

CODE OF IOWA

1924

CONTAINING

ALL STATUTES OF A GENERAL AND
PERMANENT NATURE

COMPILED AND EDITED BY

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PREFACE

The first publication of Iowa laws which bore any semblance to a code was *The Statute Laws of the Territory of Iowa, 1838-1839*, sometimes referred to as *The Old Blue Book*. A few years later there appeared the *Revised Statutes of the Territory of Iowa, 1842-1843*, popularly known as *The Blue Book*, revised and compiled by a joint committee of the Territorial Legislature, which went into effect July 1, 1843.

On January 25, 1848, the first General Assembly appointed a committee composed of Charles Mason, Wm. G. Woodward, and Stephen Hempstead to "draft, revise and prepare a code of laws for the State of Iowa". This work was accomplished in a very creditable manner and the first code of the state, known as the *Code of 1851*, was enacted by the legislature and approved by the Governor, February 5, 1851. This code was in the form of a single act, and although it was considered in chapters and sections by the legislature, it passed both houses on the last day of the session as a single bill, and on the same day was approved by the Governor.

Following the adoption of the new constitution in 1857 the seventh General Assembly in 1858 passed a joint resolution appointing William Smyth of Linn County, W. T. Barker of Dubuque County, and Charles Ben Darwin of Des Moines County "Commissioners to draft and report to the Judiciary Committee of the two houses a Code of Civil and Criminal procedure; * * * and to Revise and Codify the General Laws of the State so far as practicable".

These commissioners reported to the eighth General Assembly in 1860 a code of civil and criminal practice and these proposed bills became the law with few changes. The commissioners construed the statute as authorizing them only to make a compilation of the remaining laws and they limited their work to this, but in their report expressed the opinion that a real codification of all of the law would be very desirable but would take the "painful labor of many minds working in concert for many years".

This *Revision of 1860* was apparently not satisfactory and the *Code of 1873* soon followed. The thirteenth General Assembly in 1870 appointed William H. Seevers of Mahaska County, John C. Polley of Clinton County, and William J. Knight of Dubuque County, as commissioners to carefully revise the statutes of this state, rewrite the same, omit obsolete parts, insert all amendments, transpose words and sentences, and when necessary, to change the phraseology. Judge Polley, however, removed from the state and Wm. G. Hammond, Chancellor of the Law Department of the State University, was appointed to fill the vacancy. The report of this commission was the basis of the *Code of 1873*. The General Assembly saw that it was not possible to do the work in the regular session and this work was done at an adjourned session which lasted thirty-six days. This code took effect September 1, 1873, and section 47 thereof provided that: "All public and general statutes passed prior to the present session of the general assembly, and all public and special acts, the subjects whereof are revised in this code, or which are repugnant to the pro-

visions thereof, are hereby repealed, subject to the limitations and with the exceptions herein expressed."

The *Code of 1873* continued to be the official code of the state for twenty-four years, although supplemented in a measure by private compilations known as McClain's Code and Miller's Code, respectively, which were officially recognized by the General Assembly, and came into general use throughout the state.

The twenty-fifth General Assembly in 1894 passed a bill providing for the appointment of a commission of five persons to carefully revise and codify the laws, rewrite the same and divide them into appropriate parts and arrange them into titles, chapters, and sections, omit all parts repealed or obsolete, insert all amendments to make the laws complete, transpose words and sentences, arrange the same into sections or paragraphs, number them, change the phraseology, and make any and all alterations necessary to improve, systematize, harmonize, and make the laws clear and intelligible.

This commission consisted of Emlin McClain, Chancellor of the Law Department of the State University, appointed by the Senate, John Y. Stone and Charles Baker, appointed by the House, and H. S. Winslow and H. F. Dale, appointed by the Supreme Court.

This commission reported to the twenty-sixth General Assembly a "Proposed Code" with an "Explanatory Report". The General Assembly undertook the work of code revision; but finding that it could not be done at the regular session, an extra session was called which convened January 19, 1897. The proposed code reported by the commissioners was little more than a compilation, comparatively few changes being recommended. The General Assembly followed in general the work of the code commissioners, but made numerous changes in the law, entirely rewriting several parts of it. On May 11, 1897, a recess was taken until July 1st, and the extra session finally adjourned July 2, 1897, having been in session one hundred eleven days, and the laws, under the constitution, took effect ninety days thereafter.

After having served the people for about twenty-five years, the *Code of 1897* and the supplements thereto became so complicated and cumbersome that the thirty-eighth General Assembly provided for a new revision of the laws by the passage of an act (38 G. A., ch. 50) which contained provisions similar to those which resulted in the *Code of 1897*. This act provided for the appointment of a commission consisting of three members, one of whom was to be the Supreme Court Reporter, and the two remaining members were to be named by the Governor from a list of five persons especially fitted for such work, submitted to him by the Chief Justice of the Supreme Court. The commissioners appointed were James H. Trewin of Cedar Rapids, who had been chairman of the code supervising committee of the twenty-sixth General Assembly; J. C. Mabry of Albia, and U. G. Whitney, the Reporter of the Supreme Court.

The act providing for the appointment of the commission suggested no definite plan for the work or the report of the commission, but directed it to edit and codify the laws of Iowa, "reporting necessary and desirable changes to the General Assembly." It also provided that the commission should "submit a report to the Legislature calling attention by reference to the section of the code, to all repealed laws by section and reference

to the session repealing same and calling attention to such portions of the laws as may be found to be conflicting, or redundant or ambiguous or such as otherwise require legislative action to make clear; and shall include in such reports the comments and recommendations of the commission or editor upon the subject of any part of said code." Also, the Governor was requested by this act "to convene the Legislature in extra session during the month of January, 1920, or as soon thereafter as practicable, for the consideration of said report and code."

The commission organized March 19, 1919, by selecting James H. Trewin as chairman and U. G. Whitney as secretary. Believing it would be impracticable for the General Assembly to formulate bills, and guided by the experience of the twenty-sixth General Assembly, the commission presented to the thirty-eighth General Assembly the following plan for the pending code revision:

"First. To prepare an orderly compilation of the laws, omitting all laws of a local or temporary character, etc., and cause the same to be printed on or before December 1, 1919, without change in wording;

"Second. To prepare a report, setting forth a codification of such parts of the law as in the judgment of the commission is necessary, and that such codification shall be prepared in the form of bills as substitutes for the sections or chapters codified, as the case may be;

"Third. To separately report such amendments to the laws as codified as, in the judgment of the commission, are necessary for the public interest." (See *House Journal*, 1919, page 1101.)

The code commissioners prepared and published as directed an orderly compilation of the laws which is known as the *Compiled Code of Iowa*, 1919, and also prepared two hundred fifty-three bills, comprising two thousand sixty pages, which amended, revised, and codified certain sections, chapters, and titles of the *Compiled Code*. The commissioners made this report to the thirty-eighth General Assembly on February 1, 1920, accompanying the report with a schedule of the commissioners' bills, together with a table showing the sections codified.

The Governor having failed to call the extra session as requested, the *Compiled Code* and the commissioners' bills came before the regular session of the thirty-ninth General Assembly. Committees of the House and Senate compared the *Compiled Code* with the sources from which it was derived. The thirty-ninth General Assembly directed that its acts of a general and permanent nature be published in the form of a supplement to the *Compiled Code*, and that the code commissioners' bills be amended to conform with the legislation passed by it. Provision was also made for an extra session at which it was contemplated the work of code revision would receive exclusive consideration. The Governor did not see fit, however, to call such extra session and the matter of code revision was again delayed until the meeting of the fortieth General Assembly.

The fortieth General Assembly, at its regular session, had before it all of the code commissioners' amended bills and the advantage of a book of briefs of the bills prepared by the commissioners, but found time to pass only a small number of these bills. Governor Kendall then called an extra session to convene April 18, 1923, the day following the adjournment of the regular session. After meeting and organizing, the General

Assembly recessed until December 4, 1923. Provisions were again made for conforming the bills to the acts of the regular session of the fortieth General Assembly, and also for a cumulative supplement to the *Compiled Code*. These were prepared, and all the bills, together with a number of additional bills, were reprinted, the briefs, for greater convenience, being printed under the appropriate sections of the bills.

The extra session of the fortieth General Assembly reconvened on December 4, 1923, and immediately began consideration of the code commissioners' bills. It soon became apparent that the work would be greatly facilitated by calling the code commissioners in consultation, and such action was authorized. The commissioners remained to the end of the session as advisors and assistants to the General Assembly, and appreciation of this assistance found expression in resolutions passed by the Assembly at the close of the session. It is estimated that approximately one-third of the sections of the *Compiled Code* were amended and revised in the process of producing the *Code of 1924*. Historical references at the end of each section disclose the origin of the section and any subsequent legislative action. The sections which were affected by the codification can therefore be determined by an examination of such historical references.

The General Assembly completed its work on April 26, 1924. In chapter 3, laws of the extra session of the fortieth General Assembly, (sections 168, 169, and 172 of this Code) the preparation and publication of the *Code of 1924* were provided for. Some of these provisions are new in code building in Iowa. For instance, chapters are numbered consecutively without regard to titles. Each page contains two columns, and a chapter analysis is placed at the head of each chapter. It is believed that these features will meet with approval.

The volume contains no tables of corresponding sections and no annotations, but the law provides for the publication of such tables and annotations in separate volumes.

Provision was made that the President of the Senate should appoint two members of the Senate, and the Speaker of the House three members of the House, who should constitute a code supervising committee, to have "general supervision and oversight over the work of editing the code and the work of the code editor in preparing the code for publication and of the printing and binding thereof." The members selected from the Senate were Charles M. Dutcher of Iowa City, and Ed. M. Smith of Winterset; and those from the House were C. F. Clark of Cedar Rapids, E. P. Harrison of Oakland, and Clyde H. Doolittle of Manchester.

In view of the fact that under the constitution all of the provisions of the *Code of 1924* which were passed by the extra session of the fortieth General Assembly would take effect "ninety days after the adjournment" of such extra session, and of the fact that the code could not be prepared and published within ninety days from April 26, 1924, the General Assembly, in order that its laws might be published and ready for distribution before taking effect, recessed until July 22, 1924.

Upon reconvening on July 22d, the General Assembly, upon the recommendation of the code supervising committee, passed several bills curing manifest errors which had crept into the work of the extra session. Some of these corrections have been carried into the code as published,

and all will be found in the session laws published by the authority of the General Assembly.

The extra session of the fortieth General Assembly, having been in session one hundred fifty-five days, finally adjourned on July 30, 1924, and the laws passed by it, except those which took effect by publication, will become effective "ninety days after the adjournment".

The committee believes that the *Code of 1924* is more logically arranged than the *Code of 1897*. It is divided into many more titles and chapters, and most of the duplications and inconsistencies which resulted from the enactment of many statutes since the *Code of 1897*, sometimes without regard to the then existing law, have been eliminated. Wherever changes have been made, it has been the endeavor to express the law in concise and clear language, short sentences and sections, and it is confidently believed that it will be more readily found and more easily understood than the law appearing in any previous code of Iowa.

One of the important accomplishments of the fortieth General Assembly was the laying of the foundation for continuous code revision in providing that the code editor shall in future submit recommendations to the General Assembly for amending, revising, and codifying the laws; and it is sincerely hoped that every succeeding General Assembly will appoint appropriate committees and give serious consideration to such recommendations and that some portions of the law will be amended, revised, and codified at each session, and thus the enormous expense and the consumption of time of the members of the General Assembly in going through another general revision will be avoided. Under the law enacted, there will be a new code issued every four years; and it is, in our judgment, entirely feasible and economical to do this and thus with timely revisions of portions of the law prevent in the future the great complication and confusion into which our laws fell between the adoption of the *Code of 1897* and the present time.

The index of this code has been prepared by Mr. Jacob Van der Zee of the faculty of the State University of Iowa. As far as possible it has followed the index to the *Code of 1897*, with which users of the code are familiar. We believe that it is a great improvement over any previous index and predict that it will give general satisfaction.

In compiling and editing the present volume, the committee desires to especially commend the work of Hon. U. G. Whitney, the Code Editor. He has worked untiringly and intelligently to produce a creditable code. He has been ably assisted by Mr. O. K. Patton, of the law faculty of the State University of Iowa, and others, all of whom have displayed commendable zeal in their work.

While this code contains all the laws of the state of a general and permanent nature, it should be borne in mind that its contents were not enrolled and passed as a whole by any General Assembly. The book therefore is a compilation of the laws of Iowa, published under the authority of the state.

PREFACE

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The "Tables of Corresponding Sections" and the "Book of Annotations" will appear in due season; and it is hoped that in content, workmanship, and design the work of "code revision" started in the thirty-eighth General Assembly and ending in the extra session of the fortieth General Assembly will meet with the approval of the lawyer and the layman.

Respectfully submitted,

CHARLES M. DUTCHER, *Chairman*

C. F. CLARK, *Vice Chairman*

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ABBREVIATIONS

C., '51.....	Code of 1851
R., '60.....	Revision of 1860
C., '73.....	Code of 1873
C., '97.....	Code of 1897
S., '13.....	Supplement 1913
S. S., '15.....	Supplemental Supplement 1915
G. A.....	General Assembly
§ or Sec.....	Section
Ch.....	Chapter
Et seq.....	And sections following
H. F.....	House File
S. F.....	Senate File
Ex.....	Extra Session

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EDITORS' INTRODUCTION

It is important for the users of this book to understand fully the nature of the volume. The legislature has designated it as the *Code of 1924*, but it is a somewhat different book than the *Code of 1897* or the *Code of 1873*.

NATURE OF THE CODE OF 1924

This volume, as stated in the preface of the supervising committee, is a *compilation* rather than a *code*; it is in fact an extensively amended *Code of 1897*, compiled in one volume and containing the following:

1. All the sections of the *Code of 1897*, the *Supplement of 1913*, and the *Supplemental Supplement of 1915*, of a *general* and *permanent* nature, which were still in force at the close of the extra session of the fortieth general assembly.

2. All the sections of the acts of the thirty-seventh, thirty-eighth, thirty-ninth, and fortieth (regular) general assemblies, of a *general* and *permanent* nature, which were still in force at the close of the extra session of the fortieth general assembly.

3. All the sections of the acts of the extra session of the fortieth general assembly (known as the code revision session) of a *general* and *permanent* nature.

The sections which comprise the *Code of 1924* were not, therefore, all enacted at one session of the legislature. Indeed some of the sections of this volume were enacted at the extra session of the twenty-sixth general assembly and some at every subsequent session of the legislature down to and including the extra session of the fortieth general assembly. The statutes, therefore, of which this volume is the *prima facie* evidence, are to be found in the original enrollments of all the sessions of the general assembly from the extra session of the twenty-sixth general assembly down to and including the extra session of the fortieth general assembly: they are not to be found merely in the original enrollments of the extra session of the fortieth general assembly.

The sections, however, which were enacted at the code revision session can be easily determined by examining the historical reference at the end of each section. Every section which has a citation in the reference like either one of the following was enacted at the extra session of the fortieth general assembly:

40 Ex. G. A., H. F. 2, § 1. (See section 4 of the code)

40 Ex. G. A., S. F. 9, § 1. (See section 139 of the code)

40 Ex. G. A., ch. 3, § 27. (See section 47 of the code)

The abbreviation "Ex." in the above citations stands for *extra session*; "H. F." means *house file*; and "S. F." indicates *senate file*. The last citation differs from the first two in that the reference is to the session laws instead of to a house or senate file. In other words, this citation can be found in the published session laws of the extra session, while the first two citations can only be found in the original enrollments of the extra session on file in the office of the secretary of state and are published for the first time in this volume.

WORK PREPARATORY TO CODE REVISION

Perhaps the true nature of the *Code of 1924* can be better comprehended by understanding the manner in which it was compiled. In this connection it is necessary to review briefly the work which was done prior to the convening of the code revision session of the legislature.

Chapter 50, acts of the thirty-eighth general assembly, created a Code Commission to perform the following duties:

1. Compile all the existing statutory law of the state of a *general* and *permanent* nature in one volume.
2. Rearrange, revise, and rewrite such portions of the above compilation with such modifications and additions as were deemed necessary in order to simplify, clarify, and reduce the body of the law into one harmonious whole.

The Code Commission discharged the above duties by preparing (1) the *Compiled Code of 1919*, which consisted of all the statutory law of a *general* and *permanent* nature reclassified and rearranged, and (2) the *Report of the Code Commission*, which contained 253 recommendations in the form of legislative bills.

Due to the delay in completing the code revision program it was necessary for both the thirty-ninth and fortieth general assemblies to provide for bringing the *Compiled Code* and the *Report of the Code Commission* down to date. This was done in the case of the *Compiled Code* by the issuance of a supplement in 1921 and a supplement in 1923. In the case of the *Report of the Code Commission* a number of revised and several new bills were prepared after the close of the thirty-ninth and the fortieth general assemblies and finally all the bills were reprinted with the explanatory notes of the drafters under each section.

This brief history has been necessary because, although the *Code of 1924* is technically an extensively amended *Code of 1897*, compiled in one volume, it is in fact the *Compiled Code* and the *Supplement of 1923*, plus the legislative changes made in those two volumes by the adoption of code revision bills presented to the legislature at the extra session of the fortieth general assembly.

About two-thirds of the sections in the *Compiled Code* and the *Supplement of 1923*—comprising about half of the matter in those volumes—were not affected by any act of the extra session. Hence, those sections appear in the *Code of 1924* in the same language in which they appeared in the *Compiled Code* and in the *Supplement*—amounting to about 7,875 of the 14,027 sections. The remaining portion of the *Code of 1924*—consisting of approximately 6,152 sections—was made up from the original enrollments of the extra session of the fortieth general assembly. Thus it is evident that if the nature of the present code is to be understood it is necessary at this point to describe briefly how the *Compiled Code* and the *Supplement of 1923* were made.

The material for these volumes was taken from seven official depositories: the *Code of 1897*, the *Supplement of 1913*, the *Supplemental Supplement of 1915*, and the session laws of the thirty-seventh, thirty-eighth, thirty-ninth, and fortieth (regular) general assemblies. The statute law gathered up from these several sources embraced approximately 15,000 sections.

Inasmuch as a considerable portion of this mass of legislation consisted of repealing and amendatory sections, a large number of them were culled out and eliminated by carrying out the legislative direction contained therein. Authorized changes were also made in the remaining sections. Thus, for example, where the old law required the executive council to audit claims against the state, the words "state board of audit" were substituted; "state normal school" was changed to "state teachers' college"; and where certain state educational institutions once managed by boards of trustees were later placed under the state board of education, the name of the new board was substituted.

This editorial work on nearly 15,000 sections of law, without changing their meaning or eliminating any portion unless expressly authorized, resulted in the survival of a total of 10,495 sections. Even in cases where two or more sections or even whole chapters, like those dealing with drainage, concerned the same subject, no matter whether certain provisions were redundant or cumulative or plainly contradictory, they were allowed to stand in the *Compiled Code* and the *Supplement* just as they appeared in the official depositories.

These volumes were intended to be stepping stones in the code revision program. No changes were made in the law, but the statutes were merely brought together in these volumes for convenience of reference by the legislature when considering proposed changes or the new wording of sections which were presented in the form of code revision bills.

Although no changes were made in the law in these volumes a new classification, however, was attempted. The *Code of 1897* consisted of four parts: Public Law, Private Law, Code of Civil Practice, and Code of Criminal Procedure; each was divided into titles; and these twenty-six titles were further subdivided into chapters. All legislation enacted by the general assembly since 1897 had been fitted into this arrangement.

A general survey of the law, however, seemed to demand a rearrangement. As a result the division of the code into four parts was dispensed with as having no special value; the twenty-six titles were broken up into thirty-four titles, and over three hundred new chapters were introduced. Twenty-one of the old title headings were slightly altered, and of the five remaining, title III was broken up into new ones covering "Courts of Record of Original Jurisdiction" and "Supreme Court", and titles XIX, XX, XXIII, and XXVI were reduced to the status of chapters under other titles. On the other hand eleven subjects formerly appearing as chapters were raised to the prominence of titles.

It was this new arrangement of the law in the *Compiled Code* and the *Supplement* which the legislature had before it when it convened in extra session and out of which it was to build a new code. In addition to this compilation it also had presented to it over 200 code revision bills which had been drawn with reference to the sectionizing, chapterizing, and classification of the *Compiled Code* and the *Supplement*.

Most of these bills, with a few modifications here and there, were enacted by the legislature and under the constitution become effective ninety days after the final adjournment of the special session, with the exception of a few which were put into operation by publication.

PREPARATION OF THE CODE OF 1924

When the editors began the task of preparing the *Code of 1924* for publication they had the following materials with which to work:

1. Those sections of the *Compiled Code* and the *Supplement* which had not been affected by any code revision bill—consisting of approximately two-thirds of the sections in those volumes and approximately one-half the material.

2. Those sections of the acts of the extra session of the fortieth general assembly which were of a *general* and *permanent* nature.

Thus a somewhat different task was presented than at any prior code revision in this state. It was necessary for the editors to *fit these two classes of material together* so as to leave the whole body of the law in as logical and orderly an arrangement as possible.

In this work the new arrangement adopted in the *Compiled Code* and the *Supplement* was used, although it was deemed advisable to classify the law under thirty-six titles and six hundred sixty chapters as compared with thirty-four titles and six hundred nineteen chapters used in the *Compiled Code* and the *Supplement*.

This arrangement of the new code is very important to the lawyer. Before any attempt is made to use this volume extensively a careful study should be made of the analysis of the code by titles and chapters which appears at the beginning of the volume. In this way the reader can fix in his mind the general location of subjects. For example, the last eight titles of the new code are devoted to the courts and their procedure—formerly these provisions were scattered throughout the code.

The compilation of the new code was accomplished by first cutting and pasting the sections of the *Compiled Code* and the *Supplement* which were to be used upon large size sheets of stiff paper—one section to a sheet. Copies were then made of the original enrollments of the special session of the fortieth general assembly and each section to be used was in a similar manner mounted upon one of these sheets. The sheets used were perforated on the left-hand side so that they could be laced together and tied into strong binders for future handling and safe-keeping. When the code was finally compiled in this ponderous form it comprised 13,253 pages, divided into 49 volumes—each volume having the appearance of a large scrap book.

After the material for the new code was assembled in this form it was necessary to classify, arrange, and edit it, so that the titles, chapters, and sections could be numbered consecutively. In doing this the editors were authorized by the legislature:

- “1. To correct therein all misspelled words in the original enrollments.

2. To correct all manifest grammatical and clerical errors including punctuation but without changing the meaning.

3. To transpose sections or to divide sections so as to give to distinct subject matters a section number but without changing the meaning.”

In parts of the code where there was practically no code revision the power to divide sections was used quite extensively. Indeed, when the *Compiled Code* and the *Supplement* were edited a large number of sections were divided, especially in the titles on “Criminal Law” and “Criminal

Procedure". This same policy was followed in editing the *Code of 1924*. As a matter of fact the idea of short sections was embodied in the code revision bills and is one of the outstanding features of the new code.

In editing the material for the new code, in addition to the above work, it was necessary to read each section to see if it contained a cross-reference. There are over 4,500 sections in the code which are referred to specifically in other sections. In every one of these instances it was necessary to convert the old compiled code or supplement number or the section number of the legislative enactment of the extra session, as the case might be, into the proper section number of the new code. This process alone consumed weeks of careful and tedious work and was greatly complicated by the fact that all of the sections of the new code were not enacted by the same legislature nor with regard to each other: they represent an accumulation of legislative enactments covering a period of twenty-seven years. It was found that in many instances sections which were referred to in other sections had been changed without any regard to the sections in which the cross-references appeared. In these cases it was necessary to determine the new reference by comparing the subject matter of the old and the new sections—a merely mechanical method of converting the old numbers into those of the new code could not be relied upon.

Moreover, each section of the new code had to be provided with a historical reference. In case of those sections taken from the *Compiled Code* and the *Supplement* the same historical reference was used as appeared on the section in those two volumes, although a number of errors were corrected. But in case of the sections enacted by the code revision session or which were divided in the course of the editorial work it was necessary to prepare a new historical reference for each one of these sections. In those portions of the code in which the codification work made an entirely new arrangement of the law or severely resectionized it, this task proved to be a very difficult one.

Furthermore, each section had to be read to see if the catchwords formerly appearing on the section were correct. In many instances new catchwords were provided and a large number of corrections were made throughout the volume. After this process was completed a chapter analysis was inserted at the head of each chapter. This analysis was made by listing the section number and catchwords for each section in the chapter.

In order to carry out the legislative program of having the new code take effect in October, it was necessary for the editors to use a large corps of workers. Indeed, the amount of work entailed in the orderly and logical grouping of title contents preparatory to the renumbering of titles, chapters, and sections, the preparation and verification of historical references, the discovery and conversion of cross-references, together with the general editorial work incident to the publication of 14,027 sections of law, meant that the editorial staff had to work at top speed from April until September, much more rapidly at times than the editors desired, but the legislature had fixed the time limit, and the work had to be done accordingly.

The accuracy of the historical references and the cross-references, and whatever excellence the work may have in general, are due in a large

degree to the patience and tireless efforts of the workers in the office of the Code Editor.

The courteous treatment and helpful suggestions received from the Code Supervising Committee, which had general supervision of the work, are gratefully acknowledged.

U. G. WHITNEY

O. K. PATTON

OFFICE OF THE CODE EDITOR
STATE HOUSE, DES MOINES, IOWA
SEPTEMBER, 1924

PUBLICATION OF THE CODE

[Part of chapter 3, Acts of the Fortieth General Assembly, Special Session.]

1. Style of code.
2. Editorial work.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Style of code. The code shall be prepared and published substantially in the following form and style:

1. The printing of the text shall be in double columns from type forms thirty-seven (37) picas wide by fifty-four (54) picas high and in nine (9) point type solid and with spacing of approximately six (6) points between each section.

2. The chapters shall be numbered consecutively (commencing with number one (1)) and without regard to titles.

3. Each section shall be indicated by a number printed in bold face type.

4. Each section shall have appropriate catchwords printed in bold face type contrasting with the text and followed immediately by the first word of the section.

5. Proper historical references shall immediately follow the last word of each section.

6. The code provided for herein shall include:

a. An analysis of the code by titles and chapters.

b. The declaration of independence.

c. Articles of confederation.

d. The constitution of the United States.

e. Laws of the United States relating to citizenship, naturalization, and the authentication of records.

f. The constitution of Iowa.

g. The act admitting Iowa into the union as a state.

h. Chapter analysis at the head of each chapter.

i. All of the statutes of Iowa of a general and permanent nature.

j. The rules of the supreme court.

k. An index covering the constitution and statutes of the state of Iowa and the rules of the supreme court.

7. The code editor shall prepare and there shall be published such tables of corresponding sections of prior codes, supplements thereto, and session laws as may be determined by the code supervising committee. The committee shall publish the same in a separate volume, free distribution and sale of which shall be made the same as copies of the code.

3. Present code.
4. Code supervising committee.

8. The code shall be printed upon a good quality of paper and bound in good grade of buckram to specifications prepared by the state printing board and approved by the code supervising committee.

SECTION 2. Editorial work. The code editor in preparing the copy for an edition of the code shall have power:

1. To correct therein all misspelled words in the original enrollments.

2. To correct all manifest grammatical and clerical errors including punctuation but without changing the meaning.

3. To transpose sections or to divide sections so as to give to distinct subject matters a section number but without changing the meaning.

SECTION 3. Present code. The editor of the code shall, with all due diligence, proceed with the preparation of the code and the printing board shall proceed with like diligence and cause said code to be issued at the earliest possible time.

SECTION 4. Code supervising committee. Before the adjournment of the extra session of the fortieth general assembly, the president of the Senate shall appoint two members of the Senate and the speaker of the House shall appoint three members of the House, who shall constitute a code supervising committee, which committee shall have general supervision and oversight of the work of editing the code and the work of the code editor in preparing the code for publication and of the printing and binding thereof. The code supervising committee shall meet with the code editor at his office in the state house at such times as, in their judgment, may be necessary to properly supervise the work of the code editor, and to aid the code editor in the proper and expeditious work of preparing and publishing the code in compliance with the provisions of this act. The members of the code supervising committee shall be paid their actual and necessary expenses incurred in the performance of their duties as provided for herein.

This act took effect by publication April 17, 1924.



THE DECLARATION OF INDEPENDENCE

IN CONGRESS, JULY 4, 1776.

[*Literal reprint of the declaration of independence as it appears in the Revised Statutes of the United States, 1878.*]

The unanimous Declaration of the thirteen united States of America.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless

suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

DECLARATION OF INDEPENDENCE

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For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Government:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence

They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

New Hampshire.—JOSIAH BARTLETT, WM. WHIPPLE, MATHEW THORNTON.

Massachusetts Bay.—SAML. ADAMS, JOHN ADAMS, ROBT. TREAT PAINE, ELBRIDGE GERRY.

Rhode Island.—STEP. HOPKINS, WILLIAM ELLERY.

Connecticut.—ROGER SHERMAN, SAM'EL HUNTINGTON, WM. WILLIAMS, OLIVER WOLCOTT.

New York.—WM. FLOYD, PHIL. LIVINGSTON, FRANS. LEWIS, LEWIS MORRIS.

New Jersey.—RICHD. STOCKTON, JNO. WITHERSPOON, FRAS. HOPKINSON, JOHN HART, ABRA. CLARK.

Pennsylvania.—ROBT. MORRIS, BENJAMIN RUSH, BENJA. FRANKLIN, JOHN MORTON, GEO. CLYMER, JAS. SMITH, GEO. TAYLOR, JAMES WILSON, GEO. ROSS.

Delaware.—CAESAR RODNEY, GEO. READ, THO. M'KEAN.

Maryland.—SAMUEL CHASE, WM. PACA, THOS. STONE, CHARLES CARROLL of Carrollton.

Virginia.—GEORGE WYTHE, RICHARD HENRY LEE, TH. JEFFERSON, BENJA. HARRISON, THOS. NELSON, JR., FRANCIS LIGHTFOOT LEE, CARTER BRAXTON.

North Carolina.—WM. HOOPER, JOSEPH HEWES, JOHN PENN.

South Carolina.—EDWARD RUTLEDGE, THOS. HEYWARD, JUNR., THOMAS LYNCH, JUNR., ARTHUR MIDDLETON.

Georgia.—BUTTON GWINNETT, LYMAN HALL, GEO. WALTON.

ARTICLES OF CONFEDERATION

[Adopted by the Congress of the United States November 15, 1777, and submitted for ratification to the several states. Ratification consummated and proclaimed March 1, 1781.]

PREAMBLE.

ARTICLE I. Style of confederacy.

ARTICLE II. Each state retains all powers not expressly delegated to congress.

ARTICLE III. Obligations and purposes of the league of the states.

ARTICLE IV. Freedom of intercourse between the states—surrender of fugitives from justice—records, acts and judicial proceedings of courts to be received with full faith and credit by other states.

ARTICLE V. Congress—how organized and maintained—each state to have one vote—privileges of delegates.

ARTICLE VI. No state may send embassies or make treaties—persons holding office not to accept presents, emoluments or titles from foreign states—nor shall titles of nobility be granted—no two or more states to make treaties without consent of congress—no state duties to interfere with foreign treaties—restriction upon naval armaments and military forces—militia—arms and munitions—war powers limited and defined.

ARTICLE VII. Military appointments.

ARTICLE VIII. Equalization of war charges and expenses for the common defence—based upon the value of land and improvements thereon—taxes to be levied by states.

ARTICLE IX. Powers of congress—declaring peace and war—entering into treaties—captures and prizes—letters of marque and reprisal—courts for trial of piracies and felonies on high seas—appeals in cases of captures—differences between states—mode of choosing commissioners or judges—private right of soil claimed under two or more states—coining money—weights and measures—Indian affairs—post routes—army—navy—committee of the states—other committees—civil officers—president—public expenses—borrowing money—bills of credit—land and naval forces—quotas based on a census—states to raise and equip men at expense of United States—enumeration of measures requiring the assent of a majority of the states—adjournments of congress—journals—copies of proceedings to be furnished to states if desired.

ARTICLE X. Powers of the committee of the states.

ARTICLE XI. Canada allowed to join the Union—other colonies to require the assent of nine states.

ARTICLE XII. United States pledged for payment of bills of credit and borrowed moneys.

ARTICLE XIII. States bound by decisions of congress—union to be perpetual—changes in articles to be agreed to by every state—ratification and pledge.

[Literal reprint of the articles of confederation as they appear in the Revised Statutes of the United States, 1878.]

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventyseven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz.

“Articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence

Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

Article I. The stile of this confederacy shall be “The United States of America.”

Article II. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

Article V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

Article VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy

from, or enter into any conference, agreement, alliance or treaty with any king prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Article VII. When land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct,

and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out

one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States.—fixing the standard of weights and measures throughout the United States.—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appoint-

ing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same:

nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

Article X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled is requisite.

Article XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by

these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And

that the articles thereof shall be inviolably observed by the States we re[s]pectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

On the part & behalf of the State of New Hampshire.

JOSIAH BARTLETT,

JOHN WENTWORTH, JUNR.,

August 8th, 1778.

On the part and behalf of the State of Massachusetts Bay.

JOHN HANCOCK,
SAMUEL ADAMS,
ELDRIDGE GERRY,

FRANCIS DANA,
JAMES LOVELL,
SAMUEL HOLTEN.

On the part and behalf of the State of Rhode Island and Providence Plantations.

WILLIAM ELLERY,
HENRY MARCHANT,

JOHN COLLINS.

On the part and behalf of the State of Connecticut.

ROGER SHERMAN,
SAMUEL HUNTINGTON,
OLIVER WOLCOTT,

TITUS HOSMER,
ANDREW ADAMS.

On the part and behalf of the State of New York.

JAS. DUANE,
FRA. LEWIS,

WM. DUER,
GOUV. MORRIS.

On the part and in behalf of the State of New Jersey, Novr. 26, 1778.

JNO. WITHERSPOON,

NATHL. SCUDDER.

On the part and behalf of the State of Pennsylvania.

ROBT. MORRIS,
DANIEL ROBERDEAU,
JONA. BAYARD SMITH,

WILLIAM CLINGAN,
JOSEPH REED, 22d July, 1778.

On the part & behalf of the State of Delaware.

THO. M'KEAN, Feby. 12, 1779,
JOHN DICKINSON, May 5th, 1779,

NICHOLAS VAN DYKE.

On the part and behalf of the State of Maryland.

JOHN HANSON, March 1, 1781,

DANIEL CARROLL, Mar. 1, 1781.

On the part and behalf of the State of Virginia.

RICHARD HENRY LEE,
JOHN BANISTER,
THOMAS ADAMS,

JNO. HARVIE,
FRANCIS LIGHTFOOT LEE.

On the part and behalf of the State of No. Carolina.

JOHN PENN, July 21st, 1778,
CORNS. HARNETT,

JNO. WILLIAMS.

On the part & behalf of the State of South Carolina.

HENRY LAURENS,
WILLIAM HENRY DRAYTON,
JNO. MATHEWS,

RICHD. HUTSON,
THOS. HEYWARD, JUNR.

On the part & behalf of the State of Georgia.

JNO. WALTON, 24th July, 1778,
EDWD. TELFAIR,

EDWD. LANGWORTHY.

CONSTITUTION OF THE UNITED STATES OF AMERICA

[Recommended by the convention of the states to congress on September 17, 1787, and by it submitted on September 28, 1787, to the states for ratification, which, by the concurrence of nine states, was consummated and proclaimed, and, on March 4, 1789, the government commenced operations under the new constitution.]

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[*Literal reprint of the constitution of the United States as it appears in Senate Document No. 96, Sixty-Seventh Congress, Second Session.*]

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE. I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massa-

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chusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have

been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces:

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE. II.

SECTION. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be

the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE. IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

people to keep and bear Arms, shall not be infringed.

AMENDMENT 3.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 9.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

NOTE: The first ten amendments were proposed by congress to the legislatures of the several states on September 25, 1789, and were ratified by all of the states, except Connecticut, Georgia and Massachusetts, before the end of the year 1791, thereby becoming a part of the organic law, pursuant to the fifth article of the original constitution.

AMENDMENT 11.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

NOTE: The above amendment was submitted by congress to the legislatures of the several states on March 5, 1794, and was, in a message of the president to congress January 8, 1798, declared to have been duly ratified by the legislatures of three-fourths of the states.

AMENDMENT 12.

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or

members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

NOTE: The above amendment was submitted by congress to the legislatures of the several states on December 12, 1803, in lieu of the original third paragraph of the first section of the second article, and was proclaimed by the secretary of state on September 25, 1804, to have been duly ratified.

AMENDMENT 13.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

NOTE: The above amendment was submitted by congress to the legislatures of the several states on February 1, 1865, and was proclaimed by the secretary of state on December 18, 1865, to have been duly ratified.

AMENDMENT 14.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State,

being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

NOTE: The above amendment was submitted by congress to the legislatures of the several states on June 16, 1866, and was proclaimed by the secretary of state on July 28, 1868, to have been duly ratified.

AMENDMENT 15.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

NOTE: The above amendment was submitted by congress to the legislatures of the several states on February 27, 1869, and was proclaimed by the secretary of state on March 30, 1870, to have been duly ratified.

AMENDMENT 16.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the

several States, and without regard to any census or enumeration.

NOTE: The above amendment was submitted by congress to the legislatures of the several states on July 12, 1909, and was proclaimed by the secretary of state on February 25, 1913, to have been duly ratified.

AMENDMENT 17.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

NOTE: The above amendment was submitted by congress to the legislatures of the several states on May 16, 1912, and was proclaimed by the secretary of state on May 31, 1913, to have been duly ratified.

AMENDMENT 18.

SECTION 1. After one year from the ratification of this article the manufacture, sale,

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or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

NOTE: The above amendment was submitted by congress to the legislatures of the several states on December 17, 1917, and was proclaimed by the acting secretary of state on January 29, 1919, to have been duly ratified.

AMENDMENT 19.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

NOTE: The above amendment was submitted by congress to the legislatures of the several states on June 5, 1919, and was proclaimed by the secretary of state on August 26, 1920, to have been duly ratified.

CITIZENSHIP

GENERAL PROVISIONS

[Reprinted from the Revised Statutes of the United States, 1878, as amended by act of August 22, 1912, ch. 336, § 1, 37 Stat. L. 356.]

SECTION 1992. All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.

SECTION 1993. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

SECTION 1994. Repealed, but see act of September 22, 1922, ch. 411, § 6, 42 Stat. L. 1021, *post*.

SECTION 1995. All persons born in the district of country formerly known as the territory of Oregon, and subject to the jurisdiction of the United States on the 18th May, 1872, are citizens in the same manner as if born elsewhere in the United States.

SECTION 1996. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the president, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

NOTE: Subsequent statutes provide for the removal, upon certain conditions, of the disabilities imposed by section 1996. See acts of August 14, 1888, ch. 890, §§ 1-3, 25 Stat. L. 442; March 2, 1889, ch. 390, §§ 1-9, 25 Stat. L. 871; March 2, 1891, ch. 498, 26 Stat. L. 824; July 27, 1892, ch. 273, 27 Stat. L. 278; March 2, 1895, ch. 181, 28 Stat. L. 814.

SECTION 1997. No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the army or navy; but this section shall

be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

SECTION 1998. Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six of the Revised Statutes of the United States: *Provided*, that the provisions of this section and said section nineteen hundred and ninety-six shall not apply to any person hereafter deserting the military or naval service of the United States in time of peace: *And provided further*, that the loss of rights of citizenship heretofore imposed by law upon deserters from the military or naval service may be mitigated or remitted by the president where the offense was committed in time of peace and where the exercise of such clemency will not be prejudicial to the public interests: *And provided further*, that the provisions of section eleven hundred and eighteen of the Revised Statutes of the United States that no deserter from the military service of the United States shall be enlisted or mustered into the military service, and the provisions of section two of the act of congress approved August first, eighteen hundred and ninety-four, entitled "An act to regulate enlistments in the army of the United States," shall not be construed to preclude the reenlistment or muster into the army of any person who has deserted, or may hereafter desert, from the military service of the United States in time of peace, or of any soldier whose service during his last preceding term of enlistment has not been honest and faithful, whenever the reenlistment or muster into the military service of such person or soldier shall, in view of the good conduct of such person or soldier subsequent to such desertion or service, be authorized by the secretary of war. [Amended by act of August 22, 1912, ch. 336, § 1, 37 Stat. L. 356.]

SECTION 1999. Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the republic.

SECTION 2000. All naturalized citizens of the United States, while in foreign countries, are

entitled to and shall receive from this government the same protection of persons and property which is accorded to native-born citizens.

SECTION 2001. Whenever it is made known to the president that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the president forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the president shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the president shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the president to congress.

CITIZENSHIP GRANTED TO CERTAIN INDIANS

[*Act of February 8, 1887, ch. 119, § 6, 24 Stat. L. 390, amended, March 3, 1901, ch. 868, §1 Stat. L. 1447, and May 8, 1906, ch. 2348, §4 Stat. L. 182.*]

Every Indian born within the territorial limits of the United States to whom allotments shall have been made and who has received a patent in fee simple under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is

hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

[*Act of November 6, 1919, ch. 95, §1 Stat. L. 350.*]

Every American Indian who served in the military or naval establishments of the United States during the war against the imperial German government, and who has received or who shall hereafter receive an honorable discharge, if not now a citizen and if he so desires, shall, on proof of such discharge and after proper identification before a court of competent juris-

diction, and without other examination except as prescribed by said court, be granted full citizenship with all the privileges pertaining thereto, without in any manner impairing or otherwise affecting the property rights, individual or tribal, of any such Indian or his interest in tribal or other Indian property.

EXPATRIATION OF CITIZENS

[*Act of March 2, 1907, ch. 2534, §4 Stat. L. 1228.*]

SECTION 1. Repealed by act of June 4, 1920, ch. 223, § 5, 41 Stat. L. 751.

SECTION 2. Any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from

which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however,* that such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the department of state may prescribe: *And*

provided also, that no American citizen shall be allowed to expatriate himself when this country is at war.

SECTION 3. Repealed, but see act of September 22, 1922, ch. 411, § 7, 42 Stat. L. 1022, *post*.

SECTION 4. Repealed, but see act of September 22, 1922, ch. 411, § 6, 42 Stat. L. 1022, *post*.

SECTION 5. A child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided*, that such naturalization or resumption takes place during the minority of such child: *And provided further*, that the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States.

SECTION 6. All children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority.

SECTION 7. Duplicates of any evidence, registration, or other acts required by this act shall be filed with the department of state for record.

CITIZENSHIP OF MARRIED WOMEN

[*Act of September 22, 1922, ch. 411, 42 Stat. L. 1021.*]

SECTION 3. A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after the passage of this act, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalizations of aliens: *Provided*, that any woman citizen who marries an alien ineligible to citizenship shall cease to be a citizen of the United States. If at the termination of the marital status she is a citizen of the United States she shall retain her citizenship regardless of her residence. If during the continuance of the marital status she resides continuously for two years in a foreign state of which her husband is a citizen or subject, or for five years continuously outside the United States, she shall thereafter be subject to the same presumption as is a naturalized citizen of the United States under the second paragraph of section 2 of the act entitled "An act in reference to expatriation of citizens and their pro-

tection abroad," approved March 2, 1907. Nothing herein shall be construed to repeal or amend the provisions of Revised Statutes 1999 or of section 2 of the expatriation act of 1907 with reference to expatriation.

SECTION 6. Section 1994 of the Revised Statutes and section 4 of the expatriation act of 1907 are repealed. Such repeal shall not terminate citizenship acquired or retained under either of such sections nor restore citizenship lost under section 4 of the expatriation act of 1907.

SECTION 7. Section 3 of the expatriation act of 1907 is repealed. Such repeal shall not restore citizenship lost under such section nor terminate citizenship resumed under such section. A woman who has resumed under such section citizenship lost by marriage shall, upon the passage of this act, have for all purposes the same citizenship status as immediately preceding her marriage.

NATURALIZATION OF ALIENS

GENERAL PROVISIONS

[*Reprinted from the Revised Statutes of the United States, 1878.*]

SECTION 2165. Repealed. See act of June 29, 1906, ch. 3592, § 26, 34 Stat. L. 603.

SECTION 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

NOTE: The above section was repealed by act of May 9, 1918, ch. 69, § 2, 40 Stat. L. 542, but as to certain aliens who had served in the armies of the United States prior to January 1, 1900, it remains in full force and effect. The subject matter of this section is now covered by § 4 of act of June 29, 1906, *post*.

SECTION 2167. Repealed. See act of June 29, 1906, ch. 3592, § 26, 34 Stat. L. 603.

SECTION 2168. Repealed. See act of June 29, 1906, ch. 3592, § 26, 34 Stat. L. 603.

SECTION 2169. The provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent.

SECTION 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

SECTION 2171. Repealed. See act of May 9, 1918, ch. 69, § 1, 40 Stat. L. 542; also, act of June 29, 1906, ch. 3592, § 4, subdivision eleven, *post*.

SECTION 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

SECTION 2173. Repealed. See act of June 29, 1906, ch. 3592, § 26, 34 Stat. L. 603.

SECTION 2174. Repealed. See act of May 9, 1918, ch. 69, § 2, 40 Stat. L. 542.

CHINESE

[*Act of May 6, 1832, ch. 126, § 14, 22 Stat. L. 61.*]

Hereafter no state court or court of the United States shall admit Chinese to citizen-

ship; and all laws in conflict with this act are hereby repealed.

RESIDENCE IN HAWAII

[Act of April 30, 1900, ch. 339, 31 Stat. L. 161, amended, act of May 27, 1910, ch. 258, § 9, 36 Stat. L. 448.]

SECTION 100. For the purposes of naturalization under the laws of the United States residence in the Hawaiian Islands prior to the taking effect of this act shall be deemed equivalent to residence in the United States and in the territory of Hawaii, and the requirement of a previous declaration of intention to become a citizen of the United States and to renounce former allegiance shall not apply to persons who have resided in said islands at least five years prior to the taking effect of this act; but all other provisions of the laws of the United States relating to naturalization shall,

so far as applicable, apply to persons in the said islands.

All records relating to naturalization, all declarations of intention to become citizens of the United States, and all certificates of naturalization filed, recorded, or issued prior to the taking effect of the naturalization act of June twenty-ninth, nineteen hundred and six, in or from any circuit court of the territory of Hawaii, shall for all purposes be deemed to be and to have been made, filed, recorded, or issued by a court with jurisdiction to naturalize aliens, but shall not be by this act further validated or legalized.

BUREAU OF IMMIGRATION AND NATURALIZATION

[Act of June 29, 1906, ch. 3592, 34 Stat. L. 596-607, amended, acts of March 4, 1909, ch. 321, §§ 74-81, 35 Stat. L. 1102; June 25, 1910, ch. 401, §§ 1, 3, 36 Stat. L. 829; May 9, 1918, ch. 69, §§ 1-3, 40 Stat. L. 542.]

The designation of the bureau of immigration in the department of commerce and labor is hereby changed to the "bureau of immigration and naturalization," which said bureau, under the direction and control of the secretary of commerce and labor, in addition to the duties now provided by law, shall have charge of all matters concerning the naturalization of aliens. It shall be the duty of the said bureau to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this act of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

NOTE: Bureau of immigration and naturalization has been divided into two bureaus—namely, the bureau of immigration and the bureau of naturalization. These bureaus are now under the jurisdiction of the department of labor. See act of March 4, 1913, ch. 141, 37 Stat. L. 736.

SECTION 3. Exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by congress in any state, United States district courts for the territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the supreme court of the District of Columbia, and the

United States courts for the Indian Territory; also all courts of record in any state or territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

The naturalization jurisdiction of all courts herein specified, state, territorial, and federal, shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the bureau of immigration and naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said bureau.

SECTION 4. An alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien:

Provided, however, that no alien, who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided,* that if he has filed his declaration before the passage of this act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the state, territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified,

in their opinion, to be admitted as a citizen of the United States.

NOTE: The word "district" in above paragraph has been amended to read "the District of Columbia". See act of May 9, 1918, ch. 69, § 3, 40 Stat. L. 542.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the department of commerce and labor, if the petitioner arrives in the United States after the passage of this Act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the constitution of the United States, and that he absolutely and entirely renounces and adjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state or territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this act, be naturalized without making any declaration of intention.

Seventh. Any native-born Philipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States navy

or marine corps or the naval auxiliary service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, either the regular or the volunteer forces, or the national army, the national guard or naval militia of any state, territory, or the District of Columbia, or the state militia in federal service, or in the United States navy or marine corps, or in the United States coast guard, or who has served for three years on board of any vessel of the United States government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the army reserve or regular army reserve after honorable service, may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the bureau of naturalization, in accordance with the requirements of this subdivision it is shown that such residence can not be established; any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; any alien declarant who has served in the United States army or navy, or the Philippine constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, by two witnesses, citizens of the United States, and in these cases only residence in the Philippine Islands and the Panama Canal zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for purposes of naturalization; and any alien, or any person owing permanent allegiance to the United States embraced within this subdivision, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding the limitation upon the jurisdiction of the courts specified in section three of the act of June twenty-ninth, nineteen hundred and six, provided he appears with his two witnesses before the appropriate representative of the bureau of naturalization and passes the pre-

liminary examination hereby required before filing his petition for naturalization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of the government from the bureau of naturalization and made a part of the record at the original and any subsequent hearings; and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the masters of said vessels, shall be deemed prima facie evidence to satisfy all of the requirements of residence within the United States and within the state, territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States, identifying the applicant as the person named in the certificate or honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed; and any petition for naturalization filed under the provisions of this subdivision may be heard immediately, notwithstanding the law prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court. Any alien, who, at the time of the passage of this act, is in the military service of the United States, who may not be within the jurisdiction of any court authorized to naturalize aliens, may file his petition for naturalization without appearing in person in the office of the clerk of the court and shall not be required to take the prescribed oath of allegiance in open court. The petition shall be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall prove in their affidavits the portion of the residence that they have personally known the applicant to have resided within the United States. The time of military service may be established by the affidavits of at least two other citizens of the United States, which, together with the oath of allegiance, may be taken in accordance with the terms of section seventeen hundred and fifty of the Revised Statutes of the United States after notice from and under regulations of the bureau of naturalization. Such affidavits and oath of allegiance shall be admitted in evidence in any original or appellate naturalization proceeding without proof of the genuineness of the seal or signature or of the official character of the officer before whom the affidavits and oath of allegiance were taken, and shall be filed by the representative of the government from the bureau of naturalization at the hearing as provided by section eleven of the act of June twenty-ninth, nineteen hundred and six. Members of the naturalization bureau and service may be designated by the secretary of labor to administer oaths relating to the administration of the naturalization law; and

the requirement of section ten of notice to take depositions to the United States attorneys is repealed, and the duty they perform under section fifteen of the act of June twenty-ninth, nineteen hundred and six (thirty-fourth statutes at large, part one, page five hundred and ninety-six), may also be performed by the commissioner or deputy commissioner of naturalization: *Provided*, that it shall not be lawful to make a declaration of intention before the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court: *Provided further*, that service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens can not secure residence for naturalization purposes during service upon vessels of foreign registry.

During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military service of the United States for filing his petition or issuing the certificate of naturalization upon admission to citizenship, and no clerk of any state court shall charge or collect any fee for this service unless the laws of the state require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the state shall be charged or collected. A full accounting for all of these transactions shall be made to the bureau of naturalization in the manner provided by section thirteen of the act of June twenty-ninth, nineteen hundred and six.

Eighth. Every seaman, being an alien, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen: *Provided*, that nothing contained in this act shall be taken or construed to repeal or modify any portion of the act approved March fourth, nineteen hundred and fifteen (thirty-eighth statutes at large, part one, page eleven hundred and sixty-four, chapter one hundred and fifty-three), being an act to promote the welfare of American seamen.

Ninth. For the purpose of carrying on the work of the bureau of naturalization of sending the names of the candidates for citizenship to the public schools and otherwise promoting instruction and training in citizenship responsibilities of applicants for naturalization, as provided in this subdivision, authority is hereby given for the reimbursement of the printing and binding appropriation of the department of labor upon the records of the treasury department from the naturalization fees depos-

ited in the treasury through the bureau of naturalization for the cost of publishing the citizenship textbook prepared and to be distributed by the bureau of naturalization to those candidates for citizenship only who are in attendance upon the public schools, such reimbursement to be made upon statements by the commissioner of naturalization of books actually delivered to such student candidates for citizenship, and a monthly naturalization bulletin, and in this duty to secure the aid of and cooperate with the official state and national organizations, including those concerned with vocational education and including personal services in the District of Columbia, and to aid the local army exemption boards and cooperate with the war department in locating declarants subject to the army draft and expenses incidental thereto.

Tenth. Any person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July first, nineteen hundred and fourteen, and was on that date otherwise qualified to become a citizen of the United States, except that he had not made the declaration of intention required by law and who during or prior to that time, because of misinformation regarding his citizenship status erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention required of other aliens, and upon satisfactory proof to the court that he has so acted may be admitted as a citizen of the United States upon complying in all respects with the other requirements of the naturalization law.

Eleventh. No alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall be admitted to become a citizen of the United States unless he made his declaration of intention not less than two nor more than seven years prior to the existence of the state of war, or was at that time entitled to become a citizen of the United States, without making a declaration of intention, or unless his petition for naturalization shall then be pending and is otherwise entitled to admission, notwithstanding he shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject: *Provided*, that no alien embraced within this subdivision shall have his petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the commissioner or deputy commissioner of naturalization to be present, and the petition shall be given no final hearing except in open court and after such notice to the representative of the government from the bureau of naturalization, whose objection shall cause the petition to be continued from time to time for so long as the government may require: *Provided, however*, that nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably

to law, of any alien enemy at any time previous to the actual naturalization of such alien; and section twenty-one hundred and seventy-one of the Revised Statutes of the United States is hereby repealed: *Provided further*, that the president of the United States may, in his discretion, upon investigation and report by the department of justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon he shall have the privilege of applying for naturalization.

Twelfth. Any person who, while a citizen of the United States and during the existing war in Europe, entered the military or naval service of any country at war with a country with which the United States is now at war, who shall be deemed to have lost his citizenship by reason of any oath or obligation taken by him for the purpose of entering such service, may resume his citizenship by taking the oath of allegiance to the United States prescribed by the naturalization law and regulations, and such oath may be taken before any court of the United States or of any state authorized by law to naturalize aliens or before any consul of the United States, and certified copies thereof shall be sent by such court or consul to the department of state and the bureau of naturalization, and the act (public fifty-five, sixty-fifth Congress, approved October fifth, nineteen hundred and seventeen), is hereby repealed.

Thirteenth. Any person who is serving in the military or naval forces of the United States at the termination of the existing war, and any person who before the termination of the existing war may have been honorably discharged from the military or naval services of the United States on account of disability incurred in line of duty, shall, if he applies to the proper court for admission as a citizen of the United States, be relieved from the necessity of proving that immediately preceding the date of his application he has resided continuously within the United States the time required by law of other aliens, or within the state, territory, or the District of Columbia for the year immediately preceding the date of his petition for naturalization, but his petition for naturalization shall be supported by the affidavits of two credible witnesses, citizens of the United States, identifying the petitioner as the person named in the certificate of honorable discharge, which said certificate may be accepted as evidence of good moral character required by law, and he shall comply with the other requirements of the naturalization law.

SECTION 5. The clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of

his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpoena for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses can not be produced upon the final hearing other witnesses may be summoned.

SECTION 6. Petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided*, that no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful, at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien, to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith.

SECTION 7. No person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

SECTION 8. No alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language: *Provided*, that this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States; *And provided further*, that the requirements of this section shall not apply to any alien who has prior to the passage of this act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, that the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

SECTION 9. Every final hearing upon such petition shall be had in open court before a

judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

SECTION 10. In case the petitioner has not resided in the state, territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the state, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the bureau of immigration and naturalization and the United States attorney for the district in which said witnesses may reside.

NOTE: The provision of this section of notice to take depositions to the United States attorneys was repealed. See subdivision 7 of section 4 of this act.

The word "district" in above section has been amended to read "the District of Columbia". See act of May 9, 1918, ch. 69, § 3, 40 Stat. L. 542.

SECTION 11. The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

SECTION 15. It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this act shall, within five years after the issuance

of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the department of state, furnish the department of justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the bureau of naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the bureau of immigration and naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

SECTION 28. The secretary of commerce and labor shall have power to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this act. Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this act shall be admitted in evidence equally with the originals in any and all proceedings under this act and in all cases in which the originals thereof might be admissible as evidence.

SECTION 30. All the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents

of any state or organized territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two

years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law.

NATURALIZATION OF WIFE AND MINOR CHILDREN OF INSANE ALIENS MAKING HOMESTEAD ENTRIES UNDER LAND LAWS OF THE UNITED STATES

[Act of February 24, 1911, ch. 151, 36 Stat. L. 929.]

When any alien, who has declared his intention to become a citizen of the United States, becomes insane before he is actually naturalized, and his wife shall thereafter make a homestead entry under the land laws of the

United States, she and their minor children may, by complying with the other provisions of the naturalization laws be naturalized without making any declaration of intention.

NATURALIZATION OF MARRIED WOMEN

[Act of September 22, 1922, ch. 411, 42 Stat. L. 1022.]

The right of any woman to become a naturalized citizen of the United States shall not be denied or abridged because of her sex or because she is a married woman.

States, Hawaii, Alaska, or Porto Rico for at least one year immediately preceding the filing of the petition.

SECTION 2. Any woman who marries a citizen of the United States after the passage of this act, or any woman whose husband is naturalized after the passage of this act, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

SECTION 4. A woman who, before the passage of this act, has lost her United States citizenship by reason of her marriage to an alien eligible for citizenship, may be naturalized as provided by section 2 of this act: *Provided*, that no certificate of arrival shall be required to be filed with her petition if during the continuance of the marital status she shall have resided within the United States. After her naturalization she shall have the same citizenship status as if her marriage had taken place after the passage of this act.

(a) No declaration of intention shall be required;

(b) In lieu of the five-year period of residence within the United States and the one-year period of residence within the state or territory where the naturalization court is held, she shall have resided continuously in the United

SECTION 5. No woman whose husband is not eligible to citizenship shall be naturalized during the continuance of the martial status.

PERSONS OF FOREIGN BIRTH SERVING IN MILITARY OR NAVAL FORCES OF THE UNITED STATES DURING WAR WITH GERMANY

[Act of July 19, 1919, ch. 24, § 1, 41 Stat. L. 222.]

Any person of foreign birth who served in the military or naval forces of the United States during the present war, after final examination and acceptance by the said military or naval authorities, and shall have been honorably discharged after such acceptance and service, shall have the benefits of the

seventh subdivision of section 4 of the act of June 29, 1906, thirty-fourth statutes at large, part 1, page 596, as amended, and shall not be required to pay any fee therefor; and this provision shall continue for the period of one year after all of the American troops are returned to the United States.

CERTAIN ALIENS DEBARRED FROM NATURALIZATION

[Act of July 9, 1918, ch. 143, 40 Stat. L. 885.]

A citizen or subject of a country neutral in the present war who has declared his intention to become a citizen of the United States shall be relieved from liability to military service upon his making a declaration, in accordance with such regulations as the president may

prescribe, withdrawing his intention to become a citizen of the United States, which shall operate and be held to cancel his declaration of intention to become an American citizen and he shall forever be debarred from becoming a citizen of the United States.

NATURALIZATION OF DECLARANTS WHO HAVE SERVED IN THE NAVAL RESERVE FORCE IN TIME OF WAR

[Act of May 22, 1917, ch. 18, 40 Stat. L. 84.]

The act entitled "An act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, be, and the same is hereby, amended by adding after the proviso under the heading "Naval reserve force," which reads as follows: "Provided, that citizens of the insular possessions of the United States may enroll in the naval auxiliary reserve," a further proviso as follows: *Provided further*, that such persons who are not citizens of the United States, but who have or shall have declared their intention to become citizens of the United States, and who are citizens of

countries which are at peace with the United States, may enroll in the naval reserve force subject to the condition that they may be discharged from such enrollment at any time within the discretion of the secretary of the navy, and such persons who may, under existing law, become citizens of the United States, and who render honorable service in the naval reserve force in time of war for a period of not less than one year may become citizens of the United States without proof of residence on shore and without further requirement than proof of good moral character and certificate from the secretary of the navy that such honorable service was actually rendered.

AUTHENTICATION OF RECORDS

[*Reprinted from the Revised Statutes of the United States, 1878.*]

SECTION 905. The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.

SECTION 906. All records and exemplifications of books, which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country,

by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal, of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the state, territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken.

ADMISSION OF IOWA INTO THE UNION

ORIGINAL ACT.

PREAMBLE.

1. Iowa and Florida admitted.
2. Boundaries of Iowa.
3. Boundary rivers, jurisdiction—to be common highways.
4. Assent of people of Iowa essential.
5. Boundaries of Florida.
6. Representation in congress.
7. Rights to soil and other rights reserved.

SUPPLEMENTAL ACT.

1. Laws of United States to be in force.
2. District court—district judge—jurisdiction—clerk—compensation.
3. Compensation of judge.
4. United States district attorney—compensation.
5. United States marshal—duties and compensation.

AN ACT FOR THE ADMISSION OF THE STATES OF IOWA AND FLORIDA INTO THE UNION.

[Approved March 3, 1845.]

WHEREAS, the people of the Territory of Iowa did, on the seventh day of October, eighteen hundred and forty-four, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government; and whereas, the people of the Territory of Florida did, in like manner, by their delegates, on the eleventh day of January, eighteen hundred and thirty-nine, form for themselves a constitution and State government, both of which said constitutions are republican; and said conventions having asked the admission of their respective Territories into the Union as States, on equal footing with the original States:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

SEC. 2. *And be it further enacted,* That the following shall be the boundaries of the said State of Iowa, to wit: Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude

6. Propositions to be submitted to legislature of Iowa:

- (1) Grant of lands for school purposes.
- (2) Grant of lands for university.
- (3) Grant of lands for completion of public buildings.
- (4) Salt springs granted to the state—provisos.
- (5) Five per cent. of proceeds of public lands appropriated for roads and canals.

Proviso on which the foregoing five propositions are made.

ACCEPTANCE OF PROPOSITIONS BY LEGISLATURE OF IOWA.

1. Propositions of congress accepted—proviso.
2. Covenants of the state with the United States accepting terms of provisos.
3. Secretary of state to forward copies of act of acceptance.
4. Date of taking effect.

passing through the mouth of the Mankato or Blue-Earth river, thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south to the northern boundary line of the State of Missouri, thence eastwardly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning.

SEC. 3. *And be it further enacted,* That the said State of Iowa shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said State of Iowa, so far as the said rivers shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same: Such rivers to be common to both: And that the said river Mississippi, and the navigable waters leading into the same, shall be common highways, and forever free as well to the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State of Iowa.

SEC. 4. *And be it further enacted,* That it is made and declared to be a fundamental condition of the admission of said State of Iowa into the Union, that so much of this act as relates to the said State of Iowa shall be assented to by a majority of the qualified electors at their township elections, in the manner and at the time prescribed in the sixth

section of the thirteenth article of the constitution adopted at Iowa city the first day of November, anno Domini eighteen hundred and forty-four, or by the legislature of said State. And as soon as such assent shall be given, the President of the United States shall announce the same by proclamation; and therefrom and without further proceedings on the part of Congress, the admission of the said State of Iowa into the Union, on an equal footing in all respects whatever with the original States, shall be considered as complete.

SEC. 5. *And be it further enacted*, That said State of Florida shall embrace the territories of East and West Florida, which by the treaty of amity, settlement and limits between the United States and Spain, on the twenty-second day of February, eighteen hundred and nineteen, were ceded to the United States.

SEC. 6. *And be it further enacted*, That until the next census and apportionment shall be made, each of said States of Iowa and Florida shall be entitled to one representative in the House of Representatives of the United States.

SEC. 7. *And be it further enacted*, That said States of Iowa and Florida are admitted into the Union on the express condition that they shall never interfere with the primary disposal of the public lands lying within them, nor levy any tax on the same whilst remaining the property of the United States: *Provided*, That the ordinance of the convention that formed the constitution of Iowa, and which is appended to the said constitution, shall not be deemed or taken to have any effect or validity, or to be recognised as in any manner obligatory upon the Government of the United States.

AN ACT SUPPLEMENTAL TO THE ACT FOR THE
ADMISSION OF THE STATES OF IOWA
AND FLORIDA INTO THE UNION.

[*Approved March 3, 1845.*]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the State of Iowa as elsewhere within the United States.

SEC. 2. *And be it further enacted*, That the said State shall be one district, and be called the district of Iowa; and a district court shall be held therein, to consist of one judge, who shall reside in the said district, and be called a district judge. He shall hold, at the seat of government of the said State, two sessions of the said district court annually, on the first Monday in January, and he shall, in all things, have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act entitled "An act to establish the judicial courts of the United States." He shall appoint a clerk for the said district, who shall reside and keep

the records of the said court at the place of holding the same; and shall receive, for the services performed by him, the same fees to which the clerk of the Kentucky district is by law entitled for similar services.

SEC. 3. *And be it further enacted*, That there shall be allowed to the judge of the said district court the annual compensation of fifteen hundred dollars, to commence from the date of his appointment, to be paid quarterly at the treasury of the United States.

SEC. 4. *And be it further enacted*, That there shall be appointed in the said district, a person learned in the law, to act as attorney for the United States; who shall, in addition to his stated fees, be paid annually by the United States two hundred dollars, as a full compensation for all extra services: the said payments to be made quarterly, at the treasury of the United States.

SEC. 5. *And be it further enacted*, That a marshal shall be appointed for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed and allowed to marshals in other districts; and shall, moreover, be entitled to the sum of two hundred dollars annually, as a compensation for all extra services.

SEC. 6. *And be it further enacted*, That in lieu of the propositions submitted to the Congress of the United States, by an ordinance passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates at Iowa city, assembled for the purpose of making a constitution for the State of Iowa, which are hereby rejected, the following propositions be, and the same are hereby, offered to the legislature of the State of Iowa, for their acceptance or rejection; which, if accepted, under the authority conferred on the said legislature, by the convention which framed the constitution of the said State, shall be obligatory upon the United States:

First. That section numbered sixteen in every township of the public lands, and, where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools.

Second. That the seventy-two sections of land set apart and reserved for the use and support of a university, by an act of Congress approved on the twentieth day of July, eighteen hundred and forty, entitled "An act granting two townships of land for the use of a university in the Territory of Iowa," are hereby granted and conveyed to the State, to be appropriated solely to the use and support of such university, in such manner as the legislature may prescribe.

Third. That five entire sections of land, to be selected and located under the direction of the legislature, in legal divisions of not less than one quarter section, from any of the unappropriated lands belonging to the United States.

within the said State, are hereby granted to the State for the purpose of completing the public buildings of the said State, or for the erection of public buildings at the seat of government of the said State, as the legislature may determine and direct.

Fourth. That all salt springs within the State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the said State for its use; the same to be selected by the legislature thereof, within one year after the admission of said State, and the same, when so selected, to be used on such terms, conditions, and regulations, as the legislature of the State shall direct: *Provided*, That no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State: *And provided, also*, That the General Assembly shall never lease or sell the same, at any one time, for a longer period than ten years, without the consent of Congress.

Fifth. That five per cent. of the net proceeds of sales of all public lands lying within the said State, which have been, or shall be sold by Congress, from and after the admission of said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the legislature may direct: *Provided*, That the five foregoing propositions herein offered are on the condition that the legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide, by an ordinance, irrevocable without the consent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents, respectively.

AN ACT AND ORDINANCE ACCEPTING THE PROPOSITIONS MADE BY CONGRESS ON THE ADMISSION OF IOWA INTO THE UNION AS A STATE.

[*Approved January 15, 1849.*]

SECTION 1. *Be it enacted and ordained by the General Assembly of the State of Iowa, That*

the propositions to the State of Iowa on her admission into the Union, made by the act of Congress, entitled "An act supplemental to the act for the admission of the States of Iowa and Florida into the Union," approved March 3, 1845, and which are contained in the sixth section of that act, are hereby accepted in lieu of the propositions submitted to Congress by an ordinance, passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates which assembled at Iowa City on the first Monday of October, eighteen hundred and forty-four, for the purpose of forming a Constitution for said State, and which were rejected by Congress: *Provided*, The General Assembly shall have the right, in accordance with the provisions of the second section of the tenth article of the Constitution of Iowa, to appropriate the five per cent. of the net proceeds of sales of all public lands lying within the State, which have been or shall be sold by Congress from and after the admission of said State, after deducting all expenses incident to the same, to the support of common schools.

SECTION 2. *And be it further enacted and ordained*, as conditions of the grants specified in the propositions first mentioned in the foregoing section, irrevocable and unalterable without the consent of the United States, that the State of Iowa will never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands, the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war with Great Britain, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, County, Township, or other purposes, for the term of three years from and after the dates of the patents respectively.

SECTION 3. It is hereby made the duty of the Secretary of State, after the taking effect of this act, to forward one copy of the same to each of our Senators and Representatives in Congress, who are hereby required to procure the consent of Congress to the diversion of the five per cent. fund indicated in the proviso to the first section of this act.

SECTION 4. This act shall take effect from and after its publication in the weekly newspapers printed in Iowa City.

CONSTITUTION OF THE STATE OF IOWA

[With the exception of the summary which appears at the beginning of the constitution and the catchwords which precede each section, the constitution as it appears here is a literal print of the original constitution on file in the office of the secretary of state.]

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Preamble. WE, THE PEOPLE OF THE STATE OF IOWA, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows:

Boundaries. Beginning in the middle of the main channel of the Mississippi River, at a point due East of the middle of the mouth of the main channel of the Des Moines River, thence up the middle of the main channel of the said Des Moines River, to a point on said river where the Northern boundary line of the State of Missouri—as established by the constitution of that State—adopted June 12th, 1820—crosses the said middle of the main channel of the said Des Moines River; thence Westwardly along the said Northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersects the middle of the main channel

of the Missouri River; thence up the middle of the main channel of the said Missouri River to a point opposite the middle of the main channel of the Big Sioux River, according to Nicollett's Map; thence up the main channel of the said Big Sioux River, according to the said map, until it is intersected by the parallel of forty three degrees and thirty minutes North latitude; thence East along said parallel of forty three degrees and thirty minutes until said parallel intersects the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said Mississippi River to the place of beginning.

ARTICLE I.

BILL OF RIGHTS.

Rights of persons. SECTION 1. All men are, by nature, free and equal, and have certain inalienable rights—among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

Political power. SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it.

Religion. SEC. 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

Religious test—witnesses. SEC. 4. No religious test shall be required as a qualification for any office, or public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any party to any judicial proceeding shall have the right to use as a witness, or take the testimony of, any other person not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.

Dueling. SEC. 5. Any citizen of this State who may hereafter be engaged, either directly, or indirectly, in a duel, either as principal, or accessory before the fact, shall forever be disqualified from holding any office under the Constitution and laws of this State.

Laws uniform. SEC. 6. All laws of a general nature shall have a uniform operation;

the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

Liberty of speech and press. SEC. 7. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appear to the jury that the matter charged as libellous was true, and was published with good motives and for justifiable ends, the party shall be acquitted.

Personal security—searches and seizures. SEC. 8. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

Right of trial by jury—due process of law. SEC. 9. The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by a jury or a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law.

Rights of persons accused. SEC. 10. In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him, to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses; and, to have the assistance of counsel.

When indictment necessary. SEC. 11. All offences less than felony and in which the punishment does not exceed a fine of one hun-

dred dollars, or imprisonment for thirty days, shall be tried summarily before a Justice of the Peace; or other officer authorized by law, on information under oath, without indictment, or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offence, unless on presentment or indictment by a grand jury, except in cases arising in the army, or navy, or in the militia, when in actual service, in time of war or public danger.

NOTE: As to indictment and the number of grand jurors, see amendment 3 of 1884, p. 52.

Twice tried—bail. SEC. 12. No person shall after acquittal, be tried for the same offence. All persons shall, before conviction, be bailable, by sufficient sureties, except for capital offences where the proof is evident, or the presumption great.

Habeas corpus. SEC. 13. The writ of habeas corpus shall not be suspended, or refused when application is made as required by law, unless in case of rebellion, or invasion the public safety may require it.

Military. SEC. 14. The military shall be subordinate to the civil power. No standing army shall be kept up by the State in time of peace; and in time of war, no appropriation for a standing army shall be for a longer time than two years.

Quartering soldiers. SEC. 15. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

Treason. SEC. 16. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open Court.

Bail—punishments. SEC. 17. Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

ARTICLE II.

RIGHT OF SUFFRAGE.

Electors. SECTION 1. Every white male citizen of the United States, of the age of twenty one years, who shall have been a resident of this State six months next preceding the election, and of the County in which he claims his vote sixty days, shall be entitled to vote at all elections which are now or hereafter may be authorised by law.

NOTE: The above section was amended in 1868 by striking the word "white" from the first line thereof. See first amendment of 1868, p. 52.

For qualifications of electors, see also amendment 19, U. S. constitution, p. 19.

Eminent domain. SEC. 18. Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

NOTE: The above section was amended in 1908 by adding thereto a provision relative to drainage. See amendment of 1908, p. 53.

Imprisonment for debt. SEC. 19. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in case of fraud; and no person shall be imprisoned for a militia fine in time of peace.

Right of assemblage—petition. SEC. 20. The people have the right freely to assemble together to counsel for the common good; to make known their opinions to their representatives and to petition for a redress of grievances.

Attainder—ex post facto law—obligation of contract. SEC. 21. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Resident aliens. SEC. 22. Foreigners who are, or may hereafter become residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and descent of property, as native born citizens.

Slavery—penal servitude. SEC. 23. There shall be no slavery in this State; nor shall there be involuntary servitude, unless for the punishment of crime.

Agricultural leases. SEC. 24. No lease or grant of agricultural lands, reserving any rent, or service of any kind, shall be valid for a longer period than twenty years.

Rights reserved. SEC. 25. This enumeration of rights shall not be construed to impair or deny others, retained by the people.

NOTE: An additional section (section 26) was added to article I by the amendment of 1882. The supreme court, however, in the case of Koehler v. Hill, 60 Iowa, 543, on April 21, 1883, held that, owing to certain irregularities, the amendment did not become a part of the constitution. See amendment of 1882, p. 52.

Privileged from arrest. SEC. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

From military duty. SEC. 3. No elector shall be obliged to perform military duty on the day of election, except in time of war, or public danger.

Persons in military service. SEC. 4. No person in the military, naval, or marine service of

the United States shall be considered a resident of this State by being stationed in any garrison, barrack, or military or naval place, or station within this State.

Disqualified persons. SEC. 5. No idiot, or insane person, or person convicted of any

infamous crime, shall be entitled to the privilege of an elector.

Ballot. SEC. 6. All elections by the people shall be by ballot.

NOTE: For provisions relative to general election, see amendment of 1916, p. 53; see also code, § 504.

ARTICLE III.

OF THE DISTRIBUTION OF POWERS.

Departments of government. SECTION 1. The powers of the government of Iowa shall be divided into three separate departments—the Legislative, the Executive, and the Judicial: and no person charged with the exercise of

powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT.

General assembly. SECTION 1. The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives; and the style of every law shall be, "Be it enacted by the General Assembly of the State of Iowa."

Sessions. SEC. 2. The sessions of the General Assembly shall be biennial, and shall commence on the second Monday in January next ensuing the election of its members; unless the Governor of the State shall, in the meantime, convene the General Assembly by proclamation.

Representatives. SEC. 3. The members of the House of Representatives shall be chosen every second year, by the qualified electors of their respective districts, on the second Tuesday in October, except the years of the Presidential election, when the election shall be on the Tuesday next after the first Monday in November; and their term of office shall commence on the first day of January next after their election, and continue two years, and until their successors are elected and qualified.

NOTE: For provisions relative to the time of holding the general election, see amendment of 1916, p. 53; see also code, § 504.

Qualifications. SEC. 4. No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, be a free white male citizen of the United States, and shall have been an inhabitant of this State one year next preceding his election, and at the time of his election shall have had an actual residence of sixty days in the County, or District he may have been chosen to represent.

NOTE: The above section was amended in 1880 by striking the words "free white" therefrom. See amendment of 1880, p. 52.

Senators — qualifications. SEC. 5. Senators shall be chosen for the term of four years, at the same time and place as Representatives; they shall be twenty-five years of age, and possess the qualifications of Representatives as to residence and citizenship.

Number and classification. SEC. 6. The number of Senators shall not be less than one third, nor more than one half the representative body; and shall be so classified by lot, that one class, being as nearly one half as possible, shall be elected every two years. When the number of Senators is increased, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal in numbers as practicable.

Officers—elections determined. SEC. 7. Each house shall choose its own officers, and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

Quorum. SEC. 8. A majority of each house shall constitute a quorum to transact business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

Authority of the houses. SEC. 9. Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and, with the consent of two thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the General Assembly of a free and independent State.

Protest—record of vote. SEC. 10. Every member of the General Assembly shall have the liberty to dissent from, or protest against any act or resolution which he may think injurious to the public, or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals.

Privileged from arrest. SEC. 11. Senators and Representatives, in all cases, except treason,

felony, or breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same.

Vacancies. SEC. 12. When vacancies occur in either house, the Governor or the person exercising the functions of Governor, shall issue writs of election to fill such vacancies.

Doors open. SEC. 13. The doors of each house shall be open, except on such occasions, as, in the opinion of the house, may require secrecy.

Adjournments. SEC. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Bills. SEC. 15. Bills may originate in either house, and may be amended, altered, or rejected by the other; and every bill having passed both houses, shall be signed by the Speaker and President of their respective houses.

Executive approval—veto. SEC. 16. Every bill which shall have passed the General Assembly, shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon their journal, and proceed to re-consider it; if, after such re-consideration, it again pass both houses, by yeas and nays, by a majority of two thirds of the members of each house, it shall become a law, notwithstanding the Governors objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by adjournment, prevent such return. Any bill submitted to the Governor for his approval during the last three days of a session of the General Assembly, shall be deposited by him in the office of the Secretary of State, within thirty days after the adjournment, with his approval, if approved by him, and with his objections, if he disapproves thereof.

Passage of bills. SEC. 17. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

Receipts and expenditures. SEC. 18. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the General Assembly.

Impeachment. SEC. 19. The House of Representatives shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose,

the senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present.

Officers subject to impeachment—judgment. SEC. 20. The Governor, Judges of the Supreme and District Courts, and other State officers, shall be liable to impeachment for any misdemeanor or malfeasance in office: but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under this State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanors and malfeasance in office, in such manner as the General Assembly may provide.

Members not appointed to office. SEC. 21. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

Disqualification. SEC. 22. No person holding any lucrative office under the United States, or this State, or any other power, shall be eligible to hold a seat in the General Assembly: but offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmaster whose compensation does not exceed one hundred dollars per annum, or notary public, shall not be deemed lucrative.

Failure to account. SEC. 23. No person who may hereafter be a collector or holder of public monies, shall have a seat in either House of the General Assembly, or be eligible to hold any office of trust or profit in this State, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

Appropriations. SEC. 24. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Compensation of members. SEC. 25. Each member of the first General Assembly under this Constitution, shall receive three dollars per diem while in session; and the further sum of three dollars for every twenty miles traveled, in going to and returning from the place where such session is held, by the nearest traveled route; after which they shall receive such compensation as shall be fixed by law; but no General Assembly shall have power to increase the compensation of its own members. And when convened in extra session they shall receive the same mileage and per diem compensation, as fixed by law for the regular session, and none other.

NOTE: For statutory provisions, see code, §§ 14, 15.

Time laws to take effect. SEC. 26. No law of the General Assembly, passed at a regular

session, of a public nature, shall take effect until the fourth day of July next after the passage thereof. Laws passed at a special session, shall take effect ninety days after the adjournment of the General Assembly by which they were passed. If the General Assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the State.

Divorce. SEC. 27. No divorce shall be granted by the General Assembly.

Lotteries. SEC. 28. No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed.

Acts—one subject—expressed in title. SEC. 29. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

Local or special laws—general and uniform—boundaries of counties. SEC. 30. The General Assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for State, County, or road purposes;

For laying out, opening, and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating roads, town plats, streets, alleys, or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

Extra compensation—payment of claims. SEC. 31. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.

Oath of members. SEC. 32. Members of the General Assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States, and the Constitution

of the State of Iowa, and that I will faithfully discharge the duties of Senator, (or Representative, as the case may be,) according to the best of my ability." And members of the General Assembly are hereby empowered to administer to each other the said oath or affirmation.

Census. SEC. 33. The General Assembly shall, in the years One thousand eight hundred and fifty nine, One thousand eight hundred and sixty three, One thousand eight hundred and sixty five, One thousand eight hundred and sixty seven, One thousand eight hundred and sixty nine, and One thousand eight hundred and seventy five, and every ten years thereafter, cause an enumeration to be made of all the white inhabitants of the State.

NOTE: The above section was amended in 1868 by striking the word "white" therefrom. See second amendment of 1868, p. 52.

Senators—number—method of apportionment. SEC. 34. The number of senators shall, at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties, according to the number of white inhabitants in each.

NOTE: The above section has been amended twice. In 1868 it was amended by striking the word "white" therefrom. See third amendment of 1868, p. 52.

In 1904 this section was repealed and a substitute adopted in lieu thereof. See amendment No. 2 of 1904, p. 53.

Senators—representatives—number—apportionment—districts. SEC. 35. The Senate shall not consist of more than fifty members, nor the House of Representatives of more than one hundred; and they shall be apportioned among the several counties and representative districts of the State, according to the number of white inhabitants in each, upon ratios to be fixed by law; but no representative district shall contain more than four organized counties, and each district shall be entitled to at least one representative. Every county and district which shall have a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one representative; and any one county containing in addition to the ratio fixed by law, one half of that number, or more, shall be entitled to one additional representative. No floating district shall hereafter be formed.

NOTE: The above section has been amended twice. In 1868 it was amended by striking the word "white" therefrom. See fourth amendment of 1868, p. 52.

In 1904 this section was repealed and a substitute adopted in lieu thereof. See amendment No. 2 of 1904, p. 53.

Ratio of representation. SEC. 36. At its first session under this Constitution, and at every subsequent regular session, the General Assembly shall fix the ratio of representation, and also form into representative districts those counties which will not be entitled singly to a representative.

NOTE: The above section was repealed in 1904 and a substitute adopted in lieu thereof. See amendment No. 2 of 1904, p. 53.

Districts. SEC. 37. When a congressional, senatorial, or representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.

Elections by general assembly. SEC. 38. In all elections by the General Assembly, the members thereof shall vote viva voce and the votes shall be entered on the journal.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

Governor. SECTION 1. The Supreme Executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of Iowa.

Election and term. SEC. 2. The Governor shall be elected by the qualified electors at the time and place of voting for members of the General Assembly, and shall hold his office two years from the time of his installation, and until his successor is elected and qualified.

Lieutenant governor—returns of elections. SEC. 3. There shall be a Lieutenant Governor, who shall hold his office two years, and be elected at the same time as the Governor. In voting for Governor and Lieutenant Governor, the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor, and Lieutenant Governor, shall be sealed up and transmitted to the seat of government of the State, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

NOTE: For statutory provisions, see code, § 874.

Election by general assembly. SEC. 4. The persons respectively having the highest number of votes for Governor and Lieutenant Governor, shall be declared duly elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of said persons Governor, or Lieutenant Governor, as the case may be.

Contested elections. SEC. 5. Contested elections for Governor, or Lieutenant Governor, shall be determined by the General Assembly in such manner as may be prescribed by law.

NOTE: For statutory provisions, see code, §§ 987 to 993, inc.

Eligibility. SEC. 6. No person shall be eligible to the office of Governor, or Lieutenant Governor, who shall not have been a citizen of the United States, and a resident of the State, two years next preceding the election, and attained the age of thirty years at the time of said election.

Commander in chief. SEC. 7. The Governor shall be commander in chief of the militia, the army, and navy of this State.

Duties of governor. SEC. 8. He shall transact all executive business with the officers of

government, civil and military, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

Execution of laws. SEC. 9. He shall take care that the laws are faithfully executed.

Vacancies. SEC. 10. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the General Assembly, or at the next election by the people.

Convening general assembly. SEC. 11. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both Houses, when assembled, the purpose for which they shall have been convened.

Message. SEC. 12. He shall communicate, by message, to the General Assembly, at every regular session, the condition of the State, and recommend such matters as he shall deem expedient.

Adjournment. SEC. 13. In case of disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the General Assembly to such time as he may think proper; but no such adjournment shall be beyond the time fixed for the regular meeting of the next General Assembly.

Disqualification. SEC. 14. No person shall, while holding any office under the authority of the United States, or this State, execute the office of Governor, or Lieutenant Governor, except as hereinafter expressly provided.

Term—compensation of lieutenant governor. SEC. 15. The official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue for two years, and until their successors are elected and qualified. The Lieutenant Governor, while acting as Governor, shall receive the same pay as provided for Governor; and while presiding in the Senate, shall receive as compensation therefor, the same mileage and double the per diem pay provided for a Senator, and none other.

Pardons—reprieves—commutations. SEC. 16. The Governor shall have power to grant re-

prives, commutations and pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and the reasons therefor; and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

Lieutenant governor to act, as governor. SEC. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the Governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the Lieutenant Governor.

President of senate. SEC. 18. The Lieutenant Governor shall be President of the Senate, but shall only vote when the Senate is equally divided; and in case of his absence, or impeachment, or when he shall exercise the office of

Governor, the Senate shall choose a President pro tempore.

Vacancies. SEC. 19. If the Lieutenant Governor, while acting as Governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the President pro tempore of the Senate shall act as Governor until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

Seal of state. SEC. 20. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the Great Seal of the State of Iowa.

Grants and commissions. SEC. 21. All grants and commissions shall be in the name and by the authority of the people of the State of Iowa, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Secretary—auditor—treasurer. SEC. 22. A Secretary of State, Auditor of State and Treasurer of State, shall be elected by the qualified electors, who shall continue in office two years, and until their successors are elected and qualified; and perform such duties as may be required by law.

ARTICLE V.

JUDICIAL DEPARTMENT.

Courts. SECTION 1. The Judicial power shall be vested in a Supreme Court, District Courts, and such other Courts, inferior to the Supreme Court, as the General Assembly may, from time to time, establish.

Supreme court. SEC. 2. The Supreme Court shall consist of three Judges, two of whom shall constitute a quorum to hold Court.

Election of judges—term. SEC. 3. The Judges of the Supreme Court shall be elected by the qualified electors of the State, and shall hold their Court at such time and place as the General Assembly may prescribe. The Judges of the Supreme Court so elected, shall be classified so that one Judge shall go out of office every two years; and the Judge holding the shortest term of office under such classification, shall be Chief Justice of the Court, during his term, and so on in rotation. After the expiration of their terms of office, under such classification, the term of each Judge of the Supreme Court shall be six years, and until his successor shall have been elected and qualified. The Judges of the Supreme Court shall be ineligible to any other office in the State, during the term for which they shall have been elected.

Jurisdiction of supreme court. SEC. 4. The Supreme Court shall have appellate jurisdic-

tion only in cases in chancery, and shall constitute a Court for the correction of errors at law, under such restrictions as the General Assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior Judicial tribunals throughout the State.

District court and judge. SEC. 5. The District Court shall consist of a single Judge, who shall be elected by the qualified electors of the District in which he resides. The Judge of the District Court shall hold his office for the term of four years, and until his successor shall have been elected and qualified; and shall be ineligible to any other office, except that of Judge of the Supreme Court, during the term for which he was elected.

Jurisdiction of district court. SEC. 6. The District Court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law.

Conservators of the peace. SEC. 7. The Judges of the Supreme and District Courts shall be conservators of the peace throughout the State.

Style of process. SEC. 8. The style of all process shall be, "The State of Iowa," and all prosecutions shall be conducted in the name and by the authority of the same.

Salaries. SEC. 9. The salary of each Judge of the Supreme Court shall be two thousand dollars per annum; and that of each District Judge, one thousand six hundred dollars per annum, until they year Eighteen hundred and Sixty; after which time, they shall severally receive such compensation as the General Assembly may, by law, prescribe; which compensation shall not be increased or diminished during the term for which they shall have been elected.

NOTE: For statutory provisions relative to salary of judges of the supreme court, see biennial salary act.

Judicial districts. SEC. 10. The State shall be divided into eleven Judicial Districts; and after the year Eighteen hundred and sixty, the General Assembly may re-organize the Judicial Districts and increase or diminish the number of Districts, or the number of Judges of the said Court, and may increase the number of Judges of the Supreme Court; but such increase or diminution shall not be more than one District, or one Judge of either Court, at any one session; and no re-organization of the districts, or diminution of the number of Judges, shall have the effect of removing a Judge from office. Such re-organization of the districts, or any change in the boundaries thereof, or increase or diminution of the number of Judges, shall

take place every four years thereafter, if necessary, and at no other time.

NOTE: See amendment 2 of 1884, p. 52.

Judges—when chosen. SEC. 11. The Judges of the Supreme and District Courts shall be chosen at the general election; and the term of office of each Judge shall commence on the first day of January next, after his election.

Attorney general. SEC. 12. The General Assembly shall provide, by law, for the election of an Attorney General by the people, whose term of office shall be two years, and until his successor shall have been elected and qualified.

District attorney. SEC. 13. The qualified electors of each judicial district shall, at the time of the election of District Judge, elect a District Attorney, who shall be a resident of the district for which he is elected, and who shall hold his office for the term of four years, and until his successor shall have been elected and qualified.

NOTE: The above section was repealed in 1884 and a substitute adopted in lieu thereof. See amendment 4 of 1884, p. 52.

System of court practice. SEC. 14. It shall be the duty of the General Assembly to provide for the carrying into effect of this article, and to provide for a general system of practice in all the Courts of this State.

NOTE: For provisions relative to the grand jury, see amendment 3 of 1884, p. 52.

ARTICLE VI.

MILITIA.

Composition—training. SECTION 1. The militia of this State shall be composed of all able-bodied white male citizens, between the ages of eighteen and forty five years, except such as are or may hereafter be exempt by the laws of the United States, or of this State, and shall be armed, equipped, and trained, as the General Assembly may provide by law.

NOTE: The above section was amended in 1868 by striking the word "white" therefrom. See fifth amendment of 1868, p. 52.

Exemption. SEC. 2. No person or persons conscientiously scrupulous of bearing arms shall be compelled to do military duty in time of peace: Provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

Officers. SEC. 3. All commissioned officers of the militia, (staff officers excepted,) shall be elected by the persons liable to perform military duty, and shall be commissioned by the Governor.

ARTICLE VII.

STATE DEBTS.

Credit not to be loaned. SECTION 1. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the State shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the State.

Limitation. SEC. 2. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such

debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed the sum of two hundred and fifty thousand dollars; and the money arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

Losses to school funds. SEC. 3. All losses to the permanent, School, or University fund of this State, which shall have been occasioned

by the defalcation, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the State. The amount so audited shall be a permanent funded debt against the State, in favor of the respective fund, sustaining the loss, upon which not less than six per cent. annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article.

War debts. SEC. 4. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the debts so contracted shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Contracting debt—submission to the people. SEC. 5. Except the debts herein before specified in this article, no debt shall be hereafter contracted by, or on behalf of this State, unless such debt shall be authorized by some law for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax, sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal of such debt, within twenty years from the time of the contracting thereof;

but no such law shall take effect until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt created thereby; and such law shall be published in at least one newspaper in each County, if one is published therein, throughout the State, for three months preceding the election at which it is submitted to the people.

NOTE: For statutory provisions, see code, §§ 70, 72.

Legislature may repeal. SEC. 6. The Legislature may, at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may, at any time, forbid the contracting of any further debt, or liability, under such law; but the tax imposed by such law, in proportion to the debt or liability, which may have been contracted in pursuance thereof, shall remain in force and be irrevocable, and be annually collected, until the principal and interest are fully paid.

Tax imposed distinctly stated. SEC. 7. Every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

ARTICLE VIII.

CORPORATIONS.

How created. SECTION. 1. No corporation shall be created by special laws; but the General Assembly shall provide, by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided.

Taxation of corporations. SEC. 2. The property of all corporations for pecuniary profit, shall be subject to taxation, the same as that of individuals.

State not to be a stockholder. SEC. 3. The State shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless incurred in time of war for the benefit of the State.

Municipal corporations. SEC. 4. No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly.

Banking associations. SEC. 5. No act of the General Assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto shall take effect, or in any manner be in force, until the same shall have been submitted, separately, to the people, at a general or special election, as provided by law, to be held not less than three months after the passage of the act, and shall have been ap-

proved by a majority of all the electors voting for and against it at such election.

State bank. SEC. 6. Subject to the provisions of the foregoing section, the General Assembly may also provide for the establishment of a State Bank with branches.

Specie basis. SEC. 7. If a State Bank be established, it shall be founded on an actual specie basis, and the branches shall be mutually responsible for each others liabilities upon all notes, bills, and other issues intended for circulation as money.

General banking law. SEC. 8. If a general Banking law shall be enacted, it shall provide for the registry and countersigning, by an officer of State, of all bills, or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State Treasurer, in United States stocks, or in interest paying stocks of States in good credit and standing, to be rated at ten per cent. below their average value in the City of New York, for the thirty days next preceding their deposit; and in case of a depreciation of any portion of said stocks, to the amount of ten per cent. on the dollar, the bank or banks owning such stock shall be required to make up said deficiency by depositing additional stocks: and said law shall also provide

for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer, and to whom.

Stockholders' responsibility. SEC. 9. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held for all of its liabilities, accruing while he or she remains such stockholder.

Bill-holders preferred. SEC. 10. In case of the insolvency of any banking institution, the

bill-holders shall have a preference over its other creditors.

Specie payments—suspension. SEC. 11. The suspension of specie payments by banking institutions shall never be permitted or sanctioned.

Amendment or repeal of laws—exclusive privileges. SEC. 12. Subject to the provisions of this article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two thirds of each branch of the General Assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.

ARTICLE IX.

EDUCATION AND SCHOOL LANDS.

1st. Education.

Board of education. SECTION 1. The educational interest of the State, including Common Schools and other educational institutions, shall be under the management of a Board of Education, which shall consist of the Lieutenant Governor, who shall be the presiding officer of the Board, and have the casting vote in case of a tie, and one member to be elected from each judicial district in the State.

Eligibility. SEC. 2. No person shall be eligible as a member of said Board who shall not have attained the age of twenty five years, and shall have been one year a citizen of the State.

Election of members. SEC. 3. One member of said Board shall be chosen by the qualified electors of each district, and shall hold the office for the term of four years, and until his successor is elected and qualified. After the first election under this Constitution, the Board shall be divided, as nearly as practicable, into two equal classes, and the seats of the first class shall be vacated after the expiration of two years; and one half of the Board shall be chosen every two years thereafter.

First session. SEC. 4. The first session of the Board of Education shall be held at the Seat of Government, on the first Monday of December, after their election; after which the General Assembly may fix the time and place of meeting.

Limitation of sessions. SEC. 5. The session of the Board shall be limited to twenty days, and but one session shall be held in any one year, except upon extraordinary occasions, when, upon the recommendation of two thirds of the Board, the Governor may order a special session.

Secretary. SEC. 6. The Board of Education shall appoint a Secretary, who shall be the executive officer of the Board, and perform such duties as may be imposed upon him by the Board, and the laws of the State. They

shall keep a journal of their proceedings, which shall be published and distributed in the same manner as the journals of the General Assembly.

Rules and regulations. SEC. 7. All rules and regulations made by the Board shall be published and distributed to the several Counties, Townships, and School Districts, as may be provided for by the Board, and when so made, published and distributed, they shall have the force and effect of law.

Power to legislate. SEC. 8. The Board of Education shall have full power and authority to legislate and make all needful rules and regulations in relation to Common Schools, and other educational institutions, that are instituted, to receive aid from the School or University fund of this State: but all acts, rules, and regulations of said Board may be altered, amended or repealed by the General Assembly; and when so altered, amended, or repealed they shall not be re-enacted by the Board of Education.

Governor ex officio a member. SEC. 9. The Governor of the state shall be, *ex officio*, a member of said Board.

Expenses. SEC. 10. The Board shall have no power to levy taxes, or make appropriations of money. Their contingent expenses shall be provided for by the General Assembly.

State university. SEC. 11. The State University shall be established at one place without branches at any other place, and the University fund shall be applied to that Institution and no other.

Common schools. SEC. 12. The Board of Education shall provide for the education of all the youths of the State, through a system of Common Schools and such schools shall be organized and kept in each school district at least three months in each year. Any district fail-

ing, for two consecutive years, to organize and keep up a school as aforesaid may be deprived of their portion of the school fund.

Compensation. SEC. 13. The members of the Board of Education shall each receive the same per diem during the time of their session, and mileage going to and returning therefrom, as members of the General Assembly.

Quorum—style of acts. SEC. 14. A majority of the Board shall constitute a quorum for the transaction of business; but no rule, regulation, or law, for the government of Common Schools or other educational institutions, shall pass without the concurrence of a majority of all the

2nd. School Funds and School Lands.

Control—management. SECTION 1. The educational and school funds and lands, shall be under the control and management of the General Assembly of this State.

Permanent fund. SEC. 2. The University lands, and the proceeds thereof, and all monies belonging to said fund shall be a permanent fund for the sole use of the State University. The interest arising from the same shall be annually appropriated for the support and benefit of said University.

Perpetual support fund. SEC. 3. The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State, for the support of schools, which may have been, or shall hereafter be sold, or disposed of, and the five hundred thousand acres of land granted to the new States, under an act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved in the year of our Lord one thousand eight hundred and forty one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as has been or may hereafter be granted by Congress, on the sale of lands in this State, shall be, and remain a perpetual fund, the interest of which, together with all rents of the unsold lands, and such other means as the General Assembly may provide, shall be inviolably appropriated to the support of Common schools throughout the State.

Fines—how appropriated. SEC. 4. The money which may have been or shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several Counties for any breach

members of the Board, which shall be expressed by the yeas and nays on the final passage. The style of all acts of the Board shall be, "Be it enacted by the Board of Education of the State of Iowa."

Board may be abolished. SEC. 15. At any time after the year One thousand eight hundred and sixty three, the General Assembly shall have power to abolish or re-organize said Board of Education, and provide for the educational interest of the State in any other manner that to them shall seem best and proper.

NOTE: The board of education was abolished in 1864 by 10 G. A., ch. 52, § 1. For statutory provisions, see code, § 3912 et seq.

of the penal laws, shall be exclusively applied, in the several Counties in which such money is paid, or fine collected, among the several school districts of said Counties, in proportion to the number of youths subject to enumeration in such districts, to the support of Common Schools, or the establishment of libraries, as the Board of Education shall, from time to time provide.

Proceeds of lands. SEC. 5. The General Assembly shall take measures for the protection, improvement, or other disposition of such lands as have been, or may hereafter be reserved, or granted by the United States, or any person or persons, to this State, for the use of the University, and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be, and remain, a permanent fund, the interest of which shall be applied to the support of said University, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the General Assembly as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

Agents of school funds. SEC. 6. The financial agents of the school funds shall be the same, that by law, receive and control the State and county revenue for other civil purposes, under such regulations as may be provided by law.

Distribution. SEC. 7. The money subject to the support and maintenance of common schools shall be distributed to the districts in proportion to the number of youths, between the ages of five and twenty-one years, in such manner as may be provided by the General Assembly.

ARTICLE X.

AMENDMENTS TO THE CONSTITUTION.

How proposed—submission. SECTION 1. Any amendment or amendments to this Constitution may be proposed in either House of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the General Assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to, by a majority of all the members elected to each House, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner, and at such time as the General Assembly shall provide; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments

shall become a part of the Constitution of this State.

NOTE: For statutory provisions, see code, §§ 69, 71 to 75, inc., 761 to 768, inc.

More than one amendment. SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Convention. SEC. 3. At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, "Shall there be a Convention to revise the Constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a Convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention.

ARTICLE XI.

MISCELLANEOUS.

Justice of peace—jurisdiction. SECTION 1. The jurisdiction of Justices of the Peace shall extend to all civil cases, (except cases in chancery, and cases where the question of title to real estate may arise,) where the amount in controversy does not exceed one hundred dollars, and by the consent of parties may be extended to any amount not exceeding three hundred dollars.

Counties. SEC. 2. No new County shall be hereafter created containing less than four hundred and thirty two square miles; nor shall the territory of any organized county be reduced below that area; except the County of Worth, and the counties west of it, along the Northern boundary of this State, may be organized without additional territory.

Indebtedness of political or municipal corporations. SEC. 3. No county, or other political or municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation—to be ascertained by the last State and county tax lists, previous to the incurring of such indebtedness.

Boundaries of state. SEC. 4. The boundaries of the State may be enlarged, with the consent of Congress and the General Assembly.

Oath of office. SEC. 5. Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office.

How vacancies filled. SEC. 6. In all cases of elections to fill vacancies in office occurring before the expiration of a full term, the person so elected shall hold for the residue of the unexpired term; and all persons appointed to fill vacancies in office, shall hold until the next general election, and until their successors are elected and qualified.

Land grants located. SEC. 7. The General Assembly shall not locate any of the public lands which have been, or may be granted by Congress to this State, and the location of which may be given to the General Assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant, so exempted, shall not exceed three hundred and twenty acres.

Seat of government established—state university. SEC. 8. The seat of Government is hereby permanently established, as now fixed by law, at the City of Des Moines, in the County of Polk; and the State University, at Iowa City, in the County of Johnson.

ARTICLE XII.

SCHEDULE.

Supreme law — constitutionality of acts. SECTION 1. This Constitution shall be the supreme law of the State, and any law inconsistent therewith, shall be void. The General Assembly shall pass all laws necessary to carry this Constitution into effect.

Laws in force. SEC. 2. All laws now in force and not inconsistent with this Constitution, shall remain in force until they shall expire or be repealed.

Proceedings not affected. SEC. 3. All indictments, prosecutions, suits, pleas, complaints, process, and other proceedings pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as now provided by law; and all offences, misdemeanors, and crimes that may have been committed before the taking effect of this Constitution, shall be subject to indictment, trial and punishment, in the same manner as they would have been, had not this Constitution been made.

Fines inure to the state. SEC. 4. All fines, penalties, or forfeitures due, or to become due, or accruing to the State, or to any County therein, or to the school fund, shall inure to the State, county, or school fund, in the manner prescribed by law.

Bonds in force. SEC. 5. All bonds executed to the State, or to any officer in his official capacity, shall remain in force and inure to the use of those concerned.

First election for governor and lieutenant governor. SEC. 6. The first election under this Constitution shall be held on the second Tuesday in October, in the year one thousand eight hundred and fifty seven, at which time the electors of the State shall elect the Governor and Lieutenant Governor. There shall also be elected at such election, the successors of such State Senators as were elected at the August election, in the year one thousand eight hundred and fifty-four, and members of the House of Representatives, who shall be elected in accordance with the act of apportionment, enacted at the session of the General Assembly which commenced on the first Monday of December one thousand eight hundred and fifty six.

First election of officers. SEC. 7. The first election for Secretary, Auditor, and Treasurer of State, Attorney General, District Judges, Members of the Board of Education, District Attorneys, members of Congress and such State officers as shall be elected at the April election, in the year One thousand eight hundred and fifty seven, (except the Superintendent of Public Instruction,) and such county officers as were elected at the August election, in the year One thousand eight hundred and

fifty six, except Prosecuting Attorneys, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-eight: *Provided*, That the time for which any District Judge or other State or County officer elected at the April election in the year One thousand eight hundred and fifty eight, shall not extend beyond the time fixed for filling like offices at the October election in the year one thousand eight hundred and fifty eight.

For judges of supreme court. SEC. 8. The first election for Judges of the Supreme Court, and such County officers as shall be elected at the August election, in the year one thousand eight hundred and fifty-seven, shall be held on the second Tuesday of October, in the year One thousand eight hundred and fifty nine.

General assembly—first session. SEC. 9. The first regular session of the General Assembly shall be held in the year One thousand eight hundred and fifty-eight, commencing on the second Monday of January of said year.

Senators. SEC. 10. Senators elected at the August election, in the year one thousand eight hundred and fifty-six, shall continue in office until the second Tuesday of October, in the year one thousand eight hundred and fifty nine, at which time their successors shall be elected as may be prescribed by law.

Offices not vacated. SEC. 11. Every person elected by popular vote, by vote of the General Assembly, or who may hold office by executive appointment, which office is continued by this Constitution, and every person who shall be so elected or appointed, to any such office, before the taking effect of this constitution, (except as in this Constitution otherwise provided,) shall continue in office until the term for which such person has been or may be elected or appointed shall expire: but no such person shall continue in office after the taking effect of this Constitution, for a longer period than the term of such office, in this Constitution prescribed.

Judicial districts. SEC. 12. The General Assembly, at the first session under this Constitution, shall district the State into eleven Judicial Districts, for District Court purposes; and shall also provide for the apportionment of the members of the General Assembly, in accordance with the provisions of this Constitution.

Submission of constitution. SEC. 13. This Constitution shall be submitted to the electors of the State at the August election, in the year one thousand eight hundred and fifty-seven, in the several election districts in this State. The ballots at such election shall be written or printed as follows: Those in favor of the Constitution, "New Constitution—Yes." Those against the Constitution, "New Constitution—No." The election shall be conducted in the

same manner as the general elections of the State, and the poll-books shall be returned and canvassed as provided in the twenty-fifth chapter of the code, and abstracts shall be forwarded to the Secretary of State, which abstracts shall be canvassed in the manner provided for the canvass of State officers. And if it shall appear that a majority of all the votes cast at such election for and against this Constitution are in favor of the same, the Governor shall immediately issue his proclamation stating that fact, and such Constitution shall be the Constitution of the State of Iowa, and shall take effect from and after the publication of said proclamation.

Proposition to strike out the word "white".
 SEC. 14. At the same election that this Constitution is submitted to the people for its adoption or rejection, a proposition to amend the same by striking out the word "White" from the article on the Right of Suffrage, shall be separately submitted to the electors of this State for adoption or rejection in manner following—Namely:

Done in Convention at Iowa City, this fifth day of March in the year of our Lord One thousand eight hundred and fifty seven, and of the Independence of the United States of America, the eighty first.

In testimony whereof we have hereunto subscribed our names.

TIMOTHY DAY
 S. G. WINCHESTER
 DAVID BUNKER
 D. P. PALMER
 GEO. W. ELLS
 J. C. HALL
 JOHN. H. PETERS
 WM. A. WARREN
 H. W. GRAY
 ROBT. GOWER
 H. D. GIBSON
 THOMAS SEELY

A. H. MARVIN
 J. H. EMERSON
 R. L. B. CLARKE
 JAMES A. YOUNG
 D. H. SOLOMON
 M. W. ROBINSON
 LEWIS TODHUNTER
 JOHN EDWARDS
 J. C. TRAER
 JAMES F. WILSON
 AMOS HARRIS
 JNO T. CLARK

S AYERS
 HARVEY J. SKIFF
 J. A. PARVIN
 W. PENN. CLARKE
 JEREMIAH HOLLINGSWORTH
 WM. PATTERSON
 D. W. PRICE.
 ALPHEUS SCOTT
 GEORGE GILLASPY
 EDWARD JOHNSTONE
 AYLETT R. COTTON.

Attest:

TH: J. SAUNDERS, *Secretary.*
 E. N. BATES *Asst. Secretary.*

FRANCIS SPRINGER *President.*

PROCLAMATION.

Whereas an instrument known as the "New Constitution of the State of Iowa" adopted by the constitutional convention of said State on the fifth day of March A. D. 1857 was submitted to the qualified electors of said State at the annual election held on Monday the third day of August 1857 for their approval or rejection.

And whereas an official canvass of the votes cast at said election shows that there were Forty thousand three hundred and eleven votes cast for the adoption of said Constitution and Thirty eight thousand six hundred and eighty-one votes were cast against its adoption, leaving a majority of sixteen hundred and thirty votes in favor of its adoption.

Now therefore I, JAMES W. GRIMES, Governor of said State, by virtue of the authority conferred upon me, hereby declare the said New Constitution to be adopted, and declare it to be the supreme law of the State of Iowa.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of Iowa.

L. S. Done at Iowa City this Third day of September A. D. 1857 of the Independence of the United States the eighty second and of the State of Iowa the eleventh.

JAMES W. GRIMES.

By the Governor,
 ELIJAH SELLS,
Secretary of State.

Mills county. SEC. 15. Until otherwise directed by law, the County of Mills shall be in and a part of the sixth Judicial District of this State.
 NOTE: For provisions relative to first biennial election, see amendment No. 1 of 1904, p. 52.

AMENDMENTS TO THE CONSTITUTION

AMENDMENTS OF 1868

- 1st Strike the word "White" from Section 1 of Article 2 thereof;
- 2d Strike the word "White," from Section 33 of Article 3, thereof;
- 3d Strike the word "White," from Section 34 of Article 3 thereof;
- 4th. Strike the word White from Section 35 of Article 3 thereof;
- 5th Strike the word "White" from Section 1 of Article 6, thereof;

AMENDMENT OF 1880

Strike out the words "free white" from the third line of section four (4) of article three (3) of said constitution, relating to the legislative department.

AMENDMENT OF 1882

Add as Section 26 to Article. I. of said constitution the following:

SECTION 26 No person shall manufacture for sale, or sell, or keep for sale, as a beverage any intoxicating liquors whatever, including ale, wine and beer. The General Assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained, and shall thereby provide suitable penalties for the violation of the provisions hereof.

NOTE: On April 21, 1883, the supreme court, in the case of Koehler v. Hill, 60 Iowa, 543, held that, owing to certain irregularities, this amendment, as submitted to and adopted by the people, did not become a part of the constitution.

For prohibition of intoxicating liquors, see also amendment 18, U. S. constitution, p. 19.

AMENDMENTS OF 1884

Amendment 1. The general election for State, District County and Township officers shall be held on the Tuesday next after the first Monday in November.

NOTE: The above amendment, published as section 7 of article II, was repealed by the amendment of 1916, p. 53.

Amendment 2. At any regular session of the General Assembly, the State may be divided into the necessary Judicial Districts for District Court purposes, or the said Districts may be reorganized and the number of the Districts and the Judges of said Courts increased or diminished; but no re-organization of the Districts or diminution of the Judges shall have the effect of removing a Judge from office.

Amendment 3. The Grand Jury may consist of any number of members not less than five, nor more than fifteen, as the General Assembly may by law provide, or the General Assembly may provide for holding persons to answer for any criminal offense without the intervention of a Grand Jury.

Amendment 4. That Section 13 of Article 5 of the Constitution be stricken therefrom, and the following adopted as such Section.

SECTION 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter elect a County Attorney, who shall be a resident of the county for which he is elected, and shall hold his office for two years, and until his successor shall have been elected and qualified.

AMENDMENTS OF 1904

AMENDMENT NO. 1

Add as Section 16, to Article 12 of the constitution, the following:

SEC. 16. The first general election after the adoption of this amendment shall be held on the Tuesday next after the first Monday in November in the year one thousand nine hundred and six, and general elections shall be held biennially thereafter. In the year one thousand nine hundred and six there shall be elected a governor, lieutenant-governor, secretary of state, auditor of state, treasurer of state, attorney general, two judges of the supreme court, the successors of the judges of the district court whose terms of office expire on December 31st, one thousand nine hundred and six, state senators who would otherwise be chosen in the year one thousand nine hundred and five, and members of the house of representatives. The terms of office of the judges of the supreme court which would otherwise expire on December 31st, in odd numbered years, and all other elective state, county and township officers whose terms of office would otherwise expire in January in the year one thousand nine hundred and six, and members of the general assembly whose successors would otherwise be chosen at the general election in the year one thousand nine hundred and five, are hereby extended one year and until their successors are elected and qualified. The terms of offices of senators whose successors would otherwise be chosen in the year one thousand nine hundred and seven are hereby extended one year and until their successors are elected and qualified. The general assembly shall make such changes in the law governing the time of election and term of office of all other elective officers as shall be necessary to make the time of their election and terms of office conform to this amendment, and shall provide which of the judges of the supreme court shall serve as chief justice. The general assembly shall meet in regular session on the second Monday in January, in the year one thousand nine hundred and six, and also on the second Monday in January in the year one thousand nine hundred and seven, and biennially thereafter.

NOTE: Practically the same amendment as the above was ratified in 1900, but the supreme court, in the case of State ex rel. Bailey v. Brookhart, 113 Iowa, 250, held that said amendment was not proposed and adopted as required by the constitution, and did not become a part thereof. The above amendment of 1904 has apparently been superseded by the amendment of 1916, p. 53.

AMENDMENT NO. 2

That Sections thirty-four (34) thirty-five (35) and thirty-six (36) of Article three (3) of the constitution of the State of Iowa, be repealed and the following be adopted in lieu thereof.

SECTION 34. The Senate shall be composed of fifty members to be elected from the several senatorial districts, established by law and at the next session of the general assembly held following the taking of the state and national census, they shall be apportioned among the several counties or districts of the state, according to population as shown by the last preceding census.

SECTION 35. The House of Representatives shall consist of not more than one hundred and eight members. The Ratio of representation shall be determined by dividing the whole number of the population of the state as shown by the last preceding state or national census, by the whole number of counties then existing or organized, but each county shall constitute one representative district and be entitled to one representative, but each county having a population in excess of the ratio number, as herein provided of three fifths or more of such ratio number shall be entitled to one additional representative, but said addition shall extend only to the nine counties having the greatest population.

SECTION 36. The General Assembly shall, at the first regular session held following the adoption of this amendment, and at each succeeding regular session held next after the taking of such census, fix the ratio of representation, and apportion the additional representatives, as herein before required.

CONSTITUTION OF THE STATE OF IOWA

AMENDMENT OF 1908

That there be added to Section Eighteen (18) of Article One (1) of the constitution of the State of Iowa the following:

The General Assembly, however, may pass laws permitting the owners of land to construct drains, ditches, and levees for agricultural, sanitary or mining purposes across the lands of others, and provide for the organization of drainage districts, vest the proper authorities with power to construct and maintain levees, drains, and ditches and to keep in repair all drains, ditches, and levees heretofore constructed under the laws of the State by special assessments upon the property benefited thereby. The General Assembly may provide by law for the condemnation of such real estate as shall be necessary for the construction and maintenance of such drains, ditches, and levees, and prescribe the method of making such condemnation.

AMENDMENT OF 1916

To repeal section seven (7) of article two (2) of the constitution of Iowa and to adopt in lieu thereof the following, to-wit:

"The general election for state, district, county and township officers in the year 1916 shall be held in the same month and on the same day as that fixed by the laws of the United States for the election of presidential electors, or of president and vice-president of the United States; and thereafter such election shall be held at such time as the general assembly may by law provide."

NOTE: The above amendment repealed the first amendment of 1884, which was published as section 7 of article 2. See also amendment No. 1 of 1904, p. 52.

For statutory provisions, see code, § 504.

THE CODE OF IOWA

1924

AS AUTHORIZED BY CHAPTER THREE, ACTS OF THE FORTIETH
GENERAL ASSEMBLY, SPECIAL SESSION

TITLE I

SOVEREIGNTY AND JURISDICTION OF THE STATE, AND THE LEGISLATIVE DEPARTMENT

CHAPTER 1

SOVEREIGNTY AND JURISDICTION OF THE STATE

1. State boundaries.
2. Sovereignty.

1. State boundaries. The boundaries of the state are as defined in the preamble of the constitution. [C., '51, § 1; R., '60, § 1; C., '73, § 1; C., '97, § 1.]

2. Sovereignty. The state possesses sovereignty coextensive with the boundaries referred to in the preceding section, subject to such rights as may at any time exist in the United States in relation to public lands, or to any establishment of the national government. [C., '51, § 2; R., '60, § 2; C., '73, § 2; C., '97, § 2.]

3. Concurrent jurisdiction. The state has concurrent jurisdiction on the waters of any river or lake which forms a common boundary between this and any other state. [C., '51, § 3; R., '60, § 3; C., '73, § 3; C., '97, § 3.]

3. Concurrent jurisdiction.
4. Acquisition of lands by United States.

4. Acquisition of lands by United States. The United States of America may acquire by condemnation or otherwise for any of its uses or purposes any real estate in this state, and may exercise exclusive jurisdiction over its holding.

This state reserves, when not in conflict with the constitution of the United States or any law enacted in pursuance thereof, the right of service on real estate held by the United States of any notice or process authorized by its laws; and reserves jurisdiction, except when used for naval or military purposes, over all offenses committed thereon against its laws and regulations and ordinances adopted in pursuance thereof.

Such real estate shall be exempt from all taxation, including special assessments, while held by the United States. [R., '60, §§ 2197, 2198; C., '73, § 4; C., '97, § 4; S., '13, §§ 4-a, 4-b, 4-c, 4-d, 2024-c; 40 Ex. G. A., H. F. 2, § 1.]

CHAPTER 2

GENERAL ASSEMBLY

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| <ul style="list-style-type: none"> 5. Sessions—place. 6. Temporary organization. 7. Certificates of election. 8. Temporary officers—committee on credentials. 9. Permanent organization. 10. Officers—tenure. 11. Oaths. 12. Parliamentary rules. 13. Journals. 14. Compensation of full-time members. 15. Compensation of part-time members. 16. Payment at regular session. 17. Payment at extra or adjourned session. 18. Officers and employees. 19. Compensation of officers and employees. 20. Issue of warrants. 21. Appropriation. 22. Freedom of speech. 23. Contempt. 24. Punishment for contempt. 25. Warrant—execution. | <ul style="list-style-type: none"> 26. Fines—collection. 27. Punishment—effect. 28. Witnesses—attendance compulsory. 29. Witnesses—compensation. 30. Joint conventions. 31. Secretary—record. 32. Canvass of votes for governor. 33. Tellers. 34. Method of canvassing vote. 35. Election—vote—how taken. 36. Second poll. 37. Certificates of election. 38. Adjournment. 39. Committee on retrenchment and reform. 40. Appointive members. 41. Organization—meetings. 42. Authority during recess. 43. Record. 44. Compensation and expenses. 45. Duties. 46. May take evidence. |
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5. Sessions—place. The sessions of the general assembly shall be held at the seat of government, unless the governor shall convene them at some other place in times of pestilence or public danger. [C., '51, § 4; R., '60, § 13; C., '73, § 5; C., '97, § 5.]

6. Temporary organization. At ten o'clock in the forenoon of the day on which the general assembly shall convene, and at the place of convening the houses respectively, the president of the senate, or in his absence some person claiming to be a member, shall call the senate to order. If necessary, a temporary president shall be chosen from their own number by the persons claiming to be elected senators; and some person claiming to be elected a member of the house of representatives shall call the house to order, and the persons present claiming to be elected to the senate shall choose a secretary, and those of the house of representatives, a clerk for the time being. [C., '51, § 5; R., '60, § 14; C., '73, § 6; C., '97, § 6.]

7. Certificates of election. Such secretary and clerk shall receive and file the certificates of election presented, each for his own house, and make a list therefrom of the persons who appear to have been elected members of the respective houses. [C., '51, § 6; R., '60, § 15; C., '73, § 7; C., '97, § 7.]

8. Temporary officers—committee on credentials. The persons so appearing to be members shall proceed to elect such other officers for the time being as may be requisite;

and when so temporarily organized shall choose a committee of five, who shall examine and report upon the credentials of the persons claiming to be members. [C., '51, § 7; R., '60, § 4; C., '73, § 8; C., '97, § 8.]

9. Permanent organization. The members reported by the committee as holding certificates of election from the proper authority shall proceed to the permanent organization of their respective houses by the election of officers. [C., '51, § 8; R., '60, § 5; C., '73, § 9; C., '97, § 9.]

10. Officers—tenure. The speaker of the house of representatives shall hold his office until the first day of the meeting of the regular session next after that at which he was elected. All other officers elected by either house shall hold their offices only during the session at which they were elected, unless sooner removed. [R., '60, § 16; C., '73, § 13; C., '97, § 17.]

11. Oaths. Any member may administer oaths necessary in the course of business of the house of which he is a member, and, while acting on a committee, in the course of business of such committee. [C., '51, § 10; R., '60, § 7; C., '73, § 10; C., '97, § 10.]

12. Parliamentary rules. In the absence of other rules, those of parliamentary practice comprised in Cushing's Manual shall govern. [R., '60, § 686; C., '73, § 27; C., '97, § 31.]

13. Journals. The secretary of the senate and the clerk of the house of representatives

shall preserve copies of the printed daily journals of their respective bodies, as corrected, certify to their correctness, and file them with the secretary of state at the adjournment of the legislature. The secretary of state shall cause the same to be bound and preserved as the original journals of the senate and the house. [C., '97, § 132.]

NOTE: Printing of journals, see §§ 259 to 261, inc.

14. Compensation of full-time members. The compensation of the members of the general assembly shall be: To every member, for each full regular session, one thousand dollars, and for each extra session the same compensation per day while in session, to be ascertained by the rate per day of the compensation of the members of the general assembly at the preceding regular session; and in going to and returning from the place where the general assembly is held, five cents per mile, by the nearest traveled route; but in no case shall the compensation for any extra session exceed ten dollars per day, exclusive of mileage. [C., '51, § 11; R., '60, § 18; C., '73, § 12; C., '97, § 12; S., '13, § 12.]

15. Compensation of part-time members. When a vacancy occurs during the session of the general assembly, and by reason thereof the term of office of any member does not cover the entire session, such member shall be paid as follows:

To a member whose term of office covers fifteen session days or less, three hundred dollars.

To a member whose term of office covers more than fifteen session days and less than thirty-one such days, five hundred dollars.

To a member whose term of office covers more than thirty session days and less than fifty-one such days, seven hundred dollars.

To a member whose term of office covers more than fifty session days, one thousand dollars. [S., '13, § 12.]

16. Payment at regular session. Within thirty days after the convening of the general assembly, the presiding officers of the two houses shall jointly certify to the auditor of state the names of the members, officers, and employees of their respective houses, and the amount of mileage due each member, respectively, who shall thereupon draw a warrant upon the state treasurer for the amount due each member for mileage, as above certified, and shall also issue to each member of the general assembly, at the end of said thirty days, a warrant for one-half the salary due him for the session, and the remaining one-half at the close of the session. [C., '97, § 14.]

17. Payment at extra or adjourned session. At any extra or adjourned session, the compensation of the members shall be paid semi-monthly during such session, upon certificate of the presiding officer of each house showing

the number of days of allowance and compensation as provided by law. [C., '97, § 14; 40 Ex. G. A., ch. 26, § 1.]

18. Officers and employees. Each house of the general assembly may employ such officers and janitors as it shall deem necessary for the conduct of its business. [C., '97, § 152; S., '13, § 152.]

19. Compensation of officers and employees. The compensation of the officers and employees of the general assembly shall be fixed by joint action of the house and senate by resolution at the opening of the session, or as soon thereafter as conveniently can be done, and no other or greater compensation shall be allowed such officers and employees, except that they shall be furnished by the state such stationery and supplies as may be necessary for the proper discharge of their duties. [C., '73, § 12; C., '97, § 13; 38 G. A., ch. 1, § 1.]

20. Issue of warrants. The auditor shall also issue to each officer and employee of the general assembly, from time to time, upon certificates signed by the president of the senate and the speaker of the house, warrants for the amount due for services rendered. [C., '97, § 15.]

21. Appropriation. Said warrants shall be paid out of any moneys in the treasury not otherwise appropriated. [C., '97, § 16.]

22. Freedom of speech. No member shall be questioned in any other place for any speech or debate in either house. [C., '51, § 9; R., '60, § 6; C., '73, § 11; C., '97, § 11.]

23. Contempt. Each house has authority to punish as for a contempt, by fine or imprisonment or both, any person who commits any of the following offenses against its privileges, dignity, or authority:

1. Arresting a member, knowing him to be such, in violation of his privilege, or assaulting, or threatening to assault, or threatening any harm to the person or property of, a member, knowing him to be such, for anything said or done by him in such house as a member thereof.

2. Attempting by menace, or by force, or by any corrupt means, to control or influence a member in giving his vote, or to prevent his giving it.

3. Disorderly or contemptuous conduct, tending to disturb its proceedings.

4. Refusal to attend, or to be sworn, or to affirm, or to be examined, as a witness before it, or before a committee thereof, when duly subpoenaed.

5. Assaulting or preventing any person going before it, or before any of its committees, by its order, the offender knowing such fact.

6. Rescuing or attempting to rescue any person arrested by its order, the offender knowing of such arrest.

7. Impeding any officer of such house in the discharge of his duties as such, the offender knowing his official character. [C., '51, § 12; R., '60, § 8; C., '73, § 14; C., '97, § 18.]

24. **Punishment for contempt.** Fines and imprisonment for contempt shall be only by virtue of an order of the proper house, entered on its journals, stating the grounds thereof. [C., '51, § 14; R., '60, § 10; C., '73, § 15; C., '97, § 19.]

25. **Warrant—execution.** Imprisonment shall be effected by a warrant, under the hand of the presiding officer, for the time being, of the house ordering it, countersigned by the acting secretary or clerk, running in the name of the state, and directed to the sheriff or jailer of the proper county. Under such warrant, the proper officer will be authorized to commit and detain the person. [C., '51, § 14; R., '60, § 10; C., '73, § 15; C., '97, § 19.]

26. **Fines—collection.** Fines shall be collected by a similar warrant, directed to any proper officer of any county in which the offender has property, and executed in the same manner as executions for fines issued from courts of record, and the proceeds paid into the state treasury. [C., '51, § 14; R., '60, § 10; C., '73, § 15; C., '97, § 19.]

27. **Punishment—effect.** Imprisonment for contempt shall not extend beyond the session at which it is ordered, and shall be in the jail of the county in which the general assembly is then sitting; or, if there be no such jail, then in one of the nearest county jails.

Punishment for contempt shall not constitute a bar to any other proceeding, civil or criminal, for the same act. [C., '51, §§ 13, 15; R., '60, §§ 9, 11; C., '73, § 16; C., '97, § 20.]

28. **Witness—attendance compulsory.** Whenever a committee of either house, or a joint committee of both, is charged with an investigation requiring the personal attendance of witnesses, any person may be compelled to appear before such committee as a witness by serving an order upon him, which service shall be made in the manner required in case of a subpoena in a civil action in the district court, such order stating the time and place he is required to appear, signed by the presiding officer of the house appointing the committee, and attested by its acting secretary or clerk; or, in case of a joint committee, signed and attested by such officers of either house. [C., '73, § 17; C., '97, § 21; 38 G. A., ch. 79, § 1; 40 G. A., ch. 236, § 4.]

29. **Witnesses—compensation.** Witnesses shall be entitled to the same compensation for attendance under the preceding section as before the district court, but shall not have the right to demand payment of their fees in advance. [C., '73, § 18; C., '97, § 22.]

30. **Joint conventions.** Joint conventions of the general assembly shall meet in the hall of the house of representatives for such purposes as are or shall be provided by law. The president of the senate, or, in his absence, the speaker of the house of representatives, shall preside, or, in the absence of both, a temporary president shall be appointed by a joint vote. [R., '60, §§ 674, 675; C., '73, § 19; C., '97, § 23.]

31. **Secretary—record.** The clerk of the house of representatives shall act as secretary of the convention, and he and the secretary of the senate shall keep a fair and correct record of the proceedings of the convention, which shall be entered on the journal of each house. [R., '60, § 677; C., '73, § 21; C., '97, § 25.]

32. **Canvass of votes for governor.** The general assembly shall meet in joint session on the second Tuesday of January, or as soon thereafter as both houses have been organized after the biennial election, and canvass the votes cast for governor and lieutenant governor and determine the election; and when the canvass is completed, the oath of office shall be administered to the persons so declared elected and the governor shall deliver to the joint assembly any message he may deem expedient. [S., '13, § 30-a.]

33. **Tellers.** After the time for the meeting of the joint convention has been designated and prior thereto, each house shall appoint one teller, and the two shall act as judges of the election. [R., '60, § 676; C., '73, § 20; C., '97, § 24.]

34. **Method of canvassing vote.** Canvassing the votes for governor and lieutenant governor shall be conducted according to the foregoing provisions, so far as applicable. [C., '73, § 26; C., '97, § 30; 37 G. A., ch. 401, § 1.]

35. **Election—vote—how taken.** When any officer is to be elected by joint convention, the names of the members shall be arranged in alphabetical order by the secretaries, and each member shall vote in the order in which his name stands when thus arranged. The name of the person voted for, and the names of the members voting, shall be entered in writing by the tellers, who, after the secretary shall have called the names of the members a second time, and the name of the person for whom each member has voted, shall report to the president of the convention the number of votes given for each candidate. [R., '60, §§ 678, 679; C., '73, § 22; C., '97, § 26.]

36. **Second poll.** If no person shall receive the votes of a majority of the members present, a second poll may be taken, and so on from time to time until some person receives such majority. [R., '60, § 680; C., '73, § 23; C., '97, § 27.]

37. Certificates of election. When any person shall have received a majority of the votes as aforesaid, the president shall declare him to be elected, and shall, in the presence of the convention, sign two certificates of such election, attested by the tellers, one of which he shall transmit to the governor, and the other shall be preserved among the records of the convention and entered at length on the journal of each house. The governor shall issue a commission to the person so elected. [R., '60, § 682; C., '73, § 25; C., '97, § 29.]

38. Adjournment. If the purpose for which the joint convention is assembled is not concluded, the president shall adjourn the same from time to time as the members present may determine. [R., '60, § 681; C., '73, § 24; C., '97, § 28.]

39. Committee on retrenchment and reform. The chairmen of the committees on ways and means, judiciary, and appropriations, of the senate and house, respectively, and two members from the senate, to be appointed by the president of the senate, and two members from the house, to be appointed by the speaker of the house, at each regular session, shall constitute a standing committee on retrenchment and reform. [C., '97, § 181; S., '13, § 181; 39 G. A., ch. 218, § 2.]

40. Appointive members. Both of the appointive members in the senate and the house, respectively, shall be named from the representatives of the minority parties, if there be such; provided, however, that if there be but one member of the minority party in either the senate or the house, the representation on said committee in such house shall be one member from the minority party. [C., '97, § 181; S., '13, § 181; 39 G. A., ch. 218, § 3.]

41. Organization—meetings. The committee shall organize by electing a chairman and a secretary from its membership, and may meet at such times and places as may be ordered by resolution or upon call of the chairman and three other members of the committee. [C., '97, § 181; S., '13, § 181; 39 G. A., ch. 218, § 4.]

42. Authority during recess. The authority granted by law to the joint committee on retrenchment and reform shall continue after adjournment of the legislature and until the succeeding legislature shall convene and organize, with the same force and effect as is now granted by law to such committee during the period the legislature is in session. [C., '97, § 181; S., '13, § 181; 39 G. A., ch. 218, § 5.]

43. Record. The committee shall make a record of its meetings and transactions, which record shall be kept in the office of the secretary of state and shall be open to public inspection. [C., '97, § 181; S., '13, § 181; 39 G. A., ch. 218, § 6.]

44. Compensation and expenses. For meetings of the committee other than those held during the time the legislature is in session, each member of the committee shall receive his actual traveling expenses and a per diem of ten dollars per day for each day in attendance. [C., '97, § 181; S., '13, § 181; 39 G. A., ch. 218, § 7; 40 Ex. G. A., ch. 4, § 83.]

45. Duties. Said committee shall examine into the reports and official acts of the executive council and of each officer, board, commission, and department of the state at the seat of government, in respect to the conduct and expenditures thereof, and the receipts and disbursements of public funds thereby.

It shall report to the general assembly a joint resolution fixing the number of employees, and the salary of each, for the several offices, boards, commissions, and departments for the ensuing biennial period, and recommend such appropriations and legislation as shall promote public interests and an efficient and economical administration of the affairs of the state. [C., '97, § 182.]

NOTE: Whether the above section has been impliedly repealed by the "budget law", (chs. 19 to 21, inc.) quære; see especially § 333.

46. May take evidence. Said committee shall have the same power to summon and examine witnesses, administer oaths, compel the production of books, papers, and evidence, and to punish for contempt, as the district court. [C., '97, § 183.]

CHAPTER 3

STATUTES AND RELATED MATTERS

- 47. Form of bills.
- 48. Length of sections.
- 49. Head notes and historical references.
- 50. Bills—approval—passage over veto.
- 51. Failure of governor to return bill.
- 52. Acts—where deposited.
- 53. Acts effective July fourth.
- 54. Publication of acts.

- 55. Designation of papers.
- 56. Acts effective—certification.
- 57. Private acts—when effective.
- 58. Appropriation acts—when effective.
- 59. Pro rata effect of appropriations.
- 60. Certain appropriations prohibited.
- 61. Copies of acts effective by publication.
- 62. Cost of publishing.

47. Form of bills. Bills designed to amend, revise, codify, or repeal a law:

1. Shall refer to the number of the section or sections of the code to be amended.

2. Shall refer to the number of the chapter or chapters and title of the code to be amended.

3. Shall refer to the number of the general assembly and of the sections and chapters of the acts thereof to be amended in case the bill relates to a section or sections of an act not appearing in the code.

4. All references shall be expressed in words, followed by the numerals in parentheses, and if omitted the reporter of the supreme court in preparing acts for publication in the session laws shall supply the same. [C., '73, § 38; C., '97, § 41; S., '13, §§ 41-a, 41-b; 40 G. A., ch. 223, § 6; 40 Ex. G. A., ch. 3, § 27.]

NOTE: Form and style of printing bills, see § 262.

48. Length of sections. Where practicable, sections of bills shall not exceed sixteen lines in length and shall be germane to the title, chapter, or section to which they relate. [40 G. A., ch. 223, § 7.]

49. Head notes and historical references. Proper head notes may be placed at the beginning of a section of a bill, and at the end of the section there may be placed a reference to the section number of the code, or any session law from which the matter of the bill was taken, but neither said head notes nor said historical references shall be considered as a part of the law as enacted. [40 G. A., ch. 223, § 9.]

50. Bills—approval—passage over veto. If the governor approves a bill, he shall sign and date it; if he returns it with his objections and it afterwards passes as provided in the constitution, a certificate, signed by the presiding officer of each house in the following form, shall be indorsed thereon or attached thereto: "This bill, having been returned by the governor, with his objections, to the house in which it originated, and, after reconsideration, having again passed both houses by yeas and

nays by a vote of two-thirds of the members of each house, has become a law this day of" [C., '51, §§ 16, 17; R., '60, §§ 19, 20; C., '73, §§ 28, 29; C., '97, § 32.]

51. Failure of governor to return bill. When a bill has passed the general assembly, and is not returned by the governor within three days as provided in the constitution, it shall be authenticated by the secretary of state indorsing thereon: "This bill, having remained with the governor three days (Sunday excepted), the general assembly being in session, has become a law this day of"

Secretary of State."

[C., '51, § 18; R., '60, § 21; C., '73, § 30; C., '97, § 33.]

52. Acts—where deposited. The original acts of the general assembly shall be deposited with and kept by the secretary of state. [C., '51, § 19; R., '60, § 22; C., '73, § 31; C., '97, § 34.]

53. Acts effective July fourth. All acts and resolutions of a public nature passed at regular sessions of the general assembly shall take effect on the fourth day of July following their passage, unless some specified time is provided in the act, or they have sooner taken effect by publication. [C., '51, § 22; R., '60, § 25; C., '73, § 34; C., '97, § 37.]

54. Publication of acts. Acts which are to take effect from and after publication in newspapers shall be published in two or more papers, one at least of them at the seat of government. [C., '51, § 21; R., '60, § 24; C., '73, § 33; C., '97, § 36; S., '13, § 36.]

55. Designation of papers. In case either or both of the papers named in the act should fail or decline to publish said act as required therein, the secretary of state may designate another paper or papers in which publication shall be made, and if such papers are not

designated in the act, the same may be designated by the secretary of state, and the act published accordingly. [C., '73, § 33; C., '97, § 36; S., '13, § 36.]

56. Acts effective—certification. All such acts shall take effect from and after the date of the last publication, and the secretary of state shall make and sign, on the original roll of each of such acts, a certificate, stating in what papers it was published, and the date of the last publication in each of them, which certificate and the printing thereof at the foot of the act shall be presumptive evidence of the facts therein stated. [C., '51, § 21; R., '60, § 24; C., '73, § 33; C., '97, § 36; S., '13, § 36.]

57. Private acts—when effective. Acts of a private nature which do not prescribe the time when they take effect, shall do so on the thirtieth day next after they have been approved by the governor, or indorsed as provided in this chapter. [C., '51, § 20; R., '60, § 23; C., '73, § 32; C., '97, § 35.]

58. Appropriation acts—when effective. All annual appropriations shall be for the fiscal year beginning with July first and ending with June thirtieth of the succeeding year, and when such appropriations are made payable quarterly, the quarters shall end with September thirtieth, December thirty-first, March thirty-first, and June thirtieth; but nothing in

this section shall be construed as increasing the amount of any annual appropriation. [S., '13, § 116-a.]

59. Pro rata effect of appropriations. Annual appropriations shall be disbursed in accordance with the provisions of the acts granting the same pro rata from the time such acts shall take effect up to the first day of the succeeding quarter as provided in the preceding section. [S., '13, § 116-b.]

60. Certain appropriations prohibited. No appropriations shall be made to any institution not wholly under the control of the state. [S., '13, § 116-c1.]

61. Copies of acts effective by publication. The secretary of state shall, immediately after an act of a general nature takes effect by publication, furnish a certified copy of such act to each clerk of the district court, who shall retain the same on file for public inspection for at least six months, and shall furnish copies thereof on payment of a fee of ten cents for each one hundred words. [S. S., '15, § 36-a; 40 Ex. G. A., H. F. 4, § 1.]

62. Cost of publishing. The compensation for the publication of laws which are ordered by the general assembly to take effect by publication, unless otherwise fixed, shall be audited and paid by the state, and shall be one-third the rates of legal advertisements allowed by law. [C., '73, § 44; C., '97, § 47.]

CHAPTER 4

CONSTRUCTION OF STATUTES

63. Rules.

63. Rules. In the construction of the statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute:

1. *Repeal—effect of.* The repeal of a statute does not revive a statute previously repealed, nor affect any right which has accrued, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the statute repealed.

2. *Words and phrases.* Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such meaning.

3. *Number and gender.* Words importing the singular number may be extended to several persons or things, and words importing the plural number may be applied to one person

64. Common-law rule of construction.

or thing, and words importing the masculine gender only may be extended to females.

4. *Joint authority.* Words giving a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

5. *Highway—road.* The words "highway" and "road" include public bridges, and may be held equivalent to the words "county way", "county road", "common road", and "state road".

6. *Insane.* The words "insane person" include idiots, lunatics, distracted persons, and persons of unsound mind.

7. *Issue.* The word "issue" as applied to descent of estates includes all lawful lineal descendants.

8. *Land—real estate.* The word "land" and the phrases "real estate" and "real property" include lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal.

9. *Personal property.* The words "personal property" include money, goods, chattels, evidences of debt, and things in action.

10. *Property.* The word "property" includes personal and real property.

11. *Month—year—A. D.* The word "month" means a calendar month, and the word "year" and the abbreviation "A. D." are equivalent to the expression "year of our Lord".

12. *Oath—affirmation.* The word "oath" includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word "swear" includes "affirm".

13. *Person.* The word "person" may be extended to bodies corporate.

14. *Seal.* Where the seal of a court, public office or officer, or public or private corporation, may be required to be affixed to any paper, the word "seal" shall include an impression upon the paper alone, as well as upon wax or a wafer affixed thereto.

15. *State.* The word "state", when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the said district and territories.

16. *Town.* The word "town" means an incorporated town, and may include cities.

17. *Will.* The word "will" includes codicils.

18. *Written—in writing.* The words "written" and "in writing" may include any mode of representing words and letters in general use, except that signatures, when required by law, must be made by the writing or mark of the person.

19. *Sheriff.* The term "sheriff" may be extended to any person performing the duties of the sheriff, either generally or in special cases.

20. *Deed—bond—indenture—undertaking.* The word "deed" is applied to an instrument conveying lands, but does not imply a sealed in-

strument; and the words "bond" and "indenture" do not necessarily imply a seal, and the word "undertaking" means a promise or security in any form.

21. *Executor—administrator.* The term "executor" includes administrator, and the term "administrator" includes executor, where the subject matter justifies such use.

22. *Numerals—figures.* The Roman numerals and the Arabic figures are to be taken as parts of the English language.

23. *Computing time.* In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday.

24. *Consanguinity and affinity.* Degrees of consanguinity and affinity shall be computed according to the civil law.

25. *Clerk—clerk's office.* The word "clerk" means clerk of the court in which the action or proceeding is brought or is pending; and the words "clerk's office" mean his office.

26. *Population.* The word "population", where used in this code or any statute hereafter passed, shall be taken to be that as shown by the last preceding state or national census, unless otherwise specially provided. [C., '51, §§ 26, 2513; R., '60, §§ 29, 4121, 4123, 4124; C., '73, § 45; C., '97, § 48.]

64. **Common-law rule of construction.** The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. Its provisions and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice. [C., '51, § 2503; R., '60, § 2622; C., '73, § 2528; C., '97, § 3446.]

CHAPTER 5

UNIFORM STATE LAWS

65. Commission on uniform laws—vacancies.

66. Tenure—compensation—expenses.

65. **Commission on uniform laws—vacancies.** The governor shall appoint three commissioners, each of whom shall be a member of the bar of this state, in good standing, who shall constitute and be known as the commission on uniform state laws, and upon the death, resignation, or refusal to serve of any of the commissioners so appointed, the governor shall make an appointment to fill the vacancy so caused, such new appointment to be for the unexpired balance of the term of the original appointee. [39 G. A., ch. 201, § 1.]

66. **Tenure—compensation—expenses.** Said commissioners shall hold office for a term of four years, and until their successors are duly

67. Organization.

68. Duties—reports.

appointed, but nothing herein contained shall be construed to render a commissioner who has faithfully performed his duties ineligible for reappointment. No member of said commission shall receive any compensation for his services as commissioner, but each commissioner shall be entitled to receive his actual disbursements for expenses in performing the duties of his office. [39 G. A., ch. 201, § 2.]

67. **Organization.** The commissioners shall meet at the state capitol at least once in two years and shall organize by the election of one of their number as chairman and another as secretary, who shall hold their respective

offices for a term of two years and until their successors are elected and qualified. [39 G. A., ch. 201, § 3.]

68. Duties—reports. It shall be the duty of each of said commissioners to attend the meeting of the national conference of commissioners on uniform state laws, or to arrange for the attendance of at least one of their number at such national conference, and both in and out of such national conference they shall do all in their power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and prac-

ticable; said commission shall report to the legislature at its next session, and from time to time thereafter as said commission may deem proper, an account of its transactions, and its advice and recommendations for legislation. This report shall be printed for presentation to each legislature. It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws and generally to devise and recommend such additional legislation or other or further course of action as shall tend to accomplish the purposes of this chapter. [39 G. A., ch. 201, § 4.]

CHAPTER 6

CONSTITUTIONAL AMENDMENTS AND PUBLIC MEASURES

69. Publication of proposed amendment.
70. Publication of proposed public measure.
71. Proof of publication—record—report to legislature.
72. Submission at general election.

73. Submission at special election.
74. Certification—sample ballot.
75. Proclamation.
76. Canvass—declaration of result—record.
77. Expenses.

69. Publication of proposed amendment. Whenever any proposition to amend the constitution has passed the general assembly and been referred to the next succeeding legislature, the secretary of state shall cause the same to be published, once each week, in two newspapers of general circulation in each congressional district in the state, for the time required by the constitution. [C., '97, § 55; S., '13, § 55; 39 G. A., ch. 283, § 1.]

NOTE: Constitutional requirements, see Art. 10, § 1.

70. Publication of proposed public measure. Whenever any public measure has passed the general assembly which under the constitution must be published and submitted to a vote of the entire people of the state, the secretary of state shall cause the same to be published, once each week, in at least one newspaper of general circulation in each county in the state, for the time required by the constitution. [39 G. A., ch. 283, § 2.]

NOTE: Constitutional requirements, see Art. 7, § 5.

71. Proof of publication—record—report to legislature. Proof of the publication specified in the two preceding sections shall be made by the affidavits of the publishers of the newspapers designated by the secretary of state, and such affidavits, with the certificate of the secretary of state of the selection of such newspapers, shall be filed in his office, recorded in a book kept for that purpose, and preserved by him, and in the case of constitutional amendments he shall report to the following legislature his action in the premises. [C., '97, § 55; S., '13, § 55; 39 G. A., ch. 283, § 3.]

72. Submission at general election. Whenever a public measure has passed the general

assembly which under the constitution must be submitted to a vote of the entire people of the state and no time is fixed by the constitution or legislature for such submission, or whenever a proposition to amend the constitution has been adopted by two succeeding general assemblies and no time is fixed by the last general assembly adopting the same for its submission to the people, said measure or amendment shall be submitted to the people at the ensuing general election, in the manner required by law. [C., '97, § 56; 39 G. A., ch. 283, § 4.]

73. Submission at special election. The general assembly may provide for the submission of a constitutional amendment to the people at a special election for that purpose, at such time as it may prescribe, proclamation for which election shall be made by the governor, and the same shall in all respects be governed and conducted as prescribed by law for the submission of a constitutional amendment at a general election. [C., '97, § 58; 39 G. A., ch. 283, § 5.]

NOTE: Submission of constitutional amendments, see §§ 761 to 768, inc.

74. Certification—sample ballot. The secretary of state shall, not less than twenty days preceding any election at which a constitutional amendment or public measure is to be submitted to a vote of the entire people of the state, transmit to the auditor of each county a certified copy of such amendment or measure and a sample of the ballot to be used in such cases, prepared in accordance with law. [39 G. A., ch. 283, § 6.]

NOTE: Submission of constitutional amendments, see §§ 761 to 768, inc.

75. Proclamation. Whenever a proposition to amend the constitution is to be submitted to a vote of the electors, the governor shall include such proposed amendment in his election proclamation. [C., '97, § 57; 39 G. A., ch. 283, § 7.]

76. Canvass—declaration of result—record. The judges of election, county boards of canvassers, and other election officials shall canvass the vote on any constitutional amendment or public measure, and make return thereof, in the same manner as required by law for the canvass and return of the vote for public officers. The board of state canvassers shall

canvass such returns, declare the result, and enter the same of record, immediately following and in connection with the proofs of publication of such amendment or measure, in the book kept for that purpose by the secretary of state. [C., '97, § 56; 39 G. A., ch. 283, § 8.]

NOTE: Canvass of votes, see ch. 41.

77. Expenses. Expenses incurred under the provisions of this chapter shall be audited and allowed by the state board of audit, and paid out of any money in the state treasury not otherwise appropriated. [C., '97, § 59; 39 G. A., ch. 283, § 9.]

TITLE II

EXECUTIVE DEPARTMENT

CHAPTER 7

GOVERNOR

- 78. Office—secretary.
- 79. Journal.
- 80. Counsel.
- 81. Expenses.

78. Office—secretary. The governor shall keep his office at the seat of government, in which shall be transacted the business of the executive department of the state. He shall keep a secretary at said office during his absence. [C., '73, § 55; C., '97, § 60.]

79. Journal. He shall cause a journal to be kept in the executive office, in which a record shall be made of each official act as done, except if in cases of emergency an act is done away from the office, such entry shall be made as soon thereafter as may be. He shall cause a like military record to be kept of his acts done as commander-in-chief. [C., '73, §§ 56, 57; C., '97, § 61.]

80. Counsel. Whenever the governor is satisfied that an action or proceeding has been commenced which may affect the rights or interests of the state, he may employ counsel to protect such rights or interests; and when any civil action or proceeding has been or is about to be commenced by the proper officer in behalf of the state, he may employ additional counsel to assist in the cause. [C., '51, § 40; R., '60, § 44; C., '73, § 59; C., '97, § 63.]

NOTE: Employment of counsel by executive council, see § 152.

81. Expenses. The expenses thus incurred, and those caused in executing the laws, may be allowed by him and paid from the contingent fund. [C., '51, § 41; R., '60, § 45; C., '73, § 60; C., '97, § 64.]

82. Suits involving bridge patents. The governor, whenever he deems such action to be in the interest of the public, shall have power to direct the attorney general to appear for and on behalf of any county, city, town, or

- 82. Suits involving bridge patents.
- 83. Reward for arrest.
- 84. Accounting.

other municipality of this state or for and on behalf of any officer thereof or contractor therewith, whenever any such county, city, town, or other municipality or officer or contractor is a party to any action or proceeding in any court wherein is involved the validity of any alleged patent on any matter or thing entering into highway, bridge, or culvert construction, or on any parts thereof, and may employ such legal assistance in addition to the attorney general as he may deem necessary and may pay for the same out of any fund in the state treasury not otherwise appropriated. Whenever the attorney general is so directed by the governor it shall be his duty to comply therewith. [S., '13, § 64-a.]

NOTE: Employment of counsel by executive council, see § 152.

83. Reward for arrest. Whenever the governor is satisfied that a crime has been committed within the state, punishable by death or by imprisonment in the penitentiary for a term of ten years or more, and the person committing the same has not been arrested or has escaped from arrest, he may in his discretion, offer a reward not exceeding five hundred dollars for the arrest and delivery to the proper authorities of such persons, which reward, upon the certificate of the governor that the same has been earned, shall be audited and paid by the state.

Such reward shall be paid only upon the conviction of said person and affirmation thereof by the supreme court, if appealed thereto. [R., '60, § 57; C., '73, § 58; C., '97, § 62; 39 G. A., ch. 250.]

84. Accounting. All fees paid to the governor shall be turned over to the treasurer of state. [S. S., '15, § 4-e.]

CHAPTER 8

SECRETARY OF STATE

- 85. Duties—records.
- 86. Records relating to cities and towns.

85. Duties—records. The secretary of state shall keep his office at the seat of government, and perform all duties required of him by law; he shall have charge of and keep all the acts and resolutions of the territorial legislature and of the general assembly of the state, the enrolled copies of the constitutions of the state, and all bonds, books, records, maps, registers, and papers which are now or may hereafter be deposited to be kept in his office, including all books, records, papers, and property pertaining to the state land office. [C., '51, § 43; R., '60, § 59; C., '73, § 61; C., '97, § 66.]

86. Records relating to cities and towns. He shall receive and preserve in his office all papers transmitted to him in relation to the incorporation of cities and towns, or the annexation of territory thereto, or the consolidation or abandonment of municipal corporations; and shall keep an alphabetical list of said cities and towns in a book provided for that purpose, in which shall be entered the name of the town or city, the character of the same, whether town or city, the county in which

- 87. Commissions.
- 88. Fees.

situated, and the date of organization. [R., '60, § 1046; C., '73, § 65; C., '97, § 67.]

87. Commissions. All commissions issued by the governor shall be countersigned by the secretary, who shall register each commission in a book to be kept for that purpose, specifying the office, name of officer, date of commission, and tenure of office; provided, however, that notarial commissions shall be registered only in the office of the governor. [C., '51, § 44; R., '60, § 60; C., '73, § 62; C., '97, § 68; S., '13, § 68.]

88. Fees. The secretary of state shall collect all fees directed by law to be collected by him, including the following:

1. For certificate, with seal attached, two dollars.
2. For a copy of any law or record, upon the request of any private person or corporation, for every hundred words, twenty-five cents. [C., '51, § 2524; R., '60, § 4133; C., '73, § 3756; C., '97, § 85; 39 G. A., ch. 80, § 1; 40 G. A., ch. 276, § 18.]

CHAPTER 9

LAND OFFICE

- 89. Records.
- 90. Separate grants.
- 91. Tract books.
- 92. Land office—how kept—certified copies.
- 93. Patents.
- 94. When patents issued.
- 95. Corrections.

89. Records. The books and records of the land office shall be so kept as to show and preserve an accurate chain of title from the general government to the purchaser of each smallest subdivision of land; to preserve a permanent record, in books suitably indexed, of all correspondence with any of the departments of the general government in relation to state lands; to preserve, by proper records, copies of the original lists furnished by the selecting agents of the state, and of all other papers in relation to such lands which are of permanent interest. [R., '60, §§ 92, 95; C., '73, § 83; C., '97, § 72.]

- 96. Maps—fieldnotes—records—papers.
- 97. Color of title relinquished.
- 98. Quitclaim deeds.
- 99. Lists of federal granted lands.
- 100. University lands.
- 101. Effect of patents.

90. Separate grants. Separate tract books shall be kept for the university lands, the saline lands, the half-million acre grant, the sixteenth sections, the swamp lands, and such other lands as the state now owns or may hereafter own, so that each description of state lands shall be kept separate from all others, and each set of tract books shall be a complete record of all the lands to which they relate. [R., '60, § 94; C., '73, § 84; C., '97, § 73.]

91. Tract books. Said tract books shall be ruled in a manner similar to those used in the United States land offices, so as to record each

tract by its smallest legal subdivisions, its section, township, and range, to whom sold, and when, the price per acre, to whom patented, and when. [R., '60, § 93; C., '73, § 85; C., '97, § 74.]

92. Land office—how kept—certified copies. The land office shall be kept open during business hours. The documents and records therein shall be subject to inspection by parties having an interest therein, and certified copies thereof, signed by the secretary, with the seal of his office attached, shall be deemed presumptive evidence of the facts to which they relate, and on request they shall be furnished by him for a reasonable compensation. [R., '60, § 101; C., '73, § 86; C., '97, § 75.]

93. Patents. Patents for lands shall issue from the land office, shall be signed by the governor and recorded by the secretary; and each patent shall contain therein a marginal certificate of the book and page on which it is recorded, which certificate shall be signed by the secretary, and all patents shall be delivered free of charge. [R., '60, § 97; C., '73, § 87; C., '97, § 76.]

94. When patents issued. No patents shall be issued for any lands belonging to the state, except upon the certificate of the person or officer specially charged with the custody of the same, setting forth the appraised value per acre, name of person to whom sold, date of sale, price per acre, amount paid, name of person making final payment, and of person who is entitled to the patent, and, if thus entitled by assignment from the original purchaser, setting forth fully such assignment, which certificate shall be filed and preserved in the land office. [R., '60, §§ 98, 99; C., '73, § 88; C., '97, § 77.]

95. Corrections. The secretary is authorized and required to correct all clerical errors of his office in name of grantee and description of tract of land conveyed by the state, found upon the records of such office; he shall attach his official certificate to each conveyance so corrected, giving the reasons therefor; record the same with the record of the original conveyance, and make the necessary corrections in the tract and plat books of his office. Such corrections, when made in accordance with the foregoing provisions, shall have the force and effect of a deed originally correct, subject to prior rights accrued without notice. [C., '73, § 89; C., '97, § 78.]

96. Maps—field notes—records—papers. The secretary of state shall receive and safely keep in his office, as public records, any field notes, maps, records, or other papers relating to the public survey of this state, whenever turned over to the state in pursuance of law; the United States at all times to have free access thereto for the purpose of taking extracts therefrom or making copies thereof. [C., '73, § 90; C., '97, § 79.]

97. Color of title relinquished. Whenever the governor is satisfied by the commissioner of the general land office that the title to any lands which may have been certified to the state under any of the several grants is inferior to the rights of any valid interfering preemptor or claimant, he is authorized and required to release by deed of relinquishment such color of title to the United States, to the end that the requirements of the interior department may be complied with, and that such tract or tracts of land may be patented by the general government to the legal claimants. [C., '73, § 91; C., '97, § 80.]

98. Quitclaim deeds. Whenever the governor is satisfied by proper record evidence that any tract of land which may have been deeded by virtue of any donation or sale to the state is not the land intended to have been described, and that an error has been committed in making out the transfers, in order that such error may be corrected, he is authorized to quitclaim the same to the proper owner thereof, and to receive a deed or deeds for the lands intended to have been deeded to the state originally. [C., '73, § 92; C., '97, § 81.]

99. Lists of federal granted lands. In cases where lands have been granted to the state of Iowa by act of congress, and certified lists of lands inuring under the grant have been made to the state by the commissioner of the general land office, as required by act of congress, and such lands have been granted, by act of the general assembly, to any person or company, and such person or company shall have complied with and fulfilled the conditions of the grant, the secretary of state is hereby authorized to prepare, on the application of such person or company, or on the application of a party claiming title to any land through such person or company, a list or lists of lands situated in each county inuring to such applicant, from the lists certified by the commissioner of the general land office, as aforesaid, which shall be signed by the governor of the state, and attested by the secretary of state, with the state seal, and then be certified to by the secretary to be true and correct copies of the lists made to this state, and deliver them to such applicant, who is hereby authorized to have them recorded in the proper county, and when so recorded they shall be notice to all persons the same as deeds now are, and shall be evidence of title in such grantee, or his or its assigns, to the lands therein described, under the grant of congress by which the lands were certified to the state, so far as the certified lists made by the commissioner aforesaid conferred title to the state; but where lands embraced in such lists are not of the character embraced by such acts of congress or the acts of the general assembly of the state, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be void; but lands in

litigation shall not be included in such lists until the actions are determined and such lands adjudged to be the property of the company; nor shall the secretary include, in any of the lists so certified to the state, lands which have been adjudicated by the proper courts to belong to any other grant, or adjudicated to belong to any county or individual under the swamp-land grant, or any homestead or preemption settlement; nor shall said certificate so issued confer any right or title as against any person or company having any vested right, either legal or equitable, to any of the lands so certified. [C., '73, § 93; C., '97, § 82.]

100. University lands. The secretary of state is hereby authorized to issue patents for lands, the legal title to which is vested in the state university, in cases wherein it is shown to the satisfaction of the governor and attorney general that such lands have been in fact sold by the authority of the state and paid for, and that the certificates of purchase have been lost or destroyed. [C., '97, § 83.]

101. Effect of patents. The patents thus issued shall inure to the benefit of the original purchaser and his grantees only, and a clause to this effect shall be inserted in the patent. [C., '97, § 84.]

CHAPTER 10

AUDITOR OF STATE

- 102. Office—duties.
- 103. Warrants divided.
- 104. Statements as to state property.
- 105. Officers failing to account.
- 106. Officers failing to pay.
- 107. Officers may defend—costs.
- 108. Credit to county treasurers.
- 109. Requisitions for accounts.
- 110. Fees.
- 111. Uniform system of accounting.
- 112. Duty to install.
- 113. Examination of cities and counties.
- 114. State examiners.
- 115. Assistants.
- 116. Examinations.

- 117. Scope of examinations.
- 118. Subpoenas.
- 119. Refusal to testify.
- 120. Reports.
- 121. Report filed with county attorney.
- 122. Duty of attorney general.
- 123. Disclosures prohibited.
- 124. Examination of other municipalities.
- 125. Bills.
- 126. State reimbursed.
- 127. Biennial report of expenditures.
- 128. Additional data.
- 129. Biennial fiscal term.
- 130. Report of standing appropriations.

102. Office—duties. The auditor shall keep his office at the seat of government. He is the general accountant of the state, and it is his duty:

1. *To keep accounts with others.* To keep and state all accounts between the state and the United States, or any other state, or any public officer of the state, or person indebted to the state or intrusted with the collection, disbursement, or management of funds belonging to the same, when they are payable to or from the state treasury.

2. *To make settlements with officers.* To settle the accounts of all county treasurers and receivers of state revenues payable into the state treasury, for each of their official terms, separately.

3. *To keep accounts of revenues.* To keep fair, clear, and separate accounts of all the revenue, funds, and incomes of the state payable into the state treasury, and of all disbursements and investments thereof, showing the particulars of the same.

4. *To settle with debtors.* To settle the accounts of all public debtors for debts due the state treasury, and to require such persons, or their legal representatives, who have not accounted, to settle their accounts.

5. *To settle with creditors.* To settle all claims against the treasury, and, when a claim is recognized by law for which no appropria-

tion has been made, to give the claimant a certificate thereof, and report the same to the general assembly.

6. *To superintend and enforce collections.* To direct and superintend the payment of all money payable into the state treasury, and cause to be instituted and prosecuted the proper actions for the recovery of debts and other moneys so payable.

7. *To superintend fiscal affairs.* To superintend the fiscal affairs of the state, and secure their management as required by law.

8. *To draw warrants—form of—report to treasurer.* To draw warrants on the treasurer for money directed by law to be paid out of the treasury, as the same may become payable. Each warrant shall bear on the face thereof its proper number, date, amount, name of payee, and a reference to the law under which it is drawn, and a statement indicating the purpose for which warrant is issued, whether for salaries or wages, services or supplies, and what kind of supplies, and for what office or department, or for any other general or special purpose whatsoever, which particulars shall be entered in a book kept for that purpose, in the order of issuance; and, as soon as practicable after issuing such warrant, he shall certify the above particulars to the treasurer.

9. *To have custody of securities.* To have the custody of all books, papers, records, docu-

ments, vouchers, conveyances, leases, mortgages, bonds, and other securities appertaining to the fiscal affairs and property of the state, which are not required to be kept in some other office.

10. *To furnish information.* To furnish the governor, on his requisition, information in writing upon any subject connected with his office, and to suggest to the general assembly plans for the improvement and management of the public revenue and property.

11. *To report fiscal condition of state.* To report to the governor before each regular session of the general assembly a complete statement of the revenue, funds, income, taxable property, and other resources and property of the state, and of the public revenues and expenditures since his last report, with a detailed statement of the expenditures to be defrayed from the treasury for the term following that covered by his report, specifying each object of expenditure, and distinguishing between such as are provided for by appropriations and such as are not, and showing the probable deficiency of any former appropriations.

12. *To apportion school fund interest.* He shall, on the first Monday of March and September of each year, apportion the interest of the permanent school fund among the several counties in proportion to the number of persons between five and twenty-one years of age in each, as shown by the last report filed with him by the superintendent of public instruction. [C., '51, § 50; R., '60, §§ 71, 1967; C., '73, § 66; C., '97, § 89; S., '13, § 89; 40 Ex. G. A., H. F. 8, § 1.]

NOTE: For period covered by biennial report, see § 246.

103. *Warrants divided.* When the amount due from the state to any person exceeds twenty dollars, the auditor shall, if requested, divide the amount into sums of not less than ten dollars, and issue warrants therefor. [C., '51, § 51; R., '60, § 72; C., '73, § 67; C., '97, § 90.]

104. *Statements as to state property.* The auditor may at any time require any person receiving money, securities, or property belonging to the state, or having the management, disbursement, or other disposition of the same, an account of which is kept in his office, to render statements thereof and information in reference thereto. Any such person refusing or neglecting to render such statement or information shall forfeit twenty-five dollars, to be recovered by civil action in the name of the state. [C., '51, § 52; R., '60, § 73; C., '73, § 68; C., '97, § 91.]

105. *Officers failing to account.* If any officer who is accountable to the treasury for any money or property neglects to render an account to the auditor within the time prescribed by law, or, if no time is so prescribed, then, within twenty days after being required

so to do by the auditor, the auditor shall state an account against him from the books of the auditor's office, charging ten per cent damages on the whole sum appearing due, and interest at the rate of six per cent per annum on the aggregate from the time when the account should have been rendered; all of which may be recovered by an action brought on such account, or on the official bond of such officer. [C., '51, § 54; R., '60, § 75; C., '73, § 70; C., '97, § 93.]

106. *Officers failing to pay.* If any such officer fails to pay into the treasury the amount received by him within the time prescribed by law, or, having settled with the auditor, fails to pay the amount found due, the auditor shall charge such officer with twenty per cent damages on the amount due, with interest on the aggregate from the time the same became due at the rate of six per cent per annum, and the whole may be recovered by an action brought on such account, or on the official bond of such officer, and he shall forfeit his commission. [C., '51, § 55; R., '60, § 76; C., '73, § 71; C., '97, § 94.]

107. *Officers may defend—costs.* The penal provisions in the two preceding sections are subject to any legal defense which the officer may have against the account as stated by the auditor, but judgment for costs shall be rendered against the officer in the action, whatever be its result, unless he rendered an account within the time named in the two preceding sections. [C., '51, § 56; R., '60, § 77; C., '73, § 72; C., '97, § 95.]

108. *Credit to county treasurers.* When a county treasurer or other receiver of public money seeks to obtain credit on the books of the auditor's office for payment made to the treasurer, before giving such credit, the auditor shall require him to take and subscribe an oath that he has not used, loaned, nor appropriated any of the public money for his private benefit, nor the benefit of any other person. [C., '51, § 57; R., '60, § 78; C., '73, § 73; C., '97, § 96.]

109. *Requisitions for accounts.* In those cases where the auditor is authorized to call upon persons or officers for information, or statements, or accounts, he may issue his requisition therefor in writing to the person or officer called upon, allowing reasonable time, which, having been served and return made thereon to the auditor as a notice in a civil action, shall be evidence of the making of the requisition therein expressed. [C., '51, § 58; R., '60, § 79; C., '73, § 74; C., '97, § 97.]

110. *Fees.* He shall collect such fees as are provided for in the title on building and loan associations. [C., '97, § 100.]

111. *Uniform system of accounting.* The auditor of state shall prescribe a uniform system of blanks and forms for all financial accounts, receipts, and reports of all county,

city, and town offices, including offices of cities acting under special charter. Said system shall, as far as practicable, follow the classifications and definitions of such transactions in use in the national census office, when not in conflict with the laws of this state. Said blanks and forms shall, by said auditor, be revised, from time to time, in order to render the same more efficient and to meet changes in the law. [S., '13, §§ 100-b, 550-a, 741-a, 1056-a10, 1056-a13; 40 Ex. G. A., H. F. 8, § 2.]

112. Duty to install. It shall be the specific duty of each county, city, and town officer to install and use in his office the system of uniform blanks and forms so prescribed for his office. State examiners of accounts are charged with the specific duty to assist all such officers in installing said system. [S., '13, §§ 100-b, 100-c, 1056-a10; 40 Ex. G. A., H. F. 8, § 3.]

113. Examination of cities and counties. The auditor of state shall cause the financial condition and transactions of all county offices to be examined at least once each year, by a state examiner of accounts, and shall cause a like examination, biennially, of all offices of all cities and towns having a population of three thousand or more, including offices of cities acting under special charter. [S., '13, §§ 100-d, 1056-a11, 1056-a13; 38 G. A., ch. 301, § 1; 40 Ex. G. A., H. F. 8, § 4.]

114. State examiners. The auditor of state shall appoint such number of state examiners of accounts as may be necessary to make such examinations. Said examiners shall be of recognized skill and integrity, familiar with the system of accounting in county and city offices and with the laws relating to county and city affairs. Each examiner shall give bond in the sum of two thousand dollars, conditioned as the bonds of county officers, which bonds shall be approved and filed as bonds of state officers. Such examiners shall hold their positions for four years, unless sooner removed by the auditor of state for cause, and shall be subject at all times to the direction of said auditor. [S., '13, §§ 100-a, 1056-a11; 38 G. A., ch. 301, § 1; 39 G. A., ch. 209, § 6; 40 Ex. G. A., H. F. 8, § 5.]

115. Assistants. The auditor of state shall appoint such additional assistants to the examiners as may be necessary, who shall be subject to discharge at any time by the auditor. Such assistants shall receive such reasonable compensation as the auditor may fix and shall be paid in the same manner as examiners. The compensation of such assistants shall be considered as part of the cost of examination. [S., '13, § 100-a; 39 G. A., ch. 209, § 7; 40 Ex. G. A., H. F. 8, § 6.]

116. Examinations. Said examiners shall have the right while making said examinations, to examine all papers, books, records, and documents of any of said offices and shall have the

right, in the presence of the custodian or his deputy, to have access to the cash drawers and cash in the official custody of such officer, and a like right, during business hours, to examine the public accounts of the county or city in any depository which has public funds in its custody pursuant to law. [S., '13, §§ 100-d, 1056-a11; 40 Ex. G. A., H. F. 8, § 7.]

117. Scope of examinations. All examinations shall be made without notice to the office examined. On every examination inquiry shall be made as to the financial condition and resources of the county or city; whether the cost price for improvements and materials in said county or city is in excess of the cost price for like things in other counties or cities of the state; whether the county or city authorities are complying with the law; and whether the accounts and reports are being accurately kept. [S., '13, §§ 100-d, 1056-a11; 38 G. A., ch. 301, § 1; 40 Ex. G. A., H. F. 8, § 8.]

118. Subpoenas. The auditor of state and all examiners shall, in all matters pertaining to an authorized examination, have power to issue subpoenas of all kinds, administer oaths and examine witnesses, either orally or in writing, and the expense attending the same, including the expense of taking oral examinations in shorthand, shall be paid as other expenses of the examiner. [S., '13, §§ 100-d, 1056-a11; 40 Ex. G. A., H. F. 8, § 9.]

119. Refusal to testify. In case any witness duly subpoenaed refuses to attend, or refuses to produce documents, books, and papers, or shall attend and refuse to make oath or affirmation, or, being sworn or affirmed, shall refuse to testify, the auditor of state or the examiner may apply to the district court, or any judge of said district having jurisdiction thereof, for the enforcement of attendance and answers to questions as provided by law in the matter of taking depositions. [S., '13, § 100-d; 40 Ex. G. A., H. F. 8, § 10.]

120. Reports. A report of such examination shall be made in triplicate, signed, and verified by the officer making the examination; one copy to be filed with the auditor of state, one copy with the officer under investigation, and one copy with the auditor of the county if a county office is under investigation, or with the mayor or city council if a city office is under investigation. All reports shall be open to public inspection. [S., '13, §§ 100-d, 1056-a11; 40 Ex. G. A., H. F. 8, § 11.]

121. Report filed with county attorney. If said examination discloses any irregularity in the collection or disbursement of public funds or in the abatement of taxes a copy of said report shall be filed with the county attorney and it shall be his duty to cooperate with the state auditor, and, in proper cases, with the attorney general, to secure the correction of

the irregularity. [S., '13, § 100-d; 40 Ex. G. A., H. F. 8, § 11.]

122. Duty of attorney general. In the event such examination discloses any grounds which would be ground for removal from office, a fourth copy of said report shall be provided and filed by the auditor of state in the office of the attorney general of the state, who shall thereupon take such action as, in his judgment, the facts and circumstances warrant. [S., '13, § 100-d; 40 Ex. G. A., H. F. 8, § 12.]

123. Disclosures prohibited. No such examiner shall make any disclosure of the result of any investigation, except as he is required by law to report the same or to testify in court. Any violation of this provision shall be ground for removal. [S., '13, § 100-d; 40 Ex. G. A., H. F. 8, § 13.]

124. Examination of other municipalities. Any township, school, or municipal corporation, not embraced within the foregoing provisions of this chapter, may, on application to the auditor of state, secure an examination of its financial transactions and the conditions of its funds, or a like examination may be had on an application of twenty-five or more taxpayers of such township, school, or other corporation, accompanied by such showing of facts as, in the opinion of the auditor of state, will justify such examination. [S., '13, §§ 100-e, 1056-a12; 38 G. A., ch. 301, § 2; 40 Ex. G. A., H. F. 8, § 14.]

125. Bills. Each examiner shall, on the completion of an examination, file with the auditor of state a detailed, itemized, and sworn voucher of his per diem and expenses, which voucher, when approved by said auditor and by the state board of audit, shall be paid from any unappropriated funds in the state treasury. [S., '13, §§ 100-a, 100-e, 1056-a11; 40 Ex. G. A., H. F. 8, § 15.]

126. State reimbursed. Upon payment by the state of the per diem and expense aforesaid, the auditor of state shall at once file with the warrant-issuing officer of the county or municipality whose office was examined, a copy of the voucher so paid by the state and thereupon said warrant-issuing officer shall at once draw his warrant for said amount on the general funds of his county or municipality in

favor of the auditor of state, which warrant shall be placed to the credit of the general fund of the state. [S., '13, §§ 100-a, 100-e, 1056-a11; 40 Ex. G. A., H. F. 8, § 16.]

127. Biennial report of expenditures. The auditor of state shall, biennially, at the time provided by law, compile a complete report of the expenditures of the several state offices and institutions, except institutions under the management of the state board of control and state board of education. Such report shall show:

1. The amount and nature of all expenditures.

2. The price paid for things purchased or furnished for said departments or institutions.

3. The rates paid as salary or per diem, with the names of the officers, clerks, or employees receiving compensation or payment for expenses.

4. A statement of all supplies drawn by the several offices.

5. A statement of the fees collected by each of the several offices, boards, commissions, and institutions, and the disposition of such fees. [S., '13, § 163-a; 40 Ex. G. A., H. F. 8, § 17.]

NOTE: For time of filing report, see § 246.

128. Additional data. All data required for the foregoing report and not otherwise provided for, shall be reported to said auditor by the several officers, departments, and institutions at such times and in such form as he may direct. [S., '13, § 163-a; 40 Ex. G. A., H. F. 8, § 18.]

129. Biennial fiscal term. The biennial fiscal term of the state ends on the thirtieth day of June in each even-numbered year, and the succeeding biennial fiscal term begins on the day following. [C., '73, § 129; C., '97, § 123; S., '13, § 123; 40 Ex. G. A., H. F. 8, § 1.]

130. Report of standing appropriations. The auditor of state shall biennially prepare a separate report containing a complete list of all standing appropriations showing the amount of each appropriation and the purpose for which such appropriation is made and furnish a copy of such report to each member of the general assembly on or before the first day of the session. [40 Ex. G. A., H. F. 8, § 19.]

CHAPTER 11

TREASURER OF STATE

131. Office—accounts.
 132. Daily balance sheet.
 133. Record and payment of warrants.
 134. Receipts.
 135. Payment—interest on unpaid warrants.
 136. Record of unpaid warrants—interest.
 137. Report to and account with auditor.
 138. Interest on bonds.
 139. Deposits.

131. Office—accounts. The treasurer shall keep his office at the seat of government, and shall keep an accurate account of the receipts and disbursements at the treasury in books kept for that purpose, in which he shall specify the names of the persons from whom money is received, and on what account, and the time thereof. [C., '51, § 62; R., '60, § 83; C., '73, § 75; C., '97, § 101.]

132. Daily balance sheet. The treasurer of state shall so keep the books of his office that at the close of each day's business the account of each fund will show the balance or deficit therein, and show also the total amount of the money in the state treasury, and should the books not be in balance, the daily statement shall show the amount of the surplus or deficit by which the books fail to balance. [39 G. A., ch. 185, § 1.]

133. Record and payment of warrants. He shall enter in a book the memorandum of warrants issued as certified to him by the auditor, and receive in payment of public dues the warrants so issued in conformity with law, and redeem the same, if there be money in the treasury not otherwise appropriated, and on receiving any such warrant shall cause the person presenting it to indorse it, and shall write on the face thereof "redeemed", and enter in the book containing the auditor's memoranda, in appropriate columns, the name of the person to whom paid, date of payment, and amount of interest paid. [C., '51, § 63; R., '60, § 84; C., '73, § 76; C., '97, § 102.]

134. Receipts. When money is paid him, the treasurer shall execute receipts in duplicate therefor, stating the fund to which it belongs, one of which must be delivered to the auditor in order to obtain the proper credit, and the treasurer must be charged therewith. [C., '51, § 64; R., '60, § 85; C., '73, § 77; C., '97, § 103.]

135. Payment—interest on unpaid warrants. He shall pay no money from the treasury but upon the warrants of the auditor, and only in the order of their presentation; or,

140. Interest on deposits.
 141. Cash balance.
 142. Restoration of cash balance.
 143. Deposits by state officers.
 144. Statement itemized.
 145. Auditor and treasurer to keep account.
 146. Swamp land indemnity.
 147. Biennial report.

if there is no money in the treasury from which such warrants can be paid, he shall, upon request of the holder, indorse upon the warrant the date of its presentation, and sign it, from which time the warrant shall bear interest at the rate of five per cent per annum until the time directed in the next section. [C., '51, § 65; R., '60, § 86; C., '73, § 78; C., '97, § 104; S., '13, § 104.]

136. Record of unpaid warrants—interest. He shall keep a record of the number and amount of the warrants so presented and indorsed for nonpayment, and, when there are funds in the treasury for their payment to an amount sufficient to render it advisable, he shall give notice to what number of warrants the funds will extend, or the number which he will pay by three insertions in a newspaper printed at the seat of government. At the expiration of thirty days from the day of the last publication, interest on the warrants so named as being payable shall cease. [C., '51, § 66; R., '60, § 87; C., '73, § 79; C., '97, § 105.]

137. Report to and account with auditor. Once in each week he shall certify to the auditor the number, date, amount, and payee of each warrant taken up by him, with the date when taken up, and the amount of interest allowed; and on the first Monday of January, and the first day of April, July, and October, annually, he is directed to account with the auditor and deposit in his office all such warrants received at the treasury, and take the auditor's receipt therefor. [C., '51, § 67; R., '60, § 88; C., '73, § 80; C., '97, § 106; S., '13, § 106.]

138. Interest on bonds. When interest on any bonds of the state becomes due, the treasurer shall provide funds for the payment thereof on the day and at the place where payable; and persons holding such bonds are required to present the same at such place within ten days from such day, at the expiration of which time the funds remaining unexpended and vouchers for interest paid shall be returned to the treasury. [C., '73, § 82; C., '97, § 108.]

139. Deposits. The treasurer of state may deposit checks, drafts, or other evidence of indebtedness received by him, and belonging to the state, in banks and other depositories in Des Moines, Iowa, provided said depositories are first approved by the executive council, and have given security to the state in amounts to be fixed by said council and approved by it, conditioned for the prompt collection of all such paper and the payment of all deposits on the treasurer's order. Charges for collection by said depositories shall not exceed the minimum per cent charged private parties. This section shall not release the treasurer of state, or his bondsmen, or county treasurers, or their bondsmen, from any liability now imposed by law. [C., '97, §§ 111, 112, 113, 114; S., '13, § 113; 39 G. A., ch. 114, § 1; 40 Ex. G. A., S. F. 9, § 1.]

140. Interest on deposits. Depositories of state funds shall pay to the treasurer of state, for the use of the state, interest on all deposits at the rate of two and one-half per cent per annum. Payments shall be made at such times as may, with the approval of the executive council, be agreed on by the treasurer and depository. [C., '97, § 113; S., '13, § 113; 39 G. A., ch. 114, § 1; 40 Ex. G. A., S. F. 9, § 2.]

141. Cash balance. The treasurer of state shall not draw on the funds in any county treasury so long as the receipts from all sources, not including primary road funds, belonging to the state, are sufficient to maintain in the state treasury and authorized depositories in the aggregate, a cash balance of two million dollars. [39 G. A., ch. 155, § 3; 40 G. A., ch. 153, §§ 1, 4; 40 Ex. G. A., S. F. 9, § 2-a3.]

NOTE: Monthly statements by county treasurer of state funds, see § 5166.

142. Restoration of cash balance. When said cash balance is reduced below two million dollars the treasurer of state may draw upon each county treasurer in proportion to the amount in his possession, a sum sufficient in the aggregate to increase said cash balance to an amount not to exceed three million dollars. [39 G. A., ch. 155, § 3; 40 G. A., ch. 153, §§ 1, 4; 40 Ex. G. A., S. F. 9, § 2-a4.]

NOTE: Duty of county treasurer to honor draft, see § 5167.

143. Deposits by state officers. All elective and appointive state officers, boards, commissions, and departments, except the state fair board, the state board of education, and the board of control of state institutions, shall, within ten days succeeding the collection thereof, deposit, with the treasurer of state, or to the credit of said treasurer in any depository by him designated, ninety per cent of all fees, commissions, and moneys collected or received; the balance actually collected in cash, remaining in the hands of any officer, board, or department shall not exceed the sum of five thousand dollars and no money collected shall be held more than thirty days. [C., '73, § 3778; C., '97, § 191; S., '13, § 170-d; 40 Ex. G. A., H. F. 40, § 4.]

144. Statement itemized. Each deposit shall be accompanied by an itemized statement of the sources from which the money has been collected, and the funds to be credited, a duplicate of which shall, at the time, be filed with the auditor of state. [S., '13, § 170-d; 40 Ex. G. A., H. F. 40, § 5.]

145. Auditor and treasurer to keep account. The treasurer and auditor of state shall each keep an accurate account of the moneys so deposited. [S., '13, § 170-f; 40 Ex. G. A., H. F. 40, § 6.]

146. Swamp land indemnity. All swamp land indemnity money paid by the federal government to this state under any act of congress relating thereto shall be paid by the treasurer of state to the county treasurer of the county where the land, on account of which such payment is made, is located. The county treasurer shall be liable on his bond for the safe custody of said funds and shall promptly notify the board of supervisors of the receipt thereof. Said funds shall be applied by the said supervisors as required by law. [S., '13, §§ 116-d, 116-e, 116-f; 40 Ex. G. A., S. F. 9, § 3.]

147. Biennial report. The treasurer of state shall, biennially, at the time provided by law, report to the governor the state of the treasury and exhibit therein the amount received and paid out by the treasurer since his last report, and the balance remaining in the treasury. [C., '51, § 68; R., '60, § 89; C., '73, § 81; C., '97, § 107; 40 Ex. G. A., S. F. 9, § 4.]

NOTE: Report as to condition of treasury, see § 246.

CHAPTER 12

ATTORNEY GENERAL

- 148. Department of justice.
- 149. Duties.
- 150. Disqualification—substitute.

- 151. Assistant attorneys general.
- 152. Special counsel.
- 153. Expenses.

148. **Department of justice.** The department of justice, with the attorney general as head thereof, shall be located at the seat of government. [R., '60, § 124; C., '73, §§ 150, 3770; C., '97, §§ 208, 211; S., '13, §§ 208, 211; 40 Ex. G. A., H. F. 10, § 1.]

150-153; C., '97, §§ 208-210; S., '13, § 208-a; 40 Ex. G. A., H. F. 10, § 2.]

NOTE: Biennial report, see § 249.

149. **Duties.** It shall be the duty of the attorney general, except as otherwise provided by law:

150. **Disqualification—substitute.** If, for any reason, the attorney general be disqualified from appearing in any action or proceeding, the executive council shall appoint some suitable person for that purpose and defray the reasonable expense thereof from any unappropriated funds in the state treasury. [40 Ex. G. A., H. F. 10, § 3.]

1. To prosecute and defend all causes in the supreme court in which the state is a party or interested.

151. **Assistant attorneys general.** The attorney general may appoint a first assistant attorney general and such other assistant attorneys general as may be authorized by law, who shall devote their entire time to the duties of their positions. The assistant attorneys general shall, subject to the direction of the attorney general, have the same power and authority as the attorney general. [C., '97, § 212; S., '13, § 212; 37 G. A., ch. 350, § 1; 39 G. A., ch. 340, § 7; 40 Ex. G. A., H. F. 10, § 4.]

2. To prosecute and defend in any other court or tribunal, all actions and proceedings, civil or criminal, in which the state may be a party or interested, when, in his judgment, the interest of the state requires such action, or when requested to do so by the governor, executive council, or general assembly.

3. To prosecute and defend all actions and proceedings brought by or against any state officer in his official capacity.

4. To give his opinion in writing, when requested, upon all questions of law submitted to him by the general assembly or by either house thereof, or by any state officer, elective or appointive. Questions submitted by state officers must be of a public nature and relate to the duties of such officer.

5. To prepare drafts for contracts, forms, and other writings which may be required for the use of the state.

6. To report to the governor, at the time provided by law, the condition of his office, opinions rendered, and business transacted of public interest.

7. To supervise county attorneys in all matters pertaining to the duties of their offices, and from time to time to require of them reports as to the condition of public business intrusted to their charge.

8. To promptly account, to the treasurer of state, for all state funds received by him.

9. To keep in proper books a record of all official opinions, and a register of all actions prosecuted and defended by him, and of all proceedings had in relation thereto, which books shall be delivered to his successor.

10. To perform all other duties required by law. [R., '60, §§ 124-127, 130, 131; C., '73, §§

152. **Special counsel.** No compensation shall be allowed to any person for services as an attorney or counselor to any department of the state government, or the head thereof, or to any state board or commission, except in cases specially authorized by law, but the executive council may employ legal assistance, at a reasonable compensation, in any pending action or proceeding to protect the interests of the state, but only upon a sufficient showing, in writing, made by the attorney general, that his department can not for reasons stated by him perform said service, which reasons and action of the council shall be entered upon its records. [S., '13, § 208-b; 40 Ex. G. A., S. F. 7, § 118; 40 Ex. G. A., H. F. 10, § 5.]

NOTE: Employment of counsel by governor, see §§ 80 to 82, inc.

153. **Expenses.** The attorney general and his assistants shall be repaid their actual and necessary expenses incurred in transacting their official duties at places other than the seat of government. [C., '73, § 3770; C., '97, § 211; S., '13, § 211; 39 G. A., ch. 209, § 13; 40 Ex. G. A., S. F. 7, § 119; 40 Ex. G. A., H. F. 10, § 6.]

CHAPTER 13

REPORTER OF THE SUPREME COURT AND CODE EDITOR

GENERAL PROVISIONS

154. Appointment.
 155. Office.
 156. Duties.
 157. Recommendations—printing and reference.

SUPREME COURT REPORTS

158. Access to opinions.
 159. Standard for reports.
 160. New edition.
 161. Copyrights.

SESSION LAWS

162. Standard.
 163. Duty of secretary of state.

GENERAL PROVISIONS

154. **Appointment.** Within ninety days prior to the first secular day in January, 1927, and every four years thereafter the judges of the supreme court shall appoint a reporter of the supreme court who shall hold office for four years from said secular day and until his successor has been appointed, and has qualified. Vacancies shall be filled by said judges for the unexpired portion of the term. Chapter 60 shall not apply to appointments under this section. [C., '73, § 583; C., '97, § 1067; S., '13, §§ 207-a, 207-b; 40 G. A., ch. 225, § 1.]

155. **Office.** The office of the reporter of the supreme court shall be at the seat of government. He shall devote his entire time to the duties of his office. [C., '97, § 213; S. S., '15, § 224-a; 40 G. A., ch. 225, § 2.]

156. **Duties.** The reporter of the supreme court shall be editor of the code and his duties shall be:

1. To submit such recommendations as he deems proper to each general assembly for the purpose of amending, revising, and codifying such portions of the law as may be conflicting, redundant, or ambiguous, and to lay said recommendations before the presiding officers of each house.

2. To prepare the manuscript copy of all laws, acts, and joint resolutions passed at each session of the general assembly, and arrange the same in chapters with comprehensive index and in such manner that each chapter will show the number of the house or senate file.

3. To edit and compile the code after each even-numbered session of the general assembly so that the same may be printed as herein provided.

164. Duty of auditor of state.
 165. Copies of enrolled bills.
 166. Original enrolled bills.
 167. Appropriation.

THE CODE

168. Style of code.
 169. Editorial work.
 170. Future codes.
 171. Preparation.
 172. Citation of permanent code.
 173. Citation of session laws.
 174. Citation of prior codes.
 175. Official statutes.
 176. Publication of parts of code.
 177. Appropriation.

4. To edit and prepare for publication a series of annotations of the statutes of Iowa containing annotations of all such statutes as have been construed by the supreme court of this state or the federal courts, and cause the same to be printed in separate volumes arranged in the same manner as the titles, chapters, and sections of the code.

5. To prepare and cause to be published immediately following the issuance of the code in 1927, and every four years thereafter, a volume which shall by proper annotations show the construction placed by the supreme court of this state and the federal courts on all statutes of this state since the then existing permanent volume of annotations. The edition of 1931 and all subsequent volumes shall constitute a cumulation of the edition of 1927 and shall be so continued until said cumulation shall reach a size sufficient for a permanent volume.

6. To promptly prepare syllabi for all opinions of the supreme court and an index and proper tables for each volume of the reports. [C., '51, § 46; R., '60, §§ 62, 113, 115, 144; C., '73, §§ 35, 155, 156; C., '97, p. 5, §§ 38, 216; S., '13, p. 3; S. S., '15, §§ 224-c, 224-h; 37 G. A., ch. 5, § 1; 38 G. A., ch. 50, §§ 6, 7; 39 G. A., ch. 323, §§ 1, 2; 40 G. A., ch. 224, § 1; 40 G. A., ch. 225, §§ 4, 12; 40 Ex. G. A., ch. 3, § 21.]

157. **Recommendations—printing and reference.** The recommendations of the editor of the code shall be printed in such numbers as the printing board deems necessary for public use, and when laid before the presiding officers of the respective houses shall be referred in each house to appropriate committees on code revision, which shall be appointed by

the presiding officers of the respective houses. [40 Ex. G. A., ch. 3, § 22.]

SUPREME COURT REPORTS

158. Access to opinions. He shall, under the direction of the judges of the supreme court, have such access to the opinions of the court as will enable him to discharge his duties. [R., '60, § 112; C., '73, § 154; C., '97, § 213; S. S., '15, § 224-b; 40 G. A., ch. 225, § 3.]

159. Standard for reports. The size, style, type, binding, and appearance of volume 195 of the supreme court reports shall be substantially followed in the future publications of said reports. A majority of the judges of the supreme court may prescribe a different standard volume. [C., '97, § 218; S. S., '15, § 224-d; 39 G. A., ch. 165, § 1; 40 G. A., ch. 225, § 5; 40 Ex. G. A., ch. 3, § 23.]

160. New edition. The supreme court may, when the public interest requires it, order the publication of a new edition of any volume of its reports of which the copyright is not owned by the state, and may require compliance therewith within six months by an order entered of record. Failure to comply with said order shall work a forfeiture of said copyright to the state. [R., '60, § 120; C., '73, § 158; C., '97, § 214; S. S., '15, § 224-f; 40 G. A., ch. 225, § 11.]

161. Copyrights. All supreme court reports and books of annotations hereafter published shall be copyrighted in the name of the state of Iowa; but this shall not be construed to prevent the contractor by whom any volume of the reports of the supreme court is published, his representatives, or assigns, from continuing the exclusive publication and sale of such volume so long as he or they shall, in all respects, comply with the requirements of their contract. [C., '97, § 217; S. S., '15, § 224-g; 39 G. A., ch. 323, § 2; 40 G. A., ch. 225, § 15.]

SESSION LAWS

162. Standard. The size, style, type, and binding of the published acts of the fortieth general assembly shall be substantially followed in the future publication of the session laws. [C., '73, § 36; C., '97, § 39; 37 G. A., ch. 5, § 1; 40 G. A., ch. 224, § 3; 40 Ex. G. A., ch. 3, § 7.]

163. Duty of secretary of state. The secretary of state shall prepare and deliver to the editor of the code for insertion in each published volume of session laws, a correct list of state officers, judges of the supreme, district, superior, and municipal courts, members of the general assembly, and commissioners for this state in other states. [37 G. A., ch. 5, § 3; 40 Ex. G. A., ch. 3, § 8.]

164. Duty of auditor of state. There shall also be inserted in each volume of the session laws, the statement of the condition of the state treasury as provided by the constitution. Said statement shall be furnished by the auditor of state. [37 G. A., ch. 5, § 3; 40 Ex. G. A., ch. 3, § 9.]

165. Copies of enrolled bills. The enrolling clerks of the house and senate shall prepare a clear and distinct carbon copy of each enrolled bill or resolution at the time of preparing the original, and immediately deliver said copy to the reporter of the supreme court. [S. S., '15, § 224-i; 37 G. A., ch. 5, § 11; 37 G. A., ch. 20, § 1; 40 G. A., ch. 225, § 14.]

166. Original enrolled bills. In the preparation of the code and session laws the editor of the code shall have the right to the possession of the enrolled bills. [37 G. A., ch. 5, § 2; 40 G. A., ch. 224, § 2; 40 Ex. G. A., ch. 3, § 14.]

167. Appropriation. There is hereby appropriated, out of any funds in the state treasury not otherwise appropriated, for the purpose of providing the necessary clerical assistance in preparing said volume of session laws the sum of one thousand two hundred dollars, or so much thereof as may be necessary, for each special or regular session, which amount shall be wholly available for each session immediately upon the legal organization of the general assembly. [37 G. A., ch. 5, § 9; 40 G. A., ch. 224, § 5.]

THE CODE

168. Style of code. The code shall be prepared and published substantially in the following form and style:

1. The printing of the text shall be in double columns from type forms thirty-seven picas wide by fifty-four picas high and in nine point type solid with spacing of approximately six points between sections.

2. The chapters shall be numbered consecutively (commencing with number one) and without regard to titles.

3. Each section shall be indicated by a number printed in bold face type.

4. Each section shall have appropriate catchwords printed in bold face type contrasting with the text and followed immediately by the first word of the section.

5. Proper historical references shall immediately follow the last word of each section.

6. The code provided for herein shall include:

a. An analysis of the code by titles and chapters.

b. The declaration of independence.

c. Articles of confederation.

d. The constitution of the United States.

e. Laws of the United States relating to citizenship, naturalization, and the authentication of records.

- f. The constitution of Iowa.
 g. The act admitting Iowa into the union as a state.
 h. Chapter analysis at the head of each chapter.
 i. All of the statutes of Iowa of a general and permanent nature.
 j. The rules of the supreme court.
 k. An index covering the constitution and statutes of the state of Iowa and the rules of the supreme court.
7. The code shall be printed upon a good quality of paper and bound in good grade of buckram to specifications prepared by the state printing board and approved by the code supervising committee. [C., '97, p. 5; S., '13, p. 3; 40 G. A., ch. 223, § 9; 40 Ex. G. A., ch. 3, § 1.]

169. Editorial work. The code editor in preparing the copy for an edition of the code shall have power:

1. To correct therein all misspelled words in the original enrollments.
2. To correct all manifest grammatical and clerical errors including punctuation but without changing the meaning.
3. To transpose sections or to divide sections so as to give to distinct subject matters a section number but without changing the meaning. [40 Ex. G. A., ch. 3, § 2.]

170. Future codes. The editor of the code shall, immediately following the final adjournment of the regular session of the forty-second general assembly and immediately following the final adjournment of every even-numbered regular session thereafter, prepare a new edition of the code, and the printing board shall forthwith cause the same to be printed. [40 Ex. G. A., ch. 3, § 5.]

171. Preparation. All new editions of the code shall be so prepared and printed that each section of the general statute law shall appear in said new edition in its new or finally revised and amended form. All sections of law of a general nature enacted after the last preceding code, shall be inserted in each new edition in such logical order as the editor of the code may determine. [40 Ex. G. A., ch. 3, § 6.]

172. Citation of permanent code. The permanent codes published subsequent to the adjournment of the extra session of the fortieth general assembly shall be known and cited as "The Code, _____", giving year of edition of such code. [40 G. A., ch. 223, §§ 1, 2; 40 Ex. G. A., ch. 3, § 26.]

173. Citation of session laws. The session laws of each general assembly shall be known and cited as ".....General Assembly, Chapter....., Section....." (inserting the appropriate number). [40 G. A., ch. 223, § 4.]

174. Citation of prior codes. All prior codes and supplements shall be cited by the year in which published. [40 G. A., ch. 223, § 3.]

175. Official statutes. The code and session laws published under authority of the state shall constitute the only authoritative publications of the statutes of this state. No other publications of the statutes of the state shall be cited in the courts or in the reports or rules thereof. [C., '97, p. 5; S., '13, p. 3; 40 Ex. G. A., ch. 3, § 18.]

176. Publication of parts of code. The printing board may cause to be printed from time to time, in the form of leaflets, folders, or pamphlets and in such numbers as the board deems reasonable, parts of the code for the use of public officers. Such orders shall be limited to actual needs as shown by experience or other competent proof, and the printing shall, as far as practicable, be done from the plates or slugs from which the code has been printed. [C., '97, p. 5; S., '13, p. 3; 40 Ex. G. A., ch. 3, § 19.]

177. Appropriation. There is hereby appropriated out of any money in the treasury not otherwise appropriated an amount sufficient to defray all expenses incurred in the carrying out of the provisions of this act. [37 G. A., ch. 5, § 9; 39 G. A., ch. 165, § 2; 40 G. A., ch. 224, § 5; 40 Ex. G. A., ch. 3, § 30.]

NOTE: The word "act" in above section refers to 40 Ex. G. A., ch. 3.

CHAPTER 14

STATE PRINTING BOARD

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| 178. Board created. | 196. Combination of bidders. |
| 179. Appointive members. | 197. Acceptance of bid. |
| 180. Financial interest. | 198. Duration of contract. |
| 181. Appointment and tenure. | 199. Duty to enter into contract—forfeiture. |
| 182. Compensation. | 200. Contract provisions. |
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| 185. Printing for state institutions. | 203. Assistants outside Des Moines. |
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| 187. Specifications and rules. | 205. Contracts by institutional heads. |
| 188. Advertisements for bids. | 206. Emergency contracts. |
| 189. Requirements. | 207. Paper. |
| 190. Information furnished. | 208. Paper account. |
| 191. Specifications public. | 209. Account with each department. |
| 192. Form of bids. | 210. Bills—departments debited. |
| 193. Deposit with bid. | 211. Superintendent to separate items. |
| 194. Opening of bids—award. | 212. Vouchers—form—audit. |
| 195. Rejection of bids—procedure. | |

178. Board created. A state printing board, hereinafter referred to as “the printing board”, is hereby created. Said board shall be composed of the secretary of state, auditor of state, attorney general, and of two appointive members to be appointed by the governor. [37 G. A., ch. 183, § 1; 39 G. A., ch. 286, § 1.]

179. Appointive members. The appointive members of said board shall be residents of this state, of good moral character, and shall have had at least five years’ actual experience in the printing trade. [39 G. A., ch. 286, § 2.]

180. Financial interest. No member of said board shall be financially interested, directly or indirectly, in any plant or business in which work is performed, under the provisions of this and the two following chapters, for the state, nor shall he be so interested in any contract let under said chapters. [39 G. A., ch. 286, § 3.]

181. Appointment and tenure. The governor shall, on or before July first, each year, appoint one member of said board which appointee, after qualifying, shall serve for two years from said date. Appointees to fill vacancies shall serve from the date of appointment and qualification and for the unexpired term. [39 G. A., ch. 286, § 4; 40 Ex. G. A., S. F. 263, § 1.]

182. Compensation. The appointive members shall receive a compensation of ten dollars and actual expenses for each day actually employed hereunder in the business of the state. [39 G. A., ch. 286, § 6.]

183. Duties. The printing board shall:

1. Let contracts, except as provided in section 205, for all printing for all state offices, departments, boards, and commissions when the cost of such printing is payable out of any taxes, fees, licenses, or funds collected for state purposes.

2. Direct the manner, form, style, and quantity of all public printing when such matters are not otherwise expressly prescribed by law.

3. Employ and discharge all assistants necessary to enable the board to perform its duties and determine the compensation of such assistants when not otherwise determined by law.

4. Prescribe rules, not inconsistent with law, for the conduct of its business.

5. Keep a full and detailed record of all its meetings, actions, and proceedings.

6. Hear and determine all complaints which may be made to it with reference to any official action of the superintendent of printing.

7. Make biennial reports to the governor as to the cost of the public printing for each department during the preceding fiscal term, with recommendations of any retrenchments that can be made therein.

8. Perform all other duties required by law. [37 G. A., ch. 183, §§ 1, 16; 39 G. A., ch. 286, § 7.]

NOTE: For time of making biennial report, see § 246.

Printing of blanks relative to medical and surgical treatment of indigent persons, see § 4029.

184. Printing defined. The term “printing” as used in this and the two following chapters shall include “binding” and may include material, processes, or operations neces-

sary to produce a finished printed product. [39 G. A., ch. 286, § 8.]

185. Printing for state institutions. The power of the printing board to let contracts shall not embrace printing for any state institution when such institution, through its governing board, is able and desires to do such printing in its own printing plant. [37 G. A., ch. 183, §§ 24, 25; 39 G. A., ch. 286, § 9.]

186. Contracts with state institution. The printing board may, without advertising for bids, enter into contracts or make provision for doing any of the work coming under the provisions of this and the two following chapters at any school or institution under the ownership or control of the state. In all such cases, the work shall be done under conditions substantially the same as those provided for in the case of contracts with individuals and the same standard of quality or product shall be required. [37 G. A., ch. 183, §§ 24, 25; 39 G. A., ch. 286, § 10.]

187. Specifications and rules. The printing board shall, from time to time, adopt and print specifications and rules covering all matters relating to printing that are the subject of contracts, which specifications and rules shall contain, among other things, the following:

1. Provisions for the grouping of the work to be done or material furnished, so far as the same can be made the subject of general contracts, into classes according to the character or use thereof, or with relation to the department for which intended, or in any manner most convenient for securing bids and entering into contracts. All or any part of the printing needed for any department, board, or commission may be placed in a class by itself.

2. Estimates of the probable amount of work to be done, or material to be purchased, under each class or item, during the period of the proposed contracts.

3. Provisions for furnishing and keeping on file samples of work or stock, and other things necessary to assure compliance with the contracts.

4. Fixed standards for books and booklets, and for other printing so far as practicable, and for stock and material.

5. A schedule of maximum rates or prices, so far as the same can be made applicable, with provision that bids not within the maximum (each class being computed as a unit), may be rejected.

6. Details as to the delivery of stock to the state and placing the same in possession of contractors, and for delivery of the finished product and for a complete accounting for stock and reasonable allowance for waste where it is unavoidable.

7. A rule as to part payment for work in process of completion, or material in process

of delivery, in proportion to the part completed or delivered.

8. General regulations necessary to assure prompt and satisfactory compliance with the proposed contracts, the submission of samples, the delivery of the product (which may be at the expense of the state), the preparation and filing of bills, and such general matters as will assure to the state the utmost economy and efficiency. [37 G. A., ch. 183, §§ 4, 5, 8; 39 G. A., ch. 286, § 11.]

188. Advertisements for bids. The secretary of the board shall, from time to time as directed by the board, advertise for bids for the doing of the public printing. Such advertisements shall be published once each week for three consecutive weeks in seven newspapers in seven different cities of the state, one of which newspapers shall be published in Des Moines. [37 G. A., ch. 183, § 7; 39 G. A., ch. 286, § 12.]

189. Requirements. Said advertisements shall state where and how specifications and other necessary information may be obtained, the time during which the board will receive bids, and the day, hour, and place when bids will be publicly opened and contracts awarded. [37 G. A., ch. 183, § 7; 39 G. A., ch. 286, § 13.]

190. Information furnished. The secretary of the board shall supply prospective bidders and others on request with the specifications and rules of the board, blank forms for bids, samples of printing so far as possible, and all other information pertaining to the subject. [37 G. A., ch. 183, § 8; 39 G. A., ch. 286, § 14.]

191. Specifications public. The specifications shall be kept on file in the office of the secretary, open to public inspection, together with samples, so far as possible, of the work to be done or the material to be furnished. [37 G. A., ch. 183, § 8; 39 G. A., ch. 286, § 15.]

192. Form of bids. Bids must be:

1. In writing and only on the blanks furnished with the specifications.

2. Signed by the bidder.

3. Submitted in sealed envelopes which shall be properly indorsed.

4. In the hands of the secretary of the board by the time fixed in the advertisements for bids. [37 G. A., ch. 183, § 7; 39 G. A., ch. 286, § 16.]

193. Deposit with bid. Each bidder must deposit with the board at the time he files his bid, a certified check payable to the state treasurer for an amount to be fixed in the specifications, either covering all classes or items, or separate checks for each bid in case he makes more than one bid. Checks deposited by unsuccessful bidders, and by successful bidders when they have entered into the contract, shall be returned to them. [37 G. A., ch. 183, § 8; 39 G. A., ch. 286, § 17.]

194. Opening of bids—award. All bids shall be publicly opened and read and the contracts let at the time and place fixed therefor, or on such adjourned day or days as may be named by the board, of which adjournment all parties shall take notice. In the award of contracts, due consideration shall be given not only to the price bid, but to the mechanical and other equipment, and financial responsibility of the bidder, and his ability and experience in the performance of like or similar contracts. [37 G. A., ch. 186, § 7; 39 G. A., ch. 286, § 18.]

195. Rejection of bids—procedure. The board shall have the right to reject any or all bids, and in case of rejection or because of failure of a bidder to enter into a contract, the board may advertise for and secure new bids. [37 G. A., ch. 183, § 6; 39 G. A., ch. 286, § 19.]

196. Combination of bidders. When the board is satisfied that bidders have presented bids pursuant to an agreement, understanding, or combination to prevent free competition, it shall reject all of them and readvertise for bids as in the first instance. [39 G. A., ch. 286, § 20.]

197. Acceptance of bid. Each accepted bid shall have indorsed thereon, over the signature of the printing board or of a majority thereof, the word "accepted" with the date of such acceptance, which indorsement shall constitute immediate notice to the bidder of the fact of acceptance. [39 G. A., 286, § 21.]

198. Duration of contract. Contracts for printing and for work and material relating thereto shall be for a period not exceeding three years. [39 G. A., ch. 286, § 22; 40 G. A., ch. 275, § 18.]

199. Duty to enter into contract—forfeiture. Each successful bidder must within ten days after the award, enter into a contract in accordance with his bid, and unless this is done, or the delay is for reasons satisfactory to the board, the certified check submitted with the bid shall be forfeited to the state. The specifications on which the bid is made shall constitute a part of the contract. [37 G. A., ch. 183, § 9; 39 G. A., ch. 286, § 23.]

200. Contract provisions. Such contracts shall, among other provisions, provide:

1. That the contractor shall complete all unfinished portions of jobs or orders in hand at the expiration of the contract.

2. That the contract may be canceled, or other agreed penalty imposed, for failure to perform the terms thereof in a manner satisfactory to the printing board.

3. That the contractor may be released on such conditions as may be agreed on, in case of injury to his plant by fire, or other providential contingency.

4. That, in order to avoid delay and inconvenience in the departments, and unnecessary transportation charges to the state, deliveries of printing for the various state officials, departments, boards, and commissions shall be made in such manner as the printing board, after consultation with the various departments, shall order. [39 G. A., ch. 286, § 24.]

201. Bond. A bond for the faithful performance of the contract shall be required in connection with each contract, in an amount to be fixed by the printing board, which bond shall be filed with and approved by the board. [37 G. A., ch. 183, § 8; 39 G. A., ch. 286, § 25.]

202. Written orders. No printing shall be performed under any contract except on written orders therefor, on detailed forms prescribed by the printing board, and duly signed by the secretary of the board or by some person authorized by the board. Every order shall designate the contract under which the order is given, the class of the required printing, the definite quantity and kind thereof, and be issued in duplicate with a stub copy preserved. A separate series of stubs and duplicates shall be used for each class of printing. [39 G. A., ch. 286, § 26.]

203. Assistants outside Des Moines. The printing board may, at the various points in the state, outside the city of Des Moines, at which state institutions or departments are located, appoint assistants and empower such assistants to issue in the name of the printing board, orders for printing. Such assistants shall be furnished with a copy of the contract under which the orders are to be given, necessary blank order books and proper instructions as to their procedure. Such assistants on issuing an order shall immediately forward the original thereof to the printing board. [39 G. A., ch. 286, § 27.]

204. Acceptance of printing—penalty. No printing shall be accepted as in compliance with the contract when such printing is not of the grade of workmanship which is usually employed by first-class printers on printing of such class, nor when such printing is not of the full quality contracted for. If immediate necessity and lack of time to procure printing elsewhere compel the use of defective printing furnished by a contractor, it shall be accepted without approval, and one-half of the contract price thereof shall be deducted as liquidated damages for such breach of contract. [37 G. A., ch. 183, §§ 10, 11, 13; 39 G. A., ch. 286, § 28.]

205. Contracts by institutional heads. The printing board may authorize the managing board, or head, or chief executive officer of any institution or department of the state located outside the city of Des Moines to secure, under the specifications of the board, competi-

tive bids for printing needed by such institution or department, and submit such bids to the printing board. If said board approves any of said bids, such authorized board, head, or officer may contract for such printing with such bidder, but such contract shall not be valid until a duplicate copy thereof is filed with and approved by the printing board. [39 G. A., ch. 286, § 29.]

206. Emergency contracts. The board may at any time award a special contract or may authorize its assistants as designated in section 203 to award a special contract for any work or material coming within the provisions of this and the two following chapters but not included in contracts already in existence, or which cannot properly be made the subject of a general contract, if the amount of each such contract shall not exceed the amount of five hundred dollars, and if special bids have been duly solicited by the said board from persons or firms engaged in the kind of work under consideration who have indicated a desire to bid on the class of work to be done. [37 G. A., ch. 183, § 18; 39 G. A., ch. 286, § 30; 40 G. A., ch. 275, § 19.]

207. Paper. The board may contract for paper as part of the printing or may purchase paper and furnish the same to the contractor. All paper purchased for use of the state shall, when practicable, have a distinguishing mark or water line by which it can be identified. [R., '60, § 2170; C., '73, § 121; C., '97, § 165; S., '13, § 165; 37 G. A., ch. 183, § 23; 39 G. A., ch. 286, § 31; 40 G. A., ch. 275, § 2.]

208. Paper account. The board shall keep an accurate account with anyone doing printing for the state, and charge him with the value of all paper drawn, and credit him with all paper used on behalf of the state, and compel an accounting for all paper not so used. [C., '97, § 169; 40 G. A., ch. 275, § 3.]

209. Account with each department. The printing board shall keep an account with each separate officer, board, department, and commission of the state to which printing is furnished by the state, and in such manner as to show in detail at all times what printing has been so furnished, and the cost thereof. [39 G. A., ch. 286, § 32.]

210. Bills—departments debited. On the payment of a warrant for printing, if the official, board, department, or commission for which the printing was furnished has a contingent or support or other fund in the state treasury from which said warrant would be paid were it not for this section, the treasurer of state shall at once charge said fund with the amount of the cost of said printing. If such official, board, department, or commission has no such fund in the state treasury but has such fund in his or its own possession, the treasurer of state shall at once notify such official, board, department, or commission of the amount so paid by him for such printing, and said official, board, department, or commission shall at once reimburse the treasurer of state from his or its contingent or support fund for such payment, which reimbursement shall be credited to the unappropriated funds of the state. [37 G. A., ch. 183, § 12; 39 G. A., ch. 286, § 34.]

NOTE: Bills relative to blanks for state university hospital, see § 4029.

211. Superintendent to separate items. Should the amount of a warrant for printing include printing for more than one officer, board, department, or commission, the secretary of the board of printing shall at once furnish the treasurer with a statement of the correct amounts chargeable under the preceding section to each officer, board, department, or commission. [39 G. A., ch. 286, § 35.]

212. Vouchers—form—audit. All bills accruing under contracts for printing shall be filed with the printing board. They shall be in duplicate, or in larger numbers if ordered by the board, verified and itemized with full details necessary for computation according to the terms of the contract and orders given in relation thereto or according to law, and shall be accompanied by samples of the work or materials when practicable and when so ordered by the board.

All such bills shall be examined and approved by the printing board and the duplicate vouchers passed to the state board of audit.

All bills approved by the board shall be indorsed accordingly before presentation to the state board of audit. [37 G. A., ch. 183, § 12; 39 G. A., ch. 286, § 36.]

CHAPTER 15

SUPERINTENDENT OF PRINTING

GENERAL PROVISIONS

- 213. Appointment.
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DISTRIBUTION

- 222. Custody of documents and storage rooms.
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GENERAL PROVISIONS

213. Appointment. The printing board shall, by a majority vote, appoint some person having the same qualifications as the appointive members of the board who shall be officially known as superintendent of printing. Said superintendent shall serve during the pleasure of the board. [S. S., '15, § 144-e; 38 G. A., ch. 413; 39 G. A., ch. 286, § 37; 40 Ex. G. A., H. F. 32, § 24.]

214. Financial interest. The superintendent of printing shall not be financially interested, directly or indirectly, in any plant or business in which work is performed under the provisions of chapters 14 to 16, inclusive, for the state, nor shall he be so interested in any contract let under said chapters. [39 G. A., ch. 286, § 38.]

215. Duties. The superintendent of printing shall:

1. Have an office at the seat of government and devote his entire time to the duties of his position.
2. Have charge of the office equipment and supplies of the printing board and of the stock, if any, required in connection with printing contracts.
3. Have general supervision, under the direction of said board, of all matters pertaining to the enforcement of the contracts of the printing board.
4. Keep a detailed record of all meetings and proceedings of the printing board and of the award of contracts by said board.
5. Prepare, under the directions of said board, the specifications and advertisements for printing.

- 226. Assembly members.
- 227. Libraries.
- 228. Newspapers.
- 229. Congressional library.
- 230. County auditors.
- 231. County superintendent.
- 232. Biennial report of expenditures.
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- 234. Geological reports.
- 235. Laws.
- 236. Purchase by municipalities—accounting.
- 237. Early session laws.
- 238. Former statutes.
- 239. Supreme court reports.
- 240. Exchange.
- 241. Legislative journals and bills.
- 242. Cumulative legislative bulletin.
- 243. Enrolling clerks to keep records.

6. Have control and direction of the document department.

7. Have legal custody of all codes, session laws, books of annotations, tables of corresponding sections, and reports of the supreme court, and sell, account for, and distribute the same as provided by law.

8. Be responsible on his official bond for the public property coming into his possession.

9. Be ex officio secretary and general executive officer of the state printing board.

10. In odd-numbered years, compile for publication the Iowa official register which shall contain historical, political, and other statistics of general value, but nothing of a partisan character.

11. Perform such other duties as are necessary, or incident to his position, or which may be ordered by the printing board, or required by law. [C., '97, §§ 70, 218-223; S., '13, § 70; S. S., '15, §§ 144-h, 144-i, 144-j, 224-d; 39 G. A., ch. 165, §§ 1, 2; 39 G. A., ch. 286, § 39; 40 G. A., ch. 225, § 8; 40 G. A., ch. 275, § 1; 40 Ex. G. A., H. F. 289, § 25; 40 Ex. G. A., S. F. 263, § 7.]

NOTE: Data for official register, see §§ 284, 427, 4540.

216. Manuscript—editing—general directions. The manuscript of every report or document, or for any book, booklet, bulletin, or anything to be printed, or a copy thereof, shall be transmitted to the superintendent of printing at the time it is filed or as soon as it is ready for printing, with all photographs, drawings, maps, engravings, charts, or other material properly a part thereof. He shall edit, revise, condense, and arrange the same for printing, simplify where practicable the typographical arrangement, and, when not other-

wise covered, give all necessary instructions for the type, illustrations, headings, titles, paper, cover, binding, and other similar details. The authority here given to edit, revise, condense, and eliminate portions of manuscript shall apply notwithstanding any provisions elsewhere. Where tables or other matters are once printed it shall be sufficient thereafter to refer to the same without repeating them. [S. S., '15, § 144-i; 39 G. A., ch. 286, § 40.]

217. Cooperation. It shall be the duty of the said superintendent to advise with the officials and heads of departments as to the preparation of manuscript or copy for any printed matter, so the same may be handled in the most economical manner in the editing and printing. Officials or employees shall conform so far as practicable to all regulations of the superintendent for the improvement of the reports or other publications, or for decreasing the expense of preparation, printing, or distribution. [S. S., '15, § 144-i; 39 G. A., ch. 286, § 41.]

218. Appeals. In case of a disagreement between the superintendent and the head of any department as to the editing of manuscript, an appeal may be taken to the printing board which shall have authority to determine the matter in controversy. [S. S., '15, § 144-i; 39 G. A., ch. 286, § 42.]

219. Record relative to documents. The superintendent shall keep a record of the number of each report or document ordered printed, the number received, and the number and manner of distribution. [S. S., '15, § 144-j; 39 G. A., ch. 286, § 43.]

220. Reserve supply. The superintendent shall designate, subject to the approval of the printing board, the number of copies of reports and publications to be held in reserve, and copies thus held in reserve shall be distributed only upon the written request of the head of the department, approved by the superintendent, and ordered by the printing board. [S. S., '15, § 144-j; 39 G. A., ch. 286, § 44.]

221. Unused documents. The superintendent shall from time to time make report to the printing board of any documents in his custody deemed not needed and which have been printed five years or more, and if such report has the written approval of the head of the department from which the documents were issued, the printing board may condemn and order such documents sold, and the proceeds turned into the unappropriated funds of the state. [S. S., '15, § 144-l; 39 G. A., ch. 286, § 45.]

DISTRIBUTION

222. Custody of documents and storage rooms. The superintendent shall receive and

have the custody of the Iowa documents, reports, and all other printed matter and make and supervise the distribution of the same in such manner as will be most economical and useful to the public. He shall have charge of the state storage building or rooms, in which he shall keep the reports and documents. [S. S., '15, §§ 144-m, 144-n; 39 G. A., ch. 286, § 46.]

NOTE: Distribution of report of grand army of the republic, see § 478.

223. Information as to documents. The superintendent shall advise the public of the publication of reports and documents and of the nature of the material therein, and give information as to the publications that are for free distribution and how to obtain them. [S. S., '15, §§ 144-j, 144-n; 39 G. A., ch. 286, § 47.]

224. Mailing lists. The superintendent shall require from officials or heads of departments mailing lists, or addressed labels or envelopes, for use in distribution of reports and documents. He shall revise such lists, eliminating duplications and adding thereto libraries, institutions, public officials, and persons having actual use for the material. He shall arrange such lists so as to reduce to the minimum the postage or other cost for delivery. [S. S., '15, § 144-n; 39 G. A., ch. 286, § 48.]

225. Copies to departments. The superintendent shall furnish the various officials and departments with copies of their reports needed for office use or to be distributed to persons calling for the same. [S. S., '15, § 144-n; 39 G. A., ch. 286, § 49.]

226. Assembly members. The Iowa documents, the official reports, the completed journals of the general assembly, the miscellaneous documents, other publications, and at least thirty copies of the official register, shall be sent to each of the members of the general assembly, and, so far as they are available, additional copies upon their request. [S. S., '15, § 144-n; 39 G. A., ch. 286, § 50.]

227. Libraries. The Iowa documents, the completed journals of the general assembly, and the official register shall be sent to each free public library in Iowa, the state library, the library commission, libraries at state institutions, and college libraries. [S. S., '15, §§ 144-m, 144-n; 39 G. A., ch. 286, § 51.]

228. Newspapers. The journals of the general assembly and the official register shall be sent to each newspaper of general circulation in Iowa, and editors of newspapers in Iowa shall be entitled to other publications on request when they are available. [S. S., '15, §§ 144-m, 144-n; 39 G. A., ch. 286, § 52.]

229. Congressional library. Two copies of each publication shall be sent to the library of congress. [C., '97, § 126; S., '13, § 126; S. S., '15, §§ 144-m, 144-n; 39 G. A., ch. 286, § 53.]

230. County auditors. The Iowa documents, the completed journals of the general assembly, and the official register shall be sent to each county auditor, who shall be required to keep the same at all times available for the inspection of the public. [C., '97, § 126; S., '13, § 126; S. S., '15, §§ 144-m, 144-n; 39 G. A., ch. 286, § 54.]

231. County superintendent. The official register shall be distributed, in addition to the foregoing provisions, to the school libraries, through the county superintendent of schools to whom they shall be sent in bulk, and who shall direct their distribution each in his own county. [C., '97, § 71; S., '13, § 71; 39 G. A., ch. 286, § 55.]

232. Biennial report of expenditures. The biennial report of expenditures shall be distributed as follows:

- 1. To each member of the general assembly 15 copies
- 2. To each state officer, member of board or commission 1 copy
- 3. To each public, free, and college library in the state 1 copy
- 4. To state library 10 copies
- 5. To state historical department . 5 copies
- 6. To each county auditor, treasurer, and clerk of the district court 1 copy
- 7. To each newspaper in the state 1 copy

The remaining copies in excess of the reserve list shall be otherwise distributed as provided by law. [S., '13, § 163-b; 40 G. A., ch. 275, § 16.]

233. General distribution. The superintendent may send additional copies of publications to other state officials, individuals, institutions, libraries, or societies that may make request therefor. [39 G. A., ch. 286, § 56; 40 G. A., ch. 275, § 17.]

NOTE: Distribution of report of engineering examiners, see § 1863.

Distribution to state historical society, see § 4548.

234. Geological reports. The reports and bulletins of the geological survey shall be placed at the disposal of the state geologist. [C., '97, § 126; S., '13, § 126; 39 G. A., ch. 286, § 57.]

NOTE: Sale and distribution of reports, see § 4558.

235. Laws. The superintendent of printing shall make free distribution of the code, and of the acts of each general assembly, as follows:

- 1. To state law library for exchange purposes 125 copies
- 2. To law library of state university for exchange purposes 50 copies
- 3. To state historical department 5 copies
- 4. To state historical society.... 5 copies
- 5. To each judge of the supreme, district, superior, and municipal courts of Iowa..... 1 copy

- 6. To each judge of the federal courts in Iowa 1 copy

- 7. To the clerk of the supreme court of Iowa 1 copy

- 8. To the clerk of each federal court in Iowa 1 copy

- 9. To each state institution under the control of either the state board of education or state board of control 1 copy

- 10. To each state officer 2 copies

- 11. To the separate departments of principal state offices 1 copy

- 12. To each member of the present and subsequent general assemblies 1 copy

- 13. To chief clerk of the house.... 1 copy

- 14. To secretary of the senate.... 1 copy

- 15. To the reporter of the supreme court and code editor such number of copies as will enable him to perform the duties of his office.

- 16. To the clerk of the district court, the county attorney, the county auditor, the county recorder, the county treasurer, the sheriff, and the county superintendent of each county in the state, to the clerk of each superior or municipal court in the state, and also for use in each court room of the district, superior, or municipal court 1 copy

[C., '73, § 39; C., '97, p. 4, § 42; S., '13, p. 1, § 42; 37 G. A., ch. 5, § 6; 40 Ex. G. A., ch. 3, § 10.]

236. Purchase by municipalities—accounting. The board of supervisors may purchase and pay for out of the general fund such additional number of copies of the code and session laws as may be deemed necessary for the use of county and township officers. The council or commission of each city or town including cities acting under special charter shall have like power in order to supply the public offices of the city or town.

Each officer, except a state officer, at the expiration of his term of office, shall deliver any code and session laws furnished to him to his successor in office. [C., '73, §§ 39, 40, 43; C., '97, p. 4, §§ 43, 46; S., '13, pp. 1, 2, §§ 43, 46; 37 G. A., ch. 5, § 7; 40 Ex. G. A., ch. 3, § 11.]

237. Early session laws. The superintendent of printing may distribute gratuitously to interested persons or associations the session laws of the thirty-sixth and previous general assemblies; provided that he shall maintain in reserve such number of copies of the acts of each of said general assemblies as may be fixed by the executive council. Such reserve when fixed shall not be distributed except on the order of the executive council. [S., '13, § 46-a; 40 Ex. G. A., ch. 3, § 12.]

238. Former statutes. Upon application, in writing, from the librarian or chief executive officer of any incorporated college in this state, the superintendent of printing shall, upon the approval of the executive council, forward to said applicant, without charge, bound

volumes of the laws heretofore enacted. [S., '13, p. 3; 40 Ex. G. A., ch. 3, § 13.]

239. Supreme court reports. The superintendent of printing shall make free distribution of the reports of the supreme court as follows:

1. To library of congress	2 copies
2. To library supreme court United States	2 copies
3. To each supreme, district, superior, and municipal judge (not including police judges)	1 copy
4. To each United States district judge whose district lies within this state	1 copy
5. To the clerk of the supreme court	1 copy
6. To the attorney general	1 copy
7. To the state law library	90 copies
8. To each county	1 copy
9. To each county where district court is held in more than one place	2 copies
10. To supreme court reporter	2 copies
11. To law library state university society	50 copies
12. To library state historical society	5 copies
13. To the library Iowa state college of agriculture and mechanic arts	2 copies

[R., '60, § 119; C., '73, § 159; C., '97, § 215; S. S., '15, § 224-e; 37 G. A., ch. 402, § 1; 40 G. A., ch. 2, § 1; 40 G. A., ch. 225, § 9; 40 Ex. G. A., ch. 3, § 24.]

240. Exchange. The volumes delivered to the state [law] library shall be used for the purpose of effecting exchange with other states, foreign countries and provinces, for similar reports. All books received in such exchange shall become a part of the state library. [R., '60, § 119; C., '73, § 159; C., '97,

§ 215; S. S., '15, § 224-e; 40 G. A., ch. 225, § 10.]

241. Legislative journals and bills. The daily journals of the general assembly and the printed bills shall be sent by the superintendent of printing by mail to subscribers therefor. The journals of both houses for any one session shall be sent on payment of two dollars, and the bills on payment of five dollars. The said superintendent shall cause to be printed a sufficient number of copies to fill orders received and reported to him. [C., '97, §§ 127, 130; S. S., '15, §§ 132-b, 132-c, 132-d; 39 G. A., ch. 286, § 59.]

242. Cumulative legislative bulletin. The superintendent of printing shall, throughout each legislative session, and commencing with the close of the fourth week thereof, compile and cause to be printed, each alternate week, a cumulative bulletin of bills and joint resolutions, which bulletin shall contain a brief history of each bill, and detailed information as to the status of legislation, and shall be conveniently indexed. The last issue of each bulletin shall be brought down to the time of final adjournment and shall be promptly furnished to all members of the general assembly and to such others as the superintendent may determine. [37 G. A., ch. 9, § 2; 39 G. A., ch. 286, § 60; 40 G. A., ch. 275, § 22.]

243. Enrolling clerks to keep records. The enrolling clerks of the senate and house shall, under the directions of the secretary of the senate and house, respectively, keep a daily cumulative record of the information required in the preceding section and in such manner that the same may be promptly furnished to the superintendent at the close of each week. [39 G. A., ch. 286, § 61.]

CHAPTER 16

OFFICIAL REPORTS AND DOCUMENTS

244. Official reports—preparation.
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247. Annual reports—time covered and date of filing.
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249. Attorney general.
250. Auditor of state on municipal finances.
251. Superintendent of banking.
252. Highway commission.
253. Board of railroad commissioners.
254. Mine inspectors.
255. Delay.
256. Governor may grant extension.

257. Number of copies—style.
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259. Legislative journals.
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263. Legalizing acts of local nature.
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266. Annotations.
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270. Governor may fix filing date.
271. Title pages—complimentary insertions.

244. Official reports—preparation. State officials, boards, commissions, and heads of departments shall prepare and file written official reports, in simple language and in the most concise form consistent with clearness

and comprehensiveness of matter, required by law or by the governor.

Before filing any report its author shall carefully edit the same and strike therefrom all minutes of proceedings, and all correspond-

ence, petitions, orders, and other matter which can be briefly stated, or which is not important information concerning public affairs, and consolidate so far as practicable all statistical tables.

Any report failing to comply substantially with this section shall be returned to its author for correction, and until made so to comply shall not be printed.

This section shall not be construed as depriving the superintendent of printing of the right to edit and revise said report. [39 G. A., ch. 286, § 62.]

245. Made to governor. All official reports shall be made to the governor unless otherwise provided.

Reports after being filed with the governor and considered by him shall be delivered to the superintendent of printing. [40 G. A., ch. 275, §§ 4, 14.]

NOTE: Report of industrial commissioner to be transmitted to general assembly, see § 1432.

246. Biennial reports—time covered and date of filing. Reports of the following officials and departments shall cover the biennial period ending June thirtieth in each even-numbered year, and shall be filed as soon as practicable after the end of the reporting period:

1. Auditor of state on fiscal condition of state.
2. Auditor of state on biennial expenditures.
3. Treasurer of state as to the condition of the treasury.
4. Secretary of agriculture.
5. Superintendent of public instruction.
6. Board of control.
7. Board of education.
8. Board of parole.
9. Printing board.
10. Industrial commissioner.
11. Commissioner of public health.
12. Commissioner of labor.
13. Board of curators of state historical society.
14. Curator of historical, memorial, and art department.
15. State librarian.
16. Library commission.
17. Custodian of public buildings and grounds.
18. Game warden.
19. Adjutant general.

[C., '73, § 125; C., '97, § 122; S., '13, § 122; 39 G. A., ch. 286, §§ 63, 65; 40 G. A., ch. 275, § 5; 40 Ex. G. A., S. F. 263, § 3.]

NOTE: Auditor of state as to fiscal condition of state, see § 102, par. 11.

- Auditor of state as to state expenditures, see § 127.
- Treasurer of state biennial report, see § 147.
- Secretary of agriculture, see § 2600.
- Superintendent of public instruction, see § 3832, par. 13; § 3849.
- Board of control, see § 3285.
- Board of education, see § 3938.
- Board of parole, see § 3811.
- Printing board, see § 183, par. 7.

- Industrial commissioner, see § 1432.
- Commissioner of public health, see § 2216.
- Commissioner of labor, see § 1513, par. 4.
- Board of curators of state historical society, see § 4547.
- Curator of historical, memorial, and art department, see § 4525.
- State librarian, see § 4518, par. 7.
- Library commission, see § 4539.
- Custodian of public buildings and grounds, see § 274.
- Game warden, see § 1710.
- Adjutant general, see § 446.
- Auditor of state as to standing appropriations, see § 130.
- Treasurer of state as to vocational education funds, see § 3848.
- Treasurer of state as to maternity and infancy funds, see § 4008.
- State board for vocational education, see § 3853, par. 15; § 3857.
- Secretary of executive council, see § 284.

247. Annual reports—time covered and date of filing. Reports of the following officials and departments shall cover the year ending December thirty-first of each year, and shall be filed as soon as practicable after said date:

1. Commissioner of insurance.
 2. Apiarist.
 3. State geologist.
 4. Fire marshal.
 5. Board of accountancy.
 6. Board of engineering examiners.
 7. Inspector of passenger boats.
- [39 G. A., ch. 286, § 64; 40 G. A., ch. 275, § 6; 40 Ex. G. A., S. F., 263, § 4.]

NOTE: Commissioner of insurance, see §§ 8614, 8615.
 Apiarist, see § 4040.
 State geologist, see § 4555.
 Fire marshal, see § 1653.
 Biennial report of board of accountancy, see § 1902.
 Board of engineering examiners, see § 1863.
 Inspector of passenger boats, see § 1696.
 Fair board, see § 2393.
 Secretary of executive council, see § 285.
 Director of the budget, see § 326.

248. Governor. The biennial report of the governor to the general assembly on reprieves, commutations, pardons, and remission of fines and forfeitures shall cover the two years ending with December thirty-first immediately preceding the convening of the general assembly in regular session and shall be filed as soon as practicable after said date. [39 G. A., ch. 286, § 63; 40 G. A., ch. 275, § 7.]

249. Attorney general. The biennial report of the attorney general shall cover the period of his regular term and shall be filed as soon as practicable after the expiration of said term and not later than February first. [39 G. A., ch. 286, § 67; 40 G. A., ch. 275, § 8.]

250. Auditor of state on municipal finances. The annual report of the auditor of state on municipal finances shall cover the year ending March thirty-first preceding the filing of the report, and shall be filed as soon as possible after said date and not later than September first. [39 G. A., ch. 286, § 67; 40 G. A., ch. 275, § 9.]

251. Superintendent of banking. The annual report of the superintendent of banking shall cover the year ending June thirtieth of each year, and shall be filed as soon as practicable after said date and not later than September first. [39 G. A., ch. 286, § 64; 40 G. A., ch. 275, § 10.]

252. Highway commission. The annual report of the state highway commission shall cover the year ending December thirty-first and shall be filed not later than January fifteenth of each year, provided the summary report of county highway engineers may be filed on a date not later than February first. [39 G. A., ch. 286, § 64; 40 G. A., ch. 275, § 11.]

253. Board of railroad commissioners. The annual report of the board of railroad commissioners shall, as to all statistical data, cover the year ending December thirty-first preceding the filing of the report, and the proceedings of the board to date of filing the report each year. Said report shall be filed on or before December first. [39 G. A., ch. 286, § 64; 40 G. A., ch. 275, § 12.]

254. Mine inspectors. The report of the mine inspectors shall cover the biennial period ending December thirty-first of each odd-numbered year, and shall be filed on or before August fifteenth following the end of said reporting period. [C., '97, § 2483; S., '13, § 2483; 40 G. A., ch. 275, § 12-a.1.]

255. Delay. Should the governor deem the delay in filing a report to be unreasonable he shall take such steps as will correct the delinquency. [39 G. A., ch. 286, § 66; 40 G. A., ch. 275, § 12-a.2.]

256. Governor may grant extension. The governor shall have authority to grant an extension of time for the completion of any report or any portion thereof, but in the case of any delay deemed by him to be unnecessary or unreasonable he shall take whatever steps may be necessary to have the delayed report prepared for filing. [39 G. A., ch. 286, § 66; 40 Ex. G. A., S. F. 263, § 5.]

257. Number of copies—style. The annual and biennial reports shall be published, printed, and bound in such number as the board of printing may order. The officials and heads of departments shall furnish the printing board with information necessary to determine the number of copies to be printed.

They shall be printed on good paper, in legible type with pages substantially six inches by nine inches in size. They may be divided for binding where one portion should receive larger distribution than another, or be issued in parts or sections for greater convenience. [C., '73, § 130; C., '97, § 125; S., '13, § 125; 39 G. A., ch. 286, § 68.]

NOTE: Recommendations of code editor—number printed, see § 157.

258. Iowa documents. At the time of printing the official reports there shall also be printed from the same type or plates an edition of five hundred copies to be grouped together and bound in volumes of convenient size to be known as the Iowa documents, of which there shall be one edition for each biennial period. Each volume as thus grouped shall contain a table of contents of all the volumes. There shall be included in the Iowa documents, in addition to the official reports, the inaugural address and the message and budget of the governor. [39 G. A., ch. 286, § 69; 40 G. A., ch. 275, § 20.]

259. Legislative journals. The record of the transactions of the senate and house shall be published in a daily journal, printed in number as authorized by the general assembly or directed by the superintendent of printing. The completed journals shall be published in book form, with index and record of bills, in an edition of not less than one thousand in library binding and not less than one thousand in paper covers. There shall also be printed for the general assembly or the members thereof such other material necessary for the transaction of legislative business. [C., '97, §§ 127, 130; S. S., '15, §§ 132-b, 132-d; 39 G. A., ch. 286, § 70.]

260. Legislative proceedings. The reports of the legislative proceedings shall be delivered by the secretary of the senate and the chief clerk of the house to the superintendent of printing promptly upon completion, and he shall cause such reports to be printed in accordance with the contracts covering the same. He shall require that proof copies of the daily journal be furnished the next legislative day after date and shall promptly deliver them to the sergeants-at-arms of each house. The corrections and changes made therein by the general assembly shall be made before the printing of the corrected or completed journal. [39 G. A., ch. 286, § 71.]

261. Corrected journals. The journal, as corrected by order of the general assembly, shall be printed promptly and be delivered by the superintendent to the sergeants-at-arms of each house. An index, record and history of bills, and list of bills passed, shall be prepared by the superintendent of printing for the completed edition of the journal. [39 G. A., ch. 286, § 72.]

262. Legislative bills. The bills introduced in the general assembly shall be printed on good paper with pages approximately eight inches by ten inches in size with type not less than ten point in size, the lines spaced with pica slugs, each printed line to be one line of the original bill as introduced, and the lines of each section to be separately numbered. The number of copies of each bill to be printed unless otherwise ordered shall be fixed by the superintendent according to the needs of the

general assembly, and to supply subscribers therefor. [37 G. A., ch. 9, § 1; 39 G. A., ch. 286, § 73.]

263. Legalizing acts of local nature. A bill which seeks to legalize the acts of any official or board or other official body, in regard to any matter not of public nature, shall not be considered until it is printed as a bill and distributed to members of the general assembly, and the printing shall be without expense to the state. The superintendent of printing shall not order any such bill printed until he has received a deposit to cover the cost thereof at the rate of not less than two dollars per page, and shall exclude from the journals all such bills. [39 G. A., ch. 286, § 74.]

264. Miscellaneous documents. There shall be published, printed, and bound, uniform with the official reports, unless otherwise provided, and for the periods indicated, the following miscellaneous documents, each of which shall be compiled by the head or secretary of the department or association having charge thereof:

1. Iowa year book of agriculture, annually.
2. Iowa official register, biennially.
3. Assessments by executive council relative to public utilities, annually.
4. Census, when taken and compiled.
5. Proceedings of state teachers' association, annually.
6. Proceedings of Iowa academy of science, annually.
7. Proceedings of pioneer lawmakers' association, biennially. [39 G. A., ch. 286, § 75; 40 G. A., ch. 275, § 13; 40 Ex. G. A., S. F. 263, § 6.]

265. Legal publications. The code, session laws, annotations, tables of corresponding sections, and reports of the supreme court shall be printed, and paid for in the same manner as other public printing, and the printing board shall fix the prices thereof. [C., '97, §§ 218-224; S. S., '15, § 224-d; 38 G. A., ch. 50, § 6; 39 G. A., ch. 165, § 1; 40 G. A., ch. 225, §§ 5, 13; 40 Ex. G. A., ch. 3, § 20.]

266. Annotations. Books of annotations shall, so far as practicable, be printed and bound in the same manner, form, and style

as the code. [38 G. A., ch. 50, § 6; 39 G. A., ch. 323, § 2; 40 Ex. G. A., ch. 3, § 17.]

267. New editions. New editions of the code, book of annotations, and reports of the supreme court may be published by the printing board when the supply on hand of the last edition becomes exhausted and when a new edition is necessary in order to meet the demand. [40 Ex. G. A., ch. 3, § 16.]

268. Number printed. The number of each edition of the code, tables of corresponding sections, session laws, annotations, and reports of supreme court shall be determined by the printing board. [C., '73, § 37; C., '97, § 40; 37 G. A., ch. 5, § 5; 38 G. A., ch. 14, § 1; 40 G. A., ch. 224, § 6; 40 Ex. G. A., ch. 3, § 15.]

269. Other necessary publications. There shall be published other miscellaneous documents, reports, bulletins, books, and booklets that are needed for the use of the various officials and departments of state, or are of value for the information of the general assembly or the public, in form and number most useful and convenient, to be determined by the printing board. [39 G. A., ch. 286, § 76.]

NOTE: Additional geological reports, see § 4657.

Publication of parts of code, see § 176.

Publication of board of control bulletins, see § 3329.

270. Governor may fix filing date. The governor shall have the right to fix a date for the completion of or filing of any copy or manuscript for any miscellaneous document or other publication, or for any portion of the manuscript, and to compel compliance with such orders the same as in the case of the official reports. The superintendent of printing shall report to the governor any failure to furnish manuscript or other delay affecting any publication. [39 G. A., ch. 286, § 77.]

271. Title pages—complimentary insertions. The superintendent of printing shall provide the necessary printer's copy for a suitable title page for each publication requiring such title which shall contain the name of the author, but no such title shall have written or printed thereon or attached thereto the words "Compliments of" followed by the name of the author, nor any other words of similar import. [39 G. A., ch. 286, § 78.]

CHAPTER 17

CUSTODIAN OF PUBLIC BUILDINGS

272. Appointment and tenure.
273. Duties.

272. Appointment and tenure. The executive council shall appoint a custodian of public buildings and grounds who shall hold office during the pleasure of said council. [C., '97, § 145; S. S., '15, § 147; 39 G. A., ch. 108, § 1; 40 Ex. G. A., H. F. 32, § 25.]

273. Duties. It shall be the duty of the custodian, except as otherwise provided by law:

1. To have charge of, preserve and adequately protect the state capitol and grounds, and all other state grounds and buildings at the seat of government, and all property connected therewith or used therein or thereon.

2. To see that all parts and apartments of said buildings are properly ventilated and kept clean and in order.

3. To see that all visitors, at proper hours, are properly escorted over said grounds and through said buildings, free of expense.

4. To have, at all times, charge of and supervision over the police, janitors, and other employees of his department in and about the capitol and other state buildings at the seat of government.

5. To institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property under his control, or for committing or threatening to commit a nuisance therein or thereon.

6. To keep in his office a complete record containing an itemized account of all state property, including furniture and equipment, under his care and control, and plans and surveys of the public grounds, buildings, and underground constructions at the seat of government.

274. Biennial report.
275. Interest in contracts.

7. To perform all other duties required by law or order of the executive council. [C., '73, § 120; C., '97, §§ 147, 148, 150; S., '13, § 150; S. S., '15, § 147; 39 G. A., ch. 108, § 2.]

274. Biennial report. The custodian shall, at the time provided by law, make a verified report which shall cover all transactions for the preceding biennial period and show in detail:

1. All expenditures made on account of the department of public buildings and property.

2. The condition of all real and personal property of the state under his care or control, together with a report of any loss or destruction, or injury to any such property, with the causes thereof.

3. The measures necessary for the care and preservation of the property under his control.

4. Any recommendations as to methods which would tend to render the public service more efficient and economical.

5. Any other matter ordered by the governor. [C., '97, § 151; S., '13, § 151; 39 G. A., ch. 108, § 3; 40 G. A., ch. 275, § 15.]

NOTE: Biennial report, see § 246.

275. Interest in contracts. The custodian shall not have any pecuniary interest, directly or indirectly, in any contract for supplies furnished to the state, or in any business enterprise involving any expenditure by the state; and a violation of the provisions of this section shall be deemed a misdemeanor, and on conviction thereof he shall be fined in any sum not exceeding one thousand dollars, and be removed from office. [C., '97, § 153; 39 G. A., ch. 108, § 4.]

CHAPTER 18
EXECUTIVE COUNCIL

- 276. Membership.
- 277. Secretary.
- 278. Record of proceedings.
- 279. Record of motions and votes.
- 280. Certificate of tax rulings.
- 281. Assessment record.
- 282. Supplies.
- 283. Requisition and report blanks.
- 284. Report for Iowa official register.
- 285. Assessment report.
- 286. Contingent fund.
- 287. Anticipation of revenues.
- 288. Compromise of claims.
- 289. Court costs.
- 290. Report of unexpended balances.
- 291. Notice to transfer balance.
- 292. Order of transfer.

- 293. Duty to transfer.
- 294. Exception.
- 295. Assignment of rooms.
- 296. Repairs—supplies.
- 297. Advertisement for bids.
- 298. Contracts.
- 299. Identification of state property.
- 300. Sale of state property.
- 301. Supply account.
- 302. Officers entitled to supplies.
- 303. Postage.
- 304. Drawing supplies.
- 305. Account with officer.
- 306. Performance of duty—expense.
- 307. Necessary record.
- 308. Additional compensation and expenses.

276. Membership. The executive council shall consist of the:

1. Governor,
2. Secretary of state,
3. Auditor of state,
4. Treasurer of state, and
5. Secretary of agriculture.

A majority shall constitute a quorum. No deputy shall act on the council for his principal. [R., '60, § 993; C., '73, § 111; C., '97, § 155; 40 G. A., ch. 3, § 1; 40 Ex. G. A., H. F. 14, § 1.]

277. Secretary. The executive council shall choose a secretary who shall hold office during its pleasure, and perform such duties as may be required by law or by the executive council. [R., '60, § 999; C., '73, §§ 119, 120; C., '97, §§ 156, 157; S., '13, §§ 156, 157; 40 Ex. G. A., H. F. 14, § 2.]

278. Record of proceedings. He shall keep a complete record of the proceedings of the executive council and of the state board of review. [C., '73, § 119; C., '97, §§ 156, 157; S., '13, § 157; 40 Ex. G. A., H. F. 14, § 3.]

279. Record of motions and votes. When arriving at values for taxable purposes the records shall show the members making the various motions, the amounts such motions designate, the values undertaken to be fixed thereby, and the negative and affirmative votes thereon, and record the names of the members voting. [40 Ex. G. A., H. F. 14, § 3.]

280. Certificate of tax rulings. Upon the completion of the work of said board of review, he shall immediately transmit to the auditor of state a certified statement of the percentage to be added to or deducted from

the valuation of each kind or class of property in the several counties of the state, and to each county auditor of the state a like statement for his county. [S., '13, § 157; 40 Ex. G. A., H. F. 14, § 3.]

281. Assessment record. He shall keep an assessment record, wherein shall be recorded the detailed proceedings relating to valuations and assessments of properties made, taxes levied, and levies determined by the executive council, and shall certify to the several county auditors all property assessments and levies so made by the executive council, when such certification is required by law. [C., '73, § 119; C., '97, § 157; S., '13, § 157; 40 Ex. G. A., H. F. 14, § 4.]

282. Supplies. He shall have charge of the supplies and postage purchased for state use, and shall keep a stock book record and ledger account of the receipts and disbursements thereof. [C., '73, §§ 119, 120; S., '13, § 157; 40 Ex. G. A., H. F. 14, § 5.]

283. Requisition and report blanks. He shall, under the direction of the executive council, prepare and maintain forms for:

1. Requisitions for supplies for persons entitled to draw the same.
2. Reports of common carriers and all other persons or concerns required by law to make reports to the executive council. [C., '73, §§ 119, 120; C., '97, § 157; S., '13, § 157; 40 Ex. G. A., H. F. 14, § 6.]

284. Report for Iowa official register. He shall, as soon as practicable after January first of each odd-numbered year, prepare a report of the proceedings of the executive coun-

cil for the two preceding calendar years. Said report shall include a statement of:

1. The assessments of all common carriers, sleeping and dining cars, express and telegraph companies.

2. The aggregate assessment of telephone property by classes.

3. The official canvass of the votes cast at the last general election.

4. The cities and towns, the class of which may have been changed.

5. Other acts of said council that are of general interest.

Said report shall be published in the Iowa official register. [C., '73, § 120; C., '97, § 157; S., '13, § 157; 40 Ex. G. A., H. F. 14, § 7.]

285. Assessment report. He shall, under the direction of the executive council, annually compile detailed reports of the assessment of railroads; sleeping, dining, and equipment cars; express properties, telegraph and telephone properties. [C., '97, § 157; S., '13, § 157; 40 Ex. G. A., H. F. 14, § 8.]

286. Contingent fund. A contingent fund set apart for the use of the executive council may be expended for the purpose of paying the expenses of suppressing any insurrection or riot, actual or threatened, when state aid has been rendered by order of the governor, and for repairing, rebuilding, or restoring any state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause, and for no other purpose whatever. [C., '73, § 120; C., '97, § 170; 40 Ex. G. A., H. F. 14, § 9.]

287. Anticipation of revenues. The executive council may anticipate the revenues for any year, when the current revenues for such year are insufficient to pay all warrants issued in said year, by causing state warrants, in an amount not exceeding the estimated state revenues for said year, and drawing not to exceed five per cent per annum, to be issued, advertised, and sold on sealed bids to the highest bidder. All bids and all records pertaining thereto, and the names of all purchasers shall be kept on file. [S., '13, § 170-a; 40 Ex. G. A., H. F. 14, § 10.]

288. Compromise of claims. The executive council, on a written report to it by the attorney general together with his opinion as to the legal effect of the facts, may determine by resolution to be duly entered in its official records, the terms on which claims of doubtful equity or collectibility, and in favor of the state, may be compromised and settled with all or any of the parties thereto. Such terms may be withdrawn prior to acceptance, or in case the debtor fails to comply therewith within a reasonable time. The attorney general shall have full authority to execute all papers necessary to effect any such settlement. [S., '13, § 170-h; 40 Ex. G. A., H. F. 14, § 11.]

289. Court costs. The executive council may pay, out of any money in the state treasury not otherwise appropriated, any expense incurred, or costs taxed to the state, in any proceeding brought by or against any of the state departments or in which the state is a party or interested. [S., '13, § 170-i; 40 Ex. G. A., H. F. 14, § 12.]

290. Report of unexpended balances. All commissions, boards, officers or persons placed in charge, by statute, of special work for which a specific appropriation of state funds has been made, shall, biennially, report to the executive council the progress of such special work, the balance on hand in such fund, a list of all unpaid bills, and the amount of each, then outstanding, with such other information as the council shall from time to time require. [S. S., '15, § 170-q; 40 Ex. G. A., H. F. 14, § 13.]

291. Notice to transfer balance. When said council is satisfied that the work for which such special fund was created has been completed or abandoned, it shall fix a day for hearing on the question whether the unexpended balance then on hand should be transferred to the general revenue fund of the state, and shall cause a ten days' notice of such hearing to be given such commission, board, officer, or person, at which hearing showing may be made why such unexpended balance should not be so transferred. [S. S., '15, § 170-q; 40 Ex. G. A., H. F. 14, § 14.]

292. Order of transfer. If after such hearing the council shall find that said special work has been completed or abandoned, and that there is no good reason why such transfer should not then be made, such findings shall be made a matter of record in the minutes of its proceedings, and the secretary of the council shall at once file a copy of such proceedings with the auditor and treasurer of state. [S. S., '15, § 170-q; 40 Ex. G. A., H. F. 14, § 15.]

293. Duty to transfer. The auditor and treasurer of state shall, on receipt from the secretary of the council of a copy of such record, make such transfer. [S. S., '15, § 170-q; 40 Ex. G. A., H. F. 14, § 16.]

294. Exception. The four preceding sections shall not apply to any appropriation for any purpose connected with the operation of any state institution under the control of the state board of control of state institutions, unless the board shall certify to the said council that an unexpended balance of such appropriation will not be needed. [S., '13, § 123; 40 Ex. G. A., H. F. 14, § 17.]

295. Assignment of rooms. The executive council shall control the assignment of rooms in the capitol building, provided that room four in the basement story shall be the permanent quarters of the Grand Army of the Re-

public, department of Iowa. Assignments may be changed at any time. Assignment of rooms which are necessary for legislative purposes, shall terminate on the convening of the general assembly. The various officers to whom rooms have been so assigned may control the same while the assignment to them is in force. Official apartments shall be used only for the purpose of conducting the business of the state. [C., '97, §§ 152, 164; S., '13, §§ 152, 164; 40 Ex. G. A., H. F. 14, § 18.]

296. Repairs—supplies. The executive council may contract for the repairing of all buildings and grounds of the state at the seat of government, for the necessary telephone, telegraph, lighting, and water service for such buildings and grounds, for all necessary furniture, fuel, stores, and supplies for the said buildings and grounds, and for the various departments of the state government at the seat of government. Payment for telephone, telegraph, water, and lighting service shall not exceed the minimum charge to private parties. [C., '51, §§ 45, 60; R., '60, §§ 61, 81, 2170; C., '73, §§ 120, 121; C., '97, §§ 164, 165; S., '13, §§ 164, 165; 40 Ex. G. A., H. F. 14, § 19.]

297. Advertisement for bids. The secretary of the executive council shall, from time to time, on the order of the council, advertise in two newspapers published at the seat of government, and in such other newspapers as the council may order, for sealed proposals for furnishing supplies (except government postage and other noncompetitive supplies) which advertisements shall state the kind, quality, quantity, and time and place of delivery, the time and place when such proposals will be opened, and when the same must be filed with such secretary, and other matters as the council may direct. [R., '60, § 2169; C., '73, § 121; C., '97, § 166; S., '13, § 166; 40 Ex. G. A., H. F. 14, § 20.]

298. Contracts. All bids shall be opened at the time and place specified. Contracts shall be let to the lowest responsible bidder, but the council may reject all bids and readvertise. Successful bidders shall give security, to be approved by the council, for the faithful performance of all contracts. [R., '60, § 2169; C., '73, § 121; C., '97, § 167; 40 Ex. G. A., H. F. 14, § 21.]

299. Identification of state property. All furniture, stores, or supplies for use in and about the capitol shall, when practicable, be marked with the word "Iowa". [C., '97, § 165; S., '13, § 165; 40 Ex. G. A., H. F. 14, § 22.]

300. Sale of state property. Said council may dispose of any personal property when the same shall, for any reason, become unfit for further use by the state. [S., '13, § 165; 40 Ex. G. A., H. F. 14, § 23.]

301. Supply account. The executive council shall take charge of all property purchased, and shall keep a complete and itemized account of all such property, with the cost and disposition thereof. [R., '60, § 2170; C., '73, § 122; C., '97, §§ 168, 169; S., '13, § 168; 40 Ex. G. A., H. F. 14, § 24.]

302. Officers entitled to supplies. The council shall, unless otherwise provided, furnish the following officers and departments with all articles and supplies required for the public use and necessary to enable them to perform the duties imposed upon them by law:

1. Governor.
2. Secretary of state.
3. Auditor of state.
4. Treasurer of state.
5. Secretary of agriculture.
6. Attorney general.
7. Judges of supreme court.
8. Clerk of supreme court.
9. Reporter of supreme court.
10. Railroad commissioners.
11. Commerce counsel.
12. General assembly and members thereof.
13. Standing and special committees of the general assembly.
14. Chief clerk of the house.
15. Secretary of the senate.
16. Superintendent of public instruction.
17. Board of control of state institutions.
18. State board of education and the finance committee thereof.
19. Banking department.
20. Insurance department.
21. Horticultural society.
22. Historical department.
23. Mine inspectors.
24. Labor commissioner.
25. Geological board and state geologist.
26. Board of parole.
27. State department of health.
28. State board of audit.
29. State board of educational examiners.
30. State library.
31. Law library.
32. State library commission.
33. State printing board and superintendent of printing.
34. State fire marshal.
35. Industrial commissioner.
36. Adjutant general.
37. Director of the budget.
38. Custodian of public buildings and grounds.

This section shall not be construed to prevent the furnishing of supplies to other officers who are entitled to receive them under other provisions of law. [R., '60, § 2170; C., '73, § 122; C., '97, § 168; S., '13, § 168; 40 G. A., ch. 3, § 2; 40 Ex. G. A., H. F. 14, § 25.]

303. Postage. Postage shall not be furnished to the general assembly, its members, officers, employees, or committees. [C., '97, § 168; S., '13, § 168; 40 Ex. G. A., H. F. 14, § 26.]

304. Drawing supplies. Supplies shall be delivered only on a written requisition on the secretary of said council, signed by the officer entitled thereto, specifying the amount and kind necessary. The secretary shall take receipts for all such supplies and file and preserve the same. [R., '60, § 2170; C., '73, § 122; C., '97, § 169; 40 Ex. G. A., H. F. 14, § 27.]

305. Account with officer. The council shall keep an accurate, itemized account with each office, board, commission, or person drawing supplies, charging thereto the several articles furnished at the cost price. [C., '97, § 169; 40 Ex. G. A., H. F. 14, § 28.]

306. Performance of duty—expense. The executive council shall not employ others, or incur any expense, for the purpose of performing any duty imposed upon such council when such duty may, without neglect of their usual duties, be performed by the members, or by their regular employees, but, subject to such limitation, the council may incur the necessary expense to perform or cause to be performed any legal duty imposed on said council, and pay the same out of any money in the

state treasury not otherwise appropriated. [S., '13, §§ 170-l, 170-n, 170-p; 40 Ex. G. A., H. F. 14, § 29.]

307. Necessary record. Before incurring any expense authorized by the preceding section, the council shall, in each case, by resolution, entered upon its records, set forth the necessity for incurring such expense, the special fitness of the one employed to perform such work, the definite rate of compensation or salary allowed, and the total amount of money that may be expended. Compensation or salary for personal services in such cases must be determined by unanimous vote of all members of the council. [S., '13, §§ 170-m, 170-n; 40 Ex. G. A., H. F. 14, § 30.]

308. Additional compensation and expenses. Members of the executive council and its regular employees shall be paid no additional salary or compensation for special service, but shall receive their necessary traveling expenses, including subsistence, when absent from the seat of government on official business. [S., '13, § 170-o; 40 Ex. G. A., H. F. 14, § 31.]

CHAPTER 19

DIRECTOR OF THE BUDGET

- 309. Office created.
- 310. "Director" defined.
- 311. Appointment.
- 312. Confirmation.
- 313. Qualification and bond.
- 314. Term of office.
- 315. Removal.
- 316. Suspension.
- 317. Vacancies.

309. Office created. There is hereby created the office of director of the budget, which office shall be located at the seat of government. [40 Ex. G. A., ch. 4, § 1.]

310. "Director" defined. Wherever the word "director" appears in this and the five following chapters it shall mean "director of the budget". [40 Ex. G. A., ch. 4, § 2.]

311. Appointment. The governor shall, within sixty days after the convening of the general assembly in 1927, and every six years thereafter, appoint, with the approval of two-thirds of the members of the senate, a director of the budget. [40 Ex. G. A., ch. 4, § 2.]

312. Confirmation. No nomination shall be considered by the senate until the same has been referred to a committee of five, not more than three of whom shall belong to the same political party. Said committee shall be appointed by the president of the senate, without motion, and shall report to the senate in executive session. Such report shall be made at

- 318. Employees.
- 319. Expenses.
- 320. General powers.
- 321. Additional powers.
- 322. Production of evidence.
- 323. Refusal to obey subpoena.
- 324. Immunity of witness.
- 325. Hearings.
- 326. Annual report.

any time when called for by the senate. The consideration of nominations by the senate shall not be had on the same legislative day that nominations are so referred. [40 Ex. G. A., ch. 4, § 3.]

313. Qualification and bond. Said director shall qualify as other public officers and shall give a bond in the sum of ten thousand dollars, which bond shall be approved by the governor and be filed in the office of the secretary of state. [40 Ex. G. A., ch. 4, § 4.]

314. Term of office. The term of office of the director shall be for a period of six years, beginning July 1, 1927, and his successors shall be appointed for like periods. [40 Ex. G. A., ch. 4, § 5.]

315. Removal. The governor, with the approval of a majority of the senate during a session of the general assembly, may remove the director for malfeasance in office, or for any cause which would render him ineligible for appointment or incapable or unfit to discharge

the duties of his office, and his removal, when so made, shall be final. [40 Ex. G. A., ch. 4, § 6.]

NOTE: Removal by court or executive council, see §§ 1091, 1114.

316. Suspension. When the general assembly is not in session, the governor may suspend any director so disqualified and shall appoint another to fill the vacancy thus created, subject to the approval of the senate when next in session. [40 Ex. G. A., ch. 4, § 7.]

317. Vacancies. All vacancies in the office of director that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the date on which the general assembly next convenes in regular session. Prior to the expiration of said thirty days the governor shall transmit to the senate for its approval an appointment for the unexpired portion of the regular term. Vacancies occurring during a session of the general assembly shall be filled before the end of said session and for the unexpired portion of the regular term, in the same manner in which regular appointments are required to be made. [40 Ex. G. A., ch. 4, § 8.]

318. Employees. The director, with the approval of the executive council, shall employ a state accountant and such assistants and other employees and agents as may be necessary from time to time to carry into effect the provisions of this and the five following chapters. Such state accountant, assistants, employees and agents shall be under the direction of the director and shall be subject to dismissal by him. [40 Ex. G. A., ch. 4, § 11.]

319. Expenses. The director, state accountant, and all assistants, employees and agents shall be allowed their actual and necessary traveling expenses while in the performance of their duties. [40 Ex. G. A., ch. 4, § 12.]

320. General powers. The director shall have power, and it is hereby made his duty, to carry out and enforce all the provisions of this and the five following chapters, and to conduct hearings on all matters within his jurisdiction and render decisions thereon; he shall adopt rules governing appeals, hearings, and all determinations of questions which shall come before him, and such other rules as he may deem necessary. [40 Ex. G. A., ch. 4, § 13.]

321. Additional powers. The director shall have power to cause any of the hearings provided for in this and the four following chapters to be held by the state accountant or by any special agent appointed by him for that purpose. [40 Ex. G. A., ch. 4, § 14.]

322. Production of evidence. The director, the state accountant, or any other person appointed by the director to conduct any examination or hearing, shall have power to subpoena witnesses, administer oaths to them, and compel witnesses to produce books, letters, documents, papers, statistics and all other articles deemed essential to a full understanding of the matter under investigation. [40 Ex. G. A., ch. 4, § 15.]

323. Refusal to obey subpoena. Any witness failing to obey such subpoena shall be guilty of contempt and on report of such failure to the district court of the county in which such refusal occurs, such witness shall be punished for contempt by fine not exceeding one hundred dollars. [40 Ex. G. A., ch. 4, § 16.]

324. Immunity of witness. No witness shall be exempt from testifying to any matter in any proceeding under the provisions of this and the five following chapters or from producing any books, papers, letters, or other documents or articles on the ground that the same would tend to render him criminally liable or to expose him to public ignominy, but such witness shall not be prosecuted for any crime which such testimony or evidence tends to prove or to which the same relates. This section shall not exempt any person from prosecution for perjury. [40 Ex. G. A., ch. 4, § 17.]

325. Hearings. When a hearing is held by the director, the state accountant, or a special agent, he shall file in the office of the director the petition and other documents and a written report of the facts submitted at such hearing and his recommendations in respect thereto. The director shall promptly determine all matters submitted to him directly, or on reports of persons conducting hearings. The decisions of the director shall be final. [40 Ex. G. A., ch. 4, § 18.]

326. Annual report. The director shall make an annual report to the governor setting forth the essential facts and statistical data regarding his administration of this and the five following chapters. [40 Ex. G. A., ch. 4, § 81.]

CHAPTER 20

STATE BUDGET

327. Reports by departments.
 328. Blanks.
 329. Examinations and investigations.
 330. Assistance of departments.
 331. Hearings on reports.
 332. State budget report.

333. Appropriation bill.
 334. Governor to transmit bill.
 335. Data accompanying bill.
 336. Changes.
 337. Bill referred.
 338. Departmental askings.

327. Reports by departments. On or before the first day of September, 1924, and on or before the first day of August biennially thereafter, every department of the state, except the legislative department, shall furnish the director with:

1. A detailed estimate of all receipts of such department for the ensuing biennium and a comparison of such receipts with all the receipts of such department for the last two preceding bienniums.

2. An estimate of the needs of such department for the ensuing biennium, together with a comparison of all the expenditures of such department for the last two preceding bienniums.

3. Any other information that the director may require.

Each department shall set out in detail the reasons for the askings contained in such reports. [S., '13, § 163-a; S. S., '15, § 191-a; 40 Ex. G. A., ch. 4, § 19.]

328. Blanks. Blanks for such reports shall be furnished by the director not later than the first day of June of each even-numbered year. [40 Ex. G. A., ch. 4, § 20.]

329. Examinations and investigations. The director shall have authority to make, or cause to be made, such examinations and investigations into the operation of any department as in his discretion may be necessary. [S., '13, § 161-a; 38 G. A., ch. 409, § 1; 40 Ex. G. A., ch. 4, § 21.]

NOTE: Examinations by committee on retrenchment and reform, see § 45.

330. Assistance of departments. Every department of the state government, when requested by the director, shall render assistance to him in connection with the preparation of the budget report, budget bill and auditing accounts. [S., '13, § 163-a; 40 Ex. G. A., ch. 4, § 22.]

331. Hearings on reports. After the filing of said reports, the director shall hold public hearings at which the heads of departments, the heads of all institutions under the state board of education and state board of control, and all taxpayers or associations of taxpayers

desiring to be heard, may be heard in relation to the matters referred to in said reports. A schedule of the time and place of hearings and due public notice thereof shall be given by the director. [40 Ex. G. A., ch. 4, § 23.]

332. State budget report. The director shall prepare and file in his office, on or before the first day of November of each even-numbered year, a state budget report, which shall show in detail the following:

1. Classified estimates in detail of the expenditures necessary, in his judgment, for the support of each department and each institution and department thereof for the ensuing biennium.

2. A schedule showing a comparison of such estimates with the askings of the several departments for the current biennium and with the expenditures of like character for the last two preceding bienniums.

3. A statement setting forth in detail his reasons for any recommended increases or decreases in the estimated requirements of the various departments, institutions and departments thereof.

4. Estimates of all receipts of the state other than from direct taxation and the sources thereof for the ensuing biennium.

5. A comparison of such estimates and askings with receipts of a like character for the last two preceding bienniums.

6. The expenditures and receipts of the state for the last completed fiscal year and estimates of the expenditures and receipts of the state for the current fiscal year.

7. A detailed statement of all appropriations made during the two preceding bienniums, also of unexpended balances of appropriations at the end of the last fiscal year and estimated balances at the end of the current fiscal year.

8. Estimates in detail of the appropriations necessary to meet the requirements of the several departments and institutions for the next biennium.

9. Statements showing:

a. The condition of the treasury at the end of the last fiscal year.

b. The estimated condition of the treasury at the end of the current fiscal year.

c. The estimated condition of the treasury at the end of the next biennium, if his recommendations are adopted.

d. An estimate of the taxable value of all the property within the state.

e. The estimated aggregate amount necessary to be raised by a state levy.

f. The millage necessary to produce such amount.

g. Such other data or information as the director may deem advisable. [40 Ex. G. A., ch. 4, § 24.]

333. Appropriation bill. The director shall not later than the first day of December, 1924, and on the same day biennially thereafter, prepare a state appropriation bill and transmit the same to the governor, together with the state budget report and such other explanatory matter as in his judgment will be of value to him in making his recommendations to the general assembly, and to the general assembly on the consideration of said bill. [S. S., '15, § 191-b; 40 Ex. G. A., ch. 4, § 25.]

NOTE: Salary bill by committee on retrenchment and reform, see § 45.

334. Governor to transmit bill. The governor shall, at the time of delivering his biennial message, transmit to the senate and house of the general assembly, the state appropriation bill prepared by the director. [S. S., '15, § 191-b; 40 Ex. G. A., ch. 4, § 26.]

335. Data accompanying bill. The governor shall transmit with the bill the following:

1. A statement of the taxable value of all the property of the state.

2. The amount, in dollars, necessary to be raised by a tax levy if the bill be enacted.

3. The estimated levy in mills necessary should the proposed appropriations be made.

4. All information, comparisons, evidence and documents placed before him by the director, together with the reasons for decreases or increases in the recommendations of the said director. [S. S., '15, § 191-b; 40 Ex. G. A., ch. 4, § 27.]

336. Changes. Accompanying such bill shall be a report of the governor, setting out in detail the changes suggested by him in any of the recommendations submitted by the director. [S. S., '15, § 191-b; 40 Ex. G. A., ch. 4, § 28.]

337. Bill referred. Said appropriation bill, when so transmitted, together with all data accompanying the same, shall be referred to the committees on appropriations in the senate and the house, respectively. [S. S., '15, § 191-b; 40 Ex. G. A., ch. 4, § 29.]

338. Departmental askings. No estimate or request for an appropriation and no request for an increase in an item of any such estimate or request, and no recommendation as to how the revenue needs of the state should be met, shall be submitted to the senate or house or any committee thereof by any officer or employee of any department, except the governor, unless at the request of either house of the general assembly or of any standing committee in either house. [S. S., '15, § 191-b; 40 Ex. G. A., ch. 4, § 30.]

CHAPTER 21

EXAMINATION OF AND SETTLEMENTS WITH DEPARTMENTS

- 339. Definition.
- 340. Annual settlements.
- 341. State accountant.
- 342. Report of audits.

- 343. Method of keeping accounts.
- 344. Powers reserved.
- 345. Use of appropriations.

339. Definition. The term "department" shall be construed to mean any authority charged by law with official responsibility for the expenditure of public money of the state and any agency receiving money from the general revenues of the state. [40 Ex. G. A., ch. 4, § 37.]

340. Annual settlements. The director shall annually, and oftener if deemed necessary, make a full settlement between the state and all state officers and departments and all persons receiving or expending state funds, and shall annually make a complete audit of the books and accounts of every department of the state. [C., '97, § 161; S., '13, § 161-a; 38 G. A., ch. 409, § 1; 40 Ex. G. A., ch. 4, § 31.]

341. State accountant. The state accountant shall, under the direction of the director, supervise and be responsible for the auditing of the books and accounts of all departments of the state. [S., '13, § 161-a; 38 G. A., ch. 409, § 1; 40 Ex. G. A., ch. 4, § 32.]

342. Report of audits. The state accountant shall, in writing, make a report of all audits and examinations so made, to the director and in detail set out the following:

- 1. The actual condition of such department found to exist on every examination.
- 2. Whether, in his opinion,
 - a. All funds have been expended for the purpose for which appropriated.
 - b. The department so audited and examined is efficiently conducted, and if the maximum

results for the money expended are obtained.

c. The work of the department so audited or examined needlessly conflicts with or duplicates the work done by any other department.

3. All illegal or unbusiness-like practices.

4. Any recommendations for greater simplicity, accuracy, efficiency, or economy in the operation of the business of the several departments and institutions.

5. Comparisons of prices paid and terms obtained by the various departments for goods and services of like character and reasons for differences therein, if any.

6. Any other information which, in his judgment, may be of value to the director.

All such reports shall be filed and kept in the office of the director. [S., '13, § 161-a; 38 G. A., ch. 409, § 1; 40 Ex. G. A., ch. 4, § 33.]

343. Method of keeping accounts. Each department and institution of the state shall keep its records and accounts in such form and by such methods as to be able to exhibit in its

reports the matters required by the director, unless otherwise specifically prescribed by law. The failure of the head of any department of the state to comply with this provision shall be ground for his suspension from office. [S., '13, § 161-a; 38 G. A., ch. 409, § 1; 40 Ex. G. A., ch. 4, § 34.]

344. Powers reserved. Except as herein otherwise specifically provided, nothing in this chapter shall interfere with the authority of the state board of education, the state fair board, or the state board of control, over, nor with their policies in respect to, the management of the institutions under their control. [S., '13, § 163-a; 40 Ex. G. A., ch. 4, § 35.]

345. Use of appropriations. No appropriation nor any part thereof shall be used for any other purpose than that for which it was made without specific authority of the general assembly. [C., '97, § 187; S. S., '15, § 170-q; 40 Ex. G. A., ch. 4, § 36.]

CHAPTER 22

APPEAL BOARD

346. Board created.

347. Qualification and bond.

348. Vacancies and removals.

346. Board created. There shall be nominated by the governor and appointed in the manner required for the appointment of the director, two competent persons to act with the director as members of an appeal board in certain cases. Their terms of office shall be for four years, beginning on the first day of July, 1927, at which time one shall be appointed for two years and one for four years and thereafter all appointments except to fill vacancies shall be for a term of four years. [40 Ex. G. A., ch. 4, § 38.]

347. Qualification and bond. Such members of the appeal board shall qualify in the same manner as the director except that the bond of each shall be five thousand dollars. [40 Ex. G. A., ch. 4, § 39.]

348. Vacancies and removals. Vacancies in appointments of such members of the appeal board shall be filled and the removal from office shall be accomplished in the same manner as provided for the director. [40 Ex. G. A., ch. 4, § 41.]

349. Jurisdiction.

350. Compensation and expense.

349. Jurisdiction. The said members of the appeal board and the director shall sit and act together as a board of appeal and the director shall be chairman of the board. Said board shall only consider and determine appeals from the action of the state board of education, the state board of control, or the state fair board in respect to the letting of contracts for buildings or other improvements in which the amount involved is in excess of twenty-five thousand dollars. The hearings before the board shall be de novo and the evidence shall be preserved on file. The decision of the board shall be final and be entered of record in the office of the director. [40 Ex. G. A., ch. 4, § 42.]

350. Compensation and expense. The members of the appeal board, other than the director, shall be paid on a per diem basis and the amount of their compensation shall be fixed by the executive council. They shall be entitled to their actual and necessary expenses while engaged in the performance of their duties, to be allowed and paid in the same manner as those of the director. [40 Ex. G. A., ch. 4, § 43.]

CHAPTER 23

PUBLIC CONTRACTS AND BONDS

- 351. Terms defined.
- 352. Notice of hearing.
- 353. Objections—hearing—decision.
- 354. Appeal—limitation.
- 355. Information certified to director.
- 356. Notice of hearing on appeal.
- 357. Hearing and decision.
- 358. Enforcement of performance.
- 359. Nonapproved contracts void.

- 360. Appeal board.
- 361. Witness fees—costs.
- 362. Report on completion.
- 363. Issuance of bonds—notice.
- 364. Objections.
- 365. Notice of hearing.
- 366. Decision.
- 367. Bonds and taxes void.

351. Terms defined. The words “public improvement” as used in this chapter shall mean any building or other construction work to be paid for in whole or in part by the use of funds of any municipality.

The word “municipality” as used in this chapter shall mean county, except in the exercise of its power to make contracts for primary road improvements, city, including those acting under special charter, town, township, school district, state fair board, state board of education, and state board of control. [40 Ex. G. A., ch. 4, § 44.]

352. Notice of hearing. Before any municipality shall enter into any contract for any public improvement to cost five thousand dollars or more, the governing body proposing to make such contract shall adopt proposed plans and specifications and proposed form of contract therefor, fix a time and place for hearing thereon at such municipality affected thereby or other nearby convenient place, and give notice thereof by publication in at least one newspaper of general circulation in such municipality at least ten days before said hearing. [40 Ex. G. A., ch. 4, § 45.]

353. Objections—hearing—decision. At such hearing, any person interested may appear and file objections to the proposed plans, specifications or contract for, or cost of such improvement. The governing body of the municipality proposing to enter into such contract shall hear said objections and any evidence for or against the same, and enter of record its decision thereon. [40 Ex. G. A., ch. 4, § 46.]

354. Appeal—limitation. As hereinafter provided, interested objectors may appeal from such decision to the director by serving notice thereof on the clerk or secretary of such municipality within ten days after such decision is entered of record, provided that—

1. For all school districts, except independent school districts in cities and towns and consolidated school districts, and for towns and townships, the amount involved for the

whole improvement is five thousand dollars or more.

2. For counties, cities of the second class, towns, and for consolidated school districts and for independent school districts in whole or in part in cities of the second class or towns, ten thousand dollars or more.

3. For cities of the first class, including cities under special charter, and for school districts in whole or in part in cities of the first class and in cities under special charter, for state institutions and state fair board, twenty-five thousand dollars or more.

4. The number of objectors required to perfect an appeal shall be as follows:

Under subsection 1—ten.

Under subsection 2—twenty-five.

Under subsection 3—fifty.

[40 Ex. G. A., ch. 4, § 47.]

355. Information certified to director. In case an appeal is taken, such body shall forthwith certify and submit to the director for examination and review the following:

1. A copy of the plans and specifications for such improvement.

2. A copy of the proposed contract.

3. An estimate of the cost of such improvement.

4. A report of the kind and amount of security proposed to be given for the faithful performance of the contract and the cost of such security.

5. A copy of the objections, if any, which have been urged by any taxpayer against the proposed plans, specifications or contract, or the cost of such improvement.

6. A separate estimate of the architect’s or engineer’s fees and cost of supervision.

7. A statement of the taxable value of the property within the municipality proposing to make such improvement.

8. A statement of the several rates of levy of taxes in such municipality for each fund.

9. A detailed statement of the bonded and other indebtedness of such municipality.

10. In case of state institutions and state fair board, the last three requirements may be omitted. [40 Ex. G. A., ch. 4, § 48.]

356. Notice of hearing on appeal. The director shall forthwith fix a time and place in the municipality or nearby convenient place for hearing said appeal, and notice of such hearing shall be given by registered mail to the executive officer of the municipality, and to the first five persons whose names appear upon the notice of appeal, at least ten days before the date fixed for such hearing.

The hearing on contracts for the state institutions and state fair board shall be at the seat of government. [40 Ex. G. A., ch. 4, § 49.]

357. Hearing and decision. At such hearing, the appellants and any other interested person may appear and be heard. The director shall examine, with the aid of competent assistants, the entire record, and if the director shall find that the plans and specifications and form of contract are suitable for the improvement proposed and that it is for the best interests of the municipality and that such improvements can be made within the estimates therefor, the director shall approve the same. Otherwise the director shall recommend such modifications of the plans, specifications, or contract, as in his judgment shall be for the public benefit, and if such modifications are so made, the director shall approve the same.

The director shall certify his decision to the body proposing to enter into such contract, whereupon the municipality shall advertise for bids and let the contract subject to the approval of the director who shall at once render his final decision thereon and transmit the same to the municipality. [40 Ex. G. A., ch. 4, § 50.]

358. Enforcement of performance. After any contract for any public improvement has been completed and any five persons interested request it, the director shall examine into the matter as to whether or not the contract has been performed in accordance with its terms, and if on such investigation the director finds that said contract has not been so performed, and so reports to the body letting such contract, it shall at once institute proceedings on the contractor's bond for the purpose of compelling compliance with the contract in all of its provisions. [40 Ex. G. A., ch. 4, § 50-a1.]

359. Nonapproved contracts void. If an appeal is taken, no contract for public improvements shall be valid unless the same is finally approved by the director. In no case shall any municipality expend for any public improvement any sum in excess of five per cent more than the contract price without the approval of the director. [40 Ex. G. A., ch. 4, § 51.]

360. Appeal board. If the appeal is from the action of the state board of education, state board of control, or state fair board, the additional members of the appeal board shall sit with the director and they shall hear the appeal as an appeal board, and in such case the word "director" as used in this chapter shall, so far as applicable, be construed to

mean such appeal board. [40 Ex. G. A., ch. 4, § 52.]

361. Witness fees—costs. Witness fees and mileage for witnesses on hearing appeals shall be the same as in the district court; but objectors or appellants shall not be allowed witness fees or mileage. Costs of hearings and appeals shall be paid by the municipality. [40 Ex. G. A., ch. 4, § 53.]

362. Report on completion. Upon the completion of the improvement the executive officer or governing board of the municipality shall file with the director a verified report showing:

1. The location and character of the improvement.
2. The total contract price for the completed improvement.
3. The total actual cost of the completed improvement.
4. By whom, if anyone, the construction was supervised.
5. By whom final inspection was made.
6. Whether or not the improvement complies with its contract, plans and specifications.
7. Any failure of the contractor to comply with the plans and specifications. [40 Ex. G. A., ch. 4, § 54.]

363. Issuance of bonds—notice. Before any municipality shall institute proceedings for the issuance of any bonds or other evidence of indebtedness, excepting such bonds or other evidence of indebtedness as have been authorized by a vote of the people of such municipality, and except such bonds or obligations as it may be by law compelled to issue, a notice of such action, including a statement of the amount and purpose of said bonds or other evidence of indebtedness shall be published at least once in a newspaper of general circulation within such municipality at least ten days before the meeting at which it is proposed to issue such bonds. [40 Ex. G. A., ch. 4, § 55.]

364. Objections. At any time before the date fixed for the issuance of such bonds or other evidence of indebtedness, five or more taxpayers may file a petition in the office of the clerk or secretary of the municipality setting forth their objections thereto. [40 Ex. G. A., ch. 4, § 56.]

365. Notice of hearing. Upon the filing of any such petition, the clerk or secretary of such municipality shall immediately certify a copy thereof, together with such other data as may be necessary in order to present the questions involved, to the director, and upon receipt of such certificate, petition and information, the director shall fix a time and place for the hearing of such matter, which shall be not less than ten nor more than thirty days thereafter. Said hearing shall be held in the municipality in which it is proposed to issue such bonds or other evidence of indebtedness, or in some other nearby convenient place fixed by the director. Notice of such hearing shall be given by regis-

tered mail to the executive officer of the municipality and to the five persons whose names first appear on the petition at least ten days before the date of such hearing. [40 Ex. G. A., ch. 4, § 57.]

366. Decision. The director shall determine the matter and his decision shall be final. The same shall be certified to the executive officer of the municipality affected.

In case there is no appeal, the board of the municipality affected may issue such bonds or other evidence of indebtedness, if legally au-

thorized so to do, in accordance with the proposition published, but in no greater amount.

In case of an appeal, the municipality may issue such bonds or other evidence of indebtedness in accordance with the decision of the director. [40 Ex. G. A., ch. 4, § 58.]

367. Bonds and taxes void. Any bonds or other evidence of indebtedness issued contrary to the provisions of this chapter, and any tax levied or attempted to be levied for the payment of any such bonds or interest thereon, shall be null and void. [40 Ex. G. A., ch. 4, § 59.]

CHAPTER 24

LOCAL BUDGET LAW

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- 372. Estimates itemized.
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- 380. Tax limited.
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368. Short title. This chapter shall be known as the "local budget law". [40 Ex. G. A., ch. 4, § 60.]

369. Definition of terms. As used in this chapter and unless otherwise required by the context:

1. The word "municipality" shall mean the county, city, town, township, school district, road district, drainage district, and all other public bodies or corporations that have power to levy a tax or certify a tax or sum of money to be collected by taxation.

2. The words "levying board" shall mean board of supervisors of the county and any other public body or corporation that has power to levy a tax.

3. The words "certifying board" shall mean any public body which has the power or duty to certify any tax to be levied or sum of money to be collected by taxation.

4. The words "fiscal year" shall mean the year ending on the thirtieth day of June, and any other period of twelve months constituting a fiscal period, and ending at any other time.

5. The word "tax" shall mean any general or special tax or any special assessment levied against persons, property, or business, for public purposes as prescribed by law.

6. The words "current year" shall mean the year in progress. [40 Ex. G. A., ch. 4, § 60.]

370. Requirements of local budget. No municipality shall certify or levy in any year

any tax or assessment on property subject to taxation unless and until the following estimates have been made, filed, and considered, as hereinafter provided:

1. The amount of income thereof for the several funds from sources other than taxation.

2. The amount proposed to be raised by taxation.

3. The amount proposed to be expended in each and every fund and for each and every general purpose during the fiscal year next ensuing.

4. A comparison of such amounts so proposed to be expended with the amounts expended for like purposes for the two preceding years. [40 Ex. G. A., ch. 4, § 61.]

371. Time of filing estimates. All such estimates and any other estimates required by law shall be made and filed a sufficient length of time in advance of any regular or special meeting of the certifying board or levying board, as the case may be, at which tax levies are authorized to be made to permit publication, discussion, and consideration thereof and action thereon as hereinafter provided. [40 Ex. G. A., ch. 4, § 62.]

372. Estimates itemized. The estimates herein required shall be fully itemized and classified so as to show each particular class of proposed expenditure, showing under separate heads the amount required in such manner and form as shall be prescribed by the director. [40 Ex. G. A., ch. 4, § 63.]

373. Emergencies. Each municipality may include in the estimate herein required an estimate for emergency or other expenditure which amount can not reasonably be foreseen at the time the estimates are made, and such emergency fund shall be used for no other purpose. [40 Ex. G. A., ch. 4, § 64.]

374. Estimated tax collections. The amount of the difference between the receipts estimated from all sources other than taxation and the estimated expenditures for all purposes, including the estimates for emergency expenditures, shall be the estimated amount to be raised by taxation upon the assessable property within the municipality for the next ensuing fiscal year. The estimate shall show the number of dollars of taxation for each thousand dollars of the assessed value of all property that is assessed. [40 Ex. G. A., ch. 4, § 65.]

375. Filing estimates—notice of hearing. Each municipality shall file with the secretary or clerk thereof the estimates required to be made in the five preceding sections at least twenty days before the date fixed by law for certifying the same to the levying board and shall forthwith fix a date for a hearing thereon, and shall publish such estimates with a notice of the time when and the place where such hearing shall be held at least ten days before the hearing.

For the county and any municipality embraced within the county seat, such publication shall be in an official newspaper published at the county seat.

For a municipality outside the county seat in which one or more newspapers are published, such publication shall also be in one of such newspapers. [40 Ex. G. A., ch. 4, § 66.]

376. Levies void. The verified proof of the publication of such notice shall be filed in the office of the county auditor and preserved by him. No levy shall be valid unless and until such notice is published and filed. [40 Ex. G. A., ch. 4, § 67.]

377. Meeting for review. The certifying board or the levying board, as the case may be, shall meet at the time and place designated in said notice, at which meeting any person who would be subject to such tax levy, shall be heard in favor of or against the same or any part thereof. [40 Ex. G. A., ch. 4, § 68.]

378. Record by certifying board. After the hearing has been concluded, the certifying board shall enter of record its decision, also the amount of the separate appropriations for each fund in the manner and form prescribed by the director and shall certify the same to the levying board, which board shall enter upon the current assessment and tax roll the amount of taxes which it finds shall be levied for the ensuing fiscal year in each municipality for which it makes the tax levy. [40 Ex. G. A., ch. 4, § 69.]

379. Procedure by levying board. Any board which has the power to levy a tax without the same first being certified to it, shall follow the same procedure for hearings as is hereinbefore required of certifying boards. [40 Ex. G. A., ch. 4, § 69.]

380. Tax limited. No greater tax than that so entered upon the record shall be levied or collected for the municipality proposing such tax for the purpose or purposes indicated; and thereafter no greater expenditure of public money shall be made for any specific purpose than the amount estimated and appropriated therefor, except as provided in sections 373 and 381. [40 Ex. G. A., ch. 4, § 70.]

381. Further tax limitation. No tax shall be levied by any municipality in excess of the estimates published and five per cent additional, except such taxes as are approved by a vote of the people, but in no case shall any tax levy be in excess of any limitation imposed thereon now or hereafter by the constitution and laws of the state. [40 Ex. G. A., ch. 4, § 71.]

382. Expenses—how paid. The cost of publishing the notices and estimates required by this chapter, and the actual and necessary expenses of preparing the budget, shall be paid out of the general funds of each municipality respectively. [40 Ex. G. A., ch. 4, § 72.]

383. Budgets certified. The local budgets of the various municipalities shall be certified by the chairman of the certifying board or the levying board, as the case may be, in duplicate to the county auditor not later than the fifteenth day of August each year on blanks prescribed by the director, and according to rules and instructions which shall be furnished all certifying and levying boards in printed form by said director.

One copy of said budget shall be retained on file in his office by the county auditor, and the other shall be certified by him to the director. [40 Ex. G. A., ch. 4, § 73.]

384. Summary of budget. Before forwarding copies of local budgets to the director, the county auditor shall prepare a summary of each budget, showing the condition of the various funds for the fiscal year, including the budgets adopted as herein provided. Said summary shall be printed as a part of the annual financial report of the county auditor, and one copy shall be certified by him to the director. [40 Ex. G. A., ch. 4, § 74.]

385. Levying board to spread tax. At the time required by law the levying board shall spread the tax rates necessary to produce the amount required for the various funds of the municipality as certified by the certifying board, for the next succeeding year, as shown in the approved budget in the manner provided by law. One copy of said rates shall be certified to the director. [40 Ex. G. A., ch. 4, § 75.]

386. Tax rates final. The several tax rates and levies of the municipalities thus determined and certified in the manner provided in the preceding sections, except such as are authorized by a vote of the people, shall stand as the tax rates and levies of said municipality for the ensuing year for the purposes set out in the budget. [40 Ex. G. A., ch. 4, § 76.]

387. Transfer of funds. Subject to the provisions of any law relating to municipalities, when the necessity for maintaining any fund of the municipality has ceased to exist, and a balance remains in said fund, the certifying board or levying board, as the case may be, shall so declare by resolution, and upon such declaration, such balance shall forthwith be transferred to the general or contingent fund of the municipality, unless other provisions have been made in creating such fund in which such balance remains. [40 Ex. G. A., ch. 4, § 77.]

388. Return of funds. Subject to the provisions of law relating to municipalities, and upon the approval of the director, it shall be lawful to transfer money from one fund of a municipality to another fund thereof, and the

certifying board or levying board, as the case may be, shall provide that money so transferred must be returned to the fund from which it was transferred as soon as may be, provided that it shall not be necessary to return to the emergency fund or to any other fund no longer required, any moneys transferred therefrom to any other fund. [40 Ex. G. A., ch. 4, § 78.]

389. Supervisory power of director. The director shall exercise general supervision over the certifying boards and levying boards of all municipalities with respect to budgets and shall prescribe for them all necessary rules, instructions, forms, and schedules. The best methods of accountancy and statistical statements shall be used in compiling and tabulating all data required by this chapter. [40 Ex. G. A., ch. 4, § 79.]

390. Violations. Failure on the part of any public official to perform any of the duties prescribed in this and the five preceding chapters shall constitute a misdemeanor, and shall be sufficient ground for removal from office. [40 Ex. G. A., ch. 4, § 80.]

CHAPTER 25

STATE BOARD OF AUDIT

- 391. Membership.
- 392. Secretary—duties.
- 393. Duties of board.
- 394. Duty in auditing claims.
- 395. Rules.
- 396. Itemized vouchers.
- 397. Exceptions.
- 398. Expense attending conventions.
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- 400. Issuance of warrant.
- 401. Warrants—how drawn.
- 402. Payee of warrant.
- 403. Unallowable claims.
- 404. Expenses.
- 405. Report.
- 406. Monthly statements of per diem and expense.
- 407. Salaries paid from fees.

391. Membership. A state board of audit is hereby created. Said board shall consist of the director of the budget, the auditor of state, and the attorney general. The attorney general may designate one of his legal assistants to act in his place. [S. S., '15, § 170-r; 39 G. A., ch. 226, § 1; 40 Ex. G. A., S. F. 15, § 1.]

392. Secretary—duties. The auditor of state shall be ex officio secretary of said board. He shall keep a record which shall show the number of every claim, the date of filing, the name of the claimant, the character of the claim, the amount claimed, and the amount allowed and date thereof. [S. S., '15, § 170-r; 39 G. A., ch. 226, § 1; 40 Ex. G. A., S. F. 15, § 2.]

393. Duties of board. All claims for money due from the state, to be paid from the state treasury, except the monthly or annual salaries of the various officers and employees whose salaries are fixed by law, shall be approved and certified by the state board of audit

before warrants in payment of the same are drawn.

No claim shall be allowed when the same will exceed the amount appropriated for any department, office, bureau, commission, or institution under the state government.

No claim shall be audited by the board when such claim is presented after the lapse of two years from its accrual. Said board shall have no authority to authorize the creation of a claim against the state. [C., '51, § 53; R., '60, § 74; C., '73, § 69; C., '97, § 92; S. S., '15, §§ 170-s, 170-t; 40 Ex. G. A., S. F. 15, § 3.]

394. Duty in auditing claims. Said board, before approving a claim, shall determine:

1. That the creation of the claim is clearly authorized by law.
2. That the claim has been authorized by an officer or official body having legal authority to so authorize, and that the fact of such authorization has been certified to said board of audit by such officer or official body.

3. That all legal requirements have been observed, including notice and opportunity for competition, if required by law.

4. That the claim is in proper form and duly verified.

5. That the charges are reasonable, proper, and correct, and no part of said claim has been paid. [S. S., '15, § 170-t; 40 Ex. G. A., S. F. 15, § 4.]

395. Rules. The board of audit shall establish and publish such rules and regulations as it may deem necessary in order to determine the absolute accuracy of every claim, and may, in any case, require such further information as will enable it to discharge its duty and fully protect the state. Claimants may be examined under oath. Any member of the board may administer such oath. [C., '51, § 53; R., '60, § 74; C., '73, § 69; C., '97, § 92; S. S., '15, § 170-u; 40 Ex. G. A., S. F. 15, § 5.]

396. Itemized vouchers. Before a warrant shall issue for any claim payable from the state treasury, the claimant shall file an itemized, sworn voucher which shall show in detail the items of service, expense, thing furnished, or contract upon which payment is sought.

If the claim be for salary fixed by law, said voucher shall be filed with the auditor of state.

If the claim be for other than such salary, said voucher shall be filed with the secretary of the state board of audit.

Vouchers for postage, stamped envelopes, and postal cards may be audited as soon as an order therefor is entered by the executive council. [R., '60, § 2169; C., '73, § 121; C., '97, §§ 162, 166; S., '13, §§ 162, 163-a, 166; 40 Ex. G. A., S. F. 15, § 6.]

397. Exceptions. This chapter shall not apply to the presentation and payment of claims arising from the operation and maintenance of the institutions under the government and control of the state board of control and the state board of education, but such claims shall be presented and paid as otherwise provided by law or by the rules of such boards made pursuant thereto. [C., '97, § 162; S., '13, § 162; 40 Ex. G. A., S. F. 15, § 7.]

NOTE: Claims under workmen's compensation act excepted, see § 1420.

398. Expense attending conventions. Claims for expenses in attending conventions, and conferences outside the state shall not be allowed unless the voucher is accompanied by so much of the minutes of the executive council, certified to by its secretary, as show that such expense was authorized by said council. This section shall not apply to such claims in favor of the governor, attorney general, railroad commissioners, or commerce counsel. [39 G. A., ch. 221; 40 Ex. G. A., S. F. 15, § 7-a1.]

NOTE: Trips by board of control to other states, see § 3284.

399. Audit of salary claims. The auditor of state shall audit all claims for salaries authorized by law. [S. S., '15, § 170-s; 40 Ex. G. A., S. F. 15, § 8.]

400. Issuance of warrant. Upon the audit of a claim by the state board of audit, the voucher shall be passed to the custody of the auditor of state, as such, who shall issue his warrant in accordance with said audit. [S. S., '15, § 170-s; 40 Ex. G. A., S. F. 15, § 9.]

401. Warrants—how drawn. In no case shall warrants be drawn in the name of the certifying office, department, board, or institution, or in the name of an employee of the same, except for personal service rendered or expense incurred by said employee, unless there be express statutory authority therefor. [S., '13, § 162; 40 Ex. G. A., S. F. 15, § 10.]

402. Payee of warrant. All warrants shall be drawn to the order of the person, firm, or contractor entitled to payment or compensation, except that when goods or material are purchased in foreign countries, warrants may be drawn upon the treasurer of state, payable to bearer for net amount of invoice and current exchange, and the treasurer of state shall furnish such foreign draft payable to order of person, firm, or corporation from whom purchase is made. [S., '13, § 162; 40 Ex. G. A., S. F. 15, § 11.]

403. Unallowable claims. Claims which are not allowable under the law shall be referred to the attorney general who shall forthwith fully investigate the facts upon which each claim is based with a view to determining whether in equity and good conscience the claim should be paid by the state. He may take written testimony in the form of affidavits or otherwise, and in so doing he and any of his duly appointed assistants shall have power to administer oaths. [40 G. A., ch. 1, § 1; 40 Ex. G. A., S. F. 15, § 11-a1.]

404. Expenses. The expense attending the taking of such testimony shall be paid out of any funds in the state treasury not otherwise appropriated. [40 Ex. G. A., S. F. 15, § 11-a2.]

405. Report. Immediately upon the organization of the regular session of the general assembly after the completion of said investigation, the attorney general shall report all such testimony to either the senate or house committee on claims, together with a summarized finding of fact in each case. [40 G. A., ch. 1, § 2; 40 Ex. G. A., S. F. 15, § 11-a3.]

406. Monthly statements of per diem and expense. Every person who is authorized to contract expense accounts in the service of the state, and who is allowed a per diem for services instead of a fixed compensation, shall, on or before the last day of each month, file with the state board of audit an itemized and sworn

voucher of all expenses and days' service, with dates, amounts and place of incurring such expense, for the preceding calendar month. [S., '13, § 170-e; 40 Ex. G. A., S. F. 15, § 12.]

407. **Salaries paid from fees.** Where the law provides that the amounts allowed for per

diem and expenses shall be limited to or paid from fees collected, the warrants for said items shall be drawn against the funds realized from such fees and shall not exceed the amount thereof. [S., '13, § 170-f; 40 Ex. G. A., S. F. 15, § 13.]

CHAPTER 26

CENSUS

- 408. Forms.
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- 413. Delivery of blanks.
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- 415. City supervisor and assistants.
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- 419. Failure to perform duty.
- 420. Returns of census.
- 421. Abstracts of census.
- 422. Assistants.
- 423. Publication of census.
- 424. Federal and state cooperation.
- 425. Federal census.
- 426. Publication.
- 427. Publication in official register.
- 428. Evidence.
- 429. Population of counties, cities, and towns.

408. **Forms.** The executive council shall cause blank forms to be prepared and printed for the purpose of taking the census in the year 1925 and every ten years thereafter. [C., '51, §§ 614-617; R., '60, §§ 991-994; C., '73, §§ 112-115; C., '97, § 171; S. S., '15, § 171; 40 G. A., ch. 226, § 1.]

other branch of such service, and present place of residence. [C., '51, § 615; R., '60, § 992; C., '73, § 114; S. S., '15, § 171; 40 G. A., ch. 226, § 5.]

409. **Population.** The forms relating to population shall comprehend, for each person, the name, age, color, sex, conjugal condition, place of birth, place of birth of parents, whether alien or naturalized, number of years in the United States, and in Iowa, occupation, months unemployed, literacy, school attendance, and ownership of farms and homes. [C., '51, §§ 614-617; R., '60, §§ 991-994; C., '73, §§ 112-115; C., '97, § 171; S. S., '15, § 171; 40 G. A., ch. 226, § 2.]

413. **Delivery of blanks.** Said blanks must be delivered to the several county auditors and by the latter to the several assessors, on or before the first Monday in January of the census year. [C., '51, § 617; R., '60, § 995; C., '73, § 112; C., '97, § 171; S. S., '15, § 171; 40 G. A., ch. 226, § 6.]

410. **Agriculture.** The forms relating to agriculture shall comprehend for each farm the name and color of occupant, whether native born, alien, or naturalized, tenure, acreage of farm, value of farm and improvements, acreage, quantity, and value of different products for the year ending December thirty-first next preceding the enumeration, and number and value of live stock. [R., '60, § 992; C., '73, § 114; S. S., '15, § 171; 40 G. A., ch. 226, § 3.]

414. **Duty of assessor.** Each assessor shall, in each census year, take such census, in his district, by making accurate entries on such blanks of all matters of information thereon required, and shall return the same to the county auditor on or before June first of the census year. [C., '51, § 618; R., '60, § 992; C., '73, § 114; C., '97, § 172; S. S., '15, § 172; 40 G. A., ch. 226, § 7.]

411. **Form of inquiries.** The council may exercise its discretion as to the form, number, and division of the inquiries necessary to secure said information. [S. S., '15, § 171; 40 G. A., ch. 226, § 4.]

415. **City supervisor and assistants.** In all cities having a population of over fifteen thousand the assessor shall, in addition to other duties, act as supervisor of the census, and may, for each two thousand population as shown by the last preceding federal census, appoint one enumerator, who shall qualify in the same manner as assessors and be subject to the same provisions in so far as they relate to the census. The assessor in such cities may also appoint not more than three clerks to check the daily work of the enumerators. The compensation of said enumerators and clerks shall not exceed three dollars and fifty cents per day for each eight hours' actual work. No enumerator shall be employed for longer than sixty days, and no clerk for longer than thirty days. Said enumerators and clerks shall be chosen on competitive civil service examination (the rules, blanks, and questions

412. **Soldiers and sailors.** The forms relating to residents of this state who are, or have been, in the military or naval service of the United States, shall comprehend for each person, his name, company, regiment, or

for which to be prescribed by the executive council), and shall be removable only for cause. [S. S., '15, § 172; 40 G. A., ch. 226, § 8.]

416. False returns. Any assessor, enumerator, or clerk who makes any false return shall forfeit the right to all compensation accrued and be immediately discharged. [S. S., '15, § 172; 40 G. A., ch. 226, § 9.]

417. Refusal to give information. Any person who shall refuse to make answers to any question appearing on the blank, and who persists in such refusal after being informed that the law requires such answer, shall be arrested on information filed by the assessor or enumerator. [S. S., '15, § 172; 40 G. A., ch. 226, § 10.]

418. Penalty. If the one so refusing, on being brought before the magistrate, answers the required questions, he shall be discharged on payment of the costs. If the accused be tried and found guilty he shall be fined not less than five dollars nor more than one hundred dollars and ordered committed to the county jail until said fine is paid, but not to exceed thirty days. Each such refusal to answer shall be deemed a separate offense. [S. S., '15, § 172; 40 G. A., ch. 226, § 11.]

419. Failure to perform duty. The county auditor shall appoint some suitable person to take the census, as provided by law, at as early a date as practicable and at the expense of the county whenever any assessor fails to take such census in a satisfactory manner by June first of the census year. [R., '60, § 997; C., '73, § 117; C., '97, § 173; S. S., '15, § 173; 40 G. A., ch. 226, § 12.]

420. Returns of census. The county auditor shall forward the returns of the census to the executive council at the earliest possible date and not later than July first. Should said census be not made, or the returns be not received by July fifteenth, the council may, at the expense of the county, cause such census to be made in the district where such failure occurs, or cause the returns to be brought up. Said returns shall be filed and preserved in the office of the secretary of state. [R., '60, §§ 992, 996, 998; C., '73, §§ 114, 116, 118; C., '97, § 174; S. S., '15, § 174; 40 G. A., ch. 226, § 13.]

421. Abstracts of census. The executive council shall cause abstracts or compilations of said census to be prepared and recorded by the secretary of state, and said council may add thereto such other statistics in reference to the banking, railroads, insurance, manufactures, education, and other matters of public interest as it may deem advisable. Said secretary shall attach to said record a certificate, dated and signed by him, to the effect that said record constitutes a true compilation of said census. [C., '51, § 619; R., '60, § 996; C., '73, § 116; C., '97, §§ 175, 176; S., '13, §§ 175, 176; 40 G. A., ch. 226, § 14.]

422. Assistants. All assistants employed in the preparation of said abstracts and compilations shall be selected on their merits, after competitive examination, and shall be subject to removal at the pleasure of the council. [S. S., '15, § 175-a; 40 G. A., ch. 226, § 15.]

423. Publication of census. Said council shall cause said compiled census and certificate to be published in a book to be known as the "Census of Iowa". [C., '51, § 619; R., '60, § 996; C., '73, § 116; C., '97, § 176; S., '13, § 176; 40 G. A., ch. 226, § 16.]

424. Federal and state cooperation. The executive council is authorized, so far as practicable, to cooperate with the census bureau of the United States in the gathering, compilation, and publication of census statistics. [S., '13, § 177-a; 40 G. A., ch. 226, § 17.]

425. Federal census. The secretary of state shall, whenever a general census is taken by the federal government, procure from the supervisor of such census, or other proper federal official, a copy of such part of said census as gives the population of the state of Iowa by counties, by cities, and by towns, and file the same in his office and attach thereto, dated and signed by him, a certificate that the same is the census report furnished to him by said federal official. [S., '13, § 177-c; 40 G. A., ch. 226, § 18.]

426. Publication. He shall at once cause such census report and certificate to be published once in each of two daily newspapers of the state and of general circulation, and from and after the date of such publication said census shall be in full force and effect throughout the state. On payment of a fee of two dollars he shall furnish a certified copy of the whole or any part of such census report. [S., '13, § 177-c; 40 G. A., ch. 226, § 19.]

427. Publication in official register. The superintendent of printing shall publish said federal census report and certificate aforesaid in full in each copy of the Iowa official register until a census is taken by the state. [S., '13, § 177-c; 40 G. A., ch. 226, § 20.]

428. Evidence. Said certified census records in the office of the secretary of state, and said authorized publications, including the certificates attached thereto, shall be competent evidence of all matters therein contained. [S., '13, § 177-c; 40 G. A., ch. 226, § 21.]

429. Population of counties, cities, and towns. Whenever the population of any county, city, or town is referred to in any law of this state, it shall be determined by the last certified, or certified and published, official census, whether the same be a state or national census, unless otherwise provided. If there be a difference between the original certified record in the office of the secretary of state and the published census the former shall prevail. [C., '97, § 177; S., '13, §§ 177, 177-c; 40 G. A., ch. 226, § 21.]

CHAPTER 27

DEPUTIES OF STATE OFFICERS

430. Deputies.

430. Deputies. The secretary, auditor, treasurer of state, and secretary of agriculture may each appoint, in writing, any person, except one holding a state office, as deputy, for whose acts the appointing officer shall be responsible, and from whom the appointing officer shall require bond, which appointment and bond must be approved by the officer having the approval of the principal's bond, and such appointment may be revoked in the same manner. The appointment and revocation shall be filed with and kept by the secretary of state. [C., '51, §§ 411-413, 416; R., '60, §§ 642-644, 647; C., '73, §§ 766-768, 770, 3756-3758; C., '97, §§ 87, 99, 116; S., '13, §§ 87, 99, 116; 39 G.

431. Deputy to qualify.

A., ch. 209, §§ 2, 5, 8; 40 G. A., ch. 46, § 9; 40 Ex. G. A., S. F. 17, § 1.]

431. Deputy to qualify. The deputy shall qualify by taking the oath of the principal, to be indorsed upon and filed with the certificate of appointment, and when so qualified he shall, in the absence or disability of the appointing officer, unless otherwise provided, perform all the duties pertaining to the office of the appointing officer. [C., '51, §§ 411, 412, 416; R., '60, §§ 642, 643, 647; C., '73, §§ 766, 767, 770; C., '97, §§ 87, 99, 116; S., '13, §§ 87, 99, 116; 40 Ex. G. A., S. F. 17, § 2.]

NOTE: Deputy may not act on executive council, see § 276.

TITLE III

MILITARY CODE AND RELATED MATTERS

CHAPTER 28

MILITARY CODE

- 432. Military force—who constitutes.
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- 464. Courts-martial.
- 465. Tax exemptions—use of public utilities.
- 466. Building and camp ground improvements—salvage—improvement fund.
- 467. Term of service—rank of officers—contracts.

432. **Military force—who constitutes.** The military force of the state shall consist of every able-bodied male citizen, and every able-bodied male of foreign birth who has declared his intention to become a citizen, who is between the ages of eighteen and forty-five years, not exempt from such service under the laws of the United States, except honorably discharged soldiers, sailors, and marines of the United States, who shall be exempt from military service in this state at their option. The assessors shall return to the auditor with the annual assessment a complete enumeration of such persons, which may be revised and corrected by the board of supervisors at its June session in each even-numbered year, or at such other time as the governor may direct, and the auditor shall certify to the adjutant general a true copy of such corrected list, and in each odd-numbered year he shall certify the number of names on the list. No person having conscientious scruples against bearing arms shall be compelled to do military duty in time of peace. [C., '51, § 621; R., '60, § 1002; C., '73, § 1039; C., '97, § 2167; S., '13, § 2215-f1.]

433. **Iowa national guard—how recruited.** The organized militia shall be designated as the "national guard of the United States and of the state of Iowa", hereinafter referred to as "the guard", and it shall be recruited by volunteer enlistments, from persons of the state eligible to military duty. In this chapter the word "soldier" shall include musicians and all persons in the guard or in the militia when called into service, except commissioned officers; and the word "company" shall include battery, troop, band, signal corps, and hospital corps except as herein otherwise provided. [C., '97, § 2168; S., '13, § 2215-f2; 37 G. A., ch. 314, § 1.]

434. **Organization—armament—equipment—discipline.** The organization, armament, equipment, and discipline of the guard, except as hereinafter specifically provided, shall be the same as that which is now or may be hereafter prescribed under the provisions of the act of congress approved January 21, 1903, as amended May 27, 1908, relating to the militia, or any subsequent amendments thereto or substitutes therefor; and as to those requirements which are mandatory therein, as may be prescribed by the regulations of the war depart-

NOTE: Members of fire companies exempt, see § 1656.

ment published in pursuance therewith, and so far as the governor may prescribe as to those things which are optional therein; and any change hereafter made shall become effective as to the guard when an order or regulation to that effect shall have been promulgated by the governor. [C., '51, §§ 623-631; R., '60, §§ 1004-1015; C., '73, §§ 1038-1057; C., '97, § 2186; S., '13, § 2215-f3.]

435. Composition of national guard. The guard shall consist of such organizations as may be specified by the war department, in accordance with the act of congress approved June 3, 1916, or any amendments thereto or substitutes therefor. [C., '73, § 1045; C., '97, § 2168; S. S., '15, § 2215-f4; 37 G. A., ch. 314, § 2.]

436. Military organizations prohibited. It shall be unlawful for any body of men, other than the guard of this state and the troops of the United States, to associate themselves together as a military company or organization within the limits of this state without the written permission of the governor, which he may at any time revoke, but this provision shall not prevent civic, social, or benevolent organizations from wearing uniforms and swords not in conflict with the other provisions of this chapter. [C., '97, § 2200; S., '13, § 2215-f5.]

437. Regulations and orders. The governor is authorized to make and publish regulations and orders for the government and discipline and uniforming of the guard not in conflict with existing laws. [C., '51, § 631; R., '60, § 1012; C., '73, § 1044; C., '97, § 2205; S., '13, § 2215-f6.]

438. Subject to military code—other regulations. The guard shall be subject to the military code of Iowa and all regulations and orders made and published in pursuance therewith, and in all matters not specifically covered thereby it shall be subject to the regulations of the war department governing the national guard of the United States, the articles of war, the army regulations, and such regulations and orders as may be made and published in pursuance therewith. [S., '13, § 2215-f7; 37 G. A., ch. 314, § 3.]

439. Incorporation of companies. Companies may incorporate under the chapter authorizing incorporations not for pecuniary profit. The articles of incorporation may provide for the methods of administration of civil business, and may provide for such officers as may be deemed necessary. The articles of incorporation shall be approved by the regimental commander and the adjutant general, and such approval indorsed thereon, before the same are recorded. They must provide, among other things, that the name of the corporation shall be identical with the military designation of the organization, and that the officers of the company shall be officers of the corporation. [S., '13, § 2215-f8.]

440. Rules and by-laws—capacity to sue. Each company may make rules and by-laws for its own government, not in conflict with existing laws and regulations and orders, subject to the approval of the regimental commander. Any person who is by such rules and by-laws made the custodian of any funds, whether originally derived from federal, state, or other sources, shall have legal capacity to sue for the collection thereof or an accounting therefor. [C., '97, § 2182; S., '13, § 2215-f9.]

441. Officers—terms of. Commissioned officers of the guard shall hereafter be selected under such regulations as may be issued by the governor in conformity with the requirements of the act of congress approved June 3, 1916, or any amendments thereto or substitutes therefor, and when once commissioned shall hold their offices until they are sixty-four years of age unless they shall sooner resign, be dismissed, or discharged, as provided by the act of congress approved June 3, 1916, or any amendments thereto or substitutes therefor. Nothing in this chapter shall be construed to vacate the commission of any officer now in the guard before he has reached the age of sixty-four years unless he sooner resigns, is discharged, or dismissed. The terms of officers who have heretofore been commissioned for definite periods and who are now serving under said commissions are hereby extended to conform to the requirements of this chapter. Any officer permanently removing from this state and any company officer permanently removing his place of residence from his company station shall resign his commission upon request of the governor or make application to be placed upon the officers' reserve list, and upon failure to do so, his commission shall be revoked by the governor. [C., '51, §§ 624, 626-628; R., '60, §§ 1005, 1007-1009; C., '73, §§ 1047, 1048; C., '97, §§ 2176-2180; S., '13, § 2215-f10; 37 G. A., ch. 314, § 4.]

442. Discharge for general unfitness. At any time the moral character, capacity, and general fitness for the service of any guard officer may be determined by an efficiency board of three commissioned officers, senior in rank to the officer whose fitness for service shall be under investigation, and if the findings of such board be unfavorable to such officer and be approved by the official authorized to appoint such officer, he shall be discharged. Commissions of officers of the guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Officers of the guard rendered surplus by the disbandment of their organizations shall be placed in the national guard reserve. Officers may, upon their own application, be placed in the said reserve. [C., '97, §§ 2183, 2199; S., '13, § 2215-f11; 37 G. A., ch. 314, § 5.]

443. Bonds of officers. All officers to whom shall be issued or who shall be accountable for arms, equipment, uniforms, and any other state or United States property for military uses, or who shall have the control, custody, or disbursement of funds as provided for in this chapter, shall, before the delivery to them of such arms, equipment, uniforms, and other state or United States property, and the receipt of such funds, be required to execute and deliver to the adjutant general a bond therefor, with sureties to be approved by the governor and payable to the state, in such amount as may be fixed by the governor, conditioned according to law, for the proper care, use, and return in good order, wear, use, and unavoidable loss and damage excepted, of all such state and United States property, and the proper care and faithful disbursement and accounting of all funds coming into the hands of such officer; upon the violation of any of the conditions of such bond, action thereon shall be brought by the adjutant general upon behalf of the state, and any recovery thereon shall be credited to the guard funds of the state. It shall be the duty of the attorney general of the state to prosecute all actions upon such bonds. [R., '60, § 1013; C., '73, § 1050; C., '97, § 2190; S., '13, § 2215-f12.]

444. Enlistments. All enlistments in the guard shall be for such time and in such form as may be specified by regulations or orders issued by the governor in conformity with the act of congress approved June 3, 1916, or amendments thereto, or substitutes therefor. [C., '97, § 2173; S., '13, § 2215-f13; 37 G. A., ch. 314, § 6.]

445. Staff of governor—how appointed—rank of members. The staff of the governor shall consist of an adjutant general, who shall be chief of staff, an assistant adjutant general, both of whom shall have served honorably in the regular or volunteer service of the United States, or for not less than one year in the guard, and twelve aids. The adjutant general and assistant adjutant general shall be appointed and commissioned by the governor, and shall hold office for a period of four years, which said first four-year period shall begin July 4, 1915, and until their successors are appointed and commissioned. The assistant adjutant general shall be appointed upon the recommendation of the adjutant general. The aids may, at the discretion of the governor, be appointed and commissioned by him or detailed for such service from the active membership of the guard, or their duties may be performed by United States army officers regularly or specially detailed by the war department for service with the guard. The adjutant general shall have the rank of brigadier general and the assistant adjutant general that of major. The aids shall have the rank of lieutenant colonel, except that any person so appointed, who has held a higher rank for a period of one year or more in the guard, may be appointed with the rank of the highest grade so held by

him, and those detailed from the active membership of the guard shall retain their rank in the guard and shall not be relieved from their regular duties by reason of such detail. United States army officers, regularly or specially detailed for service with the guard or stationed in the state, may be assigned positions on the staff with their rank in the United States service or such higher rank, not above that of lieutenant colonel, as the governor may designate. [C., '73, § 1054; C., '97, § 2174; S. S., '15, § 2215-f14.]

446. Adjutant general—duties—report—assistant. The adjutant general shall issue and transmit all orders of the governor, and shall keep a record of appointments, of all officers commissioned by the governor, of all the general and special orders and regulations, and of such matters as pertain to the organization of the military force and his duties. He shall reside at the capital. He shall have charge of the state arsenal and grounds and all other property of the state kept or used for military purposes, and receive and issue all quartermaster and ordnance stores and camp equipment upon the order of the governor. The adjutant general shall furnish, at the expense of the state, such blanks and forms as shall be approved by the governor. He shall, in each year preceding a regular session of the general assembly, make out a detailed report of the transactions of his office, the expenses thereof, and such other matters as shall be required by the governor for the period since the last preceding report, and the governor may, at any time, require a similar report. The assistant adjutant general shall be on duty with the adjutant general, and shall perform such duties under his direction as may be prescribed, and in the absence of the adjutant general shall perform the duties of that officer as acting adjutant general. [C., '73, §§ 1054, 1055; C., '97, § 2175; S. S., '15, § 2215-f15.]

NOTE: For time of filing biennial report, see § 246.

447. Waterworks at Camp Dodge. The adjutant general is authorized to enter into an agreement with the secretary of war to operate the water plant at Camp Dodge for the use and benefit of the United States, its successors and assigns, upon such terms and conditions as shall be approved by the governor, provided that such operation shall be at a profit to the state. [39 G. A., ch. 327, § 2.]

448. Call by president—term of service. Whenever the United States is invaded or in danger of invasion from any foreign nation, or of rebellion against the authority of the government of the United States, or the president is unable, with the regular forces at his command, to execute the laws of the Union, it shall be lawful for the president to call forth such number of the national guard of Iowa as he may deem necessary to assist in repelling such invasion, suppressing such rebellion, or to assist in enabling him to execute such laws, and to issue his orders for that purpose, through the governor, to such officers of the

national guard of Iowa as he may think proper; and the president may specify, in his call, the period for which such service is required, and the guard so called forth shall continue to serve during the term so specified, either with-in or without the territory of the United States, unless sooner relieved by order of the president; provided that no commissioned officer or enlisted man of the guard shall be held to service beyond the term of his existing commission or enlistment. Whenever the president shall require, in any of the designated instances, more troops than can be supplied by the guard of the state, the governor shall, in his discretion, organize forthwith such other national guard forces as he may deem necessary, or order into the service of the United States so many of the unorganized militia of the state as is required, designating the same by draft if a sufficient number do not volunteer, and shall commission officers therefor.

Officers and enlisted men drafted into federal service through the guard shall upon discharge from such service continue to serve the balance of their enlistment period the same as though it had not been interrupted by such draft. [C., '97, § 2169; S., '13, § 2215-f18; 39 G. A., ch. 163, § 1.]

449. Governor may order out troops. The governor shall have the power, in cases of insurrection, invasion, or breaches of the peace, or imminent danger thereof, to order into the service of the state such of its military forces as he may think proper, under the command of the senior officer thereof. [C., '51, § 623; R., '60, § 1004; C., '73, § 1051; C., '97, §§ 2169, 2170; S., '13, § 2215-f19.]

450. Encampment—drill—instruction. The guard may parade for encampment or drill annually, by division, brigade, regiment, battalion, or company, as ordered by the governor, and the members thereof or assignments of details therefrom, at the discretion of the governor, may be called out or detailed for target practice, school of instruction, or other practice or instruction. In lieu of the encampments provided herein, the governor may, in his discretion, order part or all of the guard to participate in field maneuvers or other exercises for instruction in conjunction with troops of the United States army. Transportation shall be furnished for all military purposes. [C., '73, § 1049; C., '97, §§ 2184, 2185; S., '13, § 2215-f21.]

451. Inspections. The governor shall require such inspections of the different organizations of the guard, and such schools of instruction for officers and enlisted men, as he may deem proper and necessary. The inspections shall be made by United States army officers, either on regular or special detail with the guard or in the state, where such officers are available for that purpose, and if made by other officers, the governor shall fix their compensation therefor in the orders for such inspections. The governor shall disband

any company of the guard when it shall fall below a proper standard of efficiency, and he may order special inspections with a view of determining such efficiency. Schools of instruction may be ordered when sufficient funds are available beyond other requirements of this chapter. [C., '73, § 1049; C., '97, § 2191; S., '13, § 2215-f22.]

452. Compensation—transportation, subsistence, and quarters—injured men—hospital service—loss of property—appropriation. The guard, when in active service of the state upon the call of the governor, and when paraded for drill, encampment, target practice, school of instruction, or other duty under orders of the governor, shall be paid the following compensation for time actually on duty; each commissioned officer shall receive for such service the pay of his grade in the United States army, without allowances, increase, or additions on account of length of service, and without subsistence or other allowances other than transportation and quarters, except as herein otherwise provided; each enlisted man shall be furnished transportation, subsistence, and quarters, and in addition thereto the pay of his grade in the United States army. Officers and enlisted men of the guard incapacitated by injury or illness, caused by participation in encampments, maneuvers, or other outdoor exercises, which extends beyond the period of time covered by the order directing the duty to be performed, shall receive from the state, upon approval of the claim by the governor, the pay of their respective grade and medical service during the period of time that the disability prevents their resuming their civil occupation; enlisted men shall also receive hospital service, if needed, and subsistence. When in actual service of the state, pursuant to the order of the governor, the compensation and expenses of the guard and claims of the members thereof for injury or illness incurred in line of duty, shall be paid out of any funds in the state treasury not otherwise appropriated, upon warrants drawn by the auditor of state; the claims for such service shall be audited and allowed by the governor. Should any part of the compensation above provided be paid by the United States, there shall be paid from the state treasury only that part thereof not paid by the United States. When on active duty on rifle practice, range competition, or schools of instruction, officers shall receive such compensation or allowances as the governor shall designate in orders with reference thereto. Compensation subject to payment by the state of Iowa to the officers and enlisted men of the guard for military service shall be subject to stoppage of payment for loss or damage to public property issued them for military uses. [C., '51, § 625; R., '60, § 1006; C., '73, § 1051; C., '97, §§ 2189, 2212, 2213; S., '13, § 2215-f23; 39 G. A., ch. 163, § 3.]

453. Armory board—tenure—duties—payment of allowances. The governor shall ap-

point an armory board which shall consist of the adjutant general and four other officers from the active, reserve, or retired commissioned personnel of the guard. The board shall meet at such times and places as are ordered by the governor. The four officers so appointed shall serve at the pleasure of the governor.

The board shall, for each unit of the guard, fix the rent allowances to be paid by the state for other than state-owned armories, and shall acquire, contract, erect, purchase, sell, maintain, repair, and alter state-owned armories subject to the laws made and provided therefor.

The board shall fix the amount to be paid to commanding officers of each division, brigade, regiment, battalion, squadron, battery, troop, company, or other unit of the guard for headquarters expenses and shall provide by regulations how the same shall be disbursed by such commanding officers. The actions of the armory board shall be subject to the approval of the governor.

The allowances made by the armory board shall, when approved by the governor, be paid from the funds appropriated for the support and maintenance of the guard. [C., '97, §§ 2203, 2204, 2214; S. S., '15, §§ 2215-f24, 2215-f25; 37 G. A., ch. 314, § 9; 38 G. A., ch. 362; 39 G. A., ch. 163, § 4.]

454. Rifle ranges—appropriation. The governor may designate the location of four regimental rifle ranges, and the expenditure of the sum of five thousand dollars, or so much thereof as may be necessary, is hereby allowed for the acquisition and construction of each of such ranges.

The sum of six hundred dollars, or so much thereof as is necessary, is hereby allowed annually for the rental and maintenance of each of said ranges.

The sum of three hundred dollars, or so much thereof as is necessary, is hereby allowed to each battery, troop, company, or other unit of the guard for the procurement, construction, and maintenance of a rifle range. The payments herein provided shall be made when sufficient funds are available beyond other requirements of this chapter and when approved by the governor. [S., '13, § 2215-f26; 39 G. A., ch. 163, § 6.]

455. Drill allowance—method of payment. Each battery, troop, company, or other unit of the guard showing attendance and actual drill of those present for one and one-half hours each week shall be allowed semiannually for miscellaneous military purposes, the sum of four dollars per capita, based on the average enlisted strength during such semiannual period, but when the average attendance during any semiannual period falls below fifty per cent of the average enlisted strength in that period, then and in that event such organization shall forfeit all right or claim to any such allowance. The semiannual periods herein re-

ferred to shall begin January first and July first. The governor shall prescribe regulations governing the payment by the state and the expenditure by the unit of this allowance and when the allowances by the state have been approved by him they shall be paid from the funds appropriated for the support and maintenance of the guard. [S. S., '15, § 2215-f27; 39 G. A., ch. 163, § 7.]

456. Accounting to adjutant general. No further payments shall be made under any provision of this chapter to the accountable officer of any organization who does not fully and satisfactorily account to the adjutant general for all moneys theretofore paid to him under any provision of this chapter. [S., '13, § 2215-f28.]

457. Trespass—sale of intoxicating liquors—penalty. Any person who shall trespass upon the encampment grounds or the camp grounds of the military force of the state in active service or of the guard called out for encampment, drill, target practice, or other duty, or interrupt, molest, or interfere with any member of the guard in the discharge of his duty, or sell any malt or spirituous or other intoxicating liquor within one mile of such encampment, camp, or station, except a person engaged in the business prior to the establishment of such encampment, camp, or station under permit issued by lawful authority, shall be guilty of a misdemeanor and punishable therefor, and the commanding officer of such force may order the arrest of such person and cause him to be delivered to a peace officer or magistrate as soon as practicable. [C., '97, § 2188; S., '13, § 2215-f29.]

458. False certificate or return—misuse of funds—penalty. Any officer or soldier of the guard knowingly making any false certificate of muster or false return of state property or funds in his hands, or wilfully neglecting or refusing to apply all money drawn from the state treasury for the purpose named in the requisition therefor, shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine in the amount of money not so applied, or both such fine and imprisonment, and all costs of prosecution. [C., '97, § 2192; S., '13, § 2215-f30.]

459. Military stores property of state. All arms, uniforms, equipments, and other military property furnished or issued by the state, or for which an allowance has been made, shall belong to the state, and shall be used for military purposes only, and each officer and soldier, upon receiving a discharge, or otherwise leaving the military service of the state, or upon demand of his commanding officer, shall forthwith surrender such state military property in his possession to said commanding officer. Every member of the guard who shall neglect to return to the armory of the

company, or place in charge of the commanding officer of the company to which he belongs, any arms, uniforms, equipments, or other military property, or portion thereof, belonging to the state, within six days after being notified by said commanding officer to do so, shall be fined not more than fifty dollars or imprisoned not more than thirty days. [C., '51, § 629; R., '60, § 1010; C., '73, § 1050; C., '97, § 2190; S. S., '15, § 2215-f31.]

460. Destruction or injury of military property. Every person who shall wilfully or wantonly injure or destroy any article of uniform, arms, equipment, or other military property furnished or issued by the state, and refuses to make good such injury or loss, or who shall sell, dispose of, secrete, or remove the same with intent to sell or dispose of it, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than four months or by both such fine and imprisonment. [R., '60, § 1014; C., '73, § 1050; C., '97, § 2194; S., '13, § 2215-f32.]

461. Exemptions. Every officer and soldier of the guard shall be exempt from jury duty and labor on the road on account of poll tax during his term of service, and, except in cases of treason, felony, or breach of the peace, be privileged from arrest during his attendance at drill, parades, encampments, active service, election of officers, and in going to and returning from the same. The uniform, arms, and equipments of every member of the guard shall be exempt from attachment, execution, or sale for debt or taxes. Every member of the guard who has served the full term of his commission or enlistment, shall, upon application, be entitled to an honorable discharge, exempting him from military duty except in time of war or public danger. [C., '97, § 2209; S., '13, § 2215-f33.]

462. Service badges. The adjutant general, from the available funds at his disposal, shall procure and issue to the officers and men of the guard entitled thereto, service badges according to the design and pattern thereof as may be determined upon by the adjutant general and kept on file at the office of the adjutant general. Members of the guard who by order of the president serve in federal forces during a national emergency shall be entitled to count the period of such federal service toward the procurement of a service badge. [S., '13, § 2215-f34; 39 G. A., ch. 163, § 8.]

463. Uniform—by whom worn—when—penalty. Every person who at any time wears a uniform of the United States army, navy, marine corps, or the guard, or any part of such uniform, or a uniform or a part of a uniform similar thereto, within the bounds of the state, is guilty of a misdemeanor, and if found guilty of such offense, he shall be punished by a fine

of not less than fifty dollars and not more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment; provided that nothing in this chapter shall be construed as prohibiting officers or enlisted men of the guard of the state of Iowa, or any other state, or of the United States army, navy, marine corps, or revenue service, or forest service, or cadets at any university, college, or school, from wearing such uniform or parts of uniform, while on military duty or duty connected therewith; and provided further that nothing in this chapter shall be construed as prohibiting inmates of any veterans' or soldiers' home, or members of any war veterans' or sons of veterans' association from wearing their uniform; and provided further that nothing in this chapter shall be construed as prohibiting persons of the theatrical profession from wearing such uniforms in any playhouse or theater while actually engaged in following their profession; and provided further that nothing in this chapter shall be construed as prohibiting the uniformed ranks of civic societies from parading or traveling in a body or being in encampments, or going to or from their place of meeting or assembling in a lodge room in their adopted uniform. [S., '13, § 2215-f35.]

464. Courts-martial. Courts-martial for officers and enlisted men of the guard will be such as shall be prescribed by regulations and orders issued by the governor in compliance with the act of congress approved June 3, 1916, or any amendments thereto or substitutes therefor. [C., '97, §§ 2196-2198; S. S., '15, § 2215-f36; 37 G. A., ch. 314, § 10.]

465. Tax exemptions—use of public utilities. It shall be lawful for the boards of supervisors of the several counties and for the city councils of the several cities and towns of the state to exempt from taxation all personal and real property held and used for armory or military purposes; and it shall be lawful for any county or city or town which owns public utilities to grant to any organization of the guard which is stationed in such place the free use of such public utilities. [S., '13, § 2215-f40.]

466. Building and camp ground improvements—salvage—improvement fund. The governor is authorized to expend from the funds appropriated for the support and maintenance of the guard such amounts as may be necessary in the purchase of additional land, erection of buildings, and other improvements on the permanent camp grounds and rifle ranges purchased by the state for the use of the guard, or purchased by the United States for the use of the guard of this state, when in his judgment such buildings and improvements will be for the permanent good of the guard.

Funds derived from the sale of salvage from the permanent camp grounds and rifle ranges

of the guard shall be deposited with the treasurer of state to the credit of a fund to be known as the permanent improvement fund and such fund shall only be expended for the improvement of the permanent camp grounds and rifle ranges of the guard upon order of the executive council of the state. [S., '13, § 2215-f41; 37 G. A., ch. 314, § 14; 39 G. A., ch. 163, § 5; 39 G. A., ch. 327, § 1.]

467. Term of service—rank of officers—contracts. The term of service and rank of officers, other than the adjutant general, and the grades of enlisted men in the guard at the time of taking effect of this chapter shall not be affected thereby, unless especially mentioned

therein, but all officers and enlisted men shall be held to service for the full period of the commission or enlistment under which they are then serving; provided, however, that the governor may change the rank of such officers, or may terminate the enlistments of such enlisted men in the guard, or may transfer any such officers or such enlisted men to any organizations of the guard when necessary to conform to the regulations of the war department governing the organized militia of the United States; and provided that the provisions of this chapter shall not be construed to affect any contracts made by the guard or by any of its organizations. [S. S., '15, § 2215-f43.]

CHAPTER 29

STATE BANNER—DISPLAY OF FLAG

468. Specifications of state banner.
469. Use of state banner.

468. Specifications of state banner. The banner designed by the Iowa society of the daughters of the American revolution and presented to the state, which banner consists of three vertical stripes of blue, white, and red, the blue stripe being nearest the staff and the white stripe being in the center, and upon the central white stripe being depicted a spreading eagle bearing in its beak blue streamers on which is inscribed, in white letters, the state motto, "Our liberties we prize and our rights we will maintain" and with the word "Iowa" in red letters below such streamers, as such design now appears on the banner in the office of the governor of the state of Iowa, is hereby adopted as a distinctive state banner, for use on all occasions where a distinctive state symbol in the way of a banner may be fittingly displayed. [39 G. A., ch. 78, § 1.]

469. Use of state banner. Such design may be used as a distinctive state banner and may as such be displayed on all proper occasions where the state is officially represented as distinct from other states, either at home or abroad, or wherever it may be proper to distinguish the citizens of Iowa from the citizens of other states, such display in all cases to be subservient to and along with the display of the national emblem and, when displayed with

470. Flags on public buildings.
471. Mothers' day.

the latter, to be placed beneath the stars and stripes. [39 G. A., ch. 78, § 2.]

470. Flags on public buildings. It shall be the duty of the custodians of all public buildings of the state to raise over such building the flag of the United States of America, upon each secular day when weather conditions are favorable, and it shall be the duty of any board of public officers charged with the duty of providing for the supplies of any such public building to provide, in connection with other supplies for any such building of the state, a suitable flag for the purposes herein provided. [S., '13, § 2804-c.]

Note: Display of flags on school sites, see § 4258.

471. Mothers' day. The governor of this state is hereby authorized and requested to issue annually a proclamation calling upon our state officials to display the American flag on all state and school buildings, and the people of the state to display the flag at their homes, lodges, churches, and places of business, on the second Sunday in May, known as mothers' day, as a public expression of reverence for the homes of our state, and to urge the celebration of mothers' day in said proclamation in such a way as will deepen home ties, and inspire better homes and closer union between the commonwealth, its homes, and their sons and daughters. [40 G. A., ch. 388.]

CHAPTER 30

DESECRATION OF FLAG

472. Desecration of flag.

473. Actions for penalty.

474. Federal flag and insignia defined.

472. Desecration of flag. Any person who in any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement of any nature, upon any flag, standard, color, ensign, shield, or other insignia of the United States, or upon any flag, ensign, great seal, or other insignia of this state, or shall expose or cause to be exposed to public view, any such flag, standard, color, ensign, shield, or other insignia of the United States, or any such flag, ensign, great seal, or other insignia of this state, upon which shall have been printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, picture, design, or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose any article or substance, being an article of merchandise or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed, a representation of any such flag, standard, color, ensign, shield, or other insignia of the United States, or any such flag, ensign, great seal, or other insignia of this state, to advertise, call attention to, decorate, mark, or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defile or defy, trample upon, cast contempt upon, satirize, deride or burlesque, either by words or act, such flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, or who shall, for any purpose, place such flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, upon the ground or where the same may be tread upon, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than thirty days and shall also forfeit a penalty of fifty dollars for each such offense, to be recovered, with costs, in a civil action or suit in any court having jurisdiction. [S., '13, § 5028-a; 37 G. A., ch. 411, § 1.]

473. Actions for penalty. Such action or suit may be brought by and in the name of the state, on the relation of any citizen thereof,

475. State flag and insignia defined.

476. Presumptive evidence of desecration.

477. Enforcement.

and such penalty, when collected, less the reasonable cost and expense of action or suit and recovery, to be certified by the clerk of the district court of the county in which the offense is committed, shall be paid into the county treasury for the benefit of the school fund, and two or more penalties may be sued for and recovered in the same action or suit. [S., '13, § 5028-a; 37 G. A., ch. 411, § 1.]

474. Federal flag and insignia defined. The words "flag, standard, color, ensign, shield, or other insignia of the United States" as used in this chapter, shall include any flag, standard, color, ensign, shield, or other insignia of the United States, or any picture or representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be any such flag, standard, color, insignia, shield, or other insignia of the United States of America, or a picture or a representation of any of them. [S., '13, § 5028-a; 37 G. A., ch. 411, § 1.]

475. State flag and insignia defined. The words "flag, ensign, great seal, or other insignia of this state" as used in this chapter, shall include any flag, ensign, great seal, or other insignia, or any picture or any representation of any of them, made of any substance or represented on any substance, and of any size, evidently purporting to be any such flag, ensign, great seal, or other insignia of the state, or a picture or a representation of any of them. [S., '13, § 5028-a; 37 G. A., ch. 411, § 1.]

476. Presumptive evidence of desecration. The possession by any person other than a public officer, as such, of any flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, on which shall be anything made unlawful by this chapter, or of any article or substance or thing on which shall be anything made unlawful by this chapter, shall be presumptive evidence that the same is in violation of this chapter. [S., '13, § 5028-a; 37 G. A., ch. 411, § 1.]

477. Enforcement. It shall be the duty of the sheriffs of the various counties, chiefs of police, and town marshals to enforce the provisions of this chapter, and for failure to do so they may be removed as by law provided.

This chapter shall not be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant, or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in private correspondence, on any of which shall be printed, painted, or placed, said flag, disconnected from any advertisement.

Nothing in this chapter shall be construed as rendering unlawful the use of any trademark or trade emblem actually adopted by any person, firm, corporation, or association prior to January 1, 1895. [37 G. A., ch. 411, §§ 1, 2, 4.]

NOTE: For general removal law, see § 1091.

CHAPTER 31

GRAND ARMY OF THE REPUBLIC

478. Payment.

478. Payment. The auditor of state is hereby authorized to draw warrants upon the treasurer of state for such sums, or such portions thereof, as may be needed from time to time, the same to be certified to the state board of audit in the form of itemized bills, by the department commander, or assistant adjutant general of the department of Iowa, grand army of the republic. [30 G. A., ch. 178, § 2.]

479. Distribution of annual reports.

479. Distribution of annual reports. The department of Iowa, grand army of the republic, shall furnish to the superintendent of printing, for distribution to state institutions, fifty copies of the annual reports of the department. [30 G. A., ch. 178, § 3.]

CHAPTER 32

PENSIONS

480. Northern border brigade.

481. Spirit Lake relief expedition of 1857.

480. Northern border brigade. The survivors of the northern border brigade, as shown by the roster of Iowa soldiers (volume 6, pp. 181 to 207, inclusive), or their widows shall receive a monthly pension of twenty dollars, during the lifetime of each such survivor or his widow, to be paid from the state treasury on the proper voucher being made, and out of funds not otherwise appropriated; provided that in cases where the said survivors are now receiving pensions from the federal government this section shall not apply. [37 G. A., ch. 164.]

481. Spirit Lake relief expedition of 1857. The survivors of the Spirit Lake relief expedition of 1857, as shown by the roster of Iowa soldiers (volume 6, pp. 922 to 937, inclusive), or their widows shall receive a monthly pension of twenty dollars per month, during the lifetime of each such survivor or widow, to be paid from the state treasury on the proper voucher being made, and out of funds not otherwise appropriated. [35 G. A., ch. 348, § 1; 39 G. A., ch. 225.]

482. Mitchell's cavalry.

482. Mitchell's cavalry. The survivors of the frontier guards of Mitchell's cavalry as shown by the original muster roll and pay rolls of a military company organized and commanded by John Mitchell under the authority of a commission dated July 4, 1861, signed by Governor Samuel J. Kirkwood and identified as "John Mitchell's Company of Iowa Volunteers", all of which commission, pay roll, and return thereon, is on file in the official archives of Iowa in the historical department, and the surviving widows of deceased members thereof, shall receive a pension of two hundred forty dollars on the first day of June, 1923, and twenty dollars per month thereafter during the lifetime of each such person, to be paid from the state treasury on the proper voucher being made, and out of funds not otherwise appropriated; provided that in cases where the said persons are now receiving a pension from the federal government, this section shall not apply. [40 G. A., ch. 6, § 1.]

CHAPTER 33

MEMORIAL HALLS AND MONUMENTS FOR SOLDIERS, SAILORS, AND MARINES

- 483. Memorial buildings and monuments.
- 484. Petition.
- 485. Election.
- 486. Notice.
- 487. Acquisition of site.
- 488. Bonds.
- 489. Levy for bonds.
- 490. Levy for maintenance.
- 491. Commissioners appointed—vacancies.
- 492. Qualifications—method of appointing.
- 493. Method when one or more posts do not exist.

- 494. Method when any post fails to act.
- 495. Method when posts do not act.
- 496. Selection of successors.
- 497. Ex officio member of commission.
- 498. Disbursement of funds.
- 499. Gifts and bequests may be accepted.
- 500. Name—uses.
- 501. Record—monuments—how inscribed.
- 502. Funds, monuments and memorials previously initiated.

483. Memorial buildings and monuments. Memorial buildings and monuments designed to commemorate the service rendered by soldiers, sailors, and marines of the United States may be erected and equipped at public expense in the manner provided by this chapter by:

1. Any county which has not heretofore made an appropriation for such purpose under any prior law.

2. Any town or city operating under any form of government. [C., '97, §§ 435, 436; 38 G. A., ch. 170, § 1; 40 Ex. G. A., S. F. 19, § 1.]

484. Petition. The petition for the erection and equipment of any such hall or monument shall request the submission of the proposition to a vote of the people and shall:

1. When it is proposed to erect the same at the expense of the county, be signed by ten per cent of the qualified electors thereof as shown by the poll list in the last preceding general election, or by a majority of the members of the Grand Army of the Republic, the Spanish-American war veterans' association, and the American Legion of the county.

2. When it is proposed to erect the same at the expense of a city or town, be signed by ten per cent of the qualified electors thereof as shown by the poll list in the last preceding regular municipal election. [C., '97, § 435; 38 G. A., ch. 170, § 4; 40 Ex. G. A., S. F. 19, § 2.]

485. Election. Upon the filing of the requisite petition, the board of supervisors, or city or town council, as the case may be, shall cause the proposition to be submitted at a regular election, or at a special election to be called if requested in the petition, in substantially the following form:

"Shall the county (or city or town) of erect and equip (or purchase and equip) a memorial building (or erect a monument) as provided in chapter 33 of the code, and issue bonds in the sum of dollars to cover the expense of the same (or

levy a tax of mills on the dollar for a period of years to defray the expense of the same)?" [38 G. A., ch. 170, § 4; 40 Ex. G. A., S. F. 19, § 3.]

486. Notice. Notice of such election shall be given by publication in one newspaper published in the county, city, or town, as the case may be, once each week for at least four consecutive weeks. If no newspaper is published therein, then such notice may be given by posting in three public places within the limits of said corporation, and by publication for four consecutive weeks in a newspaper of general circulation in the county; the last publication to be not less than five nor more than twenty days prior to such election. [C., '97, § 435; 38 G. A., ch. 170, § 4; 40 Ex. G. A., S. F. 19, § 4.]

487. Acquisition of site. When the proposition to erect any such building or monument has been carried by a majority vote of all voters voting thereon, any such county, city, or town shall have the power to purchase or condemn grounds suitable for a site for any such building or monument. Such condemnation proceedings shall be in the manner provided for taking private property for works of internal public improvement. [38 G. A., ch. 170, § 1; 40 Ex. G. A., S. F. 19, § 5.]

488. Bonds. For the purpose of providing funds for the acquisition of necessary ground therefor, and for purchasing, erecting, constructing, or reconstructing such building or monument, and for the necessary equipment therefor, the county, city, or town may issue bonds to be known as liberty memorial bonds, to be issued and sold as provided by law relative to general county and city bonds; they shall provide for portions of such bonds to become due at different, definite periods, but none in less than five nor more than fifty years from date. In issuing such bonds, such county, city, or town may become indebted in an amount

which, added to all other indebtedness, shall not exceed five per cent of the actual value of the taxable property in such county, city, or town as determined by the last state and county tax lists. [38 G. A., ch. 170, § 3; 40 Ex. G. A., S. F. 19, § 6.]

489. Levy for bonds. For the purpose of liquidating such bonds together with the interest thereon, such county, city, or town shall levy upon all the property within the limits thereof, subject to taxation for such purpose, in addition to all other taxes provided by law, a special tax not exceeding in any one year eight mills on the dollar for a period of not exceeding fifty years. [38 G. A., ch. 170, § 3; 39 G. A., ch. 81, § 1; 40 Ex. G. A., S. F. 19, § 7.]

490. Levy for maintenance. In case a building or monument be constructed or purchased under this chapter, the county, city, or town shall thereafter provide annually a levy of not more than five mills on all the taxable property within said county, city, or town for the development, operation, and maintenance of such building or monument in care of a city or town. [38 G. A., ch. 170, § 5; 39 G. A., ch. 81, § 2; 40 Ex. G. A., S. F. 19, § 8.]

491. Commissioners appointed—vacancies. When the proposition to erect any such building or monument has been carried by a majority vote, the board of supervisors or the city or town council, as the case may be, shall appoint a commission consisting of five members, in the manner and with the qualifications hereinafter provided, which shall have charge and supervision of the erection of said building or monument, and when erected, the management and control thereof.

The term of office of each member shall be three years, and any vacancies occurring in the membership shall be filled in the same manner as the original appointment. [C., '97, § 436; 37 G. A., ch. 114, §§ 1-3; 39 G. A., ch. 142, § 1; 40 Ex. G. A., S. F. 19, § 9.]

492. Qualifications—method of appointing. Each such commissioner shall be an honorably discharged soldier, sailor, or marine of the United States, selected in the following manner:

Within sixty days after the election, each post of the Grand Army of the Republic, Spanish-American war veterans, and the American Legion, in the county, city, or town, as the case may be, shall appoint three delegates who shall, within ninety days after such election, meet in convention in the county, city, or town, as the case may be, and by ballot select five commissioners, whose names shall be forthwith furnished to the board of supervisors, or the city or town council, as the case may be, whereupon said board of supervisors or city or town council shall by resolution appoint them as such commissioners. [C., '97, § 436; 40 Ex. G. A., S. F. 19, § 10.]

493. Method when one or more posts do not exist. In case no post of any one of said associations is maintained in the county, city, or town, as the case may be, then those which do exist shall proceed in the manner above provided and elect said commissioners. [40 Ex. G. A., S. F. 19, § 10-a1.]

494. Method when any post fails to act. In case any post which does exist fails to send delegates to said convention, then the delegates which do attend shall proceed as above indicated and elect said commissioners. [40 Ex. G. A., S. F. 19, § 10-a2.]

495. Method when posts do not act. In case no convention of delegates from said posts meets and elects said commissioners, then the board of supervisors of the county, or the city or town council, as the case may be, shall, at the expiration of ninety days after the election to erect a building or monument, select and appoint five commissioners. [40 Ex. G. A., S. F. 19, § 10-a3.]

496. Selection of successors. Not less than sixty days before the expiration of the term of office of said commissioners, their successors in office shall be selected in the manner above provided, but if no selection shall have been made in said manner at the expiration of said term of office, then the board of supervisors, or the city or town council, as the case may be, shall appoint such successors. [40 Ex. G. A., S. F. 19, § 10-a4.]

497. Ex officio member of commission. In case any such memorial hall or building shall be a city or town hall, coliseum or auditorium, the mayor of such city or town may be an ex officio member of the commission heretofore provided for, in which case there shall be selected but four commissioners as otherwise provided, and such four, together with the mayor, shall constitute a commission of five. [40 Ex. G. A., S. F. 19, § 10-a5.]

498. Disbursement of funds. All funds voted under the provisions of this chapter shall be disbursed by the county or city officers, only upon the written order of said commissioners. Such commission shall report to and make settlement with the board of supervisors or the city council, as the case may be, at the time and in the manner required of county and city officers. [C., '97, § 436; 40 Ex. G. A., S. F. 19, § 11.]

499. Gifts and bequests may be accepted. Gifts and bequests to any county, city, or town, or to the commission, for any of the purposes provided in this chapter, may be accepted and the property shall be used in accordance with the provisions of this chapter, and as may be expressly designated by the donor. [38 G. A., ch. 170, § 6; 40 Ex. G. A., S. F. 19, § 12.]

500. Name—uses. Any such memorial hall or building shall be given an appropriate name

and shall be available so far as practical for the following purposes:

1. The special accommodations of soldiers, sailors, marines, nurses, and other persons who have been in the military or naval service of the United States.

2. For military headquarters, memorial rooms, library, assembly hall, gymnasium, natatorium, club room, and rest room.

3. County, town, or city hall, offices for any county or municipal purpose, community house, recreation center, memorial hospital, and municipal coliseum or auditorium.

4. Similar and appropriate purposes in general community and neighborhood uses, under the control and regulation of the custodians thereof. [37 G. A., ch. 114, § 4; 38 G. A., ch. 170, § 1; 40 Ex. G. A., S. F. 19, § 13.]

501. Record—monuments—how inscribed. When any such memorial hall shall be erected, the commission shall cause to be kept a record therein which shall contain the name of each soldier, sailor, and marine, who served honorably in any of the wars in which the United States has been engaged, and who enlisted or entered the service from the county, city, or town, as the case may be, stating the time of his service, the name of the war and organization in which he served, and whether or not he died in the service.

When any such monuments shall be erected, the names of the deceased soldiers, sailors, and marines referred to in this section shall

be placed thereon, and from time to time the names of others who subsequently die. [C., '97, § 435; 40 Ex. G. A., S. F. 19, § 14.]

502. Funds, monuments and memorials previously initiated. In any case of funds heretofore raised or in the process of being raised, by tax levy or other provision of law heretofore existing, for any of the purposes provided by this chapter, the board of supervisors or the city or town council, as the case may be, shall cause such funds to be used and applied to all intents and purposes for the acquisition of necessary ground and the purchase, erection, construction or reconstruction and equipment of such monument or memorial building in the same manner and to the same extent as if such funds had been raised for said purpose by a bond issue, as provided in this chapter, and all the provisions of this chapter shall apply to said funds.

All other provisions of this chapter shall apply to any monument or memorial heretofore constructed or hereafter constructed from funds raised under any provision of law heretofore existing.

In all cases covered by this section, the taking effect of this chapter shall fix the time for the selection and appointment of the commissioners to all intents and purposes the same as an election on the proposition to erect a memorial building or monument, as provided in this chapter. [40 Ex. G. A., S. F. 19, § 15.]

CHAPTER 34

REGISTRATION OF ALIENS

503. Registration of aliens—penalty.

503. Registration of aliens—penalty. When a state of war exists between the United States and a foreign country, or, in the judgment of the governor, public safety or necessity requires such action, the governor may, by proclamation, direct every subject or citizen of such foreign countries as the governor may designate in such proclamation, who are in this state, or who may from time to time come into the state, to appear within twenty-four hours after the date specified in such proclamation or after arrival within the state, before such public authorities as the governor may designate in such proclamation, and personally register his or her name, residence, business, length of stay and such other information as the governor may require. Such proclamation shall be published in such newspapers as the governor may designate. Every person to whom such proclamation is ap-

plicable shall also comply with such rules of personal identification as the governor shall from time to time prescribe. The occupant of every private residence, and the owner, lessee or proprietor, operating or managing every hotel, inn, boarding or rooming house, shall, within twenty-four hours after the date specified in such proclamation, notify such public authorities of the presence therein of every subject or citizen of a foreign country to whom such proclamation is applicable, and shall each day thereafter notify such public authorities of the arrival thereat or departure therefrom of every such subject or citizen. A failure to comply with any such proclamation or to perform any act required by this section shall be a misdemeanor, and punishable by a fine not exceeding one thousand dollars, or imprisonment for one year, or both. [37 G. A., ch. 378, § 1.]

TITLE IV

ELECTIONS AND OFFICERS

CHAPTER 35

TIME OF ELECTION AND TERM OF OFFICE

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| 504. General election. | 515. Superintendent of public instruction. |
| 505. Special election. | 516. Railroad commissioners. |
| 506. Proclamation concerning election. | 517. Judge of district court. |
| 507. Proclamation concerning revision of constitution. | 518. State senators. |
| 508. Notice of election. | 519. Representatives. |
| 509. Notice of special election. | 520. County officers. |
| 510. Time of choosing officer. | 521. Board of supervisors and township trustees. |
| 511. Term of office. | 522. Board of supervisors—limitation. |
| 512. State officers—term. | 523. Justices and constables. |
| 513. United States senators. | 524. Township clerk. |
| 514. Judges of the supreme court. | 525. Township assessor. |
| | 526. Sex no disqualification. |

504. General election. The general election for state, district, county, and township officers shall be held throughout the state on Tuesday, next after the first Monday in November of each even-numbered year. [C., '51, § 239; R., '60, § 459; C., '73, § 573; C., '97, § 1057; S., '13, § 1057-a; 40 Ex. G. A., H. F. 20, § 1.]

NOTE: Constitutional provisions, see amendment of 1916, p. 53; also amendment No. 1 of 1904, p. 52.

505. Special election. Special elections authorized by law, or held to fill vacancies in any office to be filled by the vote of the qualified voters of the entire state or of any district, county, or township may be held at the time designated by such law, or by the officer authorized to order such election. [C., '51, § 237; R., '60, § 460; C., '73, § 574; C., '97, § 1058; 40 Ex. G. A., H. F. 20, § 2.]

506. Proclamation concerning election. At least thirty days before any general election, the governor shall issue his proclamation, designating all the offices to be filled by the vote of all the electors of the state, or by those of any congressional, legislative, or judicial district, and transmit a copy thereof to the sheriff of each county. Said proclamation shall designate by number the several districts in which congressional and judicial officers are to be chosen without other description.

The office of senator in the state legislature shall be designated substantially as follows:

"In the senatorial districts numbered (giving the number of each senatorial district in

which a senator is to be chosen), each one senator."

The office of representative in the state legislature shall be designated as follows:

"In the districts numbered (giving the number of each district in which two representatives are to be chosen), each two representatives. In all other representative districts of the state, each one representative." [R., '60, § 462; C., '73, § 577; C., '97, § 1061; S. S., '15, § 1061; 40 Ex. G. A., H. F. 20, § 3.]

507. Proclamation concerning revision of constitution. In the years in which the constitution requires a vote on the question of calling a convention and revising the constitution, the following question shall be included in said proclamation:

"Shall there be a convention to revise the constitution and amend the same?" [C., '97, § 1061; S. S., '15, § 1061; 40 Ex. G. A., H. F. 20, § 4.]

508. Notice of election. The sheriff shall give at least ten days' notice thereof, by causing a copy of such proclamation to be published in some newspaper printed in the county; or, if there be no such paper, by posting such a copy in at least five of the most public places in the county. [R., '60, § 463; C., '73, § 578; C., '97, § 1062; 40 Ex. G. A., H. F. 20, § 5.]

509. Notice of special election. A similar proclamation shall be issued before any special

election ordered by the governor, designating the time at which such special election shall be held; and the sheriff of each county in which such election is to be held shall give notice thereof, as provided in the preceding section. [R., '60, § 464; C., '73, § 579; C., '97, § 1063; 40 Ex. G. A., H. F. 20, § 6.]

510. Time of choosing officer. At the general election next preceding the expiration of the term of any officer, his successor shall be elected. [R., '60, § 461; C., '73, § 575; C., '97, § 1059; 40 Ex. G. A., H. F. 20, § 7.]

511. Term of office. The term of office of all officers chosen at a general election for a full term shall commence on the second secular day of January next thereafter, except when otherwise provided by the constitution or by statute; that of an officer chosen to fill a vacancy shall commence as soon as he has qualified therefor. [R., '60, § 462; C., '73, § 576; C., '97, § 1060; S., '13, § 1060; 40 Ex. G. A., H. F. 20, § 8.]

NOTE: Term of office of governor and lieutenant governor, see Const., Art. 4, §§ 2, 15.

Term of office of judges of supreme and district courts, see Const., Art. 5, § 11.

512. State officers—term. The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, and attorney general shall hold office for a term of two years. [C., '51, § 239; R., '60, §§ 465, 466; C., '73, §§ 580, 581; C., '97, §§ 1064, 1065; S., '13, § 1065; 40 G. A., ch. 46, § 4; 40 Ex. G. A., H. F. 20, § 9.]

513. United States senators. Senators in the congress of the United States shall be elected in the same manner in which state officers are elected. [R., '60, § 674; C., '73, § 26; C., '97, § 30; S., '13, § 1087-c; 37 G. A., ch. 401, § 1; 38 G. A., ch. 86, § 9; 40 Ex. G. A., H. F. 20, § 10.]

514. Judges of the supreme court. Two judges of the supreme court shall be chosen at each general state election. In the year 1926 and each sixth year thereafter, one additional judge shall be elected. The term of office of each judge shall be six years. [R., '60, § 467; C., '73, § 582; C., '97, § 1066; S., '13, §§ 193-1a, 1066; 40 Ex. G. A., H. F. 20, § 11.]

515. Superintendent of public instruction. The superintendent of public instruction shall be elected at the general election in 1926 and each fourth year thereafter. [C., '73, § 580; C., '97, § 1064; S., '13, § 2627-a; 37 G. A., ch. 318, § 1; 40 Ex. G. A., H. F. 20, § 12.]

516. Railroad commissioners. Two railroad commissioners shall be elected at the general election in 1926 and each fourth year thereafter. One railroad commissioner shall be elected in the year 1924 and each fourth year thereafter. [C., '97, § 1068; S., '13, § 1068; 40 Ex. G. A., H. F. 20, § 13.]

517. Judge of district court. Judges of the district court shall be elected at the general election in each judicial district and hold office for four years, except when elected to fill a vacancy, in which case the election shall be only for the unexpired term. [C., '51, § 239; R., '60, § 468; C., '73, §§ 584, 585; C., '97, § 1069; 40 Ex. G. A., H. F. 20, § 14.]

518. State senators. Senators in the general assembly shall be elected at the general election in the respective senatorial districts and shall hold office for the term of four years. [C., '51, § 239; R., '60, § 471; C., '73, § 588; C., '97, § 1071; S., '13, § 1071; 40 Ex. G. A., H. F. 20, § 15.]

519. Representatives. Members of the house of representatives shall be elected at the general election in the respective representative districts and hold office for the term of two years. [C., '51, § 239; R., '60, § 470; C., '73, § 587; C., '97, § 1070; S., '13, § 1070; 40 Ex. G. A., H. F. 20, § 16.]

520. County officers. There shall be elected in each county, at each general election, an auditor, a treasurer, a clerk of the district court, a sheriff, a recorder of deeds, a county attorney, and a coroner, who shall hold office for the term of two years. [C., '51, §§ 96, 239; R., '60, §§ 224, 472, 473; C., '73, § 589; C., '97, § 1072; S., '13, § 1072; 40 Ex. G. A., H. F. 20, § 17.]

521. Board of supervisors and township trustees. There shall be elected, biennially, in counties and townships, members of the board of supervisors and township trustees, respectively, for a term of three years to succeed those whose terms of office will expire on the second secular day in January following said election; there shall also be elected a member or members for a term of three years to succeed those whose terms will expire on the second secular day in January one year later than the aforesaid date. It shall be specified on the ballot when each shall begin his term of office. [C., '51, § 239; R., '60, § 475; C., '73, §§ 295, 591; C., '97, §§ 411, 1074; S., '13, § 1074; S. S., '15, § 411; 37 G. A., ch. 204, § 1; 40 Ex. G. A., H. F. 20, § 18.]

522. Board of supervisors—limitation. No person shall be elected a member of the board of supervisors who is a resident of the same township with any of the members holding over, except that:

1. A member-elect may be a resident of the same township as a member he is elected to succeed.

2. In counties having five or seven supervisors two members may be residents of a township which embraces a city of thirty-five thousand population. [C., '97, § 411; S. S., '15, § 411; 40 Ex. G. A., H. F. 20, § 19.]

523. Justices and constables. In all townships, except such as are included in the ter-

ritorial limits of municipal courts, there shall be elected, biennially, two justices of the peace and two constables, who shall hold office two years and be county officers. [C., '51, §§ 221, 243; R., '60, §§ 443, 474, 477, 478; C., '73, §§ 389, 590, 592, 593; C., '97, § 1073; S. S., '15, § 1073; 40 Ex. G. A., H. F. 20, § 20.]

524. Township clerk. There shall be elected, biennially, in each civil township one township clerk, who shall hold his office for the term of two years. [C., '51, § 239; R., '60, § 475; C., '73, § 591; C., '97, § 1075; S., '13 § 1075; 40 Ex. G. A., H. F. 20, § 21.]

525. Township assessor. Township assessors shall be elected biennially and shall hold

office for two years. In townships embracing no city or town, the election shall be by the voters of the entire township. In townships embracing a city or town, the election shall be by the voters of the township residing outside the corporate limits of such city or town. Such assessor shall be a resident of the territory of the township outside such city or town. [R., '60, § 475; C., '73, §§ 390, 591; C., '97, §§ 565, 1075; S., '13, §§ 565, 1075; 40 Ex. G. A., H. F. 20, § 22.]

526. Sex no disqualification. No person shall be disqualified on account of sex from holding any office created by the statutes of this state. [40 Ex. G. A., H. F. 20, § 23.]

CHAPTER 36

NOMINATIONS BY PRIMARY ELECTION

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527. Primary election defined. The term "primary election" as used in this chapter shall be construed to apply to an election by the members of various political parties:

1. For the purpose of placing in nomination candidates for public office.

2. For selecting delegates to conventions.

3. For the selection of party committeemen. [S., '13, § 1087-a2; 40 Ex. G. A., ch. 5, § 1.]

528. Political party defined. The term "political party" shall mean a party which, at the last preceding general election, cast for its candidate for governor at least two per cent of the total vote cast at said election.

A political organization which is not a "political party" within the meaning of this section may nominate candidates and have the names of such candidates placed upon the official ballot by proceeding under chapter 37. [S., '13, § 1087-a3; 40 Ex. G. A., ch. 5, § 2.]

NOTE: Nomination by petition, see § 648; also ch. 37.

529. Offices affected by primary. Candidates of all political parties for all offices which are filled at a regular biennial election by direct vote of the people, except the office of judge of the supreme and district courts, shall be nominated at a primary election at the time and in the manner hereinafter directed. [S., '13, § 1087-a1; 40 Ex. G. A., ch. 5, § 3.]

530. Delegates and party committeemen. Delegates to the county convention of political parties and party county committeemen of such parties shall be elected at said primary election at said times and places. [S., '13, § 1087-a1; 40 Ex. G. A., ch. 5, § 4.]

531. Applicable statutes. The provisions of chapters 40 and 41 and the chapter on "bribery and corruption in elections" in the title on "criminal law" shall apply, so far as applicable, to all said primary elections, except as hereinafter provided. [S., '13, § 1087-a1; 40 Ex. G. A., ch. 5, § 5.]

532. Nomination of United States senators. Senators in the congress of the United States, in case of a full term, shall be nominated in the year preceding the expiration of the term of office of the incumbent. In case of a vacancy, such senators shall be nominated in the year in which occurs the first biennial election following the occurrence of the vacancy. [R., '60, § 674; C., '73, § 26; C., '97, § 30; S., '13, § 1087-c; 37 G. A., ch. 401, § 1; 38 G. A., ch. 86, § 9; 40 Ex. G. A., ch. 5, § 6.]

NOTE: Vacancies filled by governor, see § 1152, par. 1.

533. Time of holding. The primary election by all political parties shall be held at the usual voting places of the several precincts on the first Monday in June in each even-numbered year. [S., '13, § 1087-a4; 40 Ex. G. A., ch. 5, § 7.]

534. Secretary of state to furnish blanks. The secretary of state shall, at state expense,

furnish blank nomination papers, in the form provided in this chapter, to any qualified elector who desires to petition for the nomination of any candidate, or to any person who intends to be a candidate, for any office for which nomination papers are required to be filed in his office. [S., '13, § 1087-a11; 40 Ex. G. A., ch. 5, § 8.]

535. County auditor to furnish blanks. The county auditor shall, at county expense, perform the duty specified in the preceding section, as to all offices for which nomination papers are required to be filed in his office. [S., '13, § 1087-a11; 40 Ex. G. A., ch. 5, § 9.]

536. Blanks furnished by others. Blank nomination papers which are in form substantially as provided by this chapter may be used even though not furnished by the secretary of state or county auditor. [40 Ex. G. A., ch. 5, § 10.]

537. Filing of nomination papers. Nomination papers in behalf of a candidate shall be filed:

1. For an elective county office, in the office of the county auditor at least thirty days prior to the day fixed for holding the primary election.

2. For United States senator, for an elective state office, for representative in congress, and for member of the general assembly, in the office of the secretary of state not more than sixty days nor less than forty days prior to the day fixed for holding said primary election. [S., '13, § 1087-a10; 40 Ex. G. A., ch. 5, § 11.]

538. Noting time of filing. The officer receiving nomination papers for filing shall indorse thereon the day, and time of day, of filing. [40 Ex. G. A., ch. 5, § 12.]

539. Failure to file nomination papers. No candidate for any office named in the second preceding section shall have his name printed on the official primary ballot of his party unless nomination papers are filed as therein provided. [S., '13, § 1087-a10; 40 Ex. G. A., ch. 5, § 13.]

540. Form of nomination papers. All nomination papers shall be about eight and one-half by thirteen inches in size and in substantially the following form:

"I, the undersigned, a qualified elector of county, and state of Iowa, and a member of the party, hereby nominate of county, state of Iowa, who has affiliated with and is a member of the party, as a candidate for the office of to be voted for at the primary election to be held in June, 19....."

No signatures shall be counted unless they are on sheets each having such form written or printed at the top thereof. [S., '13, § 1087-a10; 40 Ex. G. A., ch. 5, § 14.]

541. Requirements in signing. The following requirements shall be observed in the signing and preparation of nomination blanks:

1. Each signer may sign as many nomination papers for the same office as there are officers to be elected to said office, and no more.

2. Each signer shall add his residence, with street and number, if any, and the date of signing.

3. All signers, for all nominations, of each separate part of a nomination paper, shall reside in the same county.

4. When more than one sheet is used, the sheets shall be neatly arranged and securely fastened together before filing, and shall be considered one nomination paper.

5. Only one candidate shall be petitioned for or nominated in the same nomination paper. [S., '13, § 1087-a10; 40 Ex. G. A., ch. 5, § 15.]

542. Withdrawals and additions not allowed. A nomination paper, when filed, shall not be withdrawn nor added to, nor any signature thereon revoked. [S., '13, § 1087-a10; 40 Ex. G. A., ch. 5, § 16.]

543. Affidavit to nomination papers. The affidavit of a qualified elector, other than the candidate, shall be appended to each such nomination paper, or papers, if more than one for any candidate, stating that he is personally acquainted with all the persons who have signed the same; that he knows them to be electors of that county and believes them to be affiliated with the party named therein; that he knows that they signed the same with full knowledge of the contents thereof; that their respective residences are truly stated therein; and that each signer signed the same on the date stated opposite his name. [S., '13, § 1087-a10; 40 Ex. G. A., ch. 5, § 17.]

544. Affidavit by candidate. Every candidate shall make and file an affidavit in substantially the following form:

"I,, being duly sworn, say that I reside at.....street, (city or town) of, county ofin the state of Iowa; that I am eligible to the office for which I am a candidate, and that the political party with which I affiliate is the.....party; that I am a candidate for nomination to the office ofto be made at the primary election to be held in June, 19...., and hereby request that my name be printed upon the official primary ballot as provided by law, as a candidate of theparty. I furthermore declare that if I am nominated and elected I will qualify as such officer.

(Signed).....

Subscribed and sworn to (or affirmed) before me by.....on this..... day of....., 19....

..... (Name)

..... (Official title)

[S., '13, § 1087-a10; 40 Ex. G. A., ch. 5, § 18.]

545. Manner of filing affidavit. The affidavit provided in the preceding section shall be filed with the nomination papers when such papers are required; otherwise alone. [S., '13, § 1087-a10; 40 Ex. G. A., ch. 5, § 19.]

546. Signatures required. Nomination papers shall be signed as follows:

1. If for a state office, or United States senator, by at least one per cent of the voters of the party of such candidates, in each of at least ten counties of the state, and in the aggregate not less than one-half of one per cent of the total vote of his party in the state, as shown by the last general election.

2. If for a representative in congress, or senator in the general assembly in districts composed of more than one county, by at least two per cent of the voters of his party, as shown by the last general election, in at least one-half of the counties of the district, and in the aggregate not less than one per cent of the total vote of his party in such district, as shown by the last general election.

3. If for an office to be filled by the voters of the county, by at least two per cent of the party vote in the county, as shown by the last general election.

In each of the above cases, the vote to be taken for the purpose of computing the percentage shall be the vote cast for the head of the ticket. [S., '13, § 1087-a10; 40 Ex. G. A., ch. 5, § 20.]

547. Candidates for township or precinct office. The name of a candidate for an office to be filled by the voters of any subdivision of a county, including the office of party committeeman, shall be printed on the official primary ballot of his party:

1. If a nomination paper signed by ten qualified voters of said subdivision is filed in his behalf with the county auditor at least twenty days prior to such primary election, or

2. If the candidate files with the county auditor, twenty days prior to such primary election, his personal affidavit as provided by section 544. [S., '13, § 1087-a10; 39 G. A., ch. 75, § 1; 40 Ex. G. A., ch. 5, § 21.]

548. Nominations certified. The secretary of state shall, at least thirty days before a primary election, furnish to each county auditor a certificate under his hand and seal, which certificate shall show:

1. The name and postoffice address of each person for whom a nomination paper has been filed in his office, and for whom the voters of said county have the right to vote at said election.

2. The office for which such person is a candidate.

3. The political party from which such person seeks a nomination.

4. The order in which the names of all candidates for offices to be filled by the voters of the entire state shall be arranged and printed

on the primary ballot in said county. [S., '13, § 1087-a12; 40 Ex. G. A., ch. 5, § 22.]

549. Order of names of candidates. The secretary of state shall arrange the various counties in the order of the vote cast by each political party in each county for its candidate for governor at the last preceding general election, or for the head of the ticket of any political party when it had no candidate for governor at such election, numbering the counties consecutively on each list from one to ninety-nine, inclusive, beginning with the county which cast the largest vote, which shall be numbered "1". He shall then arrange the surnames of such candidates in alphabetical order for the respective offices for the several political parties for the first county on the respective lists; thereafter, for each succeeding county, the names appearing first for the respective offices in the last preceding county shall be placed last, so that the names that occupied second position before the change shall occupy first position after the change. [S., '13, § 1087-a12; 40 Ex. G. A., ch. 5, § 23.]

550. Notice of election. Such auditor shall, immediately after receiving said certified matter from the secretary of state, publish a proclamation of the time of holding the primary election, the hours during which the polls will be open, the offices for which candidates are to be nominated, and that the primary election will be held in the regular polling places in each precinct. [S., '13, § 1087-a12; 40 Ex. G. A., ch. 5, § 24.]

551. Publication of notice. Such notice shall appear once each week for two consecutive weeks before the primary election, in not to exceed two newspapers of general circulation published in such county. One of such newspapers shall represent the political party which cast the largest vote in such county at the last preceding general election, and the other, if any, shall represent the political party which cast the next largest vote in such county at such general election. [S., '13, § 1087-a12; 40 Ex. G. A., ch. 5, § 25.]

552. Correction of errors. The county auditor shall correct any errors or omissions in the names of candidates and any other errors brought to his knowledge before the printing of the ballots. [S., '13, § 1087-a12; 40 Ex. G. A., ch. 21, § 26.]

553. Ballot—form. The official primary election ballot shall be prepared, arranged, and printed substantially in the following form:

PRIMARY ELECTION BALLOT

(Name of Party)
of

.....Township or Precinct,Ward,
City or Town of....., County of.....,
State of Iowa.

Primary election held on the.....day
of June, 19.....

FOR UNITED STATES SENATOR

(Vote for one.)

- William K. Brown
- J. R. Wayne
-

FOR GOVERNOR

(Vote for one.)

- Howard Collins
- William Longley
-

(Followed by other elective state and district officers in order.)

FOR COUNTY AUDITOR

(Vote for one.)

- William Strong
- Robert Thompson
-

(Followed by other elective county officers in order.)

FOR DELEGATES TO COUNTY CONVENTION

(Vote for)

-
-
-
-
-

FOR TOWNSHIP CLERK

(Vote for one.)

- John H. Black
- Joseph Raymond
-

FOR TOWNSHIP TRUSTEES

(Vote for two.)

- Clarence Foster
- William Jones
- H. S. Wilson
-

(Followed by other elective township officers in order.)

FOR PARTY COMMITTEEMEN

(Vote for one man and for one woman.)

- John Doe
- Richard Roe
-
- Martha Doe
- Mary Roe.
-

[S., '13, § 1087-a14; 40 Ex. G. A., ch. 5, § 27.]

554. Printing of ballots. The ballots of each political party shall be printed in black ink, on separate sheets of paper, uniform in

color, quality, texture, and size, with the name of the political party printed at the head of said ballots, which ballots shall be prepared by the county auditor in the same manner as for the general election, except as in this chapter provided. [S., '13, § 1087-a13; 40 Ex. G. A., ch. 5, § 28.]

NOTE: Form of official ballot, see § 760.

555. Names of state candidates. The names of candidates for offices to be filled by the voters of the entire state shall be arranged and printed on the primary ballots in the order in which they are certified by the secretary of state. [S., '13, § 1087-a13; 40 Ex. G. A., ch. 5, § 29.]

556. Names of district and county candidates. The names of candidates for offices to be filled by the voters of a county, and by the voters of any district of the state composed of more than one county, shall be arranged and printed upon the primary election ballots in the following manner: The county auditor shall prepare a list of the election precincts of his county, by arranging the various townships, towns, and cities in the county in alphabetical order, and the wards or precincts of each city, town, or township in numerical order under the name of such city, town, or township. He shall then arrange the surnames of all candidates for such offices alphabetically for the respective offices for the first precinct in the list; thereafter, for each succeeding precinct, the names appearing first for the respective offices in the last preceding precinct shall be placed last, so that the names that were second before the change shall be first after the change. [S., '13, § 1087-a13; 40 Ex. G. A., ch. 5, § 30.]

557. Names of township or district candidates. The names of candidates for all offices to be filled by the voters of a territory smaller than a county shall be arranged and printed alphabetically, according to the surnames, for the respective offices. [S., '13, § 1087-a13; 40 Ex. G. A., ch. 5, § 31.]

558. Sample ballots. The county auditor shall take from the official printed ballots of each precinct ten ballots of each political party, and shall write or stamp, in red ink, near the top of each ballot, the words "sample ballot" and shall sign or stamp his official signature thereunder. Said ballots shall be delivered to the judges, but shall not be voted, received, or counted. Said judges shall, before the opening of the polls, cause said sample ballots to be posted in and about the polling places. [S., '13, § 1087-a15; 40 Ex. G. A., ch. 5, § 32.]

559. Judges and clerks. Judges and clerks of primary elections shall be selected, appointed, and shall organize, and vacancies shall be filled, as in case of general elections. Judges are authorized to administer oaths as herein-

after provided. [S. S., '15, § 1087-a5; 40 Ex. G. A., ch. 5, § 33.]

560. Expenses of primary elections. The expenses of primary elections shall be paid in the same manner as expenses of general elections. The compensation of judges and clerks shall be thirty cents per hour. [S. S., '15, § 1087-a5; 40 Ex. G. A., ch. 5, § 34.]

NOTE: Election expenses, see § 835.

561. Supplies—poll books and ballots. All necessary election supplies, including poll books, as provided by law for the general election, together with a sufficient number of official primary ballots of each party, shall be furnished for the primary election board for each precinct by the county auditor. [S., '13, § 1087-a16; 40 Ex. G. A., ch. 5, § 35.]

NOTE: Election supplies, see § 746.

562. Form of poll books. Such poll books shall contain blank spaces for the names of the candidates of the several parties for the different offices to be written in and shall be in substantially the following form:

No.	Name	Repub- lican	Demo- crat	Prohibi- tionist	Socialist
1	James Smith	X			
2	Tom Jones		X		
3	Dan Brown			X	
4	George White				X

[S., '13, § 1087-a16; 40 Ex. G. A., ch. 5, § 36.]

563. Designating party affiliation. It shall be the duty of the clerks of the primary election when entering the name of a voter to place in the poll books a cross, thus (X), in the column designating the party ticket which was given to said voter upon his application for a ticket. [S., '13, § 1087-a16; 40 Ex. G. A., ch. 5, § 37.]

564. Australian ballot. The Australian ballot system as now used in this state, except as herein modified, shall be used at said primary election. The indorsement of the judges and the facsimile of the auditor's signature shall appear upon the ballots as provided for general elections. [S., '13, § 1087-a6; 40 Ex. G. A., ch. 5, § 38.]

NOTE: Australian ballot system, see ch. 40.

565. Opening of polls. In cities where registration is required, the polls shall be open from seven o'clock a. m. to eight o'clock p. m., and in all other precincts from nine o'clock a. m. to eight o'clock p. m. [S., '13, § 1087-a6; 40 Ex. G. A., ch. 5, § 39.]

566. Voter confined to party ticket. The elector shall be allowed to vote for candidates for nomination on the ballot of the party with which he is registered as affiliated, and shall receive no other ballot. The voter shall return the ballot, folded, to one of the judges who shall deposit it in the ballot box. [S., '13, § 1087-a6; 40 Ex. G. A., ch. 5, § 40.]

567. Ballot for another party's candidate. If any primary elector write upon his ticket the name of any person who is a candidate for the same office upon some other party ticket than that upon which his name shall be so written, such ballot shall be so counted for such person only as a candidate of the party upon whose ballot his name is written, and shall in no case be counted for such person as a candidate upon any other ticket. [S., '13, § 1087-a6; 40 Ex. G. A., ch. 5, § 41.]

568. Records of party affiliation. The official records of party affiliation now existing in the office of the several county auditors of the state shall be used in the primary election of 1924. Prior to all subsequent primary elections, the county auditor shall, for each precinct, prepare two alphabetically arranged lists of all voters, with their party affiliation, as shown by the poll books of the last preceding primary election, and deliver the same to the judges at least one day prior to each primary election. All such lists shall, with the poll books, be returned by the judges to the auditor. [S., '13, § 1087-a7; 40 Ex. G. A., ch. 5, § 42.]

569. Change of party affiliation. Any elector, who, having declared his party affiliation, desires to change the same, may, not less than ten days prior to the date of any primary election, file a written declaration with the county auditor stating his change of party affiliation, and the auditor shall enter a record of such change on the poll books of the last preceding primary election in the proper column opposite the voter's name and on the voting list. [S., '13, § 1087-a8; 40 Ex. G. A., ch. 5, § 43.]

570. New voters. Any elector whose party affiliation has not, for any reason, been registered, or any elector who has changed his residence to another precinct, or a first voter or citizen of this state casting his first vote in this state, shall be entitled to vote at any primary election by declaring his party affiliation at the time of voting. [S., '13, § 1087-a8; 40 Ex. G. A., ch. 5, § 44.]

571. Challenges. Each political party shall be entitled to have two party challengers present at each polling place, to be appointed by the respective party committeemen. Any judge or clerk of the primary election or any party challenger may challenge any voter upon the grounds mentioned in section 796 and such challenge shall be determined as there provided. [S., '13, § 1087-a9; 40 Ex. G. A., ch. 5, § 45.]

572. Change of affiliation—challenge. Any elector whose party affiliation has been recorded as provided by this chapter, and who desires to change his party affiliation on the primary election day, shall be subject to challenge. If the person challenged insists that he is entitled to vote the ticket of the political party to which he has transferred his political affiliation and the challenge is not withdrawn, one of the judges shall tender to him

the following oath: "You do solemnly swear (or affirm) that you have in good faith changed your party affiliation to and desire to be a member of the party." If he take such oath he shall thereupon be given a ticket of such political party and the clerks of the primary election shall change his enrollment of party affiliation accordingly. [S., '13, § 1087-a9; 40 Ex. G. A., ch. 5, § 46.]

573. Counting ballots and preparing returns. Upon the closing of the polls the judges and clerks shall immediately:

1. Place the ballots of the several political parties in separate piles.

2. Separately count the ballots of each party, and make the correct entries thereof on the tally sheets.

3. Certify to the number of votes cast upon the ticket of each political party for each candidate for each office.

4. Seal the ballots cast on behalf of each of the parties in separate envelopes, and on the outside of such envelope write or print the names of said party's candidates for all offices and opposite each name enter the number of votes cast for such candidate in said precinct.

5. Seal all the envelopes of all political parties in one large envelope and on the outside thereof, or on a paper attached thereto, enter the number of votes cast by each party in said precinct.

6. Seal the poll books, containing the tally sheets and certificates of the election judges, in an envelope, on the outside of which are written or printed in perpendicular columns the names of the several political parties with the names of the candidates for the different offices under their party name, and opposite each candidate's name enter the number of votes cast for such candidate in said precinct.

7. Enter at the bottom of each party column on said envelope the total vote cast by said party in said precinct. [S., '13, § 1087-a17; 40 Ex. G. A., ch. 5, § 47.]

574. Delivering returns. Said judges and clerks shall deliver said poll books, tally sheets, certificates, envelopes containing ballots, and all unused supplies to the county auditor within twenty-four hours after the close of the polls. Said auditor shall carefully preserve said returns and envelopes in the condition in which received and deliver them to the county board of canvassers. [S., '13, § 1087-a17; 40 Ex. G. A., ch. 5, § 48.]

575. Messenger sent for returns. If the returns from any precinct are not delivered as provided in the preceding section, the county auditor shall forthwith send a messenger for any such missing returns, and said messenger shall be paid as provided for such services in the general election law. [S., '13, § 1087-a17; 40 Ex. G. A., ch. 5, § 49.]

NOTE: Messengers, see § 862.

576. Elector may ascertain vote cast. Any elector of the county shall have the right, before the day fixed for canvassing the returns,

to ascertain the vote cast for any candidate in any precinct in the county, as shown on the outside of the envelope containing the poll books. [S., '13, § 1087-a17; 40 Ex. G. A., ch. 5, § 50.]

577. Canvass by county board of canvassers. On the second Tuesday next following the primary election, the board of supervisors shall meet, open and canvass the returns from each voting precinct in the county, and make abstracts thereof, stating in words written at length:

1. The number of ballots cast in the county by each political party, separately, for each office.

2. The name of each person voted for and the number of votes given to each person for each different office. [S., '13, § 1087-a19; 40 Ex. G. A., ch. 5, § 51.]

578. Signing and filing of abstract. The members of the board shall sign said abstracts and certify to the correctness thereof, and file the same with the county auditor. [S., '13, § 1087-a19; 40 Ex. G. A., ch. 5, § 52.]

579. Finality of canvass. Such canvass and certificate shall be final as to all candidates for nomination to any elective county office or office of a subdivision of a county. [S., '13, § 1087-a19; 40 Ex. G. A., ch. 5, § 53.]

580. Who nominated for county office. The candidate or candidates of each political party for each office to be filled by the voters of the county having received the highest number of votes, and not less than thirty-five per cent of all the votes cast by the party for such office, shall be duly and legally nominated as the candidate of his party for such office, except that no candidate whose name is not printed on the official ballot who receives less than ten per cent of the whole number of votes cast in the county for governor on the party ticket with which he affiliates, at the last general election, shall be declared to have been nominated to any such office. [S., '13, § 1087-a19; 40 Ex. G. A., ch. 5, § 54.]

581. Who nominated for township office. The candidate or candidates of each political party for each office to be filled by the voters of any subdivision of a county having received the highest number of votes shall be duly and legally nominated as the candidate or candidates of his party for such office, except that no candidate whose name is not printed on the official primary ballot, who receives less than five per cent of the votes cast in such subdivision for governor on the party ticket with which he affiliates, at the last general election, nor less than five votes, shall be declared to have been nominated to any such office. [S., '13, § 1087-a19; 40 Ex. G. A., ch. 5, § 55.]

582. Nominee's right to place on ballot. Each candidate so nominated shall be entitled to have his name printed on the official

ballot to be voted for at the general election without other certificate. [S., '13, § 1087-a19; 40 Ex. G. A., ch. 5, § 56.]

583. Nominee certified. The said canvassing board shall separately prepare and certify a list of the candidates of each party so nominated. It shall deliver to the chairman of each party central committee for the county a copy of the list of candidates nominated by the party he represents; and shall also certify and deliver to such chairman a list of the offices to be filled by the voters of a county for which no candidate of his party was nominated because of the failure of any candidate for any such office to receive the legally required number of votes, together with the names of the candidate for each of such offices voted for at the primary election and the number of votes received by each of such candidates. [S., '13, § 1087-a19; 40 Ex. G. A., ch. 5, § 57.]

584. Recount of ballots. Any candidate whose name appears upon the official primary ballot of any voting precinct may require the board of supervisors of the county in which such precinct is situated to recount, at the time fixed for canvassing the returns of the judges of election, the ballots cast in any such precinct as to the office for which he was a candidate, by filing with the county auditor not later than the day before such meeting, a showing in writing, duly sworn to by such candidate, that fraud was committed, or error or mistake made, in counting or returning the votes cast in any such precinct as to the office for which he was a candidate. [S., '13, § 1087-a18; 40 Ex. G. A., ch. 5, § 58.]

585. Showing must be specific. The showing for such recount must be specific, and from it there must appear reasonable ground to believe that a recount of the ballots would produce a result as to the applicant's candidacy different from the returns made by the judges. [S., '13, § 1087-a18; 40 Ex. G. A., ch. 5, § 59.]

586. Recount granted. If such showing is made to the satisfaction of the board, it shall thereupon recount the ballots cast in any such precinct for the office for which the contestant was a candidate, and if the result reached by the board on the recount of the ballots as to such office be different from that returned by the judges of election, it shall be substituted therefor as the true and correct return and so regarded in all subsequent proceedings. The action of the board shall be final and no other contest of any kind shall be permitted. [S., '13, § 1087-a18; 40 Ex. G. A., ch. 5, § 60.]

587. "Candidate" defined. The term "candidate" as used in the three preceding sections shall include and apply to persons voted for as delegates and party committeemen. [S., '13, § 1087-a18; 40 Ex. G. A., ch. 5, § 61.]

588. Abstracts to secretary of state. The county board of canvassers shall also make a separate abstract of the canvass as to the

following offices and certify to the same and forthwith forward it to the secretary of state, viz.:

1. United States senator.
2. All state offices.
3. Representative in congress.
4. Senators and representatives in the general assembly. [S., '13, § 1087-a20; 40 Ex. G. A., ch. 5, § 62.]

589. Returns filed and abstracts recorded. When the canvass is concluded, the board shall deliver the original returns to the auditor, who shall file the same and record each of the abstracts above mentioned in the election book. [S. S., '15, § 1087-a21; 40 Ex. G. A., ch. 5, § 63.]

590. Publication of proceedings. The published proceedings of the canvassing board shall be confined to a brief statement of:

1. The names of the candidates nominated by the electors of the county or subdivision thereof and the offices for which they are so nominated.
2. The offices for which no nomination was made by a political party participating in the primary, because of the failure of the candidate to receive the legally required number of votes cast by the party for such office. [S. S., '15, § 1087-a21; 40 Ex. G. A., ch. 5, § 64.]

591. Canvass by state board. On the second Monday after the June primary election, the executive council shall meet as a canvassing board, and open and canvass the abstract returns received from each county in the state. The board shall make an abstract of its canvass, stating in words written at length, the number of ballots cast by each political party, separately, for each office designated in the abstracts forwarded to the secretary of state, the names of all the persons voted for, and the number of votes received by each person for each office, and shall sign and certify thereto. [S., '13, § 1087-a22; 40 Ex. G. A., ch. 5, § 65.]

592. State canvass conclusive. The canvass and certificates by the state board of canvassers shall be final as to all candidates named therein. [S., '13, § 1087-a22; 40 Ex. G. A., ch. 5, § 66.]

593. Who nominated. The candidate of each political party for each office to be filled by vote of the people having received the highest number of votes in the state or district of the state, as the case may be, provided he received not less than thirty-five per cent of all the votes cast by the party for such office, shall be duly and legally nominated as the candidate of his party for such office, except as provided in the following section. [S., '13, § 1087-a22; 40 Ex. G. A., ch. 5, § 67.]

594. Minimum requirement for nomination. A candidate whose name is not printed on the official ballot, must, in order to be nominated, receive such number of votes as will equal at least ten per cent of the whole number of votes

cast for governor at the last general election in the state, or district of the state, as the case may be, on the ticket of the party with which such candidate affiliates. [38 G. A., ch. 253, § 1; 40 Ex. G. A., ch. 5, § 68.]

595. Nominee's right to place on ballot. Each candidate so nominated shall be entitled to have his name printed on the official ballot to be voted at the general election without other certificate. [S., '13, § 1087-a22; 38 G. A., ch. 253, § 1; 40 Ex. G. A., ch. 5, § 69.]

596. Certified list of nominees. The state board of canvassers shall prepare and certify separate lists of the candidates nominated by each party, as shown by the state canvass, and deliver to the chairman of each party central committee for the state a copy of the list of candidates nominated by the party which said chairman represents. [S., '13, § 1087-a22; 40 Ex. G. A., ch. 5, § 70.]

597. Certificates in case of failure to nominate. Said state board shall, at once after completing its canvass, prepare separate certificates for each political party as to each office for which no candidate was nominated because of the failure of any candidate for any such office to receive the legally required number of votes cast by such party for such office. Such certificates shall show the names of the several candidates for each of such offices voted for at the primary election and the number of votes received by each of said candidates. [S., '13, § 1087-a22; 40 Ex. G. A., ch. 5, § 71.]

598. Delivery of certificates. The certificate provided in the last preceding section shall be sent:

1. To the chairman of the state central committee of said party, in case of offices to be filled by the voters of the entire state.
2. To the chairman, if known, of the district central committee of said party, and to each county auditor, in case of offices to be filled by the voters of any district of the state composed of more than one county.
3. To the chairman of the county central committee of said party, and to the county auditor, in case of offices to be filled by the voters of a district of the state composed of one county. [S., '13, § 1087-a22; 40 Ex. G. A., ch. 5, § 72.]

599. Messenger sent for abstracts. If returns of abstracts have not been received by the state canvassing board from all the counties by the time fixed for such state canvass, the secretary of state shall immediately send a messenger after said missing abstracts, and the said board may adjourn from time to time until said abstracts are received. [S., '13, § 1087-a22; 40 Ex. G. A., ch. 5, § 73.]

600. State returns filed and recorded. When the canvass is concluded, the board shall deliver the original abstract returns to the secretary of state, who shall file the same in

his office and record the abstracts of the canvass of the state board and certificates attached thereto in the book kept by him known as the election book. [S., '13, § 1087-a23; 40 Ex. G. A., ch. 5, § 74.]

601. Secretary of state to certify nominees. Not less than fifteen days before the general election the secretary of state shall certify to the auditor of each county, under separate party headings, the name of each person nominated as shown by the official canvass made by the executive council, or as certified to him by the proper persons when any person has been nominated by a convention or by a party committee, or by petition, his place of residence, the office to which he is nominated, and the order in which the tickets of the several political parties shall appear on the official ballot. [C., '97, § 1105; S., '13, § 1087-a23; S. S., '15, § 1105; 40 Ex. G. A., ch. 5, § 75.]

602. Certificate in case of additional nominations. If, after the foregoing certificate has been forwarded, other authorized nominations are certified to the secretary of state, including nominations to be voted on at any time at a special election, said secretary shall at once, in the form provided in the preceding section, certify said nominations to the county auditors with a statement showing the reason therefor. [S., '13, § 1087-a23; 40 Ex. G. A., ch. 5, § 76.]

603. Tie vote. In case of a tie vote resulting in no nomination for any office, or election of delegates or party committeeman, the tie shall forthwith be determined by lot by the board of canvassers, or judges of election, as the case may be. [S., '13, § 1087-a24; 40 Ex. G. A., ch. 5, § 77.]

604. Vacancies in nominations prior to convention. Vacancies in nominations made in the primary election when such vacancies occur before the holding of the county, district, or state convention, shall be filled:

1. By the county convention if the office in which the vacancy occurs is to be filled by the voters of the county.

2. By a district convention if the office in which the vacancy occurs is to be filled by the voters of a district composed of more than one county.

3. By the state convention if the office in which the vacancy occurs is to be filled by the voters of the entire state. [S., '13, §§ 1087-a24, 1087-a24a; 40 Ex. G. A., ch. 5, § 78.]

605. Failure of convention to fill. If the convention does not fill such vacancy, the same shall, except in case of vacancy in the office of United States senator, be filled by the party central committee for the county, district, or state as the case may be. [S., '13, §§ 1087-a24, 1087-a24a; 40 Ex. G. A., ch. 5, § 79.]

606. Vacancies in nominations subsequent to convention. Vacancies in nominations made in the primary election when such vacancies

occur after the holding of a county, district, or state convention, shall, except as provided in the next section, be filled by the party central committee for the county, district, or state as the case may be. [S., '13, §§ 1087-a24, 1087-a24a; 40 Ex. G. A., ch. 5, § 80.]

607. Vacancies in nomination of United States senator. Vacancies in nominations made in the primary election, for office of United States senator, when such vacancy occurs after the holding of the state convention or too late to be filled by said convention and thirty days prior to the holding of the regular November election, shall be filled by a state convention. For this purpose, the chairman of the party's state central committee shall, within ten days after said vacancy occurs, reconvene the delegates to the last preceding state convention. [S., '13, § 1087-a24a; 40 Ex. G. A., ch. 5, § 81.]

608. Vacancies in office prior to convention. Nominations occasioned by vacancies in office when such vacancies occur too late for the filing of nomination papers for candidates in the primary election, and before the holding of the county, district, or state convention, shall be made by the convention which has jurisdiction to make nominations for the office in question. [S., '13, § 1087-a24; 40 Ex. G. A., ch. 5, § 82.]

609. Vacancies in office subsequent to convention—United States senator. Nominations occasioned by vacancies in office when such vacancies occur after the holding of the county, district, or state convention, or when they occur before said convention, but too late to be made thereby, shall be made by the party central committee for the county, district, or state, as the case may be, except that when the vacancy is in the office of senator of the United States, and occurs thirty days prior to the holding of the regular November election, nomination shall be made by convention as provided in case of vacancies in nominations for such office. [S., '13, §§ 1087-a24, 1087-a24a; 40 Ex. G. A., ch. 5, § 83.]

610. Vacancies in office of representative in congress or state senator. A nomination to be voted on at a special election and occasioned by a vacancy in the office of representative in congress, or senator in the general assembly for a district composed of more than one county, shall be made by a convention duly called by the district central committee. [S., '13, § 1087-a24; 40 Ex. G. A., ch. 5, § 84.]

611. Vacancies in office of state senator or representative. A nomination to be voted on at a special election and occasioned by a vacancy in the office of representative in the general assembly, or of a senator in such assembly for a district composed of one county, shall be made by the county central committee. [S., '13, § 1087-a24; 40 Ex. G. A., ch. 5, § 85.]

612. When county convention reconvened. When a nomination is directed to be made by a district convention composed of more than one county, and the county convention in any county of the district has adjourned without selecting delegates to such convention, the county convention shall be reconvened for the purpose of making such selection. [40 Ex. G. A., ch. 5, § 86.]

613. Committee may call convention. A party central committee empowered to make a nomination to fill a vacancy, either in a nomination authorized to be made at the primary or to fill a vacancy in office, may, in lieu of exercising such right, call a convention to make such nomination. [40 Ex. G. A., ch. 5, § 87.]

614. Vacancies in nominations and in offices for subdivisions of county. Vacancies in nominations made in the primary election, and nominations occasioned by vacancies in offices, when such offices are to be filled by a territory smaller than a county shall be filled by the members of the party committee for the county from such subdivision. [S., '13, § 1087-a24; 40 Ex. G. A., ch. 5, § 88.]

615. Certification of nominations. Nominations made in case of vacancies, and nominations made by state, district, and county conventions, shall, under the name, place of residence, and postoffice address of the nominee, and the office to which he is nominated, and the name of the political party making the nomination, be forthwith certified to the proper officer by the chairman and secretary of the convention, or by the committee, as the case may be, and if such certificate is received in time, the names of such nominees shall be printed on the official ballot the same as if the nomination had been made in the primary election. [S., '13, § 1087-a24; 40 Ex. G. A., ch. 5, § 89.]

616. County convention. Each political party shall hold a county convention at the county seat on the fourth Saturday following each primary election, which convention shall convene at eleven o'clock a. m. [S., '13, § 1087-a25; 40 Ex. G. A., ch. 5, § 90.]

617. Delegates—committee to fix number. Said county convention shall be composed of delegates elected at the last preceding primary election. The number of delegates from each voting precinct shall be determined by a ratio adopted by the respective party county central committees, and a statement designating the number from each voting precinct in the county shall be filed by such committee in the office of the county auditor at least thirty days before the primary election; if not so done, the auditor shall fix the number. [S., '13, § 1087-a25; 40 Ex. G. A., ch. 5, § 91.]

618. Election of delegates. The requisite number of names of candidates of his choice for delegates to the county convention to which

each precinct is entitled shall be written, or pasted with uniform white pasters, on the blank lines upon the ballot, by the voter while in the booth, or by someone designated by a voter unable to write, after the ballots are received and before they are deposited, and the requisite number of persons from each precinct who receive the highest number of votes shall be the delegates from the precinct to the county convention. [S., '13, § 1087-a25; 40 Ex. G. A., ch. 5, § 92.]

619. Returns as to delegates and committeemen. Returns shall be made by the judges of election respecting delegates and members of the county central committee in the same manner as for other offices, except that the judges of election shall canvass the returns as to delegates and members of the county central committee, and certify the result to the auditor with the returns. [S., '13, § 1087-a25; 40 Ex. G. A., ch. 5, § 93.]

620. Notification and certificate as to delegates. The auditor shall, immediately after the final count and canvass of the votes and returns by the board of supervisors, notify the delegates and members of the county central committee who have thus been elected, of their election, and of the time and place of holding the county convention, and shall on the second Thursday following the primary election, deliver a certified list thereof to the chairmen of the respective party central committees for the county. [S., '13, § 1087-a25; 40 Ex. G. A., ch. 5, § 94.]

621. Term of office of delegates. The term of office of such delegates shall begin on the day following the final canvass of the votes by the board of supervisors, and shall continue for two years and until their successors are elected. [S., '13, § 1087-a25; 40 Ex. G. A., ch. 5, § 95.]

622. Calling convention to order—list of offices. When the delegates, or a majority thereof, or when delegates representing a majority of the precincts, thus elected, shall have assembled in the county convention, the convention shall be called to order by the chairman of the county central committee, who shall present the certified list of delegates and members of the county central committee, and a list of the offices for which no nomination was made at the primary election by reason of the failure of any candidate for any such office to receive the legally required number of votes cast by such party therefor. [S., '13, § 1087-a25; 40 Ex. G. A., ch. 5, § 96.]

623. Proxies prohibited. If any precinct shall not be fully represented the delegates present from such precinct shall cast the full vote thereof, and there shall be no proxies. [S., '13, § 1087-a25; 40 Ex. G. A., ch. 5, § 97.]

624. Duties performable by county convention. The said county convention shall:

1. Make nominations of candidates for the party for any office to be filled by the voters

of a county when no candidate for such office has been nominated at the preceding primary election by reason of the failure of any candidate for any such office to receive the legally required number of votes cast by such party therefor.

2. Make nominations in those cases where a nomination made in the primary election has become vacant before the convening of the convention.

3. Make nominations to fill vacancies in office occurring too late to file nomination papers in the primary election.

4. Elect delegates to the next ensuing regular state convention, to the state judicial convention, and to all district conventions of that year, including judicial district convention, upon such ratio of representation as may be determined by the party organization for the state, district or districts of the state, as the case may be. Delegates to district conventions need not be selected in the absence of any apparent reason therefor.

5. Elect a member of the party central committee for the senatorial and congressional districts composed of more than one county.

6. Elect the member, or members, of the judicial district central committee as required by the law relative to the nomination and election of supreme, district, and superior judges. [S., '13, § 1087-a25; 40 Ex. G. A., ch. 5, § 98.]

625. Nominations prohibited. In no case shall the county convention make a nomination for an office for which no person was voted for in the primary election of such party, except nominations to fill vacancies in office when such vacancies occurred too late for the filing of nomination papers. [S., '13, § 1087-a25; 40 Ex. G. A., ch. 5, § 99.]

626. Party committeemen and term of office. A man member and a woman member of the county central committee for each political party shall, at said primary election, be elected from each precinct. The term of office of a member shall begin immediately following the adjournment of the county convention and shall continue for two years and until his or her successor is elected and qualified, unless sooner removed by the county central committee for inattention to duty, incompetency, or failure to support the ticket nominated by the party which elected such member. [S., '13, § 1087-a25; 40 G. A., ch. 7, § 1; 40 Ex. G. A., ch. 5, § 100.]

627. Organization of central committee—vacancies. The county central committee elected in the primary election shall organize on the day of the convention, immediately following the same.

Vacancies in such committee may be filled by majority vote of the committee, but no two members thereof from the same precinct shall be of the same sex. [S., '13, § 1087-a25; 40 G. A., ch. 7, § 1; 40 Ex. G. A., ch. 5, § 101.]

628. District convention. Each political party shall hold a senatorial or congressional convention in districts composed of more than one county:

1. When no nomination was made in the primary election for the office of senator in the general assembly, or of representative in congress, as the case may be, because of the failure of any candidate to receive the legally required number of votes cast by his party for such candidates.

2. When a vacancy exists in a nomination made in the primary election.

3. When a nomination is required to fill a vacancy in either of said offices, and when said vacancy occurred after said primary election, or, if before said election, too late for the filing of nomination papers. [S., '13, § 1087-a26; 40 Ex. G. A., ch. 5, § 102.]

629. Call for district convention. The district central committee, through its chairman, shall as soon as practicable after the necessity for such convention is known, issue a call for such senatorial or congressional convention, and immediately file a copy thereof with each county auditor in the district. Said call shall state the number of delegates to which each county will be entitled, the time and place of holding the convention, and the purpose thereof. [S., '13, § 1087-a26; 40 Ex. G. A., ch. 5, § 103.]

630. Duty of county auditor. The county auditor, in case the district delegates for his county have not been selected, shall deliver a copy of said call to the chairman of the convention which selects said delegates. [S., '13, § 1087-a26; 40 Ex. G. A., ch. 5, § 104.]

631. Organization and procedure. The organization of a district convention and the procedure therein shall be substantially the same as in the state convention. [S., '13, § 1087-a26; 40 Ex. G. A., ch. 5, § 105.]

632. Nominations authorized. The convention when organized shall make nominations to meet any of the conditions named in the fourth preceding section. [S., '13, § 1087-a26; 40 Ex. G. A., ch. 5, § 106.]

633. Nominations prohibited. In no case shall any district convention of a party make a nomination for an office for which no person was voted for in the primary election of such party, except nominations to fill vacancies in office when such vacancies occurred too late for the filing of nomination papers. [S., '13, § 1087-a26; 40 Ex. G. A., ch. 5, § 107.]

634. State convention. Each political party shall, not earlier than the first nor later than the fifth Wednesday following the county convention, hold a state convention at such time and place as may be determined by the party organization. [S., '13, § 1087-a27; 40 Ex. G. A., ch. 5, § 108.]

635. Organization—proxies prohibited. The convention shall be called to order by the chairman of the state central committee, who shall thereupon present a list of delegates, as certified by the various county conventions, and effect a temporary organization. If any county shall not be fully represented, the delegates present from such county shall cast the full vote thereof, and there shall be no proxies. [S., '13, § 1087-a27; 40 Ex. G. A., ch. 5, § 109.]

636. Nominations authorized. Said state convention shall make nominations of candidates for the party for any office to be filled by the voters of the entire state:

1. When no candidate for such office has been nominated at the preceding primary election by reason of the failure of any candidate for any such office to receive the legally required number of votes cast by such party therefor.

2. When a vacancy exists in a nomination made in the primary election.

3. When a nomination is required to fill a vacancy in an office and when such vacancy occurred after the primary election, or, if before such election, too late for the filing of nomination papers.

4. Presidential electors in those years when presidential candidates are to be voted on.

5. In all cases otherwise provided by law. [S., '13, § 1087-a27; 40 Ex. G. A., ch. 5, § 110.]

637. Nominations prohibited. In no case shall the state convention of a party make a nomination for an office for which no person was voted for in the primary election of such party, except nominations to fill vacancies in office when such vacancies occurred too late for the filing of nomination papers. [S., '13, § 1087-a27; 40 Ex. G. A., ch. 5, § 111.]

638. State central committee—platform. Said convention shall elect a state central committee consisting of one man and of one woman from each congressional district, adopt a state platform, and transact such other business as may properly be brought before it. The state central committee elected at said state convention may organize at pleasure for political work as is usual and customary with such committees, and shall continue to act until succeeded by another committee duly elected. [S., '13, § 1087-a27; 40 G. A., ch. 7, § 2; 40 Ex. G. A., ch. 5, § 112.]

639. Primary elections in certain cities. This chapter shall, so far as applicable, govern the nominations of candidates by political parties for all offices to be filled by a direct vote of the people in cities of the first class and cities acting under a special charter having a population of over fifteen thousand, except all such cities as adopt a plan of municipal government which specifically provides for a nonpartisan primary election. [S., '13, § 1087-a34; 40 Ex. G. A., ch. 5, § 113.]

640. Duty of city and town officers. The duties devolving upon the county auditor and

board of supervisors, by this chapter, shall, in municipal elections, devolve upon the city auditor and city council, respectively. Said council shall meet to perform said duties within two days next following the primary election. [S., '13, § 1087-a34; 40 Ex. G. A., ch. 5, § 114.]

641. Time of holding municipal primary. Municipal primaries shall be held on the last Monday in February of the year in which general municipal elections are held. [S., '13, § 1087-a34; 40 Ex. G. A., ch. 5, § 115.]

642. Percentage of signers in municipal primary. The percentage of voters signing petitions required for printing the name of a candidate upon the official primary ballot shall be the same as is required of a candidate for a county office and shall be based upon the vote cast for mayor by the respective parties in the preceding city election. [S., '13, § 1087-a34; 40 Ex. G. A., ch. 5, § 116.]

643. Certain names not printed on ballots. The names of candidates for ward aldermen, for city precinct committeemen, and for delegates to the city convention shall not be printed upon the official primary ballot, but in each case a blank line or lines shall be provided therefor. [S., '13, § 1087-a34; 40 Ex. G. A., ch. 5, § 117.]

644. When plurality vote nominates and elects. A plurality shall nominate the party candidate for alderman and a plurality shall elect the precinct committeemen and delegates to the city convention. [S., '13, § 1087-a34; 40 Ex. G. A., ch. 5, § 118.]

645. Expense of municipal primary. The entire expense of conducting said municipal primary election shall be audited by the city council and paid by the city. [S., '13, § 1087-a34; 40 Ex. G. A., ch. 5, § 119.]

646. Misconduct of election officials—penalty. Any party committeeman or any primary election officer or public officer upon whom a duty is imposed by this chapter or by chapters herein made applicable, who shall wilfully neglect to perform any such duty, or who shall wilfully perform it in such a way as to hinder the objects thereof, or shall disclose to anyone, except as may be ordered by any court of justice, the manner in which a ballot may have been voted, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the penitentiary not to exceed five years, or by both such fine and imprisonment. [S., '13, § 1087-a31; 40 Ex. G. A., ch. 5, § 120.]

647. Bribery—illegal voting. Whoever is guilty of any of the following acts shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than six months, to wit:

1. Offering or giving a bribe, either in money or other consideration, to any elector for the

purpose of influencing his vote at a primary election.

2. Receiving and accepting such bribe by an elector entitled to vote at any primary election.

3. Making false answers to any of the provisions of this chapter relative to his qualifications and party affiliations.

4. Wilfully voting or offering to vote at a primary election by one who has not been a resident of this state for six months next preceding said primary election, or who is not twenty-one years of age, or who is not a citizen of the United States.

5. Wilfully voting or offering to vote at a primary election by one who knows himself not to be a qualified elector of the precinct where he votes or offers to vote.

6. Violating any provision of this chapter, or any provision of law made applicable to this chapter.

7. Knowingly procuring, aiding, or abetting any violation specified in this section. [S., '13, § 1087-a33; 40 Ex. G. A., ch. 5, § 121.]

648. Nominations by petition. This chapter shall not be construed to prohibit nomination of candidates for office by petition as hereafter provided in this title, but no person so nominated shall be permitted to use the name of any political party authorized or entitled under this chapter to nominate a ticket by primary vote, or that has nominated a ticket by primary vote under this chapter. [S., '13, § 1087-a29; 40 Ex. G. A., ch. 5, § 122.]

NOTE: Nominations by petition, see ch. 87.

CHAPTER 37

NOMINATIONS BY CONVENTION OR PETITION

649. Nomination by convention.

650. Certificates.

651. Nominations by petition.

652. Withdrawals.

653. Vacancies filled.

654. Objections.

655. Filing certificates and petitions.

649. Nomination by convention. Any convention of delegates, and any primary, caucus, or meeting of qualified electors, representing a political party which, at the general election next preceding, polled at least two per cent of the entire vote cast in the state, may, for the state, or any division or municipality thereof for which the same is held, make one nomination of a candidate for each office therein to be filled at the election, and any such convention, primary, caucus, or meeting, representing a political party which, at the general election next preceding, polled at least two per cent of the entire vote cast in any division or municipality of the state, may, for such division or municipality, or for any political subdivision thereof for which the same is held, make one such nomination for each office therein to be filled at the election. [C., '97, § 1098.]

650. Certificates. Certificates of nominations, made as provided in the preceding section, shall, besides containing the names of candidates, specify as to each:

1. The office to which he is nominated.

2. The party making such nomination, or political principle which he represents, expressed in not more than five words.

3. His place of residence, with the street and number thereof, if any.

In case of electors for president and vice president of the United States, the names of the candidates for president and vice president shall be added to the party or political name. Every such certificate of nomination shall be signed by the presiding officer and secretary of the convention, caucus, or meeting of qualified electors, or by the board of canvassers to which the returns of such primary election are

made, each of whom shall add to his signature his place of residence, and shall be sworn to by each signer thereof to be true to the best of his knowledge and belief, and a certificate of the oath shall be annexed to the certificate of nomination. The presiding officer and secretary of each convention, primary, caucus, or meeting shall also certify, to the officer with whom the nomination certificates are filed, the names and addresses of each of the members of the executive or central committee appointed or elected by or representing it, and the provisions, if any, made by it for filling vacancies in nominations; and this may be done in the nomination certificate, or by a separate certificate. [C., '97, § 1099; 38 G. A., ch. 86, § 1.]

651. Nominations by petition. Nominations for candidates for state offices may also be made by nomination paper or papers signed by not less than five hundred qualified voters of the state; for county, district, or other division, not less than a county, by such paper or papers signed by not less than twenty-five qualified voters, residents of such county, district, or division; and for township, city, town, or ward, by such paper or papers signed by not less than ten qualified voters, residents of such township, city, town, or ward; but the name of a candidate placed upon the ballot by any other method shall not be added by petition for the same office. Each elector so petitioning shall add to his signature his place of business and postoffice address. [C., '97, § 1100.]

652. Withdrawals. Any candidate named by either of the methods authorized in this chapter may withdraw his nomination by a written request, signed and acknowledged by

him before any officer empowered to take the acknowledgment of deeds, and filed in the office of the secretary of state thirty days, or the proper auditor twenty or clerk twelve days before the day of election, and no name so withdrawn shall be printed upon the ballot. In case of a special election to fill vacancies in office, such withdrawal papers shall be filed with the secretary of state sixteen days, and with the proper auditor or clerk twelve days, before the day of such special election. [C., '97, § 1101; S. S., '15, § 1101; 38 G. A., ch. 100, § 1; 39 G. A., ch. 105.]

653. Vacancies filled. If a candidate declines a nomination, or dies before election day, or should any certificate of nomination or nomination paper be held insufficient or inoperative by the officer with whom it may be filed, or in case any objection made to any certificate of nomination, nomination paper, or to the eligibility of any candidate therein named, is sustained by the board appointed to determine such questions as hereinafter provided, the vacancy or vacancies thus occasioned may be filled by the convention, caucus, meeting, or primary, or other persons making the original nominations, or in such a manner as such convention, caucus, meeting, or primary has previously provided. If the time is insufficient for again holding such convention, caucus, meeting, or primary, or in case no such previous provisions being made, such vacancy shall be filled by the regularly elected or appointed executive or central committee of the particular division or district representing the political party or persons holding such convention, primary, meeting, or caucus, and certified as hereinbefore provided. The certificates of nominations made to supply such vacancies shall state, in addition to the facts hereinbefore required, the name of the original nominee, the date of his death or declination of nomination, or the fact that the former nomination has been held insufficient or inoperative, and the measures taken in accordance with the above requirements for filling a vacancy, and shall be signed and sworn to by the presiding officer and secretary of the convention, caucus, meeting, or primary, or by the chairman and secretary of the committee, as the case may be. [C., '97, § 1102.]

654. Objections. All objections or other questions arising in relation to certificates of nomination or nomination papers shall be filed with the officer with whom the certificate of nomination or nomination papers to which objection is made are filed. Those with the secretary of state shall be filed not less than twenty days, and those with other officers not less than eight days, before the day of election, except that nominations to fill vacancies occurring after said time, or in case of nomination made to be voted on at a special election, objections shall be filed within three days after the filing of the certificate or nomination

papers. Objections filed with the secretary of state shall be considered by the secretary and auditor of state and attorney general, and a majority decision shall be final; but if the objection is to the certificate or nomination papers of one or more of the above named officers, said officer or officers so objected to shall not pass upon the same, but their places shall be filled, respectively, by the treasurer of state, the governor, and the superintendent of public instruction. Objections filed with the county auditor shall be considered by the county auditor, clerk of the district court, and county attorney, and a majority decision shall be final; but if the objection is to the certificate or nomination papers of one or more of the above named county officers, said officer or officers so objected to shall not pass upon such objection, but their places shall be filled, respectively, by the county treasurer, the sheriff, and county superintendent. Objections filed with the city or town clerk shall be considered by the mayor and clerk and one member of the council chosen by the council by ballot, and a majority decision shall be final; but if the objection is to the certificate or nomination papers of either of said city or town officials, he shall not pass upon said objection, but his place shall be filled by a member of the council against whom no such objection exists, chosen as above provided. When any of the above objections are made, notice shall forthwith be given to the candidate affected thereby, addressed to his place of residence as given in the certificate or nomination papers, stating that objections have been made to his certificate or nomination papers, also stating the time and place such objections will be considered. [C., '97, § 1103.]

655. Filing certificates and petitions. Certificates of nomination and nomination papers of candidates for state, congressional, judicial, and legislative offices shall be filed with the secretary of state not more than sixty nor less than forty days; those for all other offices, except in cities and towns, with the county auditors of the respective counties, not more than sixty nor less than thirty days; and for the offices in the cities and towns, with the clerks thereof, not more than forty nor less than fifteen days, before the day fixed by law for the holding of the election. Such certificates and nomination papers thus filed, and being apparently in conformity with law, shall be regarded as valid, unless objection in writing thereto shall be made, and, under proper regulations, shall be open to public inspection, and preserved by the receiving officer for not less than six months after the election is had. Any error found in such papers may be corrected by the substitution of another, executed as is required for an original nomination certificate or paper. In case of special election to fill vacancies in office, certificates of nomination or nomination papers, for nomination of candidates for office to be filled by the electors of a larger district than a county, may be filed

with the secretary of state not later than fifteen days before the time of election. Certificates of nomination or nomination papers, nominating candidates for office to be filled by the

electors of a county, may be filed with the county auditor at any time not less than twelve days before the election. [C., '97, § 1104; S. S., '15, § 1104.]

CHAPTER 38

NOMINATION AND ELECTION OF JUDGES

- 656. State judicial convention.
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- 658. Delegates.
- 659. Number.
- 660. Procedure
- 661. Nomination.
- 662. District central committee.
- 663. District judicial convention.
- 664. Call.
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- 666. Delegates.
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- 668. District judges—how elected.
- 669. Certification to secretary of state.
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- 671. Certification to county auditor.
- 672. Form of printing of ballots.
- 673. Judges of superior court.
- 674. General election laws applicable.
- 675. Nomination by petition.

656. State judicial convention. A state judicial convention of each political party shall be held not less than one nor more than two weeks after the regular state convention of such party. [38 G. A., ch. 63, § 2; 40 Ex. G. A., S. F. 23, § 1.]

657. Call. Such state judicial convention shall convene at a time and place to be fixed by the state party committee, which shall issue a call therefor in the same manner that the call for the regular state convention is issued. [38 G. A., ch. 63, § 2; 40 Ex. G. A., S. F. 23, § 2.]

NOTE: State convention, see § 634.

658. Delegates. Delegates to the state judicial convention shall be elected at, and certified by, the county conventions at the same time and in the same manner as delegates to the regular state convention, except that no person shall be elected to act as delegate to both conventions. [38 G. A., ch. 63, § 2; 40 Ex. G. A., S. F. 23, § 3.]

NOTE: Certification of delegates, see § 635.

659. Number. Each county shall be entitled to the same number of delegates at the state judicial convention that it is entitled to have at the regular state convention. [38 G. A., ch. 63, § 2; 40 Ex. G. A., S. F. 23, § 4.]

NOTE: Number of delegates, see § 624.

660. Procedure. The method of procedure, organization, and voting of delegates shall be the same in the state judicial convention as is provided for the regular state party convention. [38 G. A., ch. 63, § 2; 40 Ex. G. A., S. F. 23, § 5.]

NOTE: Organization of state convention, see § 635.

661. Nomination. The state judicial convention shall nominate candidates for the office of judge of the supreme court and may transact such other business as is proper. Such judges shall be elected at the general election

in November in the same manner as the governor is elected, except that the state board of canvassers shall canvass the returns and declare the result. [38 G. A., ch. 63, § 2; 40 Ex. G. A., S. F. 23, § 6.]

662. District central committee. In each judicial district there shall be a district central committee composed of one member from each county of such district, except that in districts composed wholly of one county there shall be three members of such committee, and in districts composed of two counties there shall be two members of such committee from the county having the larger population. Such committeemen shall be selected by the county convention in each county held in accordance with the provisions of the law relative to nominations by primary election. Vacancies in any such district committee shall be filled by the county central committee of the county where such vacancy occurs. [38 G. A., ch. 63, § 3; 40 Ex. G. A., S. F. 23, § 7.]

NOTE: Selection of judicial district central committee, see § 624.

663. District judicial convention. In each judicial district in which a judge of the district court is to be elected, a judicial convention shall be held by each political party participating in the primary election of that year. Such convention shall be held not earlier than the first, nor later than the fifth, Thursday following the date of holding the county convention. [38 G. A., ch. 63, § 3; 40 Ex. G. A., S. F. 23, § 8.]

NOTE: Time of holding county convention, see § 616.

664. Call. Not less than ten days nor more than forty days before the day fixed for holding the county convention, a call for such judicial convention to be held shall be issued by the party central committee for such district, and published in at least one newspaper of general circulation in each county in the district, which shall state, among other things,

the number of delegates each county in the district shall be entitled to, and the time and place of holding the convention. [38 G. A., ch. 63, § 3; 40 Ex. G. A., S. F. 23, § 9.]

NOTE: Time of holding county convention, see § 616.

665. Filing — publishing — presenting call. Such call shall be filed with the county auditor in each county in the district not less than five days before the date of holding the county convention as now fixed by law, and the county auditor shall attach a copy thereof to the certified list of delegates required to be delivered by him to the chairman of the county central committee of the respective political parties. [38 G. A., ch. 63, § 3; 40 Ex. G. A., S. F. 23, § 10.]

NOTE: Time of holding county convention, see § 616.

666. Delegates. Each county convention held in such judicial district shall select such number of delegates to the judicial convention as is specified for that county in the call for such judicial convention. [38 G. A., ch. 63, § 3; 40 Ex. G. A., S. F. 23, § 11.]

NOTE: Similar provision, see § 624.

667. Organization. The organization and procedure in such judicial district convention shall be the same as in the state convention. Such convention may nominate as many candidates for the office of judge of the district court as there are judges in said district to be elected at the general election to be held in the year in which such convention is held, and may transact such other business as may properly come before it. [38 G. A., ch. 63, § 3; 40 Ex. G. A., S. F. 23, § 12.]

NOTE: Organization of state convention, see § 635.

668. District judges—how elected. Judges of the district court shall be elected at the general election in the same manner as state senators are elected. [38 G. A., ch. 63, § 3; 40 Ex. G. A., S. F. 23, § 13.]

NOTE: Election of state senators, see § 518.

669. Certification to secretary of state. All nominations for the office of judge of the supreme or district court shall be certified to the secretary of state, as near as may be in the same manner that nominations for other state offices are now certified under existing law. [38 G. A., ch. 63, § 4; 40 Ex. G. A., S. F. 23, § 14.]

NOTE: Certification of nominations, see § 615.

670. Objections to certificate of nomination. Objections to the legal sufficiency of such certificate of nomination or eligibility of the candidate shall be governed by the provisions of

law of this title relative to objections to certificates of nomination by political organizations which are not political parties. [40 Ex. G. A., S. F. 23, § 17.]

NOTE: Objections, see § 654.

671. Certification to county auditor. The names of such nominees shall, at the time of certifying nominations under the primary election, be certified by the secretary of state to the officer having charge of the printing of the ballots. [38 G. A., ch. 63, § 4; 40 Ex. G. A., S. F. 23, § 15.]

NOTE: Time of certification, see § 601.

672. Form of printing of ballots. The names of such nominees shall be printed on the ballot under the proper party designation in the manner required by law for the printing of the names of candidates for state and district offices. [38 G. A., ch. 63, § 4; 40 Ex. G. A., S. F. 23, § 16.]

NOTE: Arrangement of party nominees, see § 749.

673. Judges of superior court. Judges of superior courts shall be nominated and elected in the manner provided by law for the nomination and election of other elective officers in the cities where such courts are located. [38 G. A., ch. 63, § 5; 40 Ex. G. A., S. F. 23, § 18.]

NOTE: Primary elections in certain cities, see § 639.

674. General election laws applicable. All the laws relating to the certificates of nomination, filing the same, certifying nominations to the officers having charge of the printing of the ballots, printing of the names of candidates on the official ballot, the method of withdrawal, filling vacancies, conducting general elections, canvassing the ballot, announcing the result, recounting the ballot, publishing notice of nomination and election, contesting the election, and the penalty for illegal voting, misconduct of the election officials, and the making of the sworn return, shall, so far as applicable, be the same for the election of supreme, district, and superior judges as is now provided by the general election laws for the election of state, district, county, and city officers. [38 G. A., ch. 63, § 7; 40 Ex. G. A., S. F. 23, § 19.]

675. Nomination by petition. Candidates for the offices named in this chapter may be nominated by petition as elsewhere provided in this title, but no person so nominated shall be permitted to use the name of any political party authorized under this chapter to nominate candidates for such office. [38 G. A., ch. 63, § 6; 40 Ex. G. A., S. F. 23, § 20.]

NOTE: Nominations by petition, see ch. 37.

CHAPTER 39

REGISTRATION OF VOTERS

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676. Registration required. Registration of voters shall be made for all elections, in all cities, including cities acting under special charter, having a population of six thousand or more, not counting inmates of any state institution.

Registration of voters shall not be made for school elections except as otherwise provided. [C., '73, § 599; C., '97, §§ 1076, 1078, 1131; S., '13, § 1076-a; S. S., '15, § 1076; 37 G. A., ch. 41, § 1; 38 G. A., ch. 353, § 3; 39 G. A., ch. 19, § 1; 40 Ex. G. A., H. F. 24, § 1.]

NOTE: Registration in school districts, see §§ 4204, 4207.

677. Appointment of registers. The city council shall, for each precinct in the city and on or before the sixth Monday preceding each general election, appoint one suitable person from each of the two political parties which cast the greatest number of votes at the last general election, from three names presented by each chairman of the city central political committee of such parties, to be registers of voters. [C., '73, § 599; C., '97, § 1076; S. S., '15, § 1076; 40 Ex. G. A., H. F. 24, § 2.]

678. Vacancies. If for any cause any register shall not be appointed at or before the time above mentioned, or, if appointed, shall be unable for any cause to serve, the mayor of such city shall forthwith, on similar recommendation, make such appointments and fill all vacancies. [C., '97, § 1076; S. S., '15, § 1076; 40 Ex. G. A., H. F. 24, § 3.]

679. Consolidation of precincts. All cities in which registration is required, including

cities under special charter, may, by resolution passed not less than thirty days or more than sixty days preceding any general, city, or special election, consolidate the voting precincts of the city into registration districts for the purpose of registration only and appoint registers for such registration districts and designate the place of meeting, at one of the usual voting places within the consolidated district; but such registers must be residents and electors of the registration district in which they are to serve. [38 G. A., ch. 180, § 1; 40 Ex. G. A., H. F. 24, § 4.]

680. Consolidation—books and supplies. In case of consolidation as aforesaid, the registers for the consolidated district shall be furnished with separate blank registration books for each voting precinct embraced in the consolidation, and each registration shall be entered in the books for that voting precinct of which the registering voter is a resident and in no other books. Said registers shall perform within said consolidated district all the duties which would devolve upon the several boards of registers in case there were no consolidation. [40 Ex. G. A., H. F. 24, § 5.]

681. Effect of consolidation. An order of consolidation as aforesaid shall have the effect of terminating the term of office of all registers of all precincts embraced in the consolidation, and the registers appointed to act in the consolidated district shall serve only for the election in question. [40 Ex. G. A., H. F. 24, § 6.]

682. Qualification of registers. Said registers shall be electors of the precinct in which

they are to serve, of good clerical ability, temperate, of good habits and reputation, and shall be able to speak the English language understandingly. [C., '97, § 1076; S. S., '15, § 1076; 40 Ex. G. A., H. F. 24, § 7.]

683. Oath of registers. Said registers shall qualify by taking an oath or affirmation to the effect that they will well and truly discharge all of the duties required of them by law. [C., '97, § 1076; S. S., '15, § 1076; 40 Ex. G. A., H. F. 24, § 8.]

684. Term of office and compensation. Registers shall hold their office for two years and receive compensation at the rate of three dollars for each day of eight hours engaged in the discharge of their duties. [C., '97, § 1076; S. S., '15, § 1076; 40 Ex. G. A., H. F. 24, § 9.]

685. Notice of registration. The times and places of making registration of voters shall be published by the mayor in the two leading political party papers published in such city, except no publication shall be required for a special election. If there be but one such paper published in the city, publication of notice therein shall be sufficient. [C., '73, § 597; C., '97, § 1085; 40 Ex. G. A., H. F. 24, § 10.]

686. Time of publication. The publication shall be made for a period of three days prior to the opening of the registry book, if the paper is a daily paper, and for one week, if a weekly paper, and shall call the attention of the voters to the necessity of complying with the laws with reference to registration, in order to be entitled to vote at the ensuing election. [C., '97, § 1085; 40 Ex. G. A., H. F. 24, § 11.]

687. Form of registry books. Registry books shall be substantially in the following form:

REGISTER OF VOTERS.....PRECINCT.....WARD																
Number	Residence	Name	Age	Nativity	Color	Term of Residence			Naturalized	Date of papers	Court	By act of Congress	Qualified voter	Date of application	Last preceding place of residence	Signature
						Precinct number	street number	County								
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.....
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[C., '73, § 596; C., '97, § 1077; S., '13, § 1077; 40 Ex. G. A., H. F. 24, § 12.]

688. Expenses. Said registry book and all blanks and materials necessary to carry out the provisions of this chapter shall be furnished by the city clerk and shall be printed at

the equal expense of the city and county. Registers shall be paid by the city in city elections and in all other cases by the county. [C., '97, §§ 1076, 1077; S., '13, § 1077; S. S., '15, § 1076; 40 Ex. G. A., H. F. 24, § 13.]

689. Public inspection. Registry books shall be open for public inspection and examination during the time fixed for registration. [C., '73, § 596; C., '97, § 1077; S., '13, § 1077; 40 Ex. G. A., H. F. 24, § 14.]

690. Place of meeting of registers. The registers, in case the city council fails to consolidate the voting precincts into registration districts, shall meet at the usual voting place in the precinct for which they have been appointed. In case of such consolidation, the registers shall meet at the usual voting place specified in the resolution of the city council consolidating the precincts. The meeting of the registers on election day shall be convenient to but not within one hundred feet of the voting place. [C., '73, § 597; C., '97, §§ 1077, 1082; 40 Ex. G. A., H. F. 24, § 15.]

691. Time of meeting of registers. Registers shall meet:

1. On the second Thursday prior to any general, city, or special election.
2. On the last Saturday before any such election.
3. On the day of such election. [C., '73, §§ 597, 600; C., '97, §§ 1077, 1080, 1082; S., '13, § 1077; 40 Ex. G. A., H. F. 24, § 16.]

692. Duration of meetings. At the first meeting the registers shall hold a session for two consecutive days, and in presidential years, the session shall be for three consecutive days. All sessions shall be from eight o'clock a. m. to nine o'clock p. m., except on election day, when the session shall end with the closing of the polls. [C., '73, § 597; C., '97, §§ 1077, 1080; S., '13, § 1077; 40 Ex. G. A., H. F. 24, § 17.]

693. Right of registration. Any person claiming to be a voter, or that he will be on election day, may appear before said registers in the election precinct where he claims the right to vote, and make and subscribe, under oath, the statement in said registry book. The signature of the applicant shall be made at the right-hand end of the line under the column "Signature". No person shall register at any other time or place than is designated in this chapter, except as otherwise specially provided by law. [C., '73, § 597; C., '97, §§ 1077, 1078; S., '13, § 1077; 38 G. A., ch. 353, § 4; 39 G. A., ch. 19, § 1; 40 Ex. G. A., H. F. 24, § 18.]

694. Oath. The following oath shall be administered by one of the registers to each applicant for registration:

"You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of

residence, name, place of birth, your qualifications as an elector, or voter, and your right as such to register and vote under the laws of this state." [C., '73, § 597; C., '97, § 1077; S., '13, § 1077; 40 Ex. G. A., H. F. 24, § 19.]

695. Questions propounded to applicant. The registers shall, after the administration of said oath, carefully and fully examine said applicant relative to all matters of information indicated by the registry book and, in addition:

1. Whether said applicant came into the precinct for the sole purpose of voting at said election.

2. How long he intends to reside in said precinct.

3. Such other questions as may tend to test his qualifications as a resident of the precinct, citizenship, and right to vote. [C., '73, § 597; C., '97, § 1077; S., '13, § 1077; 40 Ex. G. A., H. F. 24, § 20.]

696. Completing registration. If the applicant appears to have the right to be registered, the registers shall fill out the above prescribed form of statement, which the applicant shall sign and swear to, as above provided. [C., '73, § 597; C., '97, § 1077; S., '13, § 1077; 40 Ex. G. A., H. F. 24, § 21.]

697. Keeping registry book. The following requirements shall be observed in the making of registrations, and in the preparation and keeping of the registry book:

1. Each statement for each registrant shall be dated and consecutively numbered, commencing with the number "1" at each registration.

2. The registry book shall, at the close of each day's registration, be ruled off so as to prevent further entries.

3. The registry book shall, when not in use by the registers, be kept in the custody of the city clerk until disposed of as provided by law. [C., '97, § 1078; 40 Ex. G. A., H. F. 24, § 22.]

698. Alphabetical list of registration. The registers shall, within three days after the completion of the registration, made in the second week preceding the election, prepare two alphabetical lists of the names of all persons registered, which lists shall contain, for each person, all the information appearing on the registry book, and, in addition, the date when each person removed to such precinct from his last preceding place of residence when such removal occurred within one year. [C., '97, § 1079; 40 Ex. G. A., H. F. 24, § 23.]

699. Posting alphabetical list. One of said lists shall be forthwith conspicuously posted by the registers at the usual place of holding elections in such precinct, for inspection of the public, and the other copy shall be retained in their possession. [C., '73, § 599; C., '97, § 1079; 40 Ex. G. A., H. F. 24, § 24.]

700. Correction of registry. At the meeting on Saturday preceding the election the registers shall:

1. Revise and correct the registry book by striking therefrom the name of any person not entitled to vote at said election.

2. Add to such book, consecutively numbering them, the names of all persons applying for registration who on election day will be entitled to vote in said precinct.

3. Revise and correct the alphabetical list which is in their possession so that it will correspond to the registration to date. [C., '73, § 599; C., '97, § 1080; 40 Ex. G. A., H. F. 24, § 25.]

701. Certifying and copying alphabetical list. When the alphabetical list has been revised and corrected, it shall be certified and copied by the registers, who shall deliver, or cause to be delivered, such list and copy to the judges of the election of the proper precinct, which delivery shall be made on election day, and before the opening of the polls. [C., '73, §§ 599, 600; C., '97, § 1080; 40 Ex. G. A., H. F. 24, § 26.]

702. Division of lists. The original of said alphabetical list and the copy thereof may each be divided by the registers into not exceeding three separately bound parts. [40 G. A., ch. 8, § 1; 40 Ex. G. A., H. F. 24, § 26-a1.]

703. Use of lists at election. At the opening of the polls and before any ballot shall be received, the judges of the election shall appoint one of their number, or one of the clerks, to check the name of each voter whose name is on the alphabetical lists, to whom a ballot is delivered. [C., '97, § 1080; 40 Ex. G. A., H. F. 24, § 27.]

704. Return of alphabetical lists. The copy of the alphabetical list thus delivered shall be preserved by the judges, and returned with the vote from that precinct, and the original alphabetical list shall be returned to the city clerk. [C., '73, § 599; C., '97, § 1080; 40 Ex. G. A., H. F. 24, § 28.]

705. Hearing on corrections of lists. All proceedings of registers shall be public, and any person entitled to vote in a precinct shall have the right to be heard before them in reference to corrections of or additions to the lists of such precinct. No person shall be admitted to registry unless he appears in person, except as in this chapter provided, and, if demanded, he shall furnish to the registers such proofs of his right thereto as may by law be required by judges of election of any person offering to vote. [C., '97, § 1081; 40 Ex. G. A., H. F. 24, § 29.]

706. Registration of sick voters. If an elector is, by reason of sickness, unable to go to the place of registry on any day the registers may be in session, the registers shall, upon the filing before them, by a registered elector, of an

affidavit to that effect, visit such sick elector at his place of residence on any day when not in session, administer the proper oath, and place his name on the registry book and alphabetical list, if found entitled thereto. [C., '97, § 1081; 40 Ex. G. A., H. F. 24, § 30.]

707. Registration on election day. Registration on election day shall be granted to the following named persons and to no others:

1. To a person who was absent from the city during all the days fixed for registration.

2. To a person who, being a foreigner, has received his final papers since the last preceding day for registration.

3. To a person whose name was, on the preceding Saturday, and in the absence of such person, stricken from the registration, and who, on said election day, shall prove to the satisfaction of said registers that he is a lawfully qualified voter of said precinct. [C., '97 § 1082; 40 Ex. G. A., H. F. 24, § 31.]

708. Certificates granted on election day. Certificates of registration granted on election day shall contain:

1. All the data showing the qualification of the voter as shown by the registration.

2. The special matter showing this voter's right to such certificate under the preceding section.

3. A signed verification of all such data and matter by the applicant.

4. An indorsement by the registers to the effect that the person therein named is a qualified voter in that precinct and that he is entitled to be registered as such.

5. An affidavit of a freeholder who is a registered voter in that precinct, who shall make oath to the qualification of the applicant as a voter in that precinct. [C., '97, § 1082; 40 Ex. G. A., H. F. 24, § 32.]

709. Wrongful striking from list. If the applicant be one whose name was stricken from registration, such affidavit of said freeholder shall contain the facts showing the right of said applicant to vote in that precinct. Registration in such cases shall be made in the manner required for regular registration. [C., '97, § 1082; 40 Ex. G. A., H. F. 24, § 33.]

710. Certificates delivered to judges. Certificates of registration granted on election day shall be handed in to the judges of election when a ballot is delivered to him. The data therefrom, showing the voter's name and his qualification as a voter, shall be entered on the alphabetical lists by the judges and clerks of the election, under the appropriate headings, and the original certificate shall be returned to the city clerk, who shall carefully preserve it in the same manner and for the same time as the alphabetical list and poll book. [C., '97, § 1082; 40 Ex. G. A., H. F. 24, § 34.]

711. Registers to certify duplicate registrations. The registers, prior to each election

except presidential elections, and after completing their registration, shall certify the names of all persons by them registered to the registers of the ward or precinct of the same city, which the registration shows such persons gave as their last place of residence. [C., '97, § 1083; 40 Ex. G. A., H. F. 24, § 35.]

712. Striking off names. The registers to whom names are certified under the preceding section shall strike the names of such persons so certified from the registry lists of the ward or precinct in which they last resided, if found thereon. [C., '97, § 1083; 40 Ex. G. A., H. F. 24, § 36.]

713. New registry—how often. A new registry of voters shall be taken in each year of a presidential election. [C., '97, § 1084; 40 Ex. G. A., H. F. 24, § 37.]

714. Registration book in nonpresidential years. For all state or municipal elections, general or special, except in presidential years, the registers shall prepare a new registry book by copying from the poll book of the preceding general election all the names found therein, adding thereto those of all persons registered and voting at any subsequent election, which new registry book shall show all the facts of qualification of each voter as they appear on the last preceding registry book, and which, when thus made up, shall be used at each election until a new registry book is prepared as required by law. [C., '73, § 594; C., '97, § 1084; 40 Ex. G. A., H. F. 24, § 38.]

715. Transfer constitutes registration. Every person thus registered, as provided in the preceding section, shall be considered as entitled to vote at any election at which said registry book may be used, unless his name shall be dropped by the correction of registration, as authorized by law. [C., '97, § 1084; 40 Ex. G. A., H. F. 24, § 39.]

716. Clerk to furnish registration records to registers. The city clerk shall, on the application of the registers, deliver to them, prior to their first meeting for each election, the registry book, alphabetical list, and poll book, which they require in order to properly prepare the necessary registry book for the next ensuing election; all of which shall be returned to him when they have completed their work for such election. [C., '73, § 599; C., '97, § 1086; 40 Ex. G. A., H. F. 24, § 40.]

717. City clerk to preserve registration records. The city clerk shall carefully preserve all registry books and alphabetical lists and other papers pertaining to the registration, until destroyed as provided by law. [C., '97, § 1086; 40 Ex. G. A., H. F. 24, § 41.]

NOTE: Destruction of poll and registration books, see § 858.

718. Penalty. If any register or judge of election shall wilfully neglect or disregard any

duty imposed, or shall make, or permit to be made, any registration, statement, or list, except at the time and place and in the manner herein authorized and prescribed, or shall knowingly make, or permit to be made, any false statement as aforesaid, or if any person shall wilfully make, or authorize to be made, any

statement required to be made, false in any particular, or shall violate any of the provisions of this chapter, every such register or judge of election, person or persons, shall be guilty of a misdemeanor. [C., '97, § 1087; 40 Ex. G. A., H. F. 24, § 42.]

CHAPTER 40

METHOD OF CONDUCTING ELECTIONS

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719. Elections included. The provisions of this chapter shall apply to all elections known to the laws of the state, except school elections. [C., '97, § 1088; 40 Ex. G. A., S. F. 25, § 1.]

720. Terms defined. For the purposes of this chapter:

1. The term "general election" means any election held for the choice of national, state, judicial, district, county, or township officers.

2. The term "city election" means any municipal election held in a city or town.

3. The term "special election" means any other election held for any purpose authorized or required by law. [C., '97, § 1089; 40 Ex. G. A., S. F. 25, § 2.]

721. Election precincts. Election precincts shall, except as otherwise provided, be as follows:

1. Each township when there is no part of a city therein.

2. The portion of a township outside the limits of any city.

3. Such divisions of cities as may be fixed by the council by ordinance.

4. Each incorporated town, for town elections. [C., '51, § 245; R., '60, § 480; C., '73, §§ 501, 605; C., '97, § 1090; S., '13, § 1090; 40 Ex. G. A., S. F. 25, § 3.]

722. Change in precincts by supervisors. The board of supervisors may divide a township, or part thereof, into two or more precincts, or change or abolish such division. An order establishing precincts shall define their boundaries. [C., '73, § 603; C., '97, § 1090; S., '13, § 1090; 40 Ex. G. A., S. F. 25, § 4.]

723. City precincts. The council of a city may, from time to time, by ordinance definitely fixing the boundaries, divide the city into such number of election precincts as will best serve the convenience of the voters. [C., '97, § 1090; S., '13, § 1090; 40 Ex. G. A., S. F. 25, § 5.]

724. Power to combine township and city precincts. The board of supervisors and the council of any city of less than thirty-five hundred inhabitants, not including the inmates of any state institution, may combine any part of the township outside of such city with any or all the wards or precincts thereof as one election precinct, or change or abolish such precinct. [C., '97, § 1090; S., '13, § 1090; 40 Ex. G. A., S. F. 25, § 6.]

725. Portions of townships combined. No precinct shall contain different townships or parts thereof, except where, by reason of the existence of a village or incorporated town on or near a township line, the board of supervisors may create a voting precinct in compact form, from said town or village, and may include therein territory adjoining and adjacent to said village or town, which is situated in two or more townships. [C., '97, § 1090; S., '13, § 1090; 37 G. A., ch. 66, § 1; 40 Ex. G. A., S. F. 25, § 7.]

726. Changes in precincts. In cases contemplated in the preceding section, the board may, from time to time, make such changes in said boundaries as the convenience of the voters may require. [S., '13, § 1090; 37 G. A., ch. 66, § 1; 40 Ex. G. A., S. F. 25, § 8.]

727. Proper place of voting. No person shall vote in any precinct but that of his residence, except as provided in section 5628. [C., '73, § 605; C., '97, § 1090; S., '13, § 1090; 40 Ex. G. A., S. F. 25, § 9.]

728. Polling places for certain precincts. Polling places for precincts outside the limits of a city, but within the township, or originally within and set off as a separate township from the township in which the city is in whole or in part situated, and a polling place for a township which entirely surrounds another township containing a city, may be fixed at some room or rooms in the courthouse or in some other building within the limits of the city as the board of supervisors may provide. [C., '97, § 1091; S., '13, § 1091; 40 Ex. G. A., S. F. 25, § 10.]

729. Notice of boundaries of precincts. The board of supervisors or council shall number or name the several precincts established, and cause the boundaries of each to be recorded in the records of said board of supervisors or council, as the case may be, and publish notice thereof in some newspaper of general circulation, published in such county or city, once each week for three consecutive weeks, the last to be made at least thirty days before the next general election. The precincts thus established shall continue until changed. [C., '73, § 604; C., '97, § 1092; 40 Ex. G. A., S. F. 25, § 11.]

730. Election boards. Election boards shall consist of three judges and two clerks. Not more than two judges and not more than one clerk shall belong to the same political party or organization, if there be one or more electors of another party qualified and willing to act as such judge or clerk. Nothing in this chapter shall change or abrogate any of the provisions of law relating to double election boards. [C., '51, §§ 246, 248; R., '60, §§ 481, 483; C., '73, § 606; C., '97, § 1093; S. S., '15, § 1093; 40 Ex. G. A., S. F. 25, § 12.]

731. Judges in cities and towns. In cities and towns, the councilmen shall be judges of election; but in case more than two councilmen belonging to the same political party or organization are residents of the same election precinct, the county board of supervisors may designate which of them shall serve as judge. [C., '97, § 1093; S. S., '15, § 1093; 40 Ex. G. A., S. F. 25, § 13.]

732. Judges and clerk in township precincts. In township precincts, the clerk of the township shall be a clerk of election of the precinct in which he resides, and the trustees of

the township shall be judges of election, except that, in townships not divided into election precincts, if all the trustees be of the same political party, the board of supervisors shall determine by lot which two of the three trustees shall be judges of such precinct. [C., '51, §§ 246, 248; R., '60, §§ 481, 483; C., '73, § 606; C., '97, § 1093; S. S., '15, § 1093; 40 Ex. G. A., S. F. 25, § 14.]

733. Supervisors to choose additional members. The membership of such election board shall be made up or completed by the board of supervisors from the parties which cast the largest and next largest number of votes in said precinct at the last general election, or that one which is unrepresented. [C., '97, § 1093; S. S., '15, § 1093; 40 Ex. G. A., S. F. 25, § 15.]

734. Council to act in cities and towns. In city and town elections, the powers given in this chapter and duties herein made incumbent upon the board of supervisors shall be performed by the council. [C., '97, § 1093; S. S., '15, § 1093; 40 Ex. G. A., S. F. 25, § 16.]

735. Boards with only one voting machine. The election board in precincts using only one voting machine shall consist of three judges, only two of whom shall be of the same political party, and two of whom shall also act as clerks. [38 G. A., ch. 69, § 1; 40 Ex. G. A., S. F. 25, § 17.]

736. Vacancies occurring on election day. If, at the opening of the polls in any precinct, there shall be a vacancy in the office of clerk or judge of election, the same shall be filled by the members of the board present, and from the political party which is entitled to such vacant office under the provisions of this chapter. [C., '51, § 247; R., '60, § 482; C., '73, § 607; C., '97, § 1093; S. S., '15, § 1093; 40 Ex. G. A., S. F. 25, § 18.]

737. Boards for special elections—duty of auditor. The election board at any special election shall be the same as at the last preceding general election. In case of vacancies happening therein, the county auditor may make the appointments to fill the same when the board of supervisors is not in session. [C., '97, § 1093; S. S., '15, § 1093; 40 Ex. G. A., S. F. 25, § 19.]

738. Compensation of members. The members of election boards shall receive thirty cents per hour while engaged in the discharge of their duties. [S. S., '15, § 1093; 40 Ex. G. A., S. F. 25, § 20.]

739. Polling places. In townships the trustees, except as otherwise provided, shall provide, at the expense of the county, suitable places in which to hold all elections provided for in this chapter, and see that the same are warmed and lighted. [C., '51, §§ 222, 245; R., '60, §§ 444, 480; C., '73, §§ 391, 603; C., '97, §§ 566, 1113; 40 Ex. G. A., S. F. 25, § 21.]

740. Duty of mayor and clerk. In cities and towns, the duties placed upon the trustees by the preceding section shall be performed by the mayor and clerk. [C., '97, § 1113; 40 Ex. G. A., S. F. 25, § 21-a1.]

741. Notice of change. When a change is made from the usual place of holding elections in the township, notice of such change shall be given by posting up notices in three public places in the township, ten days prior to the day on which the election is to be held. [C., '51, § 222; R., '60, § 444; C., '73, § 391; C., '97, § 566; 40 Ex. G. A., S. F. 25, § 21-a2.]

742. Schoolhouses as polling places. In precincts outside of cities and towns the election shall, if practicable, be held in the public school building. All damage to the building or furniture shall be paid by the county. [C., '97, § 1113; 40 Ex. G. A., S. F. 25, § 22.]

NOTE: Schoolhouses as polling places, see § 4371.

743. Arrangement and number of polling places and booths. The number, arrangement, and construction of polling places and voting booths shall be as follows:

1. A guard rail shall be so constructed and placed that only such persons as are inside such rail can approach within six feet of the ballot box, or of the booths.

2. The voting booths shall be so arranged that they can only be reached by passing within said guard rail, and so that they shall be in plain view of the election officers, and both booths and ballot boxes shall be in plain view of persons outside of the guard rail.

3. Each booth shall be at least three feet square, and have three sides inclosed, the side in front to open and shut by a door swinging outward, or closed with a curtain.

4. Each side of the booth shall be seven feet high, and the door or curtain shall extend to within two feet of the floor, and shall be closed while the voter is preparing his ballot.

5. Each booth shall contain a shelf at least one foot wide, at a convenient height for writing, and shall be well lighted.

6. The number of voting booths shall not be less than one to every sixty voters or fraction thereof who voted at the last preceding election in the precinct.

7. The booths and compartments shall be so built and arranged, if possible, as to be permanent, so that after the election they may be taken down and deposited with the township, city, or town clerk, as the case may be, for safe-keeping and for future use. [C., '97, § 1113; 40 Ex. G. A., S. F. 25, § 23.]

744. Ballot boxes. The auditor shall furnish each precinct in the county, except as provided in the next section, the necessary ballot boxes with locks and keys therefor. [C., '51, § 254; R., '60, § 489; C., '73, § 614; C., '97, § 1130; S., '13, § 1130; 40 Ex. G. A., S. F. 25, § 24.]

745. Separate ballot box and ballots for township officers. When the territory of a pre-

cinct is such that one or more of the officers of a township can be legally voted for by only a part of the precinct voters, the auditor shall prepare separate ballots for such township officer or officers, and the trustees shall furnish a separate ballot box in which such special ballots shall be deposited when voted. Only such special ballots shall be placed in said special ballot box. The judges of election shall have the right to administer an oath to any person and to examine him under oath in order to determine whether he is entitled to vote for the township officer or officers. [C., '97, § 1130; S., '13, §§ 1090, 1130; 39 G. A., ch. 60, § 11; 40 Ex. G. A., S. F. 25, § 25.]

746. Auditor to furnish poll books and supplies. The auditor shall prepare and furnish to each precinct two poll books, and all other books, blanks, materials, and supplies necessary to carry out the provisions of this chapter. Each poll book shall contain a column for the names of the voters, a column for the number, and sufficient printed blank leaves to contain the entries of the oaths, certificates, and returns. [C., '51, § 255; R., '60, § 490; C., '73, § 615; C., '97, §§ 1113, 1132; 40 Ex. G. A., S. F. 25, § 26.]

747. Voting by ballot. In all elections regulated by this chapter, the voting shall be by ballots printed and distributed as hereinafter provided, except as may be otherwise specially directed by law. [C., '97, § 1097; 40 Ex. G. A., S. F. 25, § 27.]

748. All candidates on one ballot—exception. The names of all candidates to be voted for in such election precinct, except presidential electors, shall be printed on one ballot. [C., '51, § 256; R., '60, § 491; C., '73, § 616; C., '97, § 1106; S., '13, § 1106; 38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 28.]

749. Arrangement of party nominees. All nominations of any political party or group of petitioners, except as provided in the preceding section, shall be placed under the party name or title of such party or group, as designated by them in their certificates of nomination or petitions, or if none be designated, then under some suitable title, and the ballot shall contain no other names, except as provided in the following section. [C., '97, § 1106; S., '13, § 1106; 38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 29.]

750. Candidates for president in place of electors. The candidates for electors of president and vice president of any political party or group of petitioners shall not be placed on the ballot, but in the years in which they are to be elected the names of candidates for president and vice president, respectively, of such parties or group of petitioners shall be placed on the ballot, as the names of candidates for United States senators are placed thereon, under their respective party, petition, or adopted

titles for each political party, or group of petitioners, nominating a set of candidates for electors. [C., '97, § 1106; S., '13, § 1106; 38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 30.]

751. One square for president and vice president. Upon the left-hand margin of each separate column of the ballot, immediately opposite the names of the candidates for president and vice president, a single square, the sides of which shall not be less than one-fourth of an inch in length, shall be printed in front of a bracket inclosing the names of the said candidates for president and vice president. The votes for said candidates shall be counted and certified to by the election judges in the same manner as the votes for other candidates. [38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 31.]

752. United States senators. At all general elections next preceding the expiration of the term of office of United States senator, there shall be placed upon the official ballot in the proper place the names of candidates for all parties or groups of petitioners for said office that have been nominated by law. The votes for said candidates shall be counted and certified to by the election judges in the same manner as votes for other candidates. [S., '13, § 1106; 38 G. A., ch. 86, § 2; 38 G. A., ch. 353, § 2; 39 G. A., ch. 19, § 1; 40 Ex. G. A., S. F. 25, § 32.]

753. Order of arranging names. Each list of candidates for the several parties and groups of petitioners shall be placed in a separate column on the ballot, in such order as the authorities charged with the printing of the ballots shall decide, except as otherwise provided, and be called a ticket. [C., '97, § 1106; S., '13, § 1106; 38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 33.]

754. Candidates of nonparty organization. The term "group of petitioners" as used in the foregoing sections shall embrace an organization which is not a political party as defined by law. [40 Ex. G. A., S. F. 25, § 33-a.]

755. Columns to be separated. Each of the columns containing the list of candidates, including the party name, shall be separated by a distinct line. [C., '97, § 1106; S., '13, § 1106; 38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 34.]

756. Candidate's name to appear but once. The name of a candidate shall not appear upon the ballot in more than one place for the same office, whether nominated by convention, primary, caucus, or petition, except as hereinafter provided. [C., '97, § 1106; S., '13, § 1106; 38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 35.]

NOTE: Name to be repeated, see § 759.

757. Dual nomination. When two or more political parties, or when two or more political

organizations which are not political parties, or when a political party and a political organization which is not a political party, nominate the same candidate for the same office, such nominee shall forthwith designate, in writing, the political party name, or the political organization name, under which he desires to have his name printed on the official ballot for the ensuing general election; such written designation shall be filed with the officer with whom the nomination paper, or certificate of nomination by a convention or caucus, is filed and the name of such nominee shall appear on the ballot in accordance therewith. [C., '97, § 1106; S., '13, §§ 1087-a6, 1106; 38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 36.]

758. Failure to designate. If the designation referred to in the preceding section be not filed, the following rules shall govern:

1. If the nomination be by two or more political parties, the name of such nominee shall be printed under the party designation under which nomination papers were first filed in his behalf.

2. If the nomination be by a political party and also by a political organization which is

not a political party, the name of such nominee shall be printed under the name of the political party or political organization first filing nomination papers, or certificate of nomination, as the case may be.

3. If the nomination be by two or more political organizations which are not political parties, the name of such nominee shall be printed under the name of the political organization first filing a certificate of nomination of such candidate. [C., '97, § 1106; S., '13, §§ 1087-a6, 1106; 38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 37.]

759. Nominees for judge of district court. The name of a nominee for the office of judge of the district court shall be printed on said general official ballot as a candidate of each political party, political organization, or group of petitioners nominating such candidate. The bar association or convention of attorneys of any county or judicial district shall be deemed a political organization for the purpose of this section. [S., '13, § 1106; 38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 38.]

760. Form of official ballot. Said ballot shall be substantially in the following form:

- | | | | |
|---|--|---|---|
| <p>○ REPUBLICAN</p> <p><input type="checkbox"/> For President,
A.... B....,
of Ohio.</p> <p><input type="checkbox"/> For Vice President,
C.... D....,
of New York.</p> <p>For United States Senator,</p> <p><input type="checkbox"/> E.... F....,
of....County.
For Governor,</p> <p><input type="checkbox"/> G.... H....,
of....County.
For Lieutenant Governor,</p> <p><input type="checkbox"/> I.... J....,
of....County.
For Judge of Supreme Court,</p> <p><input type="checkbox"/> L.... M....,
of....County.</p> | <p>○ DEMOCRATIC</p> <p><input type="checkbox"/> For President,
N.... O....,
of Virginia.</p> <p><input type="checkbox"/> For Vice President,
P.... Q....,
of Indiana.</p> <p>For United States Senator,</p> <p><input type="checkbox"/> R.... S....,
of....County.
For Governor,</p> <p><input type="checkbox"/> T.... U....,
of....County.
For Lieutenant Governor,</p> <p><input type="checkbox"/> V.... W....,
of....County.
For Judge of Supreme Court,</p> <p><input type="checkbox"/> X.... Y....,
of....County.</p> | <p>○ PROHIBITION</p> <p><input type="checkbox"/> For President,
A.... B....,
of Maine.</p> <p><input type="checkbox"/> For Vice President,
C.... D....,
of Illinois.</p> <p>For United States Senator,</p> <p><input type="checkbox"/> E.... F....,
of....County.
For Governor,</p> <p><input type="checkbox"/> G.... H....,
of....County.
For Lieutenant Governor,</p> <p><input type="checkbox"/> I.... J....,
of....County.
For Judge of Supreme Court,</p> <p><input type="checkbox"/> L.... M....,
of....County.</p> | <p>○ UNION LABOR</p> <p><input type="checkbox"/> For President,
N.... O....,
of Idaho.</p> <p><input type="checkbox"/> For Vice President,
P.... Q....,
of Ohio.</p> <p>For United States Senator,</p> <p><input type="checkbox"/> R.... S....,
of....County.
For Governor,</p> <p><input type="checkbox"/> T.... U....,
of....County.
For Lieutenant Governor,</p> <p><input type="checkbox"/> V.... W....,
of....County.
For Judge of Supreme Court,</p> <p><input type="checkbox"/> X.... Y....,
of....County.</p> |
|---|--|---|---|

[C., '97, § 1106; S., '13, § 1106; 38 G. A., ch. 86, § 2; 40 Ex. G. A., S. F. 25, § 39.]

761. Constitutional amendment or other public measure. When a constitutional amendment or other public measure is to be voted upon by the electors, it shall be printed in full upon a separate ballot, preceded by the words, "Shall the following amendment to the constitution (or public measure) be adopted?" [C., '97, § 1106; S., '13, § 1106; 40 Ex. G. A., S. F. 25, § 40.]

762. Form of ballot. Upon the right-hand margin, opposite said words, two spaces shall be left, one for votes favoring such amendment or public measure, and the other for votes opposing the same. In one of these spaces the word "yes" or other word required by law shall be printed; in the other, the word "no" or other word required, and to the right of each space a square shall be printed to receive the voting cross. [C., '97, § 1106; S., '13, § 1106; 40 Ex. G. A., S. F. 25, § 41.]

763. General form of ballot. Ballots referred to in the two preceding sections shall be substantially in the following form:

"Shall the following amendment YES
to the constitution (or public NO
measure) be adopted?"

(Here insert in full the proposed constitutional amendment or public measure.) [C., '97, § 1106; S., '13, § 1106; 40 Ex. G. A., S. F. 25, § 42.]

764. Marking ballots on public measures. The elector shall designate his vote by a cross mark, thus, "X", placed in the proper square. [C., '97, § 1106; S., '13, § 1106; 40 Ex. G. A., S. F. 25, § 43.]

765. Notice on ballots. At the top of ballots on such public measures shall be printed the following:

"[Notice to voters. For an affirmative vote upon any question submitted upon this ballot make a cross (X) mark in the square after the word 'Yes'. For a negative vote make a similar mark in the square following the word 'No'.]" [S., '13, § 1106; 40 Ex. G. A., S. F. 25, § 44.]

766. Different measures on same ballot. If more than one constitutional amendment or public measure is to be voted upon, they shall be printed upon the same ballot, one below the other, with one inch space between the several constitutional amendments or public measures to be submitted. [S., '13, § 1106; 40 Ex. G. A., S. F. 25, § 45.]

767. Printing of ballots on public measures. All of such ballots for the same polling place shall be of the same size, similarly printed, upon yellow colored paper. On the back of each such ballot shall be printed appropriate words, showing that such ballot relates to a constitutional or other question to be submitted to the electors, so as to distinguish the said ballots from the official ballot for candidates for office, and a facsimile of the signature of the auditor

or other officer who has caused the ballot to be printed. [S., '13, § 1106; 40 Ex. G. A., S. F. 25, § 46.]

768. Indorsement and delivery of ballots. Ballots on such public measures shall be indorsed and given to each voter by the judges of election, as in case of ballots generally, and shall be subject to all other laws governing ballots for candidates, so far as the same shall be applicable. [S., '13, § 1106; 40 Ex. G. A., S. F. 25, § 47.]

769. County auditor to control printing. For all elections held under this chapter, except those of cities or towns, the county auditor shall have charge of the printing of ballots in his county, and shall cause to be placed thereon the names of all candidates which have been certified to him by the secretary of state, in the order the same appear upon said certificate, together with those of all other candidates to be voted for thereat, whose nominations have been made in conformity with law. [C., '97, § 1107; S. S., '15, § 1107; 40 Ex. G. A., S. F. 25, § 48.]

770. Candidates for township offices—when omitted. The name of a candidate for a township office shall not be placed upon the general official ballot for a precinct when the territory of said precinct is such that only a part of the precinct voters can legally vote for said candidate. In such case special ballots shall be prepared as heretofore provided. [C., '97, § 1107; S. S., '15, § 1107; 40 Ex. G. A., S. F. 25, § 49.]

771. City or town clerk to control printing. In city or town elections, the clerk shall have charge of the printing of the ballots, and shall cause to be placed thereon the names of all candidates to be voted for thereat, whose nominations have been made as provided by law. [C., '97, § 1107; S. S., '15, § 1107; 40 Ex. G. A., S. F. 25, § 50.]

772. Publication of ballot. For publication of the official ballot, forty cents for each ten lines of brier or its equivalent may be charged, the space necessarily occupied thereby being measured as if it were in brier type set solid. In no case shall the cost of publishing the official ballot exceed forty dollars for each of the two papers in which it shall be published, except in presidential years, when it shall not exceed the sum of seventy dollars for each of said papers. [C., '73, § 3832; C., '97, § 1293; S., '13, § 1293; 40 Ex. G. A., S. F. 25, § 51.]

773. Delivery of ballots to judges. In all cases the ballots shall be furnished the election judges at the polling place in each precinct not less than twelve hours before the opening of the polls on the morning of the election. [C., '97, § 1107; S. S., '15, § 1107; 40 Ex. G. A., S. F. 25, § 52.]

774. Maximum cost of printing. The cost of printing the official election ballots shall not exceed twenty-five dollars per thousand ballots or fraction thereof except in presidential years, when the cost shall not exceed thirty dollars per thousand where two thousand or more ballots are printed for a county. Where less than two thousand ballots are printed the price shall not exceed thirty dollars per thousand, except in presidential years when the price shall not exceed forty dollars per thousand or fraction thereof. [S. S., '15, § 1107; 40 Ex. G. A., S. F. 25, § 53.]

775. Method and style of printing ballots. Ballots shall be prepared as follows:

1. They shall be on plain white paper, through which the printing or writing can not be read.

2. The party name shall be printed in capital letters, not less than one-fourth of an inch in height.

3. The names of candidates shall be printed in capital letters, not less than one-eighth, nor more than one-fourth of an inch in height.

4. A square, the sides of which shall not be less than one-fourth of an inch in length, shall be printed at the beginning of each line in which the name of a candidate is printed, except as otherwise provided.

5. On the outside of the ballot, so as to appear when folded, shall be printed the words "Official ballot", followed by the designation of the polling place for which the ballot is prepared, the date of the election, and a facsimile of the signature of the auditor or other officer who has caused the ballot to be printed. [C., '97, § 1109; S., '13, § 1109; 40 Ex. G. A., S. F. 25, § 54.]

776. Vacancies certified before ballots are printed. The name supplied for a vacancy by the certificate of the secretary of state, or by nomination certificates or papers for a vacancy filed with the county auditor, or city or town clerk, shall, if the ballots are not already printed, be placed on the ballots in place of the name of the original nominee. [C., '97, § 1108; 40 Ex. G. A., S. F. 25, § 55.]

777. Vacancies certified after ballots are printed. If vacancies be certified after the ballots have been printed, new ballots, whenever practicable, shall be furnished. [C., '97, § 1108; 40 Ex. G. A., S. F. 25, § 56.]

778. Inserting name of vacancy nominee. When it may not be practicable, after a vacancy has been certified, to have new ballots printed, the election officers having charge of them shall place the name supplied for the vacancy upon each ballot used before delivering it to the judges of election. [C., '97, § 1108; 40 Ex. G. A., S. F. 25, § 57.]

779. Furnishing judges name of vacancy nominee—pasters. If said ballots have been

delivered to the judges of election before a vacancy has been certified, said auditor or clerk shall immediately furnish the name of such substituted nominee to all judges of election within the territory in which said nominee may be a candidate.

Pasters with the name of the substituted nominee thereon shall likewise be furnished the voter with his ballot when possible to do so. [C., '97, § 1108; 40 Ex. G. A., S. F. 25, § 58.]

780. Filling in name of vacancy nominee. Judges of election having charge of the ballots shall, in the case contemplated in the preceding section, place the name supplied for the vacancy upon each ballot issued before delivering it to the voter, by affixing a paster, or by writing or stamping the name thereon. [C., '97, § 1108; 40 Ex. G. A., S. F. 25, § 59.]

781. Time of printing—inspection and correction. Ballots shall be printed and in the possession of the officer charged with their distribution in time to enable him to furnish ballots to absent voters as provided by law. Said printed ballots shall be subject to the inspection of candidates and their agents. If mistakes are discovered, they shall be corrected without delay, in the manner provided in this chapter. [C., '97, § 1110; 40 Ex. G. A., S. F. 25, § 60.]

782. Number ballots delivered. The officers charged with the printing of the ballots shall cause to be delivered to the judges of election seventy-five ballots, of the kind to be voted in such precinct, for every fifty votes or fraction thereof cast therein at the last preceding election of state officers. [C., '97, § 1110; 40 Ex. G. A., S. F. 25, § 61.]

783. Packing ballots—delivery—receipts. Such ballots shall be put up in separate sealed packages, with marks on the outside, clearly designating the polling place for which they are intended and the number of ballots inclosed, and receipt therefor shall be given by the judge or judges of election to whom they are delivered, which receipt shall be preserved by the officer charged with the printing of the ballots. [C., '97, § 1110; 40 Ex. G. A., S. F. 25, § 62.]

784. Reserve supply of ballots. Any officer charged with the printing and distribution of ballots shall provide and retain at his office an ample supply of ballots, in addition to those distributed to the several voting precincts, and if at any time the ballots furnished to any precinct shall be lost, destroyed, or exhausted before the polls are closed, on written application, signed by a majority of the judges of such precinct, or signed and sworn to by one of such judges, he shall immediately cause to be delivered to such judges, at the polling place, such additional supply of ballots as may be required, and sufficient to comply with the

provisions of this chapter. [C., '97, § 1110; 40 Ex. G. A., S. F. 25, § 63.]

785. Form of reserve supply. For general elections, the supply of ballots so retained shall only equal the number provided for the precinct casting the largest vote at the preceding general election, and shall include only the portions of the various tickets to be voted for throughout the entire county, with blank spaces in which the names of candidates omitted may be written by the voter, and with blank spaces in the indorsement upon the back of such ballots, in which the name of the precinct shall be written by the judges of election. [C., '97, § 1110; 40 Ex. G. A., S. F. 25, § 64.]

786. Attorney general to furnish instructions. The attorney general shall prepare, and from time to time revise, written instructions to the voters relative to voting, and deliver such instructions to the secretary of state. Such instructions shall cover the following matters:

1. The manner of obtaining ballots.
2. The manner of marking ballots.
3. That unmarked or improperly marked ballots will not be counted.
4. The method of gaining assistance in marking ballots.
5. That any erasures or identification marks, or otherwise spoiling or defacing a ballot, will render it invalid.
6. Not to vote a spoiled or defaced ballot.
7. How to obtain a new ballot in place of a spoiled or defaced one.
8. Upon the right of an employee to absent himself for two hours for the purpose of voting, by application for leave so to do made before the day of election, without deduction from his salary or wages.

9. Any other matters thought necessary. [C., '97, § 1111; 40 Ex. G. A., S. F. 25, § 65.]

787. Copies of instructions. The secretary of state shall furnish county auditors and city clerks with copies of the foregoing instructions. [C., '97, § 1111; 40 Ex. G. A., S. F. 25, § 66.]

788. Judges furnished instructions. The county auditor and city clerk shall cause copies of the foregoing instructions to be printed in large, clear type, under the heading of "Card of Instructions", and shall furnish the judges of election with a sufficient number of such cards as will enable them to comply with the following section. [C., '97, § 1111; 40 Ex. G. A., S. F. 25, § 67.]

789. Posting instruction cards and sample ballots. The judges of election, before the opening of the polls, shall cause said cards of instructions to be securely posted as follows:

1. One copy in each voting booth.
2. Not less than four copies, with an equal number of sample ballots, in and about the polling place. [C., '97, § 1112; 40 Ex. G. A., S. F. 25, § 68.]

790. Publication of list of nominations. The county auditor shall, prior to the day of election, publish a list of all nominations made as provided by law, and to be voted for at such election, except township, city, or town officers. Such publication shall be, as near as may be, in the form in which such nominees will appear on the official ballot. Such publication shall be in two newspapers, representing, if possible, the political parties which cast at the preceding general election the largest number and the next largest number of votes. [C., '97, § 1112; 40 Ex. G. A., S. F. 25, § 69.]

791. Time of opening polls. At all elections the polls shall be opened at eight o'clock in the forenoon, except in cities where registration is required, when the polls shall be opened at seven o'clock in the forenoon, or in each case as soon thereafter as vacancies in the places of judges or clerks of election have been filled. In all cases the polls shall be closed at seven o'clock in the evening. [C., '51, § 251; R., '60, § 486; C., '73, § 611; C., '97, § 1096; S., '13, § 1096; 40 Ex. G. A., S. F. 25, § 70.]

792. Oath. Before opening the polls, each of the judges and clerks shall take the following oath: "I, A. B., do solemnly swear that I will impartially, and to the best of my knowledge and ability, perform the duties of judge (or clerk) of this election, and will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same." [C., '51, § 249; R., '60, § 484; C., '73, § 609; C., '97, § 1094; 40 Ex. G. A., S. F. 25, § 71.]

793. How administered. Any one of the judges or clerks present may administer the oath to the others, and it shall be entered in the poll books, subscribed by the person taking it, and certified by the officer administering it. [C., '51, § 250; R., '60, § 485; C., '73, § 610; C., '97, § 1095; 40 Ex. G. A., S. F. 25, § 72.]

794. Ballot furnished to voter. The judges of election of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall give his name, and, if required, his residence, to such judges, one of whom shall thereupon announce the same in a loud and distinct tone of voice. [C., '97, § 1114; 40 Ex. G. A., S. F. 25, § 73.]

795. Voting under registration. In precincts where registration is required, if such name is found on the register of voters by the officer having charge thereof, he shall likewise repeat such name in the same manner; if the name of the person desiring to vote is not found on the register of voters, his ballot shall not be received until he shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. [C., '97, § 1114; 40 Ex. G. A., S. F. 25, § 74.]

796. Challenges. Any person offering to vote may be challenged as unqualified by any judge or elector; and it is the duty of each of the judges to challenge any person offering to vote whom he knows or suspects not to be duly qualified. No judge shall receive a ballot from a voter who is challenged, until such voter shall have established his right to vote. [C., '51, § 258; R., '60, § 493; C., '73, § 619; C., '97, § 1115; 40 Ex. G. A., S. F. 25, § 75.]

797. Examination on challenge. When any person is so challenged, the judges shall explain to him the qualifications of an elector, and may examine him under oath touching his qualifications as a voter. [C., '51, § 259; R., '60, § 494; C., '73, § 620; C., '97, § 1115; 40 Ex. G. A., S. F. 25, § 76.]

798. Oath in case of challenge. If the person challenged be duly registered, or if such person is offering to vote in a precinct where registration is not required, and insists that he is qualified, and the challenge be not withdrawn, one of the judges shall tender to him the following oath:

"You do solemnly swear that you are a citizen of the United States, that you are a resident in good faith of this precinct, that you are twenty-one years of age as you verily believe, that you have been a resident of this county sixty days, and of this state six months next preceding this election, and that you have not voted at this election."

If said person takes such oath, his vote shall be received. [C., '51, § 259; R., '60, § 494; C., '73, § 620; C., '97, § 1115; 40 Ex. G. A., S. F. 25, § 77.]

799. Voter to receive one ballot—indorsement by judge. One of the judges of election shall give the voter one ballot and only one, on the back of which a judge shall indorse his initials, in such manner that they may be seen when the ballot is properly folded. No ballot without said official indorsement shall be deposited in the ballot box. The voter's name shall immediately be checked on the registry list. [C., '97, §§ 116, 117; 40 Ex. G. A., S. F. 25, § 78.]

800. Names to be entered on poll book. The name of each person, when a ballot is delivered to him, shall be entered by each of the clerks of election in the poll book kept by him, in the place provided therefor. [C., '51, § 260; R., '60, § 495; C., '73, § 621; C., '97, § 1116; 40 Ex. G. A., S. F. 25, § 79.]

801. Marking and return of ballot. On receipt of the ballot, the voter shall, without leaving the inclosed space, retire alone to one of the voting booths, and without delay mark his ballot, and, before leaving the voting booth, shall fold the same in such manner as to conceal the marks thereon, and deliver the same to one of the judges of election. The num-

ber of the voter on the poll books or register lists shall not be indorsed on the back of his ballot. [C., '51, § 257; R., '60, § 492; C., '73, § 617; C., '97, §§ 117, 119; S., '13, § 1119; 38 G. A., ch. 86, § 7; 40 Ex. G. A., S. F. 25, § 80.]

802. Depositing ballots. One of the judges of election shall at once, after receiving the ballot, in the presence of the voter, deposit such ballot in the ballot box and the voter shall quit said inclosed space as soon as he has voted. [C., '51, § 257; R., '60, § 492; C., '73, § 617; C., '97, § 1117; 40 Ex. G. A., S. F. 25, § 81.]

803. Failure to vote—return of ballot. Any voter who, after receiving an official ballot, decides not to vote, shall, before retiring from within the guard rail, surrender to the election officers the official ballot which has been given him, and such fact shall be noted on each of the poll lists. A refusal to surrender such ballot shall subject the person so offending to immediate arrest and the penalties provided in this chapter. [C., '97, § 1117; 40 Ex. G. A., S. F. 25, § 82.]

804. Prohibited ballot—taking ballot from polling place. No voter shall vote or offer to vote any ballot except such as he has received from the judges of election, nor take or remove any ballot from the polling place before the close of the poll. [C., '97, § 1117; 40 Ex. G. A., S. F. 25, § 83.]

805. Limitation on time for voting. No voter shall be allowed to occupy a voting booth already occupied by another, nor remain within said inclosed space more than ten minutes, nor to occupy a voting booth more than five minutes, in case all of said voting booths are in use and other voters waiting to occupy the same, nor to again enter the inclosed space after having voted; nor shall more than two voters in excess of the whole number of voting booths provided be allowed at any one time in such inclosed space, except by the authority of the election officers to keep order and enforce the law. [C., '97, § 1117; 40 Ex. G. A., S. F. 25, § 84.]

806. Selection of officials to assist voters. At, or before, the opening of the polls, the judges of each precinct shall select two members of the election board, of different political parties, to assist voters who may be unable to mark their ballots. [C., '97, § 1118; 40 Ex. G. A., S. F. 25, § 85.]

807. Assisting voter. Any voter who may declare upon oath that he can not read the English language, or that, by reason of any physical disability other than intoxication, he is unable to mark his ballot, shall, upon request, be assisted by said two officers, in marking said ballot. Said officers shall mark said ballot as directed by the voter, and shall thereafter give no information regarding the same. [C., '97, § 1118; 40 Ex. G. A., S. F. 25, § 86.]

808. Assistance to voter indicated on poll book. The clerks of election shall enter upon the poll lists, after the name of any elector who received such assistance in marking his ballot, a memorandum of the fact. [C., '97, § 1118; 40 Ex. G. A., S. F. 25, § 87.]

809. Voting mark. The voting mark shall be a cross which shall be placed in the circle at the head of a ticket, or in the squares opposite the names of candidates. [C., '97, §§ 1119, 1121; S., '13, §§ 1119, 1121; 38 G. A., ch. 86, § 7; 40 Ex. G. A., S. F. 25, § 88.]

810. But one vote for same office except in groups. No voter shall vote for more than one candidate for the same office, nor for a greater number of candidates for two or more offices of the same class than there are offices of such class to be filled at such election. [C., '97, § 1120; S., '13, § 1120; 38 G. A., ch. 86, § 8; 40 Ex. G. A., S. F. 25, § 89.]

811. How to mark a straight ticket. If the names of all the candidates for whom a voter desires to vote appear upon the same ticket, and he desires to vote for all candidates whose names appear upon such ticket he may do so in any one of the following ways:

1. He may place a cross in the circle at the top of such ticket without making a cross in any square beneath said circle.

2. He may place a cross in the square opposite the name of each such candidate without making any cross in the circle at the top of such ticket.

3. He may place a cross in the circle at the top of such ticket and also a cross in any or all of the squares beneath said circle. [C., '97, §§ 1119, 1120; S., '13, §§ 1119, 1120; 38 G. A., ch. 86, §§ 7, 8; 40 Ex. G. A., S. F. 25, § 90.]

812. Voting part of ticket only. If the names of all the candidates for whom the voter desires to vote appear upon a single ticket but he does not desire to vote for all the candidates whose names appear thereon, he shall place a cross in the square opposite the name of each such candidate for whom he desires to vote without making any cross in the circle at the top of such ticket. [C., '97, §§ 1119, 1120; S., '13, §§ 1119, 1120; 38 G. A., ch. 86, §§ 6, 7; 40 Ex. G. A., S. F. 25, § 91.]

813. Group candidates for offices of same class. Where two or more offices of the same class are to be filled at the same election, and all of the candidates for such offices, for whom the voter desires to vote, appear upon his party ticket at the top of which he has marked a cross in the circle, he need not otherwise indicate his vote for such candidates; but if the name of any candidate for whom he desires to vote for such office appears upon a different ticket, then as to such group of candidates the cross in the circle does not apply and to indicate his choice the voter must place a cross

in the square opposite the name of each such candidate for whom he desires to vote whether the same appears under such marked circle or not. [C., '97, §§ 1119, 1120; S., '13, §§ 1119, 1120; 38 G. A., ch. 86, §§ 6, 7; 40 Ex. G. A., S. F. 25, § 92.]

814. How to mark a mixed ticket. If the names of all candidates for whom a voter desires to vote do not appear upon the same ticket, he may indicate the candidates of his choice by marking his ballot in any one of the following ways:

1. He may place a cross in the circle at the top of a ticket on which the names of some of the candidates for whom he desires to vote appear and also a cross in the square opposite the name of each other candidate of his choice, whose name appears upon some ticket other than the one in which he has marked the circle at the top.

2. He may place a cross in the square opposite the name of each candidate for whom he desires to vote without placing any cross in any circle. [C., '97, §§ 1119, 1120; S., '13, §§ 1119, 1120; 38 G. A., ch. 86, §§ 6, 7; 40 Ex. G. A., S. F. 25, § 93.]

815. Counting ballots. The ballots shall be counted according to the markings thereon, respectively, as provided in the six preceding sections, and not otherwise. If, for any reason, it is impossible to determine from a ballot, as marked, the choice of the voter for any office, such ballot shall not be counted for such office. When there is a conflict between the cross in the circle on one ticket and the cross in the square on another ticket on the ballot, the cross in the square shall be held to control, and the cross in the circle in such case shall not apply as to that office. Any ballot marked in any other manner than as authorized in the six preceding sections, and in such manner as to show that the voter employed such mark for the purpose of identifying his ballot, shall be rejected. [C., '97, § 1120; S., '13, § 1120; 38 G. A., ch. 86, § 8; 40 Ex. G. A., S. F. 25, § 94.]

816. Writing name on ballot. The voter may also insert in writing in the proper place the name of any person for whom he desires to vote and place a cross in the square opposite thereto. The writing of such name without making a cross opposite thereto, or the making of a cross in a square opposite a blank without writing a name therein, shall not affect the validity of the remainder of the ballot. [C., '97, § 1119; S., '13, § 1119; 38 G. A., ch. 86, § 7; 40 Ex. G. A., S. F. 25, § 95.]

817. Spoiled ballots. Any voter who shall spoil his ballot may, on returning the same to the judges, receive another in place thereof, but no voter shall receive more than three ballots, including the one first delivered to him. None but ballots provided in accordance with the provisions of this chapter shall be counted.

[C., '97, § 1121; S., '13, § 1121; 40 Ex. G. A., S. F. 25, § 96.]

818. Defective ballot does not nullify vote. No ballot properly marked by the voter shall be rejected:

1. Because of any discrepancy between the printed ballot and the nomination paper, or certificate of nomination, or certified abstract of the canvassing board.

2. Because of any error in stamping or writing the indorsement thereon by the officials charged with such duties.

3. Because of any error on the part of the officer charged with such duty in delivering the wrong ballots at any polling place. [C., '97, § 1122; 40 Ex. G. A., S. F. 25, § 97.]

819. Defective ballots—how counted. Said defective ballots shall be counted for the candidate or candidates for such offices named in the nomination papers, certificate of nomination, or certified abstract. [C., '97, § 1122; 40 Ex. G. A., S. F. 25, § 98.]

820. Wrong ballots—how counted. Said wrong ballots shall be counted as cast for all candidates for whom the voter had the right to vote, and for whom he did vote. [C., '97, § 1122; 40 Ex. G. A., S. F. 25, § 99.]

821. Persons permitted at polling places. The following persons shall be permitted to be present at and in the immediate vicinity of the polling places, provided they do not solicit votes:

1. Any person who is by law authorized to perform or is charged with the performance of official duties at the election.

2. Any number of persons, not exceeding three from each political party having candidates to be voted for at such election, to act as challenging committees, who are appointed and accredited by the executive or central committee of such political party or organization.

3. Any number of persons not exceeding three from each of such political parties, appointed and accredited in the same manner as above prescribed for challenging committees, to witness the counting of ballots. [C., '97, § 1124; 40 Ex. G. A., S. F. 25, § 100.]

822. When judges and clerks may order arrest. Any judge or clerk of election shall order the arrest of any person who conducts himself in a noisy, riotous, tumultuous or disorderly manner at or about the polls, so as to disturb the election, or insults or abuses the judges or clerks of election, or commits a breach of the peace, or violates any of the provisions of this chapter. [C., '51, § 253; R., '60, § 488; C., '73, § 613; C., '97, § 1128; 40 Ex. G. A., S. F. 25, § 101.]

823. Judges may commit disorderly person. Any constable or special policeman may forthwith arrest such person and bring him before the judges of election, and they, by a warrant

under their hands, may commit him to the jail of the county for a term not exceeding twenty-four hours, but they shall permit him to vote. [C., '51, § 253; R., '60, § 488; C., '73, § 613; C., '97, § 1128; 40 Ex. G. A., S. F. 25, § 102.]

824. Prohibited acts on election day. The following acts, except as specially authorized by law, are prohibited on any election day:

1. Loitering, congregating, electioneering, treating voters, or soliciting votes, during the receiving of the ballots, within one hundred feet of any outside door of any building affording access to any room where the polls are held, or of any outside door of any building affording access to any hallway, corridor, stairway, or other means of reaching the room where the polls are held.

2. Interrupting, hindering, or opposing any voter while in or approaching the polling place for the purpose of voting.

3. A voter allowing any person to see how his ballot is marked.

4. A false statement by a voter as to his ability to mark his ballot.

5. Interfering or attempting to interfere with a voter when inside the inclosed space, or when marking his ballot.

6. Endeavoring to induce a voter to show how he marks, or has marked his ballot.

7. Marking, or causing in any manner to be marked, on any ballot, any character for the purpose of identifying such ballot. [C., '97, §§ 1124, 1134; S., '13, § 1137-a5; 40 Ex. G. A., S. F. 25, § 103.]

825. Penalty. Any violation of the provisions of the preceding section shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment for not less than ten days nor more than thirty days in the county jail, or by both fine and imprisonment. [C., '97, § 1134; 40 Ex. G. A., S. F. 25, § 104.]

826. Employees entitled to time to vote. Any person entitled to vote at a general election shall, on the day of such election, be entitled to absent himself from any services in which he is then employed for a period of two hours, between the time of opening and closing the polls, which period may be designated by the employer, and such voter shall not be liable to any penalty, nor shall any deduction be made from his usual salary or wages, on account of such absence, but application for such absence shall be made prior to the day of election. [C., '97, § 1123; 40 Ex. G. A., S. F. 25, § 105.]

827. Intimidation of employees by employer. Any employer who shall refuse to an employee the privilege conferred by the preceding section, or shall subject such employee to a penalty or reduction of wages because of the exercise of such privilege, or shall in any manner attempt to influence or control such employee as to how he shall vote, by offering any reward, or threatening discharge from employment, or otherwise intimidating or attempting to in-

timidate such employee from exercising his right to vote, shall be punished by a fine of not less than five dollars nor more than one hundred dollars. [C., '97, § 1123; 40 Ex. G. A., S. F. 25, § 106.]

828. Acts declared unlawful. It shall be unlawful for any person, prior to the closing of the polls, wilfully to do any of the following acts:

1. Destroy, deface, tear down, or remove any list of candidates, card of instruction, or specimen ballot posted as provided by law.

2. Remove or destroy any of the supplies or articles furnished for the purpose of enabling voters to prepare their ballots. [C., '97, § 1135; 40 Ex. G. A., S. F. 25, § 107.]

829. Penalty. Any person violating the preceding section shall be fined not less than ten dollars nor more than one hundred dollars, or imprisoned not less than ten nor more than thirty days, or be punished by both said fine and imprisonment. [C., '97, § 1135; 40 Ex. G. A., S. F. 25, § 108.]

830. Official neglect or misconduct. Any public officer upon whom a duty is imposed by this chapter, who shall wilfully neglect to perform such duty, or who shall wilfully perform it in such a way as to hinder the object thereof, or shall disclose to anyone, except as may be ordered by any court of justice, the manner in which any ballot may have been voted, shall be punished by a fine of not less than five dollars nor more than one thousand dollars, or by imprisonment in the penitentiary not less than one nor more than five years, or by both fine and imprisonment. [C., '97, § 1137; 40 Ex. G. A., S. F. 25, § 109.]

831. Special police. The city council shall detail and employ, at each election, from citizens, or from the police force of the city, from two to four special policemen for each voting precinct and fully empower them for the special occasion of such election to prevent violations of this chapter, or of any other lawful command made under this chapter. Said special police shall be men of good character and reputation and shall be appointed on the nomination of the principal political committee of each political party recognized as the two leading parties, and in equal numbers from each of said political parties. No other peace officer than those above named shall exercise his authority for preserving order at or within one hundred feet of such voting places, unless called in by an emergency. If no policeman be in attendance, the judges of election may appoint one or more specially, by writing, who shall have all the powers of such special policeman. [C., '97, § 1125; 40 Ex. G. A., S. F. 25, § 110.]

832. Constables. Except in voting precincts within any city, any constable of the township, who may be designated by the judges of election, shall attend at the place of elec-

tion; if none attend, the judges of the election may, in writing, specially appoint one or more, who shall have all the powers of a regular constable. [C., '51, § 252; R., '60, § 487; C., '73, § 612; C., '97, § 1126; 40 Ex. G. A., S. F. 25, § 111.]

833. Preserving order. All special policemen and constables are authorized and required to preserve order and peace at all places of election, and such special policemen, constables, and all other persons are authorized and required to obey the lawful orders and commands of said judges of election given to prevent violations of this chapter. [C., '51, § 252; R., '60, § 487; C., '73, § 612; C., '97, § 1127; 40 Ex. G. A., S. F. 25, § 112.]

834. Compensation of police. The special policemen appointed under the provisions of this chapter, when not appointed from the police force of the city, shall be entitled to receive two dollars a day for their services. [S., '13, § 1129; 40 Ex. G. A., S. F. 25, § 113.]

835. Election expenses. The expense of necessary booths, guard rails, and ballot boxes shall be paid by the county. All other election expenses authorized by law shall be paid by the county in case of general elections or special elections held by the county, and in all other cases by the city, town, or other municipality in which the election is held. [C., '97, § 1129; S., '13, § 1129; 40 Ex. G. A., S. F. 25, § 114.]

836. Penalty. Any person violating or attempting to violate any provisions or requirements of this chapter, or failing or refusing to comply with any order or command of an election officer, made in pursuance of the provisions of this chapter, shall, unless otherwise provided, be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment of not less than twenty days, nor more than six months, in the county jail. [C., '97, § 1133; 40 Ex. G. A., S. F. 25, § 115.]

837. Promise of position prohibited. It shall be unlawful for any candidate for any office to be voted for at any primary, general, municipal, or special election, prior to his nomination or election, to promise, either directly or indirectly, to support or use his influence in behalf of any person or persons for any position, place, or office, or to promise directly or indirectly to name or appoint any person or persons to any place, position, or office in consideration of any person or persons supporting him or using his, her, or their influence in securing his or her nomination, election, or appointment. [S., '13, § 1134-a; 40 Ex. G. A., S. F. 25, § 116.]

838. Promise of influence prohibited. It shall be unlawful for any person to solicit from any candidate for any office to be voted

for at any primary, municipal, general, or special election, or any candidate for appointment to any public office, prior to his nomination, election, or appointment, a promise, directly or indirectly, to support or use his or her influence in behalf of any person or persons for any position, place, or office, or a promise either directly or indirectly to name or appoint any person or persons to any place, position, or office in consideration of any person or persons supporting him or her, or using his, her, or their influence in securing his or her nomi-

nation, election, or appointment. [S., '13, § 1134-b; 40 Ex. G. A., S. F. 25, § 117.]

839. Penalty. Any person violating any of the provisions of the two preceding sections shall be deemed guilty of a misdemeanor and punished by a fine of not less than fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months. [S., '13, § 1134-c; 40 Ex. G. A., S. F. 25, § 118.]

CHAPTER 41

CANVASS OF VOTES

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840. Canvass by judges. When the poll is closed, the judges shall forthwith, and without adjournment:

1. Publicly canvass the vote, and credit each candidate with the number of votes counted for him.

2. Ascertain the result of the vote.

3. Compare the poll lists and correct errors therein.

4. Cause each clerk to keep a tally list of the count.

[C., '51, §§ 261, 266; R., '60, §§ 496, 501; C., '73, §§ 622, 626; C., '97, § 1138; 40 Ex. G. A., H. F. 26, § 1.]

841. When judges declare election. The candidate receiving the highest number of votes, if for an office in that precinct alone, shall be declared elected, and the judges shall issue certificates accordingly. [C., '97, § 1138; 40 Ex. G. A., H. F. 26, § 2.]

842. Double or defective ballots. If two or more marked ballots are so folded together as to appear to be cast as one, the judges shall indorse thereon "Rejected as double". Such ballots shall not be counted, but shall be folded together and kept as hereinafter directed. Every ballot not counted shall be indorsed "Defective" on the back thereof. [C., '51, § 262; R., '60, § 497; C., '73, § 623; C., '97, § 1139; 40 Ex. G. A., H. F. 26, § 3.]

843. Ballots objected to. Every ballot objected to by a judge or challenger, but counted, shall be indorsed on the back thereof "Objected to", and there shall also be indorsed thereon, and signed by the judges, a statement as to how it was counted. [C., '97, § 1139; 40 Ex. G. A., H. F. 26, § 4.]

844. Disputed ballots returned separately. All ballots indorsed as required by the two preceding sections shall be inclosed and securely sealed in an envelope, on which the judges

shall indorse "Disputed ballots", with a signed statement of the precinct in which, and date of the election at which, they were cast. [C., '97, § 1139; 40 Ex. G. A., H. F. 26, § 5.]

845. Ballots in excess of poll list. If the ballots for any office exceed the number of the voters in the poll lists, such fact shall be certified, with the number of the excess, in the return. [C., '51, § 263; R., '60, § 498; C., '73, § 627; C., '97, § 1140; 40 Ex. G. A., H. F. 26, § 6.]

846. Error on county office—township office. If, in case of such excess, the vote of the precinct where the error occurred would change the result as to a county office if the person appearing to be elected were deprived of so many votes, then the election shall be set aside as to him in that precinct, and a new election ordered therein; but no person residing in another precinct at the time of the general election shall be allowed to vote at such special election.

If the error occurs in relation to a township office, the trustees may order a new election or not, in their discretion. [C., '51, § 263; R., '60, § 498; C., '73, § 627; C., '97, § 1140; 40 Ex. G. A., H. F. 26, § 7.]

847. Error on state or district office—tie vote. If the error be in relation to a district or state office, it shall be certified with the number of the excess to the state canvassers. If the error affects the result of the election, the canvass shall be suspended and a new vote ordered in the precinct where the error occurred. When there is a tie vote due to such an excess, there shall be a new election. No person residing in another precinct at the time of the general election shall be allowed to vote at such special election. When the new vote is taken and returned, the canvass shall be completed. [C. '51, § 263; R., '60, § 498; C., '73, § 627; C., '97, § 1140; 40 Ex. G. A., H. F. 26, § 8.]

848. Return of ballots not voted. Ballots not voted, or spoiled by voters while attempting to vote, shall be returned by the judges of election to the officer or authorities charged with their printing and distribution, and a receipt taken therefor, and they shall be preserved for six months. [C., '51, § 269; R., '60, § 504; C., '73, § 630; C., '97, § 1141.]

849. Record of ballots. Such officer shall keep a record of the number of ballots delivered for each polling place, the name of the person to whom, and the time when, delivered, and enter upon such record the number and character of the ballots returned, with the time when and the person by whom they are returned. [C., '97, § 1141.]

850. Proclamation of result. When the canvass is completed one of the judges shall publicly announce the total number of votes received by each of the persons voted for, the office for which he is designated, as announced

by the clerks, and the number of votes for, and the number of votes against, any proposition which shall have been submitted to a vote of the people. [C., '97, § 1142; 40 Ex. G. A., H. F. 26, § 9.]

851. Return and preservation of ballots. Immediately after making such proclamation, and before separating, the judges shall fold in two folds, and string closely upon a single piece of flexible wire, all ballots which have been counted by them, except those indorsed "Rejected as double", "Defective", or "Objected to", unite the ends of such wire in a firm knot, seal the knot in such a manner that it cannot be untied without breaking the seal, inclose the ballots so strung in an envelope, and securely seal such envelope. The judges shall at once return all the ballots to the officer from whom they were received, who shall carefully preserve them for six months. [C., '51, § 269; R., '60, § 504; C., '73, § 630; C., '97, § 1142; 40 Ex. G. A., H. F. 26, § 10.]

852. Destruction of general election ballots. If at the expiration of six months no contest is pending, the officer having the ballots in custody, without opening the package in which they have been inclosed, shall destroy the same by burning, in the presence of two electors, one from each of the two leading political parties, who shall be designated by the chairman of the board of supervisors, or, in municipal elections, by the mayor of the city or town. [C., '97, § 1143; S., '13, § 1143; 40 Ex. G. A., H. F. 26, § 11.]

853. Destruction of primary election ballots. The ballots cast at a primary election, with the nomination papers, shall, where no contest is pending, be destroyed ten days prior to the holding of the general election following the primary election at which said ballots were cast. [C., '97, § 1143; S., '13, §§ 1087-a10, 1143; 40 Ex. G. A., H. F. 26, § 12.]

854. Destruction in abeyance pending contest. If a contest is pending, the ballots shall be kept until the contest is finally determined, and then so destroyed. [C., '97, § 1143; S., '13, § 1143; 40 Ex. G. A., H. F. 26, § 13.]

855. Return of board. A return shall be made in each poll book, giving, in words written at length, the whole number of ballots cast for each officer, except those rejected, the name of each person voted for, and the number of votes given to each person for each different office; which return shall be signed by the judges, and be substantially as follows:

At an election at.....in.....township, or in.....precinct of.....township, in.....county, state of Iowa, on the.....day of.....A. D....., there were.....ballots cast for the office of.....of which
 A.....B.....had.....votes.
 C.....D.....had.....votes.
 (and in the same manner for any other officer).

A true return. L..M.. }
 N..O.. } Judges of Election.
 P..Q.. }

Attest: R..S.. }
 T..U.. } Clerks of Election.

[C., '51, §§ 267, 303; R., '60, §§ 502, 537; C., '73, §§ 628, 661; C., '97, § 1144.]

856. Return of poll book and registration book. In each precinct, one of the poll books containing the aforesaid signed and attested return, and one of the registration books, if any, shall be delivered by one of the judges within two days to the county auditor. [C., '51, § 268; R., '60, §§ 333, 503, 1131; C., '73, §§ 503, 629; C., '97, § 1145; 40 Ex. G. A., H. F. 26, § 14.]

857. Return of remaining poll and registration books. The other of said poll books and the other registration book, if any, shall be forthwith delivered by one of the judges to the township, city, or town clerk, depending on whether the precinct is a township, city, or town precinct. [C., '51, § 268; R., '60, §§ 333, 503, 1131; C., '73, §§ 503, 629; C., '97, § 1145; 40 Ex. G. A., H. F. 26, § 15.]

858. Preservation of books. The receiving officer shall file said books, and the registry books and lists and other papers pertaining to registration, in his office, and preserve the same for three years and until the determination of any contest then pending, after which they shall be destroyed. [C., '51, § 268; R., '60, §§ 333, 503, 1131; C., '73, §§ 503, 629; C., '97, § 1145; 40 Ex. G. A., H. F. 26, § 16.]

859. Canvass of returns for city, town, and township officers. If there are two or more precincts in any township, city, or ward, the trustees and clerk, or the mayor and clerk, as the case may be, shall, on the day after the election, meet and canvass the returns from all precincts for votes cast for officers to be elected by such township, city, or ward. [R., '60, § 1131; C., '73, §§ 502, 631; C., '97, § 1146; 40 Ex. G. A., H. F. 26, § 17.]

860. Abstracts of votes—certificates of election. The returns shall be opened in the presence of all the canvassers, and an abstract of votes made and signed by them, and the result declared, and a certificate of election signed by them giving the candidates elected. If the mayor shall have been a candidate at such election, a justice of the peace of the county, selected by the clerk, shall act with him in making the canvass. [R., '60, § 1131; C., '73, §§ 503, 631; C., '97, § 1146; 40 Ex. G. A., H. F. 26, § 18.]

861. Notice to candidate of his election. Notice of the result of the election of township, city, and town officers shall be given by the township, city, or town clerk, as the case may be, within five days thereafter by mailing

notice to each person who has been declared elected, which notice shall specify the office to which such person has been elected and require him to appear before the proper officer and qualify according to law. [C., '51, § 317; R., '60, § 548; C., '73, § 633; C., '97, § 1147; 40 Ex. G. A., H. F. 26, § 19.]

NOTE: Qualification by public officers, see ch. 53.

862. Messengers for missing returns. The county auditor shall, on the fourth day following an election, send messengers for all returns not then received by him. The expense of securing such returns shall be paid by the county. [C., '51, § 270; R., '60, § 505; C., '73, § 634; C., '97, § 1148; 40 Ex. G. A., H. F. 26, § 20.]

NOTE: Mileage paid messengers, see § 886.

863. Canvass by board of supervisors. At their meeting on the Monday after the general election, at twelve o'clock, noon, the board of supervisors shall open and canvass the returns, and make abstracts, stating, in words written at length, the number of ballots cast in the county for each office, the name of each person voted for, and the number of votes given to each person for each different office. [C., '51, §§ 271, 304, 305; R., '60, §§ 335, 506, 538, 539; C., '73, §§ 635, 662; C., '97, § 1149.]

864. Abstract of votes. The abstract of the votes for each of the following classes shall be made on a different sheet:

1. President and vice president of the United States.
2. Governor and lieutenant governor.
3. All state officers not otherwise provided for.
4. Representatives in congress.
5. Senators and representatives in the general assembly for the county alone.
6. Senators in the general assembly by districts comprising more than one county.
7. Judges of the district court.
8. County officers.
9. Senators in the congress of the United States. [C., '51, §§ 272, 304, 305; R., '60, §§ 507, 538, 539; C., '73, §§ 636, 662; C., '97, § 1150; S., '13, § 1150; 38 G. A., ch. 86, § 3.]

865. Duplicate abstracts. All abstracts of votes, except the abstracts of votes for county officers, shall be made in duplicate, and signed by the board of county canvassers. One of said abstracts shall be forwarded to the secretary of state, and the other filed by the county auditor. [C., '51, §§ 272, 304, 305; R., '60, §§ 507, 538, 539; C., '73, §§ 637, 662; C., '97, § 1151; S., '13, § 1151; 38 G. A., ch. 86, § 4; 40 Ex. G. A., H. F. 26, § 21.]

866. Declaration of election. Each abstract of the votes for such officers as the county alone elects, except district judges, and senators and representatives in the general assembly, shall contain a declaration of whom the canvassers

determine to be elected. [C., '51, § 275; R., '60, § 509; C., '73, § 639; C., '97, § 1152; 40 Ex. G. A., H. F. 26, § 22.]

867. Returns filed. When the canvass is concluded, the board shall deliver the original returns to the auditor, who shall file the same, and record each of the abstracts above mentioned in the election book. [C., '51, § 276; R., '60, §§ 335, 510; C., '73, § 640; C., '97, § 1154.]

868. Certificate of election. When any person is thus declared elected, there shall be delivered to him a certificate of election, under the official seal of the county, in substance as follows:

STATE OF IOWA, }
County. }

At an election holden in said county on the day of, A. D., A..... B..... was elected to the office of of the said county for the term of years from the day of, A. D. (or if he was elected to fill a vacancy, say for the residue of the term ending on the day of, A. D.), and until his successor is elected and qualified.

C..... D.....,
 President of Board of Canvassers.

Witness, E..... F.....,
 County Auditor (clerk).

Such certificate shall be presumptive evidence of his election and qualification. [C., '51, § 277; R., '60, §§ 511, 514; C., '73, § 641; C., '97, § 1155.]

869. Abstracts forwarded to secretary of state. The auditor shall, within ten days after the election, forward to the secretary of state, in separate, securely sealed envelopes, one of the said duplicate abstracts of votes for each of the following offices:

1. President and vice president of the United States.
2. Governor and lieutenant governor.
3. United States senator.
4. Representative in congress.
5. Supreme and district judges.
6. Senators and representatives in the general assembly for the county alone.
7. Senators in the general assembly in districts comprising more than one county.
8. All state officers not otherwise specified above. [C., '51, §§ 283, 284, 305; R., '60, §§ 517, 518, 539; C., '73, §§ 645, 662; C., '97, § 1157; S., '13, § 1157; 38 G. A., ch. 86, § 5; 40 Ex. G. A., H. F. 26, § 23.]

870. Abstract for governor and lieutenant governor. The envelope containing the abstracts of votes for governor and lieutenant governor shall be indorsed substantially as follows: "Abstract of votes for governor and lieutenant governor from county". After being so indorsed said envelope

shall be addressed, "To the Speaker of the House of Representatives". [C., '51, § 283; R., '60, § 517; C., '73, § 645; C., '97, § 1157; S., '13, § 1157; 40 Ex. G. A., H. F. 26, § 24.]

871. Indorsement on other envelopes. Said remaining envelopes shall be indorsed substantially in the manner provided in the preceding section, with changes necessary to indicate the particular office, and each shall be addressed, "To the Secretary of State". [C., '51, §§ 283, 305; R., '60, §§ 517, 539; C., '73, §§ 645, 662; C., '97, § 1157; S., '13, § 1157; 38 G. A., ch. 86, § 5; 40 Ex. G. A., H. F. 26, § 25.]

872. Forwarding of envelopes. Said envelopes, including the one addressed to the speaker, after being prepared, sealed, and indorsed as aforesaid, shall be placed in one package and forwarded to the secretary of state. [C., '51, §§ 284, 305; R., '60, §§ 518, 539; C., '73, §§ 645, 662; C., '97, § 1157; S., '13, § 1157; 40 Ex. G. A., H. F. 26, § 26.]

873. Missing abstracts. If the abstracts from any county are not received at the office of the secretary of state within fifteen days after the day of election, he shall send a messenger to the auditor of such county, who shall furnish him with them, or, if they have been sent, with a copy thereof, and he shall return them to the secretary without delay. [C., '51, § 285; R., '60, § 519; C., '73, § 649; C., '97, § 1158.]

874. Abstracts on governor and lieutenant governor. The envelopes containing the abstracts of votes for governor and lieutenant governor shall not be opened by the secretary of state, but he shall securely preserve the same and deliver them to the speaker of the house of representatives at the time said abstracts are canvassed as provided by law. [40 Ex. G. A., H. F. 26, § 27.]

NOTE: Canvass of vote for governor and lieutenant governor, see § 32 et seq.; also see Const., Art. 4, § 3.

875. Envelopes containing other abstracts. All other envelopes containing abstracts of votes shall be kept by the secretary of state, unopened, until the time fixed by law for the canvass of such abstracts, and they shall then be opened only in the presence of the state board of canvassers. [C., '51, § 286; R., '60, § 520; C., '73, § 650; C., '97, § 1159; 40 Ex. G. A., H. F. 26, § 28.]

NOTE: Canvass by board of state canvassers, see § 877.

876. State canvassing board. The executive council shall constitute a board of canvassers of all abstracts of votes required to be filed with the secretary of state, except for the offices of governor and lieutenant governor. No member of such board shall take part in canvassing the votes for an office for which he is a candidate. [C., '51, § 287; R., '60, § 521; C., '73, §§ 647, 651; C., '97, §§ 1160, 1162; S., '13, § 1162; 40 Ex. G. A., H. F. 26, § 29.]

877. Time of state canvass. On the twentieth day after the day of election, the board of state canvassers shall open and canvass all of the returns. If they are not received from all the counties, it may adjourn, not exceeding twenty days, for the purpose of obtaining them, and, when received, shall proceed with the canvass. The returns of votes cast for senators and representatives in the general assembly shall be canvassed at least twenty days prior to the convening of the general assembly. [C., '51, §§ 288, 306; R., '60, §§ 522, 540; C., '73, §§ 647, 652, 663; C., '97, §§ 1161, 1162; S., '13, § 1162; 40 Ex. G. A., H. F. 26, § 30.]

NOTE: Canvass of returns under special election, see § 885.

878. Abstract of result. It shall make an abstract stating, in words written at length, the number of ballots cast for each office, the names of all the persons voted for, for what office, the number of votes each received, and whom it declares to be elected; which abstract shall be signed by the canvassers in their official capacity and as state canvassers, and have the seal of the state affixed. [C., '51, §§ 289, 306; R., '60, §§ 523, 540; C., '73, §§ 653, 663; C., '97, § 1163.]

879. Record of canvass. The secretary of state shall file the abstracts when received and shall have the same bound in book form to be kept by him as a record of the result of said state election, to be known as the state election book. [C., '51, § 290; R., '60, § 524; C., '73, § 654; C., '97, § 1164; S., '13, § 1164.]

880. Certificate of election. Each person declared elected by the state board of canvassers shall receive a certificate thereof, signed by the governor, or, in his absence, by the secretary of state, with the seal of state affixed, attested by the other canvassers, to be in substance as follows:

STATE OF IOWA:

To A B, Greeting: It is hereby certified that, at an election holden on the day of you were elected to the office of of said state, for the term of years, from and after the day of (or if to fill a vacancy, for the residue of the term, ending on the day of).

Given at the seat of government this day of

If the governor be absent, the certificate of the election of the secretary of state shall be signed by the auditor. The certificate to members of the legislature shall describe, by the number, the district from which the member is elected. [C., '51, §§ 288, 306; R., '60, §§ 522, 540; C., '73, §§ 652, 657, 663; C., '97, § 1165.]

881. Certificates mailed. The secretary of state shall deliver or mail certificates of elec-

tion to the persons declared elected. [C., '51, §§ 292, 294; R., '60, §§ 526, 528; C., '73, §§ 648, 656, 658; C., '97, § 1167.]

882. Senator or representative in congress. The certificate of the election of a senator or representative in congress shall be signed by the governor, with the seal of the state affixed, and be countersigned by the secretary of state. [C., '51, § 294; R., '60, § 528; C., '73, § 658; C., '97, § 1166; 40 Ex. G. A., H. F. 26, § 31.]

883. Tie vote. If more than the requisite number of persons, including presidential electors, are found to have an equal and the highest number of votes, the election of one of them shall be determined by lot. The name of each of such candidates shall be written on separate pieces of paper, as nearly uniform in size and material as possible, and placed in a receptacle so that the names can not be seen. In the presence of the board of canvassers, one of them shall publicly draw one of such names, and such person shall be declared elected. The result of such drawing shall be entered upon the abstract of votes and duly recorded, and a certificate of election issued to such person, as provided in this chapter. [C., '51, §§ 281, 282, 307, 316; R., '60, §§ 515, 516, 541, 547; C., '73, §§ 632, 643, 644, 664; C., '97, § 1169.]

884. Canvass public — result determined. All canvasses of returns shall be public, and the persons having the greatest number of votes shall be declared elected. [C., '51, §§ 262, 273, 307; R., '60, §§ 497, 508, 541; C., '73, §§ 623, 638, 664; C., '97, § 1170.]

885. Special elections—canvass and certificate. In case a special election has been held, the board of county canvassers shall meet at one o'clock in the afternoon of the second day thereafter, and canvass the votes cast thereat. The county auditor, as soon as the canvass is completed, shall transmit to the secretary of state an abstract of the votes so canvassed, and the state board, within five days after receiving such abstracts, shall canvass the returns. A certificate of election shall be issued by the county or state board of canvassers, as in other cases. All the provisions regulating elections, obtaining returns, and canvass of votes at general elections, except as to time, shall apply to special elections. [R., '60, § 673; C., '73, §§ 791-793; C., '97, § 1171.]

886. Messengers for election returns. Messengers sent for the returns of elections shall be paid from the state or county treasury, as the case may be, ten cents a mile going and returning. [C., '51, § 295; R., '60, § 529; C., '73, § 3827; C., '97, § 1172.]

CHAPTER 42

DOUBLE ELECTION BOARDS

- 887. Double counting board.
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- 889. "Receiving" and "counting" boards defined.
- 890. Selection of counting board—duties.
- 891. Oath.
- 892. Administration of oath.
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- 896. Secrecy of ballot.
- 897. Presence of persons.
- 898. Counting quarters—guarding ballots.
- 899. Certification of count—returns.
- 900. Compensation of board.
- 901. Applicability of law.
- 902. Violations.
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887. Double counting board. In all election precincts in Iowa where three hundred or more votes were cast in the last preceding general election, the board of supervisors may appoint for each primary and general election three additional judges and two additional clerks to be known as the election counting board. [39 G. A., ch. 60, § 1.]

888. Qualifications. Each of such appointees shall be of good moral character, well informed, able to read, write, and speak the English language, shall be a voter in the election precinct in which he is to serve, and entitled to vote therein. [39 G. A., ch. 60, § 1.]

889. "Receiving" and "counting" boards defined. The judges and clerks of election as provided in existing law shall be known as the receiving board and it shall be their duty to supervise the casting of ballots at said election, and the judges and clerks provided for in the two preceding sections shall be known as the counting board. [39 G. A., ch. 60, § 2.]

890. Selection of counting board—duties. The counting board shall be chosen from the two political parties casting the highest number of votes at the last general election. Not more than two judges nor more than one clerk shall belong to the same political organization, provided that two of such judges shall be chosen from the political party casting the highest number of votes at the last preceding general election. The receiving board shall perform all the functions of judges and clerks of election as now provided by law except as to counting and certifying the vote as by this chapter provided. [39 G. A., ch. 60, § 2.]

891. Oath. All judges and clerks shall take an oath as now provided in existing law for judges of election and in addition to such oath the counting board shall take the following oath:

"I.....do swear (or affirm) that I will duly attend to the ensuing election during the continuance thereof as a member of

the counting board; that I will not, prior to the closing of the polls, communicate in any manner, directly or indirectly, by word or sign, the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto; that I will make and return a perfect return of the said election, and will in all things truly, impartially, and faithfully perform my duty respecting the same to the best of my judgment and ability; that I am not directly or indirectly interested in any bet or wager on the result of this election". [39 G. A., ch. 60, § 7.]

892. Administration of oath. This oath shall be administered by a clerk of the receiving board who is hereby empowered to administer such oath. [39 G. A., ch. 60, § 7.]

893. Duties of double boards. The counting boards shall proceed to their respective voting places to which they have been appointed at one o'clock p. m., and shall take charge of the ballot box containing the ballots already cast in that precinct. It shall retire to a partitioned space or room provided for that purpose and there proceed to count and tabulate the ballots as it shall find them deposited in the ballot box. The receiving board shall continue to receive the votes of electors in the other box provided, until such time as the counting board shall have finished counting and tabulating the ballots cast in the first ballot box. The two boards shall then exchange the first box for the second box and so continue until they have counted and tabulated all the votes cast on that election day. When the hour arrives for closing the polls, the receiving board shall certify to all matters pertaining to casting of ballots and shall then unite with the counting board in the counting of ballots. The judges shall then divide the ballots not counted and each group of judges and clerks shall proceed to canvass their portion of the same. When the canvass has been completed the judges and clerks shall report the result of their canvass, which report shall be incorpo-

rated in the returns provided by law. [39 G. A., ch. 60, § 3; 40 Ex. G. A., S. F. 25, § 99-a1.]

894. Ballot boxes. It shall be the duty of the board of supervisors to provide the judges of election with such ballot boxes and other election supplies as may be required to be furnished in duplicate to accomplish the purpose of this chapter. [39 G. A., ch. 60, § 4.]

895. Manner of counting. Whenever the counting board receives from the receiving board the ballot box, they shall also be furnished a statement from the receiving board giving the number of votes as shown by the poll books up to that time, which shall equal the number of votes in the ballot box. The counting board shall on opening the ballot box first count the ballots therein. If the number of ballots found in the ballot box exceeds the number as shown by the statement received from the receiving board the counting judges shall proceed to examine the official indorsement of said ballots, and, if any ballots are found that do not bear proper official indorsement, said ballots shall be kept separate and a record of such ballots shall be made and returned under the head of excess ballots. The counting board shall then proceed to count the ballots as now provided by law. [39 G. A., ch. 60, § 5.]

896. Secrecy of ballot. The space or room occupied by the counting board shall be policed in such manner as to prevent any person, or persons, from gaining information regarding the progress of the count before the polls are closed. [39 G. A., ch. 60, § 6.]

897. Presence of persons. No person shall be admitted into the space or room where such ballots are being counted until the polls are closed, except the counting board. [39 G. A., ch. 60, § 9.]

898. Counting quarters—guarding ballots. Boards of supervisors shall provide suitable places for the counting of ballots, but when it becomes necessary to remove the ballot box from one room to another, or from one building to another, and at all times when they are in possession of the counting board, they shall be under constant observation of at least two counting judges. [39 G. A., ch. 60, § 10.]

899. Certification of count—returns. Both boards shall certify to all matters pertaining to counting and canvassing of votes and shall return poll books and ballots to the county auditor as provided by law. [39 G. A., ch. 60, § 15.]

900. Compensation of board. Compensation for counting judges and clerks shall be the same as now provided by law for clerks and judges of election. [39 G. A., ch. 60, § 13.]

NOTE: Compensation of judges and clerks, see § 738.

901. Applicability of law. This chapter shall apply to all general and primary elections, but shall not apply to school elections or town elections, or where voting machines are used. [39 G. A., ch. 60, §§ 12, 14.]

902. Violations. Any judge or clerk violating the provisions of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be liable to a fine of not to exceed five hundred dollars, or imprisonment in the county jail not to exceed six months. Any person so convicted shall be disfranchised for five years thereafter. [39 G. A., ch. 60, § 8.]

903. Circulation of information. Anyone circulating or attempting to circulate any information with reference to the result of the counted ballots shall be guilty of a misdemeanor and punished as provided by the preceding section. [39 G. A., ch. 60, § 8.]

CHAPTER 43

VOTING MACHINES

- 904. Use of voting machines.
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- 906. Terms of purchase.
- 907. Commissioners—term—removal.
- 908. Examination of machine—report of commissioners.
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- 910. Construction of machine approved.
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- 919. Voting machine in plain view—guard rail.
- 920. Method of voting.
- 921. Additional instructions.
- 922. Injury to machine.
- 923. Canvass of vote.
- 924. Judges to lock machine.
- 925. Written statements of election.
- 926. What statutes apply—separate ballots.

904. Use of voting machines. At all state, county, city, town, primary, and township elections held in the state, ballots or votes may be cast, registered, recorded, and counted by means of voting machines, as hereinafter provided. [S., '13, § 1137-a7.]

905. Purchase. The board of supervisors of any county, or the council of any incorporated city or town in the state may, by a two-thirds vote, authorize, purchase, and order the use of voting machines in any one or more voting precincts within said county, city, or town, until otherwise ordered by said board of supervisors or city or town council. [S., '13, § 1137-a8.]

906. Terms of purchase. The local authorities, on the adoption and purchase of a voting machine, may provide for the payment therefor in such manner as they may deem for the best interest of the locality, and may for that purpose issue bonds, certificates of indebtedness, or other obligations, which shall be a charge on the county, city, or town. Such bonds, certificates, or other obligations may be issued with or without interest, payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par. [S., '13, § 1137-a14.]

907. Commissioners—term—removal. The governor shall appoint three commissioners, not more than two of whom shall be from the same political party. The said commissioners shall hold office for the term of five years, subject to removal at the pleasure of the governor. [S., '13, § 1137-a9.]

908. Examination of machine—report of commissioners. Any person or corporation owning or being interested in any voting machine may call upon the said commissioners to examine the said machine, and make report to the secretary of state upon the capacity of

the said machine to register the will of voters, its accuracy and efficiency, and with respect to its mechanical perfections and imperfections. Their report shall be filed in the office of the secretary of state and shall state whether in their opinion the kind of machine so examined can be safely used by such voters at elections under the conditions prescribed in this chapter. If the report states that the machine can be so used, it shall be deemed approved by the commissioners, and machines of its kind may be adopted for use at elections as herein provided. Any form of voting machine not so approved can not be used at any election. [S., '13, § 1137-a10.]

909. Compensation. Each commissioner is entitled to one hundred fifty dollars for his compensation and expenses in making such examination and report, to be paid by the person or corporation applying for such examination. No commissioner shall have any interest whatever in any machine reported upon. Provided that said commissioner shall not receive to exceed fifteen hundred dollars and reasonable expenses in any one year; and all sums collected for such examinations over and above said maximum salaries and expenses shall be turned into the state treasury. [S., '13, § 1137-a10.]

910. Construction of machine approved. A voting machine approved by the state board of voting machine commissioners must be so constructed as to provide facilities for voting for the candidates of at least seven different parties or organizations, must permit a voter to vote for any person for any office although not nominated as a candidate by any party or organization, and must permit voting in absolute secrecy.

It must also be so constructed as to prevent voting for more than one person for the same office, except where the voter is lawfully entitled to vote for more than one person for

that office; and it must afford him an opportunity to vote for any or all persons for that office as he is by law entitled to vote for and no more, at the same time preventing his voting for the same person twice.

It may also be provided with one ballot in each party column or row containing only the words "presidential electors", preceded by the party name, and a vote for such ballot shall operate as a vote for all the candidates of such party for presidential electors.

Such machine shall be so constructed as to accurately account for every vote cast upon it. [S., '13, § 1137-a11.]

911. Experimental use. The board of supervisors of any county or the council of any city or town may provide for the experimental use at an election in one or more districts, of a machine which it might lawfully adopt, without a formal adoption thereof; and its use at such election shall be as valid for all purposes as if it had been lawfully adopted. [S., '13, § 1137-a12.]

912. Duties of local authorities. The local authorities adopting a voting machine shall, as soon as practicable thereafter, provide for each polling place one or more voting machines in complete working order, and shall thereafter keep them in repair, and shall have the custody thereof and of the furniture and equipment of the polling place when not in use at an election. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used in such election district or districts within the county, city, or town as the officers adopting the same may direct. [S., '13, § 1137-a13.]

913. Ballots—form. All ballots shall be printed in black ink on clear, white material, of such size as will fit the ballot frame, and in as plain, clear type as the space will reasonably permit. The party name for each political party represented on the machine shall be prefixed to the list of candidates of such party. The order of the list of candidates of the several parties or organizations shall be arranged as provided in sections 748 to 760, inclusive, except that the lists may be arranged in horizontal rows or vertical columns. [S., '13, § 1137-a15.]

914. Exception—party circle and general form. The provisions of section 760 shall not be applicable to voting machines owned prior to April 1, 1921, by any county or municipality in so far as they relate to the party circle and the form of the ballot generally; but nothing herein contained shall prohibit the use of voting machines equipped to comply with the foregoing provisions. [39 G. A., ch. 266.]

915. Sample ballots. The officers or board charged with the duty of providing ballots

for any polling place shall provide therefor two sample ballots, which shall be arranged in the form of a diagram showing the entire front of the voting machine as it will appear after the official ballots are arranged for voting on election day. Such sample ballots shall be open to public inspection at such polling place during the day of election and the day next preceding election day. [S., '13, § 1137-a16.]

916. Two sets of ballots. Two sets of ballots shall be provided for each polling place for each election for use in the voting machine. [S., '13, § 1137-a17.]

917. Delivery of ballots. The ballots and stationery shall be delivered to the election board of each election precinct before ten o'clock in the forenoon of the day next preceding the election. [S., '13, § 1137-a18.]

918. Duties of election officers—independent ballots. The judges of election and clerks of each precinct shall meet at the polling place therein, at least three-quarters of an hour before the time set for the opening of the polls at each election, and shall proceed to arrange within the guard rail the furniture, stationery, and voting machine for the conduct of the election. The judges of election shall then and there have the voting machine, ballots, and stationery required to be delivered to them for such election; and, if it be an election at which registered voters only can vote, the registry of such electors required to be made and kept therefor. The judges shall thereupon cause at least two instruction cards to be posted conspicuously within the polling place. If not previously done, they shall arrange, in their proper place on the voting machine, the ballots containing the names of the offices to be filled at such election, and the names of the candidates nominated therefor. If not previously done, the machine shall be so arranged as to show that no vote has been cast, and the same shall not be thereafter operated, except by electors in voting. Before the polls are open for election, each judge shall carefully examine every machine and see that no vote has been cast, and the same shall be subject to inspection of the election officers. Ballots voted for any person whose name does not appear on the machine as a nominated candidate for office, are herein referred to as independent ballots. When two or more persons are to be elected to the same office, and the machine requires that all independent ballots voted for that office be deposited in a single receptacle or device, an elector may vote in or by such receptacle or device for one or more persons whose names do not appear upon the machine with or without the names of one or more persons whose names do so appear. With that exception, and except for presidential electors, no independent ballot shall be voted for any person for any office whose name appears on the machine as a nominated candidate for that office; any independent ballot so voted shall not be counted. An independent ballot

must be cast in its appropriate place on the machine, or it shall be void and not counted. [S., '13, § 1137-a19.]

919. Voting machine in plain view—guard rail. The exterior of the voting machine and every part of the polling place shall be in plain view of the election officers. The voting machine shall be placed at least three feet from every wall and partition of the polling place, and at least three feet from the guard rail, and at least four feet from the clerk's table. A guard rail shall be constructed at least three feet from the machine, with openings to admit electors to and from the machine. [S., '13, § 1137-a20.]

920. Method of voting. After the opening of the polls, the judges shall not allow any voter to pass within the guard rail until they ascertain that he is duly entitled to vote. Only one voter at a time shall be permitted to pass within the guard rail to vote. The operating of the voting machine by the elector while voting shall be secret and obscured from all other persons, except as provided by this chapter in cases of voting by assisted electors. No voter shall remain within the voting machine booth longer than one minute, and if he shall refuse to leave it after the lapse of one minute, he shall be removed by the judges. [S., '13, § 1137-a21.]

921. Additional instructions. In case any elector after entering the voting machine booth shall ask for further instructions concerning the manner of voting, two judges of opposite political parties shall give such instructions to him; but no judge or other election officer or person assisting an elector shall in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket, or for any particular candidate, or for or against any particular amendment, question, or proposition. After receiving such instructions, such elector shall vote as in the case of an unassisted voter. [S., '13, § 1137-a22.]

922. Injury to machine. No voter, or other person, shall deface or injure the voting machine or the ballot thereon. It shall be the duty of the judges to enforce the provisions of

this section. During the entire period of an election, at least one of their number, designated by them from time to time, shall be stationed beside the entrance to the booth and shall see that it is properly closed after a voter has entered it to vote. He shall also, at such intervals as he may deem proper or necessary, examine the face of the machine to ascertain whether it has been defaced or injured, to detect the wrongdoer, and to repair any injury. [S., '13, § 1137-a23.]

923. Canvass of vote. As soon as the polls of the election are closed, the judges of the election thereat shall immediately lock the voting machine against voting and open the counting compartments in the presence of all persons who may be lawfully within the polling place, and proceed to canvass the vote. [S., '13, § 1137-a24.]

924. Judges to lock machine. The judges of election shall, as soon as the count is completed and fully ascertained as in this chapter required, lock the machine against voting, and it shall so remain for the period of thirty days.

Whenever independent ballots have been voted, the judges shall return all of such ballots properly secured in a sealed package as prescribed by section 851. [S., '13, § 1137-a25.]

925. Written statements of election. After the total vote for each candidate has been ascertained, and before leaving the room or voting place, the judges shall make and sign written statements of election, as required by the election laws now in force, except that such statements of the canvass need not contain any ballots except the independent ballots as herein provided. [S., '13, § 1137-a26.]

926. What statutes apply—separate ballots. All of the provisions of the election law now in force and not inconsistent with the provisions of this chapter shall apply with full force to all counties, cities, and towns adopting the use of voting machines. Nothing in this chapter shall be construed as prohibiting the use of a separate ballot for constitutional amendments and other public measures. [S., '13, § 1137-a27.]

CHAPTER 44

ABSENT VOTERS' LAW

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927. **Right to vote—conditions.** Any qualified voter of this state may, as provided in this chapter, vote at any general, municipal, special, or primary election, or at any election held in any independent town, city, or consolidated school district:

1. When, through the nature of his business, he is, on election day, absent from the county in which he is a qualified voter, or when he expects, in the course of said business, to be so absent.

2. When, through illness or physical disability, he is prevented from personally going to the polls on election day and voting. [S. S., '15, § 1137-b; 37 G. A., ch. 419, § 3; 40 Ex. G. A., S. F. 27, § 1.]

928. **Application for ballot.** Any voter, under the circumstances specified in the preceding section, may, on any day not Sunday or a holiday and not more than twenty days prior to the date of election, make application to the county auditor, or to the city or town clerk, as the case may be, for an official ballot to be voted at such election. [S. S., '15, § 1137-c; 37 G. A., ch. 419, § 4; 40 G. A., ch. 10, § 1; 40 Ex. G. A., S. F. 27, § 2.]

929. **Secretary of school board.** In the application of this chapter to elections held in independent city, town, and consolidated school districts, the secretary of the school board shall perform the duty herein imposed on the county auditor or clerk of the city or town. [40 Ex. G. A., S. F. 27, § 2-a.1.]

NOTE: For school districts having printed ballots, see § 4203.

930. **Officers to furnish blank applications.** Said officers shall furnish to any qualified

voter of the county, city, or town of which they are such officers, blanks on which to make application for such ballot. [S. S., '15, § 1137-d; 40 Ex. G. A., S. F. 27, § 3.]

931. **Form of blank application.** Applications for ballots shall be made on blanks substantially in the following form:

“APPLICATION FOR BALLOT TO BE VOTED AT THE.....ELECTION ON

 State of..... }
 County of..... } ss.

I,, do solemnly swear that I have been a resident of the state of Iowa for six months, of the county of for sixty days, and of the precinct of ward of the city, town, or township of ten days next preceding this election, and that I am a duly qualified voter entitled to vote at said election; that my occupation is, and that on account of
 (Business, illness, or physical disability)

I cannot be at the polls on election day, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same, on or before the day of said election. I am affiliated with the party.

(Fill out only in case of primary election)

Signed
 Date
 Residence (street and number, if any)
 City or town
 P. O. Address

Subscribed and sworn to before me this day of, A. D. 19..... [S. S., '15, § 1137-d; 37 G. A., ch. 419, § 5; 40 Ex. G. A., S. F. 27, § 4.]

932. Residence in precinct. The requirement in the preceding section for ten days' residence in the precinct shall not apply to general elections as defined in chapter 40. [40 Ex. G. A., S. F. 27, § 5.]

933. Penalty clause added to form. Immediately below said form, sections 960 and 961 shall be printed in full. [S. S., '15, § 1137-d; 40 Ex. G. A., S. F. 27, § 6.]

934. When party affiliation shown. Said application shall designate the voter's party affiliation only when the application is for a primary election ballot. [S. S., '15, § 1137-d; 40 Ex. G. A., S. F. 27, § 7.]

935. Ballot mailed. Upon receipt of such application, and immediately after the ballots are printed, it shall be the duty of such auditor or clerk to mail to said applicant, postage prepaid, such official ballot or ballots as such applicant would have the right to cast at such election. [S. S., '15, § 1137-e; 40 Ex. G. A., S. F. 27, § 8.]

936. Application mailed with ballot. If the voter is absent from the county and requests said application by letter, or someone makes the request for him, after the ballots are printed, then the auditor may send him both the application and ballot at the same time. [40 Ex. G. A., S. F. 27, § 8.]

937. Personal delivery of ballot. Such officer shall deliver said ballot or ballots to any qualified elector applying in person at the office of such auditor or clerk, as the case may be, and subscribing to the foregoing application, not more than fifteen days before the date of said election, but said ballot shall be immediately marked, inclosed in the ballot envelope with proper affidavit thereon, and returned to said officer. [S. S., '15, § 1137-e; 40 G. A., ch. 10, § 2; 40 Ex. G. A., S. F. 27, § 9.]

938. Duty of auditor—form of affidavit. It shall be the duty of said auditor or clerk to fold said ballot or ballots in the manner in which they are required to be folded when voted, and to inclose the same in an unsealed envelope, to be furnished by him, which envelope shall bear upon the face thereof the name, official title, and postoffice address of such auditor or clerk. [S. S., '15, § 1137-f; 40 Ex. G. A., S. F. 27, § 10.]

939. Voter's affidavit on envelope. On the reverse side of said unsealed envelope shall be printed a blank form of affidavit in substantially the following form:

"State of..... } ss. County of..... } I,, do solemnly swear that the following matters relating to my qualifications for registration and voting are true; residence, city, town, or township of..... street, No., county, Iowa. Age years. Nativity Color Sex Term of residence in precinct Term of residence in county Term of residence in state Naturalized Date of naturalization papers Court in which naturalized Date of application Whether by act of congress Whether qualified voter Last preceding place of residence, city, town, or township of street, No. I am affiliated with the party. (Fill out only in case of primary election) I am engaged in the business or work of; that I shall be prevented from attending the polls on the day of election on account of (here affiant will state whether absence from the county of his residence or physical disability), and that I have marked the inclosed ballot in secret.

Signed Subscribed and sworn to before me this.... day of, A. D., and I hereby certify that the affiant exhibited the inclosed ballot to me unmarked; that he then in my presence and in the presence of no other person, and in such manner that I could not see his vote, marked such ballot and inclosed and sealed the same in this envelope; that the affiant was not solicited or advised by me for or against any candidate or measure.

..... (Official title.)" [S. S., '15, 1137-f; 37 G. A., ch. 419, § 1; 40 Ex. G. A., S. F. 27, § 11.]

940. When party affiliation shown. Said affidavit shall designate the voter's party affiliation only in case the ballot inclosed is a primary election ballot. [S. S., '15, § 1137-f; 40 Ex. G. A., S. F. 27, § 12.]

941. Marking ballot. The voter, on receipt of said ballot or ballots, shall, in the presence of the officer administering the oath and of no other person, mark such ballot or ballots, but in such manner that such officer will not know how such ballot is marked. [S. S., '15, § 1137-g; 37 G. A., ch. 419, § 6; 40 Ex. G. A., S. F. 27, § 13.]

942. Taking and subscribing oath and inclosing ballot. After marking such ballot, the voter shall, before said officer, make and subscribe to the affidavit on the reverse side of the envelope, and, in the presence of such officer, fold such ballot, or ballots, separately, so as to conceal the markings thereon, and de-

posit the same in said envelope, which shall then be securely sealed. [S. S., '15, § 1137-g; 37 G. A., ch. 419, § 6; 40 Ex. G. A., S. F. 27, § 14.]

943. Mailing or delivering ballot. The sealed envelope containing the said ballot or ballots may be personally delivered by the voter to the auditor, deputy, or clerk. If not so delivered, said envelope shall be inclosed in a carrier envelope, which shall also be securely sealed, and mailed by the voter, postage paid, to said auditor or clerk. [S. S., '15, § 1137-g; 37 G. A., ch. 419, § 6; 40 Ex. G. A., S. F. 27, § 15.]

944. Manner of preserving ballot and application. Upon receipt of such ballot, the auditor or clerk shall at once inclose the same, unopened, together with the application made by the voter, in a large carrier envelope, securely seal the same, and indorse thereon, over his official signature, the following:

1. Names of the judges of election of the precinct (naming it) of which the voter is a resident.

2. The name of the city or town in which or near which such judges will hold the election in said precinct.

3. The street number, or other clear designation of the polling place in said precinct, and a statement that "This envelope contains an absent voter's ballot and must be opened only at the polls on election day while said polls are open." [S. S., '15, §§ 1137-h, 1137-i; 37 G. A., ch. 419, §§ 7, 8; 40 Ex. G. A., S. F. 27, § 16.]

945. Delivery of ballot with election supplies. In case said voter's ballot is received by the auditor or clerk prior to the delivery of the official ballots to the judges of election of the precinct in which said elector resides, such ballot, envelope, and application, sealed in the carrier envelope, shall be inclosed in such package and therewith delivered to the judges of such precinct. [S. S., '15, §§ 1137-h, 1137-i; 37 G. A., ch. 419, §§ 7, 8; 40 Ex. G. A., S. F. 27, § 17.]

946. Auditor may mail or personally deliver. If said voter's ballot be received after the time specified in the preceding section, said receiving officer shall at once mail said carrier envelope, postage prepaid, to said judges. Said officer may, in person or by deputized agent, personally deliver said envelope to said judges, if he can so do without expense to the county, city, or town. [S. S., '15, § 1137-i; 37 G. A., ch. 419, § 8; 40 Ex. G. A., S. F. 27, § 18.]

947. Receipt for ballot. In case ballots and applications are personally delivered, the delivering officer shall take the receipt of the judges therefor. [S. S., '15, § 1137-i; 40 Ex. G. A., S. F. 27, § 19.]

948. Ballots rejected. All ballots forwarded to absent voters and not received by the auditor or city or town clerk in time for

delivery to the judges of election before the closing of the polls, shall be rejected. [40 Ex. G. A., S. F. 27, § 20.]

949. Casting ballots. At any time between the opening and closing of the polls on such election day the judges of election of said precinct shall open the outer or carrier envelope only, announce the absent or disabled voter's name, and compare the signature upon the application with the signature upon the affidavit on the ballot envelope. In case the judges find the affidavits executed, that the signatures correspond, the applicant a duly qualified elector of the precinct, and that the applicant has not voted in person at said election, they shall open the envelope containing the voter's ballot in such manner as not to deface or destroy the affidavit thereon, and take out the ballot or ballots therein contained without unfolding or permitting the same to be unfolded or examined, and, having indorsed the ballot in like manner as other ballots are required to be indorsed, deposit the same in the proper ballot box and enter the voter's name in the poll book, the same as if he had been present and voted in person. [S. S., '15, § 1137-j; 37 G. A., ch. 419, § 2; 40 Ex. G. A., S. F. 27, § 21.]

950. Precincts using voting machines. In precincts using voting machines, none of said ballot envelopes shall be opened until immediately after the closing of the polls to voters who vote in person. If there be more than one absent voter's ballot entitled to be cast, they shall, without being unfolded, be thoroughly intermingled in some proper manner, after which they shall be unfolded and, under the personal supervision of all the judges, be registered on the voting machine the same as if the absent voter had been present and voted in person. [39 G. A., ch. 279, § 1; 40 G. A., ch. 11, § 1; 40 Ex. G. A., S. F. 27, § 22.]

951. Rejecting ballot. In case such affidavit is found to be insufficient, or that the signatures do not correspond, or that the applicant is not a duly qualified elector in such precinct, or that the ballot envelope is open, or has been opened and resealed, or that the ballot envelope contains more than one ballot of any one kind, or that said voter has voted in person, such vote shall not be accepted or counted. [S. S., '15, § 1137-j; 40 Ex. G. A., S. F. 27, § 23.]

952. Rejected ballots—how handled. Every ballot not counted shall be indorsed on the back thereof "Rejected because (giving reason therefor)." All rejected ballots shall be inclosed and securely sealed in an envelope on which the judges shall indorse "Defective ballots", with a statement of the precinct in which and the date of the election at which they were cast, signed by the judges and returned to the same officer and in the same manner as by law provided for the return and preservation of official ballots voted at such

election. [S. S., '15, § 1137-j; 40 Ex. G. A., S. F. 27, § 24.]

953. Rejection of ballot—return of envelope. If the ballot is rejected, said ballot envelope, with the affidavit of the voter indorsed thereon, shall be returned with said rejected ballot in the envelope indorsed "Defective ballots". [37 G. A., ch. 419, § 2; 40 Ex. G. A., S. F. 27, § 25.]

954. Affidavit envelope constitutes registration. The affidavit upon the ballot envelope shall constitute a sufficient registration of the voter in precincts where registration is required. [37 G. A., ch. 419, § 2; 40 Ex. G. A., S. F. 27, § 26.]

955. Alphabetical list completed. The judges of election shall, in case the ballot is deposited in the box, enter the voter's name on the alphabetical lists if not already there, with the same data as is entered when a certificate of registration is filed. [37 G. A., ch. 419, § 2; 40 Ex. G. A., S. F. 27, § 27.]

956. Ballot envelope preserved. The ballot envelope having the voter's affidavit thereon shall, in case the ballot is deposited in the box, be preserved and returned with the certificates of registration, poll book, and alphabetical lists to the city clerk, who shall preserve the same, and it shall be used by the registers of election, in precincts where registration is required, in making up the new registry lists from the poll books, and such affidavit shall serve as the registration record of the voter for the new registry books and lists. [37 G. A., ch. 419, § 2; 40 Ex. G. A., S. F. 27, § 28.]

957. Challenges. The vote of any absent voter may be challenged for cause and the judges of election shall determine the legality of such ballot as in other cases. [S. S., '15, § 1137-k; 37 G. A., ch. 419, § 9; 40 Ex. G. A., S. F. 27, § 29.]

958. Ballot of deceased voter. When it shall be made to appear by due proof to the judges of election that any elector, who has so marked and forwarded his ballot, has died before the

ballot is deposited in the ballot box, then the ballot of such deceased voter shall be indorsed, "Rejected because voter is dead", and be returned by the judges of election with the unused ballots to the official issuing it; but the casting of the ballot of a deceased voter shall not invalidate the election. [S. S., '15, § 1137-l; 40 Ex. G. A., S. F. 27, § 30.]

959. Laws made applicable. This chapter and all other election laws now in force, and not inconsistent with this chapter, shall apply to all counties, cities, and towns in which voting machines are used, and the proper election officials in such counties shall take such action as is necessary to carry out the provisions of this chapter. [S. S., '15, § 1137-m; 40 Ex. G. A., S. F. 27, § 31.]

960. False affidavit. Any person who shall wilfully swear falsely to any of such affidavits shall be guilty of perjury, and punished accordingly. [S. S., '15, § 1137-n; 40 Ex. G. A., S. F. 27, § 32.]

961. Refusal to return ballot. Any person who, having procured an official ballot or ballots, shall wilfully neglect or refuse to cast or return the same in the manner provided, or who shall wilfully violate any provision of this chapter, shall, unless otherwise provided, be fined not to exceed one hundred dollars, or imprisoned in the county jail not to exceed thirty days. Any person who applies for a ballot and wilfully neglects or refuses to return the same shall be deemed to have committed an offense in the county to which such ballot was returnable. [S. S., '15, § 1137-n; 40 Ex. G. A., S. F. 27, § 33.]

962. Offenses by officers. If any county auditor, city or town clerk, or any election officer shall refuse or neglect to perform any of the duties prescribed by this chapter, or shall violate any of the provisions thereof, he shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not to exceed ninety days. [S. S., '15, § 1137-n; 40 Ex. G. A., S. F. 27, § 37.]

CHAPTER 45

PRESIDENTIAL ELECTORS

963. Time of election—qualifications.
 964. How elected.
 965. Canvass of vote.
 966. Nonpolitical parties.
 967. Presidential nominees.

968. Certificate to electors.
 969. Meeting—certificate.
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 971. Compensation.

963. Time of election—qualifications. At the general election in the years of the presidential election, or at such other times as the congress of the United States may direct, there shall be elected by the voters of the state one person from each congressional district into which the state is divided, and two from the state at large, as electors of president and vice president, no one of whom shall be a person holding the office of senator or representative in congress, or any office of trust or profit under the United States. [C., '51, § 301; R., '60, § 535; C., '73, § 659; C., '97, § 1173; S., '13, § 1173; 38 G. A., ch. 86, § 6; 38 G. A., ch. 353, § 1; 39 G. A., ch. 19, § 1; 40 Ex. G. A., H. F. 28, § 1.]

964. How elected. A vote for the candidates of any political party, or group of petitioners, for president and vice president of the United States, shall be conclusively deemed to be a vote for each candidate nominated in each district and in the state at large by said party, or group of petitioners, for presidential electors and shall be so counted and recorded for such electors. [38 G. A., ch. 86, § 6; 40 Ex. G. A., H. F. 28, § 2.]

965. Canvass of vote. The canvass of the votes for candidates for president and vice president of the United States and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party or group of petitioners, respectively, and the certificate of such election made by the governor shall be in accord with such return. [38 G. A., ch. 86, § 6; 40 Ex. G. A., H. F. 28, § 3.]

966. Nonpolitical parties. The term "group of petitioners" as used in this chapter shall embrace an organization which is not a political party as defined by law. [40 Ex. G. A., H. F. 28, § 4.]

NOTE: For definition of a political organization which is not a political party, see § 528.

967. Presidential nominees. The names of the candidates for president and vice president, respectively, of a political party as defined in the law relating to primary elections,

shall, at least twenty days prior to the election, be certified to the secretary of state by the chairman and secretary of the state central committee of said party. [40 Ex. G. A., H. F. 28, § 5.]

NOTE: "Political party" defined, see § 528.

968. Certificate to electors. At the expiration of ten days from the completed canvass, the governor, under his hand and the seal of state, shall issue to each presidential elector declared elected a certificate of his election, the same in substance as required in other cases, and shall notify him to attend at the seat of government at noon on the second Monday in January following his election, reporting his attendance to him. If there be a contest of the election, no certificate shall issue until it is determined. [C., '51, § 308; R., '60, § 542; C., '73, § 665; C., '97, § 1168.]

969. Meeting—certificate. The presidential electors shall meet in the capitol, at the seat of government, at noon of the second Monday in January after their election, or as soon thereafter as practicable. If, at the time of such meeting, any elector for any cause is absent, those present shall at once proceed to elect, from the citizens of the state, a substitute elector or electors, and certify the choice so made to the governor, and he shall immediately cause the person or persons so selected to be notified thereof. [C., '51, §§ 308-310; R., '60, §§ 542-544; C., '73, §§ 665-667; C., '97, § 1174.]

970. Certificate of governor. When so met, the said electors shall proceed, in the manner pointed out by law, with the election, and the governor shall duly certify the result thereof, under the seal of the state, to the United States secretary of state, and as required by act of congress relating to such elections. [C., '51, § 311; R., '60, § 545; C., '73, § 668; C., '97, § 1175.]

971. Compensation. The electors shall each receive a compensation of five dollars for every day's attendance, and the same mileage as members of the general assembly. [C., '51, § 312; R., '60, § 546; C., '73, § 669; C., '97, § 1176.]

NOTE: Mileage of members of general assembly, see § 14.

CHAPTER 46

STATEMENT OF EXPENSES

- 972. Statement.
- 973. Requirement.
- 974. Filing.
- 975. Statements by party chairmen.
- 976. Additional statements.

- 977. Public inspection.
- 978. Limitation on expenses.
- 979. Limitation as to senator and representative.
- 980. Penalty.

972. Statement. Every candidate for any office voted for at any primary, municipal, or general election shall, within thirty days after the holding of such election, file a true, detailed, and sworn statement showing all sums of money or other things of value disbursed, expended, or promised, directly or indirectly, by him, and to the best of his knowledge and belief by any other person or persons in his behalf, for the purpose of aiding or securing his nomination or election. [S., '13, § 1137-a1; 40 Ex. G. A., S. F. 29, § 1.]

973. Requirement. Such statement shall show the dates, amounts, and from whom such sums of money or other things of value were received, and the dates, amounts, purposes, and to whom paid or disbursed, and shall include the assessment of any person, committee, or organization in charge of the campaign of such candidate. [S., '13, § 1137-a1; 40 Ex. G. A., S. F. 29, § 2.]

974. Filing. Such statement shall be filed:

1. With the county auditor, in case of municipal or county offices.
2. With the secretary of state, in case of state or federal offices. [S., '13, § 1137-a1; 40 Ex. G. A., S. F. 29, § 3.]

975. Statements by party chairmen. The chairman of each party central committee for the state, district, or county, shall file a true, detailed, and sworn statement of receipts and expenditures within thirty days after the general election. The chairmen of state and district central committees shall file said statements with the secretary of the state; and the chairmen of county central committees, with the county auditor. Such statements shall contain all the information required to be filed by candidates, and in addition thereto shall state the amounts or balances remaining on hand. [S., '13, § 1137-a3; 40 Ex. G. A., S. F. 29, § 4.]

976. Additional statements. If after the filing of any of the foregoing statements said candidate or chairman shall, directly or indirectly, receive any money or other thing of value contributed, expressly or tacitly, for the purpose of reimbursing or aiding said candidate in his nomination or election, or for the purpose of defraying the expense of said committee, said candidate, or chairman, as the case may be, shall within thirty days after the receipt of such contribution or gift file a like sworn statement. [39 G. A., ch. 197, § 1; 40 Ex. G. A., S. F. 29, § 5.]

977. Public inspection. Said statements shall be open at all times to the inspection of the public, and remain on file and be a part of the permanent records in the office where filed. [S., '13, § 1137-a4; 40 Ex. G. A., S. F. 29, § 6.]

978. Limitation on expenses. It shall be unlawful for any candidate to expend in connection with any primary election campaign more than fifty per cent of the annual salary applicable to the position for which he is a candidate, and unlawful for him to expend in connection with his campaign for election to any office more than fifty per cent of the annual salary applicable to the position for which he is a candidate. [39 G. A., ch. 197, § 1; 40 Ex. G. A., S. F. 29, § 7.]

979. Limitation as to senator and representative. It shall be unlawful for anyone who is a candidate for the office of state representative or state senator to expend in connection with any primary election campaign or general election campaign more than fifty per cent of the salary of a member at one regular session of the general assembly. [40 Ex. G. A., S. F. 29, § 7.]

980. Penalty. The violation of any provision of this chapter shall constitute a misdemeanor. [S., '13, § 1137-a6; 40 Ex. G. A., S. F. 29, § 8.]

CHAPTER 47

CONTESTING ELECTIONS—GENERAL PROVISIONS

981. Grounds of contest.
 982. Certificate withheld.
 983. Incumbent.

981. Grounds of contest. The election of any person to any county office, or to a seat in either branch of the general assembly, may be contested by any person eligible to such office; and the election of any person to a state office, or to the office of presidential elector, by any eligible person who received votes for the same office; and the grounds therefor shall be as follows:

1. Misconduct, fraud, or corruption on the part of judges of election in any precinct, or of any board of canvassers, or any member of either board, sufficient to change the result.

2. That the incumbent was not eligible to the office at the time of election.

3. That the incumbent has been duly convicted of an infamous crime before the election, and the judgment has not been reversed, annulled, or set aside, nor the incumbent pardoned, at the time of election.

4. That the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property, or thing of value, for the purpose of procuring his election.

5. That illegal votes have been received or legal votes rejected at the polls, sufficient to change the result.

6. Any error in any board of canvassers in counting the votes, or in declaring the result of the election, if the error would affect the result.

7. Any other cause which shows that another person was the person duly elected. [C., '51, §§ 339, 341, 368, 380, 387; R., '60, §§ 569, 571, 598, 610, 617; C., '73, §§ 692, 718, 730, 737; C., '97, § 1198.]

982. Certificate withheld. If notice of contesting the election of an officer is filed be-

984. Change the result.
 985. Recanvass in case of contest.
 986. Other contests—provisions applicable.

fore the certificate of election is delivered to him, it shall be withheld until the determination of the contest. [C., '51, § 367; R., '60, § 597; C., '73, § 713; C., '97, § 1219.]

983. Incumbent. The term "incumbent" in this chapter means the person whom the canvassers declare elected. [C., '51, § 340; R., '60, § 570; C., '73, § 693; C., '97, § 1199.]

984. Change the result. When the misconduct, fraud, or corruption complained of is on the part of the judges of election in a precinct, it shall not be held sufficient to set aside the election, unless the rejection of the vote of that precinct would change the result as to that office. [C., '51, § 342; R., '60, § 572; C., '73, § 694; C., '97, § 1200.]

985. Recanvass in case of contest. The parties to any contested election shall have the right, in open session of the court or tribunal trying the contest, and in the presence of the officer having them in custody, to have the ballots opened, and all errors of the judges in counting or refusing to count ballots corrected by such court or tribunal. [C., '97, § 1143; S., '13, § 1143.]

986. Other contests—provisions applicable. All the provisions of the chapter in relation to contested elections of county officers shall be applicable, as near as may be, to contested elections for other offices, except as herein otherwise provided, and in all cases process and papers may be issued to and served by the sheriff of any county. [C., '51, §§ 379, 396; R., '60, §§ 609, 626; C., '73, §§ 729, 745; C., '97, § 1250.]

NOTE: Contesting election of county officer, see ch. 52.

CHAPTER 48

CONTESTING ELECTIONS OF GOVERNOR AND LIEUTENANT GOVERNOR

987. Notice—grounds.
 988. Notice to incumbent.
 989. Houses notified.
 990. Contest court.

991. Powers and proceedings.
 992. Testimony.
 993. Judgment.

987. Notice—grounds. The contestant for the office of governor or lieutenant governor shall, within thirty days after the proclamation of the result of the election, deliver to the presiding officer of each house of the general assembly a notice of his intent to contest, and a specification of the grounds of such contest, as provided in chapter 52. [C., '51, § 388; R., '60, § 618; C., '73, § 738; C., '97, § 1239.]

988. Notice to incumbent. As soon as the presiding officers have received the notice and specifications, they shall make out a notice, directed to the incumbent, including a copy of the specifications, which shall be served by the sergeant-at-arms. [C., '51, § 389; R., '60, § 619; C., '73, § 739; C., '97, § 1240.]

989. Houses notified. The presiding officers shall also immediately make known to their respective houses that such notice and specifications have been received. [C., '51, § 390; R., '60, § 620; C., '73, § 740; C., '97, § 1241.]

990. Contest court. Each house shall forthwith proceed, separately, to choose seven members of its own body in the following manner:

1. The names of members of each house, except the presiding officer, written on similar paper tickets, shall be placed in a box, the names of the senators in their presence by their secretary, and the names of the representatives in their presence by their clerk.

2. The secretary of the senate in the presence of the senate, and the clerk of the house of representatives in the presence of the house, shall

draw from their respective boxes the names of seven members each.

3. As soon as the names are thus drawn, the names of the members drawn by each house shall be communicated to the other, and entered on the journal of each house. [C., '51, § 391; R., '60, § 621; C., '73, § 741; C., '97, § 1242.]

991. Powers and proceedings. The members thus drawn shall constitute a committee to try and determine the contested election, and for that purpose shall hold their meetings publicly at the place where the general assembly is sitting, at such times as they may designate; and may adjourn from day to day or to a day certain, not more than four days distant, until such trial is determined; shall have power to send for persons and papers, and to take all necessary means to procure testimony, extending like privileges to the contestant and the incumbent; and shall report their judgment to both branches of the general assembly, which report shall be entered on the journals of both houses. [C., '51, § 392; R., '60, § 622; C., '73, § 742; C., '97, § 1243.]

992. Testimony. The testimony shall be confined to the matters contained in the specifications. [C., '51, § 393; R., '60, § 623; C., '73, § 743; C., '97, § 1244.]

993. Judgment. The judgment of the committee pronounced in the final decision on the election shall be conclusive. [C., '51, § 394; R., '60, § 624; C., '73, § 744; C., '97, § 1245.]

CHAPTER 49

CONTESTING ELECTIONS FOR SEATS IN THE GENERAL ASSEMBLY

994. Statement served.
 995. Subpoenas.
 996. Depositions.

994. Statement served. The contestant for a seat in either branch of the general assembly shall, within thirty days after the incumbent is declared elected, serve on the incumbent a statement as required in relation to county officers, except the list of illegal votes, which shall be served with the notice of taking depositions relative to them, and if no such deposition is taken, then twenty days before the first day of the next session. [C., '51, § 381; R., '60, § 611; C., '73, § 731; C., '97, § 1233.]

NOTE: Statement of contest, see § 1024.

995. Subpoenas. Any judge or clerk of a court of record may issue subpoenas in the above cases, as in those provided in chapters 51 and 52, and compel the attendance of witnesses thereunder. [C., '51, § 382; R., '60, § 612; C., '73, § 732; C., '97, § 1234.]

996. Depositions. Depositions may be taken in such cases in the same manner and under the same rules as in an action at law in the district court, but no cause for taking the same need be shown. [C., '51, § 383; R., '60, § 613; C., '73, § 733; C., '97, § 1235.]

997. Return of depositions. A copy of the statement, and of the notice for taking depositions, with the service indorsed, and verified

997. Return of depositions.
 998. Statement and depositions—notice.
 999. Power of general assembly.

by affidavit if not served by an officer, shall be returned to the officer taking the depositions, and then, with the depositions, shall be sealed up and transmitted to the secretary of state, with an indorsement thereon showing the nature of the papers, the names of the contesting parties, and the branch of the general assembly before whom the contest is to be tried. [C., '51, § 384; R., '60, § 614; C., '73, § 734; C., '97, § 1236.]

998. Statement and depositions—notice. The secretary shall deliver the same unopened to the presiding officer of the house in which the contest is to be tried, on or before the second day of the session, regular or special, of the general assembly next after taking the depositions, and the presiding officer shall immediately give notice to his house that such papers are in his possession. [C., '51, § 385; R., '60, § 615; C., '73, § 735; C., '97, § 1237.]

999. Power of general assembly. Nothing herein contained shall be construed to abridge the right of either branch of the general assembly to grant commissions to take depositions, or to send for and examine any witness it may desire to hear on such trial. [C., '51, § 386; R., '60, § 616; C., '73, § 736; C., '97, § 1238.]

CHAPTER 50

CONTESTING ELECTIONS OF PRESIDENTIAL ELECTOR

1000. Court of contest.
 1001. Clerk.
 1002. Oath.

1000. Court of contest. The court for the trial of contested elections for presidential electors shall consist of the chief justice of the supreme court, who shall be presiding judge of the court, and four judges of the district court not interested, to be selected by the supreme court, two of whom, with the chief justice, shall constitute a quorum for the transaction of the business of the court. If the chief justice should for any cause be unable to attend at the trial, the judge longest on the supreme court bench shall preside in place of the chief

1003. Statement.
 1004. Organization and trial.
 1005. Judgment.

justice; and any question arising as to the membership of the court shall be determined by the members of the court not interested in the question. [C., '97, § 1246.]

1001. Clerk. The secretary of state shall be the clerk of the court, or, in his absence or inability to act, the clerk of the supreme court. [C., '97, § 1246.]

1002. Oath. Each member of the court, before entering upon the discharge of his duties, shall take an oath before the secretary of state,

or some officer qualified to administer oaths, that he will support the constitution of the United States and that of the state of Iowa, and that, without fear, favor, affection, or hope of reward, he will, to the best of his knowledge and ability, administer justice according to law and the facts in the case. [C., '97, § 1246.]

1003. Statement. The contestant shall file the statement provided for in chapter 52 in the office of the secretary of state within ten days from the day on which the returns are canvassed by the state board of canvassers, and, within the same time, serve a copy of the same, with a notice of the contest, on the incumbent. [C., '97, § 1247.]

1004. Organization and trial. The clerk of the court shall, immediately after the filing of the statement, notify the judges herein named, and fix a day for the organization of the court within three days thereafter, and also

notify the parties to the contest. The judges shall meet on the day fixed, and organize the court, and make and announce such rules for the trial of the case as they shall think necessary for the protection of the rights of each party and a just and speedy trial of the case, and commence the trial of the case as early as practicable thereafter, and so arrange for and conduct the trial that a final determination of the same and judgment shall be rendered at least six days before the second Monday in January next following. [C., '97, § 1248.]

1005. Judgment. The judgment of the court shall determine which of the parties to the action is entitled to hold the office of presidential elector, and shall be authenticated by the presiding judge and clerk of the court and filed with the secretary of state; and the judgment so rendered shall constitute a final determination of the title to the office, and a certificate of appointment shall be issued to the successful party as an elector. [C., '97, § 1249.]

CHAPTER 51

CONTESTING ELECTIONS OF STATE OFFICERS

- 1006. Contest court.
- 1007. Clerk.
- 1008. Statement filed.
- 1009. Selection of court.
- 1010. Notice of selection.
- 1011. Organization of court.
- 1012. Contest relative to office of district judge.

- 1013. Delivery of papers.
- 1014. Limitation on hearing.
- 1015. Notice to incumbent—trial.
- 1016. Subpoenas—depositions.
- 1017. Judgment filed—execution.
- 1018. Power of judge.
- 1019. Compensation of judges.

1006. Contest court. The court for the trial of contested state offices, except that of governor and lieutenant governor, shall consist of three district judges, not interested, who shall be selected by the chief justice of the supreme court, except that when the chief justice is a party to the contest, the governor shall select said district judges. [C., '51, § 369; R., '60, § 599; C., '73, § 719; C., '97, § 1224; 40 Ex. G. A., H. F. 30, § 1.]

1007. Clerk. The secretary of state shall be the clerk of this court; but if the person holding that office is a party to the contest, the clerk of the supreme court, or, in case of his absence or inability, the auditor of state shall be clerk. [C., '51, § 370; R., '60, § 600; C., '73, § 720; C., '97, § 1225.]

1008. Statement filed. The statement as provided in chapter 52 must be filed with such clerk within thirty days from the day when incumbent was declared elected. [C., '51, § 371; R., '60, § 601; C., '73, § 721; C., '97, § 1226.]

1009. Selection of court. Upon the filing of such statement, the chief justice of the supreme court, or governor, as the case may be, shall select the membership of the court to try such contest, and immediately certify such selection to the clerk of the supreme court. Va-

cancies shall also be filled by the chief justice, or governor, as the case may be. [40 Ex. G. A., H. F. 30, § 2.]

1010. Notice of selection. The clerk of the supreme court, on receipt of such certificate, shall forthwith in writing notify the members of such court of contest of their selection. [C., '51, § 372; R., '60, § 602; C., '73, § 722; C., '97, § 1227; 40 Ex. G. A., H. F. 30, § 3.]

1011. Organization of court. The members so selected for said contest court shall, in cases of contest over offices other than district judge, meet at the seat of government within ten days after said notification and qualify by taking the oath required in case of contest over the office of presidential elector, and proceed, at said place, with the discharge of their duties. [C., '51, § 375; R., '60, § 605; C., '73, § 725; C., '97, § 1229; 40 Ex. G. A., H. F. 30, § 4.]

NOTE: Oath, see § 1002.

1012. Contest relative to office of district judge. In case of contests relative to the office of district judge, such selected members of said court shall meet, qualify, and transact the business of said court of contest at such place or places as they may designate, and in such case, after organizing, may select a clerk other

than the one heretofore specified. [40 Ex. G. A., H. F. 30, § 5.]

1013. Delivery of papers. Upon the organization of said court of contest, all papers in the possession of the clerk of the supreme court shall be forthwith delivered to said court of contest. [40 Ex. G. A., H. F. 30, § 6.]

1014. Limitation on hearing. The time for the trial of any contest relative to a state office shall not be set beyond the last Monday in January following the election. [C., '51, § 372; R., '60, § 602; C., '73, § 722; C., '97, § 1227; 40 Ex. G. A., H. F. 30, § 7.]

1015. Notice to incumbent—trial. Upon the organization of said court of contest, the court shall cause a notice of said contest to be served on the incumbent, together with a copy of the statement of contest filed by the contestant. No trial shall be held sooner than twenty days following said notice, except by consent of all parties. [C., '51, § 372; R., '60, § 602; C., '73, § 722; C., '97, § 1227; 40 Ex. G. A., H. F. 30, § 8.]

1016. Subpoenas—depositions. The secretary of state, the several clerks of the supreme and district courts, under their respective seals of office, and either of the judges of the supreme or district courts, under their hands, may issue subpoenas for witnesses to attend

this court; and disobedience to such process may be treated as a contempt. Depositions may also be taken as in the case of contested county elections. [C., '51, § 373; R., '60, § 603; C., '73, § 723; C., '97, § 1228.]

1017. Judgment filed—execution. A transcript of the judgment rendered by such court, filed in the office of the clerk of the supreme court, shall have the force and effect of a judgment of the supreme court, and execution may issue therefrom in the first instance against the party's property generally. [C., '51, § 377; R., '60, § 607; C., '73, § 727; C., '97, § 1231.]

1018. Power of judge. The presiding judge of this court shall have authority to carry into effect any order of the court, after the adjournment thereof, by attachment or otherwise. [C., '51, § 378; R., '60, § 608; C., '73, § 728; C., '97, § 1232.]

1019. Compensation of judges. The judges shall be entitled to receive for their travel and attendance the sum of six dollars each per day, with such mileage as is allowed to members of the general assembly, to be paid from the state treasury. [C., '51, § 376; R., '60, § 606; C., '73, § 726; C., '97, § 1230.]

NOTE: Mileage of members of general assembly, see § 14.

CHAPTER 52

CONTESTING ELECTIONS OF COUNTY OFFICERS

1020. Contest court.
1021. Judges.
1022. Clerk.
1023. Sheriff to attend.
1024. Statement of contest.
1025. Bond.
1026. When auditor is party.
1027. Names of voters specified.
1028. Trial—notice.
1029. Place of trial.
1030. Subpoenas.
1031. Postponement.
1032. Procedure—powers of court.

1020. Contest court. The court for the trial of contested county elections shall be thus constituted: The chairman of the board of supervisors shall be the presiding officer, and the contestant and incumbent may each name a person who shall be associated with him. [C., '51, § 343; R., '60, § 573; C., '73, § 695; C., '97, § 1201.]

1021. Judges. The contestant and incumbent shall each file in the auditor's office, on or before the day of trial, a written nomination of one associate judge of the contested election, who shall be sworn in manner and form as trial jurors are in trials of civil actions; if either the contestant or the incumbent fails to

1033. Sufficiency of statement.
1034. Amendment—continuance.
1035. Testimony.
1036. Voters required to testify.
1037. Judgment.
1038. How enforced.
1039. Appeal—supersedeas.
1040. Judgment on appeal.
1041. Process—fees.
1042. Compensation of judges.
1043. Costs.
1044. How collected.

nominate, the presiding judge shall appoint for him. When either of the nominated judges fails to appear on the day of trial, his place may be filled by another appointment under the same rule. [C., '51, §§ 347, 348; R., '60, §§ 577, 578; C., '73, § 700; C., '97, § 1206.]

1022. Clerk. The county auditor shall be clerk of this court, and keep all papers, and record the proceedings in the election book, in manner similar to the record of the proceedings of the district court, but when the county auditor is a party, the court shall appoint a suitable person as clerk, whose appointment shall be recorded. [C., '51, § 344; R., '60, § 574; C., '73, § 696; C., '97, § 1202.]

1023. Sheriff to attend. The court or presiding judge may direct the attendance of the sheriff or a constable when necessary. [C., '51, § 359; R., '60, § 589; C., '73, § 708; C., '97, § 1214.]

1024. Statement of contest. The contestant shall file in the office of the county auditor, within twenty days after the day when the incumbent was declared elected, a written statement of his intention to contest the election, setting forth the name of the contestant, and that he or she is qualified to hold such office, the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which statement shall be verified by the affidavit of the contestant, or some elector of the county, that the causes set forth are true as he verily believes. [C., '51, § 345; R., '60, § 575; C., '73, § 697; C., '97, § 1203.]

1025. Bond. The contestant must also file with the county auditor a bond, with security to be approved by said auditor, conditioned to pay all costs in case the election be confirmed, or the statement be dismissed, or the prosecution fail. [C., '51, § 345; R., '60, § 575; C., '73, § 697; C., '97, § 1203.]

1026. When auditor is party. When the auditor is a party, the clerk of the district court shall receive such statement and approve such bond. [C., '73, § 697; C., '97, § 1203.]

1027. Names of voters specified. When the reception of illegal or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the precinct where they voted or offered to vote, shall be set forth in the statement. [C., '51, § 346; R., '60, § 576; C., '73, § 698; C., '97, § 1204.]

1028. Trial—notice. The chairman of the board of supervisors shall thereupon fix a day for the trial, not more than thirty nor less than twenty days thereafter, and shall cause a notice of such trial to be served on the incumbent, with a copy of the contestant's statement, at least ten days before the day set for trial. [C., '51, §§ 347, 349, 350; R., '60, §§ 577, 579, 580; C., '73, § 699; C., '97, § 1205.]

1029. Place of trial. The trial of contested county elections shall take place at the county seat, unless some other place within the county is substituted by the consent of the court and parties. [C., '51, § 357; R., '60, § 587; C., '73, § 707; C., '97, § 1213.]

1030. Subpoenas. Subpoenas for witnesses may be issued at any time after the notice of trial is served, either by the clerk of the district court or by the county auditor, and shall command the witnesses to appear at . . . , on . . . , to testify in relation to a contested election, wherein A . . . B . . . is contestant and C . . . D . . . is incumbent. [C., '51, §§ 352,

356; R., '60, §§ 582, 586; C., '73, §§ 704, 706; C., '97, § 1210.]

1031. Postponement. The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement shall be in the discretion of the court. [C., '51, § 353; R., '60, § 583; C., '73, § 701; C., '97, § 1207.]

1032. Procedure—powers of court. The proceedings shall be assimilated to those in an action, so far as practicable, but shall be under the control and direction of the court, which shall have all the powers of the district court necessary to the right hearing and determination of the matter, to compel the attendance of witnesses, swear them and direct their examination, to punish for contempt in its presence or by disobedience to its lawful mandate, to adjourn from day to day, to make any order concerning intermediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case. [C., '51, §§ 354, 358, 361; R., '60, §§ 584, 588, 591; C., '73, § 702; C., '97, § 1208.]

1033. Sufficiency of statement. The statement shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest. [C., '51, § 355; R., '60, § 585; C., '73, § 705; C., '97, § 1211.]

1034. Amendment—continuance. If any part of the causes are held insufficient, they may be amended, but the incumbent will be entitled to an adjournment, if he states on oath that he has matter of answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court thinks reasonable; but if all the causes are held insufficient and an amendment is asked, the adjournment shall be at the cost of contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed. [C., '51, §§ 355, 361; R., '60, §§ 585, 591; C., '73, § 705; C., '97, § 1211.]

1035. Testimony. The testimony may be oral or by deposition, taken as in an action at law in the district court. [C., '51, § 351; R., '60, § 581; C., '73, § 703; C., '97, § 1209.]

1036. Voters required to testify. The court may require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter, and, if he was not a qualified voter in the county where he voted, then to answer for whom he voted. [C., '51, § 360; R., '60, § 590; C., '73, § 709; C., '97, § 1215; 40 Ex. G. A., H. F. 72, § 1.]

1037. Judgment. The court shall pronounce judgment whether the incumbent or any other person was duly elected, and ad-

judge that the person so declared elected will be entitled to his certificate. If the judgment be against the incumbent, and he has already received the certificate, the judgment shall annul it. If the court find that no person was elected, the judgment shall be that the election be set aside. [C., '51, § 362; R., '60, § 592; C., '73, § 714; C., '97, § 1220.]

1038. How enforced. When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the presiding judge shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the county, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same; and the sheriff shall execute such order as other writs. [C., '73, § 715; C., '97, § 1221.]

1039. Appeal—supersedeas. The party against whom judgment is rendered may appeal within twenty days to the district court, but, if he be in possession of the office, such appeal will not supersede the execution of the judgment of the court as provided in the preceding section, unless he gives a bond, with security to be approved by the district judge in a sum to be fixed by him, and which shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that he will prosecute his appeal without delay, and that, if the judgment appealed from be affirmed, he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered. The court shall hear the appeal in equity and determine anew all

questions arising in the case. [C., '73, § 716; C., '97, § 1222; S., '13, § 1222.]

1040. Judgment on appeal. If, upon appeal, the judgment is affirmed, the district court may render judgment upon the bond for the amount of damages, against the appellant and the sureties thereon. [C., '73, § 717; C., '97, § 1223.]

1041. Process—fees. The style, form, and manner of service of process and papers, and the fees of officers and witnesses, shall be the same as in the district court, so far as the nature of the case admits. [C., '51, §§ 356, 374; R., '60, §§ 586, 604; C., '73, §§ 706, 724; C., '97, § 1212.]

1042. Compensation of judges. The judges shall be entitled to receive four dollars a day for the time occupied by the trial. [C., '51, § 363; R., '60, § 593; C., '73, § 710; C., '97, § 1216.]

1043. Costs. The contestant and the incumbent are liable to the officers and witnesses for the costs made by them, respectively; but if the election be confirmed, or the statement be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs. [C., '51, § 364; R., '60, § 594; C., '73, § 711; C., '97, § 1217.]

1044. How collected. A transcript of the judgment, filed and recorded in the office of the clerk of the district court as provided in relation to transcripts from justices' courts, shall have the same effect as there provided, and execution may issue thereon. [C., '51, § 365; R., '60, § 595; C., '73, § 712; C., '97, § 1218.]

CHAPTER 53

TIME AND MANNER OF QUALIFYING

- 1045. General time to qualify.
- 1046. City and town officers—time to qualify.
- 1047. Unavoidable casualty.
- 1048. Contest—time to qualify.
- 1049. Governor and lieutenant governor.
- 1050. Judges.
- 1051. Officer holding over.

- 1052. Appointee to fill vacancy.
- 1053. Temporary officer.
- 1054. Other officers.
- 1055. Oath on bond.
- 1056. Reelected incumbent.
- 1057. Approval conditioned.

1045. General time to qualify. Each officer, elective or appointive, before entering upon his duties as such, shall qualify by taking the prescribed oath and by giving, when required, a bond, which qualification shall be perfected, unless otherwise specified, before noon of the second secular day in January of the first year of the term for which such officer was elected. [C., '51, §§ 319, 334, 335; R., '60, §§ 549, 564, 565; C., '73, §§ 670, 685-687; C., '97,

§ 1177; S., '13, § 1177; 40 Ex. G. A., S. F. 31, § 1.]

NOTE: Official bonds, see ch. 54.

1046. City and town officers—time to qualify. City and town officers shall so qualify within ten days after their election has been declared by the board of canvassers. [C., '51, §§ 319, 334, 335; R., '60, §§ 549, 564, 565; C.,

'73, §§ 670, 685-687; C., '97, § 1177; S., '13, § 1177; 40 Ex. G. A., S. F. 31, § 2.]

1047. Unavoidable casualty. When on account of sickness, the inclement state of the weather, unavoidable absence, or casualty, an officer has been prevented from qualifying within the prescribed time, he may do so within ten days after the time herein fixed. [C., '97, § 1177; S., '13, § 1177; 40 Ex. G. A., S. F. 31, § 3.]

1048. Contest—time to qualify. In case the election of an officer is contested, the successful party shall qualify within ten days after the decision is rendered. [C., '51, § 335; R., '60, § 565; C., '73, § 687; C., '97, § 1177; S., '13, § 1177; 40 Ex. G. A., S. F. 31, § 4.]

1049. Governor and lieutenant governor. The governor and lieutenant governor shall each qualify within ten days after the result of the election shall be declared by the general assembly, by taking an oath in its presence, in joint convention assembled, administered by a judge of the supreme court, to the effect that he will support the constitution of the United States and the constitution of the state of Iowa, and will faithfully and impartially, and to the best of his knowledge and ability, discharge the duties incumbent upon him as governor, or lieutenant governor, of this state. [C., '51, §§ 320, 334; R., '60, §§ 550, 564; C., '73, §§ 671, 685; C., '97, § 1178.]

1050. Judges. All judges of courts of record shall qualify by the first day of January following the election, by taking and subscribing an oath to the effect that they will support the constitution of the United States and that of the state of Iowa, and that, without fear, favor, affection, or hope of reward, they will, to the best of their knowledge and ability, administer justice according to the law, equally to the rich and the poor. [C., '51, §§ 322, 334; R., '60, §§ 552, 564; C., '73, §§ 673, 685; C., '97, § 1179.]

1051. Officer holding over. When it is ascertained that the incumbent is entitled to hold over by reason of the nonelection of a successor, or for the neglect or refusal of the successor to qualify, he shall qualify anew, within the time provided by the next section. [C., '51, § 338; R., '60, § 568; C., '73, § 690; C., '97, § 1195; S., '13, § 1195.]

1052. Appointee to fill vacancy. Persons elected or appointed to fill vacancies, and offi-

cers entitled to hold over to fill vacancies occurring through a failure to elect, appoint, or qualify, as provided in chapter 59, shall qualify within ten days from such election, appointment, or failure to elect, appoint, or qualify, in the same manner as those originally elected or appointed to such offices. [C., '51, § 440; R., '60, § 668; C., '73, § 786; C., '97, § 1275.]

1053. Temporary officer. Any person temporarily appointed to fill an office during the incapacity or suspension of the regular incumbent shall qualify, in the manner required by this chapter, for the office so to be filled. [C., '73, § 691; C., '97, § 1194.]

1054. Other officers. All other civil officers, elected by the people or appointed to any civil office, unless otherwise provided, shall take and subscribe an oath substantially as follows:

"I,, do solemnly swear that I will support the constitution of the United States and the constitution of the state of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of (naming it) in (naming the township, town, city, county, district, or state, as the case may be), as now or hereafter required by law." [C., '51, §§ 331, 332; R., '60, §§ 561, 562, 1084, 1132; C., '73, §§ 504, 514, 675, 676; C., '97, § 1180.]

1055. Oath on bond. Every civil officer who is required to give bond shall take and subscribe the oath provided for in the preceding section, on the back of his bond, or on a paper attached thereto, to be certified by the officer administering it. [C., '51, § 331; R., '60, § 561; C., '73, § 675; C., '97, § 1181.]

Notes: Officers required to give bonds, see ch. 54.

1056. Reelected incumbent. When the incumbent of an office is reelected, he shall qualify as above directed. [C., '51, § 338; R., '60, § 568; C., '73, § 690; C., '97, § 1193.]

1057. Approval conditioned. When the reelected officer has had public funds or property in his control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and property to the proper person to whom he should account therefor; and the officer or board approving the bond shall indorse upon the bond, before its approval, the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer. [C., '73, § 690; C., '97, § 1193.]

CHAPTER 54

OFFICIAL AND PRIVATE BONDS

1058. Bond not required.
 1059. Conditions of bond of public officers.
 1060. Liability of surety.
 1061. Conditions of other bonds.
 1062. Want of compliance—effect.
 1063. State officers—amount of bonds.
 1064. Amount of bond, when not fixed by law.
 1065. County, city, town, and township officers.
 1066. Minimum bonds of county officers.
 1067. Expense of treasurer's bond paid by county.
 1068. Municipal officers.
 1069. Bonds of deputy officers.

1058. Bond not required. Bonds shall not be required of the following public officers:

1. Governor.
2. Lieutenant governor.
3. Members of the general assembly.
4. Judges of the supreme, district, superior, and municipal courts.
5. Township trustees.
6. Aldermen, councilmen, and commissioners of cities and towns. [C., '51, § 323; R., '60, § 553; C., '73, § 674; C., '97, § 1182; S., '13, § 1182; S. S., '15, § 694-c11; 40 Ex. G. A., H. F. 32, § 1.]

1059. Conditions of bond of public officers. All other public officers, except as otherwise specially provided, shall give bond with the conditions, in substance, as follows:

That as (naming the office), in (city, town, township, county, or state of Iowa), he will render a true account of his office and of his doings therein to the proper authority, when required thereby or by law; that he will promptly pay over to the officer or person entitled thereto all moneys which may come into his hands by virtue of his office; that he will promptly account for all balances of money remaining in his hands at the termination of his office; that he will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property appertaining to his said office, and deliver them to his successor, or to any other person authorized to receive the same; and that he will faithfully and impartially, without fear, favor, fraud, or oppression, discharge all duties now or hereafter required of his office by law. [C., '51, § 324; R., '60, §§ 554, 1084, 1132; C., '73, §§ 504, 514, 674; C., '97, § 1183; 40 Ex. G. A., H. F. 32, § 2.]

1060. Liability of surety. The sureties on such bond shall be liable for all money or public property that may come into the hands of such officer at any time during his posses-

1070. Minimum number of sureties—qualifications.
 1071. Surety company bonds.
 1072. Beneficiary of bond.
 1073. Approval of bonds.
 1074. Time for approval.
 1075. Approval by auditor.
 1076. Failure of board to approve—application to judge.
 1077. Custody of bond.
 1078. Recording of bonds.
 1079. Failure to give bond.

sion of such office. [C., '51, § 324; R., '60, §§ 554, 1084, 1132; C., '73, §§ 504, 514, 674; C., '97, § 1183; 40 Ex. G. A., H. F. 32, § 3.]

1061. Conditions of other bonds. All other bonds required by law, when not otherwise specially provided, shall be conditioned as the bonds of public officers. [S., '13, §§ 1177-a, 1177-d; 40 Ex. G. A., H. F. 32, § 4.]

1062. Want of compliance—effect. All bonds required by law shall be construed as impliedly containing the conditions required by statute, anything in the terms of said bonds to the contrary notwithstanding. [C., '51, § 337; R., '60, § 567; C., '73, § 689; C., '97, § 1192; S., '13, § 1177-c; 40 Ex. G. A., H. F. 32, § 5.]

1063. State officers—amount of bonds. State officers shall give bonds in an amount as follows:

1. Secretary of state, auditor of state, attorney general, clerk of the supreme court, not less than ten thousand dollars.
2. Treasurer of state, not less than three hundred thousand dollars.
3. Members of board of control of state institutions, twenty-five thousand dollars.
4. Each member of the finance committee of the state board of education, twenty-five thousand dollars.
5. Each treasurer of a state institution under the control of the state board of education, an amount to be fixed by the board substantially equal to twice the highest amount of money liable to come into his hands at any one time.
6. Commissioner of public health, secretary of agriculture, and each railroad commissioner, not less than five thousand dollars.
7. Superintendent of public instruction, not less than two thousand dollars.
8. Custodian of public buildings and grounds, such amount as the executive council may fix.

9. Commissioner of insurance, fifty thousand dollars.

10. Superintendent of banking, twenty thousand dollars.

11. State fire marshal, five thousand dollars.

12. Mine inspectors, two thousand dollars.

13. Labor commissioner, two thousand dollars.

14. Deputy labor commissioner, one thousand dollars.

15. State game warden, five thousand dollars.

16. Deputy game wardens, five hundred dollars.

17. Secretary of executive council, such amount as the executive council may fix.

18. State librarian, five thousand dollars.

19. Law librarian, three thousand dollars.

20. Curator historical department, one thousand dollars.

21. Superintendent of printing, five thousand dollars.

22. Industrial commissioner, one thousand dollars.

23. Members state highway commission, five thousand dollars.

24. Reporter of the supreme court, not less than one thousand dollars.

25. All other public officers, in the amount provided by law, or as fixed under the following section. 1. [C., '51, § 326; R., '60, §§ 128, 556; C., '73, § 678; C., '97, § 1184; 40 Ex. G. A., H. F. 32, § 6.] 2. [C., '51, § 326; R., '60, § 556; C., '73, § 678; C., '97, § 1184; 40 Ex. G. A., H. F. 32, § 6.] 3. [S., '13, § 2727-a2; 40 Ex. G. A., H. F. 32, § 6.] 4. [S., '13, § 2682-i; 40 Ex. G. A., H. F. 32, § 6.] 5. [R., '60, § 1739; C., '73, § 1614; C., '97, § 2654; 40 Ex. G. A., H. F. 32, § 6.] 6. [C., '97, § 1184; 40 G. A., ch. 46, § 7; 40 Ex. G. A., H. F. 32, § 6.] 7. [C., '51, § 326; C., '73, § 678; C., '97, § 1184; 40 Ex. G. A., H. F. 32, § 6.] 8. [C., '97, § 145; S. S., '15, § 147; 39 G. A., ch. 108, § 1; 40 Ex. G. A., H. F., 32, § 6.] 9. [S., '13, § 1683-r; 39 G. A., ch. 209, § 15; 40 G. A., ch. 169; 40 Ex. G. A., H. F. 32, § 6.] 10. [37 G. A., ch. 40, § 4; 39 G. A., ch. 209, § 60; 40 Ex. G. A., H. F. 32, § 6.] 11. [S., '13, § 2468-a; 40 Ex. G. A., H. F. 32, § 6.] 12. [C., '97, § 2478; S. S., '15, § 2478; 40 Ex. G. A., H. F. 32, § 6.] 13. [C., '97, § 2469; S., '13, § 2469; 40 Ex. G. A., H. F. 32, § 6.] 14. [40 Ex. G. A., H. F. 32, § 6.] 15. [40 Ex. G. A., H. F. 32, § 6.] 16. [S. S., '15, § 2562; 39 G. A., ch. 209, § 40; 40 Ex. G. A., H. F. 32, § 6.] 17. [S., '13, § 157; 40 Ex. G. A., H. F. 32, § 6.] 18. [C., '51, § 446; R., '60, § 691; C., '73, § 1890; C., '97, § 2860; S., '13, § 2881-h; 40 Ex. G. A., H. F. 32, § 6.] 19. [40 Ex. G. A., H. F. 32, § 6.] 20. [S., '13, § 2881-h; 40 Ex. G. A., H. F. 32, § 6.] 21. [S. S., '15, § 144-g; 39 G. A., ch. 286, § 37; 40 Ex. G. A., H. F. 32, § 6.] 22. [40 Ex. G. A., H. F. 32, § 6.] 23. [S. S., '15, § 1527-s; 40 Ex. G. A., H. F. 32, § 6.] 24. [C., '73, § 678; C., '97, § 1184; 39 G. A., ch. 4, § 1; 40 Ex. G. A., H. F. 32, § 6.] 25. [40 Ex. G. A., H. F. 32, § 6.]

1064. Amount of bond, when not fixed by law. In all cases where no amount or a minimum amount is fixed by law for the official bond of a public officer, the approving officer or board shall fix the bond at such amount as public interest may require. [40 Ex. G. A., H. F. 32, § 7.]

1065. County, city, town, and township officers. The bonds of the following county officers, viz.: treasurers, clerks of the district courts, county attorneys, recorders, coroners, auditors, superintendents of schools, sheriffs, justices of the peace, and constables, and city, town, and township assessors, shall each be in a penal sum to be fixed by the board of supervisors. [C., '51, §§ 326, 327; R., '60, §§ 556, 557; C., '73, § 678; C., '97, § 1185; S., '13, § 1185; 40 Ex. G. A., H. F. 32, § 9.]

1066. Minimum bonds of county officers. Bonds of members of the board of supervisors, treasurers, clerks of the district courts, county auditors, sheriffs, and county attorneys shall not be in less sum than five thousand dollars each, and those of justices and constables, not less than five hundred dollars each. [C., '51, § 327; R., '60, § 557; C., '73, § 678; C., '97, § 1185; S., '13, §§ 1182-a, 1185; 40 Ex. G. A., H. F. 32, § 10.]

1067. Expense of treasurer's bond paid by county. If any county treasurer shall elect to furnish a bond with any association or incorporation as surety as provided in this chapter, the reasonable cost of such bond shall be paid by the county where the bond is filed. [S., '13, § 1185; 40 Ex. G. A., H. F. 32, § 11.]

NOTE: Surety company bonds authorized, see § 1071.

1068. Municipal officers. The bonds of all municipal officers who are required to give bonds shall each be in such penal sum as may be provided by law or as the council shall from time to time prescribe by ordinance; but the bonds of mayors shall not be in less sum than five hundred dollars each. [R., '60, §§ 1084, 1132; C., '73, §§ 504, 514; C., '97, § 1185; S., '13, § 1185; 40 Ex. G. A., H. F. 32, § 12.]

1069. Bonds of deputy officers. Bonds required by law of deputy state, county, city, and town officers shall, unless otherwise provided, be in such amounts as may be fixed by the governor, board of supervisors, or the council, as the case may be, with sureties as required for the bonds of the principal, and filed with the same officer. The giving of such bond shall not relieve the principal from liability for the official acts of the deputy. [C., '51, § 411; R., '60, § 642; C., '73, § 766; C., '97, § 1186; 40 Ex. G. A., H. F. 32, § 13.]

1070. Minimum number of sureties—qualifications. Every bond required by this chapter, except as hereinafter specified, shall be executed with at least two sureties, each

of whom shall be a freeholder of the state. The bonds of the state treasurer and of the county treasurer shall have not less than four sureties, possessed of like qualifications. [C., '51, §§ 328, 329; R., '60, §§ 558, 559; C., '73, § 679; C., '97, § 1187; 40 Ex. G. A., H. F. 32, § 14.]

1071. Surety company bonds. Any association or incorporation which does the business of insuring the fidelity of others, and which has authority by law to do business in this state, shall be accepted as surety upon bonds required by law. [C., '97, § 1187; 40 Ex. G. A., H. F. 32, § 15.]

1072. Beneficiary of bond. All bonds of public officers shall run to the state, and be for the use and benefit of any corporation, public or private, or person injured or sustaining loss, with a right of action in the name of the state for its or his use. [C., '51, § 325; R., '60, § 555; C., '73, § 677; C., '97, § 1188; S., '13, § 1188; 40 Ex. G. A., H. F. 32, § 16.]

1073. Approval of bonds. Bonds shall be approved:

1. By the governor, in case of state and district officers, elective or appointive.

2. By the board of supervisors, in case of county officers, township clerks, and assessors.

3. By a judge of the district court of the county in question, in case of members of the board of supervisors.

4. By the township clerk, in case of other township officers.

5. By the mayor, or as may be provided by ordinance, in case of city and town officers.

6. By the city or town council, in case of the office of mayor. [C., '51, § 330; R., '60, § 560; C., '73, § 680; C., '97, § 1188; S., '13, §§ 1182-a, 1188; 40 Ex. G. A., H. F. 32, § 17.]

NOTE: Approval of bonds of notary public, see § 1200.

1074. Time for approval. All bonds shall be approved or disapproved within five days after their presentation for that purpose, and indorsed, in case of approval, to that effect and filed. [C., '51, § 330; R., '60, § 560; C., '73, § 680; C., '97, § 1188; S., '13, § 1188; 40 Ex. G. A., H. F. 32, § 18.]

1075. Approval by auditor. When a bond, approvable by the board of supervisors, of any public officer is presented after the final adjournment of the January session of said board, except those of the county auditor and treasurer, the auditor may approve such bond, in which case he shall report his action to the board at its next session. The action of the auditor in approving the bond shall stand as the action of the board unless the board enters its disapproval. If such disapproval be entered, the new bond must be given within five days from the date of such decision, but the old bond shall stand good for all acts done up to the time of the approval of the new bond.

[C., '51, § 330; R., '60, § 560; C., '73, § 680; C., '97, § 1189; 40 Ex. G. A., H. F. 32, § 19.]

1076. Failure of board to approve—application to judge. If the board of supervisors refuses or neglects to approve the bond of any county officer, he may within five days thereafter, or after the expiration of the time allowed for such approval, present the same for approval to a judge of the district court of the proper district, who shall fix a day for the hearing. Notice of such hearing shall be given the board and return made in the same manner as in a civil action, and the court or judge at the time fixed shall, unless good cause for postponement be shown, proceed to hear the matter and approve the bond, if found sufficient, and such approval shall have the same force and effect as an approval by the board. [C., '73, § 681; C., '97, § 1190; 40 Ex. G. A., H. F. 32, § 20.]

1077. Custody of bond. The bonds and official oaths of public officers shall, after approval and proper record, be filed:

1. For all state officers, elective or appointive, except those of the secretary of state, with the secretary of state.

2. For the secretary of state, with the state auditor.

3. For county and township officers, except those of the county auditor, with the county auditor.

4. For county auditor, with the county treasurer.

5. For members of the board of supervisors, and for justices of the peace, with the clerk of the district court.

6. For officers of cities and towns, and officers not otherwise provided for, when both bond and oath are required, in the office of the officer or clerk of the body approving the bond.

7. For officers of cities and towns when only an oath is required, in the office of the mayor. [C., '51, § 333; R., '60, § 563; C., '73, § 682; C., '97, §§ 1188, 1191; S., '13, §§ 1182-a, 1188; 40 Ex. G. A., H. F. 32, § 21.]

1078. Recording of bonds. The secretary of state, each county auditor, and each auditor or clerk of a city or town, shall keep a book, to be known as the "Record of Official Bonds", and all official bonds shall be recorded therein in full as follows:

1. In the record kept by the secretary of state, the official bonds of all state officers, elective or appointive, except the bonds of notaries public.

2. In the record kept by the county auditor, the official bonds of all county officers, elective or appointive, justices of the peace, township clerks, constables, and all assessors.

3. In the record kept by the city or town auditor or clerk, the official bonds of all city or town officers, elective or appointive.

Said records shall have an index which, under the title of each office, shall show the name

of each principal, his sureties, and the date of the filing of the bond.

A bond when recorded shall be returned to the officer charged with the custody thereof. [C., '73, § 683; C., '97, § 1196; S., '13, § 1196; 40 Ex. G. A., H. F. 32, § 22.]

1079. Failure to give bond. Any officer who acts in an official capacity without giving bond when such bond is required shall be fined in an amount not exceeding the amount of the bond required of him. [C., '73, § 684; C., '97, § 1197; 40 Ex. G. A., H. F. 32, § 23.]

CHAPTER 55

ADDITIONAL SECURITY AND DISCHARGE OF SURETIES

- 1080. Additional security.
- 1081. New bond.
- 1082. Effect.
- 1083. Sureties on bonds of public officers.
- 1084. Notice.
- 1085. Subpoenas.

- 1086. Hearing—order—effect.
- 1087. Failure to comply.
- 1088. Justice of the peace.
- 1089. Sureties on other bonds.
- 1090. Return of premium by surety.

1080. Additional security. Whenever the governor shall deem it advisable that the bonds of any state officer should be increased and the security enlarged, or a new bond given, he shall notify said officer of the fact, the amount of new or additional security to be given, and the time when the same shall be executed; which said new security shall be approved and filed as provided by law. [R., '60, § 660; C., '73, § 772; C., '97, § 1280.]

or may postpone it, as justice requires. [C., '51, § 422; R., '60, § 653; C., '73, § 776; C., '97, § 1284.]

1085. Subpoenas. The approving officer may issue subpoenas in his official name for witnesses, compel them to attend and testify, in the same way an officer authorized to take depositions may. [C., '51, § 427; R., '60, § 658; C., '73, § 780; C., '97, § 1288.]

NOTE: Approval and filing of bonds, see §§ 1073, 1077.

1081. New bond. Any officer or board who has the approval of another officer's bond, when of the opinion that the public security requires it, upon giving ten days' notice to show cause to the contrary, may require him to give additional security by a new bond, within a reasonable time to be prescribed. [C., '51, §§ 418, 419; R., '60, §§ 649, 650; C., '73, § 773; C., '97, § 1281.]

1086. Hearing—order—effect. If, upon the hearing, there appears substantial ground for apprehension, the approving officer or board may order the principal to give a new bond and to supply the place of the petitioning surety within a reasonable time to be prescribed, and, upon such new bond being given, the petitioning surety upon the former bond shall be declared discharged from liability on the same for future acts, which order of discharge shall be entered in the proper election book, but the bond will continue binding upon those who do not petition for relief. [C., '51, § 424; R., '60, § 655; C., '73, § 777; C., '97, § 1285.]

NOTE: Who may approve bonds, see § 1073.

1082. Effect. If a requisition made under either of the foregoing sections be complied with, both the old and the new security shall be in force; if not, the office shall become and be declared vacant, and the fact be certified to the proper officer, to be recorded in the election book or township record. [C., '51, § 420; R., '60, §§ 651, 661; C., '73, § 774; C., '97, § 1282.]

1087. Failure to comply. If the new bond is not given as required, the office shall be declared vacant, and the order to that effect entered in the proper election book. [C., '51, § 425; R., '60, § 656; C., '73, § 778; C., '97, § 1286.]

1083. Sureties on bonds of public officers. When any surety on the bond of a public officer desires to be relieved of his obligation, he may petition the approving officer or board for relief, stating the grounds therefor. [C., '51, § 421; R., '60, § 652; C., '73, § 775; C., '97, § 1283; 40 Ex. G. A., S. F. 33, § 1.]

1088. Justice of the peace. If the proceedings relate to a justice of the peace, and he is removed from office, the county auditor shall notify the proper township trustees or clerk of the removal. [C., '51, § 426; R., '60, § 657; C., '73, § 779; C., '97, § 1287.]

NOTE: Approving officers, see § 1073.

1084. Notice. The surety shall give the principal at least twenty-four hours' notice of the presenting and filing of the petition, with a copy thereof. At the expiration of this notice the approving officer may hear the matter,

1089. Sureties on other bonds. When the principal on the bond has been appointed by a judge or court or is under the jurisdiction of a court, the petition for release must be presented to said court and the release shall be made subject to the orders of said court.

Sureties on other bonds required by law who desire to be released of their obligation may proceed in the manner required for release in case of bonds of public officers.

The provisions of this section shall not apply to sureties on bonds given to secure the performance of contracts for public works, nor to sureties on appearance bonds in criminal cases. [C., '51, § 421; R., '60, § 652; C., '73, § 775; C., '97, § 1283; S., '13, § 1177-b; 40 Ex. G. A., S. F. 33, § 2.]

1090. Return of premium by surety. When a surety is released as heretofore provided, he shall refund to the party entitled thereto the premium paid, if any, less a pro rata part thereof for the time said bond has been in force. [S., '13, § 1177-b; 40 Ex. G. A., S. F. 33, § 3.]

CHAPTER 56

REMOVAL FROM OFFICE

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1091. Removal by court. Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons:

1. For wilful or habitual neglect or refusal to perform the duties of his office.
2. For wilful misconduct or maladministration in office.
3. For corruption.
4. For extortion.
5. Upon conviction of a felony.
6. For intoxication, or upon conviction of being intoxicated. [S., '13, § 1258-c; 37 G. A., ch. 391, § 1; 40 Ex. G. A., H. F. 34, § 1.]

NOTE: Removal of director of budget, see § 815.
Removal of fire marshal, see § 1620.
Removal of member of board of control, see § 3278.
Removal of member of state board of education, see § 8916.

1092. Jurisdiction. The jurisdiction of the proceeding provided for in this chapter shall be as follows:

1. As to state officers whose offices are located at the seat of government, the district court of Polk county.
2. As to state officers whose duties are confined to a district within the state, the district court of any county within such district.
3. As to county, municipal, or other officers, the district court of the county in which such officers' duties are to be performed. [40 Ex. G. A., H. F. 34, § 2.]

1093. Who may file petition. The petition for removal may be filed:

1. By the attorney general in all cases.

2. As to state officers, by not fewer than twenty-five electors of the state.

3. As to any other officer, by five qualified electors of the district, county, or municipality where the duties of the office are to be performed.

4. As to district officers, by the county attorney of any county in the district.

5. As to all county and municipal officers, by the county attorney of the county where the duties of the office are to be performed. [S., '13, § 1258-d; 40 Ex. G. A., H. F. 34, § 3.]

1094. Petition—other pleading. The petition shall be filed in the name of the state of Iowa. The accused shall be named as defendant, and the petition, unless filed by the attorney general, shall be verified. The petition shall state the charges against the accused and may be amended as in ordinary actions, and shall be filed in the office of the clerk of the district court of the county having jurisdiction. The petition shall be deemed denied but the accused may plead thereto. [S., '13, §§ 1258-d, 1258-e; 40 Ex. G. A., H. F. 34, § 4.]

1095. Notice. Upon the filing of a petition, notice of such filing and of the time and place of hearing shall be served upon the accused in the manner required for the service of notice of the commencement of an ordinary action. Said time shall not be less than ten days nor more than twenty days after completed service of said notice. [S., '13, § 1258-f; 40 Ex. G. A., H. F. 34, § 5.]

1096. Suspension from office. Upon the filing of the petition in the office of the clerk of the district court, and presentation of the same to the judge, the court or judge may suspend

the accused from office, if in his judgment sufficient cause appear from the petition and affidavits which may be presented in support of the charges contained therein. [S., '13, § 1258-g; 40 Ex. G. A., H. F. 34, § 6.]

1097. Effect of suspension. In case of suspension, the order shall be served upon the officer in question and it shall be unlawful for him to exercise or attempt to exercise any of the functions of his office until such suspension is revoked. [40 Ex. G. A., H. F. 34, § 7.]

1098. Governor to direct filing. The governor shall direct the attorney general to file such petition against any of said officers whenever he has reasonable grounds for such direction. The attorney general shall comply with such direction and prosecute such action. [S., '13, §§ 1258-d, 1258-e; 40 Ex. G. A., H. F. 34, § 8.]

1099. Duty of county attorney. The county attorney of any county in which an action is instituted under the last preceding section shall, at the request of the attorney general, appear and assist in the prosecution of such action. In all other cases instituted in his county, the county attorney shall appear and prosecute when the officer sought to be removed is other than himself. [S., '13, § 1258-d; 40 Ex. G. A., H. F. 34, § 9.]

1100. Special prosecutor. When the proceeding is brought to remove the county attorney, the court may appoint an attorney to appear in behalf of the state and prosecute such proceedings. [S., '13, § 1258-d; 40 Ex. G. A., H. F. 34, § 10.]

1101. Application for outside judge. At any time not less than five days prior to the time the accused is required to appear, a copy of the petition may be filed by either party in the office of the clerk of the supreme court, together with an application to the supreme court for the appointment of a judge outside the judicial district in which the trial is to be had to hear said petition. [S., '13, § 1258-f; 40 Ex. G. A., H. F. 34, § 11.]

1102. Appointment of judge. It shall be the duty of the chief justice of the supreme court, upon the filing of said copy and application, or in his absence or inability to act, any justice thereof, to forthwith issue a written commission directing a district judge outside of such district to proceed to the county in which the complaint was filed, and hear the same. The clerk of the supreme court shall transmit a certified copy of said order to the clerk of the district court where the cause is pending. [S., '13, § 1258-f; 40 Ex. G. A., H. F. 34, § 12.]

1103. Order by appointed judge. Upon the receipt of such commission, said judge shall immediately make an order fixing a time and place of hearing in the county in which the petition is filed. Said time shall not be less

than ten days nor more than twenty days from the date of the order. [S., '13, § 1258-f; 40 Ex. G. A., H. F. 34, § 13.]

1104. Filing order—effect. Said order shall be forwarded to the clerk of the district court of the county in which the hearing is to be had. Said order shall supersede the time and place specified in any notice already served. [S., '13, § 1258-f; 40 Ex. G. A., H. F. 34, § 14.]

1105. Notice to accused. The clerk shall file said order, and forthwith give the defendant, by mail, notice of the time and place of hearing. [S., '13, § 1258-f; 40 Ex. G. A., H. F. 34, § 15.]

1106. Nature of action—when triable. The proceeding shall be summary in its nature, shall be triable as an equitable action, and may be heard either in vacation or term time. [S., '13, § 1258-g; 40 Ex. G. A., H. F. 34, § 16.]

1107. Temporary officer. Upon such suspension, the board or person authorized to fill a vacancy in the office, shall temporarily fill the office by appointment. In case of a suspension of a clerk or sheriff, the district court or judge thereof may supply such place by appointment until a temporary appointment shall be made. Such orders of suspension and temporary appointment of county and township officers shall be certified to the county auditor, and be by him entered in the election book; those of city and town officers, certified to the clerk and entered upon the records; in case of other officers, to the person or body making the original appointment. [C., '51, §§ 404, 407, 410; R., '60, §§ 635, 638, 641; C., '73, §§ 752, 753, 758; C., '97, § 1257; S., '13, § 1258-g; 40 Ex. G. A., H. F. 34, § 17.]

1108. Judgment of removal. Judgment of removal, if rendered, shall be entered of record, and the vacancy forthwith filled as provided by law. [S., '13, § 1258-h; 40 Ex. G. A., H. F. 34, § 18.]

1109. Hearing on appeal. In case of appeal, the supreme court shall fix the time of hearing and the filing of abstracts and arguments, and said cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken, provided the abstract and arguments are filed in said court in time for said action to be heard. [S., '13, § 1258-i; 40 Ex. G. A., H. F. 34, § 19.]

1110. Effect of appeal. The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the district court or judge, or restore said defendant to office pending such appeal. [S., '13, § 1258-i; 40 Ex. G. A., H. F. 34, § 20.]

1111. Effect of dismissal. If the petition be dismissed on final hearing on the merits, the defendant shall have judgment against the state, if the action was instituted by the

attorney general, and against the county, city, town, or other subdivision of the state if the action is otherwise instituted, for the reasonable and necessary expenses incurred by the defendant in making his defense, including a reasonable attorney fee, to be fixed by the court or judge. Such payment shall be made out of any funds in the state treasury not otherwise appropriated, or out of the general fund of the county, city, town, or other subdivision of the state, as the case may be. [S., '13, § 1258-i; 40 Ex. G. A., H. F. 34, § 21.]

1112. Complaint without probable cause. If the action is instituted upon complaint of citizens, and it appears to the court that there was no reasonable cause for filing the complaint, such expense may be taxed as costs against the complaining parties. [S., '13, § 1258-i; 40 Ex. G. A., H. F. 34, § 22.]

1113. Expense of judge and reporter. A judge who is required to preside at such hearing, outside of his judicial district, and the judge's official reporter who is required to report such hearing, shall be allowed, from the state treasury, their necessary and actual expenses incurred by reason of such hearing. [S., '13, § 1258-j; 40 Ex. G. A., H. F. 34, § 23.]

1114. Appointive state officers. Any appointive state officer may also be removed from office by a majority vote of the executive council for any of the following causes:

1. Habitual or wilful neglect of duty.
 2. Any disability preventing a proper discharge of the duties of his office.
 3. Gross partiality.
 4. Oppression.
 5. Extortion.
 6. Corruption.
 7. Wilful misconduct or maladministration in office.
 8. Conviction of felony.
 9. A failure to produce and fully account for all public funds and property in his hands at any inspection or settlement.
 10. Becoming ineligible to hold the office.
- [S., '13, § 1258-b; 40 Ex. G. A., H. F. 34, § 24.]

NOTE: Removal of director of budget, see § 315.

Removal of fire marshal, see § 1620.

Removal of member of board of control, see § 3278.

Removal of member of state board of education, see § 3916.

1115. Subpoenas—contempt. The executive council, in any investigation held by it, may issue subpoenas for witnesses and for the production of records, books, papers, and other evidence. If a witness, duly subpoenaed, refuses to appear, or refuses to testify, or otherwise refuses to comply with said subpoena, such fact shall be certified by such council to the district court or judge of the county where the hearing is being held and said court or judge shall proceed with said refusal as though the same had occurred in a legal proceeding before said court or judge. [39 G. A., ch. 158, §§ 1, 2; 40 Ex. G. A., H. F. 34, § 24-a1.]

1116. Witness fees. Said witnesses, if in the employ of the state, shall not be entitled to any witness fees, but shall receive the mileage allowed witnesses in the district court. Other witnesses shall receive the fees and mileage allowed witnesses in district court. A sum sufficient to pay said fees and mileage is hereby appropriated out of any unappropriated funds in the state treasury. [39 G. A., ch. 158, § 1; 40 Ex. G. A., H. F. 34, § 24-a2.]

1117. City or town officers. Any city or town officer, elective or appointive, may be removed from office, after hearing on written charges filed with the council of such city or town, for any cause which would be ground for an equitable action for removal in the district court, but such removal can only be made by a two-thirds vote of the entire council. [R., '60, § 1087; C., '73, § 516; C., '97, § 1258; S. S., '15, § 1258; 40 Ex. G. A., H. F. 34, § 25.]

NOTE: Removal of municipal officers, see § 5638.

1118. Method of removal—limitation. The council, including councils of cities acting under special charters, may, by ordinance, provide as to the manner of preferring and hearing such charges. No person shall be twice removed by the council from the same office for the same offense. Proceedings before the council shall not be a bar to proceedings in the district court as in this chapter provided. [R., '60, § 1087; C., '73, § 516; C., '97, § 1258; S., '13, § 1258-a; S. S., '15, § 1258; 40 Ex. G. A., H. F. 34, § 26.]

CHAPTER 57

SUSPENSION OF STATE OFFICERS

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- 1130. Reports revealing grounds of removal.

1119. Commission to examine accounts. The governor shall, when of the opinion that the public service requires such action, appoint, in writing, a commission of three competent accountants and direct them to examine the books, papers, vouchers, moneys, securities, and documents in the possession or under the control of any state officer, board, commission, or of any person expending or directing the expenditure of funds belonging to or in the possession of the state. [R., '60, §§ 46, 47, 55, 56; C., '73, § 759; C., '97, § 1259; 39 G. A., ch. 171, § 1; 40 Ex. G. A., H. F., 50, § 1.]

55, 56; C., '73, § 759; C., '97, § 1259; 40 Ex. G. A., H. F. 50, § 3.]

1120. Power of commission. Said commissioners while in session shall have power to issue subpoenas, to call any person to testify in reference to any fact connected with their investigation, and to require such persons to produce any paper or book which the district court might require to be produced. Each commissioner shall have power to administer oaths. [R., '60, § 54; C., '73, § 765; C., '97, § 1260; 40 Ex. G. A., H. F. 50, § 2.]

1123. Duty of governor. The governor, if he finds from said report that matters exist which would be grounds for removing said officer from office, shall proceed as follows:

1. If the officer is an elective state officer, not removable under impeachment proceedings, or if said officer is an appointive state officer, he shall lay a copy of said report before the attorney general.

2. If the officer is an appointive state officer, he shall also lay a copy of said report before the executive council.

3. If the officer is one who is removable only under impeachment proceedings he shall, by written order, forthwith suspend such officer from the exercise of his office, and require him to deliver all the moneys, books, papers, and other property of the state to him, to be disposed of as hereinafter provided. [R., '60, § 48; C., '73, § 760; C., '97, § 1261; 40 Ex. G. A., H. F. 50, § 4.]

NOTE: Who may be impeached, see Const., Art. 3, § 20; also code, § 1181.

1121. Refusal to obey subpoena — fees. If any witness, duly subpoenaed, refuses to obey said subpoena, or refuses to testify, said commission shall certify said fact to the district court or judge thereof of the county where the investigation is being had and said court or judge shall proceed with said witness in the same manner as though said refusal had occurred in a legal proceeding before said court or judge.

Witnesses shall be paid in the manner provided for witnesses before the executive council and from the same appropriation. [40 Ex. G. A., H. F. 50, § 2-a1.]

NOTE: Payment of witnesses before executive council, see § 1116.

1122. Nature of report. Such accountants shall make out a full, complete, and specific statement of the transactions of said officer with, for, or on behalf of the state, showing the true balances in each case, and report the same to the governor, with such suggestions as they may think proper. [R., '60, §§ 46, 47,

1124. Effect of order—penalty. It shall be unlawful for such officer, after the making of such order of suspension, to exercise or attempt to exercise any of the functions of his office until such suspension shall be revoked; and any attempt by the suspended officer to exercise such office shall be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding one thousand dollars, or by both fine and imprisonment. [R., '60, § 49; C., '73, § 761; C., '97, § 1261; 40 Ex. G. A., H. F. 50, § 5.]

1125. Temporary appointment. On the making of such order, the governor shall appoint a temporary incumbent of said office. Such appointee, after qualifying, shall perform all the duties and enjoy all the rights belonging to the said office, until the removal of the suspension of his predecessor, or the appointment or election of a successor. [R., '60, § 51; C., '73, § 762; C., '97, § 1262; 40 Ex. G. A., H. F. 50, § 6.]

NOTE: Qualification by temporary officer, see § 1053.

1126. Governor to protect state. When the governor shall suspend any public officer, he shall direct the proper legal steps to be taken to indemnify the state from loss. [R., '60, § 52; C., '73, § 763; C., '97, § 1263; 40 Ex. G. A., H. F. 50, § 7.]

1127. Governor to report to general assembly. Forthwith after the organization of the general assembly first convening after the making of said order of suspension, the governor shall lay before it the order and all information and evidence relating thereto in his possession. [40 Ex. G. A., H. F. 50, § 8.]

1128. Failure to impeach or convict. The adjournment of such assembly without voting articles of impeachment against such officer or a verdict of "not guilty" on such articles duly

preferred, shall work a revocation of such order of suspension. [40 Ex. G. A., H. F. 50, § 9.]

1129. Compensation of commissioners. Said commissioners shall each receive for the time actually employed in the performance of their duties the sum of ten dollars per day, which sum shall be paid out of any unappropriated funds in the state treasury. [R., '60, § 53; C., '73, § 764; C., '97, § 1264; 40 Ex. G. A., H. F. 50, § 10.]

1130. Reports revealing grounds of removal. When any report as to the condition of a state office, other than the report of said commission, is made and filed under authority of law, and said report reveals grounds for the removal from office of a public officer, the person filing said report shall also file a copy thereof with the governor and with the attorney general. [40 Ex. G. A., H. F. 50, § 10-a1.]

CHAPTER 58

IMPEACHMENT

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1131. Impeachment defined. An impeachment is a written accusation against the governor, or a judge of the supreme, district, or superior court, or other state officer, by the house of representatives before the senate, of a misdemeanor or malfeasance in office. [R., '60, § 4937; C., '73, § 4546; C., '97, § 5469.]

1132. Specification of charges—majority must concur. An impeachment must specify the offenses charged as in an indictment. If more than one misdemeanor or malfeasance is charged, each shall be stated separately and distinctly. A majority of all the members of the house of representatives elected must concur in the impeachment. [C., '51, §§ 3157, 3158; R., '60, §§ 4938-4940; C., '73, §§ 4547-4549; C., '97, § 5470.]

1133. Board of managers—articles. When an impeachment is concurred in, the house of representatives shall elect from its own body seven members whose duty it shall be to prosecute the same, and, as a board of managers, they shall be authorized to exhibit and present articles of impeachment in accordance with the resolutions of the house previously adopted. [C., '97, § 5471.]

1134. Notice to governor. When an impeachment is concurred in, the clerk of the house of representatives must forthwith in

writing notify the governor thereof. [C., '97, § 5472.]

1135. Officer suspended—temporary appointment. Every officer impeached shall be suspended by the governor from the exercise of his official duties until his acquittal, and the governor shall forthwith appoint some suitable person to temporarily fill the office, and he, having qualified as required by law, shall perform all the duties and enjoy all the rights pertaining to the office until the removal of the suspension of his predecessor or the election of a successor. [C., '51, § 3165; R., '60, § 4948; C., '73, § 4554; C., '97, § 5473.]

NOTE: Qualification by temporary officer, see § 1053.

1136. President of senate—notice to senate. If the president of the senate is impeached, notice thereof must be immediately given to the senate, which shall thereupon choose another president, to hold his office until the result of the trial is determined. [C., '51, § 3167; R., '60, § 4949; C., '73, § 4555; C., '97, § 5474.]

1137. Issuance and service of warrant. When presented with an impeachment, the senate must forthwith cause the person accused to be arrested and brought before it. The warrant of arrest or other process shall be issued by the secretary of the senate, signed by him, and may be served by any person

authorized by the senate or president. [C., '51, §§ 3159, 3160; R., '60, §§ 4941, 4942; C., '73, §§ 4550, 4551; C., '97, § 5475.]

1138. Appearance—answer—counsel. Upon the appearance of the person impeached, he is entitled to a copy of the impeachment, and to a reasonable time in which to answer the same, and shall be allowed counsel as in an ordinary criminal prosecution. [C., '51, § 3161; R., '60, § 4943; C., '73, § 4552; C., '97, § 5476.]

1139. Organization of court. When an impeachment is presented, the senate shall, after the hour of final adjournment of the legislature, be forthwith organized as a court of impeachment for the trial thereof, at the capitol.

An oath or affirmation shall be administered by the secretary of the senate to its president, and by him to each member of that body, to the effect that he will truly and impartially try and determine the charges of impeachment according to the law and evidence.

No member shall sit on the trial or give his evidence thereon until he has taken such oath or affirmation.

The organization of such court shall be perfected when such presiding officer and the members present, but not less than a majority of the whole number, have taken and subscribed the oath or affirmation. [C., '51, § 3162; R., '60, § 4944; C., '73, § 4553; C., '97, § 5477.]

1140. Powers of court. The court of impeachment shall sit in the senate chamber, and have power:

1. To compel the attendance of its members as the senate may do when engaged in the ordinary business of legislation.

2. To establish rules and regulations necessary for the trial of the accused.

3. To appoint from time to time such subordinate officers, clerks, and reporters as are necessary for the convenient transaction of its business, and at any time to remove any of them.

4. To issue subpoenas, process, and orders, which shall run into any part of the state, and may be served by any adult person authorized so to do by the president of the senate, or by the sheriff of any county, or his deputy, in the name of the state, and with the same force and effect as in an ordinary criminal prosecution, and to compel obedience thereto.

5. To exercise the powers and privileges conferred upon the senate for punishment as for contempts in the chapter entitled "General Assembly".

6. To adjourn from time to time, and to dissolve when its work is completed. [C., '97, § 5478.]

1141. Record of proceedings—administering oaths. The secretary of the senate, in all cases of impeachment, shall keep a full and accurate record of the proceedings, which shall be a public record; and shall have power to administer all requisite oaths or affirmations, and issue subpoenas for witnesses. [R., '60, § 4959; C., '73, § 4570; C., '97, § 5479.]

1142. Process for witnesses. The board of managers and counsel for the person impeached shall each be entitled to process for compelling the attendance of persons or the production of papers and records required in the trial of the impeachment. [C., '97, § 5480.]

1143. Punishment. When any person impeached is found guilty, judgment shall be rendered for his removal from office and his disqualification to hold any office of honor, trust, or profit under the state. [C., '97, § 5481.]

1144. Compensation—fees—payment. The presiding officer and members of the senate, while sitting as a court of impeachment, and the managers elected by the house of representatives, shall receive the sum of six dollars each per day, and mileage at the rate of five cents per mile in going from and returning to their places of residence by the ordinary traveled routes; the secretary, sergeant-at-arms, and all subordinate officers, clerks, and reporters, shall receive such amount as shall be determined upon by a majority vote of the members of such court. The same fees shall be allowed to witnesses, to officers, and to other persons serving process or orders, as are allowed for like services in criminal cases, but no fees can be demanded in advance. The state treasurer shall, upon the presentation of certificates signed by the presiding officer and secretary of the senate, pay all of the foregoing compensations and the expenses of the senate incurred under the provisions of this chapter. [C., '97, § 5482.]

CHAPTER 59

VACANCIES IN OFFICE

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1145. Holding over. Except when otherwise provided, every officer elected or appointed for a fixed term shall hold office until his successor is elected and qualified, unless he resigns, or is removed or suspended, as provided by law. [C., '51, § 241; C., '73, § 784; C., '97, § 1265.]

1146. What constitutes vacancy. Every civil office shall be vacant upon the happening of either of the following events:

1. A failure to elect at the proper election, or to appoint within the time fixed by law, unless the incumbent holds over.
2. A failure of the incumbent or holdover officer to qualify within the time prescribed by law.
3. The incumbent ceasing to be a resident of the state, district, county, township, city, town, or ward by or for which he was elected or appointed, or in which the duties of his office are to be exercised.
4. The resignation or death of the incumbent.
5. The removal of the incumbent from, or forfeiture of, his office, or the decision of a competent tribunal declaring his office vacant.
6. The conviction of incumbent of an infamous crime, or of any public offense involving the violation of his oath of office. [C., '51, §§ 334, 429; R., '60, §§ 564, 662, 1132; C., '73, §§ 504, 686, 781; C., '97, § 1266; 37 G. A., ch. 12, § 1.]

NOTE: Duty of holdover officer to requalify, see § 1051.

Six months' absence from county of member of board of supervisors constitutes ipso facto vacancy, see § 5115.

1147. Possession of office. When a vacancy occurs in a public office, possession shall be taken of the office room, the books, papers, and all things pertaining thereto, to be held until the qualification of a successor, as follows: Of the office of the county auditor, by the clerk of the district court; of the clerk or treasurer, by the county auditor; of any of the state officers, by the governor, or, in his absence or inability at the time of the occurrence, as follows: Of the secretary, by the treasurer; of the auditor, or superintendent of public instruction, by the secretary; of

the treasurer, by the secretary and auditor, who shall make an inventory of the money and warrants therein, sign the same, and transmit it to the governor; and the secretary shall take the keys of the safe and desks, after depositing the books, papers, money and warrants therein, and the auditor shall take the key of the office room. [C., '51, § 444; R., '60, § 671; C., '73, § 788; C., '97, § 1267.]

1148. Resignations. Resignations in writing by civil officers may be made as follows, except as otherwise provided:

1. By the governor, to the general assembly, in session, if not, to the secretary of state.
2. By state senators and representatives, and all officers appointed by the senate or house, or by the presiding officers thereof, to the respective presiding officers of the senate and house, when the general assembly is in session, and such presiding officers shall immediately transmit to the governor information of the resignation of any member thereof; when the general assembly is not in session, all such resignations shall be made to the governor.
3. By senators and representatives in congress, all officers elected by the qualified voters in the state or any district or division thereof larger than a county, or chosen by the general assembly, all judges of courts of record, all officers, trustees, inspectors, and members of all boards and commissions now or hereafter created under the laws of the state, and all persons filling any position of trust or profit in the state, for which no other provision is made, to the governor.
4. By all county and township officers, to the county auditor, except that of the auditor, which shall be to the board of supervisors.
5. By all councilmen and officers of cities and towns, to the clerk or mayor. [C., '51, § 430; R., '60, § 663; C., '73, § 782; C., '97, § 1268.]

1149. Vacancy in general assembly. When a vacancy shall occur in the office of senator or representative in the general assembly, except by resignation, the auditor of the county of his residence shall notify the governor of

such fact and the cause. [C., '51, § 443; R., '60, § 672; C., '73, §§ 789, 790; C., '97, § 1269.]

1150. Vacancy in state boards. In case of a vacancy from any cause, other than resignation or expiration of term, occurring in any of the governing boards of the state institutions, the secretary thereof shall immediately notify the governor. [C., '97, § 1270.]

1151. Duty of officer receiving resignation. An officer receiving any resignation, or notice of any vacancy, shall forthwith notify the board, tribunal, or officer, if any, empowered to fill the same by appointment. [C., '97, § 1271.]

1152. Vacancies—how filled. Vacancies shall be filled by the officer or board named, and in the manner, and under the conditions, following:

1. *United States senator.* In the office of United States senator, when the vacancy occurs when the senate of the United States is in session, or when such senate will convene prior to the next general election, by the governor.

2. *State offices.* In all state offices, judges of courts of record, officers, trustees, inspectors, and members of all boards or commissions, and all persons filling any position of trust or profit in the state, by the governor, except when some other method is specially provided.

3. *Supreme court appointees.* In the offices of clerk and reporter of the supreme court, by the supreme court.

4. *County offices.* In county offices, including justices of the peace and constables, by the board of supervisors.

5. *Board of supervisors.* In the membership of the board of supervisors, by the clerk of the district court, auditor, and recorder.

6. *Clerk of the district court.* In the office of the clerk of the district court, by the said court or by a judge thereof, by order entered of record in the court journal which order shall be effective until the vacancy shall be filled in the manner provided by law.

7. *Township offices.* In township offices, including trustees, by the trustees, but where the offices of the three trustees are all vacant, the county auditor shall appoint. [C., '51, § 436; R., '60, § 664; C., '73, §§ 513, 783, 794; C., '97, § 1272; S., '13, § 1272; 37 G. A.,

ch. 401, § 2; 38 G. A., ch. 215, § 1; 40 Ex. G. A., S. F. 35, § 1.]

NOTE: Special sheriff or coroner, see § 5199.

Auditor temporarily to act as recorder, see § 5170.

1153. Person removed not eligible. No person can be appointed to fill a vacancy who has been removed from office within one year next preceding. [C., '51, § 441; R., '60, § 669; C., '73, § 787; C., '97, § 1273.]

1154. Appointments. Appointments under the provisions of this chapter shall be in writing, and filed in the office where the oath of office is required to be filed. [C., '51, § 439; R., '60, § 667; C., '73, § 785; C., '97, § 1274.]

NOTE: Place of filing oath, see § 1077.

1155. Tenure of vacancy appointee. An officer filling a vacancy in an office which is filled by election of the people shall continue to hold until the next regular election at which such vacancy can be filled, and until a successor is elected and qualified. Appointments to all other offices, made under this chapter, shall continue for the remainder of the term of each office, and until a successor is appointed and qualified. [C., '51, §§ 429, 439; R., '60, §§ 662, 667, 1101; C., '73, §§ 530, 781, 785; C., '97, § 1276.]

1156. Officers elected to fill vacancies—tenure. Officers elected to fill vacancies, either at a special or general election, shall hold for the unexpired portion of the term, and until a successor is elected and qualified, unless otherwise provided by law. [R., '60, § 1083; C., '73, § 513; C., '97, § 1277.]

1157. Vacancies—when filled. If a vacancy occurs in an elective office in a city, town, or township ten days, or a county office fifteen days, or any other office thirty days, prior to a general election, it shall be filled at such election, unless previously filled at a special election. [C., '51, §§ 431-435; R., '60, §§ 672, 1101; C., '73, §§ 530, 789, 794, 795; C., '97, § 1278.]

1158. Special election to fill vacancies. A special election to fill a vacancy shall be held for a representative in congress, or senator or representative in the general assembly, when the body in which such vacancy exists is in session, or will convene prior to the next general election, and the governor shall order such special election at the earliest practicable time, giving ten days' notice thereof. [C., '51, § 443; R., '60, § 672; C., '73, § 789; C., '97, § 1279.]

CHAPTER 60

SOLDIERS' PREFERENCE LAW

1159. Appointments and promotions.
 1160. Age and physical disability.
 1161. Duty to investigate and appoint.
 1162. Mandamus.

1159. Appointments and promotions. In every public department and upon all public works in the state, and of the counties, cities, towns, and school boards thereof, including those of cities acting under special charters, honorably discharged soldiers, sailors, marines, and nurses from the army and navy of the United States in the late civil war, Spanish-American war, Philippine insurrection, China relief expedition, or war with Germany, who are citizens and residents of this state, shall, except in the position of school teachers, be entitled to preference in appointment, employment, and promotion over other applicants of no greater qualifications. [S., '13, § 1056-a15; 39 G. A., ch. 166, § 2; 40 G. A., ch. 227, § 1.]

1160. Age and physical disability. The persons thus preferred shall not be disqualified from holding any position hereinbefore mentioned on account of age or by reason of any physical disability, provided such age or disability does not render such person incompetent to perform properly the duties of the position applied for. [S., '13, § 1056-a15; 39 G. A., ch. 166, § 2; 40 G. A., ch. 227, § 2.]

1161. Duty to investigate and appoint. When such soldier, sailor, marine, or nurse shall apply for appointment or employment under this chapter, the officer, board, or person whose duty it is or may be to appoint or employ some person to fill such position or place shall, before appointing or employing anyone to fill such position or place, make an investigation as to the qualifications of said applicant for such place or position, and if the applicant is of good moral character and can perform the duties of said position so applied for, as hereinbefore provided, said of-

1163. Removal—certiorari to review.
 1164. Burden of proof.
 1165. Exceptions.

ficer, board or person shall appoint said applicant to such position, place, or employment. [S., '13, § 1056-a15; 39 G. A., ch. 166, § 2; 40 G. A., ch. 227, § 3.]

1162. Mandamus. A refusal to allow said preference, or a reduction of the salary for said position with intent to bring about the resignation or discharge of the incumbent, shall entitle the applicant or incumbent, as the case may be, to maintain an action of mandamus to right the wrong. [S., '13, §§ 1056-a15, 1056-a16; 39 G. A., ch. 166, §§ 2, 3; 40 G. A., ch. 227, § 4.]

1163. Removal—certiorari to review. No person holding a public position by appointment or employment, and belonging to any of the classes of persons to whom a preference is herein granted, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employee or appointee to a review by a writ of certiorari. [S., '13, § 1056-a16; 39 G. A., ch. 166, § 3; 40 G. A., ch. 227, § 5.]

1164. Burden of proof. The burden of proving incompetency or misconduct shall rest upon the party alleging the same. [S., '13, § 1056-a16; 39 G. A., ch. 166, § 3; 40 G. A., ch. 227, § 6.]

1165. Exceptions. Nothing in this chapter shall be construed to apply to the position of private secretary or deputy of any official or department, or to any person holding a strictly confidential relation to the appointing officer. [S., '13, § 1056-a16; 39 G. A., ch. 166, § 3; 40 G. A., ch. 227, § 6.]

CHAPTER 61

NEPOTISM

1166. Employments prohibited—exceptions.

1166. Employments prohibited—exceptions. It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of the state or by virtue of the ordinance of any city or town in the state, to appoint as deputy, clerk, or helper in said office or position to be paid from the public funds, any person related by consanguinity or affinity, within the third degree, to the person elected, appointed, or making said appointment, unless such appointment shall first be approved by the officer, board, council, or commission whose duty it is to approve the bond of the principal; provided this provision shall not apply in cases where such person ap-

1167. Payment prohibited.

pointed receives compensation at the rate of six hundred dollars per year or less, nor shall it apply to persons teaching in public schools. [40 G. A., ch. 15, § 1.]

NOTE: Approving officers and boards, see § 1073.

1167. Payment prohibited. No person so unlawfully appointed or employed shall be paid or receive any compensation from the public money and such appointment shall be null and void and any person or persons so paying the same or any part thereof, together with his bondsmen, shall be liable for any and all moneys so paid. [40 G. A., ch. 15, § 2.]

CHAPTER 62

DUTIES RELATIVE TO PUBLIC CONTRACTS

1168. Unauthorized contracts.

1169. Executive council may authorize indebtedness.

1168. Unauthorized contracts. Officers empowered to expend, or direct the expenditure of, public money of the state shall not make any contract for any purpose which contemplates an expenditure of such money in excess of that authorized by law. [R., '60, § 2181; C., '73, § 127; C., '97, §§ 185, 186; 40 G. A., ch. 228, § 1.]

1169. Executive council may authorize indebtedness. Nothing herein contained shall prevent the incurring of an indebtedness on account of support funds for state institutions, upon the prior written direction of the executive council, specifying the items and amount of such indebtedness to be increased, and the necessity therefor. [C., '97, § 186; 40 G. A., ch. 228, § 2.]

1170. Divulging contents of sealed bids. No public officer or deputy thereof, if any,

1170. Divulging contents of sealed bids.

1171. Penalty.

shall directly or indirectly or in any manner whatsoever, at any other time or in any other manner than as provided by law, open any sealed bid or convey or divulge to any person any part of the contents of a sealed bid, on any proposed contract concerning which a sealed bid is required or permitted by law. [S., '13, § 1279-a; 40 G. A., ch. 228, § 3.]

1171. Penalty. A violation of the provisions of the preceding section shall, in addition to criminal liability, render the violator liable, personally and on his bond, if any, to liquidated damages in the sum of one thousand dollars for each violation, to inure to and be collected by the state, county, city, town, school district, or other municipal corporation of which the violator is an officer or deputy. [S., '13, § 1279-a; 40 G. A., ch. 228, § 4.]

CHAPTER 63

SALE OF BONDS OF PUBLIC CORPORATIONS

1172. Notice of sale.
 1173. Sealed and open bids.
 1174. Rejection of bids.
 1175. Selling price.

1172. Notice of sale. When public bonds are offered for sale, the official or officials in charge of such bond issue shall, by advertisement published for two or more successive weeks in at least one official newspaper of the county, give notice of the time and place of sale of said bonds, the amount to be offered for sale, and any further information which may be deemed pertinent. [39 G. A., ch. 170, § 1; 40 Ex. G. A., S. F. 275, § 1.]

1173. Sealed and open bids. Sealed bids may be received at any time prior to the calling for open bids. After the sealed bids are all filed, the official or officials shall call for open bids. After all of the open bids have been received the substance of the best open bid shall be noted in the minutes. The official or officials shall then open any sealed bids that may have been filed and they shall note in the minutes the substance of the best sealed bid. [39 G. A., ch. 170, § 2; 40 Ex. G. A., S. F. 275, § 2.]

1174. Rejection of bids. Any or all bids may be rejected, and the sale may be advertised anew, in the same manner, or the bonds or any portion thereof may thereafter be sold at private sale to any one or more of such bidders, or other persons, by popular subscription or otherwise. In case of private sales, the said bonds shall be sold upon terms not less favorable to the public than the most favorable bid made by a bona fide and responsible bidder at the last advertised sale. [39 G. A., ch. 170, § 3; 40 Ex. G. A., S. F. 275, § 3.]

1176. Commission and expense.
 1177. Penalty.
 1178. Sale of state bonds.
 1179. Exchange of bonds.

1175. Selling price. No public bond shall be sold for less than par, plus accrued interest. [39 G. A., ch. 170, § 3; 40 G. A., ch. 14; 40 Ex. G. A., S. F. 275, § 4.]

NOTE: Above section and the two following sections made applicable to special charter cities by § 6752.

1176. Commission and expense. No commission shall be paid, directly or indirectly, in connection with the sale of a public bond. No expense shall be contracted or paid in connection with such sale other than the expenses incurred in advertising such bonds for sale. [40 G. A., ch. 14; 40 Ex. G. A., S. F. 275, § 5.]

1177. Penalty. Any public officer who fails to perform any duty required by this chapter or who does any act prohibited by this chapter, shall be guilty of a misdemeanor. [40 G. A., ch. 14; 40 Ex. G. A., S. F. 275, § 6.]

1178. Sale of state bonds. All contracts for the sale of bonds issued by the state shall be subject to the approval of the executive council. [40 G. A., ch. 4, § 1; 40 Ex. G. A., S. F. 275, § 7.]

1179. Exchange of bonds. Nothing in this chapter shall be deemed to prevent the exchange of bonds for legal indebtedness evidenced by bonds, warrants, or judgments as otherwise provided by law. [40 Ex. G. A., S. F., 275, § 8.]

CHAPTER 64

COMMISSIONERS IN OTHER STATES

- 1180. Appointment and tenure.
- 1181. Seal.
- 1182. Application.
- 1183. Oath.
- 1184. Certificate of qualifications.
- 1185. Authentication of certificate.
- 1186. Fees—filing of application.
- 1187. Issuance of commission.
- 1188. Disposition of commissions.

- 1189. Governor to keep record.
- 1190. Published list of commissioners.
- 1191. Powers.
- 1192. Evidentiary effect of official acts.
- 1193. Signature and seal as evidence.
- 1194. Fees.
- 1195. Resident commissioner for foreign state—conditions.
- 1196. Authority of resident commissioner.

1180. Appointment and tenure. The governor may appoint and commission, in each of the states of the United States, other than this state, and in each territory or insular possession of the United States, one or more commissioners who shall continue in office for three years from the date of commission. Such appointment may be revoked at any time by the governor. [C., '51, § 71; R., '60, § 188; C., '73, § 267; C., '97, § 383; 40 G. A., ch. 276, § 1.]

1181. Seal. Each such commissioner shall have an official seal, on which shall be engraved the words, "Commissioner for Iowa", with his surname and at least the initials of his christian name; also the name of the state in which he acts, which seal must be so engraved as to make a clear impression on wax, wafer, or paper. [C., '73, § 268; C., '97, § 384; 40 G. A., ch. 276, § 2.]

1182. Application. Any person desiring to be appointed such commissioner shall make application in substantially the following form:

State of..... }
 County of..... } ss.

I,, do hereby apply to his excellency, the governor of Iowa, for appointment as commissioner for the state of Iowa in the state of.....; that I am a resident of said state and reside at....., in said state; that I do solemnly swear that I will support, protect, and defend the constitution of the United States, and the constitution of the state of Iowa, and that I will well and truly execute and perform all the duties of such commissioner, under and by virtue of the laws of the state of Iowa during my term of office; and that opposite my signature hereto, I have attached a true impression of my official seal.

(Official Seal)

Subscribed and sworn to by the above named before me, this..... day of..... A. D., 19.....

Witness my hand and official seal.

.....
 [C., '51, § 73; R., '60, § 190; C., '73, § 272; C., '97, § 388; 39 G. A., ch. 233, § 2; 40 G. A., ch. 276, § 3.]

1183. Oath. The oath to said application shall be taken and subscribed:

1. Before a clerk of a court of record in the state in which the applicant is to exercise his appointment, if made, or

2. Before a duly authorized commissioner for Iowa, resident in said state.

The said oath shall be certified to under the signature of the person administering it, with the seal of his court, or with the seal of the said commissioner, as the case may be. [C., '51, § 73; R., '60, § 190; C., '73, § 272; C., '97, § 388; 39 G. A., ch. 233, § 2; 40 G. A., ch. 276, § 4.]

1184. Certificate of qualifications. A certificate in substantially the following form, and executed by a judge of a court of record of the state in which the applicant proposes to act, shall accompany said application:

State of..... }
 County of..... } ss.

I,, do hereby certify that I am a duly qualified and acting judge of (Name of court).....; that I am personally acquainted with....., know him to be a resident of the state of....., a person of good moral character, and fully competent to perform the duties of commissioner of the state of Iowa.

Witness my official signature this..... day of, 19.....

(Official Signature)

[40 G. A., ch. 276, § 5.]

1185. Authentication of certificate. The clerk of the court specified in the certificate provided for in the last preceding section shall, under his official signature and the seal of

said court, certify to the nature of said court, and to the official position and genuineness of signature of the person executing said certificate. [40 G. A., ch. 276, § 6.]

1186. Fees—filing of application. Said application shall be accompanied by a fee of fifteen dollars. Said application shall remain permanently on file in the office of the governor. [C., '51, §§ 73, 2524; R., '60, §§ 190, 4133; C., '73, §§ 272, 3756; C., '97, §§ 85, 388; 39 G. A., ch. 80, § 1; 39 G. A., ch. 233, § 2; 40 G. A., ch. 276, § 7.]

1187. Issuance of commission. If said application is in due form the governor shall, if he is satisfied of the fitness of the applicant, issue to said applicant duplicate commissions substantially in the following form:

STATE OF IOWA
Executive Department

To all to whom these presents shall come, greeting.

Know ye that I, governor of the state of Iowa, reposing special confidence in, in the name and by the authority of the people of the said state, do hereby appoint and commission him a commissioner, resident in the state of, to administer oaths, to take depositions and affidavits to be used in the courts of this state, and to take acknowledgments or proof of deeds and other instruments to be recorded and used in this state, to take effect on and after the day of..... A. D., 19...., and do authorize him to discharge according to law the duties of said office and to hold and enjoy the same, together with all the powers, privileges, and emoluments thereto appertaining for the term of three years from said date.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the state of Iowa. Done at Des Moines, this day of in the year of our Lord, one thousand nine hundred and

BY THE GOVERNOR:

Attest.

.....
Secretary of State.
[C., '73, § 273; C., '97, § 389; 39 G. A., ch. 233, § 3; 40 G. A., ch. 276, § 8.]

1188. Disposition of commissions. One duplicate commission shall be forwarded to the person commissioned. The other duplicate shall be forwarded to the secretary of state of the state in which said commissioner has been appointed to act. [C., '73, § 273; C., '97, § 389; 39 G. A., ch. 233, § 3; 40 G. A., ch. 276, § 9.]

1189. Governor to keep record. The governor shall keep in his office a complete record of all appointments made by him pursuant to the provisions of this chapter. [C., '73, § 276; C., '97, § 392; 39 G. A., ch. 233, § 6; 40 G. A., ch. 276, § 10.]

1190. Published list of commissioners. The governor shall cause to be published with the session laws of each general assembly a full and complete list of all commissioners for Iowa who are duly qualified, and whose commissions do not expire on or before the fourth day of July of the year in which such publication is made, which list shall give the post-office address, date of qualification, and date of expiration of the commission, of each commissioner. [C., '73, § 274; C., '97, § 390; 39 G. A., ch. 233, § 4; 40 G. A., ch. 276, § 11.]

1191. Powers. A commissioner appointed as herein required shall have all the powers enumerated in said commission. [C., '51, § 71; R., '60, § 188; C., '73, § 267; C., '97, § 383; 40 G. A., ch. 276, § 12.]

1192. Evidentiary effect of official acts. Oaths administered by any such commissioner, affidavits and depositions taken by him, and acknowledgments and proofs of deeds and other instruments, as aforesaid, certified by him, over his official signature and seal, are made as effectual in law, to all intents and purposes, as if done and certified by a clerk of the district court, or justice of the peace, or notary public, of this state. [C., '51, § 72; R., '60, § 189; C., '73, § 271; C., '97, § 387; 40 G. A., ch. 276, § 13.]

1193. Signature and seal as evidence. The signature and impression of the official seal of a person purporting to be a commissioner shall be deemed presumptively genuine, and shall be entitled to the same credit as evidence in the courts and public offices of this state as the signature and seal of a clerk of the district court, or notary public of this state. [C., '51, § 74; R., '60, § 191; C., '73, § 269; C., '97, § 385; 40 G. A., ch. 276, § 14.]

1194. Fees. Such commissioner is authorized to demand for his services the same fees as may be allowed for similar services by the laws of the state in which he is to exercise his office. [C., '51, § 75; R., '60, § 192; C., '73, § 270; C., '97, § 386; 40 G. A., ch. 276, § 15.]

1195. Resident commissioner for foreign state—conditions. Commissioners of like nature appointed in this state under the authority of any other of the states of the United States, or under authority of any of the territories or insular possessions of the United States shall obtain from the issuing authority of such state, territory, or insular possession, a duplicate of his commission and file the same with the governor of this state. [C., '51, § 77; R., '60, § 194; C., '73, § 275; C., '97, § 391; 39 G. A., ch. 233, § 5; 40 G. A., ch. 276, § 16.]

1196. Authority of resident commissioner. The commissioners specified in the last preceding section are hereby invested with the authority of a justice of the peace to issue subpoenas, requiring the attendance of wit-

nesses before them to give their testimony by deposition or affidavit, in any matter in which such deposition or affidavit may be taken by the law of such other state. They are also authorized to administer oaths in any matter in relation to which they are required or permitted

by such law of the other states; and false swearing in such cases is hereby made subject to the penal laws of this state relating to perjury. [C., '51, § 77; R., '60, § 194; C., '73, § 275; C., '97, § 391; 39 G. A., ch. 233, § 5; 40 G. A., ch. 276, § 17.]

CHAPTER 65

NOTARIES PUBLIC

- 1197. Appointment.
- 1198. When appointments made.
- 1199. Notice of expiration of term.
- 1200. Conditions.
- 1201. Certificate filed with clerk.
- 1202. Revocation—notice.
- 1203. Powers within county of appointment.
- 1204. Powers within adjoining county.
- 1205. Oaths and protest by interested notary.

- 1206. Improperly acting as notary.
- 1207. Acting under maiden name.
- 1208. Record to be kept.
- 1209. Death—resignation—removal.
- 1210. Neglect to deposit records.
- 1211. Neglect of executor to deposit records.
- 1212. Change of residence.
- 1213. Duty of clerk as to records.
- 1214. Notary fees.

1197. Appointment. The governor may at any time appoint one or more notaries public in each county and may at any time revoke such appointment. [C., '51, § 78; R., '60, § 195; C., '73, § 258; C., '97, § 373; S., '13, § 373; 40 G. A., ch. 229, § 1.]

When the governor is satisfied that the foregoing requirements have been fully complied with, he shall execute and deliver a commission to the person appointed. [C., '51, §§ 80, 83; R., '60, §§ 197, 200, 207-209; C., '73, § 259; C., '97, § 374; S., '13, § 374; 39 G. A., ch. 80, § 2.]

1198. When appointments made. Such appointments, if for a full term, shall be made on July 4, 1924, and on the same day each three years thereafter. All commissions shall expire on the fourth day of July in the same years. No commission shall be for a longer period than three years. [C., '51, § 78; R., '60, § 195; C., '73, § 258; C., '97, § 373; S., '13, § 373; 40 G. A., ch. 229, § 2.]

1201. Certificate filed with clerk. When the governor delivers a commission to the person appointed, he or his secretary shall make a certificate of such appointment and forward the same to the clerk of the district court of the proper county, who shall file and preserve the same in his office, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force. [C., '73, § 260; C., '97, § 375; S., '13, § 375.]

1199. Notice of expiration of term. The governor shall, on or before May first preceding the expiration of each commission, notify each notary public of such expiration and furnish him with a blank application for reappointment and a blank bond. [C., '97, § 373; S., '13, § 373; 40 G. A., ch. 229, § 3.]

1202. Revocation—notice. Should the commission of any person appointed notary public be revoked by the governor, he shall immediately notify such person and also the clerk of the district court of the proper county, through the mail. [C., '73, § 261; C., '97, § 376; S., '13, § 376.]

1200. Conditions. Before any such commission is delivered to the person appointed, he shall:

1. Procure a seal on which shall be engraved the words "Notarial Seal" and "Iowa", with his surname at length and at least the initials of his christian name.

2. Execute a bond to the state of Iowa in the sum of five hundred dollars conditioned for the true and faithful execution of the duties of his office, which bond, when secured by personal surety, shall be approved by the clerk of the district court of the county of his residence; all other bonds shall be approved by the governor.

1203. Powers within county of appointment. Each notary is invested, within the county of his appointment, with the powers and shall perform the duties which pertain to that office by the custom and law of merchants. [C., '51, § 79; R., '60, § 196; C., '73, § 262; C., '97, § 377; S., '13, § 377; 40 G. A., ch. 229, § 4.]

3. Write on said bond, or a paper attached thereto, his signature, and place thereon a distinct impression of his official seal.

4. File such bond with attached papers, if any, in the office of the governor.

5. Remit to the governor the sum of five dollars for the three-year period provided by law.

1204. Powers within adjoining county. Such notary public is also invested with the powers specified in the preceding section in any county adjoining the county of his appointment, provided he has filed in such adjoining county, with the clerk of the district court, a certified copy of his certificate of appointment. [S., '13, § 377; 40 G. A., ch. 229, § 5.]

1205. Oaths and protest by interested notary. Any notary public, who is at the same time an officer, director, or stockholder of a corporation, is also hereby invested with the power to administer oaths to any officer, director, or stockholder of such corporation in any matter wherein said corporation is interested, and is hereby authorized to protest for nonacceptance or nonpayment, bills of exchange, drafts, checks, notes, and other negotiable or nonnegotiable instruments which may be owned or held for collection by such corporation, as fully and effectually as if he were not an officer, director, or stockholder of such corporation. [40 G. A., ch. 229, § 5-a.]

1206. Improperly acting as notary. If any notary public exercises the duties of his office after the expiration of his commission, or when otherwise disqualified, or appends his official signature to documents when the parties have not appeared before him, he shall be fined not less than fifty dollars, and shall be removed from office by the governor. [R., '60, § 210; C., '73, § 3975; C., '97, § 4912; 40 G. A., ch. 229, § 6.]

1207. Acting under maiden name. When a female has, prior or subsequent to the adoption of this code, been commissioned a notary public, and has, after the issuance of said commission and prior to the expiration thereof, contracted a marriage, the official acts of such notary public after said marriage and prior to the expiration of said commission shall not be deemed illegal or insufficient because, after said marriage, she performed said official acts under the name in which said commission was issued. [40 Ex. G. A., ch. 34, § 1.]

1208. Record to be kept. Every notary public is required to keep a true record of all notices given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with a copy of the instrument in relation to which the notice is served, and of the notice itself. [C., '51, § 81; R., '60, § 198; C., '73, § 263; C., '97, § 378.]

1209. Death—resignation—removal. On the death, resignation, or removal from office of any notary, his records, with all his official papers, shall, within three months therefrom, be deposited in the office of the clerk of the

district court in the county for which such notary shall have been appointed. [C., '51, § 85; R., '60, § 202; C., '73, § 264; C., '97, § 379; 40 G. A., ch. 229, § 7.]

1210. Neglect to deposit records. If any notary, on his resignation or removal, neglects for three months so to deposit them, he shall be guilty of a misdemeanor and be liable in an action to any person injured by such neglect. [C., '51, § 85; R., '60, § 202; C., '73, § 264; C., '97, § 379; 40 G. A., ch. 229, § 8.]

1211. Neglect of executor to deposit records. If an executor or administrator of a deceased notary wilfully neglects, for three months after his acceptance of that appointment, to deposit in said clerk's office the records and papers of a deceased notary which came into his hands, he shall be held guilty of a misdemeanor. [C., '51, § 85; R., '60, § 202; C., '73, § 264; C., '97, § 379; 40 G. A., ch. 229, § 9.]

1212. Change of residence. If a notary remove his residence from the county for which he was appointed, such removal shall be taken as a resignation. [C., '51, § 86; R., '60, § 203; C., '73, § 265; C., '97, § 380.]

1213. Duty of clerk as to records. Each clerk aforesaid shall receive and safely keep all such records and papers of the notary in the cases above named, and shall give attested copies of them, under the seal of his court, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary. [C., '51, § 87; R., '60, § 204; C., '73, § 266; C., '97, § 381.]

1214. Notary fees. Notaries public shall be entitled to the following fees:

1. For all services in connection with the legal protest of a bill or note, two dollars.
2. For being present at a demand, tender, or deposit and noting the same, seventy-five cents.
3. For administering an oath, ten cents.
4. For certifying to an oath under his official seal, twenty-five cents.
5. For any other certificate under seal, twenty-five cents. [C., '51, § 2542; R., '60, § 4151; C., '73, § 3801; C., '97, § 382; 40 G. A., ch. 229, § 10.]

CHAPTER 66

ADMINISTRATION OF OATHS

- 1215. General authority.
- 1216. Limited authority.

1215. General authority. The following officers are empowered to administer oaths and to take affirmations:

1. Judges of the supreme, district, superior, municipal, and police courts.
2. Official court reporters of district, superior, and municipal courts in taking depositions under appointment or by agreement of counsel.
3. Clerks and deputy clerks of said district, superior, police, and municipal courts.
4. Justices of the peace within the county of their residence.
5. Notaries public within the county of their appointment, and within any adjoining county in which they have filed with the clerk of the district court of said adjoining county a certified copy of their certificate of appointment. [C., '51, §§ 227, 979, 980, 1594; R., '60, §§ 201, 449, 1843, 1844, 2684; C., '73, §§ 277, 278, 396; C., '97, § 393; 40 Ex. G. A., S. F. 39, § 1.]

NOTE: Notary fee for administering and certifying oath, see § 1214.

1216. Limited authority. The following officers and persons are empowered to admin-

- 1217. Jurat by deputy.

ister oaths and to take affirmations in any matter pertaining to the business of their respective office, position, or appointment:

1. Governor, secretary of state, secretary of agriculture, auditor of state, treasurer of state, attorney general.
2. Members of all boards, commissions, or bodies created by law.
3. All county officers other than those named in the preceding section.
4. Mayors and clerks of cities and towns, judges and clerks of election, township clerks, assessors, and surveyors.
5. All duly appointed referees or appraisers. [C., '51, §§ 980, 1865; R., '60, §§ 1844, 3201; C., '73, §§ 277, 278; C., '97, § 393; 40 Ex. G. A., S. F. 39, § 2.]

1217. Jurat by deputy. In preparing a jurat to an oath or affirmation administered by a deputy, it shall be sufficient for the deputy to affix his own name, together with the designation of his official position, and the seal of his principal, if any. [40 Ex. G. A., S. F. 39, § 3.]

CHAPTER 67

SALARIES AND FEES IN GENERAL

- 1218. Salaries paid monthly.
- 1219. Appraisers of property.
- 1220. General fees.
- 1221. When fees payable.

1218. Salaries paid monthly. The salaries of all officers authorized in this code shall be paid in equal monthly installments at the end of each month, and shall be in full compensation for all services, except as otherwise expressly provided. [C., '73, § 3780; C., '97, § 1289.]

1219. Appraisers of property. The compensation of appraisers appointed by authority of law to appraise property for any purpose shall be fifty cents per hour for each appraiser for the time necessarily spent in effecting the appraisal and five cents a mile for the distance traveled in going to and returning from the place of appraisal, which shall, unless

- 1222. Fees payable in advance.
- 1223. Receipt for fees paid.
- 1224. Report of fees.
- 1225. State accounts—inspection.

otherwise provided, be paid out of the property appraised or by the owner thereof. [C., '51, § 2550; R., '60, § 4158; C., '73, § 3813; C., '97, § 1290; S. S., '15, § 1290-a; 40 Ex. G. A., H. F. 40, § 1.]

1220. General fees. Any officer legally called on to perform any of the following services, in cases where no fees have been fixed therefor, shall be entitled to receive:

1. For drawing and certifying an affidavit, or giving a certificate not attached to any other writing, twenty-five cents.
2. For affixing his official seal to any paper, whether the certificate be under seal or not, thirty-five cents.

3. For making out a transcript of any public papers or records under his control for the use of a private person or corporation, or recording articles of incorporation, for every one hundred words, ten cents. [C., '51, § 2523; R., '60, § 4132; C., '73, § 3819; C., '97, § 1291.]

1221. When fees payable. When no other provision is made on the subject, the party requiring any service shall pay the fees therefor upon the same being rendered, and a bill of particulars being presented, if required. [C., '51, § 2557; R., '60, § 4164; C., '73, § 3837; C., '97, § 1295.]

1222. Fees payable in advance. All fees, unless otherwise specifically provided, are payable in advance, if demanded, except in the following cases:

1. When the fees grow out of a criminal prosecution.
2. When the fees are payable by the state or county.
3. When the orders, judgments, or decrees of a court are to be entered, or performed, or its writs executed. [C., '73, § 3842; C., '97, § 1298; 40 Ex. G. A., H. F. 40, § 2.]

1223. Receipt for fees paid. Every person charging fees shall, if required by the person

paying them, give him a receipt therefor, setting forth the items, and the date of each. [C., '51, § 2549; R., '60, § 4157; C., '73, § 3836; C., '97, § 1294.]

1224. Report of fees. All officers required by the provisions of this code to collect and pay over fines and fees shall, except as otherwise provided, on the first Monday in January in each year, make report thereof under oath to the board of supervisors of the proper county, showing the amount of fines assessed, and the amount of fines and fees collected, together with vouchers for the payment of all sums collected to the proper officer. [R., '60, § 4314; C., '73, § 3973; C., '97, § 1301.]

1225. State accounts—inspection. The books, accounts, vouchers, and funds belonging to, or kept in, any state office or institution, or in the charge or under the control of any state officer or person having charge of any state funds or property, shall, at all times, be open or subject to the inspection of the governor or any committee appointed by him, or by the general assembly or either house thereof; and the governor shall see that such inspection of the office of state treasurer is made at least four times in every twelve months. [C., '51, §§ 59, 69; R., '60, §§ 80, 90; C., '73, § 132; C., '97, § 184.]

TITLE V

REGULATIONS UNDER POLICE POWER

CHAPTER 68

COAL MINES AND MINING

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1226. Board of examiners. The executive council shall, on or before June thirtieth of each even-numbered year, appoint a board of five examiners, consisting of two practical miners and two mine operators, all holding certificates of competency as mine foremen, and one mining engineer, each of whom shall have had at least five years' actual experience in his profession immediately preceding his appointment, who shall hold office for a term of two years, and until their successors have been appointed and have qualified. [C., '97, § 2479; S., '13, 2479-a; 40 Ex. G. A., S. F. 41, § 1.]

1227. Qualifications - malfeasance-removal. No member of said board shall be interested in or connected with any school, scheme, plan, or device having for its object the preparation, education, or instruction of persons in the knowledge required of applicants for certificates of competency. Any member of said board shall be summarily removed from office by the executive council, upon due notice and hearing, for violation of the law, misfeasance or malfeasance in the performance of his duties, or for other sufficient cause and his successor shall thereupon be appointed by the said executive council for the unexpired term. [S., '13, § 2479-a; 40 Ex. G. A., S. F. 41, § 2.]

NOTE: Removal by executive council, see § 1114.

1228. Mine inspectors—examinations—notice. The board shall meet in the office of the state mine inspectors at the seat of government on the first Monday in March of each even-numbered year for the examination of applicants for certificates of competency for mine inspector, and at such other times and places as shall be necessary in the discharge of its duties. It shall adopt rules and regulations and prescribe and conduct such examinations of applicants as shall carry out the purpose and intent of this chapter in relation to the qualifications of mine inspectors. Notice of all such examinations shall be published in at least one newspaper in each mine district not less than fifteen days preceding the date of such examination. [C., '97, § 2480; S., '13, § 2489-c; 39 G. A., ch. 209, §§ 62, 64; 40 Ex. G. A., S. F. 41, § 3.]

- 1323. Wages how paid—coercion prohibited.
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- 1334. Right of adjoining landowner—survey—bond.
- 1335. Expenses—by whom paid.
- 1336. Double damages.
- 1337. Violations of provisions—misdemeanors—penalties.

1229. Mine foremen and hoisting engineers. The board shall hold such meetings at such times and places as may be necessary for the examination of applicants for certificates of mine hoisting engineers and mine foremen. It shall prescribe and adopt such rules and regulations therefor as may be reasonably necessary for the conducting of such examination, which shall include among other things to be determined by the board, the following:

EXAMINATION OF MINE FOREMEN

A knowledge on the part of such applicants of:

1. The conditions relating to the safety of the underground workings of a mine.
2. The nature and properties of noxious, poisonous, and explosive gases found in mines.
3. The different systems of working coal mines and ventilation thereof.
4. The administering of first aid treatment to injured workmen.

EXAMINATION OF HOISTING ENGINEERS

A knowledge on the part of such applicants of the conditions relating to the safety of machinery in charge of a mine hoisting engineer, including all property connected therewith used in operating such machinery and also the machinery utilized at escape ways and shafts and ventilating apparatus. [C., '97, § 2480; S., '13, § 2489-c; 39 G. A., ch. 209, §§ 62, 64; 40 Ex. G. A., S. F. 41, § 3.]

1230. Scope of examinations—certificates. Such questions shall not be exclusive of any other questions to be presented by the board, but the board shall prepare and present such additional questions as they may deem best to carry out the spirit and intent of the law. The board shall issue to those examined and found to possess the requisite qualifications, certificates of competency for the position of mine foremen or mine hoisting engineers. [S., '13, §§ 2489-c, 2489-d; 39 G. A., ch. 209, § 64; 40 Ex. G. A., S. F. 41, § 3.]

1231. Examination—qualification of mine inspector. The examination for mine inspectors shall consist of oral and written questions in theoretical and practical mining and mine engineering, on the nature and properties of noxious and poisonous gases found in mines, and on the different systems of working and

ventilating coal and gypsum mines. During the progress of the examination, access to books, memoranda, or notes shall not be allowed, and the board shall issue to those examined and found to possess the requisite qualifications, certificates of competency for the position of mine inspector; but certificates shall be granted only to persons of twenty-five years of age or over, of good moral character, citizens of the state, and with at least five years' experience in the practical working of mines, and who have not been acting as agent or superintendent of any mines for at least six months next preceding such examination. [C., '97, § 2481; 40 Ex. G. A., S. F. 41, § 4.]

1232. Mine inspectors — vacancies. The governor shall on or before July 1, 1927, and every four years thereafter, appoint three mine inspectors from those receiving certificates of competency from the board of examiners as by law provided, who shall hold their office for a term of four years and until their successors shall be appointed and qualify, subject to removal by him for cause. Any vacancies occurring shall be filled in the same manner as original appointments, for the unexpired term only. [C., '73, § 1567; C., '97, § 2478; S. S., '15, § 2478; 40 Ex. G. A., S. F. 41, § 5.]

1233. Removal of inspector—charges—bond—notice. Charges of gross neglect of duty or malfeasance in office against any inspector may be made in writing, sworn to, and filed with the governor, and must be made by five miners, or one or more mine operators; such charges shall be accompanied with a bond in the sum of five hundred dollars, running to the state, with two or more sureties approved by the clerk of the district court of the county in which the sureties reside, conditioned for the payment of all costs and expenses arising from the investigation of the charges, and thereupon the governor shall convene the board of examiners at such time and place as he may designate, giving the inspector and the person whose name first appears in the charge ten days' notice thereof. [C., '97, § 2484; S., '13, § 2484; 40 Ex. G. A., S. F. 41, § 6.]

1234. Manner of trial—report of findings—costs. The board, at the time and place fixed, shall proceed to hear, try, and determine the matter, and for this purpose shall summon any material witness desired by either party, and any member may administer the proper oath to all witnesses. Evidence may also be taken by deposition as in other cases, and continuances of the hearing may be granted in furtherance of justice and upon the application of either party. After the evidence has been fully heard, the board shall report to the governor its action and decision. If the charges are sustained, the inspector shall be forthwith removed by the governor, and the costs and expenses of the hearing taxed against the inspector, but if the charges are not sustained, the costs shall be taxed against the parties fil-

ing the charges and their bondsmen. [C., '97, § 2484; S., '13, § 2484; 40 Ex. G. A., S. F. 41, § 7.]

1235. Appeal — notice — manner of trial. The aggrieved party shall have the right to appeal from such findings and order to the district court of any county in the district of the inspector against whom charges were made, by giving notice in writing to the board, or any member thereof, served in the same manner as original notices, within ten days from the time of filing the findings with the governor, or if the order of removal is made, within ten days therefrom. Upon such appeal all matters shall be heard bearing upon the charges made, and the pleadings may be amended within the discretion of the court. The appeal shall be tried as an equitable action and the first term after the appeal is perfected shall be the trial term. Upon such hearing the court shall render and enter such order or decree as the evidence warrants in equity and justice. Nothing herein contained shall prevent the governor from proceeding under any law provided for the suspension or removal of state officers for malfeasance or nonfeasance in office. [S., '13, § 2484; 40 Ex. G. A., S. F. 41, § 8.]

NOTE: Suspension of state officers by governor, see ch. 57.

1236. Qualifications of inspector. Each inspector shall devote his entire time and attention to the business incumbent upon him. An inspector shall in no way be financially interested in or connected with any mining property or directly or indirectly act as agent, officer, or representative of any person, firm, or corporation engaged or interested in mining or any business connected therewith. [C., '97, § 2478; S. S., '15, § 2478; 40 Ex. G. A., S. F. 41, § 9.]

1237. General office — report to governor. The three inspectors shall maintain a general office at the seat of government and keep therein all records, correspondence, documents, apparatus, or other property pertaining to their office; they shall at the time provided by law, make a biennial report to the governor of their official doings, including therein all matters which by this chapter are specially committed to their charge, adding such suggestions as to needed future legislation as in their opinion may be important. [C., '73, § 1569; C., '97, § 2483; S., '13, § 2483; 39 G. A., ch. 209, § 34; 40 Ex. G. A., S. F. 41, § 10.]

NOTE: Biennial report, see § 254.

1238. Inspection districts—local office—expenses. The governor shall divide the state into three inspection districts, and assign one inspector to each district. Each inspector shall maintain an office at some suitable place in his district, to be approved by the governor, and shall reside in the district and remain therein, unless otherwise engaged in the conduct of his official duties. The expenses of the local office of the mine inspector, including

rental and other necessary expenses, not exceeding one hundred eighty dollars per year, shall be paid by the state. [C., '97, § 2482; S., '13, § 2482; 40 Ex. G. A., S. F. 41, § 11.]

1239. Duties of inspector—record. He shall examine, test, and adjust, as often as he deems necessary, all scales, beams, and other apparatus used in weighing coal at the mines. He shall examine all the mines in his district as often as the time will permit, which examination shall be made at least once every six months, keep a record of the inspections made, showing date, the condition in which the mine is found, the extent and manner in which the laws relating to the government of mines and their operation are observed and obeyed, the progress made in improvements for better security to health and life, number of accidents happening and their character, the number employed, and such other matters as may be of public interest and connected with the mining industries of the state. [C., '73, § 1567; C., '97, § 2482; S., '13, § 2482; 40 Ex. G. A., S. F. 41, § 12.]

1240. Posting of reports. Inspectors, immediately after making an inspection, shall post or cause to be posted, at some convenient and conspicuous place to which employees of such mine and their representatives shall have free access, a summary report of the conditions found to exist in the mine, together with any requests or orders made for changes or repairs. [40 G. A., ch. 16, § 1; 40 Ex. G. A., S. F. 41, § 12-a1.]

1241. Duty of mine owner. The owner of every mine in this state, subject to inspection, shall provide a suitable place for the posting of reports as provided in the preceding section, which place shall be so located and constructed as to protect the report, when posted, from the weather and from improper removal. The place for posting such report and the means of protection therefor, shall conform to the direction of the mine inspector. [40 G. A., ch. 16, § 2; 40 Ex. G. A., S. F. 41, § 12-a2.]

1242. Unlawful destruction. Any person who, without the consent of the mine inspector, intentionally destroys such report, or place for keeping the same, shall be deemed guilty of a misdemeanor. [40 G. A., ch. 16, § 3; 40 Ex. G. A., S. F. 41, § 12-a3.]

1243. Right to enter mine—assistance by owner. The inspector shall have the right at all reasonable times, by day or night, to enter any mine in his district or any district to which he may be sent by the governor, for the purpose of ascertaining its condition, and the manner of its operation, by making personal examination and inquiry in relation thereto, but not so as to unnecessarily obstruct or impede the working of the mine; and to this end the

mine owner or person in charge shall furnish such mine inspector all necessary assistance. [C., '97, § 2482; S., '13, § 2482; 40 Ex. G. A., S. F. 41, § 13.]

1244. Terms defined. Wherever the word "operator" occurs in this chapter it shall include the owner, lessee, agent, managing officer, and person in charge of any mine. [40 Ex. G. A., S. F. 41, § 14.]

1245. Maps—surveys. The operator of any mine shall comply with the following provisions relative to maps and surveys:

1. *Scale.* Each mine map shall be drawn to a scale of not more than two hundred feet to the inch.

2. *General specifications.* Each map shall show the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or operator, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the map is drawn.

3. *Boundaries and surface lines.* Every such map or plan shall correctly show the surface boundary lines of the coal rights pertaining to each mine and all section or quarter section lines or corners within the same, the lines of town lots and streets, the tracks and sidetracks of all railroads, the location of all wagon roads, rivers, streams, and ponds, and reservations made of coal and mineral.

4. *Underground conditions.* For the underground workings said map shall show all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the location of the escape ways, and of the fan or furnace or other means of ventilation and the direction of air currents, and the location of permanent pumps, hauling engines, engine planes, abandoned works, fire walls, and standing water.

5. *Separate maps.* A separate and similar map drawn to the same scale in all cases shall be made of each and every seam of coal operated in any mine in this state. A separate map shall also be made of the surface whenever the surface buildings, lines, or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them, and in such case the surface map shall be drawn upon transparent cloth or paper so that it can be laid upon the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavations of the mine and any other principal workings of the mine.

6. *Rise and dip of seam.* Each map of underground workings shall also show by profile drawing and measurement, the last one hundred fifty feet approaching the boundary lines, showing the rise and dip of the seam.

7. *Copies.* The original or true copies of all such maps shall be kept at the office of the

mine, and true copies thereof shall also be furnished the state mine inspector for the district in which said mine is located, within thirty days after the completion of the same.

8. *Extensions.* An accurate extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July first of every year and the result of such survey, with the date thereof, shall be promptly and accurately entered upon the original map, and a true, correct, and accurate copy of said extended map shall be forwarded to the inspector of mines in the district in which said mine is located so as to show all changes in plan of new work in the mine, and all extensions of the old workings to the most advanced face or boundary of said workings which have been made since the last preceding survey, and the parts of the mine abandoned or worked out after the last preceding survey shall be clearly indicated and shown by colorings, which copy must be delivered to the inspector of mines within thirty days after the last survey is made.

9. *Abandoned mine.* When any coal mine is worked out or is about to be abandoned or indefinitely closed, the operator of the same shall make or cause to be made a completed and extended map of said mine and the result of the same shall be duly extended on all maps of the mine and copies thereof so as to show all excavations and the most advanced workings of the mine, and their exact relation to the boundary or section lines on the surface, and deliver to the inspector a copy of the completed map.

10. *Surveys ordered.* The inspector shall order a survey to be made of the workings of any mine, and the result to be extended on the maps of the same and the copies thereof, when in his judgment the safety of the workmen, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. If not made by the operator when ordered by the inspector, such inspector shall cause it to be made and paid for by the state and the amount collected from the operator. [C., '97, § 2485; S., '13, § 2485; 40 Ex. G. A., S. F. 41, § 15.]

1246. *Failure to furnish map.* When the operator of any mine neglects or refuses for a period of ninety days to furnish to said inspector the map or plan, or a copy thereof, of such mine or any extension thereof, as provided in this chapter, the inspector shall cause to be made an accurate map or plan of such mine or extension as the case may be, at the expense of the operator. The cost shall be paid by the state and recovered from such operator. It shall be the duty of the county attorney of the county in which such mine is located, at the request of the inspector, to bring action in the name of the state for such recovery. [S., '13, § 2485-a; 40 Ex. G. A., S. F. 41, § 16.]

1247. *Maps property of state—custody—copies.* The maps so delivered to the inspector shall be the property of the state and shall remain in the custody of the inspector during his term of office, and be delivered to his successor in office. They shall be kept at the office of the inspector and be open to examination by all persons interested in the same; but such examination shall only be made in the presence of the inspector or his office assistant, and he shall not permit any copies of the same to be made without the written consent of the operator or the owner of the property, except as otherwise provided. [C., '97, § 2485; S., '13, § 2485; 40 Ex. G. A., S. F. 41, § 17.]

1248. *Escape ways and air shafts.* The operator of any mine shall construct and maintain at least two distinct openings for each seam of coal worked, which, in mines operated by shaft, shall be separated by natural strata of not less than three hundred feet in breadth, and in mines operated by slope or drift not less than two hundred feet in breadth, through which ingress and egress at all times shall be unobstructed to the employees and persons having occasion to use the same as escape ways or places of exit from the mine; but where five or a less number of persons are employed, the mine inspector in the exercise of a sound discretion shall have the power to waive the requirements of this section. [C., '97, § 2486; S., '13, § 2486; 40 Ex. G. A., S. F. 41, § 18.]

1249. *Stairways for escape—air and escape shafts separated.* All escape shafts not provided with hoisting appliances as hereinafter provided shall have stairs at an angle of not more than sixty degrees in ascent, nor less than two and one-half feet in width, with proper, safe, and substantial landings at convenient and easy distances, and equipped with substantial hand rails or banisters. If a shaft be used for an escape way and air shaft, that part used as an escape way shall be divided and partitioned closely with substantial material from the part used as an air shaft, all of which shall be kept in safe condition. [S., '13, § 2486-a; 40 Ex. G. A., S. F. 41, § 19.]

1250. *Hoisting appliances for escape shafts.* All escape shafts not provided with stairs shall be provided with suitable appliances for hoisting underground workmen at all times, ready for use both day and night, while the workmen are in the mine. The hoisting apparatus shall be separate and apart from the hoisting shaft, and the quipment shall include a depth indicator, brake on the drum, steel or iron cable, safety catches on cages, and covers on cages to securely protect any person while on the cage. [S., '13, § 2486-b; 40 Ex. G. A., S. F. 41, § 20.]

1251. *Underground connection with contiguous mine.* Where two or more mines are connected underground the owners by joint

agreement may use the hoisting shaft, slope, or drift of the one as an escape way for the other, and the road or traveling ways thereto on either side shall be kept clear of every obstruction to travel by the respective operators, and the intervening doors, if any, shall remain unlocked and ready at all times for immediate use. When such connection has once been established between contiguous mines, it shall be unlawful for the operator of either mine to close the same without consent both of contiguous operators and of the inspector of mines of the district; but when either operator desires to abandon mining operations, the expenses and duty of maintaining such connection shall devolve upon the party continuing operation. [S., '13, § 2486-c; 40 Ex. G. A., S. F. 41, § 21.]

1252. Location of shafts—approval of inspector. No escape shaft or other place of exit, air shaft or opening for ventilation, not including hoisting shafts, shall be located or constructed without first giving notice to the mine inspector, and obtaining his approval thereof in writing, who shall retain a copy and file in his office and preserve with other records of that mine. [S., '13, § 2486-d; 40 Ex. G. A., S. F. 41, § 22.]

1253. Additional air way or escape way. The mine inspector of the district in which any mine is located shall have the right at any time to order such additional air way or escape way, shaft, opening, or other place of exit as may be deemed necessary for the purpose of furnishing necessary additional ventilation or means of escape. [S., '13, § 2486-d; 40 Ex. G. A., S. F. 41, § 23.]

1254. Appeal from order—time and manner of trial. The operator shall have the right to appeal from such order to the district court, where the action shall be tried in equity, and shall have precedence over any and all other cases, and the first term held after the taking of such appeal shall be the trial term; but in any case the mine inspector may elect, by giving five days' notice to the party taking the appeal, to bring said cause on for hearing before any judge of the judicial district in which such mine is located, who shall have discretion to fix a time and place for such trial in vacation. Upon such hearing the court shall render and enter such order or decree as the evidence warrants in equity and justice. [S., '13, § 2486-d; 40 Ex. G. A., S. F. 41, § 24.]

1255. Ventilation—obstruction prohibited. Escape ways shall be ventilated and kept free from vitiated air, accumulation of ice, and obstructions of every kind; nor shall steam or heated air be discharged therein during the daytime unless an attendant be kept in charge thereof and the equipment so arranged that the steam or warm air may be readily turned off at any time, and a conspicuous signboard placed in plain view indicating the point where

the steam or warm air may be turned off. All surface or other water which flows therein shall be conducted by rings or other means to receptacles so as to keep the stairway reasonably free from water. [S., '13, § 2486-e; 40 Ex. G. A., S. F. 41, § 25.]

1256. Traveling ways—signboards—inspection. In any mine affected by this chapter and every seam of coal or other mineral worked therein, the following requirements shall apply:

1. *Ways.* There shall be constructed, kept, and maintained safe and accessible traveling ways to and from any and all escape ways or places of exit, which shall be maintained free from falls of roof, standing water, and other obstructions and made at least five feet high and seven feet wide. In any case when, in the judgment of the inspector of the district where the mine is located, it is impracticable by reason of any conditions to make the traveling way of such dimensions, then the traveling way may be made and maintained not less than three feet in height and six feet in width, upon written permission of the mine inspector.

2. *Signboards.* At all points where the passage or traveling ways to an escape shaft or place of exit intersect other roadways or entries, conspicuous signboards shall be placed thereat indicating the way to such shaft or place of exit.

3. *Inspection.* All traveling ways shall be inspected by the mine foreman or his assistant at least once each week, and written report of their condition made and filed in the office of the mine, which shall be open for examination to all the employees of the mine and all other persons entitled thereto at all reasonable times. [S., '13, § 2486-f; 40 Ex. G. A., S. F. 41, § 26.]

1257. Dispute as to orders of inspector—copy of order—appeal. If any dispute or difference should arise as to the findings or orders of the mine inspector under the provisions of the preceding section, between such inspector and employer operating the mine, or between such inspector and at least five employees working in the mine, then and in that case the inspector shall furnish, on demand, to the aggrieved party or parties a copy of his findings or orders complained of and he shall also file the originals thereof in the general office of the state mine inspectors, and the aggrieved party or parties may have the right to appeal from said findings and orders to the district court of the county in which said mine is located on the same terms and conditions as appeals from orders relating to air shafts and escape ways. [S., '13, § 2486-f; 40 Ex. G. A., S. F. 41, § 27.]

1258. Time and manner of trial—final order. When an appeal is taken as provided in the preceding section, the case shall be docketed and precedence given over all other cases excepting criminal cases where the party is in

jail, and the inspector may bring the case on for hearing before any judge of the judicial district where the mine is located by giving five days' notice in writing to the opposite party. If the evidence shows that the order was a reasonable one as made by the inspector the findings and order of the inspector shall stand as made by him. If the evidence shows that the order was not a reasonable one, the court shall vacate it or so modify it as to be equitable and just. [S., '13, § 2486-f; 40 Ex. G. A., S. F. 41, § 28.]

1259. Traveling way around hoisting shafts. At the bottom of each hoisting shaft there shall be constructed a safe and convenient traveling way around the shaft for employees and animals, and it shall be unlawful for any person to pass across the shaft bottom in any other manner than by such traveling way, except such employees as may be necessary to perform the work at the bottom of the shaft, or those engaged in making repairs. [S., '13, § 2486-j; 40 Ex. G. A., S. F. 41, § 29.]

1260. Place of refuge in haulage roads. On all single-track haulage roads where hauling is done by machinery or other mechanical device, and on all gravity or inclined planes in mines where it is impracticable to construct a separate traveling way, and which persons employed in the mines must use while performing their work, or travel, on foot, to and from their work, places of refuge must be cut in the side wall not less than three feet in depth and four feet wide and five feet high, and not more than twenty yards apart unless there be a clear space of not less than two and one-half feet between the car when on the track and the rib or side of the entry of the haulage way. [S., '13, § 2486-k; 40 Ex. G. A., S. F. 41, § 30.]

1261. Separate traveling way—exception. In no case shall such haulage way referred to in the preceding section be used as a traveling way unless it shall first be determined by the inspector that it is impracticable to construct, keep, or maintain a separate traveling way; and in all cases, unless otherwise determined by the inspector to be impracticable, there shall be kept and maintained a separate traveling way for the employees which shall at all times be maintained in good and safe condition and free from falls of roof and other obstructions. [S., '13, § 2486-k; 40 Ex. G. A., S. F. 41, § 31.]

1262. Signals—tripcar lights. On every such haulage way over one hundred feet in length used as a traveling way and when haulage is done by tail rope or cable, a signal line and code of signals shall be maintained so as to afford means of communication at all times between the haulage engineer and persons along such haulage way; and a conspicuous light shall be carried on the front of trip or train of cars moved by mechanical means. [S., '13, § 2486-k; 40 Ex. G. A., S. F. 41, § 32.]

1263. Doors in haulage ways—duty of employees. On all haulage ways where doors are maintained to direct the air current, it shall be unlawful for any person at any time to leave any of the doors open that direct the air current. Each person shall, after passing through such doors, see that they are properly closed. [S., '13, §§ 2488-c, 2489-16a; 40 Ex. G. A., S. F. 41, § 33.]

1264. Entries used by draft animals—width—exception. All entries constructed after July 4, 1911, in which the haulage is done by animals and wherein employees work or use the same as a means of ingress and egress to and from their working places, shall be maintained substantially eight feet in width from one rib or side of the entry or haulage way to the opposite side, and shall be kept free from timbers or refuse and as even on the surface each side of the track as may be reasonably practicable; but this section shall not apply to such haulage ways in longwall work when the inspector of the district where the mine is located shall determine that it is impracticable to maintain such width of entry or haulage way. [S., '13, § 2486-l; 40 Ex. G. A., S. F. 41, § 34.]

1265. Area of breaks-through in rooms and entries. All breaks-through in entries must be of an area of not less than twenty-five feet and in rooms not less than twenty feet to secure proper ventilation. [S., '13, § 2488-e; 40 Ex. G. A., S. F. 41, § 35.]

1266. Breaks-through in entries—when and how closed. All breaks-through in entries except the last one shall be securely closed and all stoppings in breaks-through except the one next to the last in entries shall be made with some substantial material so as to securely and completely close the same, and prevent the air from passing through or in any part thereof, which shall be subject to the state mine inspector's approval, who is hereby authorized and empowered to require any change to be made in the material or construction of such stoppings. The stopping in next to the last break-through in entries may be constructed temporarily of some suitable material until one additional break-through has been made, when the temporary stopping shall be replaced by permanent stopping as by this section provided. [S., '13, § 2488-d; 40 Ex. G. A., S. F. 41, § 36.]

1267. Breaks-through in rooms—when and how closed. All breaks-through in the rooms, except the last one, shall be closed and securely fastened so as to prevent the air from passing through the same, which stoppings shall be subject to the approval of the mine inspector of the district in which the mine is operated. [S., '13, § 2488-e; 40 Ex. G. A., S. F. 41, § 37.]

1268. Closing of abandoned rooms and entries. The mouth or openings of all abandoned

rooms, entries, and workings shall be securely closed with permanent stoppings, in such manner as to prevent the passage of air or the escape of gases. [S., '13, § 2488-e; 40 Ex. G. A., S. F. 41, § 38.]

1269. Precaution against fire—location of buildings. It shall be unlawful to erect, keep, or maintain any inflammable structure or building or other material in the space intervening between the main or hoisting shaft, slope, or drift, and the escape shaft or other place of exit; or any powder magazine in such location or manner as to jeopardize the free and safe exit of employees from the mine by any escape shaft or other place of exit in case of fire or other casualty to the main shaft, slope, drift, buildings, or other structures. [S., '13, § 2486-g; 40 Ex. G. A., S. F. 41, § 39.]

1270. Boiler and engine rooms. All boiler and engine rooms at any mine shall be constructed of fireproof material, and in no case shall the boiler room be placed within sixty feet of the hoisting shaft, slope, or drift. [S., '13, § 2486-h; 40 Ex. G. A., S. F. 41, § 40.]

1271. Shaft lights. In all cases, after twilight, or when steam or other causes obscure the plain view of the top and openings of any shaft, there shall be maintained a good and substantial light, but in no case shall an open light or torch be used. [S., '13, § 2486-i; 40 Ex. G. A., S. F. 41, § 41.]

1272. Ventilation—amount of air—circulation. The operator of any mine shall provide and maintain an amount of ventilation of not less than one hundred cubic feet of air per minute for each person employed in the mine and not less than five hundred cubic feet of air per minute for each animal used therein, which shall be so circulated throughout the mine as to dilute, render harmless, and expel all noxious and poisonous gases in all working parts of the mine. In no case shall the air current be a greater distance than sixty feet from the working face, except when making crosscuts in entries for an air course, then the distance shall not be greater than seventy feet; but in a special case requiring it, the state mine inspector may, in writing, grant permission to go beyond the limit herein mentioned. When the air current is carried to the working face of the room in double room mining, such air current shall be treated as a compliance with this section. [C., '97, § 2488; S., '13, § 2488; 40 Ex. G. A., S. F. 41, § 42.]

1273. Air measurements—when and how taken—record. The measurement of the air currents in any mine shall be taken at the bottom of the intake and near the mouth of each split thereof, and also near the working face of the entries. The person in charge of the mine shall be furnished with an anemometer by the owner or lessee of the mine, and shall take the measurements of the air as in

this section provided at least once each week and make a record thereof showing the time and place the measurements were taken. Such record shall be kept at the office of the mine, and a report showing such measurements sent each month to the inspector of the district. [S., '13, § 2488; 40 Ex. G. A., S. F. 41, § 43.]

1274. Air current split—number of men on split. In every mine the air current shall be split and so conducted that not more than eighty employees at any time shall be working on or in each split, except in case of emergency. But the inspector of the district where the mine is located may in writing grant permission for a greater number, not exceeding fifty additional, when the required number of cubic feet of air per minute is properly circulated therein. [S., '13, § 2488-a; 40 Ex. G. A., S. F. 41, § 44.]

1275. Contrivances for supplying air—prohibition. Efficient means in the way of exhaust steam, fans, furnaces, or other contrivances of sufficient capacity shall be kept in operation to supply air current, but if a furnace is used it shall be so constructed by lining the upcast for a distance of not less than fifty feet or for such greater distance as in special cases may be required by the mine inspector, with incombustible material. No furnace shaft shall be constructed in connection with an escape shaft or other way of exit for the employees of a mine. [C., '97, § 2488; S., '13, § 2486-d, 2488-b; 40 Ex. G. A., S. F. 41, § 45.]

1276. Unhealthful conditions. When the mine inspector finds the air insufficient or the employees working under unsafe or improper health conditions, he shall at once give notice to the mine operator, and upon failure to make the necessary changes within such time as the inspector shall fix, such inspector shall order the employees, except such as may be necessary to correct the defect and make the repairs, to cease work and remain out of the mine until such conditions are corrected. [C., '97, § 2488; S., '13, § 2488-f; 40 Ex. G. A., S. F. 41, § 46.]

1277. Speaking tubes. The operator of any mine shall, where the voice can not be distinctly heard from top to bottom, provide and maintain a metal speaking tube or other adequate means of communication and keep the same in complete order from the bottom or interior to the top or exterior. [C., '97, § 2489; S., '13, § 2489; 40 Ex. G. A., S. F. 41, § 47.]

1278. Signaller at bottom. In all cases where mechanical means are used in any mine to hoist or lower employees, the operator of such mine shall keep and maintain a suitable, sober, and competent person at the top and at the bottom in charge of the signals during such time of lowering and raising the employees, who shall be and remain on duty for at least thirty minutes before and after the

usual hours for beginning and stopping the ordinary work of the mine. [C., '97, § 2489; S., '13, § 2489; 40 Ex. G. A., S. F. 41, § 48.]

1279. Safety appliances and regulations.

1. *Brakes.* In all shafts where the employees are raised and lowered by machinery there shall be provided a good and sufficient brake on the drum, so adjusted that it may be operated by the engineer without leaving his post at the levers.

2. *Flanges on drum.* Flanges shall be so arranged on the ends of the drum of any engine used that when the whole cable is wound on the drum, there shall be not less than four inches of clearance between the outer surface of the cable and the outer edge of the flanges.

3. *Hoisting cable.* The ends of the hoisting cable shall be well secured on the drum and at least two and one-half laps of the same shall remain on the drum when the cage is at rest at the lowest caging place in the shaft.

4. *Index dial.* An index dial or indicator shall be so arranged and placed as to indicate to the engineer at all times the true position of the cages in the shaft.

5. *Safety catches.* All cages used in any shaft shall be equipped with efficient safety catches and suspended between good substantial guides, and so constructed overhead with boiler iron that falling objects cannot strike persons on the cage.

6. *Safety gates.* At all landings and openings at the top of all shafts there shall be maintained an approved safety gate constructed in such manner as at all times to close the opening or entrance to the shaft when the cage is not at rest at that point. There shall be adequate springs at the top of each slope and a trail or dog attached to each train used therein. [S., '13, § 2489-1a; 40 Ex. G. A., S. F. 41, § 49.]

1280. Number of persons allowed on cage—riding loaded car or cage prohibited. Not more than ten persons shall be allowed on any cage when ascending or descending, and such less number as may be fixed by the mine inspector. No person at any time shall be allowed to ride in the shaft or any cage with a car, tools, or other material, or when such car, tools, or material is on the opposite cage, except when absolutely necessary in the performance of work in the making of repairs. No person shall ride upon a loaded trip in any part of the mine, except the conductor or person in charge thereof or any person in the performance of his duty. [S., '13, § 2489-1a; 40 Ex. G. A., S. F. 41, § 50.]

1281. Speed of cage carrying men—use prohibited. Cages on which employees are riding shall not be lifted or lowered at a rate of speed greater than four hundred feet per minute, and no cage having any unstable or self-dumping platform or device shall be used for the carriage of employees or material other than coal or mineral unless the same is provided with some convenient device by which the cage

platform can be securely locked when employees are being conveyed thereon. [S., '13, § 2489-2a; 40 Ex. G. A., S. F. 41, § 51.]

1282. Code of signals—location. In all mines operated by machinery there shall be placed in plain view of the engineer while at his post of duty, and in a conspicuous place at the top and at the bottom of each shaft, slope, or drift, the following code of signals, which shall be used between the engineer and the other employees in the operation of the mine:

1. One ring or whistle shall signify to hoist coal or empty cage; and also to stop when the cage is in motion.

2. Two rings or whistles shall signify to lower cage.

3. Three rings or whistles shall signify that employees are ready to enter cage either top or bottom; when return signal of one ring or whistle is received from the engineer employees may enter the cage, but not before, when one ring or whistle shall be given to start.

4. Four rings or whistles shall signify to hoist slowly; warning of danger.

5. Five rings or whistles shall signify accident within the mine and a call for stretcher and supplies.

6. Six rings or whistles shall call for a reversal of the fan.

7. From top to bottom one ring or whistle shall signify all ready, get on cage.

8. Two rings or whistles from top to bottom shall signify send away empty cage which shall be answered from the bottom with one ring or whistle and the cage may then be moved.

9. The operator of such mine may with written consent of the mine inspector add to this code of signals in his discretion when deemed necessary for the efficiency of the mine or the safety of the employees, but any addition thereto shall be placed as in this section provided for the code of signals. [S., '13, §§ 2489-3a, 2489-4a; 40 Ex. G. A., S. F. 41, § 52.]

1283. Engineers—competency—incompetent prohibited. The operator of any mine shall not place in charge of any engine in and around the mine any but competent and sober engineers who shall not permit any person but those designated to handle, operate, or interfere with it or any part of the machinery except such as may be necessary in making proper and needed repairs, and then only when the engine or machinery is not in use in hoisting or lowering employees or hoisting coal or mineral. [S., '13, § 2489-3a; 40 Ex. G. A., S. F. 41, § 53.]

1284. Engineer to inspect machinery. It shall be the duty of the engineer at least once each day to carefully inspect all of the machinery and apparatus under his charge and all of its parts, and if any defects appear which will render its use unsafe to any employee in the mine, he shall cease operating the machinery until the defects are corrected. [S., '13, § 2489-3a; 40 Ex. G. A., S. F. 41, § 54.]

1285. Persons not permitted in engine room or to talk to engineer. No person but the engineer shall be allowed in the engine room except on business connected with the operation of the mine or to repair machinery, and in such case the person shall immediately re-tire therefrom when the work is completed or business transacted, and no person shall be permitted to talk to the engineer while in the performance of his duty in hoisting or lowering employees, coal, or mineral. [S., '13, § 2489-3a; 40 Ex. G. A., S. F. 41, § 55.]

1286. Mine foreman defined. The term "mine foreman" as used in this chapter and the law of this state, shall mean and be construed to be one in charge of the underground workings or departments of the mine or any part thereof, either by day or night. [S., '13, § 2489-14a; 40 Ex. G. A., S. F. 41, § 56.]

1287. Certificate of competency of employees. It shall be unlawful for any operator of any coal mine to employ any person as mine foreman, pit boss, or hoisting engineer at any coal mine employing five or more persons therein, and for any person to attempt to discharge such duties unless he shall hold a certificate of competency for such position as provided in this chapter. [S., '13, §§ 2489-a, 2489-f; 40 Ex. G. A., S. F. 41, § 57.]

1288. Temporary employment. In case of the discharge, resignation, or disability of any person lawfully performing the duties of foreman, pit boss, or hoisting engineer, the operator shall have thirty days within which to secure the services of a certificated person to take the place of the one so discharged, resigned, or disabled; and during such time a competent and capable person may be temporarily employed to perform such services, whether holding a certificate or not. [S., '13, § 2489-a; 40 Ex. G. A., S. F. 41, § 58.]

1289. Certificate of competency—how procured. Any person may secure such certificate of competency who satisfactorily passes the examination, written and oral, prescribed by the board of examiners. [S., '13, §§ 2489-b, 2489-d; 40 Ex. G. A., S. F. 41, § 59.]

1290. Revocation of certificate of competency—how tried—costs. In any case where a mine foreman, pit boss, engineer, or other person receiving a certificate under the law pertaining to mines and mining within this state has wilfully disobeyed the orders of the mine inspector or has been convicted of a misdemeanor relating to his duties in mine operation, his certificate shall be revoked, upon complaint being filed with the board of examiners, who shall proceed to hear the case at such time and place as it may determine, which shall be as soon as practicable after the charges are filed and notice given by it to the accused. The board shall have power to subpoena witnesses and administer oaths and a

majority of the board shall be required to determine the questions at issue; the costs incurred shall be taxed to the losing party and collected as in other cases. [S., '13, § 2489-15a; 40 Ex. G. A., S. F. 41, § 60.]

1291. Fees—certificates recorded. Every person applying for a certificate under this chapter shall pay to the examining board a fee of two dollars, and every successful applicant shall pay to said board an additional fee of two dollars, all of said fees to be accounted for and paid into the state treasury. Each certificate issued under this chapter shall be recorded in the office of the examining board, and shall show the name, age, residence, and mining experience of the person to whom it was issued. [S., '13, § 2489-e; 40 Ex. G. A., S. F. 41, § 61.]

1292. Duties of foreman or pit boss. The duties of the mine foreman or pit boss in charge of any mine or any part thereof shall be:

1. *Inspection.* To make careful inspection of the mine from day to day by himself or assistant and at all times when in his judgment conditions may require.

2. *Directions and rules.* To give such directions and formulate such rules for the guidance of the men employed in the mine as skillful and safe operation of the mine may require.

3. *Props.* To see that the mines are at all times sufficiently supplied with props of proper lengths, caps, and other timbers necessary to securely prop the roof of such mine and the rooms wherein the men are employed, and such material shall be conveniently placed for the use of the miners upon their request.

4. *Ventilation.* To keep a careful watch over the ventilating apparatus and airways, together with all of the stoppings, doors, and other means of directing the air current.

5. *Minors.* To keep a record of the boys under sixteen years of age employed by him during the time of school vacation, showing their ages, names, and residence of parents or guardians and character of employment, which record shall be kept at the office of the mines and open for inspection at all reasonable times.

6. *Daily examination.* To examine all escape ways, the traveling ways leading thereto, or cause them to be examined by his assistant, once each day, and make written report of the conditions and file in the office at the mine, which report shall be open for examination at all reasonable times to representatives of the employees and other persons entitled thereto, and send a copy of such report each month to the mine inspector of the district in which said mine is operated.

7. *Guarding dangerous ways.* If he finds any escape way or traveling way impassable or dangerous, he shall immediately upon the discovery of the defect, place such obstructions at the defective place as may be reasonably necessary to apprise the employees of the

danger. [S., '13, § 2489-13a; 40 Ex. G. A., S. F. 41, § 62.]

1293. Duty of miners and other employees. It shall be the duty of each employee:

1. *Examination of working place.* To examine his working place upon entering the same and not commence to mine or load coal or other material until it is made safe.

2. *Prop and timber roof.* To securely prop and timber the roof of his working place therein and to obey any order or orders given by the superintendent or mine foreman relating to the width of the working place and to the security of the mine in the part thereof where he is at work.

3. *Waste.* To avoid waste of props, caps, timbers, and other material, and when he has any such not suitable for his purpose to place the same at some convenient point near the track, and where the same may be readily seen, and inform the mine foreman, or other person in charge, of their being unsuitable for the purpose intended.

4. *Drawsplate.* When drawsplate or other like material is over the coal, to see to it that proper timbers are placed thereunder for his safety before working under the same. [S., '13, § 2489-16a; 40 Ex. G. A., S. F. 41, § 63.]

1294. Unlawful to injure property or violate regulations. No workman or other person shall knowingly commit any of the following acts:

1. Injure a water gauge, barometer, air course, brattice, or any equipment, machinery, or live stock.

2. Obstruct or throw open any airway, handle or disturb any part of the machinery or the hoisting engine of the mine.

3. Open a door of a mine and neglect to close it.

4. Endanger the mine or those working therein.

5. Disobey any order given in pursuance of law or do a wilful act whereby the safety of persons working in or about a mine or the security of the mine or the machinery connected therewith may be endangered.

6. Place any refuse material or any obstruction in any part of the air course or any part of the breaks-through in the entries or rooms other than as by this chapter provided. [S., '13, § 2489-17a; 40 Ex. G. A., S. F. 41, § 64.]

1295. Use of intoxicants prohibited. No person shall go into, at, or around a mine or the buildings, tracks, or machinery connected therewith while under the influence of intoxicants, and no person shall use, carry, or have in his possession, at, in, or around the mine or the buildings, tracks, or machinery connected therewith, any intoxicants. [S., '13, § 2489-18a; 40 Ex. G. A., S. F. 41, § 65.]

1296. Shot examiners—proof of competency—revocation of permit. In all mines where the coal is blasted from the solid, competent

persons shall be employed to examine all drill holes before they are charged. Before entering upon the discharge of their duties, said examiners shall give proof of their competency to the mine inspector of the district in which the mine where they are employed is located, and said inspector shall certify to the operator of each mine the persons who have given proof of their competency to act in the capacity of shot examiners. The mine inspector shall refuse to give permission to any person to act as shot examiner who, in his judgment, is not competent. He shall revoke any permission granted should it appear that a shot examiner is incompetent, negligent, or careless in the performance of his work. [S., '13, § 2495-b; 40 Ex. G. A., S. F. 41, § 66.]

1297. Drill holes—when unlawful to charge or fire. It shall be unlawful for any miner or other person to charge a drill hole with powder or other explosive until the shot examiner shall have first examined the same. The shot examiner shall forbid the charging or firing of any drill hole with powder or other explosive if in his judgment it would be unsafe to the employees or the mine to discharge the shot. In any case where the shot examiner forbids the charging or firing of any drill hole, he shall make a cross with chalk markings at the mouth of the hole when condemned, and make an entry thereof in a book kept by him for that purpose, stating the name of the person working in such place, the number of drill holes therein which he forbids being charged, and the date thereof, which record shall be retained for at least one week. It shall be unlawful for any shot firer or other person to discharge any shot or blast which has been condemned by the shot examiner. In any case when the mine foreman shall have forbidden the charging of any drill hole or the firing of any shot, no person shall be permitted to charge such hole or fire such shot. If the shot examiner forbids the charging of a hole or the firing of a shot, the mine foreman shall not cause the hole to be charged or the shot fired. [S., '13, § 2489-19a; 40 Ex. G. A., S. F. 41, § 67.]

1298. Transportation of powder into coal mines. No person, firm, or corporation shall be permitted to transport, carry, or convey by any electrical means whatever, any powder or other explosives into any coal mine until after the coal miners and other employees have ceased their work and departed from the mines. [S., '13, § 2496-a; 40 Ex. G. A., S. F. 41, § 68.]

1299. Transportation and delivery—by whom. The transportation and delivery of all powder and other explosives in coal mines shall be done by the operator or by men employed by him for that purpose. [S., '13, § 2496-d; 40 Ex. G. A., S. F. 41, § 69.]

1300. Storage of powder—what permitted. No operator of any coal mine shall suffer or

permit, under any circumstances, the storing of powder or other explosives in any coal mine except as follows:

1. Each miner shall be permitted to have in his separate and individual possession at one time not more than two kegs containing twenty-five pounds of powder each, and other explosives sufficient for one day's use.

2. Such powder or other explosive shall be kept by the miner in a wooden or metallic box or boxes securely locked, and said boxes shall be kept at a reasonable distance from the track; and black powder and high explosives shall be kept in separate boxes. [S., '13, § 2496-b; 40 Ex. G. A., S. F. 41, § 70.]

1301. Supply for following day—where deposited. It shall not be construed as storing powder, as defined in the preceding section, to deposit the powder or other explosives at the end of the electrical or mechanical haulage at the face of the mine for the following day's use, if deposited in conformity with the provisions of the preceding section. [S., '13, § 2496-c; 40 Ex. G. A., S. F. 41, § 71.]

1302. Supply of caps—timbers—props. The operator of any mine shall at all times keep a sufficient supply of props, caps, and other necessary timbers to be used by employees in the mine, convenient and ready for use, and shall send such materials down when requested and deliver them at the places where needed. [S., '13, § 2489-5a; 40 Ex. G. A., S. F. 41, § 72.]

1303. Material for tamping. In all mines where coal is blasted from the solid, the operator shall furnish sand, soil, or clay to be used for tamping which shall be delivered to the employee and placed at a convenient distance from the working places ready for use, and so as not to obstruct any employee in his work. No person shall be permitted to use any substance or material other than sand, soil, or clay for tamping. [S., '13, § 2489-6a; 40 Ex. G. A., S. F. 41, § 73.]

1304. Sprinkling of roadways. The operator of any mine shall not permit the accumulation of dust upon and along any roadway; and where any roadway is dry and dusty, shall cause the same to be sprinkled at least once each week and as much oftener as conditions may require. [S., '13, § 2489-7a; 40 Ex. G. A., S. F. 41, § 74.]

1305. Stables—location—construction—use. The operator of any mine shall not locate a stable at any point in a mine where the air current supplied to the employees passes through such place and in no case shall such stable be located without first having the written approval of the mine inspector of that district, a copy of which shall be filed in his office. The material used in the construction of stables in mines shall, as nearly as practicable, be incombustible and such stables shall not be used as a place for storing any inflammable material, except such hay as may be reasonably

necessary for one day's use. [S., '13, § 2489-8a; 40 Ex. G. A., S. F. 41, § 75.]

1306. Telephone systems. In all mines where the working parts thereof exceed two thousand feet from the foot of the slope, shaft, or the mouth of a drift as the case may be, a good and substantial telephone system or other like suitable means of communication shall be maintained at all times ready for use, from the bottom to some suitable and convenient point at or near the face of such working parts which shall be extended as the works of the mine progress two thousand feet therefrom. [S. S., '15, § 2489-10a; 40 Ex. G. A., S. F. 41, § 76.]

1307. Stretchers—blankets—bandages. The operator of any mine shall at all times keep at some convenient place at the mine, in readiness for use in case of accident, one good and substantial stretcher for each fifty employees or fraction thereof engaged in the operation of the mine, and proper and sufficient blankets for each stretcher, together with a sufficient supply of bandages. [S., '13, § 2489-11a; 40 Ex. G. A., S. F. 41, § 77.]

1308. Gasoline and engines—use and location. No gasoline engine, except gasoline haulage motors where the exhaust is properly cared for, or supplies of gasoline therefor, shall be located in or near the air current which supplies the employees of any mine with air, but in all cases shall be placed upon the return of the air and located at least twenty feet from any and all traveling ways. In no case shall any gasoline engine or place for supply of gasoline be located without first having the approval in writing of the mine inspector, who shall determine the suitability of the location of said engine and supplies. The supply of gasoline shall be kept at the place designated and shall not exceed twelve gallons at any one time. [S., '13, § 2489-9a; 40 Ex. G. A., S. F. 41, § 78.]

1309. Temporary location of engine—conditions. In case of emergency a gasoline engine may be temporarily placed where needed and the inspector of the district in which the mine is located immediately notified thereof; he shall at once proceed to the mine and determine as to the safety of the employees while the engine is so operated at such location. If in his judgment the operation thereof can be continued at such place with reasonable safety to the employees, such operation may be continued while the employees are at work until the emergency shall have passed; otherwise the inspector shall order the employees, except such as are required to operate the engine and work connected therewith, to leave the mine until the same is made safe. [S., '13, § 2489-9a; 40 Ex. G. A., S. F. 41, § 79.]

1310. Fire extinguishers required—where kept. At all hoisting shafts, air shafts, escape shafts, and places of exit, boiler and engine

rooms, stables in mines, and places where gasoline engines are used, there shall be kept ready for use at all times at least two hand fire extinguishers of approved make, conveniently placed for immediate use when needed. [S., '13, § 2489-a; 40 Ex. G. A., S. F. 41, § 80.]

1311. Gasoline motors prohibited in mines hereafter equipped. In any mine hereafter opened or equipped for operation no gasoline haulage motor shall be installed or used in the underground workings for any purpose, and it shall be the duty of the mine inspector to enforce the provisions of this section. [40 Ex. G. A., S. F. 41, § 81.]

1312. Purity of illuminating oil—standard—department of agriculture to regulate. Only pure animal or vegetable oil or other means for illuminating purposes equally as safe and free from smoke or offensive odor shall be used in any mine in this state. For the purpose of determining the purity of oils the department of agriculture shall fix a standard of purity and establish regulations for testing the same, and when so determined and established shall be binding on all courts and other authorities. When any substance used for illuminating purposes in a mine leaves any refuse after use which gives off any gas or offensive odor, it shall be removed from the mine at the end of his day's work by the person using it. [C., '97, § 2493; S., '13, § 2493; 40 Ex. G. A., S. F. 41, § 82.]

1313. Inspection by oil inspector—where made—branding. The department of agriculture shall inspect and test all oil offered for sale, sold, or used for illuminating purposes in coal mines in this state, and for such purposes the inspector of said department may enter upon the premises of any person. If upon test and examination the oil shall meet the requirements made by said department, said inspector shall brand, over his official signature, the barrel or vessel holding the same, with the date and words "Approved for illuminating coal mines". Should it fail to meet such requirements, he shall brand it over his official signature, and date, "Rejected for illuminating coal mines". All inspection shall be made within this state, and paid for by the person for whom the inspection is made at the rate of ten cents per barrel or vessel, which charge shall be a lien on the oil inspected, and be collected by the inspector. Each inspector shall be governed in all things respecting his record and returns as provided in the general law relative to inspection of petroleum products. [S., '13, § 2495-a; 40 Ex. G. A., S. F. 41, § 83.]

NOTE: Inspection of petroleum products, see ch. 159.

1314. Proceedings by inspector when law violated—costs. When any such inspector has good reason to believe that oil is being sold or used in violation of the provisions of this chapter, he shall make complaint to the county attorney of the county in which the offense

was committed, who shall forthwith commence proceedings against the offender. All reasonable expenses for analyzing suspected oil shall be paid by the owner of the oil when it is found that he is selling or offering to sell impure oil in violation of the provisions of this chapter. Such expenses may be recovered in a civil action, and in criminal proceedings such expenses shall be taxed as part of the costs. [S., '13, § 2495-a; 40 Ex. G. A., S. F. 41, § 84.]

1315. Electrical current permitted in mines. All wires or cables at or in any mine used for transmitting electrical current in excess of one hundred volts shall be armored or insulated in so far as practicable, except trolley and all return wires or cables. Wires or cables used for conducting or transmitting current in excess of two hundred seventy-five volts shall be placed and protected for the safety of persons and animals as provided in the next section. [40 Ex. G. A., S. F. 41, § 85.]

1316. Regulations for electrical current. All wires, cables, or transformers used at or in any mine for transmitting, conducting, or transforming electrical current in excess of two hundred seventy-five volts shall be armored, insulated, isolated, or placed so as to prevent injury to persons and animals in so far as possible consistent with the use for which such instrumentalities are intended. At the approach to a transformer, if used, there shall be displayed a sign, with the word "danger" and the number of volts of electrical current conducted, indicated thereon in large plain letters and figures, on which light shall be thrown at all times when electrical current is being conducted or transmitted. [40 Ex. G. A., S. F. 41, § 86.]

1317. Grounding and insulation of current. Electric pumps and stationary electric machines shall be insulated and grounded in their emplacement, by the use of wires or other equivalent means and inspected with such frequency and kept in such repair that contact therewith will be rendered harmless in so far as possible consistent with the use for which such machinery is intended. [40 Ex. G. A., S. F. 41, § 87.]

1318. Handling of electrical equipment. It shall be unlawful for any person to inspect, repair, handle, disturb, or interfere with any of the electrical equipment or machinery of a mine except the mine inspector, operator, superintendent, mine foreman, or those designated by such persons to do such work, and those whom such designated persons may request or permit to aid in the work of handling or repairing. [40 Ex. G. A., S. F. 41, § 88.]

1319. Scales and weighers—duties—records—damages. The operator shall, if the miners are paid by weight, provide the mine with suitable scales of standard make, and require the person selected to weigh the coal delivered

from the mine to take and subscribe an oath before some person authorized to administer oaths, to the effect that he will keep the scales correctly and truly balanced, and accurately weigh and a true record keep of each car delivered, which oath, with that of the checkweighman hereinafter provided for, shall be conspicuously displayed with record of weights at the place of weighing, which record shall carry the account of each miner by itself, be open to the inspection at all proper times of miners and all others having a pecuniary interest in the mine. All damages sustained on account of a failure to weigh and credit to the proper person any coal mined shall be recoverable in an action brought within two years from the time the right thereto accrued, and a knowledge of a violation of this provision by the miner shall not be a defense thereto. [C., '97, § 2490; S., '13, § 2490; 40 Ex. G. A., S. F. 41, § 89.]

1320. Checkweighman—duties. The miners employed and working in any mine may furnish a competent checkweighman, who, before entering upon his duties, shall take and subscribe an oath to the effect that he is duly qualified and will faithfully discharge his duties as checkweighman, and he shall at all proper times have access to and the right to examine the scales, machinery, or apparatus used in weighing, and to see all measures and weights of coal mined and the accounts kept thereof; but not more than one person on the part of the miners collectively shall have this right, and such examination and inspection shall be so made as to create no unnecessary interference with the use of such scales, machinery, or apparatus. [C., '97, § 2490; S., '13, § 2490; 40 Ex. G. A., S. F. 41, § 90.]

1321. When weighed—weights—impurities. The operator shall, where the miner is to be paid by the ton or other quantity, unless otherwise agreed upon in writing, weigh the coal before screening, and the miner shall be credited at the rate of eighty pounds to the bushel and two thousand pounds to the ton, but no payment shall be required for sulphur, rock, slate, blackjack, dirt, or other impurities which may be loaded or found with the coal. [C., '97, § 2490; S., '13, § 2490; 40 Ex. G. A., S. F. 41, § 91.]

1322. Pay days—failure to pay—damages—attorney fee. All wages shall be paid in money upon demand semimonthly, by paying the amount earned during the first fifteen days of each month not later than the first Saturday after the twentieth of said month, and for those earned after the fifteenth of each month not later than the first Saturday after the fifth of the succeeding month. A failure or refusal to make payment within five days after demand shall entitle the laborer to recover the amount due him, and one dollar per day additional, not exceeding the amount due, for each day such payment is neglected or refused, and in

any action therefor the court shall tax as a part of the costs a reasonable attorney fee to plaintiff's attorney. [C., '97, § 2490; S., '13, § 2490; 40 Ex. G. A., S. F. 41, § 92.]

1323. Wages how paid—coercion prohibited. The operator shall not sell, give, deliver, or issue, directly or indirectly, to any person employed, in payment for labor due or as advances for labor to be performed, any script, check, draft, order, or other evidence of indebtedness payable or redeemable otherwise than in money at its face value. He shall not compel or in any manner endeavor to coerce any employee to purchase goods or supplies from any particular person, firm, company, or corporation, but upon demand all wages shall be paid in money as provided in the preceding section. [C., '97, § 2490; S., '13, § 2490; 40 Ex. G. A., S. F. 41, § 93.]

1324. Annual reports—what to contain. The operator of any mine shall, on or before the first day of February in each year, send to the office of the inspector of the district where the mine is located, upon blanks furnished by the state, a correct return with respect to the year ending January first of each year showing the quantity of coal mined and the number of persons ordinarily employed at, in, and around such mine, designating the number of persons below and above ground, and such other information as required by such blank. [S. S., '15, § 2489-12a; 40 Ex. G. A., S. F. 41, § 94.]

1325. Uniform reports. The inspectors shall prepare uniform blanks which shall be used in all cases where reports are required to be made to the district mine inspectors or the inspectors at their general office. [S., '13, § 2484-a; 40 Ex. G. A., S. F. 41, § 95.]

1326. Report of accidents. Forthwith upon the happening of any accident resulting in the death of an employee, the operator shall report the same by mail or otherwise to the mine inspector of the district and the coroner of the county in which the accident happens. In all other cases of personal injury, not resulting in death, the operator shall make a report to the mine inspector of the district upon a standard form provided by the inspector for that purpose, containing a detailed statement of the extent of the injury and the manner in which it occurred. [C., '97, § 2482; S., '13, § 2482; S. S., '15, § 2489-12a; 40 Ex. G. A., S. F. 41, § 96.]

1327. Failure to provide for safety of employees. In addition to any and all other remedies, if any owner or person in charge of any mine shall fail to provide any of the appliances specified in this chapter for the safety of the employees, or the appliances provided do not conform to such requirements, or such owner or agent shall neglect, for twenty days after notice given in writing by the mine inspector of such failure to remedy the same, such in-

spector may apply to the district court, or any judge thereof, in an action brought in the name of the state, for writ of injunction to restrain the working of the mine with more persons than are necessary to make the improvements needed and prevent deterioration of the mine, until such appliances have been supplied. In case an injury happens to those engaged in work because of such failure, the negligence of such operator shall be held to be the proximate cause of such injury. [C., '73, § 1568; C., '97, § 2492; 40 Ex. G. A., S. F. 41, § 97.]

1328. Changes not covered by statute. In all cases not covered by statute when it is found necessary that some change, improvement, or device is required to reasonably secure the safety or health of the employees of any mine, and the operator neglects or refuses to make the change or improvement or supply the device needed within a reasonable time after written notice so to do given by the inspector of the district in which the mine is located, the inspector shall file a verified petition with the clerk of the district court of the county where the mine is located setting forth all such facts and asking a mandatory writ to compel the making of such improvements. [C., '73, § 1568; S., '13, § 2494-a; 40 Ex. G. A., S. F. 41, § 98.]

1329. Notice of time and place of hearing. Such inspector shall give five days' notice to the accused in the same manner as original notices are served, stating the time and place and the name of the judge before whom the case will be tried. The accused party shall be required to appear at the time and place mentioned in the notice, which may be at any place convenient for the judge in the judicial district. [S., '13, § 2494-a; 40 Ex. G. A., S. F. 41, § 99.]

1330. Title of proceeding—time to plead—how tried. The proceeding shall be entitled the state of Iowa as plaintiff and the operator as defendant, who shall plead on or before noon of the fourth day after notice. At the time and place fixed in the notice the case shall be heard and tried by the judge in equity, who shall make such order as the evidence warrants. [S., '13, § 2494-a; 40 Ex. G. A., S. F. 41, § 100.]

1331. Witnesses—court may suspend operation. The clerk of the district court where such petition has been filed shall issue subpoenas at the request of either party, and witnesses shall be required to respond thereto as in other cases, and it shall be the official duty of the county attorney to represent the plaintiff in all matters pertaining to such proceeding. Pending such proceeding the judge may, if he deems it advisable for the safety of the employees, order the mine closed until such hearing is completed, and if changes are ordered, then till such changes are made. [S., '13, § 2494-a; 40 Ex. G. A., S. F. 41, § 101.]

1332. Burden of proof—final order. The burden of proof shall rest upon the plaintiff to show that the proposed change, improvement, or device is reasonably required for the safety or health of the employees. If the evidence in the whole case shows that the proposed change, improvement, or device is necessary for the purposes intended, the judge shall forthwith issue a mandatory order specifying the improvements required and the time within which they shall be made, and enter the same of record in the district court of the county in which the mine is located. [S., '13, § 2494-a; 40 Ex. G. A., S. F. 41, § 102.]

1333. Contempt of court—penalty. If the defendant fails to comply with the order made by the judge within the time fixed, such defendant may be charged with contempt of court, and upon conviction thereof be fined not to exceed five hundred dollars and committed to the county jail until such fine is paid. [S., '13, § 2494-a; 40 Ex. G. A., S. F. 41, § 103.]

1334. Right of adjoining landowner—survey—bond. Upon affidavit of any person owning land in the vicinity of any mine, or his agents, filed with the inspector of the district stating that it is necessary for the protection of his property to know how near his land the excavations in the mine extend, the inspector shall make an examination or employ a surveyor therefor if necessary, to determine the length and direction of entries and other works toward the land of the applicant and the extent of excavation of same on all of his land, if any, and file a report thereof in his office. The inspector may in such case permit examination of such map or copies thereof as may be in his custody, for the purpose of determining the location of the workings. If it be found necessary to survey the premises to discover the facts, the owner or person filing the affidavit shall first give a bond or other security to the inspector in favor of the state in the sum of one hundred dollars conditioned to pay all costs and expenses incurred thereby. [S., '13, § 2485-b; 40 Ex. G. A., S. F. 41, § 104.]

1335. Expenses—by whom paid. The necessary expenses incurred and compensation of five dollars per day to the inspector for the use of the state and ten dollars per day to the surveyor shall be paid by the applicant except when it shall be shown that said applicant's property has been undermined, in which case the expense shall be paid by the mine owner, operator, lessee, or person in charge. [S., '13, § 2485-b; 40 Ex. G. A., S. F. 41, § 105.]

1336. Double damages. In any case where any operator, without permission, takes coal from adjoining land, he shall be liable for double damages to the owner and for all expenses caused thereby. [S., '13, § 2485-b; 40 Ex. G. A., S. F. 41, § 106.]

1337. Violations of provisions—misdemeanors—penalties. Any person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished as hereinafter provided, respectively:

1. *Maps.* Any owner, operator, lessee, or person in charge of any mine, refusing or neglecting to comply with the provisions of this chapter in relation to making and furnishing to the mine inspector maps of such mine, shall be fined one hundred dollars and be imprisoned in the county jail until such fine and costs are paid.

2. *Orders.* Any person, employer, or employee refusing or neglecting to comply with any order of the mine inspector relating to insufficient air, improper ventilation, or unsafe and improper health conditions in any mine, shall be fined not less than five dollars nor more than one hundred dollars.

3. *Unlawful employment.* Any owner, operator, lessee, agent, or managing officer of any mine who shall employ any mine foreman, pit boss, or hoisting engineer who does not hold a certificate of competency from the board of examiners, except as otherwise provided in this chapter, shall be fined not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding six months, or both.

4. *Explosives.* Any owner, lessee, operator, or the agent thereof, or officer or agent of any firm or corporation violating any of the provisions of this chapter relating to the transportation and storage of powder and other explosives in and about any mine, shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days.

5. *Illuminating oils.* Any person, firm, corporation, or their agents or employees, violating any of the provisions of this chapter relating to inspection, selling, or offering to sell illuminating oils or any other substance for

illuminating purposes in any mine, shall be fined not less than twenty-five dollars nor more than one hundred dollars.

6. *Oils.* Any owner, operator, lessee, or employee of any mine violating any of the provisions of this chapter prohibiting the use or sale or permitting the use or sale of impure or adulterated oil or other substance for illuminating purposes in any mine, shall be fined not less than five dollars nor more than twenty-five dollars.

7. *Weighing.* Any owner, lessee, or operator, or any party in charge of any mine, or any weighman or checkweighman violating any of the provisions of this chapter relating to the correct weighing and recording of the weights of coal mined at any mine shall be fined not exceeding five hundred dollars or be imprisoned in the county jail not exceeding sixty days.

8. *General prohibitions.* Any miner, workman, or other person violating any of the provisions of this chapter relating to injuring or interfering with any air course or brattice, obstructing or throwing open doors in mines, disturbing any part of the machinery or equipment, disobeying any orders in carrying out the provisions of this chapter, riding upon a loaded car or other means of transportation in the mine except as in this chapter permitted, doing any act whereby the lives, limbs, or health of persons or the security of the mine and machinery are endangered, or neglecting or refusing to securely prop or support the roof and entries under his control, or neglecting or refusing to obey any order of the superintendent in relation to the safety of the mine in the part under his control, shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days. [C., '97, §§ 2491, 2494; S., '13, §§ 2485-a, 2488-f, 2489-f, 2494, 2496-e; 40 Ex. G. A., S. F. 41, § 107.]

CHAPTER 69

GYPSUM MINES

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1338. Escape shafts. The owner or person in charge of any gypsum mine operated by shaft or one having a slope or drift opening in which five or more men are employed shall construct and maintain at least two distinct

openings, which in shaft mines hereafter constructed shall be separated by not less than three hundred feet and in slope or drift mines by not less than two hundred feet in breadth through which, in every shaft or slope mine,

ingress and egress at all times shall be unobstructed and free from water. [S., '13, § 2496-f.]

1339. Stairs. All escape shafts hereafter constructed shall have stairs at an angle of not more than sixty degrees in descent, with a stairway not less than two feet in width, kept in safe condition, with proper landings at easy and convenient distances apart and adequate means of escape from mines now in operation. [S., '13, § 2496-f.]

1340. Fans—combustible materials. Such owner or person shall provide all air shafts with fans for ventilating purposes, and no combustible material shall be allowed to be or remain between any escape shaft and hoisting shaft, nor shall any building hereafter erected be located within two hundred feet of an escape shaft without written permission from the state inspector. [S., '13, § 2496-f.]

1341. Joint use. Where two or more mines are connected underground the several owners may, by agreement, use the hoisting shaft or slope of one mine as an escape for the other. No escape shaft shall be located or constructed without first giving notice to, and obtaining the approval in writing of the state mine inspector. [S., '13, § 2496-f.]

1342. Ventilation. The owner or person in charge of any mine shall provide and maintain, whether the mine be operated by shaft, slope, or drift, an amount of ventilation of not less than one hundred cubic feet of air per minute for each person, nor less than five hundred cubic feet of air per minute for each mule or horse employed therein, which shall be so circulated throughout the mines as to dilute, render harmless, and expel all noxious and poisonous gases in all working parts of the same. [S., '13, § 2496-h.]

1343. Air measurement. In no case shall the air current be a greater distance than sixty feet from the working face, except when making crosscuts in entries for air courses; then, in that case, the distance shall not be greater than seventy feet; but the state mine inspector may, in writing, grant permission to go beyond the limit herein mentioned, when the conditions are such in a special case as to require it. [S., '13, § 2496-h.]

1344. Insufficient air. When the mine inspector shall find the air insufficient, or men working under unsafe conditions, he shall at once give notice to the mine owner or his agent or person in charge, and upon the failure to make the necessary changes within a reasonable time, to be fixed by him, he may order the men out, to remain out until the mine is put in proper condition. [S., '13, § 2496-h.]

1345. Speaking tubes—safety appliances. The owner or person in charge of any mine shall in all mines operated by shaft or slope,

where the voice can not be distinctly heard, provide and maintain a metal speaking tube or other means of communication, kept in complete order from the bottom or interior to the top or exterior, also a sufficient safety catch and proper cover overhead on all cages, and an adequate brake to all drums or other devices used for lowering or hoisting persons, an approved safety gate at the top of each shaft, springs at the top of each slope, and a trail attached to each train used therein. [S., '13, § 2496-i.]

1346. Competent engineers—safety precautions. He shall not knowingly place in charge of any engine used in or about the operation of the mines any but experienced, competent, and sober engineers, who shall have the same qualifications as are required of hoisting engineers at coal mines, and who shall not allow anyone but those designated for that purpose to handle or in any way interfere with it or any part of the machinery, nor shall more than ten persons be allowed to descend or ascend in any cage at one time, or such less number as may be fixed by the state mine inspector, nor anyone but the conductor on a loaded car or cage. [S., '13, § 2496-i.]

1347. Props. He shall at all times keep a sufficient supply of timber to be used as props, convenient and ready for use, and shall send such props down when required and deliver them to the places where needed. [S., '13, § 2496-i.]

1348. Violation—writ of injunction—negligence. In addition to any and all other remedies, if any owner or person in charge of any mine shall fail to provide the requirements herein specified, or such owner or agent neglect for twenty days after notice given in writing by the state mine inspector of such failure to remedy the same, such inspector may apply to the district court or any judge thereof in an action brought in the name of the state for a writ of injunction to restrain the working of the mine with more persons at the same time than are necessary to make the improvements needed, save as may be required to prevent waste, until such appliances have been provided, and in case an injury happens to those engaged in the work because of such failure, the same shall be held culpable negligence on the part of the operator of the mine. [S., '13, § 2496-j.]

1349. Duties and powers state mine inspector. It is hereby made the duty of the state mine inspector to enforce the provisions of this chapter. He shall have the right to enter any gypsum mine under the provisions of this chapter, at any time, but shall not unnecessarily interfere with the working of any mine, nor shall more than six months intervene between examinations of any such mine. [S., '13, § 2496-k.]

1350. Fatal accidents—reports. Every person in charge of a mine under the provisions

of this chapter shall, within twenty-four hours after a fatal accident happens to any employee in or around the mine, report the same to the coroner of the county in which the mine is operated and to the state mine inspector. [S., '13, § 2496-l.]

1351. Maps. The owner, operator, lessee, or person in charge of any gypsum mine shall make or cause to be made an accurate map or plan of such mine, drawn to a scale not more than two hundred feet to the inch, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, operator, lessee, or person in charge, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made. [S., '13, § 2496-m.]

1352. Details required. Every such map or plan shall correctly show the surface boundary lines of the rights pertaining to each mine and all section or quarter-section lines or corners within the same; the lines of town lots or streets; the tracks or side-tracks of all railroads, the location of all wagon roads, rivers, streams, ponds, and reservations made of gypsum and mineral. For the underground workings said map shall show all shafts, slopes, tunnels, or other opening to the surface or to the workings of a continuous mine; all excavations, entries, rooms, and crosscuts; the location of the escape ways, and of the fan or furnace or other means of ventilation and the direction of air currents and the location of permanent pumps, hauling engines, engine planes, abandoned works, fire walls, and standing water. [S., '13, § 2496-m.]

1353. Separate maps. A separate and similar map drawn to the same scale in all cases shall be made of each and every seam of gypsum operated in any mine in the state. A separate map shall also be made of the surface whenever the surface buildings, lines, or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them and in such case the surface map shall be drawn upon transparent cloth or paper so it can be laid upon the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavation of the mine, together with any other principal workings of the mines. [S., '13, § 2496-m.]

1354. Rise and dip of seam. Each map shall also show, by profile drawing and measurement, the last one hundred fifty feet approaching the boundary lines, showing the rise and dip of the seam. [S., '13, § 2496-m.]

1355. Copies. The original or true copies of all such maps shall be kept at the office of the mine and true copies thereof shall also be furnished the state mine inspector for the

district in which said mine is located within thirty days after the completion of the same. [S., '13, § 2496-m.]

1356. Custody and examination. The maps so delivered to the inspector shall be the property of the state and shall remain in the custody of the said inspector during his term of office and be delivered to his successor in office. They shall be kept at the office of the inspector and be open to examination to all persons interested in the same. But such examination shall only be made in the presence of the inspector or his office assistant, and he shall not permit any copies of the same to be made without the written consent of the operator or the owner of the property, except as herein and otherwise provided. [S., '13, § 2496-m.]

1357. Additional survey. An accurate extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July first of every year and the result of such survey with the date thereof shall be promptly and accurately entered upon the original map and a true, correct, and accurate copy of said extended map shall be forwarded to the inspector of mines in the district in which said mine is located so as to show all changes in plan of new work in the mine, and all extension of the old workings to the most advanced face or boundary of said workings which have been made since the last preceding survey, and the parts of the mine abandoned or worked out after the last preceding survey shall be clearly indicated and shown by colorings, which copy must be delivered to the inspector of mines within thirty days after the last survey is made. [S., '13, § 2496-m.]

1358. Abandoned mine. When any gypsum mine is worked out or is about to be abandoned or indefinitely closed, the owner, operator, lessee, or person in charge of the same shall make or cause to be made a complete extended map of said mine and the result of the same shall be duly extended on all maps of the mine and copies thereof so as to show all excavations and the most advanced workings of the mine and their exact relation to the boundary of section lines on the surface, and deliver to the inspector a copy of the completed map. [S., '13, § 2496-m.]

1359. Inspector may order survey. The state inspector of mines shall order a survey to be made of the workings of any mine and the result to be extended on the maps of the same and the copies thereof whenever in his judgment the safety of the workmen, the support of the surface, the conservation of the property, or the safety of the adjoining mine requires it; and if not made by the owner, operator, lessee, or person in charge when ordered by the inspector it shall be made or caused to be made by the inspector and paid for by the state and the amount collected from the owner, operator, lessee, or person in charge as other debts are collected. [S., '13, § 2496-m.]

1360. Violations. Any owner or person in charge of any gypsum mine who shall fail to comply with the provisions of this chapter, or any of them, or shall hinder or obstruct the carrying out of any of the requirements of this chapter shall be punished by imprisonment in the county jail not exceeding sixty days or by a fine not exceeding five hundred dollars; or if any miner, workman, or other person knowingly injure or interfere with any air course or brattice, or obstruct or throw open doors or disturb any part of the machinery, or disobey

any order given in carrying out the provisions of this chapter whereby the lives and health of the persons or the security of the mines and machinery is endangered, or shall neglect or refuse to securely prop any entries under his control, or refuse to obey any order given by the superintendent in relation to the safety of the mine or that part of the mine under his charge or control, he shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days. [S., '13, § 2496-n.]

CHAPTER 70

WORKMEN'S COMPENSATION

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1361. To whom not applicable. This chapter shall not apply to:

1. Any household or domestic servant.
2. Persons whose employment is of a casual nature.
3. Persons engaged in agriculture, in so far as injuries shall be incurred by employees while engaged in agricultural pursuits or any operations immediately connected therewith, whether on or off the premises of the employer.
4. As between a municipal corporation, city, or town, and any person or persons receiving any benefits under, or who may be entitled to benefits from, any "firemen's pension fund" or "policemen's pension fund" of any municipal corporation, city, or town, except as otherwise

provided by law. [S., '13, § 2477-m; 37 G. A., ch. 418, § 1; 40 Ex. G. A., H. F. 42, § 1.]

1362. Compulsory when. Where the state, county, municipal corporation, school district, or city under any form of government is the employer, the provisions of this chapter for the payment of compensation and amount thereof for an injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee, except as otherwise provided in the preceding section. [S., '13, § 2477-m; 40 Ex. G. A., H. F. 42, § 2.]

1363. Acceptance presumed. Except as provided by this chapter, it shall be conclusively

presumed that every employer has elected to provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury. [S., '13, § 2477-m; 40 Ex. G. A., H. F. 42, § 3.]

1364. Rejection. The presumption as stated in the preceding section shall continue and be in force until notice in writing of an election to the contrary shall have been given to the employees by posting the same in some conspicuous place where the business is carried on, and also by filing notice with the industrial commissioner with return thereon by affidavit showing the date and place notice was posted. Any employer beginning business and giving notice at once of his rejection of this chapter shall not be considered as under such provisions, but such employer shall not be relieved of the payment of compensation until thirty days after the posting and filing of such notice with the industrial commissioner. [S., '13, § 2477-m; 40 Ex. G. A., H. F. 42, § 4.]

1365. Employer's notice to reject. An employer's notice of election to reject the provisions of this chapter shall be substantially in the following form:

To the employees of the undersigned, and the Iowa industrial commissioner:

You are hereby notified that the undersigned rejects the provisions to provide, secure, and pay compensation to employees of the undersigned for injuries received as provided in chapter 70 of the code, and elects to pay damages for personal injuries received by such employee under the common law and statutes of this state as modified by sections 1375 and 1379 of said chapter.

Signed.....
(Employer.)

State of Iowa, }
.....County. } ss.

The undersigned on oath says that a true copy of the foregoing notice was on the..... day of....., 19....., posted at.....
(State fully place where posted.)

Subscribed and sworn to before me by....
.....this..... day of....., 19....
.....
(Notary Public.)

[S., '13, § 2477-m; 40 Ex. G. A., H. F. 42, § 5.]

1366. Posting notice to reject. The employer shall keep such notice posted in some conspicuous place where the business is carried on, which shall apply to the employees subsequently employed by the employer with the same force and effect and to the same extent as employees in the employ at the time the notice was given. [S., '13, § 2477-m; 40 Ex. G. A., H. F. 42, § 6.]

1367. Defenses when employee rejects. In the event an employee elects to reject the provisions of this chapter, the rights and remedies thereof shall not apply where such employee brings an action to recover damages for injuries received arising out of and in the course of his employment, except as otherwise provided by this chapter; and in such actions the employer shall have the right to plead and rely upon any and all defenses including those at common law, and the defenses of contributory negligence, assumption of risk, and fellow servant rule, except as otherwise provided by law. [S., '13, § 2477-m2; 40 Ex. G. A., H. F. 42, § 7.]

1368. Certain defenses not available when employee rejects. When an employee who has rejected the provisions of this chapter, receives an injury through failure of the employer to furnish or failure to exercise reasonable care to keep and maintain any safety device, appliance, or equipment as required by law, statutory rule or regulation, or through the violation of any other statutory requirements or regulations on the part of such employer, then the doctrine of assumed risk in relation to such cause of injury shall not be available as a defense to such employer in any action for damages on account of such injury. [S., '13, § 2477-m2; 40 Ex. G. A., H. F. 42, § 8.]

1369. Employees' notice to reject. The notice required to be given by an employee shall be substantially in the following form:

To..... and the Iowa industrial commissioner:
(Name of employer.)

You are hereby notified that the undersigned hereby elects to reject the terms, conditions, and provisions of chapter 70 of the code for the payment of compensation as provided thereby, and elects to rely upon the common law as modified by sections 1367 and 1368 of said chapter for the right to recover for personal injury which I may receive, if any, arising out of and in the course of my employment while in line of duty for my employer above named.

Dated this.....day of....., 19.....
Signed.....

State of Iowa, }
.....County. } ss.

The undersigned on oath says that the above written notice was on the.....day of....., 19....., served on the within named employer of the undersigned by delivering to..... a true copy thereof.

.....
(Name of person serving.)

Subscribed and sworn (or affirmed) to before me by the saidthis..... day of....., 19.....
.....
(Notary Public.)

[S., '13, § 2477-m2; 40 Ex. G. A., H. F. 42, § 9.]

1370. Affidavit of employee as to rejection. When an employee or one who is an applicant

for employment rejects the provisions of this chapter, he shall, in addition to such notice, state in an affidavit to be filed with said notice who, if any person, requested, suggested, or demanded of such person to reject the provisions of this chapter. If such request, suggestion, or demand has been made of such employee by any person, such employee shall state the name of the person who made the request, suggestion, or demand, and all of the circumstances relating thereto, the date and place made, and persons present, and if it be found that the employer of such employee, or an employer to whom an applicant for employment has applied, or any person a member of the firm, association, corporation, or agent or official of such employer, made a request, suggestion, or demand to such employee or applicant for employment to reject the provisions of this chapter, the rejection made under such circumstances shall be conclusively presumed to have been fraudulently procured, and such rejection shall be null and void and of no effect, unless such employee has a permanent disability at the time of making the affidavit, then and in that event such rejection shall be presumed to have been fraudulently procured. [S., '13, § 2477-m2; 40 Ex. G. A., H. F. 42, § 10.]

1371. Interested person not to administer oath. No person interested in the business of such employer, financially or otherwise, shall be permitted to administer the oath to the affiant required in case an employee or applicant for employment elects to reject the provisions of this chapter. And the person administering such oath to such affiant shall carefully read the notice and affidavit to such person making such rejection, and shall explain that the purpose of the notice is to bar such person from recovering compensation in accordance with the schedule and terms of this chapter in the event that he sustains an injury in the course of such employment; all of which shall be shown by certificate of the person administering the oath herein contemplated.

The industrial commissioner shall refuse to file the notice and affidavit, unless the same fully and in detail complies with the requirements hereof.

If such rejection, affidavit, or certificate is found insufficient for any cause, they shall be returned to the person who executed the instrument, with the reasons indorsed thereon by the industrial commissioner. [S., '13, § 2477-m2; 40 Ex. G. A., H. F. 42, § 11.]

1372. Tenure of election. When the employer or employee has given notice in compliance with this chapter electing to reject the terms thereof, such election shall continue and be in force until such employer or employee shall thereafter elect to come under the provisions of this chapter as is provided in the next section. [S., '13, § 2477-m3; 40 Ex. G. A., H. F. 42, § 12.]

1373. Waiver of election to reject. When an employer or employee rejects the provisions of this chapter, such party may at any time thereafter elect to waive the same by giving notice in writing in the same manner required of the party in electing to reject the provisions of this chapter, which shall become effective when filed with the industrial commissioner and posted at the place of business. [S., '13, § 2477-m3; 40 Ex. G. A., H. F. 42, § 13.]

1374. Liability when employer and employee reject. When the employer and the employee elect to reject the provisions of this chapter, the liability of the employer shall be the same as though the employee had not rejected the provisions hereof. [S., '13, § 2477-m4; 40 Ex. G. A., H. F. 42, § 14.]

1375. Defenses not available when employer rejects. An employer who rejects the provisions of this chapter in the manner and form provided, shall not escape liability for personal injury sustained by an employee of such employer when the injury sustained arises out of and in the course of the employment on the grounds that:

1. The employee assumed the risks inherent in or incidental to or arising out of his or her employment, or the risks arising out of the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising out of the failure of the employer to furnish reasonably safe tools or appliances, or the risks arising out of the failure of the employer to exercise reasonable care in selecting reasonably competent employees in the business, or on the ground that the employer exercised reasonable care in selecting reasonably competent employees in the business.

2. The injury was caused by the negligence of a coemployee.

3. The employee was negligent, unless such negligence was wilful and with intent to cause the injury, or the result of intoxication on the part of the injured party. [S., '13, § 2477-m; 40 Ex. G. A., H. F. 42, § 15.]

1376. Wilful injury—intoxication. No compensation under this chapter shall be allowed for an injury caused:

1. By the employee's wilful intent to injure himself or to wilfully injure another.

2. When intoxication of the employee was the proximate cause of the injury. [S., '13, §§ 2477-m, 2477-m1; 40 Ex. G. A., H. F. 42, § 16.]

1377. Implied acceptance. Where the employer and employee have not given notice of an election to reject the terms of this chapter, every contract of hire, express or implied, shall be construed as an implied agreement between them and a part of the contract on the part of the employer to provide, secure, and pay, and on the part of the employee to accept compensation in the manner as by this chapter provided for all personal injuries sustained

arising out of and in the course of the employment. [S., '13, § 2477-m; 40 Ex. G. A., H. F. 42, § 17.]

1378. Contract to relieve not operative. No contract, rule, regulation, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided. [S., '13, § 2477-m7; 40 Ex. G. A., H. F. 42, § 18.]

1379. Negligence presumed—burden of proof. In actions by an employee against an employer for personal injury sustained, arising out of and in the course of the employment, when the employer has rejected the provisions of this chapter, the following provisions shall apply:

1. It shall be presumed:

a. That the injury to the employee was the direct result and growing out of the negligence of the employer.

b. That such negligence was the proximate cause of the injury.

2. In such cases the burden of proof shall rest upon the employer to rebut the presumption of negligence. [S., '13, § 2477-m; 40 Ex. G. A., H. F. 42, § 19.]

1380. Rights of employee exclusive—presumption. The rights and remedies provided in this chapter for an employee on account of injury shall be exclusive of all other rights and remedies of such employee, his personal or legal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury; and all employees affected by this chapter shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions, and provisions hereof until notice in writing shall have been served upon his employer, and also on the industrial commissioner, with return thereon by affidavit showing the date upon which notice was served upon the employer. [S., '13, § 2477-m2; 40 Ex. G. A., H. F. 42, § 20.]

1381. Subsequent election to reject—effect. An employer having come under this chapter, who thereafter elects to reject the terms, conditions, and provisions thereof, shall not be relieved from the payment of compensation to any employee who sustains an injury arising out of and in the course of the employment before the election to reject becomes effective; and in such cases the employer shall be required to secure the payment of any compensation due or that may become due to such employee, subject to the approval of the Iowa industrial commissioner. [S., '13, § 2477-m5; 40 Ex. G. A., H. F. 42, § 21.]

1382. Liability of other than employer—subrogation. When an employee receives an injury for which compensation is payable under this chapter, and which injury is caused under circumstances creating a legal liability against some person other than the employer to pay damages, the employee, or his dependent, or

the trustee of such dependent, may take proceedings against his employer for compensation, and the employee or, in case of death, his legal representative may also maintain an action against such third party for damages. When an injured employee or his legal representative brings an action against such third party, a copy of the original notice shall be served upon the employer by the plaintiff, not less than ten days before the trial of the case, but a failure to give such notice shall not prejudice the rights of the employer, and the following rights and duties shall ensue:

1. If compensation is paid the employee or dependent or the trustee of such dependent under this chapter, the employer by whom the same was paid, or his insurer which paid it, shall be indemnified out of the recovery of damages to the extent of the payment so made, with legal interest, and shall have a lien on the claim for such recovery and the judgment thereon for the compensation for which he is liable. In order to continue and preserve the lien, the employer or insurer shall, within thirty days after receiving notice of such suit from the employee, file, in the office of the clerk of the court where the action is brought, notice of the lien.

2. In case the employee fails to bring such action within ninety days, or where a city or town or city under special charter is such third party, within thirty days after written notice so to do given by the employer or his insurer, as the case may be, then the employer or his insurer shall be subrogated to the rights of the employee to maintain the action against such third party, and may recover damages for the injury to the same extent that the employee might. In case of recovery, the court shall enter judgment for distribution of the proceeds thereof as follows:

a. A sum sufficient to repay the employer for the amount of compensation actually paid by him to that time.

b. A sum sufficient to pay the employer the present worth computed on a six per cent basis of the future payments of compensation for which he is liable, but such sum thus found shall not be considered as a final adjudication of the future payments which the employee shall receive and the amount received by the employer, if any, in excess of that required to pay the compensation shall be paid to the employee.

c. The balance, if any, shall be paid over to the employee.

3. Before a settlement shall become effective between an employee or an employer and such third party who is liable for the injury, it must be with the written consent of the employee, in case the settlement is between the employer or insurer and such third person; and the consent of the employer or insurer, in case the settlement is between the employee and such third party; or on refusal of consent, in either case, then upon the written approval of the industrial commissioner.

4. A written memorandum of any settlement, if made, shall be filed by the employee in

the office of the industrial commissioner. [S., '13, § 2477-m6; 40 Ex. G. A., H. F. 42, § 22.]

1383. Notice of injury—failure to give. Unless the employer or his representative shall have actual knowledge of the occurrence of an injury, or unless the employee or someone on his behalf or some of the dependents or someone on their behalf shall give notice thereof to the employer within fifteen days after the occurrence of the injury, then no compensation shall be paid until and from the date such notice is given or knowledge obtained; but if such notice is given or knowledge obtained within thirty days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced thereby, and then only to the extent of such prejudice; but if the employee or beneficiary shall show that his failure to give prior notice was due to mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation, or deceit of another, or to any other reasonable cause or excuse, then compensation may be allowed, unless and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice; but unless knowledge is obtained or notice given within ninety days after the occurrence of the injury, no compensation shall be allowed. [S., '13, § 2477-m8; 40 Ex. G. A., H. F. 42, § 23.]

• 1384. Form of notice. No particular form of notice shall be required, but may be substantially as follows:

To
You are hereby notified that on or about the day of, 19....., personal injury was sustained by....., while in your employ at
(Give name and place employed and point; and that compensation where located when injury occurred.) will be claimed therefor.

Signed.....
No variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place. [S., '13, § 2477-m8; 40 Ex. G. A., H. F. 42, § 24.]

1385. Service of notice. The notice may be served on anyone upon whom an original notice may be served in civil cases. Service may be made by any person, who shall make return verified by affidavit upon a copy of the notice, showing the date and place of service and upon whom served; but no special form of the return of service of the notice shall be required. It shall be sufficient if the facts therefrom can be reasonably ascertained. The return of service may be amended at any time. [S., '13, § 2477-m8; 40 Ex. G. A., H. F. 42, § 25.]

1386. Limitation of actions. No original proceedings for compensation shall be main-

tained in any case unless such proceedings shall be commenced within two years from the date of the injury causing such death or disability for which compensation is claimed. [40 Ex. G. A., H. F. 42, § 23-a1.]

1387. Surgical and medical services—amount. In addition to other compensation hereinafter provided for, at the time of the injury and thereafter during the disability, but not exceeding four weeks of incapacity, the employer, if so requested by the employee, or anyone for him, or if so ordered by the court or industrial commissioner, shall furnish reasonable surgical, medical, and hospital services, and supplies therefor, or any other appropriate treatment agreed to in writing by the employee and the employer and the insurer, not exceeding one hundred dollars; but, in exceptional cases, the employer shall furnish such additional medical, surgical, and hospital services and supplies for such period and in such amount as the industrial commissioner shall order, but in no event to exceed one hundred dollars for such additional services and supplies. [S., '13, § 2477-m9; 37 G. A., ch. 270, § 1; 38 G. A., ch. 220, § 2; 40 Ex. G. A., H. F. 42, § 26.]

1388. Burial expense. When death ensues from the injury, the employer shall pay the reasonable expenses of burial of such employee, not to exceed one hundred fifty dollars, which shall be in addition to other compensation or any other benefit provided for in this chapter. [S., '13, § 2477-m9; 40 Ex. G. A., H. F. 42, § 27.]

1389. Liability in case of death and no dependents. When the injury causes death of an employee who leaves no dependents, then the employer shall pay the reasonable expense of the employee's sickness, if any, and the expense of burial, as provided in the last two preceding sections, and this shall be the only compensation; provided that if, from the date of the injury until the date of the death, any weekly compensation shall have become due and unpaid up to the time of the death, the same shall be payable to the estate of the deceased employee. [S., '13, § 2477-m9; 40 Ex. G. A., H. F. 42, § 28.]

1390. Compensation schedule. In all cases where an employee receives a personal injury for which compensation other than for medical, surgical, and hospital services and burial expenses, is payable, such compensation shall be upon the basis of sixty per cent per week of the average weekly earnings but not to exceed fifteen dollars nor less than six dollars per week, except if at the time of his injury his earnings are less than six dollars per week, then he shall receive in weekly payments a sum equal to the full amount of his weekly earnings. [S., '13, § 2477-m9; 37 G. A., ch. 270, §§ 3, 4; 38 G. A., ch. 220, § 1; 40 Ex. G. A., H. F. 42, § 29.]

1391. Maturity date and interest. Compensation payments shall be made each week beginning on the twenty-second day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to such weekly compensation payments, interest at six per cent from date of maturity. [40 Ex. G. A., H. F. 42, § 29-a.1.]

1392. Death cases—dependents.

1. When death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of his injury, the weekly compensation for a period of three hundred weeks from the date of his injury.

2. When the injury causes the death of a minor employee whose earnings were received by the parent, the compensation to be paid such parent shall be two-thirds the weekly compensation for an adult with like earnings.

3. If the employee leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid, shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury.

4. When weekly compensation has been paid to an injured employee prior to his death, the compensation to dependents shall run from the date to which compensation was fully paid to such employee, but shall not continue for more than three hundred weeks from the date of the injury.

5. Where an employee is entitled to compensation under this chapter for an injury received, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

6. Except as otherwise provided by treaty, whenever, under the provisions of this and the two following chapters, compensation is payable to a dependent who is an alien not residing in the United States at the time of the injury, the employer shall pay fifty per cent of the compensation herein otherwise provided to such dependent, and the other fifty per cent shall be paid into the state treasury. But if the nonresident alien dependent is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefits of such law in as favorable degree as herein extended to the nonresident alien, then said compensation which would otherwise be payable to such dependent shall be paid into the state treasury. [S., '13, §§ 2477-m9, 2477-m10; 38 G. A., ch. 220, § 3; 40 Ex. G. A., H. F. 42, § 30.]

1393. When compensation begins—periodical increase. Except as to injuries resulting

in permanent partial disability, compensation shall begin on the fifteenth day of disability after the injury.

If the period of incapacity extends beyond the thirty-fifth day following the date of injury, then the compensation for the fifth week shall be increased by adding thereto an amount equal to two-thirds of one week of compensation.

If the period of incapacity extends beyond the forty-second day following the date of injury, then the compensation for the sixth week shall be increased by adding thereto an amount equal to two-thirds of one week of compensation.

If the period of incapacity extends beyond the forty-ninth day following the date of injury, then the compensation for the seventh week shall be increased by adding thereto an amount equal to two-thirds of one week of compensation.

If the period of incapacity extends beyond the forty-ninth day following the date of injury, then the compensation thereafter shall be only the weekly compensation. [S., '13, § 2477-m9; 37 G. A., ch. 270, § 2; 40 Ex. G. A., H. F. 42, § 31.]

1394. Temporary disability. For injury producing temporary disability, and beginning on the fifteenth day thereof, the employer shall pay the weekly compensation during the period of such disability, but not exceeding three hundred weeks, including the periodical increase in cases to which the preceding section applies. [S., '13, § 2477-m9; 37 G. A., ch. 270, § 3; 38 G. A., ch. 220, § 1; 40 Ex. G. A., H. F. 42, § 32.]

1395. Permanent total disability. For an injury causing permanent total disability, the employer shall pay the weekly compensation during the period of his disability, not, however, beyond four hundred weeks. [S., '13, § 2477-m9; 37 G. A., ch. 270, § 4; 38 G. A., ch. 220, § 1; 40 Ex. G. A., H. F. 42, § 33.]

1396. Permanent partial disabilities. Compensation for permanent partial disability shall begin at the date of injury and shall be based upon the extent of such disability, and for all cases of permanent partial disability included in the following schedule compensation shall be paid as follows:

1. For the loss of a thumb, weekly compensation during forty weeks.

2. For the loss of a first finger, commonly called the index finger, weekly compensation during thirty weeks.

3. For the loss of a second finger, weekly compensation during twenty-five weeks.

4. For the loss of a third finger, weekly compensation during twenty weeks.

5. For the loss of a fourth finger, commonly called the little finger, weekly compensation during fifteen weeks.

6. The loss of the first or distal phalange of the thumb or of any finger shall equal the loss of one-half of such thumb or finger and compensation shall be one-half of the time for the loss of such thumb or finger.

7. The loss of more than one phalange shall equal the loss of the entire finger or thumb.

8. For the loss of a great toe, weekly compensation during twenty-five weeks.

9. For the loss of one of the toes other than the great toe, weekly compensation during fifteen weeks.

10. The loss of the first phalange of any toe shall equal the loss of one-half of such toe and the compensation shall be one-half of the time provided for the loss of such toe.

11. The loss of more than one phalange shall equal the loss of the entire toe.

12. For the loss of a hand, weekly compensation during one hundred fifty weeks.

13. The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall equal the loss of an arm and the compensation therefor shall be weekly compensation during two hundred twenty-five weeks.

14. For the loss of a foot, weekly compensation during one hundred twenty-five weeks.

15. The loss of two-thirds of that part of a leg between the hip joint and the knee joint shall equal the loss of a leg, and the compensation therefor shall be weekly compensation during two hundred weeks.

16. For the loss of an eye, weekly compensation during one hundred weeks.

17. For the loss of an eye, the other eye having been lost prior to the injury, weekly compensation during two hundred weeks.

18. For the loss of hearing in one ear, weekly compensation during fifty weeks, and for the loss of hearing in both ears, weekly compensation during one hundred fifty weeks.

19. The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or of any two thereof, caused by a single accident, shall equal permanent total disability, to be compensated as such.

20. In all other cases of permanent partial disability, the compensation shall bear such relation to the periods of compensation stated in the above schedule as the disability bears to those produced by the injuries named in the schedule. [S., '13, § 2477-m9; 37 G. A., ch. 270, §§ 5, 6, 7; 38 G. A., ch. 220, §§ 1, 4, 5, 6; 40 Ex. G. A., H. F. 42, § 34.]

1397. Basis of computation.

1. Compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages, or earnings in the employment of the same employer during the year next preceding the injury.

2. Employment by the same employer shall mean in the grade in which the employee was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

3. The annual earnings, if not otherwise determinable, shall be three hundred times the average daily earnings in such computation.

4. If the injured person has not been engaged in the employment for a full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class

in the same or in neighboring employments of the same kind have earned during such period. If this basis of computation is impossible, or should appear to be unreasonable, three hundred times the amount which the injured person earned on an average of those days when he was working during the year next preceding the accident, shall be the basis for the computation.

5. In case of injured employees who earn either no wages or less than three hundred times the usual daily wage or earnings of the adult day laborer in the same line of industry of that locality, the yearly wage shall be reckoned as three hundred times the average daily local wages of the average wage earner in that particular kind or class of work; or if information of that kind is not obtainable, then the class most kindred or similar in the same general employment in the same neighborhood.

6. For employees in a business or enterprise which customarily shuts down and ceases operation during a season of each year, the number of working days which it is the custom of such business or enterprise to operate each year instead of three hundred shall be the basis for computing the annual earnings; but the minimum number of days which shall be used as a basis for the year's work shall not be less than two hundred.

7. Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of the employment.

8. In computing the compensation to be paid to any employee who, before the accident for which he claims compensation, was disabled and drawing compensation under the provisions of this chapter, the compensation for each subsequent injury shall be apportioned according to the proportion of disability caused by the respective injuries which he shall have suffered. [S., '13, § 2477-m15; 38 G. A., ch. 220, § 7; 40 Ex. G. A., H. F. 42, § 35.]

1398. Contributions from employees. The compensation herein provided shall be the measure of liability which the employer has assumed for injuries or death that may occur to employees in his employment subject to the provisions of this chapter, and it shall not be in anywise reduced by contribution from employees or donations from any source. [S., '13, § 2477-m12; 40 Ex. G. A., H. F. 42, § 36.]

1399. Examination of injured employees. After an injury, the employee, if so requested by his employer, shall submit himself for examination at some reasonable time and place within the state and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this state, without cost to the employee; but if the

employee requests, he shall, at his own cost, be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employee to submit to such examination shall deprive him of the right to any compensation for the period of such refusal. When a right of compensation is thus suspended, no compensation shall be payable for the period of suspension. [S., '13, § 2477-m11; 40 Ex. G. A., H. F. 42, § 37.]

1400. Statement of earnings. The employer shall furnish, upon request of an injured employee or dependent or any legal representative acting for such person, a statement of the earnings, wages, or salary and other matters relating thereto during the year or part of the year that such employee was in the employment of such employer for the year preceding the injury; but not more than one report shall be required on account of any one injury. [37 G. A., ch. 188, § 1; 40 Ex. G. A., H. F. 42, § 38.]

1401. Refusing or neglecting to furnish statement. On failure of the employer to furnish such statement of earnings for thirty days after receiving written request therefor from an injured employee, his agent, attorney, dependent, or legal representative, such employer shall pay a penalty of twenty-five dollars for each offense to be collected by the commissioner in any court having jurisdiction and paid into the state treasury. [40 Ex. G. A., H. F. 42, § 39.]

1402. Persons conclusively presumed wholly dependent. The following shall be conclusively presumed to be wholly dependent upon the deceased employee:

1. The surviving spouse, with the following exceptions:

a. When it is shown that at the time of the injury the surviving spouse had wilfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree.

b. When the surviving spouse was not married to the deceased at the time of the injury.

c. When the deceased leaves no dependent children and the surviving spouse remarries, then all compensation shall cease on the date of such marriage.

2. A child or children under sixteen years of age, and over said age if physically or mentally incapacitated from earning, whether actually dependent for support or not upon the parent at the time of his or her death. An adopted child or children or stepchild or stepchildren shall be regarded the same as issue of the body.

3. A parent of a minor who is receiving the earnings of the employee at the time when the injury occurred. Stepparents shall be regarded as parents. [S., '13, § 2477-m16; 37 G. A., ch. 270, § 11; 40 Ex. G. A., H. F. 42, § 40.]

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1403. Payment to spouse—death before payment. If the deceased employee leaves a surviving spouse, the full compensation shall be paid to her or him, subject to the exceptions in the preceding section.

If the spouse dies before full payment, the balance shall be paid to the person or persons wholly dependent on deceased, if any, share and share alike. If there are none wholly dependent, then such balance shall be paid to partial dependents, if any, in proportion to their dependency. [S., '13, § 2477-m16; 40 Ex. G. A., H. F. 42, § 41.]

1404. Payment to actual dependents. In all other cases, questions of dependency in whole or in part shall be determined in accordance with the facts as of the date of the injury; and in such other cases if there is more than one person wholly dependent, the death benefit shall be equally divided among them. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them in the proportion each dependency bears to their aggregate dependency. [S., '13, § 2477-m16; 40 Ex. G. A., H. F. 42, § 42.]

1405. Commutation. Future payments of compensation may be commuted to a present worth lump sum payment on the following conditions:

1. When the period during which compensation is payable can be definitely determined.

2. When the written approval of such commutation by the industrial commissioner has been filed in the proceedings to commute.

3. When it shall be shown to the satisfaction of the court or a judge thereof that such commutation will be for the best interest of the person or persons entitled to the compensation, or that periodical payments as compared with a lump sum payment will entail undue expense, hardship, or inconvenience upon the employer liable therefor. [S., '13, § 2477-m14; 40 Ex. G. A., H. F. 42, § 43.]

1406. Proceedings for commutation. A written petition for commutation may be made to the district court in and for the county in which the injury occurred or to any judge thereof, and shall have indorsed thereon the approval of the industrial commissioner.

Notice of the filing or presentation of such petition shall be served upon the opposite party or parties for the time and in the manner required for original notices. The court or judge in term time or vacation shall hear and determine the matter as a proceeding in equity, and render such judgment and decree, granting such commutation in whole or in part or dismissing the petition, as equity will warrant on the facts presented.

In any case parties in interest may agree in writing to waive presenting the petition for commutation to the district court and in such case, if the application is approved by the industrial commissioner, governed by the law applicable to the district court, he may enter

an order for commutation which shall have the same force and effect as if made by the district court with the right upon the part of either party to file a certified copy thereof in the district court as provided for an award. [S., '13, § 2477-m14; 37 G. A., ch. 270, § 9; 40 Ex. G. A., H. F. 42, § 44.]

1407. Basis of commutation—payment—discharge. When the commutation is ordered, the court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest, calculated at five per cent per annum. Upon the payment of such amount the employer shall be discharged from all further liability on account of such injury or death, and be entitled to a duly executed release, upon filing which the liability of such employer under any agreement, award, finding, or judgment shall be discharged of record. [S., '13, § 2477-m14; 40 Ex. G. A., H. F. 42, § 45.]

1408. Partial commutation. When partial commutation is ordered, the court shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their present value upon the basis of interest calculated at five per cent per annum, with provisions for the payment of weekly compensation not included in such commutation, subject to any provisions of the law applicable to such unpaid weekly payments; all remaining payments, if any, to be paid at the same time as though such commutation had not been made. [S., '13, § 2477-m15; 40 Ex. G. A., H. F. 42, § 45-a1.]

1409. Trustees for incompetent. When an injured minor employee, or a minor dependent, or one mentally incompetent, is entitled to compensation under this chapter, payment shall be made to a trustee appointed by the judge of the district court for the county in which the injury occurred, and the money coming into the hands of said trustee shall be expended for the use and benefit of the person entitled thereto under the direction and orders of the judge during term time or in vacation. If the judge making the appointment deems it advisable, a trustee may be appointed to serve for more than one county in the district and the expenses shall be paid ratably by each county according to the amount of work performed in each county. The trustee shall qualify and give bond in such amount as the judge may direct, which may be increased or diminished from time to time as the court may deem best. [S., '13, § 2477-m13; 37 G. A., ch. 270, § 8; 40 Ex. G. A., H. F. 42, § 46.]

1410. Annual report of trustee—compensation. The trustees shall make annual reports to the court of all money or property received and expended for each person; and for services rendered as trustee, shall be paid such compensation by the county as the court may direct by written order directed to the

auditor of the county, who shall issue a warrant therefor upon the treasurer of the county in which the appointment is made. [S., '13, § 2477-m13; 40 Ex. G. A., H. F. 42, § 47.]

1411. Alien dependents in foreign country—representative. In case a deceased employee for whose injury or death compensation is payable leaves surviving him an alien dependent or dependents residing outside the United States, the consul general, consul, vice consul, or consular agent of the nation of which the said dependent or dependents are citizens, or the duly appointed representative of such consular official resident in the state of Iowa, shall be regarded as the exclusive representative of such dependent or dependents, and said consular officials or their representatives shall have the same rights and powers in all matters of compensation which said nonresident aliens would have if resident in the state of Iowa. [37 G. A., ch. 336, § 1; 40 Ex. G. A., H. F. 42, § 48.]

1412. Consular officer or agent may be appointed trustee. Such consular officer or his duly appointed representative resident in the state of Iowa shall file in the district court of the county in which the accident occurred resulting in the death of said employee evidence of his authority, and thereupon the court or a judge thereof shall appoint him a trustee for such nonresident alien dependents, and thereafter he shall be subject to the jurisdiction of said court until his final report of distribution and payment has been filed and approved. Such consular official or his said representative shall qualify as such trustee by giving bond with approved sureties in a sum to be fixed by said court or judge, and the amount of said bond may be increased or decreased from time to time as said court or judge may direct. [37 G. A., ch. 336, § 1; 40 Ex. G. A., H. F. 42, § 49.]

1413. Notice to consular officer. If such consular officer, or his duly appointed representative, shall file with the industrial commissioner evidence of his authority, the industrial commissioner shall notify such consular officer or his representative of the death of all employees leaving alien dependent, or dependents, residing in the country of said consular officer so far as same shall come to his knowledge. [37 G. A., ch. 336, § 1; 40 Ex. G. A., H. F. 42, § 52.]

1414. Contracts to avoid compensation. Any contract of employment, relief benefit, or insurance, or other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this chapter, shall be null and void; and any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine not less than ten dollars nor more than fifty dollars for each offense. [S., '13, § 2477-m17; 40 Ex. G. A., H. F. 42, § 54.]

1415. Waivers prohibited. No employee or dependent to whom this chapter applies, shall have power to waive any of the provisions of this chapter in regard to the amount of compensation which may be payable to such employee or dependent hereunder. [S., '13, § 2477-m17; 40 Ex. G. A., H. F. 42, § 55.]

1416. Contracts presumed fraudulent. Any contract or agreement made by any employer or his agent or attorney with any employee or any other dependent under the provisions of this chapter within twelve days after the injury shall be presumed to be fraudulent. [S., '13, § 2477-m18; 40 Ex. G. A., H. F. 42, § 56.]

1417. Employees in interstate commerce. So far as permitted, or not forbidden, by any act of congress, employers engaged in interstate or foreign commerce and their employees working only in this state shall be bound by the provisions of this chapter in like manner and with the same force and effect in every respect as by this chapter provided for other employers and employees. [S., '13, § 2477-m21; 40 Ex. G. A., H. F. 42, § 57.]

1418. Employees of state. All valid claims now due or which may hereafter become due employees of the state under the provisions of this chapter shall be paid out of any funds in the state treasury not otherwise appropriated. [37 G. A., ch. 67, § 1; 40 Ex. G. A., H. F. 42, § 58.]

1419. Payment of state employees. The auditor of state is hereby authorized and directed to draw warrants on the state treasury for any and all amounts due state employees under the provisions of this chapter upon there being filed in his office, either a memorandum of settlement approved by the industrial commissioner or of an award made by a board of arbitration, for which no review is pending, or an order of the industrial commissioner from which no appeal has been taken, or a judgment of any court of the state accompanied by a certificate of the industrial commissioner setting forth the amount of compensation due and the statutory provisions under which the same should be paid. [37 G. A., ch. 67, § 2; 40 Ex. G. A., H. F. 42, § 59.]

1420. Board of audit not to approve. Claims for compensation under the last two preceding sections shall not require approval by the board of audit. [37 G. A., ch. 67, § 3; 40 Ex. G. A., H. F. 42, § 60.]

1421. Definitions. In this and chapters 71 and 72, unless the context otherwise requires, the following definitions of terms shall prevail:

1. "Employer" includes and applies to any person, firm, association, or corporation, state, county, municipal corporation, city under special charter and under commission form of government, school district, and the legal representatives of a deceased employer.

2. "Workman" or "employee" means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer, except as hereinafter specified.

3. The following persons shall not be deemed "workmen" or "employees":

a. A person whose employment is purely casual and not for the purpose of the employer's trade or business.

b. A person engaged in clerical work only, but clerical work shall not include anyone who may be subject to the hazards of the business.

c. An independent contractor.

d. A person holding an official position, or standing in a representative capacity of the employer, or an official elected or appointed by the state, county, school district, municipal corporation, city under special charter or commission form of government.

4. The term "workman" or "employee" shall include the singular and plural of both sexes. Any reference to a workman or employee who has been injured shall, when such workman or employee is dead, include his dependents as herein defined or his legal representatives; and where the workman or employee is a minor or incompetent, it shall include his guardian, next friend, or trustee.

5. The words "injury" or "personal injury" shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include injury caused by the wilful act of a third person directed against an employee for reasons personal to such employee, or because of his employment.

c. They shall not include a disease unless it shall result from the injury.

6. The words "personal injury arising out of and in the course of the employment" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

7. The word "court" wherever used in this and the two succeeding chapters, unless the context shows otherwise, shall be taken to mean the district court. [S., '13, § 2477-m16; 37 G. A., ch. 270, § 10; 40 G. A., ch. 17; 40 Ex. G. A., H. F. 42, § 61.]

1422. Peace officers. Any policeman (except those pensioned under the policemen's pension fund created by law), any sheriff, marshal, constable, and any and all of their deputies, and any and all other such legally appointed or elected law-enforcing officers, who shall, while in line of duty or from causes arising out of or sustained while in the course of their official employment, meaning while in the act of making or attempting to make an arrest or giving pursuit, or while performing such

official duties where there is peril or hazard peculiar to the work of their office, be killed outright, or become temporarily or permanently physically disabled, or if said disability result in death, shall be entitled to compensation, the same to be paid out of the general funds of the state for all such injuries or disability.

Where death occurs, compensation shall be paid to the dependents of the officer, as in other compensation cases. Such compensation shall be the maximum allowed in compensation cases. The industrial commissioner shall have jurisdiction as in other cases. [40 G. A., ch. 17; 40 Ex. G. A., H. F. 42, § 61-a1.]

CHAPTER 71

INDUSTRIAL COMMISSIONER

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1423. Industrial commissioner—term—vacancy. The governor shall, prior to the adjournment of the general assembly in 1925, and each six years thereafter, appoint, with the approval of the senate, an industrial commissioner whose term of office shall be six years from July first of the year of appointment. He shall maintain his office at the seat of government. An appointment to fill a vacancy may be made when the senate is not in session, but shall be acted upon at the next session thereof. [S., '13, § 2477-m22; 40 Ex. G. A., H. F. 42, § 62.]

1424. Appointment of deputy. The commissioner shall, in writing, appoint a deputy for whose acts he shall be responsible, and who shall serve during the pleasure of the commissioner. [37 G. A., ch. 270, § 14; 40 Ex. G. A., H. F. 42, § 63.]

1425. Duties of the deputy. In the absence or disability of the industrial commissioner, or when acting under the directions of the commissioner, the deputy shall have all of the powers and perform all of the duties of the industrial commissioner pertaining to his office. [37 G. A., ch. 270, § 14; 40 Ex. G. A., H. F. 42, § 64.]

1426. Appropriation for expenses. There is hereby appropriated out of any money not otherwise appropriated the sum of five thou-

sand dollars, or so much thereof as may be required, annually, to defray the expenses of said office. [S., '13, § 2477-m23; 39 G. A., ch. 209, § 33; 40 Ex. G. A., H. F. 42, § 65.]

1427. Political activity and contributions. It shall be unlawful for the commissioner, or any appointee of the commissioner while in office, to espouse the election or appointment of any candidate to any political office, contribute to the campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointment to any political office, and any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined one hundred dollars, and it shall be sufficient cause for removal from office. [S., '13, §§ 2477-m23, 2477-m37; 40 Ex. G. A., H. F. 42, § 66.]

1428. Political promises. Any person who is a candidate for appointment as commissioner who makes any promise to another, express or implied, in consideration of any assistance or influence given or recommendation made that the candidate will, if appointed as a commissioner, appoint such person or one whom he may recommend to any office within the power of the commissioner to appoint, shall be fined one hundred dollars. [S., '13, § 2477-m38; 40 Ex. G. A., H. F. 42, § 67.]

1429. Recommendations of commissioner or employee. All recommendations to the governor

of any person asking the appointment of another as commissioner shall be reduced to writing, signed by the person presenting the same, which shall be filed by the governor in his office and open at all reasonable times for public inspection, and all recommendations made by any person to the commissioner for the appointment of another within the power of the commissioner to appoint, shall be reduced to writing, signed by the person presenting the same, and filed by the commissioner and open for public inspection at all reasonable times. If any person recommending the appointment of another within the contemplation of this section refuses to reduce the same to writing, it shall be the duty of the person to whom the recommendation is made, to make a memorandum thereof, stating the name of the person recommended and the name of the person who made the same, which shall be filed in the office of the governor or the commissioner as the case may be. [S., '13, § 2477-m39; 40 Ex. G. A., H. F. 42, § 68.]

1430. Interest in affected business. It shall be unlawful for the commissioner to be financially interested in any business enterprise coming under or affected by this chapter during his term of office, and if he violates this statute, it shall be sufficient grounds for his removal from office, and in such case the governor shall at once declare the office vacant and appoint another to fill the vacancy. [S., '13, § 2477-m39; 40 Ex. G. A., H. F. 42, § 69.]

1431. Duties. It shall be the duty of the commissioner:

1. To establish and enforce all necessary rules and regulations not in conflict with the provisions of this chapter and chapters 70 and 72 for carrying out the purposes thereof.

2. To prepare and distribute the necessary blanks relating to computation, adjustment, and settlement of compensation arising thereunder.

3. To preside as chairman of boards of arbitration for the settlement of controversies.

4. To keep records of all proceedings and decisions of such boards, issue subpoenas for witnesses, administer oaths, examine books and records of parties subject to such provisions.

5. In general to do all things not inconsistent with law in carrying out said provisions according to their true intent and purpose. [S., '13, § 2477-m24; 40 Ex. G. A., H. F. 42, § 70.]

1432. Biennial reports. The commissioner shall, at the time provided by law, make a biennial report to the governor setting forth in appropriate form the business and expense of the office for the two preceding years, the number of arbitrations and the results thereof, and such other matters pertaining to his office as may be of public interest, together with any recommendations for change or amendment of the laws as found in this chapter and

chapters 70 and 72, and such recommendations, if any, shall be transmitted by the governor to the first general assembly in session thereafter. [S., '13, § 2477-m24; 40 Ex. G. A., H. F. 42, § 71.]

NOTE: For time of making report, see § 246.

1433. Records of employer-right to inspect. All books, records, and pay rolls of the employers, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the industrial commissioner or any of his representatives presenting a certificate of authority from said commissioner for the purpose of ascertaining the correctness of the wage expenditure, the number of men employed, and such other information as may be necessary for the uses and purposes of the commissioner in his administration of the law.

Information so obtained shall be used for no other purpose than to advise the commissioner or insurance association with reference to such matters.

A refusal on the part of the employer to submit his books, records, or pay rolls for the inspection of the commissioner or his authorized representatives presenting written authority from the commissioner, shall subject the employer to a penalty of one hundred dollars for each such offense, to be collected by civil action in the name of the state, and paid into the state treasury. [S., '13, § 2477-m36; 40 Ex. G. A., H. F. 42, § 72.]

1434. Reports of injuries. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment and resulting in incapacity for a longer period than one day. Within forty-eight hours, not counting Sundays and legal holidays, after the employer has knowledge of the occurrence of an accident resulting in personal injury causing incapacity for a longer period than one day, a report shall be made in writing by the employer to the industrial commissioner on blanks to be procured from the commissioner for that purpose. [S., '13, § 2477-m36; 37 G. A., ch. 270, § 19; 40 Ex. G. A., H. F. 42, § 73.]

1435. Additional reports. Upon the termination of the disability of the injured employee, or if such disability extends beyond a period of sixty days, at the expiration of such period the employer shall make a supplemental report on blanks to be procured from the commissioner for that purpose. The said reports shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex, and occupation of the injured employee, and shall state the date and hour of the accident, the nature and cause of the injury, and such other information as may be required by the commissioner.

Any employer who fails to make the report required by this and the preceding section

shall be liable to a penalty of fifty dollars for each offense, to be recovered by the commissioner. The commissioner shall be represented by the county attorney in the county in which such proceeding is brought. [S., '13, § 2477-m36; 40 Ex. G. A., H. F. 42, § 74.]

1436. Compensation agreements. If the employer and the employee reach an agreement in regard to the compensation, a memorandum thereof shall be filed with the industrial commissioner by the employer or employee, and unless the commissioner shall, within twenty days, notify the employer and employee of his disapproval of the agreement by registered letter sent to their addresses as given on the memorandum filed, the agreement shall stand approved and be enforceable for all purposes, except as otherwise provided in this and chapters 70 and 72.

In case the injured employee is a minor, either he or his trustee may execute the memorandum of agreement and may give a valid and binding release for the compensation paid on his account.

Such agreement shall be approved by said commissioner only when the terms conform to the provisions of this and the preceding chapter. [S., '13, § 2477-m25; 37 G. A., ch. 270, § 16; 40 Ex. G. A., H. F. 42, § 75.]

1437. Board of arbitration. If the employer and injured employee or his representatives or dependents fail to reach an agreement in regard to compensation, either party may file a petition and copy thereof with the industrial commissioner, stating therein his or her claims in general terms and asking that a board of arbitration be formed. Thereupon the commissioner shall in writing notify the parties to name their respective members of such board. Such board shall consist of three persons, one of whom shall be the industrial commissioner or his deputy, who shall act as chairman. The other two shall be named, respectively, by the two parties. [S., '13, § 2477-m26; 40 Ex. G. A., H. F. 42, § 76.]

1438. Waiver of right. If either party fails to appoint an arbitrator by the time fixed for hearing by the commissioner, such defaulting party shall be deemed to have waived the right to appoint an arbitrator and hearing shall proceed without such appointment. Parties may, in writing filed with the commissioner, waive the appointment of arbitrators and in such case the hearing shall proceed before the commissioner or his deputy with the same force and effect as if tried before a board with respective representatives. [S., '13, § 2477-m28; 40 Ex. G. A., H. F. 42, § 77.]

1439. Oath of arbitrators. The arbitrators appointed by the parties shall be sworn by the chairman to take the following oath:

"I,, do solemnly swear (or affirm) that I will faithfully perform my duties as arbitrator and will not be influenced in my

decision by any feeling of friendship or partiality toward either party.

(Signed)"
[S., '13, § 2477-m27; 40 Ex. G. A., H. F. 42, § 78.]

1440. Powers of board—hearings. The board of arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the board shall be in the county where the injury occurred, but by written stipulation of the parties filed in the case it may be held at any other place in the state. If the injury occurred outside this state the hearings of the board shall be held in the county seat of this state which is nearest to the place where the injury occurred unless the interested parties and the industrial commissioner mutually agree by written stipulation that the same may be held at some other place. [S., '13, § 2477-m29; 38 G. A., ch. 220, § 8; 40 Ex. G. A., H. F. 42, § 79.]

1441. Liberal rules of evidence. While sitting as a board of arbitration, or when conducting a hearing on review, or in making any investigation or inquiry, neither the board of arbitration nor the commissioner shall be bound by common law or statutory rules of evidence or by technical or formal rules of procedure; but they shall hold such arbitrations, or conduct such hearings and make such investigations and inquiries in such manner as is best suited to ascertain and conserve the substantial rights of all parties thereto. Process and procedure under this chapter shall be as summary as reasonably may be. [37 G. A., ch. 270, § 15; 40 Ex. G. A., H. F. 42, § 80.]

1442. Appointment of reporter. If either, or both, parties to any proceeding hereunder shall furnish compensation for a shorthand reporter in such reasonable amount as the commissioner shall fix, the commissioner shall appoint a reporter to report the proceedings of any hearing before the commissioner or a board of arbitration. The amount so paid shall be taxed as other costs. Any such reporter shall faithfully and accurately report any proceeding for which he or she shall be employed. [40 Ex. G. A., H. F. 42, § 81.]

1443. Transcript of evidence—compensation. The official shorthand reporter appointed for any hearing before the commissioner or a board of arbitration on written request by either party to the controversy, or by the commissioner, shall make a transcript of the evidence or so much thereof as shall be requested, to be paid for at the rate of not to exceed ten cents for each one hundred words. The transcript shall be paid for by the party requesting it, and if used as the record of the evidence on a review or appeal, the expense shall be taxed as part of the costs against the losing party, or apportioned as the case may be. [40 Ex. G. A., H. F. 42, § 83.]

1444. Depositions. The deposition of any witness may be taken and used as evidence in

any hearing pending before a board of arbitration or the industrial commissioner in compensation proceedings.

Such depositions shall be taken in the same manner as provided for the taking of depositions for use in the district court, and when so taken shall be admissible in evidence in such hearings in the same manner, subject to the same rules governing the admission of evidence as in the district court.

Application for a commission to take depositions in such case shall be filed in the office of the clerk of the district court of the county wherein the injury occurred. [37 G. A., ch. 409, § 1; 40 Ex. G. A., H. F. 42, § 84.]

1445. Witnesses—books and records. The district court is hereby empowered to enforce by proper proceedings the provisions of this chapter relating to the attendance and testimony of witnesses and the examination of books and records. [S., '13, § 2477-m24; 37 G. A., ch. 409, § 1; 40 Ex. G. A., H. F. 42, § 84-a1.]

1446. Findings of arbitration board filed. The decision of the board of arbitration, together with a statement or certificate of evidence submitted before it, its findings of fact, rulings of law, and any other matters pertinent to questions arising before it, shall be filed with the industrial commissioner. [S., '13, § 2477-m29; 38 G. A., ch. 220, § 8; 40 Ex. G. A., H. F. 42, § 85.]

1447. Review. Any party aggrieved by the decision or findings of a board of arbitration may, within ten days after such decision is filed with the industrial commissioner, file in the office of the commissioner a petition for review, and the commissioner shall thereupon fix a time for the hearing on such petition and notify the parties.

At such hearing, the commissioner shall hear the parties, consider all evidence taken before the board of arbitration if it has been transcribed, and may hear any additional evidence, and he may affirm, modify, or reverse the decision of the board, or may remand it to the board for further findings of facts.

Additional evidence to that presented and admitted in arbitration proceedings shall not be introduced by either party unless such party gives the opposite party, or his attorney, five days' notice thereof in writing, stating the particular phase of the controverted claim to which such additional evidence will apply. [S., '13, §§ 2477-m29, 2477-m32; 38 G. A., ch. 220, § 8; 40 Ex. G. A., H. F. 42, § 86.]

1448. Decision and findings of fact. The decision of the industrial commissioner in any case on review before him shall be in writing, filed in his office, and shall set forth his findings of fact and conclusions of law. [S., '13, § 2477-m32; 40 Ex. G. A., H. F. 42, § 87.]

1449. Appeal. Any party aggrieved by any decision or order of the industrial commissioner in a proceeding on review, may within

thirty days from the date such decision or order is filed, appeal therefrom to the district court of the county in which the injury occurred, by filing in the office of the commissioner a written notice of appeal setting forth in general terms the decision appealed from and the grounds of the appeal. The commissioner shall forthwith give notice to the other parties in interest. [S., '13, § 2477-m33; 37 G. A., ch. 270, § 17; 40 Ex. G. A., H. F. 42, § 88.]

1450. Transcript on appeal. Within thirty days after a notice of appeal is filed with the commissioner, he shall make, certify, and file in the office of the clerk of the court to which the appeal is taken, a full and complete transcript of all documents in the case, including any depositions, and a transcript or certificate of the evidence, if reported, together with the notice of appeal. [S., '13, § 2477-m33; 37 G. A., ch. 270, § 17; 40 Ex. G. A., H. F. 42, § 89.]

1451. Trial on appeal. The first term after the appeal is taken shall be the trial term, and if the appeal is taken during a term, it shall be triable at that term at any time after ten days from the date of filing the transcript by the commissioner and ten days' notice in writing by either party upon the other. Such appeal shall have precedence on the docket and for trial over all other civil business except appeals of the same kind which shall be tried in the order in which they are filed, except as otherwise agreed in writing by all parties in interest and filed. [37 G. A., ch. 270, § 17; 40 Ex. G. A., H. F. 42, § 90.]

1452. Record on appeal—finding of fact conclusive. The transcript as certified and filed by the industrial commissioner shall be the record on which the appeal shall be heard, and no additional evidence shall be heard. In the absence of fraud the findings of fact made by the industrial commissioner within his powers shall be conclusive. [37 G. A., ch. 270, § 17; 40 Ex. G. A., H. F. 42, § 91.]

1453. Decision on appeal. Any order or decision of the industrial commissioner may be modified, reversed, or set aside on one or more of the following grounds and on no other:

1. If the commissioner acted without or in excess of his powers.
2. If the order or decree was procured by fraud.
3. If the facts found by the commissioner do not support the order or decree.
4. If there is not sufficient competent evidence in the record to warrant the making of the order or decision. [37 G. A., ch. 270, § 17; 40 Ex. G. A., H. F. 42, § 92.]

1454. Judgment or order remanding. When the district court, on appeal, reverses or sets aside an order or decision of the industrial commissioner, it may remand the case to the commissioner for further proceedings in harmony with the holdings of the court, or it may enter the proper judgment, as the case may be.

Such judgment or decree shall have the same force and effect as if action had been originally brought and tried in said court. [37 G. A., ch. 270, § 17; 40 Ex. G. A., H. F. 42, § 93.]

1455. Costs on appeal. The clerk shall charge no fee for any service rendered in compensation cases except the filing fee and transcript fees when the transcript of a judgment is required. The taxation of costs in such appeals shall be in the discretion of the court. [37 G. A., ch. 270, § 17; 40 Ex. G. A., H. F. 42, § 94.]

1456. Appeal to supreme court. An appeal may be taken to the supreme court from any final order, judgment, or decree of the district court, but such appeal shall be docketed, placed upon the term calendar, and submitted in the same time and manner as criminal cases in said court. [37 G. A., ch. 270, § 17; 40 Ex. G. A., H. F. 42, § 95.]

1457. Review of award or settlement. Any award for payments or agreement for settlement made under this chapter where the amount has not been commuted, may be reviewed by the industrial commissioner at the request of the employer or of the employee at any time, and if on such review the commissioner finds the condition of the employee warrants such action, he may end, diminish, or increase the compensation so awarded or agreed upon. [S., '13, § 2477-m34; 37 G. A., ch. 270, § 18; 40 Ex. G. A., H. F. 42, § 96.]

1458. Notice of review. When any interested party desires a review of payments or settlement as provided in the preceding section, he shall file a petition for review with the industrial commissioner setting forth the grounds upon which the right of review is claimed. The commissioner shall give the parties in interest notice of the time fixed for such hearing, which shall not be less than five days from the date of filing such petition. [S., '13, § 2477-m34; 37 G. A., ch. 270, § 18; 40 Ex. G. A., H. F. 42, § 97.]

1459. Notice and service. Any notice to be given by the commissioner or court provided for in this chapter shall be in writing, but service thereof shall be sufficient if registered and deposited in the mail, addressed to the last known address of the parties, unless otherwise provided in this chapter. [S., '13, § 2477-m34; 37 G. A., ch. 270, § 18; 40 Ex. G. A., H. F. 42, § 98.]

1460. Place of hearing. All petitions for review of the decision and findings of a board of arbitration, and all petitions for review of payments or settlements shall be heard at the seat of government, unless the interested parties and the industrial commissioner agree by written stipulation that any such petition may be heard elsewhere. [37 G. A., ch. 270, § 18; 40 Ex. G. A., H. F. 42, § 99.]

1461. Examination by physician—fee—evidence. The industrial commissioner may ap-

point a duly qualified, impartial physician to examine the injured employee and make report. The fee for this service shall be five dollars, to be paid by the industrial commissioner, together with traveling expenses, but the commissioner may allow additional reasonable amounts in extraordinary cases. Any physician so examining any injured employee shall not be prohibited from testifying before the industrial commissioner, board of arbitration, or any other person, commission, or court, as to the results of his examination or the condition of the injured employee. [S., '13, § 2477-m30; 40 Ex. G. A., H. F. 42, § 101.]

1462. Fees—approval—lien. All fees or claims for legal, medical, hospital, and burial services rendered under this chapter and chapters 70 and 72 shall be subject to the approval of the industrial commissioner, and no lien for such service shall be enforceable without the approval of the amount thereof by the industrial commissioner. For services rendered in the district court and supreme court, the attorney's fee shall be subject to the approval of a judge of the district court. [S., '13, §§ 2477-m20, 2477-m35; 40 Ex. G. A., H. F. 42, § 102.]

1463. Compensation of arbitrators—costs. The arbitrators except the commissioner shall each receive five dollars as a fee for services, but the industrial commissioner may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the employer, who may deduct an amount equal to one-half the sum from any compensation found due the employee. All other costs incurred in the hearing before a board of arbitration or the commissioner shall be taxed in the discretion of such board or the commissioner as the case may be. [S., '13, § 2477-m31; 40 Ex. G. A., H. F. 42, § 103.]

1464. Witness fees. Witness fees and mileage on hearings before an arbitration board or the industrial commissioner shall be the same as in the district court. [S., '13, § 2477-m24; 40 Ex. G. A., H. F. 42, § 104.]

1465. Judgment by district court on award. Any party in interest may present a certified copy of an order or decision of the commissioner, or an award of a board of arbitration from which no petition for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the commissioner, and all papers in connection therewith, to the district court of the county in which the injury occurred, whereupon said court shall render a decree or judgment in accordance therewith and cause the clerk to notify the parties. Such decree or judgment, in the absence of an appeal from the decision of the industrial commissioner, shall have the same effect and in all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court. [S., '13, § 2477-m33; 37 G. A., ch. 270, § 17; 40 Ex. G. A., H. F. 42, § 105.]

1466. **Judgment—modification of.** Upon the presentation to the court of a certified copy of a decision of the industrial commissioner, ending, diminishing, or increasing the compensation under the provisions of this chapter, the

court shall revoke or modify the decree or judgment to conform to such decision. [S., '13, § 2477-m33; 37 G. A., ch. 270, § 17; 40 Ex. G. A., H. F. 42, § 105-a1.]

CHAPTER 72

COMPENSATION LIABILITY INSURANCE

- 1467. Insurance of liability required.
- 1468. Notice of failure to insure.
- 1469. Maximum commission for reinsurance.
- 1470. Mutual companies.
- 1471. Benefit insurance.
- 1472. Certificate of approval.
- 1473. Termination of plan—appeal.
- 1474. Insolvency clause prohibited.

- 1475. Policy clauses required.
- 1476. Other policy requirements.
- 1477. Relief from insurance.
- 1478. Revocation of release from insurance.
- 1479. Employer failing to insure.
- 1480. Manner of election—failure to elect—effect.
- 1481. Notice to employer of election.

1467. **Insurance of liability required.** Every employer subject to the provisions of this and the two preceding chapters, unless relieved therefrom as hereinafter provided, shall insure his liability thereunder in some corporation, association, or organization approved by the commissioner of insurance.

Every such employer shall exhibit, on demand of the insurance commissioner, evidence of his compliance with this section; and if such employer refuses, or neglects to comply with this section, he shall be liable in case of injury to any workman in his employ under the common law as modified by statute, and in the same manner and to the same extent as though such employer had legally exercised his right to reject the provisions relating to compensation for injury to employees. [S., '13, § 2477-m41; 37 G. A., ch. 270, § 20; 40 Ex. G. A., H. F. 42, § 107.]

1468. **Notice of failure to insure.** Any employer who fails to insure his liability as required herein shall keep posted a sign of sufficient size and so placed as to be easily seen by his employees in the immediate vicinity where working, which sign shall read as follows:

“NOTICE TO EMPLOYEES

You are hereby notified that the undersigned employer has failed to insure his liability to pay compensation as required by law, and that because of such failure he is liable to his employees in damages for personal injuries sustained by his employees in the same manner and to the same extent as though he had legally exercised his right to reject the provisions relating to compensation.

(Signed).....”

Any employer coming under the provisions of this and the two preceding chapters who fails to comply with this section or to post and keep the above notice in the manner and form herein required, shall be guilty of a misdemeanor. [37 G. A., ch. 270, § 20; 40 Ex. G. A., H. F. 42, § 108.]

1469. **Maximum commission for reinsurance.** No insurer of any obligation under this chapter shall either by himself or through another, either directly or indirectly, charge or accept as a commission or compensation for placing or renewing any insurance under this chapter, more than fifteen per cent of the premium charged. [S., '13, § 2477-m46; 40 Ex. G. A., H. F. 42, § 109.]

1470. **Mutual companies.** For the purpose of complying with this chapter, groups of employers by themselves or in an association with any or all of their workmen, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the insurance commissioner; and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with this chapter. [S., '13, § 2477-m42; 40 Ex. G. A., H. F. 42, § 110.]

1471. **Benefit insurance.** Subject to the approval of the industrial commissioner, any employer or group of employers may enter into or continue an agreement with his or their workmen to provide a scheme of compensation, benefit, or insurance in lieu of compensation and insurance; but such scheme shall in no instance provide less than the benefits provided and secured, nor vary the period of compensation provided for disability or for death, or the provisions of law with respect to periodic payments, or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased; and the approval of the industrial commissioner shall be granted, if the scheme provides for contribution by workmen, only when it confers benefits, in addition to those required by law, commensurate with such contributions. [S., '13, § 2477-m43; 40 Ex. G. A., H. F. 42, § 111.]

1472. **Certificate of approval.** When such scheme or plan is approved by the industrial commissioner, he shall issue a certificate to

that effect, whereupon it shall be legal for such employer, or group of employers, to contract with any or all of his or their workmen to substitute such scheme or plan for the provisions relating to compensation and insurance during a period of time fixed by said department. [S., '13, § 2477-m44; 40 Ex. G. A., H. F. 42, § 112.]

1473. Termination of plan—appeal. Such scheme or plan may be terminated by the industrial commissioner on reasonable notice to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this chapter; but from any such order of said industrial commissioner the parties affected, whether employer or workman, may, upon the giving of proper bond to protect the interests involved, appeal to the district court in the same time and manner as appeals from actions of the industrial commissioner, which appeal shall be tried as an equitable action. [S., '13, § 2477-m45; 40 Ex. G. A., H. F. 42, § 113.]

1474. Insolvency clause prohibited. No policy of insurance issued under this chapter shall contain any provision relieving the insurer from payment if the insured becomes insolvent or discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is unpaid. [S., '13, § 2477-m48; 40 Ex. G. A., H. F. 42, § 114.]

1475. Policy clauses required. Every policy shall provide that the workman shall have a first lien upon any amount becoming due on account of such policy to the insured from the insurer, and that in case of the legal incapacity, inability, or disability of the insured to receive the amount due and pay it over to the insured workman, or his dependents, said insurer shall pay the same directly to such workman, his agent, or to a trustee for him or his dependents, to the extent of any obligation of the insured to said workman or his dependents. [S., '13, § 2477-m48; 40 Ex. G. A., H. F. 42, § 115.]

1476. Other policy requirements. Every policy issued by an insurance corporation, association, or organization to insure the payment of compensation shall contain a clause providing that between any employer and the insurer, notice to and knowledge of the occurrence of injury or death on the part of the insured shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured shall be jurisdiction of the insurer, and the insurer shall be bound by every agreement, adjudication, award, or judgment rendered against the insured. [S., '13, § 2477-m47; 40 Ex. G. A., H. F. 42, § 116.]

1477. Relief from insurance. When an employer coming under this chapter furnishes satisfactory proofs to the insurance commissioner of such employer's solvency and financial ability to pay the compensation and bene-

fits as by law provided and to make such payments to the parties when entitled thereto, or when such employer deposits with such commissioner security satisfactory to him and the industrial commissioner as guaranty for the payment of such compensation, such employer shall be relieved of the provisions of this chapter requiring insurance; but such employer shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by such insurance commissioner or industrial commissioner. [S., '13, § 2477-m49; 40 Ex. G. A., H. F. 42, § 117.]

1478. Revocation of release from insurance. The insurance commissioner with the concurrence of the industrial commissioner may, at any time, upon reasonable notice to such employer and upon hearing, revoke for cause any order theretofore made relieving any employer from carrying insurance as provided by this chapter. [S., '13, § 2477-m49; 40 Ex. G. A., H. F. 42, § 118.]

1479. Employer failing to insure. When any employer to whom this and the two preceding chapters apply has not rejected the terms and provisions thereof by filing and posting notice as provided in chapter 70, but has failed to insure his or its liability in one of the ways provided in this chapter, unless relieved from carrying such insurance as provided in the second preceding section, then any employee of such employer, who has not rejected the provisions of said chapters, in case of personal injury in the course of and arising out of such employment, shall have the right to elect to collect compensation as provided in chapters 70 and 71, or collect damages at common law as modified by said chapter 70; but this section and the two succeeding sections shall not apply to an employer who, at the time of the injury, was employing not to exceed five employees whose employment was not of a casual nature. [40 Ex. G. A., H. F. 42, § 119.]

1480. Manner of election—failure to elect—effect. Any employee entitled to make an election as provided in the preceding section shall do so in writing signed by himself indicating the election, made and filed with the industrial commissioner within sixty days after receiving an injury for which such employee is entitled to either compensation or damages.

If such injured employee or one having the right to elect for him, fails to make an election within sixty days, then and in that event it shall be conclusively presumed that the employee elected to accept compensation according to the schedule of compensation as provided in chapter 70. [40 Ex. G. A., H. F. 42, § 120.]

1481. Notice to employer of election. Within five days after a written election has been filed in the office of the industrial commissioner as provided in the preceding section, the commissioner shall give notice thereof in writing to the employer by registered mail as provided for giving other notice by the commissioner. [40 Ex. G. A., H. F. 42, § 121.]

CHAPTER 73

HEALTH AND SAFETY APPLIANCES

1482. Enforcement.
 1483. Water-closets—separate for each sex.
 1484. Washing facilities—separate for each sex.
 1485. Seats for female employees when practicable.
 1486. Steam and water gauges and safety valves.
 1487. Safety appliances—guarding machinery.
 1488. Removal of guards or safety appliances.

1489. Blowers and pipes for dust—exceptions.
 1490. Pipes and flues for gases.
 1491. Notice of violation.
 1492. Record of accidents.
 1493. Report of accidents—evidence.
 1494. Penalties.
 1495. Assumption of risks.

1482. Enforcement. It shall be the duty of the commissioner of labor of the state, and the mayor and chief of police of every city or town, to enforce the provisions of this chapter. [S. S., '15, § 4999-a5; 40 Ex. G. A., S. F. 43, § 1.]

1483. Water-closets—separate for each sex. Every manufacturing or mercantile establishment, workshop, or hotel in which five or more persons are employed, shall be provided with a sufficient number of water-closets, earth closets, or privies for the reasonable use of the persons employed therein, which shall be properly screened and ventilated and kept at all times in a clean condition and free from all obscene writing or marking; and such water-closets or privies shall be supplied in the proportion of at least one to every twenty employees; and if women or girls are employed in such establishment, the water-closets, earth closets, or privies used by them shall have separate approaches and be separate and apart from those used by the men or boys. [S., '13, § 4999-a1; 40 Ex. G. A., S. F. 43, § 2.]

1484. Washing facilities—separate for each sex. In factories, mercantile establishments, mills, and workshops, adequate washing facilities shall be provided for all employees; and when the labor performed by the employees is of such a character as to require or make necessary a change of clothing, wholly or in part, by the employees, there shall be provided a dressing room, or rooms, lockers for keeping clothing, and adequate washing facilities separate for each sex, and no person or persons shall be allowed to use the facilities assigned to the opposite sex. A sufficient supply of water suitable for drinking purposes shall be provided. [S., '13, § 4999-a1; 40 Ex. G. A., S. F. 43, § 3.]

1485. Seats for female employees when practicable. All employers of females in any workshop, mercantile, or manufacturing business or establishment shall provide and maintain suitable seats, when practicable, for the use of such female employees, at or beside the counter or work-bench where employed,

and permit the use thereof by such employees to such extent as the work engaged in may reasonably admit. [C., '97, § 4999; 40 Ex. G. A., S. F. 43, § 4.]

1486. Steam and water gauges and safety valves. Every person owning or operating a steam boiler in this state shall provide the same with steam gauge, safety valve, and water gauge, and keep the same in good order. [C., '73, § 4064; C., '97, §§ 5025, 5026; S., '13, § 4999-a2; 40 Ex. G. A., S. F. 43, § 5.]

1487. Safety appliances—guarding machinery. It shall be the duty of the owner, agent, superintendent, or other person in charge of any workshop, manufacturing or other industrial establishment or concern operated by machinery, either in a fixed location or when portable and moved from place to place therein in carrying on such industry, so far as practicable, to install and keep in order belt shifters or other safe mechanical means for throwing belts on and off pulleys, install loose pulleys, and protect, by guards or housing, all gearing, cogs, belting, shafting, tumbling rods, universal or knuckle joints, set screws, saws, planes, and other machinery, when so located or used that employees may receive injury thereby. The provisions of this chapter shall not apply to agricultural pursuits. [C., '73, § 4064; C., '97, § 5025; S., '13, § 4999-a2; 40 Ex. G. A., S. F. 43, § 6.]

1488. Removal of guards or safety appliances. When any person shall remove any guard or safety appliance from any machine or other equipment, or shall so adjust or place the same as to destroy or impair its use in preventing bodily injury or safeguarding health, for the purpose of enabling the employee operating said machine to perform any special work that cannot otherwise be performed, it shall be the duty of said employee or employer to immediately replace it after such special work has been completed. [S. S., '15, § 4999-a5; 40 Ex. G. A., S. F. 43, § 7.]

1489. Blowers and pipes for dust—exceptions. All persons, companies, or corporations

operating any factory or workshop where emery wheels or emery belts of any description, or tumbling barrels used for rumbling or polishing castings, are used, shall provide the same with blowers and pipes of sufficient capacity, placed in such a manner as to protect the person or persons using same from the particles of dust produced or caused thereby, and to carry away said particles of dust arising from or thrown off such wheels, belts, and tumbling barrels, while in operation, directly to the outside of the building, or to some receptacle placed so as to receive or confine such particles of dust; but grinding machines upon which water is used at the point of grinding contact, and small emery wheels which are used temporarily for tool grinding, are not included within the provisions of this section, and the shops employing not more than one man at such work may, in the discretion of the labor commissioner, be exempt from the provisions hereof. [S., '13, § 4999-a4; 40 Ex. G. A., S. F. 43, § 8.]

1490. Pipes and flues for gases. Any factory, workshop, printshop, or other place where molten metal or other material which gives off deleterious gases or fumes is kept or used shall be equipped with pipes or flues so arranged as to give easy escape to such gases or fumes into the open air, or provided with other adequate ventilators. [S., '13, § 4999-a4; 40 Ex. G. A., S. F. 43, § 9.]

1491. Notice of violation. When the commissioner or his inspector shall discover or have reason to believe that any provision of the eight preceding sections is being violated, he shall give to the person, company, corporation, or the manager or superintendent thereof, a notice in writing to comply with such provision within a reasonable time to be fixed in said notice and which time shall be of not less than seven nor more than thirty days duration, except that such time may be extended by the commissioner for good cause shown.

In fixing the time in such notice, the commissioner shall take into consideration the nature of the failure or defect constituting the violation, the danger to be apprehended therefrom, and the probable length of time and amount of labor required to remedy or cure such defect. [S. S., '15, § 4999-a5; 40 Ex. G. A., S. F. 43, § 9-a1.]

1492. Record of accidents. Manufacturers, manufacturing corporations, proprietors, or corporations operating any mercantile establishment, mill, workshop, business house, or mine, other than those subject to inspection by the state mine inspector, shall keep a careful record of any accident occurring to an employee while at work for the employer, when such accident results in the death of the em-

ployee or in such bodily injury as will or probably may prevent him from returning to work within two days thereafter. The said record shall at all times be open to inspection by an inspector of the bureau of labor. [S., '13, § 2477-1a; 40 Ex. G. A., S. F. 43, § 10.]

1493. Report of accidents—evidence. Within forty-eight hours after the occurrence of an accident, the record of which is required to be kept, a written report thereof shall be forwarded to the commissioner of labor and said commissioner may require further and additional report to be furnished him should the first report be by him deemed insufficient. No statement contained in any such report shall be admissible in any action arising out of the accident therein reported. [S., '13, § 2477-1a; 40 Ex. G. A., S. F. 43, § 11.]

1494. Penalties. Any person, corporation, firm, agent, or superintendent violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished as follows:

1. For a violation of any one of the provisions of sections 1483, 1484, and 1485, by a fine not exceeding ten dollars for each offense.

2. For a violation of section 1486, by a fine of not less than fifty dollars nor more than five hundred dollars.

3. For a violation of any one of the provisions of sections 1487, 1488, 1489, 1490, 1492, and 1493, by a fine not exceeding one hundred dollars. [C., '73, § 4064; C., '97, §§ 4999, 5025, 5026; S., '13, §§ 2477-1a, 4999-a1, 4999-a2; S. S., '15, § 4999-a5; 40 Ex. G. A., S. F. 43, § 12.]

1495. Assumption of risks. In all cases where the property, works, machinery, or appliances of an employer are defective or out of repair, and where it is the duty of the employer from the character of the place, work, machinery, or appliances to furnish reasonably safe machinery, appliances, or place to work, the employee shall not be deemed to have assumed the risk, by continuing in the prosecution of the work, growing out of any defect as aforesaid, of which the employee may have had knowledge when the employer had knowledge of such defect, except when in the usual and ordinary course of his employment it is the duty of such employee to make the repairs, or remedy the defects. Nor shall the employee under such conditions be deemed to have waived the negligence, if any, unless the danger be imminent and to such extent that a reasonably prudent person would not have continued in the prosecution of the work; but this statute shall not be construed so as to include such risks as are incident to the employment; and no contract which restricts liability hereunder shall be legal or binding. [S., '13, § 4999-a3.]

CHAPTER 74

BOARDS OF ARBITRATION

- 1496. Petition for appointment.
- 1497. Notification by governor.
- 1498. Governor to appoint for parties.
- 1499. Third appointee.
- 1500. Agreement to be bound by decision.
- 1501. Oath—organization.
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- 1505. Subpoenas—by whom served—fees.
- 1506. Investigation—report filed—public inspection.
- 1507. Investigation—prohibition—decision binding.
- 1508. Decision—report to governor.
- 1509. Decision filed and published—evidence preserved.

1496. Petition for appointment. When any dispute arises between any person, firm, corporation, or association of employers and their employees or association of employees, of this state, except employers or employees having trade relations directly or indirectly based upon interstate trade relations operating through or by state or international boards of conciliation, which has or is likely to cause a strike or lockout, involving ten or more wage earners, and which does or is likely to interfere with the due and ordinary course of business, or which menaces the public peace, or which jeopardizes the welfare of the community, and the parties thereto are unable to adjust the same, either or both parties to the dispute, or the mayor of the city, or the chairman of the board of supervisors of the county in which said employment is carried on, or on petition of any twenty-five citizens thereof over the age of twenty-one years, or the labor commissioner, after investigation, may make written application to the governor for the appointment of a board of arbitration and conciliation, to which board such dispute may be referred under the provisions of this chapter; and the manager of the business of any person, firm, corporation, or association of such employers, or any organization representing such employees, or if such employees are not members of any organization, then a majority of such employees affected may make the application as provided in this chapter, but in no case shall more than twenty employees be required to join in such application. [S., '13, § 2477-n; 40 G. A., ch. 230, § 1.]

1497. Notification by governor. The governor shall at once upon application made to him as herein provided, and upon his being satisfied that the dispute comes within the provisions of the preceding section, notify the parties to the dispute of the application for the appointment of a board of arbitration and conciliation and make request upon each party to the dispute that each of them recommend within three days from the date of notice, the names of five persons who have no direct in-

terest in such dispute and are willing and ready to act as members of the board, and the governor shall appoint from each list submitted one of such persons recommended. [S., '13, § 2477-n1; 40 G. A., ch. 230, § 2.]

1498. Governor to appoint for parties. Should either of the parties fail or neglect to make any recommendation within the said period, the governor shall, as soon thereafter as possible, appoint a fit person who shall be deemed to be appointed on the recommendation of the parties in default. [S., '13, § 2477-n1; 40 G. A., ch. 230, § 2.]

1499. Third appointee. The members of the board so appointed shall within five days of their appointment recommend to the governor the name of one person who is ready and willing to act as a third member of the board, and upon failure or neglect upon their part to make such recommendation within the said period, or upon the failure or refusal of the person so recommended to act, the governor shall as soon thereafter as possible appoint some person to act as the third member of the board. [S., '13, § 2477-n1; 40 G. A., ch. 230, § 2.]

1500. Agreement to be bound by decision. In all cases when the application is made by both parties to the dispute, they shall set forth in the application whether or not they agree to be bound by the decision of the board of arbitration and conciliation; and if both parties agree to be so bound by such decision, then the same shall be binding and enforceable as set out in section 1507. [S., '13, § 2477-n2.]

1501. Oath—organization. Each member of the board shall, before entering upon the duties of his office, be sworn to a faithful and impartial discharge thereof; they shall organize at once by the choice of one of their number as chairman, and one of their number as secretary, and shall have power to employ all necessary clerks and stenographers to properly carry out the duties of their appointment. [S., '13, § 2477-n3.]

1502. Compensation. The members of the board shall receive a compensation of five dollars per diem for the time actually employed, together with their traveling and other necessary expenses, the same to be payable out of the state treasury upon warrants drawn by the state auditor. [S., '13, § 2477-n3.]

1503. Evidence—witnesses. For the purpose of this inquiry the board shall have all the powers of summoning before it and enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence, to produce books, papers, and other documents or things as the board may deem requisite to the full investigation of the matters into which it is inquiring, as is vested in the district court in civil cases. [S., '13, § 2477-n4; 40 G. A., ch. 230, § 3.]

1504. Oath—rule of evidence. Any member of the board may administer an oath, and the board may accept, admit, and call for such evidence as in equity and good conscience it thinks material and proper, whether strictly legal evidence or not. [S., '13, § 2477-n4; 40 G. A., ch. 230, § 3.]

1505. Subpoenas—by whom served—fees. A subpoena or any notice may be delivered or sent to any sheriff, constable, or any police officer who shall forthwith serve the same, and make due return thereof, according to directions. Witnesses in attendance and officers serving subpoenas or notices shall receive the same fees as are allowed in the district court, payable from the state treasury, upon the certificate of the board that such fees are due and correct. The board shall have the same power and authority to maintain and enforce order at the hearings and obedience to its writs of subpoena as is by law conferred upon the district court for like purposes. [S., '13, § 2477-n4; 40 G. A., ch. 230, § 4.]

1506. Investigation—report filed—public inspection. The board shall as soon as practical, visit the place where the controversy exists, and make careful inquiry into the cause, and the said board may, with the consent of the governor, conduct such inquiry beyond the limits of the state. The board shall hear all persons interested who come before it, advise the respective parties what ought to be done or submitted to by either or both of the parties to the dispute to adjust said contro-

versy, and make a written decision thereof, which shall at once be made public and open to public inspection and shall be recorded by the secretary of the board, and a copy of such report shall be filed in the office of the clerk of the city or town in which the controversy arose and shall be open for public inspection. [S., '13, § 2477-n5.]

1507. Investigation—prohibition—decision binding. The board of arbitration and conciliation shall within ten days from the date of their appointment, unless such time shall be extended by the governor, complete the investigation of any controversy submitted to them, and during the pendency of such period neither party shall engage in any strike or lockout. Any decision made by the board shall date from the date of the appointment of the board and shall be binding upon the parties who join in the application as herein provided for a period of one year. [S., '13, § 2477-n6.]

1508. Decision—report to governor. Within five days after the completion of the investigation, unless the time is extended by the governor for good cause shown, the board or a majority thereof shall render a decision, stating such details as will clearly show the nature of the controversy and the point disposed of by them, and make a written report to the governor of their findings of fact and of their recommendation to each party to the controversy. [S., '13, § 2477-n7; 40 G. A., ch. 230, § 5.]

1509. Decision filed and published—evidence preserved. Every decision and report shall be filed in the office of the governor, and a copy served upon each party to the controversy, and a copy furnished to the labor commissioner for publication in the report of the commissioner, who shall cause such decision and report to be published at a rate of not to exceed thirty-three and one-third cents per ten lines of brier type or its equivalent in two newspapers of general circulation in the county in which the business is located upon which the dispute arose.

All evidence taken and exhibits and documents offered shall be carefully preserved and at the close of the investigation shall be filed in the office of the governor of the state and shall only be subject to inspection upon his order. [S., '13, § 2477-n7; 40 G. A., ch. 230, § 6.]

CHAPTER 75

BUREAU OF LABOR

1510. Labor commissioner.
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1510. Labor commissioner. The bureau of labor shall be under the control of a labor commissioner, who shall have his office at the seat of government and shall devote his entire time to the duties of his office. [C., '97, § 2469; S., '13, § 2469; 40 Ex. G. A., H. F. 46, § 1.]

1511. Appointment. The governor shall, within sixty days after the organization of the regular session of the general assembly in 1925, and each two years thereafter, appoint, with the approval of two-thirds of the members of the senate, a labor commissioner who shall serve for a period of two years from July first of the year of appointment. [C., '97, § 2469; S., '13, § 2469; 40 Ex. G. A., H. F. 46, § 2.]

1512. Vacancies. A vacancy in said position which may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes in regular session. Prior to the expiration of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term.

Vacancies occurring during a session of the general assembly shall be filled as regular appointments are filled and before the end of said session and for the unexpired portion of the regular term. [C., '97, § 2469; S., '13, § 2469; 40 Ex. G. A., H. F. 46, § 2-a1.]

1513. Industrial statistics and information—reports. The duties of said commissioner shall be:

1. To safely keep all records, papers, documents, correspondence, and other property pertaining to or coming into his hands by virtue of his office, and deliver the same to his successor, except as otherwise provided.

2. To collect, assort, and systematize statistical details relating to all departments of labor in the state, especially in its relation to

the commercial, social, educational, and sanitary conditions surrounding the laboring classes, the means of escape from and the protection of life and health in factories, the employment of children, the number of hours of labor exacted from them and from women, and to the permanent prosperity of the mechanical, manufacturing, and productive industries of the state.

3. To collect as fully as practicable such information and reliable reports from each county in the state, the amount and condition of the mechanical and manufacturing interests, the value and location of the various manufacturing and coal productions of the state, also sites offering natural or acquired advantages for the profitable location and operation of different branches of industry; he shall by correspondence with interested parties in other parts of the United States, impart to them such information as may tend to induce the location of mechanical and producing plants within the state, together with such other information as shall tend to increase the productions, and consequent employment of producers.

4. To submit the foregoing statistics and information to the governor in biennial reports in which he shall give a statement of the business of the bureau since the last regular report, and shall compile therein such information as may be considered of value to the industrial interests of the state, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics, and apprentices, wages earned, the savings from the same, with age and sex of laborers employed, the number and character of accidents, the sanitary condition of institutions where labor is employed, the proportion of married laborers and mechanics who live in rented houses, with the average annual rental, and the value of property owned by laborers and mechanics; to include in such report what progress has been made with schools now in operation for the instruction of students in the mechanic arts, and what

systems have been found most practical, with details thereof.

5. To issue from time to time, with the consent of the executive council, bulletins containing information of importance to the industries of the state and to the safety of wage earners. [C., '97, §§ 2469, 2470; S., '13, §§ 2469, 2470; 40 Ex. G. A., H. F. 46, § 3.]

NOTE: For time of making biennial report, see § 246.

1514. Other duties—jurisdiction in general. The commissioner shall have jurisdiction and it shall be his duty to supervise the enforcement of:

1. All laws relating to safety appliances and inspection thereof and health conditions in manufacturing and mercantile establishments, workshops, machine shops, and other industrial concerns within his jurisdiction.

2. The laws relating to preventing fires and to fire escapes and other means of escaping therefrom.

3. All laws of the state relating to child labor.

4. All laws relating to the state free employment bureau and employment agencies.

5. Such other provisions of law as are now or shall hereafter be within his jurisdiction. [S., '13, § 2477-f; S. S., '15, §§ 2477-g1, 4999-a5, 4999-a10; 39 G. A., ch. 209, § 32; 40 Ex. G. A., H. F. 46, § 4.]

1515. Appointment of inspectors. The appointment, by the commissioner, of all factory inspectors shall be subject to the approval of the executive council. [S., '13, § 2477; 40 Ex. G. A., H. F. 46, § 5.]

1516. Woman inspector—duties. One of the factory inspectors in the bureau of labor shall be a woman, who shall inspect the sanitary and general conditions of all factories, workshops, hotels, cafes, restaurants, stores, and all other establishments and places where women and children are employed; collect statistics and report the same to the commissioner with such recommendations as she believes will improve working conditions of women and children, and to which the commissioner shall make special reference in his biennial reports to the governor. She shall perform such other services under the direction of the commissioner as will tend to promote the health and general welfare of the women and children employed in the industries within the state. [S., '13, § 2477; 40 Ex. G. A., H. F. 46, § 6.]

1517. Traveling expenses—limitation. The commissioner, inspectors, and other employees of the office shall be allowed their necessary traveling expenses while in the discharge of their duties. Such expense in the aggregate, exclusive of salaries, shall not exceed the sum of four thousand dollars per annum. [C., '97, § 2477; S., '13, § 2477; 39 G. A., ch. 209, § 31; 40 Ex. G. A., H. F. 46, § 7.]

1518. Right to enter premises. The labor commissioner and the inspectors shall have the power to enter any factory or mill, workshop,

mine, store, business house, public or private work, when the same is open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this chapter, and to examine into the methods of protection from danger to employees, and the sanitary conditions in and around such buildings and places, and make a record thereof. [C., '97, § 2472; S., '13, § 2472; 40 Ex. G. A., H. F. 46, § 8.]

1519. Power to secure evidence—witness fees—limitation. The labor commissioner and his deputy shall have the power to issue subpoenas, administer oaths, and take testimony in all matters relating to the duties required of them, said testimony to be taken in some suitable place in the vicinity to which testimony is applicable. No witness shall be compelled by such subpoena to go outside the county of his residence, except when the hearing is in a county adjoining the county of his residence, then he shall be required to obey such subpoena. Witnesses subpoenaed and testifying before the commissioner or an inspector shall be paid the same fees as witnesses before a justice's court, such payment to be made out of the general funds of the state on voucher by the commissioner, but such expense for witnesses shall not exceed one hundred dollars annually. [C., '97, § 2471; S., '13, § 2471; 40 Ex. G. A., H. F. 46, § 9.]

1520. Prosecutions for violations—discretion. If the commissioner or an inspector shall learn of any violation of, or neglect to comply with the law in respect to the employment of children, or in respect to fire escapes, or the safety of employees, or for the preservation of health, such officer may give the county attorney of the county in which such factory or building is situated, written notice of the facts, whereupon that officer shall institute the proper proceedings against the person guilty of such offense or neglect.

If the commissioner or inspector is of the opinion that such violation or neglect is not wilful, or is an oversight or of a trivial nature, he may in his discretion fix a time within which the defect or evil may be corrected and notify the owner, operator, superintendent, or person in charge, and if corrected within the time fixed, then the commissioner or inspector shall not cause prosecution to be begun. [C., '97, § 2472; S., '13, § 2472; 40 Ex. G. A., H. F. 46, § 10.]

1521. Reports to bureau. It shall be the duty of every owner, operator, or manager of every factory, mill, workshop, mine, store, business house, public or private work, or any other establishment where labor is employed, as herein provided, to make to the bureau, upon blanks furnished by the commissioner, such reports and returns as he may require for the purpose of compiling such labor statistics as are contemplated in this chapter; and the owner, operator, or business manager shall

make such reports or returns within sixty days from the receipt of blanks furnished by the commissioner, and shall certify under oath to the correctness of the same. [C., '97, § 2474; S., '13, § 2474; 40 Ex. G. A., H. F. 46, § 11.]

1522. Names of persons furnishing information. Any use of the names of individuals, firms, or corporations furnishing the commissioner information required by this chapter for his biennial report, in such manner as to disclose any of their private or personal affairs, is hereby prohibited. [C., '97, § 2475; 40 Ex. G. A., H. F. 46, § 12.]

1523. Reports and records preserved—destroyed when. No report or return made to said bureau in accordance with the provisions of this chapter, and no schedule, record, or document gathered or returned by its officers or employees, shall be destroyed within two years after the collection or receipt thereof. At the expiration of two years all records, schedules, or papers accumulating in said bureau during said period that may be considered of no value by the commissioner may be destroyed by authority of the executive council first obtained. [C., '97, § 2476; 40 Ex. G. A., H. F. 46, § 13.]

1524. Definition of terms. The expressions "factory", "mill", "workshop", "mine", "store", "business house", and "public or private work", as used in this chapter, shall be construed to mean any factory, mill, workshop, mine, store, business house, public or private work, where wage earners are employed for a compensation. [C., '97, § 2473; S. S., '15, § 2473; 40 Ex. G. A., H. F. 46, § 14.]

1525. Violations—penalties. Persons violating any of the provisions of this chapter shall be punished as in this section provided, respectively:

1. Any owner, superintendent, manager, or person in charge of any factory, mill, workshop, store, mine, hotel, restaurant, cafe, business house, public or private work, who shall refuse to allow the commissioner of labor or any inspector or employee of the bureau of labor to enter the same, or who shall hinder or deter him in collecting information which it is his duty to collect shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days.

2. Any person duly subpoenaed to attend a hearing before the commissioner or deputy or a court in any proceeding provided by this chapter who shall wilfully neglect or refuse to attend or testify at the time and place named in the subpoena shall be fined not exceeding fifty dollars or imprisoned in the county jail not exceeding thirty days.

3. Any officer or employee of the bureau of labor, or any person making unlawful use of names or information obtained by virtue of his office, shall be fined not exceeding five hundred dollars or imprisoned in the county jail not exceeding one year.

4. Any owner, operator, or manager of a factory, mill, workshop, mine, store, business house, public or private work, who shall neglect or refuse for thirty days after receipt of notice from the commissioner to furnish any reports or returns he may require to enable him to discharge his duties shall be fined not to exceed one hundred dollars or imprisoned in the county jail not to exceed thirty days. [C., '97, §§ 2471, 2472, 2474, 2475; S., '13, §§ 2471, 2472, 2474; 40 Ex. G. A., H. F. 46, § 15.]

CHAPTER 76

CHILD LABOR

1526. Child labor—age limit—exception.
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1535. Authority of officers to require showing.
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 1539. Night work prohibited—age limit.
 1540. Violations—penalties.
 1541. Enforcement—duties of officers.

1526. Child labor—age limit—exception. No person under fourteen years of age shall be employed with or without compensation in any mine, manufacturing establishment, factory, mill, shop, laundry, slaughter house, or packing house, or in any store or mercantile establishment where more than eight persons are employed, or in any livery stable, garage, place of amusement, or in the distribution or transmission of merchandise or messages; but nothing in this section shall be construed as

prohibiting any child from working in any of the above establishments or occupations when operated by his parents. [S. S., '15, § 2477-a; 40 Ex. G. A., H. F. 44, § 1.]

1527. Hours of labor—noon intermission. No person under sixteen years of age shall be employed at any of the places or in any of the occupations specified in the preceding section before the hour of seven o'clock in the morning or after the hour of six o'clock in the eve-

ning, and if such person is employed exceeding five hours of each day, a noon intermission of not less than thirty minutes shall be given between the hours of eleven and one o'clock, and such person shall not be employed more than eight hours in any one day, exclusive of the noon hour intermission; nor shall any such person be employed more than forty-eight hours in any one week. [S. S., '15, § 2477-c; 38 G. A., ch. 139, § 1; 40 Ex. G. A., H. F. 44, § 2.]

1528. Hours where part-time school prevails. When in any organized school district there shall have been established a part-time school, department, or class, no person under sixteen years of age shall be employed for more than forty hours in any one week. [38 G. A., ch. 139, § 1; 40 Ex. G. A., H. F. 44, § 3.]

1529. Cleaning or operating dangerous machinery—age limit—exception. The following acts shall be unlawful:

1. Directing or permitting any boy under sixteen or girl under eighteen years of age to clean machinery while it is in motion.

2. Permitting any boy or girl under sixteen years of age to operate or assist in operating any freight or passenger elevator.

3. Permitting any boy or girl under sixteen years of age to operate or assist in operating dangerous machinery; but this provision shall not apply to pupils working under an instructor in manual training departments in public schools of the state or under an instructor in a school, shop, or industrial plant, in a course of vocational education approved by the state board for vocational education. [S., '13, § 4999-a2; S. S., '15, § 2477-a; 39 G. A., ch. 180, § 1; 40 Ex. G. A., H. F. 44, § 4.]

1530. Permit for child labor. No child under sixteen years of age shall be employed, permitted, or suffered to work in or in connection with any of the establishments or occupations mentioned in section 1526 unless the person, firm, or corporation employing such child procures and keeps on file, accessible to any officer charged with the enforcement of this chapter, a work permit issued as hereinafter provided, and keeps two complete lists of the names and ages of all such children under sixteen years of age employed in or for such establishments or in such occupations, one on file in the office and one conspicuously posted near the principal entrance of the place or establishment in which such children are employed.

On termination of the employment of a child whose permit is on file, such permit shall be returned by the employer within two days to the officer who issued it with a statement of the reasons for the termination of such employment.

A work permit shall be issued for every position obtained by a child between the ages of fourteen and sixteen years. The permit in no case shall be issued to the child, parent, guardian, or custodian, but to its prospective employer. [S. S., '15, § 2477-d; 40 Ex. G. A., H. F. 44, § 5.]

1531. Labor permit—how obtained. A work permit shall be issued only by the superintendent of schools or by a person authorized by him in writing, or, where there is no superintendent of schools, by a person authorized in writing by the local school board in the community where such child resides, upon the application of the parent, guardian, or custodian of the child desiring such permit. The person authorized to issue work permits shall not issue any such permit, except as provided in sections 1537 and 1538, until he has received, examined, approved, and filed:

1. A written agreement from the person, firm, or corporation into whose service the child under sixteen years of age is about to enter, promising to give such child employment, describing the work to be performed and agreeing to return the work permit of such child to the office from which it was issued within two days after the termination of the employment of such child.

2. The school record of such child filled out and signed by the superintendent of the school which such child has last attended certifying that the child is able to read intelligently and write legibly simple sentences in the English language and has completed a course of study equivalent to six yearly grades in reading, writing, spelling, English language, geography, and arithmetic. Such school record shall give also the name, date of birth, and residence of the child as shown on the records of the school and also the name of its parent, guardian, or custodian. In exceptional cases where a child is strong, healthy, and well developed physically, superintendents or local school boards may, with the approval of the labor commissioner, issue permits for boys and girls between the ages of fourteen and sixteen, with less educational acquirements, good for vacation only.

3. A certificate signed by a medical inspector of schools, or if there be no such inspector, then by a physician appointed by the board of education, certifying that the applicant for the work permit has reached the normal development of a child of its age and is in sufficiently sound health and physically able to perform the work for which the permit is sought.

4. Evidence of age showing that the child is fourteen years old, or more, which shall consist of one of the following proofs required in the order herein designated as follows:

a. A transcript of the birth certificate filed according to law with a registrar of vital statistics or other officer charged with the duty of recording births.

b. A passport or a transcript of a certificate of baptism showing the date of birth and place of baptism of such child.

c. A school census record.

d. In cases where none of the above named proofs are obtainable, a certificate signed by the local medical inspector of schools, or if there be no such inspector, then by a physician appointed by the local board of education, certifying that in his opinion the applicant for

the work permit is fourteen years of age or more. [S. S., '15, § 2477-d; 40 Ex. G. A., H. F. 44, § 6.]

1532. What permit shall show. Every such work permit shall state the name, sex, the date and place of birth, the residence of the child in whose name it is issued, the color of hair and eyes, the height and weight, the proof of age, the school grade completed, the name and location of the establishment where the child is to be employed, the work for which the permit is issued, that the papers required for its issuance have been duly examined, approved, and filed, and that the person named therein has personally appeared before the officer issuing the permit and has been examined. [S. S., '15, § 2477-d; 40 Ex. G. A., H. F. 44, § 7.]

1533. Duplicate permit filed with commissioner. A duplicate of every such work permit issued shall be filled out and forwarded to the office of the labor commissioner between the first and the tenth day of the month following the month in which it is issued. [S. S., '15, § 2477-d; 40 Ex. G. A., H. F. 44, § 8.]

1534. Superintendent of public instruction—duty. The blank forms for the work permit, the employer's agreement, the school record, and the physician's certificate shall be formulated by the superintendent of public instruction and furnished by him to the local school authorities. [S. S., '15, § 2477-d; 40 Ex. G. A., H. F. 44, § 8.]

1535. Authority of officers to require showing. Any officer whose duty it is to enforce the provisions of this chapter shall have authority to demand of any employer in or about whose place or establishment a child apparently under the age of sixteen years is employed, permitted, or suffered to work, and whose permit is not filed as required by this chapter, that such employer shall either furnish him within ten days the same documentary evidence of age of such child as is required upon the issuance of a work permit, or shall cease to employ or permit or suffer such child to work in such place or establishment. [S. S., '15, § 2477-d; 40 Ex. G. A., H. F. 44, § 9.]

1536. Life, health, or morals endangered—age limitation. No person under sixteen years of age shall be employed at any work or occupation which, by reason of its nature or the place of employment, the health of such person may be injured, or morals depraved, or at any work in which the handling or use of gunpowder, dynamite, or other like explosive is required, or in or about any mine during the school term, or in or about any hotel, cafe, restaurant, bowling alley, pool or billiard room, cigar store, barber shop, or in any occupation dangerous to life or limb.

No female under twenty-one years of age shall be employed in any capacity where the duties of such employment compel her to re-

main constantly standing. [S. S., '15, § 2477-b; 40 Ex. G. A., H. F. 44, § 10.]

1537. Street occupations for children forbidden—exceptions. No boy under eleven years of age nor girl under eighteen years of age shall be employed, permitted, or suffered to work at any time in any city of ten thousand or more inhabitants within this state in or in connection with the street occupations of peddling, bootblacking, the distribution or sale of newspapers, magazines, periodicals, or circulars, nor in any other occupations in any street or public place, except that in such cities, the superintendent of schools or person authorized by him, upon sufficient showing made by a judge of the superior, municipal, or juvenile court, may, in exceptional cases, issue a permit to a boy under eleven years of age. [S. S., '15, § 2477-a1; 40 Ex. G. A., H. F. 44, § 11.]

1538. Street occupations for boys—age limit—permit—badge. No boy between eleven and sixteen years of age shall be employed or permitted to work in any such city in connection with any of the occupations mentioned in the preceding section unless he complies with all the requirements for the issuance of work permits as described in this chapter except the filing of an employer's agreement, but the school record so required shall certify only that the boy is regularly attending school and that the work in which he wishes to engage will not interfere with his progress at school. Upon compliance with these requirements such boy shall be entitled to receive from the officer authorized to issue work permits a badge which shall authorize such boy to engage in the above-mentioned occupations at such time or times, between four a. m. and seven-thirty p. m. each day, as the public schools of the city or district where such boy resides are not in session, but at no other time, except that during the summer school vacation such boy may engage in such occupation until the hour of eight-thirty p. m. All such badges issued in the same calendar year shall be of the same color, which color shall be changed each year, and shall become void upon the first day of January following their issuance. [S. S., '15, § 2477-a1; 40 Ex. G. A., H. F. 44, § 12.]

1539. Night work prohibited—age limit. No person under eighteen years of age shall be employed in the transmission, distribution, or delivery of goods or messages between the hours of ten in the evening and five in the morning in any city of ten thousand or more inhabitants. [S. S., '15, § 2477-c; 38 G. A., ch. 139, § 1; 40 Ex. G. A., H. F. 44, § 13.]

1540. Violations—penalties. Any parent, guardian, or other person, who having under his control any person under sixteen years of age causes or permits said person to work or be employed in violation of the provisions of this chapter, or any person making, certifying to, or causing to be made or certified to, any

statement, certificate, or other paper for the purpose of procuring the employment of any person in violation of said provisions, or who makes, files, executes, or delivers any such statement, certificate, or other paper containing any false statement for the purpose of procuring the employment of any person in violation of this chapter, or for the purpose of concealing the violation thereof in such employment, and any person, firm, or corporation, or the agent, manager, superintendent, or officer of any person, firm, or corporation, whether for himself or such person, firm, corporation, either by himself or acting through any agent, foreman, superintendent, or manager, who employs any person, or permits any person to be employed in violation of the provisions of this chapter, or who shall refuse to allow any authorized officer or person to inspect any place of business under said provisions, if demand is made therefor at any time during business hours, or who shall wilfully obstruct such officer or person while making such inspection, or who shall fail to keep posted the lists containing the names of persons employed under sixteen years of age and other information as required by this chapter, or who shall knowingly insert any false statement in such list, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days.

The parent or person in charge of any child who shall engage in any street occupation in violation of any of the provisions of this chapter shall be punished by a fine of not more than fifteen dollars.

Whoever furnishes or sells to any minor any article of any description with the knowledge that said minor intends to sell said article in violation of the provisions of this chapter relating to street occupations, shall be punished by a fine of not less than fifteen dollars nor more than one hundred dollars for each offense.

Whoever violates any other provision of this chapter, shall be fined not to exceed one hundred dollars. [S., '13, § 2477-e; S. S., '15, § 2477-a1; 38 G. A., ch. 139, § 2; 40 Ex. G. A., H. F. 44, § 14.]

1541. Enforcement—duties of officers. It shall be the duty of the labor commissioner, his deputies, inspectors, and assistants, to enforce the provisions of this chapter. It shall also be the duty of all mayors and police officers, town and city marshals, sheriffs and their deputies, school superintendents, school truant and attendance officers, within their several jurisdictions, to cooperate in the enforcement of such provisions and furnish the labor commissioner, his deputies and assistants all information coming to their knowledge regarding any violations of such provisions. All such officers and any person authorized in writing by any court of record shall have authority to enter for purposes of investigation any of the establishments and places mentioned in this chapter and to freely question any person therein as to any violations of such provisions.

It shall be the duty of county attorneys to investigate all complaints made to them of violations of any such provisions, and to prosecute all such cases of violation within their respective counties. [S., '13, § 2477-f; S. S., '15, § 2477-a1; 40 Ex. G. A., H. F. 44, § 15.]

CHAPTER 77

STATE EMPLOYMENT BUREAU AND EMPLOYMENT AGENCIES

- 1542. Free employment bureau.
- 1543. Duty as to free employment services.
- 1544. Extension of service.
- 1545. Service free.
- 1546. Failure to procure employment—fee returned.

1542. Free employment bureau. The labor commissioner shall maintain in his office at the seat of government a department to be called the state free employment bureau, and he is hereby directed to adopt such rules and regulations as are necessary to carry out the purposes of this chapter. He shall, with the approval of the executive council, appoint a competent person who shall be placed in charge of such work and be known as the chief clerk of the bureau, whose term of office shall be the same as that of the commissioner. [S. S., '15, § 2477-g1; 40 Ex. G. A., S. F. 47, § 1.]

1543. Duty as to free employment services. It shall be the duty of the commissioner through the free employment service to:

- 1547. Copy of application or agreement furnished applicant.
- 1548. Division of fees prohibited.
- 1549. Records required.
- 1550. Investigation by labor commissioner.
- 1551. Violations.

1. Adopt all means at his command to bring together those desiring to employ labor and those desiring employment.

2. Supply information as to opportunities for securing employment and the character and conditions of work to be performed in the various industries of the state including agricultural pursuits.

3. Adopt all available means for steadying employment and avoiding unemployment. [S. S., '15, § 2477-g2; 40 Ex. G. A., S. F. 47, § 2.]

1544. Extension of service. With the approval of the executive council, the commissioner may establish within the state such branches of free employment agencies as shall afford the best distribution of labor, and for

such purposes may cooperate with any federal, state, municipal, or other free employment bureau or association. [S. S., '15, § 2477-g2; 40 Ex. G. A., S. F. 47, § 3.]

1545. Service free. No fee or compensation shall be received, either directly or indirectly, from persons applying to the bureau for employment or help. [S. S., '15, § 2477-g2; 40 Ex. G. A., S. F. 47, § 4.]

1546. Failure to procure employment—fee returned. Every person, firm, or corporation who shall agree or promise, or who shall advertise through the public press, or by letter, to furnish employment or situations to any person or persons, and in pursuance of such advertisement, agreement, or promise, shall receive any money, personal property, or other valuable thing whatsoever, and who shall fail to procure for such person or persons acceptable situations or employment as agreed upon, within the time stated or agreed upon, or if no time be specified then within a reasonable time, shall upon demand return all such money, personal property, or valuable consideration of whatever character. [S., '13, § 2477-h; 40 Ex. G. A., S. F. 47, § 5.]

1547. Copy of application or agreement furnished applicant. It shall be unlawful for any person, firm, or corporation to receive any application for employment from, or enter into any agreement with, any person to furnish or procure for said person any employment unless there is delivered to such person making such application or contract, at the time of the making thereof, a true and full copy of such application or agreement, which application or agreement shall specify the fee or consideration to be paid by the applicant. [S., '13, § 2477-i; 40 Ex. G. A., S. F. 47, § 6.]

1548. Division of fees prohibited. It shall be unlawful for any person, firm, or corporation, or any person employed or authorized by such person, firm, or corporation, to receive

any part of any fee or any percentage of wages or any compensation of any kind whatever, that is agreed upon to be paid by any such employee to any employment bureau or agency for services rendered to any such employee in procuring for him employment with such person, firm, or corporation. [S., '13, § 2477-j; 40 Ex. G. A., S. F. 47, § 7.]

1549. Records required. Every person, firm, or corporation operating an employment agency or engaged in the business of finding employment for others, for which any fee is charged, shall keep a record of the applications received and what, if any, employment was found or furnished to the applicant, giving the name of each applicant and the name and address of his employer, if employment is found, and the fee charged each applicant. [40 Ex. G. A., S. F. 47, § 8.]

1550. Investigation by labor commissioner. The labor commissioner, his deputy or inspectors, and the chief clerk of the bureau shall have authority to examine at any time the records, books, and any papers relating in any way to the conduct of any employment agency or bureau within the state, and must investigate any complaint made against any such employment agency or bureau, and if any violations of law are found he shall at once file or cause to be filed, an information against any person, firm, or corporation guilty of such violation of law. [S., '13, § 2477-k; 40 Ex. G. A., S. F. 47, § 9.]

1551. Violations. Any person, firm, or corporation violating any of the provisions of this chapter, or who shall refuse access to records, books, or other papers relative to the conduct of such agency or bureau, to any person having authority to examine same, shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not to exceed thirty days. [S., '13, § 2477-l; 40 Ex. G. A., S. F. 47, § 10.]

CHAPTER 78

CIGARETTES AND TOBACCO

- 1552. Definition of terms.
- 1553. Sale or gift to minor prohibited.
- 1554. Violation.
- 1555. Minors required to give information.
- 1556. Violation.
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- 1581. Return.
- 1582. Additional tax penalty assessed by magistrate.
- 1583. Notice of assessment.
- 1584. Request to exhibit permit—prima facie evidence.
- 1585. Advertisement near public schools prohibited.
- 1586. Penalty.

1552. Definition of terms. The term “person” as used in this chapter shall include corporation, firm, copartnership, and association; the term “paper” shall include “wrapper” and “tube”. [40 Ex. G. A., S. F. 257, § 1.]

1553. Sale or gift to minor prohibited. No person shall furnish to any minor under twenty-one years of age by gift, sale, or otherwise, any cigarette or cigarette paper, or any paper or other substance made or prepared for the purpose of use in making of cigarettes. No person shall directly or indirectly by himself or agent sell, barter, or give to any minor under sixteen years of age any tobacco in any other form whatever except upon the written order of his parent or guardian or the person in whose custody he is. [C., '97, §§ 5005, 5006; 39 G. A., ch. 203, § 1; 40 Ex. G. A., S. F. 257, § 2.]

1554. Violation. Any person who shall violate any of the provisions of the preceding section shall for the first offense be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days. For a second or any subsequent violation such person shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than one month nor more than six months or by both such fine and imprisonment. [C., '97, §§ 5005, 5006; 39 G. A., ch. 203, § 1; 40 Ex. G. A., S. F. 257, § 3.]

1555. Minors required to give information. Any minor under twenty-one years of age in any place other than at the home of his parent or parents, being in the possession of a cigarette or cigarette papers, shall be required at the request of any peace officer, juvenile court officer, truant officer, or teacher in any school to give information as to where he or she obtained such article. [S., '13, §§ 5007-c, 5007-d; 39 G. A., ch. 203, § 2; 40 Ex. G. A., S. F. 257, § 4.]

1556. Violation. Any minor under twenty-one years of age refusing to give information as required by the preceding section shall be guilty of a misdemeanor and if eighteen years of age or over, shall be punished by a fine not exceeding five dollars or by imprisonment in the county jail not exceeding five days, or by both such fine and imprisonment.

If such minor shall be under the age of eighteen years he or she shall be certified by the magistrate or justice of the peace before whom the case is tried, to the juvenile court of the county for such action as said court shall deem proper.

If any minor having been convicted of violating the preceding section shall give information which shall lead to the arrest of the person or persons having violated any of the provisions of the third preceding section and shall give evidence as a witness in any proceedings that may be prosecuted against said person or persons, the court in its discretion may suspend sentence against the offending minor. [S., '13, §§ 5007-c, 5007-d; 39 G. A., ch. 203, § 2; 40 Ex. G. A., S. F. 257, § 5.]

1557. Permit to sell. No person shall sell cigarettes or cigarette papers without first having obtained a permit therefor in the manner provided by this chapter. Such permit may be granted by resolution of the council of any city or town under any form of government and when so granted, may be issued by the clerk of such city or town. If issued to a person for use outside of a city or town such permit may be granted by resolution of the board of supervisors and when so granted shall be issued by the auditor of the county. Such permit shall remain in force and effect for two years following the July first after its issuance, unless sooner revoked. [39 G. A., ch. 203, §§ 3, 6; 40 Ex. G. A., S. F. 257, § 6.]

1558. Form of permit. Such permit shall:

1. Be granted only to a person owning or operating the place from which sales are to be made under the permit.

2. Not be transferable.

3. Be numbered and show the name and the residence of the person to whom granted and the place of business of the holder where sales are to be conducted under said permit. [39 G. A., ch. 203, § 3; 40 Ex. G. A., S. F. 257, § 7.]

1559. Revocation. The city or town council or board of supervisors, as the case may be, granting such permit shall revoke the permit of any person who has been convicted of violating any of the provisions of this chapter and no permit shall again be granted to a person for a period of two years from the date his permit has been revoked. [39 G. A., ch. 203, § 3; 40 Ex. G. A., S. F. 257, § 8.]

1560. Issuance or revocation certified to state treasurer. The clerk of a city or town and the auditor of a county which has granted a permit shall upon the issuance or revocation of any permit granted under the provisions of this chapter immediately certify such issuance or revocation to the treasurer of state. [39 G. A., ch. 203, § 3; 40 Ex. G. A., S. F. 257, § 9.]

1561. Bond. No permit shall be issued until the applicant therefor shall file a bond to be approved by the council or the board of supervisors granting the permit, which bond shall run to the city, town or county, as the case may be, for the benefit of all parties interested and shall be in the amount of not less than one thousand dollars, conditioned upon the faithful observance of all the provisions of this chapter, including the payment of all taxes, fines, penalties, and costs in said chapter provided, and for the payment of all damages that may result from the sale of cigarettes or cigarette papers in or upon the premises occupied by the obligor. [39 G. A., ch. 203, § 4; 40 Ex. G. A., S. F. 257, § 10.]

1562. Sureties. Said bond shall be signed by the obligor as principal and by a surety company authorized to do business in this state; or by two sureties who shall each qualify in double the amount of the bond, and nei-

ther of whom shall be surety on any other like bond. [39 G. A., ch. 203, § 4; 40 Ex. G. A., S. F. 257, § 10.]

1563. Mulet tax. No permit shall be granted or issued until the applicant shall have paid to the treasurer of the city or town or county granting such permit, a mulet tax as follows:

1. In towns and other places outside any city or town, fifty dollars.

2. In cities of the second class, seventy-five dollars.

3. In cities of the first class, one hundred dollars.

Such mulet tax shall be paid for the period ending the first of July next following such permit and said permit shall become null and void if the holder thereof shall fail to pay a similar mulet tax on or before the first day of July each year thereafter, for the year then beginning. [C., '97, § 5007; 39 G. A., ch. 203, § 5; 40 Ex. G. A., S. F. 257, § 11.]

1564. When payable. Every person holding a permit or carrying on the business of selling or keeping for sale any cigarettes or cigarette papers, or maintaining a place where cigarettes or cigarette papers are sold or kept with intent to sell, shall pay the mulet tax provided for in the preceding section, on or before the first day of July in each year, for the year then beginning. [39 G. A., ch. 203, § 7; 40 Ex. G. A., S. F. 257, § 12.]

1565. Lien and penalties. The said mulet tax shall be a lien upon the real estate wherein or whereon the business is conducted or where a place for selling, or keeping with intent to sell, any cigarettes or cigarette papers is maintained, from the time said tax becomes due and payable. If the tax is not paid in the month of July when the same falls due a penalty of twenty per cent shall be added to the amount thereof for said month and one per cent per month thereafter until paid. [C., '97, § 5007; 39 G. A., ch. 203, §§ 7, 10; 40 Ex. G. A., S. F. 257, § 13.]

1566. Return by assessor—certification of tax. In all cases where the mulet tax has not been paid the assessor of the city or town or township, as the case may be, shall, on or after the twentieth of July of each year, return to the county auditor and the treasurer of state a list of persons who are, or during the preceding year have been, engaged in carrying on within said city or town or township the business of selling or keeping for sale cigarettes or cigarette papers, or maintaining a place where they or any of them are sold or kept for sale, together with a description of the real estate wherein or whereon such business is carried on or such place maintained, with the name of the occupant or tenant or owner or agent.

The county auditor shall thereupon enter said mulet tax as provided for in section 1563 against the real estate so described and also certify said tax to the county treasurer for collection as other taxes.

Any assessor wilfully failing to comply with the provisions of this section shall pay a fine of fifty dollars and costs for each offense. [39 G. A., ch. 203, § 8; 40 Ex. G. A., S. F. 257, § 14.]

1567. Listing by sheriff or citizens. Should the assessor for any reason fail to perform the duties prescribed in the preceding section, the sheriff or any three citizens of the county, may by verified statement on information and belief, addressed to the county auditor, procure the listing of names and description of property and places as provided in said section with the same force and effect as if done by the assessor. [39 G. A., ch. 203, § 9; 40 Ex. G. A., S. F. 257, § 15.]

1568. When tax delinquent—collection. After the expiration of thirty days from the date when the mulct tax becomes due and payable, if not paid it shall be delinquent and collectible by the county treasurer in the same manner in which other delinquent taxes are collectible and all the provisions as to the collection of other delinquent taxes shall apply, including the provisions of law regarding tax sales for delinquent taxes in December of each year. [39 G. A., ch. 203, § 11; 40 Ex. G. A., S. F. 257, § 16.]

1569. Tax paid to general fund. All mulct taxes provided for in this chapter for cities and towns shall be paid to the treasurer of the city or town wherein the business for which such tax is paid is located and shall go into the general fund of said city or town. If paid for conducting business outside of any city or town it shall be paid to the county treasurer and credited to the general fund of such county. [C., '97, § 5007; 39 G. A., ch. 203, § 12; 40 Ex. G. A., S. F. 257, § 17.]

1570. State stamp tax—schedule. There is hereby levied and assessed and shall be collected and paid to the treasurer of state prior to or at the time of sale and delivery to the consumer, upon all cigarettes, cigarette papers, wrappers, and tubes sold, the following taxes:

1. Class A. On cigarettes weighing not more than three pounds per thousand, one mill on each such cigarette.

2. Class B. On cigarettes weighing more than three pounds per thousand, two mills on each such cigarette.

3. Class C. On cigarette papers or wrappers or any papers made or prepared for the purpose of making cigarettes, made up in packages, books or sets, on each such package, book, or set containing:

a. More than twenty-five but not more than fifty papers, one-half cent.

b. More than fifty papers but not more than one hundred papers, one cent.

c. More than one hundred papers, one-half cent for each fifty or fractional part thereof.

4. Class D. On tubes, one cent for each fifty tubes or fractional part thereof. [39 G. A., ch. 203, § 13; 40 Ex. G. A., S. F. 257, § 18.]

1571. Size of package—stamps affixed—cancellation. All cigarettes sold under the provisions of this chapter shall be put up in packages containing five, eight, ten, twelve, fifteen, sixteen, twenty, twenty-four, forty, fifty, eighty, or one hundred cigarettes each. Before being delivered to the consumer each package of cigarettes and each package, book, or set of papers or tubes shall have securely affixed thereto a suitable stamp denoting the tax thereon and said stamp shall be properly canceled prior to removal or consumption under such regulation as the treasurer of state shall prescribe. [39 G. A., ch. 203, § 13; 40 Ex. G. A., S. F. 257, § 19.]

1572. Violation. Any person violating any of the provisions of the last two preceding sections shall be punished by fine of not less than one hundred dollars, nor more than three hundred dollars, and be confined in the county jail until such fine is paid, but not exceeding six months. In addition all cigarettes, cigarette papers, and papers made or prepared for the purpose of making cigarettes, in his possession or in his place shall be confiscated and forfeited to the state. [39 G. A., ch. 203, § 13; 40 Ex. G. A., S. F. 257, § 20.]

1573. Forgery—counterfeiting. Any person who, with intent to defraud the state, shall make, alter, forge, or counterfeit any license, permit, provided for in this chapter, or who shall have in his possession any forged, counterfeited, spurious, or altered license, permit, or stamp with intent to use the same, knowing or having reasonable grounds to believe they are such, shall be fined not more than one thousand dollars, and be imprisoned in the state penitentiary nor more than three years. [39 G. A., ch. 203, § 13; 40 Ex. G. A., S. F. 257, § 21.]

1574. Preparation of stamps—delivery to treasurer—sale. The auditor of state shall prepare and have suitable stamps for use on each kind of package. Upon requisition of the treasurer of state the auditor shall deliver to his order the stamps designated in such requisition and shall charge the treasurer with the stamps so delivered, and shall keep an accurate record of all stamps coming into and leaving his hands. The treasurer of state shall sell the stamps only to dealers holding unrevoked permits. The moneys received from the sale of said stamps shall be turned into the general fund of the state. [39 G. A., ch. 203, § 14; 40 Ex. G. A., S. F. 257, § 22.]

1575. Unused stamps—sale prohibited. The state treasurer shall, on written request, redeem any unused stamps from any dealer to whom the stamps were sold, and pay for same out of any funds derived under the provisions of this chapter. It shall be unlawful for any dealer to sell such stamps to any person whomsoever. [39 G. A., ch. 203, § 14; 40 Ex. G. A., S. F. 257, § 23.]

1576. Additional assistant — compensation. The state treasurer is hereby authorized to appoint an additional assistant, whose sole duty it shall be to administer and enforce the provisions of this chapter, including the collection of all stamp taxes provided for herein. In such enforcement the state treasurer may call to his aid the attorney general, the special agents of the state, any county attorney, or any peace officer. The treasurer is further authorized to appoint such clerks and additional help as may be needed to carry out the provisions of this chapter. The compensation of all persons employed hereunder shall be fixed by the executive council, and be paid from the revenues derived under the provisions of this chapter. [39 G. A., ch. 203, § 15; 40 Ex. G. A., S. F. 257, § 24.]

1577. Violation—nuisance—abatement. Any person violating any of the provisions of this chapter, or maintaining a place where cigarettes or cigarette papers are sold or kept with intent to sell in violation of the provisions of this chapter shall be guilty of keeping and maintaining a nuisance, and the building or place so used for the sale or keeping for sale of cigarettes or cigarette papers in violation of the provisions of this chapter, shall be a nuisance and all persons keeping or maintaining the same or aiding or being concerned therein may be enjoined and such building or place abated as a nuisance.

The procedure in actions to enjoin and abate such nuisance or for contempt for violating any order of injunction in connection therewith shall be, so far as applicable, the same as those now provided by the laws of the state for enjoining and abating intoxicating liquor nuisance. [C., '97, § 5006; 39 G. A., ch. 203, § 16; 40 Ex. G. A., S. F. 257, § 25.]

1578. Search warrant. If any reputable citizen of the county shall make oath before a magistrate that he has reason to believe and does believe that any house, place or building, describing the same and naming the occupant or keeper thereof, is unlawfully used as a place in which to receive, keep, store, sell, or give away cigarettes or cigarette papers in violation of this chapter or that the keeper or occupant is in any way concerned, engaged, or employed in owning or keeping any such cigarettes or cigarette papers in such building or place with intent to violate the law or authorize or permit the same to be done, such magistrate shall issue a search warrant particularly describing the place to be searched, the person or persons to be apprehended or the articles or things to be seized, directed to any peace officer in the county, commanding him to search such house, building, or place and to seize such cigarettes or cigarette papers and for the arrest of the occupant or keeper thereof. [S., '13, § 5007-a; 40 Ex. G. A., S. F. 257, § 26.]

1579. Seizure—sale. Any cigarettes or cigarette papers seized under a search warrant and the occupant or keeper of the house, build-

ing or place where they were seized shall be brought before the magistrate who issued the search warrant. If the magistrate finds that such cigarettes or cigarette papers so seized were kept in violation of law, he shall make and enter upon his docket an order for their forfeiture to the county in which they were seized and shall issue a special execution directing any peace officer of the county to whom the magistrate shall deliver it, to sell such forfeited goods to any person having a permit to keep and sell the same at the highest cash price he can obtain, and such peace officer shall be exempt from the provisions of this chapter providing for stamping such articles before sale. [S., '13, § 5007-a; 40 Ex. G. A., S. F. 257, § 27.]

1580. Proceeds. The proceeds derived from such sale shall be paid by the peace officer to the county treasurer and by him credited to the school fund of the county. [40 Ex. G. A., S. F. 257, § 27.]

1581. Return. Such peace officer shall return the special execution to the court from which it was issued as in other cases. [40 Ex. G. A., S. F. 257, § 27.]

1582. Additional tax penalty assessed by magistrate. Any magistrate who shall, in a search warrant proceeding, order the forfeiture and sale of any cigarettes or cigarette papers which have been seized as having been kept for sale or with intent to sell in violation of the provisions of this chapter, shall certify a copy of the record of such finding and order to the county treasurer within ten days after the entry of such order, and thereupon the county treasurer shall, in addition to all other penalties and taxes, assess a tax of three hundred dollars against the property, building, or place in or upon which such cigarettes or cigarette papers were unlawfully kept for sale, or with intent to sell in violation of the provisions of this chapter, and which tax the county treasurer shall collect in the same manner and by the same proceedings as other taxes and credit the same to the city or town or general fund of the county as the case may be. [S., '13, § 5007-b; 40 Ex. G. A., S. F. 257, § 28.]

1583. Notice of assessment. Within ten days after the receipt of the magistrate's certificate the county treasurer shall by registered mail notify the keeper or occupant of such house, building, or place and the owner of record thereof, if any, of such assessment. [S., '13, § 5007-b; 40 Ex. G. A., S. F. 257, § 29.]

1584. Request to exhibit permit—prima facie evidence. The proprietor or keeper of any building or place wherein cigarettes or cigarette papers shall be kept for sale, or with intent to sell, shall upon request of any peace officer of the county exhibit to such peace officer his permit to so keep and sell. His refusal or failure to so exhibit such permit shall be prima facie evidence that such cigarettes or cigarette papers are kept for sale or with in-

tent to sell in violation of the provisions of this chapter. [S., '13, § 5007-a; 40 Ex. G. A., S. F. 257, § 30.]

1585. Advertisement near public schools prohibited. No bills, pictures, posters, placards, or other matter used to advertise the sale of tobacco in any form shall be distributed, posted, painted, or maintained within four hundred feet of premises occupied by a public school or used for school purposes. This pro-

vision shall not apply to advertisement in newspapers regularly published and distributed to subscribers and purchasers as such. [S., '13, § 5028-s; 40 Ex. G. A., S. F. 257, § 31.]

1586. Penalty. Any person violating any of the provisions of the preceding section shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days. [S., '13, § 5028-t; 40 Ex. G. A., S. F. 257, § 32.]

CHAPTER 79

HOUSES OF PROSTITUTION

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- 1614. Certification, entry, and payment of tax.
- 1615. Collection of tax.
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1587. Houses of prostitution—equipment—nuisance—injunction. Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of lewdness, assignation, or prostitution is guilty of a nuisance, and the building, erection, or place, or the ground itself, in or upon which such lewdness, assignation, or prostitution is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining such nuisance, are also declared a nuisance and shall be enjoined and abated as hereinafter provided. [S. S., '15, § 4944-h1; 40 Ex. G. A., H. F. 52, § 1.]

1588. Injunction—procedure. When a nuisance is kept, maintained, or exists, as defined in this chapter, the county attorney, or any citizen of the county, or any society, association, or body incorporated under the laws of this state, may maintain an action in equity in the name of the state of Iowa, upon the relation of such county attorney, citizen, or corporation to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same from further conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists, from further permitting such building or ground or both to be so used. [S. S., '15, §. 4944-h2; 40 Ex. G. A., H. F. 52, § 2.]

1589. Notice—temporary writ—without bond. The defendants shall be served with notice as in other actions and in such action the court, or judge in vacation, shall upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction without bond, if the existence of such nuisance shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise as the complainant may elect, unless the court or judge by previous order, shall have directed the form and manner in which such evidence shall be presented. [S. S., 15, § 4944-h2; 40 Ex. G. A., H. F. 52, § 3.]

1590. Owners defined—unknown owners—publication of notice. The person in whose name the real estate affected by the action stands on the books of the county auditor, for the purposes of taxation, shall be presumed to be the owner thereof, and in case of unknown persons having or claiming any ownership, right, title, or interest in property affected by the action, such may be made parties to the action by designating them in the notice and petition as "all other persons unknown claiming any ownership, right, title, or interest in the property affected by the action" and service thereon may be had by publishing such notice in the manner prescribed for the publication

of original notices in ordinary actions. [S. S., '15, § 4944-h9; 40 Ex. G. A., H. F. 52, § 4.]

1591. Trial. Any person having or claiming such ownership, right, title, or interest, and any owner or agent in behalf of himself and such owner may make, serve, and file his answer therein within twenty days after such service, and have trial of his rights in the premises by the court; and if said cause has already proceeded to trial or to findings and judgment, the court shall by order fix the time and place of such trial and shall modify, add to, or confirm such findings and judgment as the case may require. Other parties to said action shall not be affected thereby. [S. S., '15, § 4944-h9; 40 Ex. G. A., H. F. 52, § 4.]

1592. Temporary restraining order. Where a temporary injunction is prayed for, the court, or judge in vacation, on the application of plaintiff, may issue an ex parte restraining order, restraining the defendants and all other persons from removing or in any manner interfering with the furniture, fixtures, musical instruments, and movable property used in conducting the alleged nuisance, until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon. [S. S., '15, § 4944-h2; 40 Ex. G. A., H. F. 52, § 5.]

1593. Writ—how served. The restraining order may be served by handing to and leaving a copy of said order with any person in charge of said property or residing in the premises or apartment wherein the same is situated, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such premises or apartment where such nuisance is alleged to be maintained, or by both such delivery and posting. [S. S., '15, § 4944-h2; 40 Ex. G. A., H. F. 52, § 6.]

1594. Inventory. The officer serving such restraining order shall forthwith make and return into court an inventory of the personal property situated in and used in conducting or maintaining such nuisance. [S. S., '15, § 4944-h2; 40 Ex. G. A., H. F. 52, § 6.]

1595. Mutilation or removal of notice. Where such order is so posted, mutilation or removal thereof, while the same remains in force, shall be a contempt of court, provided such posted order contains thereon or therein a notice to that effect. [S. S., '15, § 4944-h2; 40 Ex. G. A., H. F. 52, § 6.]

1596. Notice. Three days' notice in writing shall be given the defendants of the hearing of the application for temporary injunction, and if then continued at the instance of defendant, the temporary writ as prayed shall be granted as a matter of course. [S. S., '15, § 4944-h2; 40 Ex. G. A., H. F. 52, § 7.]

1597. Answer. Each defendant so notified shall serve upon the complainant or his at-

torney a verified answer on or before the date fixed in said notice for said hearing, and such answer shall be filed with the clerk of the district court of the county wherein such cause is triable, but the court may allow additional time for so answering, providing such extension of time shall not prevent the issuing of said temporary writ as prayed for. The allegations of the answer shall be deemed to be traversed without further pleading. [S. S., '15, § 4944-h2; 40 Ex. G. A., H. F. 52, § 7.]

1598. Scope of injunction. When an injunction has been granted, it shall be binding on the defendant throughout the judicial district in which it was issued, and any violation of the provisions of the injunction or temporary restraining order herein provided, shall be a contempt and punished as hereinafter provided. [S. S., '15, § 4944-h2; 40 Ex. G. A., H. F. 52, § 7.]

1599. Trial term. The action when brought shall be triable at the first term of the court. [S. S., '15, § 4944-h3; 40 Ex. G. A., H. F. 52, § 8.]

1600. Evidence. In such action evidence of the general reputation of the place shall be competent for the purpose of proving the existence of said nuisance and shall be prima facie evidence of such nuisance and of knowledge thereof and of acquiescence and participation therein on the part of the owners, lessors, lessees, users, and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form of property used in conducting or maintaining said nuisance. [S. S., '15, § 4944-h3; 40 Ex. G. A., H. F. 52, § 8.]

1601. Dismissal. If the complaint is filed by a citizen or a corporation, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the county attorney in writing or in open court. [S. S., '15, § 4944-h3; 40 Ex. G. A., H. F. 52, § 9.]

1602. Delay in trial. If the court is of the opinion that the action ought not to be dismissed, he may direct the county attorney to prosecute said action to judgment at the expense of the county, and if the action is continued more than one term of court, any citizen of the county or the county attorney may be substituted for the complaining party and prosecute said action to judgment. [S. S., '15, § 4944-h3; 40 Ex. G. A., H. F. 52, § 9.]

1603. Costs. If the action is brought by a citizen or a corporation and the court finds there were no reasonable grounds or cause for said action, the costs may be taxed to such citizen or corporation. [S. S., '15, § 4944-h3; 40 Ex. G. A., H. F. 52, § 9.]

1604. Violation of injunction. In case of the violation of any injunction granted under

the provisions of this chapter, or of a restraining order or the commission of any contempt of court in proceedings under this chapter, the court, or in vacation a judge thereof, may summarily try and punish the offender. [S. S., '15, § 4944-h4.]

1605. Procedure. The proceedings shall be commenced by filing with the clerk of the court a complaint under oath, setting out and alleging facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. [S. S., '15, § 4944-h4.]

1606. Penalty. A party found guilty of contempt under the provisions of this chapter shall be punished by a fine of not less than two hundred nor more than one thousand dollars or by imprisonment in the county jail not less than three nor more than six months or by both fine and imprisonment. [S. S., '15, § 4944-h4.]

1607. Abatement—sale of property—building closed—contempt. If the existence of the nuisance be admitted or established in an action as provided in this chapter, or in a criminal proceeding in the district court, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale of such in the manner provided for the sale of chattels under execution, and shall direct the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released as hereinafter provided. [S. S., '15, § 4944-h5; 40 Ex. G. A., H. F. 52, § 10.]

1608. Fees. For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property, on execution, and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court. [S. S., '15, § 4944-h5; 40 Ex. G. A., H. F. 52, § 10.]

1609. Breaking closed building punished. If any person shall break and enter or use a building, erection, or place so directed to be closed, he shall be punished as for contempt as provided in this chapter. [S. S., '15, § 4944-h5; 40 Ex. G. A., H. F. 52, § 11.]

1610. Duty of county attorney. In case the existence of such nuisance is established in a criminal proceeding in a court not having equitable jurisdiction, it shall be the duty of the county attorney to proceed promptly under this chapter to enforce the provisions and penalties thereof; and the finding of the defendant guilty in such criminal proceedings, unless

reversed or set aside, shall be conclusive as against such defendant as to the existence of the nuisance. [S. S., '15, § 4944-h6.]

1611. Proceeds. All moneys collected under this chapter shall be paid to the county treasurer. The proceeds of the sale of the personal property as provided in the fourth preceding section, shall be applied in payment of the costs of the action and abatement or so much of such proceeds as may be necessary, except as hereinafter provided. [S. S., '15, § 4944-h6.]

1612. Release of property on filing bond. If the owner of the premises in which said nuisance has been maintained appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the court in the full value of the property, to be ascertained by the court, or in vacation by the judge thereof, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation the judge, if satisfied of his good faith, may order the premises, closed or sought to be closed under the order of abatement, delivered to said owner, and said order of abatement canceled so far as the same may relate to said real property. The release of the property under the provisions of this section shall not release it from the injunction herein provided against the property nor any of the defendants nor from any judgment, lien, penalty, or liability to which it may be subject by law. [S. S., '15, § 4944-h7.]

1613. Muclet tax. When a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by this chapter, there shall be imposed upon said building and the ground upon which the same is located and against the person or persons maintaining said nuisance and the owner or agent of said premises, a tax of three hundred dollars. The imposing of said tax shall be made by the court as a part of the proceeding. [S. S., '15, § 4944-h8; 40 Ex. G. A., H. F. 52, § 12.]

1614. Certification, entry, and payment of tax. The clerk of said court shall make and certify a return of the imposition of said tax forthwith to the county auditor, who shall enter the same as a tax upon the property, and against the persons upon which or whom the lien was imposed, as and when the other taxes are entered, and the same shall be and remain a lien on the land upon which such lien was imposed until fully paid. Any such lien imposed while the tax books are in the hands of the auditor shall be immediately entered therein. The payment of said tax shall not relieve the persons or property from any other penalties provided by law. [S. S., '15, § 4944-h8; 40 Ex. G. A., H. F. 52, § 12.]

1615. Collection of tax. The provisions of the law relating to the collection of taxes in

this state, the delinquency thereof, and sale of property for taxes shall govern in the collection of the tax herein prescribed in so far as the same are applicable. [S. S., '15, § 4944-h8; 40 Ex. G. A., H. F. 52, § 13.]

1616. Application of tax. The said tax collected shall be applied in payment of any deficiency in the costs of the action and abatement on behalf of the state to the extent of such deficiency after the application thereto of the proceeds of the sale of personal property as hereinbefore provided, and the remainder of said tax together with the unexpended portion of the proceeds of the sale of personal property shall be distributed in the same manner as fines collected for the keeping of houses of ill fame, except that twenty per cent of the amount of the whole tax collected and of the whole proceeds of the sale of said personal property, as provided in this chapter, shall be paid by the treasurer to the attorney represent-

ing the state in the injunction action, at the time of final judgment. [S. S., '15, § 4944-h8; 40 Ex. G. A., H. F. 52, § 13.]

1617. Tax assessed against person served or appearing. When such nuisance has been found to exist under any proceeding in the district court or as in this chapter provided, and the owner or agent of such building or ground whereon the same has been found to exist was not a party to such proceeding, nor appeared therein, the said tax of three hundred dollars shall, nevertheless, be imposed against the persons served or appearing and against the property as in this chapter set forth. [S. S., '15, § 4944-h9; 40 Ex. G. A., H. F. 52, § 14.]

1618. Rule of interpretation. Should any provision or item of this chapter be held to be unconstitutional, such fact shall not be held to invalidate the other provisions and items thereof. [S. S., '15, § 4944-h10.]

CHAPTER 80

STATE FIRE MARSHAL

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1619. Appointment—term—vacancy. The governor shall, with the approval of the senate, appoint every four years a state fire marshal, whose term of office shall be four years and begin on the first day of July following the appointment. If any appointment, original or to fill a vacancy, is made when the senate is not in session, it shall be acted upon at the next session thereof, and in such case the appointee shall perform the duties of the office till such appointment is acted upon by the senate. His office shall be at the seat of government and he shall devote his entire time to the duties thereof. [S., '13, §§ 2468-a, 2468-m; 40 Ex. G. A., S. F. 53, § 1.]

1620. Removal. The governor may remove the fire marshal at any time for cause, and appoint another for the unexpired term. [S., '13, § 2468-a; 40 Ex. G. A., S. F. 53, § 2.]

NOTE: Removal by court or executive council, see §§ 1091, 1114.

1621. Appointment of deputy. The fire marshal may appoint, with the approval of the executive council, one deputy who shall have the same qualifications as the marshal. [S., '13, §§ 2468-b, 2468-d; 39 G. A., ch. 209, § 28; 40 Ex. G. A., S. F. 53, § 3.]

1622. Duties of deputy. During the absence or inability of the fire marshal or a vacancy in that office, the deputy shall perform the duties of fire marshal. [S., '13, § 2468-c; 40 Ex. G. A., S. F. 53, § 4.]

1623. Expenses. The fire marshal and his deputy and assistants shall be entitled to their necessary traveling and hotel expenses while away from the city of Des Moines. The fire marshal may contract other necessary expenses in the performance of his official duties, but shall not exceed the amount appropriated for the support of his department. [S., '13, § 2468-l; 39 G. A., ch. 209, § 30; 40 Ex. G. A., S. F. 53, § 5.]

1624. Investigation of causes of fires—duties of city and other officers. The state fire marshal, his deputy or inspectors, shall immediately investigate the cause, origin, and circumstances of every fire occurring within the state, when so requested by any official mentioned in this section, or the sheriff, deputy sheriff, or county attorney of any county. The chief of the fire department of every city, town, or village in which a fire department is established, the mayor of every town or city in which no fire department exists, and the township clerk of every township, outside the limits of any city, town, or village, shall investigate the cause, origin, and circumstances of every fire occurring in such city, town, village, or township by which property has been destroyed or damaged, and whether such fire was the result of carelessness or design. [S., '13, §§ 2468-d, 2468-e; 40 Ex. G. A., S. F. 53, § 6.]

1625. Time for investigation—report. The state fire marshal shall have the right to supervise and direct such investigation when notified as above provided. The officer making investigation of fires occurring in cities, villages, towns, or townships, shall forthwith notify said fire marshal, and shall within one week of the occurrence of the fire furnish to the said fire marshal a written statement of all facts relating to the cause and origin of the fire and such other information as may be called for by the blanks provided by said fire marshal. [S., '13, § 2468-e; 40 Ex. G. A., S. F. 53, § 7.]

1626. Refusal of officer to investigate—penalty. Any chief of a fire department, mayor, or township clerk who fails or refuses to make the investigation and report required of him, shall be fined in a sum not less than five dollars nor more than one hundred dollars. [S., '13, § 2468-e; 40 Ex. G. A., S. F. 53, § 8.]

1627. Record of fires. The fire marshal shall keep in his office a record of all fires occurring in the state, showing the name of the owners, name or names of occupants of the property at the time of the fire, the sound value of the property, the amount of insurance thereon, the total amount of insurance collected, the total amount of loss to the property owner, together with all the facts, statistics, and circumstances, including the origin of the fire, which may be determined by the investigation. Such record shall at all times be open to public inspection. [S., '13, § 2468-f; 40 Ex. G. A., S. F. 53, § 9.]

1628. Testimony under oath. The fire marshal or his deputy or inspectors shall, when in their opinion further investigation is necessary, take or cause to be taken the testimony under oath of all persons supposed to have knowledge of any facts, or to have means of knowledge in relation to the matter in which an examination is herein required to be made, and shall cause the same to be reduced to writing. [S., '13, § 2468-g; 40 Ex. G. A., S. F. 53, § 10.]

1629. Oaths—attendance of witnesses—books and papers. The fire marshal and his deputy or inspectors shall each have power in any county in the state to administer an oath and compel the attendance of witnesses before them, or either of them, to testify in relation to any matter which is by the provisions of this chapter a subject of inquiry and investigation, and may require the production of any books, papers, or documents necessary for such investigation. [S., '13, § 2468-h; 40 Ex. G. A., S. F. 53, § 11.]

1630. Refusal to testify or produce books or papers. Any witness who refuses to be sworn, or refuses to testify, except as otherwise provided by law, or who disobeys any lawful order of said fire marshal, his deputy or inspectors, or who fails to produce any books, papers, or documents touching any matter under examination, shall be guilty of a misdemeanor, and shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days. [S., '13, § 2468-h; 40 Ex. G. A., S. F. 53, § 12.]

1631. Crimes in connection with fires—arrest. If the fire marshal or his deputy shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, he or they shall cause such person to be arrested and charged with the offense, or either of them, and shall furnish to the proper county attorney all such evidence, together with the names of witnesses and all of the information obtained, including a copy of all matter and testimony taken in the case. [S., '13, § 2468-g; 40 Ex. G. A., S. F. 53, § 13.]

1632. Authority to enter and inspect buildings. The state fire marshal and his deputy or inspectors and all officers upon whom the duty of inspection is enjoined by this chapter, or either of them, shall have authority in the performance of the duties imposed by the provisions of this chapter, to enter upon, or examine any buildings, or premises adjoining or near the same, for the purpose of inspecting the same and the contents thereof. [S., '13, § 2468-i; 40 Ex. G. A., S. F. 53, § 14.]

1633. Removal or repair. When the fire marshal or his deputy shall find any building or structure, which for want of proper repair or by reason of age and dilapidated condition, is especially liable to fire, and is so situated as to endanger other buildings or property therein, or when any such official shall find in any building or upon any premises combustible or explosive matter or inflammable materials dangerous to the safety of any buildings or premises, he shall in writing order the same to be removed or remedied and such order shall be complied with by the owner or occupant of said building or premises, within such reasonable

time as the fire marshal shall specify. [S., '13, § 2468-j; 40 Ex. G. A., S. F. 53, § 15.]

1634. Review of order by fire marshal. Any owner, lessee, or occupant of a building may, within five days after an order is issued for the removal, destruction, or repair thereof, or the removal of the contents thereof or the change of any other conditions, file with the fire marshal a petition for a review of such order. Thereupon the marshal shall fix a place which shall be within the county where the property is situated, and a time, for such review, which shall be not less than three nor more than ten days after the filing of such petition, and notify the petitioner thereof. [40 Ex. G. A., S. F. 53, § 16.]

1635. Hearing on review. The marshal shall hear the evidence both for and against said order and may affirm, modify, or revoke such order according to the facts presented at such hearing, and make record of his findings and final order. [40 Ex. G. A., S. F. 53, § 17.]

1636. Appeal to district court. Any owner, lessee, or occupant of a building may appeal to the district court of the county where such building is located from a final order of the fire marshal requiring the removal, destruction, or repair of such building, or the removal of any of its contents, or changing of its condition in any other respect, within thirty days from the delivery to such person of a copy of such final order. [S., '13, § 2468-j; 40 Ex. G. A., S. F. 53, § 18.]

1637. How appeal taken. Such appeal shall be taken by filing in the office of the fire marshal notice of such appeal, specifying the order appealed from and the court and term thereof to which the appeal is taken, accompanied by a bond in the penal sum of one hundred dollars with sureties approved by the clerk of said court, conditioned to pay all costs that shall be adjudged against appellant and abide the decree, judgment, and order of the court. [40 Ex. G. A., S. F. 53, § 19.]

1638. How tried—trial term. Said appeal shall be tried in equity and the first term shall be the trial term, and if filed in term time shall be triable at any time after the filing of the transcript. The court may affirm, modify, or revoke the order from which the appeal is taken. [40 Ex. G. A., S. F. 53, § 20.]

1639. Transcript—how appeal entitled. Forthwith after notice of appeal is filed in the office of the fire marshal, he shall make or cause to be made a certified transcript of the proceedings on review before him, including the order appealed from, notice of appeal, bond and all documentary evidence filed in the proceeding and transmit the same to the clerk of said court who shall docket said appeal and entitle it in the name of the appellant against the state of Iowa. [40 Ex. G. A., S. F. 53, § 21.]

1640. County attorney to represent state. The county attorney shall represent the state and the fire marshal, but not to the exclusion of any other attorney who may be engaged in said cause. [40 Ex. G. A., S. F. 53, § 22.]

1641. Appeal to supreme court. Either party may appeal from a judgment or order of the district court within the time and in the manner provided by law for appeals in ordinary actions. [40 Ex. G. A., S. F. 53, § 22-a1.]

1642. Suspension of order. Any order of the fire marshal from which an appeal has been taken to the district or supreme court, shall remain suspended during the pendency of such appeal. [40 Ex. G. A., S. F. 53, § 22-a2.]

1643. Costs. If the appellant fails in the appeal the costs shall be taxed against him, but if the order is revoked or annulled the costs shall be taxed to the state. If the order shall be modified, the court may in its discretion apportion the costs. [40 Ex. G. A., S. F. 53, § 23.]

1644. Enforcing decree and judgment. The court shall issue such mandatory and other writs as shall be necessary to enforce its decree, judgment, or any final order in any such case, and may punish as for contempt of court any refusal to obey the same. [40 Ex. G. A., S. F. 53, § 24.]

1645. Appeal exclusive remedy. Unless appealed from as in this chapter provided, any order made by the fire marshal or his deputy shall be final, and the right of appeal as herein provided shall be the exclusive remedy against the enforcement of such orders. [40 Ex. G. A., S. F. 53, § 25.]

1646. Time for compliance with order—penalty. When no petition of review has been filed or when the fire marshal on review or the court on appeal has affirmed or modified an order for the removal, destruction, or repair of a building, or the removal of any of its contents, or the change of any of its conditions, the owner, lessee, or occupant shall comply with such order within thirty days after the delivery of the same or a copy thereof to him, either personally or by registered letter to his last known address, or by service upon his duly appointed agent. If such owner, lessee, or occupant shall fail to comply with such order he shall be subject to a penalty of ten dollars for each day of failure or neglect after the expiration of said period, which shall be recovered in the name of the state and paid into the treasury of the county where collected. [S., '13, § 2468-j; 40 Ex. G. A., S. F. 53, § 26.]

1647. Refusal to obey orders—duty of marshal—expense. If any person fails to comply with a final order of the marshal or his deputy or of a court on appeal and within the time fixed, then such officers are empowered and authorized to cause such building or premises

to be repaired, torn down, demolished, materials and all dangerous conditions removed, as the case may be, and at the expense of such person, and if such person within thirty days thereafter fails, neglects, or refuses to repay said officers the expense thereby incurred by them, such officers shall certify said expenses, together with twenty-five per cent penalty thereon, to the auditor of the county in which said property is situated. [40 Ex. G. A., S. F. 53, § 27.]

1648. Notice. Notice of the reasonableness and amount of assessment shall be given in a manner as provided for giving notice in ordinary actions by the marshal or his deputy to the property owner, also notifying the property owner that a hearing thereon shall be had before the auditor of said county on a day not less than ten or more than fifteen days from the date of completed service of notice upon the property owner and if no appeal is taken therefrom to the district court at the time fixed in said notice the auditor shall hear and determine the matter. Any person aggrieved by the order and determination of the auditor may appeal therefrom to the district court of the county by serving notice within twenty days thereafter upon said auditor; and such appeal shall be heard and determined by the court as in cases of appeals from the order of the fire marshal as provided in this chapter. [40 Ex. G. A., S. F. 53, § 27.]

1649. Entry of tax. Said auditor shall enter said expense on the tax records of said county as a special charge against the real estate on which said building is or was situated, if in the name of such person, otherwise as a personal tax against such person, and the same shall be collected as other taxes and, when collected, shall, together with the penalty thereon, be refunded to the fire marshal, and by him paid into the state treasury where it shall be credited to the appropriation for expenses of the fire marshal's office. [40 Ex. G. A., S. F. 53, § 27.]

1650. Investigation may be private. Investigation by or under the direction of the state fire marshal or his deputy or inspectors may in their discretion be private. They may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not allowed to communicate with each other until they have been examined. [40 Ex. G. A., S. F. 53, § 28.]

1651. Fire drills in public schools—exits unlocked. It shall be the duty of the state fire marshal and his deputy to require teachers of public and private schools, in all buildings of more than one story, to have at least one fire drill each month, and to require all teachers of such schools, whether occupying buildings of one or more stories, to keep all doors and exits of their respective rooms and buildings unlocked during school hours. [S., '13, § 2468-k; 40 Ex. G. A., S. F. 53, § 29.]

1652. Bulletin. The state fire marshal shall prepare a bulletin upon the causes and dangers of fires, arranged in not less than four divisions or chapters, and under the direction of the executive council shall publish and deliver the same to the public schools throughout the state. [S., '13, § 2468-k; 40 Ex. G. A., S. F. 53, § 30.]

1653. Annual report—publication—distribution. The state fire marshal shall file with the governor annually, at the time provided by law, a detailed report of his official acts and of the affairs of his office which report shall be published and distributed as the reports of other state officers. [S., '13, § 2468-n; 40 Ex. G. A., S. F. 53, § 31.]

NOTE: Time of filing report, see § 247.

1654. Fee for fires reported—payment. There shall be paid to the chief of the fire department, and to mayors of incorporated towns, and to the township clerk of every township, who are by this chapter required to report fires to the state fire marshal, the sum of fifty cents for each fire so reported to the satisfaction of the state fire marshal and in addition thereto there shall be paid to township clerks mileage at the rate of ten cents per mile for each mile traveled to and from the place of fire. Said allowances shall be paid by the state fire marshal out of any funds appropriated for the use of the office of said state fire marshal. [S., '13 § 2468-o; 40 G. A., ch. 26; 40 Ex. G. A., S. F. 53, § 32.]

1655. Annual appropriation for expenses and fees. There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of seven thousand five hundred dollars annually, or so much thereof as may be necessary for the purpose of paying the expenses and fees authorized by this chapter. The said fire marshal shall keep on file in the office an itemized statement of all expenses incurred by his department. [S., '13, § 2468-p; 39 G. A., ch. 209, § 29; 40 G. A., ch. 27; 40 Ex. G. A., S. F. 53, § 33.]

CHAPTER 81

FIRE COMPANIES

1656. Exemptions of members.

1657. Certificate of service—evidence of exemption.

1656. Exemptions of members. Any person while an active member of any fire engine, hook and ladder, hose, or any other company for the extinguishment of fire, or the protection of property at fires, under the control of the corporate authorities of any city or town, shall be exempt from the performance of military duty and labor on the roads on account of poll tax, and from serving as a juror. Any person who has been an active member of such company in any city or town as aforesaid, and has faithfully discharged his duties as such for the term of ten years, shall thereafter be exempt from military duty in time of peace, from serving as a juror, and from labor on the roads. [R., '60, § 1763; C., '73, § 1560; C., '97, § 2462.]

1657. Certificate of service—evidence of exemption. Any person who has thus served in any company for the term of ten years shall receive from the foreman of the company of which he shall have been a member a certificate to that effect, and on its presentation to the clerk he shall file the same in his office and give his certificate, under the corporate seal, to such person, setting forth the name of the company of which such person was a member and the duration of such membership, which certificate

1658. Certificate of exemption from working roads.

1659. False claim to exemption punished.

shall be received in all courts as evidence that the person legally holding the same is entitled to such exemption. [R., '60, § 1764; C., '73, § 1561; C., '97, § 2463.]

1658. Certificate of exemption from working roads. To entitle a person to exemption from labor on the roads before the expiration of the term of ten years, he shall, on or before the first day of April of each year, file with the clerk of the city or town a certificate, signed by the foreman of the company of which he is a member, that the holder thereof is an active member of said fire company, and thereupon the clerk shall enter said exemption upon the street tax list for that year. [C., '73, § 1562; C., '97, § 2464.]

1659. False claim to exemption punished. Any person who shall by misrepresentation, or by the use of a false certificate or the certificate of any other person, endeavor to avail himself of the benefits of this chapter, upon conviction thereof, shall be imprisoned in the county jail for a period of not more than six nor less than one month, and pay a fine of not less than ten nor more than one hundred dollars. [R., '60, § 1765; C., '73, § 1563; C., '97, § 2465.]

CHAPTER 82

FIRE ESCAPES AND OTHER MEANS OF ESCAPE FROM FIRE

1660. Fire escapes—buildings equipped.

1661. Terms defined.

1662. Fire escapes required.

1663. Location of fire escapes and exits.

1664. How constructed.

1665. Construction and arrangement.

1666. Class of escapes—stairways.

1667. Doors to open outward.

1668. Number and size of exits.

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1671. Rules and regulations.

1672. Building inspectors.

1673. Powers and duties.

1674. Limitation of powers.

1675. Notice to owner.

1676. Appeal.

1677. Violations.

1660. Fire escapes—buildings equipped. All buildings, structures, and enclosures of three or more stories in height, and such other buildings of a less number of stories as are in this chapter specially designated, shall be equipped with such protection against fire, and means of escape therefrom, as in this chapter provided. [S. S., '15, § 4999-a6; 40 Ex. G. A., S. F. 45, § 1.]

I. C.—17

1661. Terms defined. The word "building" as used in this chapter shall include all structures or enclosures of each of the classes mentioned or referred to herein. The word "story" shall include a basement story when such basement story is on the average five feet or more above the ground. [S. S., '15, § 4999-a6; 40 Ex. G. A., S. F. 45, § 2.]

1662. Fire escapes required. Every building, structure, or enclosure of three or more stories, and every schoolhouse of two stories and not provided with two stairways located approximately at each end of the hallway in the second story, and every structure having a stage, and every theater or opera house of more than one story, or having balconies or galleries, shall have at least the number of fire escapes of the kind prescribed by law as determined by the following formula:

Number of fire escapes shall equal C times P.

P equals the average maximum number of persons on the story with the highest number above the first story.

C is a coefficient and is fixed, and shall be taken for the various classes of buildings as follows:

1. Buildings having wooden or combustible walls, C equals .020.
2. Buildings having brick or combustible walls with combustible interior, C equals .014.
3. Buildings having brick or incombustible walls and incombustible roof and slow burning construction, C equals .012.
4. Buildings of fireproof construction throughout, C equals .007.
5. Buildings of wooden or combustible walls equipped with efficient water sprinkler system, C equals .014.
6. Buildings having brick or incombustible walls with combustible interior equipped with efficient water sprinkler system, C equals .008.
7. Buildings having brick or incombustible walls and incombustible roof and slow burning construction equipped with efficient water sprinkler system, C equals .006.
8. Fireproof buildings equipped with efficient water sprinkler system, C equals .003.

When the result of the said formula is one or any fraction thereof, the number of escapes shall be one. The number of additional escapes required shall include any fraction as a unit, except when such fraction shall be thirty-three hundredths or less, in which case the fraction may be dropped if permitted by the inspector. [S. S., '15, § 4999-a7; 40 Ex. G. A., S. F. 45, § 3.]

1663. Location of fire escapes and exits. The following regulations as to location of fire escapes and exits are hereby established:

1. The first fire escape required by law shall be placed as far as possible from the existing inside stairway or passage to the lower floors of the building, taking into account the hazard and the path or route of access to the escape from such stairway.
2. The distance to the nearest fire escape from any inside stairway or passage to the lower floor shall not exceed two hundred feet by way of the path or route of access to such fire escape from such stairway or passage.
3. Additional fire escapes to those otherwise provided by law shall be provided wherever it is necessary to pass within twenty feet of any stairway or elevator shaft from any portion of the building more than twenty feet from

such stairway or shaft to reach the fire escape required by the provisions of law and where there are peculiar, unusual, or extreme hazards, additional fire escapes may be required by those authorized by law to regulate and fix the number and requirements of fire escapes.

4. When the inspector shall deem it necessary on account of the height of any building or on account of the number of persons ordinarily occupying said building, either permanently or temporarily in the course of business, such building shall be equipped with a sufficient number of fire escapes to permit the exit of all occupants within the following periods of time:

- a. Buildings with wooden or combustible walls, two minutes.
- b. Buildings having brick or incombustible walls with combustible interior, three minutes.
- c. Buildings having brick or incombustible walls and incombustible roof and slow burning interior construction, four minutes.
- d. Buildings of fireproof construction throughout, fifteen minutes; or a less period of time if hazard of merchantable contents of such building may so require.

In estimating the period of time required the rate of descent on the fire escapes shall not be taken in excess of one and five-tenths feet of vertical distance, or height, per second, when said fire escapes are fully loaded, which rate of descent shall be estimated to permit the exit of not to exceed one person per second; but the time of complete exit as herein provided may be increased where efficient sprinkler systems are installed, such increase of time to be determined by the character and efficiency of the sprinkling system unless peculiar or unusual hazards exist. [S. S., '15, § 4999-a7; 40 Ex. G. A., S. F. 45, § 4.]

1664. How constructed. All fire escapes shall be constructed as described in the following classifications:

Class A. Fire escapes of this class shall consist of those more safe and efficient than outside ladders and stairways and which shall have been approved as such by the labor commissioner, and may include inside stairways and means of escape in fireproof buildings when approved by said commissioner.

Class B. Fire escapes of this class shall consist of a suitable outside stairway of not less than twenty-two inches clear width of steel or wrought iron constructed with platform and with stationary stairway carried down to within six and one-half feet of the ground, or with a drop or counterbalanced stairway from the second story platform or balcony to the ground.

Class C. Fire escapes of this class shall consist of at least one ladder, not less than eighteen inches in width, of steel or wrought iron construction, of sufficient size and strength for safety, attached to the outside walls of the building and provided with platforms of steel or wrought iron inclosed by suitable railings and of such dimensions and in such proximity

to the windows of each story above the first as to render access to the ladder from each story easy and safe, the said ladder to extend to within six and one-half feet of the ground or to be provided with a drop ladder hung at the second story in such a manner that it can be easily lowered for use. [S. S., '15, § 4999-a8; 40 Ex. G. A., S. F. 45, § 5.]

1665. Construction and arrangement.

1. All of the above classes of fire escapes shall be of suitable material, construction, arrangement, and location to make the same safe and efficient and no fire escape of a higher class shall be less safe and efficient than one of a lower class and the provisions of each lower class with respect to platform, access to windows and openings, and sufficiency of strength shall apply to the upper class except where allowed to be modified by those having authority.

2. All fire escapes reaching the top floor shall have suitable extensions reaching from the upper platform to safe landing on the roof of the building; but the commissioner may waive this provision when on examination he finds that such ladder would be an element of danger.

3. All fire escapes of any of the foregoing classes shall have such windows or openings leading to the platform or balconies of the same as shall be necessary to make the same safe and efficient, and all routes or paths of access to said fire escapes shall be safe and sufficient, with all doors of rooms leading to fire escapes one-half glass and equipped with mortise latches or equivalent so that the same may be easily and quickly opened by breaking the glass and turning the latches from the inside of the doors, all so as to render access to the fire escape from each floor above the first easy and safe. No window or door leading to the platform of a fire escape shall be fastened against exit.

4. The attachment of all fire escapes shall be made in a thorough and substantial manner and sufficient to carry the full load that may be placed on said fire escapes when the same are crowded, with a factor of safety of not less than four.

5. Suitable signs indicating the location of fire escapes shall be posted at all entrances to elevators, stairways, landings, and in all rooms.

6. In all buildings which are used for lodging or sleeping purposes, and in opera houses, theaters, and public assembly halls, and other buildings occupied or used at night where, in the judgment of the commissioner, this provision should apply, red lights shall be maintained at night or when the buildings are darkened, to indicate the place or opening through which access to the fire escape is obtained. Red lights shall not be used for lighting purposes in such buildings at locations where they may be mistaken for an exit light. [S. S., '15, § 4999-a8; 40 Ex. G. A., S. F. 45, § 6.]

1666. Class of escapes—stairways.

1. Hotels, lodging houses, tenements, apart-

ment buildings, schools, retail or department stores, seminaries, college buildings, office buildings, hospitals, asylums, opera houses, theaters, assembly halls, and factories required by law to be equipped with fire escapes shall be equipped with those of class "A" or class "B". All other buildings and structures required to be equipped with fire escapes shall be equipped with those of class "A", "B", or "C", or with a combination of such classes.

2. Class "C" shall not be used on any building over three stories in height in which more than five persons are at any one time allowed upon any one of the floors above said third story nor where any of the persons allowed upon any floor above the third story are females or minors; but the labor commissioner may under peculiar conditions and where the hazards are not great:

a. Permit fire escapes of class "C" to be used on buildings of more than three stories, but when ladder fire escapes are permitted on buildings more than three stories in height the ladders thereof must offset at the platforms and must not continue in the same line for more than one story.

b. Permit fire escapes of class "C" or other approved means of escape to be used on an ordinary dwelling of not more than three stories in height and temporarily used in part for lodging purposes when not more than five persons, none of whom are under sixteen years of age, occupy the third floor.

3. Where stairways not less than forty-four inches in clear width are provided they shall be taken as the equivalent of two or more single stairways in proportion to their width, provided the means of escape and efficiency and safety of said escapes are not thereby diminished. [S. S., '15, 4999-a9; 39 G. A., ch. 241, § 1; 40 Ex. G. A., S. F. 45, § 7.]

1667. Doors to open outward. The entrance and exit doors of all hotels, churches, lodge halls, courthouses, assembly halls, theaters, opera houses, colleges, public schoolhouses, and other structures where the hazard is deemed sufficient by the inspector, and the entrance doors to all class and assembly rooms in public school buildings, shall open outward and shall not be fastened against exit or so the same can not be easily opened from within. [S. S., '15, § 4999-a9a; 40 Ex. G. A., S. F. 45, § 8.]

1668. Number and size of exits. Inspectors shall, subject to the final decision of the commissioner, have power to determine the number and size of exits from all theaters, opera houses, and assembly halls, and from other buildings having one or more balconies, the location of such exits with reference to fire escapes, and shall require that no exit shall be fastened so as to prevent free passage from the building. [S. S., '15, § 4999-a10; 40 Ex. G. A., S. F. 45, § 9.]

1669. Supervision of fire escapes. The labor commissioner, except when otherwise specially provided by law, shall have general charge and supervision of the inspection and regulation of

fire escapes and means of escape and of the enforcement of the law relating thereto, and for this purpose the inspectors named herein, and others upon whom there is imposed by law or ordinance any duty with reference to fire escapes, shall be subject to his direction and to the rules and regulations adopted by such commissioner. [S. S., '15, § 4999-a10; 40 Ex. G. A., S. F. 45, § 11.]

1670. Standard specifications. The said commissioner shall adopt standard uniform specifications for the various classes of fire escapes provided by law and shall furnish such specifications to all persons who are by law made inspectors of fire escapes and means of escape from fire, and such persons shall keep the same on file in their respective offices. [S. S., '15, § 4999-a10; 40 Ex. G. A., S. F. 45, § 12.]

1671. Rules and regulations. The labor commissioner shall make all necessary rules and regulations to carry out the purpose of this law and have the same printed in pamphlet form for distribution; and he shall have the power to approve any and all plans relating to fire escapes of the various classes, and it shall be his duty to see that the same conform to the law, and to make rulings and orders relative thereto, and where any dispute or disagreement arises with respect to the plans and specifications for any fire escape or means of escape from fire, the commissioner shall have the power and authority to determine and pass upon the same and make orders relative thereto. [S. S., '15, § 4999-a10; 40 Ex. G. A., S. F. 45, § 13.]

1672. Building inspectors. The building inspector or other officer performing like duties in cities having such officer, and if there be no such officer, then the chief of the fire department, and if there be no chief of a paid fire department, the mayor of such city or town, or if the building is not within the corporate limits of any city or town, then the chairman of the board of supervisors, shall inspect all fire escapes within their respective jurisdictions, except buildings otherwise required by law to be inspected. [S. S., '15, § 4999-a10; 40 Ex. G. A., S. F. 45, § 14.]

1673. Powers and duties. Such inspection officers shall as often as necessary, and whenever complaint is made, carefully inspect and examine such fire escapes, and such inspection shall include all paths or routes between any interior passage to a lower floor and the opening and means of access to the said fire escapes, and the signs, lights, exits, and means of escape of all buildings required to be equipped with fire escapes and required to have certain exits and means of escape; and upon the complaint of any person that any fire escape, exit, or means of escape from fire is being maintained contrary to law, or any rule or regulation relative thereto or relative to protection against fire is being violated, such inspector shall examine into the conditions

complained of and determine what, if any, requirements should be made in relation thereto, and shall have power to make all reasonable requirements and regulations in conformity with the law and to determine all matters with respect to fire escapes, protection from fire, and means of escape from buildings. [S. S., '15, § 4999-a10; 40 Ex. G. A., S. F. 45, § 15.]

1674. Limitation of powers. Said inspectors, however, shall be subject to the rules and under the direction of the department of labor, and their duties shall not conflict with the duties of inspection by the labor commissioner, the engineer of the department of public health, and their assistants or deputies. [S. S., '15, § 4999-a10; 40 Ex. G. A., S. F. 45, § 16.]

1675. Notice to owner. It shall be the duty of any inspector required by law to inspect fire escapes or means of escape from fire to serve or cause to be served a written notice in behalf of the state of Iowa upon the owner, if he be a resident of the county in which the buildings are situated, or if he be a nonresident of such county, then upon his agent or lessee, that the buildings are not provided with fire escapes in accordance with the provisions of this chapter, or that the fire escapes or means of escape from fire are defective, unsafe, or dangerous, notifying such owner of such lack of fire escapes, condition of the building, defective, dangerous, or unsafe means of escape from fire or any matter relating thereto, and notifying him to comply with the law and requirements of the inspector or commissioner within sixty days after the service of such notice; but the time of such notice may be extended by the labor commissioner if necessary. [S. S., '15, § 4999-a10; 40 Ex. G. A., S. F. 45, § 17.]

1676. Appeal. The owner, by himself, his agent, or lessee, may appeal from the action or requirement of any inspector at any time within sixty days after the service of such notice by a written communication addressed to said commissioner, setting forth such objections as he may have to the complaint, requirement, or regulations of such inspector; and it shall be the duty of the commissioner to pass upon and determine all matters of disagreement relating to fire escapes and the means of escape from fire in buildings, and all rules, regulations, findings, and orders made by the commissioner in his discretion, shall be reasonable and not unduly burdensome. [S. S., '15, § 4999-a10; 40 Ex. G. A., S. F. 45, § 18.]

1677. Violations. Any person who shall violate any of the provisions of law relating to fire escapes or means of escape from fire, or any owner, agent, or trustee having the full care and control of any building and who has been served with notice as provided herein and who shall, within sixty days of the service of the notice, or within the time as extended by the commissioner, fail and neglect

to comply with the requirements of law, or of the inspector or the commissioner, or who shall fail, refuse, or neglect to perform any order or requirement fixed by law, or by the labor commissioner, shall be punished by a fine of not less than twenty-five dollars nor

more than one hundred dollars. Each additional week of neglect to comply with such notice, order, or requirement shall constitute a separate offense. [S. S., '15, § 4999-a11; 40 Ex. G. A., S. F. 45, § 19.]

CHAPTER 83

PASSENGER AND FREIGHT ELEVATORS

1678. General equipment.
1679. Standard equipment.
1680. Enforcement.
1681. Conference board.

1682. Code of standards.
1683. Ordinances.
1684. Violations.

1678. General equipment. Every elevator and elevator opening and machinery connected therewith in every elevator, hoistway, hatchway, and wellhole shall be so constructed, guarded, equipped, maintained, and operated as to render it safe for the purposes for which it is used. Nothing herein contained shall be construed to apply to any elevator hoisting device and anything connected therewith coming under the jurisdiction of the state mine inspector. [40 G. A., ch. 18, § 1.]

1679. Standard equipment. No elevator used for the carrying of passengers or freight shall be operated or used unless the same is constructed, installed, equipped, maintained, and operated in compliance with the standards of equipment, rules, and regulations adopted as provided in this chapter. [40 G. A., ch. 18, § 2.]

1680. Enforcement. All elevators coming within the provisions of this chapter shall be subject to inspection at any time by the commissioner of the bureau of labor statistics and the commissioner is hereby empowered and authorized to enforce all standards of equipment, rules, and regulations that may be adopted as in this chapter provided, and to enforce all of the provisions of this chapter and may, for the purpose of compelling compliance with the rules, prohibit the use and operation of any elevator, which does not comply with the standards of equipment, rules and regulations adopted, until such time as the elevator may be constructed, installed, repaired, or placed in such condition as to conform to the code of standards, rules, and regulations. [40 G. A., ch. 18, § 2.]

1681. Conference board. Immediately upon the taking effect of this chapter the governor shall appoint a conference board for the purpose of adopting a code of standards, rules, and regulations for the construction, installation, equipment, maintenance, and operation of elevators. Such board to consist of a representative from each of the engineering departments

of the state college of agriculture and mechanic arts and the state university, a representative of an elevator construction company, and a representative of a casualty insurance company, and a representative of the bureau of labor statistics, all of whom shall serve without compensation. [40 G. A., ch. 18, § 3.]

1682. Code of standards. Such board shall adopt a code of standards, rules, and regulations for the construction, installation, equipment, maintenance, and operation of elevators and when adopted shall have the force and effect of law, and the commissioner of the bureau of labor statistics is hereby authorized to publish such code in pamphlet form for distribution to all interested persons making application therefor. [40 G. A., ch. 18, § 4.]

1683. Ordinances. Cities and towns and cities with a commission form of government are hereby empowered to enact ordinances providing for the inspections and regulation of the operation of such elevators and of the operators thereof; provided, however, that the provision of said ordinance shall not be in conflict with the provisions of this chapter or with the rules and regulations herein provided for. [40 G. A., ch. 18, § 5.]

NOTE: Above section made applicable to special charter cities by § 6753.

1684. Violations. Every person, firm, or corporation operating an elevator in violation of any of the provisions of this chapter or in violation of the code of standards, rules, and regulations adopted by the board, or who resists or interferes with any official or agent of the bureau of labor statistics in the enforcement of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not to exceed thirty days or by such fine and imprisonment. [40 G. A., ch. 18, § 6.]

CHAPTER 84

LIABILITY OF HOTEL KEEPERS AND STEAMBOAT OWNERS FOR BAGGAGE

- 1685. Limitation on liability.
- 1686. Exception—failure to receive property.
- 1687. Nature of liability.

1685. Limitation on liability. No keeper of any hotel, inn, or eating house, nor the owner of any steamboat, shall be liable to any guest for more than one hundred dollars for the loss of or injury to any money, jewelry, articles of gold or silver manufacture, precious stones, personal ornaments, documents of any kind, or other similar property, if such keeper or owner at all times provides:

1. A metal safe or vault, in good order and fit for the safe keeping of such property.

2. Locks or bolts on the door and proper fastenings on the transoms and windows of the sleeping quarters used by guests.

3. Printed notices posted up in a conspicuous place in the office or other public room and in the quarters occupied by guests, stating that such places for safe deposit are provided for the use and accommodation of guests and patrons. [C., '97, § 3138; S., '13, § 3138; 39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 70.]

1686. Exception—failure to receive property. The limited liability provided in the preceding section shall not apply where:

1. A guest has offered to deliver such valuables to said keeper or owner for custody in such metal safe or vault, and

2. Said keeper or owner has omitted or refused to receive and deposit the same in such safe or vault and give such guest a receipt therefor.

But such keeper or owner shall not be required to receive from any one guest for deposit in such safe or vault, property having a market value of more than five hundred dollars. [C., '97, § 3138; S., '13, § 3138; 39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 71.]

1687. Nature of liability. The liability of such keeper or owner for loss of or injury to

- 1688. Limitation on amount of liability.
- 1689. Leaving baggage after registering off.
- 1690. Forwarding baggage before becoming guest.

personal property placed by any guest in his care, other than that described in the two preceding sections, shall be that of a depository for hire. [39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 72.]

1688. Limitation on amount of liability. In no event shall the liability of such keeper or owner exceed the following amounts:

1. For each trunk and its contents, two hundred fifty dollars.

2. For each valise and its contents, one hundred fifty dollars.

3. For each box, bundle, or package and its contents, fifty dollars.

4. For any and all other miscellaneous effects of each guest, not exceeding one hundred dollars. [39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 73.]

1689. Leaving baggage after registering off. In case baggage or other personal property of a guest has remained in any hotel, inn, eating house, or steamboat forty-eight hours after the guest has paid his bill and registered off and the relation of keeper and guest has ceased, such keeper or owner may hold such baggage or property at the risk of the owner. [39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 74.]

1690. Forwarding baggage before becoming guest. In case baggage or other property has been forwarded to any hotel, inn, eating house, or steamboat, and the owner of such baggage or property does not within forty-eight hours become a guest, such keeper or owner may hold such baggage or property at the risk of the owner. [39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 75.]

CHAPTER 85

INSPECTION OF PASSENGER BOATS

1691. Inspectors.
 1692. Boats.
 1693. Pilots and engineers.
 1694. Fees.
 1695. Operation without certificate.
 1696. Reports.
 1697. Headlights.

1698. Safety appliances.
 1699. Speed at bridge.
 1700. Penalty.
 1701. Life preservers.
 1702. Inspection of life preservers.
 1703. Penalties.

1691. Inspectors. The governor shall appoint one or more suitable persons as inspectors of passenger boats, to hold office for two years from the first Monday in May in each even-numbered year, unless sooner removed, who shall qualify by taking an oath, to be indorsed upon the certificate of appointment, faithfully and honestly to discharge the duties of the office. [C., '97, § 2511.]

1692. Boats. Any inspector, on the request of the owner, agent, or master of any boat other than rowboat, upon the inland waters of the state, having a carrying capacity of five or more passengers, shall carefully and thoroughly inspect such boat, its appliances and machinery, and, if found in proper condition and safe for the carriage of persons or passengers, give his certificate thereof, including therein the number of persons or passengers that may be carried, and on what waters; which certificate, or a copy thereof, shall be posted in a conspicuous place on the boat, and any boat so inspected and certified shall be entitled to run for the season following the date thereof. [C., '97, § 2512; S., '13, § 2512.]

1693. Pilots and engineers. In like manner, upon the request of any pilot or engineer for a license as such, the inspector shall forthwith investigate the competency of the applicant, his acquaintance with and experience in his business, his habits as to sobriety, and other qualifications, and, if found capable of performing well his duties, and of good habits, he shall issue his certificate authorizing him to act as pilot or engineer, as the case may be, for five years from the date thereof, unless sooner revoked for cause, which revocation when made shall take effect upon approval by the governor. [C., '97, § 2512; S., '13, § 2512.]

1694. Fees. The inspector may charge and require advance payment for inspection, for each sailboat, one dollar, each boat propelled by other power, with a capacity of not more than twenty persons, five dollars, those of greater capacity, ten dollars, and for each applicant for license as pilot or engineer, three dollars. [C., '97, § 2512; S., '13, § 2512.]

1695. Operation without certificate. If any owner, agent, or master of any such boat, having a capacity of carrying five or more persons, plying the inland waters of the state, shall hire, or offer to hire, such boat for the carrying of persons, or receive persons thereon for hire, without first obtaining annually, before the boating season, a certificate as in this chapter required, or if such owner, agent, or master, having obtained such certificate, shall permit or receive for carriage on such boat a greater number of persons than authorized therein, or if any person shall act as pilot or engineer on any boat mentioned for which inspection and license are herein required, without first obtaining a license therefor, or if, having such license, he continues to follow such avocation after the same has been revoked, or has expired, he shall be fined in a sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year, or punished by both fine and imprisonment; but the provisions of this chapter shall not apply to vessels licensed by authority of the United States. [C., '97, § 2513; S., '13, § 2513.]

1696. Reports. Each inspector annually, on or before the first day of January, shall report to the governor the number and date of licenses granted pilots or engineers, to whom issued, the date thereof, the number and kind of boats inspected, the time and place of inspection, upon what waters to be used, and such other matters as may be considered useful or of general interest, with the total amount of fees received from all sources. [C., '97, § 2514; S., '13, § 2514.]

NOTE: Annual report, see § 247.

1697. Headlights. Any person or company operating any boat, launch, or other vessel propelled by machinery, or through the means of sails, upon the public waters of the state between the hours of thirty minutes after sunset and thirty minutes before sunrise shall cause the same to carry at the bow thereof, properly lighted, operated, and conspicuously displayed, a headlight, the lens or mirror of which shall be not less than five inches in diameter. [S. '13, § 2514-a.]

1698. Safety appliances. All such vessels operated by machinery having a speed exceeding ten miles per hour shall be equipped with reverse gear, reversible propeller, or other adequate means for prompt stoppage and reversal thereof. [S., '13, § 2514-b.]

1699. Speed at bridge. All such vessels when passing through a draw or bridge or beneath same shall slow down to a speed of not more than four miles per hour. [S., '13, § 2514-c.]

1700. Penalty. Any person or company violating any of the provisions of the three preceding sections shall upon conviction be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days. [S., '13, § 2514-d.]

1701. Life preservers. Every boat for which a certificate of inspection is issued as provided in this chapter shall at all times

when in service be supplied with a number of life preservers of recognized standard make and efficiency equal to one-half the number of passengers that may be carried by such boat under its certificate of inspection; said life preservers to be kept within view and easy reach of the passengers. [S., '13, § 2514-e.]

1702. Inspection of life preservers. At the time of inspecting the boat under the provisions of this chapter the life preservers shall be inspected and if found in proper condition such fact shall be included in the certificate of inspection; and no certificate of inspection shall be issued to the owner, agent, or master of any boat unless supplied with the life preservers as above provided. [S., '13, § 2514-f.]

1703. Penalties. Any owner, agent, or master of any such boat who shall violate the terms of the two preceding sections shall be subjected to the penalties provided for in section 1695. [S., '13, § 2514-g.]

CHAPTER 86

PROPAGATION AND PROTECTION OF FISH, GAME, WILD BIRDS, AND ANIMALS

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1704. **State ownership and title—exceptions.** The title and ownership of all fish, mussels, clams, and frogs in any of the public waters of the state, and in all ponds, sloughs, bayous, or other waters adjacent to any public waters stocked with fish by overflow of public waters, and of all wild game, animals, and birds, including their nests and eggs, found in the state, whether game or nongame, native or migratory, except deer in parks and in public and private preserves, the ownership

of which was acquired prior to April 19, 1911, are hereby declared to be in the state, except as otherwise in this chapter provided. [S., '13, §§ 2562-c, 2563-j; S. S., '15, § 2562-b; 40 G. A., ch. 32; 40 Ex. G. A., H. F. 54, § 1.]

NOTE: For exception, see § 1707.

1705. **Conclusive presumption.** Any person catching, taking, killing, or having in possession any of such fish, mussels, clams, frogs, game, animals, or birds, their nests or eggs,

in violation of the provisions of this chapter, shall be held to consent that the title to the same shall be and remain in the state for the purpose of regulating and controlling the catching, taking, or having in possession the same, and disposing thereof after such catching, taking, or killing. [S., '13, § 2562-c; S. S., '15, § 2562-b; 40 G. A., ch. 32; 40 Ex. G. A., H. F. 54, § 2.]

1706. Private preserves. Any person desiring to engage in the business of raising and selling game birds or animals in a wholly inclosed preserve or inclosure, of which he is the owner or lessee, may make application in writing to the state game warden for a license so to do. The state game warden, when it shall appear that such application is made in good faith, shall upon the payment of an annual fee of two dollars issue to such applicant a breeder's license permitting him to breed and raise any of such game birds or animals on such preserve or inclosure, and to sell the same for breeding or stocking purposes on or within such preserve or inclosure, and kill, use, or sell the same for food. Such license must be renewed annually upon payment of the fee as above provided, and the possession of such license shall exempt the licensee from the penalties of this chapter for killing, having in possession, or selling such game birds or animals, or any of them; provided such licensee shall raise or breed such birds or animals upon or within such preserve or inclosure, or secure the same by purchase from without the state, or from a licensed breeder within the state. [S. S., '15, § 2562-b; 40 Ex. G. A., H. F. 54, § 3.]

1707. Private fishing preserve. Persons who raise or propagate fish upon their own premises, or who own premises on which there are waters having no natural inlet or outlet through which such waters may become stocked or replenished with fish, are the owners of the fish therein and may take them therefrom or permit the same to be done. Any person taking said fish without the consent of such owner shall be liable to such owner for three times the value thereof. [C., '73, § 4054; C., '97, § 2545; 40 Ex. G. A., H. F. 54, § 4.]

1708. State game warden—appointment. Within two months prior to March 1, 1925, and each four years thereafter, the governor shall appoint a state game warden who shall hold office for a period of four years from March first of the year of the appointment, subject to the approval of the senate. Said state game warden shall enforce the provisions of this chapter and shall have his office at the seat of government and devote his entire time to the discharge of his duties. [C., '97, § 2539; S. S., '15, § 2539; 39 G. A., ch. 209, § 39; 40 Ex. G. A., H. F. 54, § 5.]

1709. Fish hatcheries—game farms—distribution of fish and game. The state game war-

den shall have the right to establish and control the state hatcheries and game farms, which shall be used for the purpose of stocking the waters of the state with fish and the natural covers with game birds to the extent of the means provided for that purpose; and impartially and equitably distribute all birds, eggs, and fry raised by or furnished to the state, or for it through other sources, in the streams, lakes, and natural covers of the state. [C., '97, § 2539; S. S., '15, § 2539; 40 Ex. G. A., H. F. 54, § 6.]

1710. Reports and accounting. At the time provided by law, the state game warden shall make a report to the governor of his doings for the preceding biennial period, including therein an itemized statement of all receipts and disbursements; also all contracts for the taking of soft fish from the waters of this state, with the profits accruing from such contracts; also such other information upon the subject of the culture of fish and the protection of game as may be of value. All funds derived under said contracts shall be paid into the state fish and game protection fund. [C., '97, § 2539; S. S., '15, § 2539; 40 G. A., ch. 28, § 1; 40 Ex. G. A., H. F. 54, § 7.]

NOTE: Time of report, see § 246.

1711. Monthly accounting. The state game warden shall monthly forward to the state board of audit, under oath, itemized statements of all moneys received and the source thereof, and all the moneys expended, and for what purpose, with the balance on hand in each separate fund. Such monthly statement shall also show the number and varieties of fish distributed and in what waters. [C., '97, § 2539; S. S., '15, § 2539; 40 Ex. G. A., H. F. 54, § 7-a.]

1712. Assistant and deputy wardens. The state game warden may appoint three assistant game wardens and such number of deputies as he may deem necessary. Such assistants and deputy wardens shall act under the advice and direction of the state game warden, and perform such duties in relation to their offices as may be required of them. [C., '97, § 2562; S. S., '15, § 2562; 39 G. A., ch. 209, § 40; 40 Ex. G. A., H. F. 54, § 8.]

1713. Arrests—assistance of peace officers. Assistant and deputy game wardens may arrest without warrant any person violating the provisions of this chapter. They may serve and execute any warrant or process issued by any court in enforcing said provisions, in the same manner as any peace officer might serve and execute the same, and they shall receive the same fee therefor. They may call to their aid any peace officer or other person, whose duty shall then be to enforce or aid in enforcing the provisions of this chapter. [C., '97, § 2562; S. S., '15, § 2562; 40 Ex. G. A., H. F. 54, § 9.]

1714. Seizure of unlawful game. It shall be the duty of the state game warden, his as-

sistants and deputies, and police officers of the state, to seize with or without warrant and take possession of any fish, birds, or animals, or mussels, clams, and frogs, except for bait, which have been caught, taken, or killed at a time, in a manner, or for a purpose, or had in possession or under control, or offered for shipment, contrary to the provisions of this chapter. [S. S., '15, § 2539; 38 G. A., ch. 98, § 8; 40 G. A., ch. 32; 40 Ex. G. A., H. F. 54, § 10.]

1715. Seizure of unlawful devices. Any nets, seines, traps, spears, contrivances, materials, and substances whatever, while in use or in possession or kept or maintained for the purpose of catching, taking, killing, trapping, or deceiving any fish, birds, or animals contrary to any of the provisions of this chapter, are hereby declared to be a public nuisance; and it shall be the duty of the state game warden, his assistants and deputies, sheriffs, constables, and police officers of the state, without warrant or process, to take or seize any and all of the same, and confiscate and sell or destroy any and all of the same without warrant or process, and no liability shall be incurred to the owner or any other person for such seizure and destruction, and said warden or his assistants or deputies, or other peace officers, shall be released from all liability to any person for any act done or committed, or property seized or destroyed, under or by virtue of this section. [C., '73, § 4052; C., '97, § 2540; S. S., '15, §§ 2539, 2540; 40 Ex. G. A., H. F. 54, § 11.]

1716. Search warrant. Any court having jurisdiction of the offense, upon receiving proof of probable cause for believing that any fish, mussels, clams, frogs, birds, or animals caught, taken, killed, had in possession, under control, or shipped, contrary to any of the provisions of this chapter, or hidden or concealed in any place, shall issue a search warrant and cause a search to be made in any place therefor. The property so seized under such warrant shall be safely kept under the direction of the court so long as necessary for the purpose of being used as evidence in any trial, and if such trial results in a conviction the property seized shall be confiscated by the state game warden, his assistants or deputies. [S. S., '15, § 2539; 38 G. A., ch. 98, § 8; 40 G. A., ch. 32; 40 Ex. G. A., H. F. 54, § 12.]

1717. State fish and game protection fund. The assistant and deputy game wardens shall pay to the state game warden, on or before the fifteenth day of each month, all license fees and other moneys collected by them in the discharge of their duties. All such sums and all license fees, penalties, and forfeitures from other sources, including all funds realized from any fish, game, animals, or other property confiscated and sold under the provisions of this chapter, shall constitute the state fish and game protection fund, which shall be kept separate by the state treasurer, and out of which shall be paid the compensation, travel-

ing, contingent, and office expenses of the state game warden, his assistants and deputies, including the expenses of the propagation of fish and game, gathering and distributing fish in the waters of the state, and all expenditures necessary for the enforcement of the provisions of this chapter; and all which expenses shall not exceed in any one year the amount collected and placed to the credit of said fund. The fish and game protection fund shall be paid out only on verified vouchers approved by the state board of audit. [S., '13, §§ 2547-b, 2563-a6, 2563-a11; 40 Ex. G. A., H. F. 54, § 13.]

1718. License to hunt and trap. No person shall hunt, pursue, kill, or take any wild animal, bird, or game in this state in any manner, or trap fur-bearing animals or game without first procuring a license. [S. S., '15, § 2563-a1; 40 Ex. G. A., H. F. 54, § 14.]

1719. License to fish. No male person over the age of eighteen years shall fish in the stocked meandered lakes of the state without first procuring a fishing license. [S., '13, § 2563-a2; 37 G. A., ch. 168, § 1; 40 Ex. G. A., H. F. 54, § 14.]

1720. Exceptions. No license shall be required from owners or tenants of farm lands, their wives, children, or employees for hunting, trapping, or fishing upon lands owned or occupied by them. [40 Ex. G. A., H. F. 54, § 14.]

1721. Consent of parent or guardian. No license shall be granted any person under eighteen years of age unless the written consent of parents or guardian is attached to the application. [S., '13, § 2563-a2; 40 Ex. G. A., H. F. 54, § 15.]

1722. Application blanks to be furnished to recorders. The state game warden shall furnish county recorders with application blanks for a license, and license blanks. These blanks shall provide for the insertion of the name, age, sex, and place of residence of the applicant and of the licensee. The license shall bear a facsimile signature of the state game warden, and the seal and signature of the recorder of the county in which it is issued. [S., '13, § 2563-a3; 40 Ex. G. A., H. F. 54, § 16.]

1723. Authority of license. The license shall authorize its holder to fish and hunt in accordance with the provisions of this chapter in any county of the state, but not on private waters, or on inclosed or cultivated lands without permission of the owner or the tenant, nor hunt upon any public highway or railroad right-of-way. [S., '13, § 2563-a3; 40 Ex. G. A., H. F. 54, § 16.]

1724. Application for license. An applicant for a license to fish and hunt shall fill out an authorized application blank, subscribe and swear to it before the county recorder, a notary, or a justice of the peace. Such applica-

tion blanks shall be furnished by the county recorder to any person requesting same. The application shall then be presented to the county recorder who shall issue all hunting and fishing licenses, the issuance of which is not otherwise provided for in this chapter. [S. S., '15, § 2563-a4; 37 G. A., ch. 168, § 2; 40 Ex. G. A., H. F. 54, § 17.]

1725. Fees—accounting. Before any license is issued to any applicant the following license fees shall be paid to the county recorder:

1. For resident of the state for fishing with hook and line in stocked meandered lakes and hunting, one dollar.
2. For nonresident or resident alien, for fishing with hook and line and trot-line in any state waters, three dollars.
3. For nonresident or resident alien, for hunting, ten dollars.

These fees the county recorder shall pay at the end of each month to the state treasurer who shall place them to the credit of the fish and game protection fund. [S. S., '15, § 2563-a4; 37 G. A., ch. 168, § 2; 38 G. A., ch. 98, § 7; 40 Ex. G. A., H. F. 54, § 17.]

1726. License record. The county recorder shall keep a record of the licenses he issues which shall show the date of issue, the name and address of the person to whom issued, and the date of revocation, if revoked. [S., '13, § 2563-a7; 40 Ex. G. A., H. F. 54, § 18.]

1727. Terms of license. Each license shall be signed in ink by the licensee. Such license, if issued to a resident of the state and not a resident alien, shall entitle such person to whom issued, to fish with hook and line in stocked meandered lakes and to hunt, pursue, and kill wild animals, birds, or game within the state at any time when same shall be lawful.

A license issued to a nonresident or resident alien shall entitle such person to either fish with hook and line and trot-line, or to hunt, pursue, and kill wild animals, birds, or game, within the state at any time when same shall be lawful.

A license shall not entitle the person to whom issued to fish, nor to hunt, pursue, or kill wild animals, birds, or game, in this state without having such license upon his person at the time of so doing and exhibiting it for inspection and permitting it, on demand, to be examined by any person.

All resident combination fishing and hunting licenses and all hunting licenses shall be void on and after the first day of July next succeeding the issuance thereof.

All nonresident or resident alien fishing licenses shall be void after the last day of December of the year in which the same are issued. [S., '13, § 2563-a8; 40 Ex. G. A., H. F. 54, § 19.]

1728. Nonresidents—restrictions. A nonresident holding a valid license may take from the state not to exceed twenty-five game birds or

animals, provided they are so carried as to be readily inspected and his license is shown on request. [S., '13, § 2563-a5; 40 Ex. G. A., H. F. 54, § 20.]

1729. Revocation. A license in the possession of any person other than to whom first issued, and, on complaint, the license of any person hunting on inclosed or cultivated lands without permission of the owner or tenant shall be revoked by the county recorder. [S., '13, § 2563-a9; 40 Ex. G. A., H. F. 54, § 21.]

1730. Fishing zones. For the purposes of the next succeeding section the state shall be divided into two zones as follows:

1. The northern zone shall embrace all counties of the state north of the township line which divides the townships of Range 81 N. from those of Range 82 N. except such portions of Cedar and Clinton counties as are north of such township line.

2. The southern zone shall embrace all counties south of the township line which divides the townships of Range 81 N. from those of Range 82 N. and those portions of Cedar and Clinton counties lying north of said township line. [40 Ex. G. A., H. F. 54, § 21-a1.]

1731. Closed seasons on fish. It shall be unlawful for any person to take from the waters of the state:

1. Any salmon or trout from September first to April fourteenth.

2. Any black bass in the northern zone from December first to June fourteenth or in the southern zone from November fifteenth to May thirty-first.

3. Any pike, crappie, pickerel, catfish, perch, or any other game fish, in the northern zone from December first to May fourteenth, or in the southern zone from November fifteenth to April thirtieth.

All dates in this section are inclusive. [C., '97, § 2540; S. S., '15, § 2540; 40 Ex. G. A., H. F. 54, § 22.]

1732. Catch limits. It shall be unlawful for any person at any time to take from the waters of the state in any one day more than twenty-five of said kinds of fish in the aggregate, of which total number not more than ten may be pike or bass, except as otherwise provided in this chapter when using licensed nets or seines. [S. S., '15, § 2540; 40 Ex. G. A., H. F. 54, § 23.]

1733. Size limits. No person shall at any time kill, destroy, have in possession or under control, for any purpose whatever, any pike, pickerel, or blue or channel catfish less than twelve inches in length, any bass less than ten inches in length, except rock or silver bass which shall not be less than seven inches in length, or any trout or crappie less than eight inches in length, or any perch less than seven inches in length, or any sunfish less than six inches in length, except as otherwise pro-

vided in this chapter, when using licensed nets or seines. Any such fish taken shall be immediately returned to the water with as little injury to the fish as possible. [S. S., '15, § 2540; 39 G. A., ch. 256, § 1; 40 Ex. G. A., H. F. 54, § 24.]

1734. Tackle restrictions—trot-lines. No person shall at any time take from the waters of the state any fish, except as in this chapter otherwise provided, except with hook, line and bait; nor shall any person use more than two lines, with one hook upon each line, in still fishing or otherwise, except when using a trot-line in the manner provided in this chapter, or in trolling or casting a spoonhook. Any person may, from June fifteenth to November fourteenth, both dates inclusive, use not more than one trot-line in streams only, and extending not more than half the distance across such streams, except that at no time shall a trot-line be used within three hundred feet of a fishway or dam. [C., '73, § 4052; C., '97, §§ 2540, 2542; S. S., '15, § 2540; 40 Ex. G. A., H. F. 54, § 25.]

1735. Prohibited articles. The possession of a spear, trap, net, or seine, for fishing, shall be unlawful, except where the use of such is permitted by this chapter. [C., '97, § 2540; S. S., '15, § 2540; 40 Ex. G. A., H. F. 54, § 26.]

1736. Minnows for bait. In taking minnows for bait one-quarter inch mesh seine not exceeding five yards in length may be used, and longer seines not exceeding thirty feet in length may be used if approved in writing by the state game warden in inland lakes or boundary waters of the state. If any game fish shall be taken, they shall at once be restored unharmed to the water whence taken. "Minnows" as used in this section shall not include young bass, pike, crappie, trout, salmon, or fry of any game fish, native or otherwise. [C., '73, § 4052; C., '97, § 2541; 40 Ex. G. A., H. F. 54, § 27.]

1737. Trolling from launches and steamboats. No fish may be taken by trolling from any gasoline, oil, or electric launch or steamboat propelled by such power, from any of the inland waters of the state. The foregoing clause relative to launches and steamboats shall not apply to or be effective on the Mississippi or Missouri rivers. [39 G. A., ch. 212, §§ 1, 2; 40 Ex. G. A., H. F. 54, § 28.]

1738. Explosive—drugs. It shall be unlawful for anyone to place in the waters of the state any lime, ashes, or drugs of any kind, or other substance, or explode dynamite, gun cotton, giant powder, or other compound or preparation, or use electricity in any way, with the intent to kill or to so affect any fish that it may be taken. [C., '97, § 2540; S. S., '15, § 2540-a; 40 Ex. G. A., H. F. 54, § 29.]

1739. Fishing through ice. It shall be unlawful for anyone to have, erect or use, while

fishing on or through the ice, any house, shed or other protection against the weather, or have or use any stove or other means for creating artificial heat. [C., '73, § 4052; C., '97, § 2540; S. S., '15, § 2540; 40 Ex. G. A., H. F. 54, § 30.]

1740. Stocked waters. No person shall fish for or by any means catch any fish in any waters of the state which have been stocked with brood fish one or two years old, within one year from the date of stocking thereof, if notice of such fact is by the authority of the state game warden posted around such waters. [C., '97, § 2540; S. S., '15, § 2540; 40 Ex. G. A., H. F. 54, § 31.]

1741. Dams—fishways. It shall be unlawful for any person, firm, or corporation to place, erect, or cause to be placed or erected, any dam or other device or contrivance in such manner as to hinder or obstruct the free passage of fish up, down, or through such waters, except as otherwise provided in this chapter. Dams for manufacturing or other lawful purposes may be erected across the waters of the state. No dam or obstruction across such waters shall be erected or maintained which is not provided with a fishway, nor shall any pumping station or plant except sand pumping and dredging machines, in or connected with such waters be constructed or operated which is not provided with screens to prevent fish from entering the pumping station or plant. Such fishways and screens shall be constructed and used according to the plans and specifications prepared and furnished by the state game warden. Any dam, obstruction, or pumping plant which is not so constructed is a public nuisance and may be abated accordingly. [C., '97, §§ 2540, 2547, 2548; S., '13, § 2547; S. S., '15, §§ 2540, 2548; 37 G. A., ch. 81, § 1; 40 Ex. G. A., H. F. 54, § 32.]

1742. Injury to dam. It shall be unlawful for any owner or his agent to remove or destroy any existing dam, or alter it in a way so as to lower the water level, without giving written notice to the state game warden ten days prior to such removal or change. [40 Ex. G. A., H. F. 54, § 32-a1.]

1743. Fish dams—condemning property for. Any city or town, bounded in whole or in part by any meandered lake or chain of lakes, or the board of supervisors of the county in which such waters are situated, may construct and maintain across the outlet or inlet thereof a dam to obstruct the passage of fish, the same to be of earth, masonry, or other material to the natural and ordinary level of the lake, above and across the entire width to be an open network of bars or wire with the necessary supports, so arranged as to prevent as far as may be the escape of fish. For this purpose, upon the petition of a majority of the resident taxpayers of any city or town, so much land as is situated within the corporate limits as may be necessary may be purchased or condemned in the same manner provided for the

appropriation of private property for streets and other municipal uses, and paid for out of the general fund. [C., '97, § 2549; 40 Ex. G. A., H. F. 54, § 33.]

1744. Taking by warden for stocking and exchange. The state game warden may take from any of the public waters of the state, at any time and in any manner, any fish for the purpose of propagating or restocking other waters, or exchanging with fish commissioners or wardens of other states or the federal government. [C., '97, § 2546; S., '13, § 2546; 40 Ex. G. A., H. F. 54, § 34.]

1745. Undesirable fish. The warden may enter into written contracts for the taking by seine or net from the public waters of this state, buffalo, carp, quillback, redhorse, suckers, dogfish, gizzard shad, and gar, but no other fish. Such contracts shall not be for more than one year, and shall specify:

1. The particular waters from which such fish may be taken.
2. The compensation to be paid the state, and the times and terms of payment.
3. That no fish shall be taken except in the presence of and under the supervision of the warden or one of his regular deputies.
4. That all expenses, including the fees, salaries, and expenses of the warden and his deputies, shall be paid by the holders of the contracts.
5. That the contract may be forfeited and canceled, without notice, by the warden in the event of a breach thereof.
6. Such other provisions for the protection of the state as the warden may require. [C., '97, § 2546; S., '13, § 2546; 40 G. A., ch. 28, § 1; 40 Ex. G. A., H. F. 54, § 35.]

1746. Bond. The holder of such contract shall, prior to the taking of any fish thereunder, file with the warden a bond with sufficient security to be approved by the warden, in an amount to be fixed by the warden, and in no event less than five hundred dollars. Such bond shall be conditioned for the faithful performance of the contract, the payment of all damages resulting from a breach thereof, and such other conditions as to the warden may seem right and proper. [40 G. A., ch. 28, § 1; 40 Ex. G. A., H. F. 54, § 36.]

1747. Net and seine license for certain streams—bond. It shall be lawful for any person to take from the Mississippi or Missouri rivers within the jurisdiction of this state any fish with nets or seines upon procuring from the state game warden an annual license for the use of such nets and seines. Before any such license shall be issued to a nonresident of the state, the applicant shall execute and deliver to the state game warden a bond running to the state of Iowa in the penal sum of two hundred dollars with two sureties, to be approved by the state game warden, conditioned that the licensee shall faithfully comply with all the laws of this

state regulating the use of nets and seines for fishing. [S. S., '15, § 2547-a; 40 Ex. G. A., H. F. 54, § 37.]

1748. License fees for nets and seines. No license shall be issued for the use of any seine or net having less than two and one-half inch mesh, bar measure, provided, however, that any seine or net which was possessed and licensed prior to March 1, 1924, may be licensed and used lawfully for two years after that date. Fee for licenses shall be as follows:

1. For each five hundred lineal feet of seine, or fraction thereof, fifteen dollars.
2. For each pound net having one hundred feet or more lead on each side, six dollars.
3. For each pound net having less than one hundred feet lead on each side, three dollars.
4. For each bait net, dip net, hoop net, and fyke net, one dollar. All seine and net licenses shall expire on the first day of March following their issuance. [S. S., '15, § 2547-a; 40 Ex. G. A., H. F. 54, § 38.]

1749. Report by licensee. Written reports shall be made to the state game warden, on forms prepared and furnished by him for that purpose, by each licensee at the expiration of such license, stating in detail the amount and kind of fish caught, the amount for which same were sold and the total value of each kind. The state game warden may refuse to issue subsequent licenses until such reports are filed. [40 Ex. G. A., H. F. 54, § 38-a.]

1750. License tags for nets and seines. The state game warden shall furnish to each such licensee, at an expense not to exceed ten cents each, a metal tag, numbered and stamped so as to show year of issuance and for what issued, for each net, and each five hundred feet of seine; and it shall be unlawful to use any seine or net without having a tag thus procured attached thereto. [S. S., '15, § 2547-a; 40 Ex. G. A., H. F. 54, § 39.]

1751. Size limits when using net or seine. It shall be unlawful for any person to take with any seines or nets, when permitted to use same in the Mississippi or Missouri rivers, any black bass, pike, or crappie, or any of the following fish in lengths less than as follows, to wit:

Carp, fifteen inches; buffalo, fifteen inches; pickerel, eighteen inches; catfish, thirteen inches; yellow perch, seven inches; sunfish, six inches; and the following fish weighing less than as follows, to wit: Sand sturgeon, one pound, or rock sturgeon, three pounds. [S., '13, § 2547-c; 40 Ex. G. A., H. F. 54, § 40.]

1752. Wholesale fish market license. It shall be unlawful for any person, firm, or corporation to operate a wholesale fish market, jobbing house, or other place for wholesaling, marketing, or distributing fish, without first procuring a license for such purpose from the state game warden. The license fee shall be ten dollars per year, and the license shall ex-

pire on the thirty-first day of December following its issuance. [S. S., '15, § 2547-a; 40 Ex. G. A., H. F. 54, § 41.]

1753. Reports required. Each holder of a wholesale fish market license shall make to the state game warden, within thirty days after the expiration of the license, a report in writing, upon blanks furnished by the state game warden, of all fish caught or taken from waters under the jurisdiction of this state, which were handled by such licensee. Failure on the part of a holder of such license to make report as herein required shall prevent such licensee from securing a subsequent wholesale fish market license. [40 Ex. G. A., H. F. 54, § 42.]

1754. Possession and sale of black bass. It shall be unlawful for any commercial institution, commission house, restaurant, or cafe keeper, or fish dealer, to have in possession, buy, sell, or barter, or offer to buy, sell, or barter, any black bass, whether caught or taken within or without the state, or lawfully or unlawfully taken. [39 G. A., ch. 256, §§ 2, 3; 40 Ex. G. A., H. F. 54, § 43.]

1755. Taking of mussels licensed. It shall be unlawful to take, catch, or kill mussels for commercial purposes without a license issued by the state game warden. [38 G. A., ch. 98, § 1; 40 Ex. G. A., H. F. 54, § 44.]

1756. Mussel license. The state game warden shall upon application issue a license to take, catch, or kill mussels. On making application for such license, residents of this state shall pay to the state game warden a fee of two dollars, and nonresidents a fee of twenty-five dollars; and for authority to use a dredge, an additional fee of twenty dollars in either case. All such licenses shall expire on December thirty-first following their issuance and shall be numbered consecutively as issued and a record thereof kept in the office of the state game warden. Each license shall show the name and address of the licensee and the amount paid for such license, whether or not the use of a dredge is authorized, whether the licensee is a resident or non-resident, and what waters of the state are closed against the taking of mussels under such license. [38 G. A., ch. 98, § 2; 40 Ex. G. A., H. F. 54, § 45.]

1757. Reports required of licensees. On or before December thirty-first of the year in which any license is issued, the holder thereof shall make a written report to the state game warden on blanks furnished by him, stating the total weight of mussels taken, caught or killed under such license, the names and locations of waters from which the mussels were taken and the amount received for shells sold. Upon failure to make such a report, the state game warden shall not issue another license until such report shall be made. [38 G. A., ch. 98, § 6; 40 Ex. G. A., H. F. 54, § 46.]

1758. Manner of taking regulated. Any person, firm, or corporation to whom a license

under the provisions of the preceding section has been issued:

1. May operate not more than one boat for each license, or one rig in taking, catching, or killing mussels for commercial purposes. Any such person, firm, or corporation may use one additional boat for purposes of towing only when no apparatus for taking, catching, or killing is used or kept thereon.

2. It shall be unlawful to have in possession in the waters while engaged in taking, catching, or killing mussels for commercial purposes, more than four crowfoot bars, or for more than two of such bars to be in the water at the same time, or for any crowfoot bar to be of greater length than twenty feet, or more than one dredging equipment, or a dredge with openings of greater length than three feet or with prongs or forks of greater length than four inches, or any dredge without a license therefor. A pitchfork may be used for gathering mussel shells, without the payment of a license fee for dredging equipment. [38 G. A., ch. 98, § 3; 40 Ex. G. A., H. F. 54, § 47.]

1759. Legal size of mussels. It shall be unlawful to take, catch, or kill, offer for sale or have in possession for commercial purposes, any mussel of a size less than one and three-fourths inches in greatest dimensions. Undersized mussels shall be immediately culled and returned to the water whence taken, without avoidable injury, excepting that the so-called pigtoes may be retained. [38 G. A., ch. 98, § 4; 40 Ex. G. A., H. F. 54, § 48.]

1760. Restricted areas prescribed. The state game warden may from time to time, as may be required for the conservation of the mussel resources of the state, prescribe by written or printed order, areas in any part of the state from which mussels shall not be taken for such a period as may be specified by the warden, but no such period shall exceed five years, nor shall more than one-half of the mussel producing waters of the state be closed at the same time. [38 G. A., ch. 98, § 5; 40 Ex. G. A., H. F. 54, § 49.]

1761. Publication of orders. The state game warden shall cause the orders referred to in the preceding section to be published once in the newspapers of general circulation published within each county containing or having on its boundary, waters affected by such orders. Such orders shall take effect at the time fixed therein which shall not be less than thirty days after the publication thereof in the first newspaper in which it is inserted in such county. The state game warden may extend the time at which such order shall take effect. [38 G. A., ch. 98, § 5; 40 Ex. G. A., H. F. 54, § 50.]

1762. Territorial jurisdiction-reciprocity of states. Any person licensed by the authorities of Illinois or Wisconsin to take mussels from or in the waters forming the boundary between such states and Iowa may take them from that portion of said waters lying within the terri-

torial jurisdiction of this state without having procured a license therefor from the state game warden of this state, in the same manner that persons holding Iowa licenses may do, if the laws of Illinois or Wisconsin, respectively, extend a similar privilege to persons so licensed under the laws of Iowa. [38 G. A., ch. 98, § 10; 40 Ex. G. A., H. F. 54, § 51.]

1763. Terms defined. As used in this chapter the words:

1. "Mussels" shall mean and embrace the pearly, fresh water mussels or clams, or naiad, and the shell thereof.

2. "Crowfoot bar" shall mean a bar of any material bearing a series of hooks designed to catch or adapted for catching mussels by the insertion of such hooks between the shells of the mussels.

3. "Dredge" shall mean any mechanism of capture which is adapted for dragging the bottom of waters and is operated with or without the aid of mechanical power, except the crow-foot bar.

4. "Commercial purposes" shall mean and be presumed to be the taking, catching, killing, or having in possession mussels, unless the contrary is proven.

5. "Rig" shall mean one boat equipped with not more than four crowfoot bars, one boat equipped with power and one barge. [38 G. A., ch. 98, § 9; 40 Ex. G. A., H. F. 54, § 52.]

1764. Protection of deer, elk, and goat. It shall be unlawful for any person other than the owner, or person authorized by the owner, to kill, maim, trap, or in any way injure or capture any deer, elk, or goat, except when distrained by law. [S., '13, § 2551-a; 40 Ex. G. A., H. F. 54, § 53.]

1765. Deer—killing or capture. When it shall become necessary in the opinion of the state game warden or his deputies to kill or capture any deer now running at large within this state, it shall be done under the authority and direction of the state game warden, who shall distribute such deer so killed or captured within this state and the expense of said killing or capture and distribution shall be paid by the person receiving such deer. [S., '13, § 2562-d; 40 Ex. G. A., H. F. 54, § 54.]

1766. Fur-bearing animals—trapping regulations. It shall be unlawful for any person to kill, trap, or ensnare any beaver, mink, otter, or muskrat, from March sixteenth to November fourteenth, both dates inclusive, or any raccoon or skunk from February first to October thirty-first, both dates inclusive, except where such killing, trapping, or ensnaring may be for the protection of public or private property; or to injure any muskrat house or destroy any skunk den, except for the protection of public or private property; or to have in possession during the closed season provided for in this section, except during the first ten days thereof, any of the animals or carcasses or parts thereof described in this section, whether lawfully or unlawfully taken within or without

this state; but nothing herein contained shall be deemed to apply to green hides in process of manufacture. [C., '97, § 2553; S. S., '15, § 2553; 37 G. A., ch. 396, § 1; 39 G. A., ch. 87, § 1; 40 G. A., ch. 31, § 1; 40 Ex. G. A., H. F. 54, § 55.]

1767. Closed seasons for game birds and animals. Every person is prohibited from trapping, shooting, killing, or taking any of the following named birds or animals during the following named closed seasons:

1. Wild duck, goose or brant, rail, plover, sandpiper, marsh or beach birds, Wilson or jacksnipe, from January first to September fiftieth, both dates inclusive.

2. Woodcock, from December first to September thirtieth, both dates inclusive.

3. Pinnated grouse or prairie chicken, from December first to September thirtieth, both dates inclusive; and at all time prior to October 1, 1927.

4. Ruffed grouse or pheasant or wild turkey, from December first to October thirty-first, both dates inclusive; and at all time prior to November 1, 1932.

5. Quail, from November sixteenth to October thirty-first, both dates inclusive, and at all time prior to November 1, 1927.

6. Mongolian, ring-neck, English or Chinese pheasants, Hungarian partridge, or other imported game birds in this state, at all time.

7. Gray, fox, or timber squirrel, from January first to August thirty-first, both dates inclusive. [R., '60, § 4381; C., '73, § 4048; C., '97, § 2551; S. S., '15, §§ 2551, 2563-u; 37 G. A., ch. 111, § 1; 37 G. A., ch. 202, § 1; 37 G. A., ch. 233, § 1; 39 G. A., ch. 25, § 1; 39 G. A., ch. 33, § 1; 39 G. A., ch. 85, § 1; 40 G. A., ch. 29, § 1; 40 Ex. G. A., H. F. 54, § 56.]

1768. Bag limits and possession. No person shall shoot or kill to exceed the following numbers of game birds or animals in any one day, respectively:

Five prairie chickens, eight quails, fifteen ducks, two male imported pheasants, and fifteen other game birds or animals. Nor shall any one person, firm, or corporation have in his or its possession at any one time to exceed ten prairie chickens, fifty water fowl, fifteen quail, eight male imported pheasants, and fifteen of either of the other kinds of game birds or animals named in this chapter, unless by a common carrier for the purpose of lawfully shipping as provided in this chapter.

Nothing in this section shall apply to such animals as are considered fur-bearing animals. It shall be unlawful to have any game birds or animals named in this chapter in possession during the periods when the killing thereof is prohibited, except during the first ten days of the closed season for them, respectively. [C., '97, § 2552; S. S., '15, § 2552; 40 Ex. G. A., H. F. 54, § 57; H. F. 54-A, § 1.]

1769. Buying or selling game prohibited. Except as otherwise provided in this chapter, it shall be unlawful for any person, firm, or corporation to buy or sell, dead or alive, any

game birds or animals named in this chapter, but nothing in this section shall apply to such animals as are considered fur-bearing animals in this chapter. [C., '97, § 2554; S. S., '15, § 2554; 40 Ex. G. A., H. F. 54, § 58.]

1770. Regulations on killing game birds. No person shall kill or attempt to kill any bird named in this chapter with the aid or use of any sneak boat or sink box, or from any sailboat, gasoline, or electric launch or steamboat, or any other water conveyance except as propelled by oar or paddle, or any other device used for concealment in the open water; nor pursue, for the purpose of killing or capture, any such bird by motor vehicle or aircraft; nor use any artificial light, battery, or deception, contrivance or device with intent to attract or deceive such bird, except that in hunting wild ducks and geese, decoys and duck or goose calls may be used and artificial ambushes erected and used on land. No person shall at any time hunt or shoot any game bird between sunset and thirty minutes before sunrise of the following morning. [R., '60, § 4381; C., '73, § 4048; C., '97, § 2551; S. S., '15, § 2551; 40 G. A., ch. 30, § 1; 40 Ex. G. A., H. F. 54, § 59.]

1771. Swivel gun and poison prohibited. It shall be unlawful for any person to use a swivel gun, or any other firearm, except such as is commonly shot from the shoulder, or any poison or medicated or poisoned food, for the purpose of capturing or killing any of the birds or animals protected by this chapter. [C., '97, § 2558; 40 Ex. G. A., H. F. 54, § 60.]

1772. Carrying firearms in motor vehicles. No person shall carry a gun or other firearm, except a pistol or revolver, in a motor vehicle unless the same be unloaded in both barrels and magazine and taken apart or contained in a case. [40 Ex. G. A., H. F. 54, § 61.]

1773. Traps, nets, and snares. No person shall capture or take or attempt to capture or take, with any trap, snare, or net, any of the game birds named in this chapter. [R., '60, § 4381; C., '73, § 4048; C., '97, § 2551; S. S., '15, § 2539, 2551; 40 Ex. G. A., H. F. 54, § 62.]

1774. Nongame birds—sale of plumage prohibited—game birds defined. No person shall, within the state, kill or catch or have in his or her possession, living or dead, any wild bird other than a game bird, or purchase, offer or expose for sale, transport or ship within or without the state, any such wild bird after it has been killed or caught, except as permitted by this chapter.

No part of the plumage, skin or body of any bird protected by this section shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state.

All species of wild birds, either resident or migratory, except as specified in this section shall be considered nongame birds.

The following are declared to be game birds:

1. The Anatidae, commonly known as swans, geese, brant, and river and sea ducks.

2. The Rallidae, commonly known as rails, coots, mud-hens, and gallinules.

3. The Limicolae, commonly known as shore birds, plovers, surf birds, snipe, woodcock, sandpipers, tatlars, and curlews.

4. The Gallinae, commonly known as wild turkeys, grouse, prairie chickens, pheasants, partridges, and quail. [S., '13, §§ 2563-k, 2563-m, 2563-n; 40 Ex. G. A., H. F. 54, § 63.]

1775. Nests and eggs. No person shall destroy, have in possession or under control, for any purpose whatever, except specimens for scientific use as provided in this chapter, the nests or eggs of any nongame bird, but nothing herein shall be construed to prevent the removal of nests from buildings. [C., '73, § 4063; C., '97, § 2561; S., '13, §§ 2561, 2563-l; 40 Ex. G. A., H. F. 54, § 64.]

1776. Birds and fowls not protected. It shall not be a violation of the provisions of this chapter to take, shoot, or kill the following birds or fowls:

1. The English starling, the English or European house sparrow, blackbird, blue-jay, crow, sharp-shinned hawk, Cooper's hawk, and great horned owl.

2. Grebe, loon, gull, or tern, merganser, bittern, known as blue crane, poorjoe or cranky, little blue heron, and black crowned night heron, on the grounds and waters of any public or private fish hatchery within the state by the owner, superintendent, or employee thereof. [S., '13, § 2563-q; 40 Ex. G. A., H. F. 54, § 65.]

1777. Parrots and canaries. This chapter shall not be construed to forbid the selling or shipping of parrots, canaries or any other cage birds which are imported from other countries or not native to any part of the United States. [S., '13, § 2563-r; 40 Ex. G. A., H. F. 54, § 66.]

1778. Using birds as targets. No person shall keep or use any live pigeon or other bird as a target, to be shot at for amusement or as a test of skill in marksmanship, or shoot at a bird kept or used for such purpose, or be a party to such shooting, or lease any building, room, field, or premises, or knowingly permit the use thereof, for the purpose of such shooting. [S., '13, § 2563-i; 40 Ex. G. A., H. F. 54, § 67.]

1779. Certificates of permission for scientific purposes. Certificates may be granted by the state game warden to any properly accredited person of the age of eighteen years or over, permitting the holder thereof to collect fish, game, wild animals and birds, their nests or eggs, for scientific purposes only.

The applicant for the same must present to said officer written testimonials from two well known zoologists who must be residents of Iowa, certifying to the good character and fitness of said applicant to be intrusted with such privilege, and must pay said officer two dollars to defray the necessary expenses attending the granting of such certificate.

On proof that the holder of such certificate has taken or killed any fish, game, animal, or

bird, whether game or nongame, or taken the nest or eggs of any such bird, for other than strictly scientific purposes, his certificate shall become void.

The certificates shall expire on December thirty-first of the year issued and shall not be transferable. [S., '13, §§ 2563-o, 2563-p; 40 Ex. G. A., H. F. 54, § 68.]

1780. Transportation for sale prohibited. It shall be unlawful for any person, firm, or corporation to offer for transportation or to transport by common carrier or vehicle of any kind, to any place within or without the state, for the purposes of sale, any of the fish, game, animals, or birds taken, caught, or killed within the state, or to peddle any of such fish, game, animals, or birds; provided, however, that fish of one day's catch lawfully taken may be sold, in the immediate vicinity where taken, to an individual for his family consumption, by the party taking such fish.

It shall be unlawful to take, ship, or carry out of the state for any purpose any such fish, game, animals, or birds unless lawfully caught, taken, or killed by a nonresident licensee under the provisions of this chapter, who may take, carry, or ship to his place of residence as indicated by such license, such fish, game, animals, or birds, as are lawfully caught, taken, or killed thereunder. Nothing in this section shall apply to such animals as are considered fur-bearing animals in this chapter. [C., '97, § 2555; S. S., '15, §§ 2540, 2555; 40 Ex. G. A., H. F. 54, § 69.]

1781. Transportation regulations and restrictions. Any person, firm, or corporation desiring the shipment or transportation of any game, fish, animals, or birds shall deliver to the common carrier to which the shipment is offered, a statement under oath, in duplicate, showing the name and address of the shipper, the date and number of his license, where and by what officer issued, the name and residence of the consignee to whom the shipment is made, the kind and number of fish, animals, or birds in the shipment, that the same have not been unlawfully killed, bought, sold, or had in possession, and are not being shipped for the purpose of market or sale, and that such shipment does not contain a greater number of fish, animals or birds than may be lawfully shipped in one day. One copy of such affidavit shall be retained by the common carrier receiving such shipment, for the period of twelve months thereafter, and the other copy shall be attached in a secure manner to the package or container of such fish, animals, or birds. [C., '97, § 2555; S. S., '15, §§ 2540, 2555; 40 Ex. G. A., H. F. 54, § 70.]

1782. Oaths—administration of. In addition to all officers authorized by law to administer oaths, the agent of any common carrier receiving for transportation any fish, animals, or birds, as in this chapter provided, is hereby authorized to administer the required oath. [C., '97, § 2540; S. S., '15, § 2540; 40 Ex. G. A., H. F. 54, § 71.]

1783. Limit of shipment. No person except as otherwise provided shall ship, carry or transport in any one day, game, fish, birds, or animals, except fur-bearing animals, in excess of the following numbers, respectively: Ten prairie chickens, fifty water fowl, fifteen quail, eight male imported pheasant, and fifteen of either of the other game, birds, or animals, and forty fish, including all varieties shipped, except as otherwise provided under license to fish with seine or net or under permit from the state game warden. [C., '97, § 2555; S. S., '15, § 2555; 40 Ex. G. A., H. F. 54, § 72.]

1784. Shipping restrictions. It shall be unlawful for any common carrier to receive for transportation any game, fish, animals, or birds in greater numbers or in any other way or manner than in this chapter provided. [C., '97, § 2555; S. S., '15, § 2555; 40 Ex. G. A., H. F. 54, § 73.]

1785. Exceptions. The foregoing provisions regarding the possession and transportation of fish shall not apply to such fishing as is done under written permits from the state game warden or to such fishing as is permitted with nets or seines in certain boundary waters of the state or fishing done on private fishing preserves. [C., '97, §§ 2546, 2547; S., '13, §§ 2546, 2547; S. S., '15, § 2547-a; 40 Ex. G. A., H. F. 54, § 74.]

1786. Common carrier—regulations. It shall be unlawful for any person, firm or corporation to ship any fish taken with licensed nets or seines unless there is attached to each container a tag stating the name and address of the consignor and consignee, the amount of each kind contained therein, the waters from which taken, and that same were taken with licensed nets or seines. [40 Ex. G. A., H. F. 54, § 74.]

1787. Entire shipment contraband. In the shipping of fish, whenever a container includes one or more fish that are contraband, the entire contents of the container shall be deemed contraband, and shall be seized by the state game warden, his assistants or deputies. [40 Ex. G. A., H. F. 54, § 74-a1.]

1788. Game brought into the state. It shall be lawful for any person, firm, or corporation to have in possession any fish or game lawfully taken outside the state and lawfully brought into the state, but the burden of proof shall be upon the person in such possession to show that such fish or game was lawfully killed and lawfully brought into the state. [S. S., '15, § 2555; 40 Ex. G. A., H. F. 54, § 75.]

1789. Violation. Whoever shall take, catch, kill, injure, destroy, have in possession, buy, sell, ship, or transport any fish, mussels, birds, their nests, eggs, or plumage, fowls, game, or animals in violation of the provisions of this chapter or whoever shall use any device, equipment, seine, trap, net, tackle, firearm, drug, poison, explosive, or other substance or means, the use of which is prohibited by this chapter,

or use the same at a time, place or in a manner or for a purpose prohibited, or do any other a in violation of such provisions for which no other punishment is provided, shall be fined not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not more than thirty days.

Each fish, fowl, bird, birds' nest, egg or plumage, and animal unlawfully caught, taken, killed, injured, destroyed, possessed, bought, sold, or shipped shall be a separate offense. [R., '60, §§ 4381-4383; C., '73, §§ 4048, 4053, 4063; C., '97, §§ 2543, 2544, 2551, 2552, 2556, 2558, 2561; S., '13, §§ 2547-e, 2551-b, 2561, 2563-a8, 2563-i, 2563-o, 2563-s, 2563-v; S. S., '15, §§ 2540-a, 2544, 2551, 2552, 2556; 37 G. A., ch. 168, § 3; 37 G. A., ch. 202, § 1; 37 G. A., ch. 233, § 1; 38 G. A., ch. 98, §§ 2-5; 39 G. A., ch. 25, § 1; 39 G. A., ch. 33, § 1; 39 G. A., ch. 256, § 4; 40 G. A., chs. 29, 30; 40 Ex. G. A., H. F. 54, § 76.]

1790. Violations relating to dams. Whoever shall erect any dam or other obstruction prohibited by this chapter or at a place or in a manner prohibited, or shall injure or destroy any dam lawfully erected, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail not more than one hundred days. [C., '97, §§ 2548, 2550; S. S., '15, § 2548; 37 G. A., ch. 81, § 1; 40 Ex. G. A., H. F. 54, § 77.]

1791. Violations by common carrier. Any common carrier which shall violate any of the provisions of this chapter relating to receiving, having in possession, shipping or delivering any fish, fowls, birds, birds' nests, eggs, or plumage, game or animals, in violation of the provisions of this chapter or contrary to the regulations and restrictions therein provided, and any agent, employee, or servant of such corporation violating such provisions, shall be fined not less than one hundred dollars nor more than three hundred dollars, and any such agent, employee, or servant may be imprisoned not exceeding thirty days. [C., '73, § 4049; C., '97, § 2557; 40 Ex. G. A., H. F. 54, § 78.]

1792. Duty of attorney general and county attorneys. It shall be the duty of the attorney general, when requested by the state game warden, to give his opinion in writing upon any question of law arising under this chapter; and it shall be the duty of all county attorneys

in this state when requested by the state game warden or any deputy, to prosecute all criminal actions brought in their respective counties for violations of the provisions of this chapter. Nothing in this chapter shall be construed as prohibiting any person from instituting legal proceedings for the enforcement of any of the provisions thereof. [R., '60, § 4385; C., '73, § 4051; C., '97, § 2559; S. S., '15, § 2559; 40 Ex. G. A., H. F. 54, § 79.]

1793. Information—venue. In all prosecutions under this chapter, any number of violations may be charged in one information, but each charge shall be set out in a separate count if more than one charge is included in one information.

Prosecutions for violations may be brought in the county in which any fish, fowl, bird, birds' nest, eggs, or plumage, or animals protected by this chapter were unlawfully caught, taken, killed, trapped, ensnared, bought, sold, or shipped unlawfully, or in any county into or through which they were received, transported, or found in possession of any person. [R., '60, § 4385; C., '73, § 4051; C., '97, § 2559; S. S., '15, § 2559; 40 Ex. G. A., H. F. 54, § 80.]

1794. Presumptive evidence. It shall be presumptive evidence of a violation of the provisions of this chapter for any person:

1. At any time to have in his possession a gun in any field, forest, or on any waters of the state, without a license, except as provided in section 1720.

2. To fail to have a license upon his person at any time required by law, or then refuse to exhibit the same on request of any person desiring to examine it.

3. To have in his possession any fish, game, birds, birds' nests, eggs, or plumage, or animals, which have been unlawfully caught, taken, or killed.

4. To be in possession of such fish, game, birds, or animals at a time when or place where it shall be unlawful to take, catch, or kill the same, except game, birds or animals, during the first ten days of the closed season.

5. To have in his possession any implements, devices, equipment, or means whatever of taking fish, birds, or animals protected by this chapter at any place where the possession or use thereof is prohibited. [C., '97, § 2554; S., '13, § 2563-a10; S. S., '15, §§ 2554, 2555; 38 G. A., ch. 98, § 2; 40 Ex. G. A., H. F. 54, § 81.]

CHAPTER 87

BOARD OF CONSERVATION AND PUBLIC PARKS

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1795. Appointment. The governor shall appoint five persons who shall constitute a state board of conservation, the members of which shall serve without pay, except actual and necessary expenses. [37 G. A., ch. 236, § 9; 40 G. A., ch. 33, § 2.]

1796. Tenure. The members of such board shall hold office for three years and until their successors are appointed, and qualify, except that of the first board to be appointed one shall be appointed to hold office for the period ending the second secular day in January, 1925, two shall be appointed to hold office until the second secular day in January, 1926, and two shall be appointed to hold office until the second secular day in January, 1927. [40 G. A., ch. 33, § 2.]

1797. Secretary. The secretary of the executive council shall, without additional compensation, act as secretary of the state board of conservation. [40 G. A., ch. 33, § 2.]

1798. Duties in general. The board shall investigate places in Iowa rich in natural history, forest reserves, archaeological specimens, and geological deposits; and the means of promoting forestry and maintaining and preserving animal and bird life and the conservation of the natural resources of the state. [37 G. A., ch. 236, § 9; 40 G. A., ch. 33, § 3.]

1799. Duties as to parks. It shall be the duty of the board, under the supervision and direction of the executive council, to establish, maintain, improve, and beautify public parks upon the shores of lakes, streams, or other waters, or at other places within the state which have become historical or which are of scientific interest, or which by reason of their natural scenic beauty or location are adapted

therefor. [37 G. A., ch. 236, § 1; 38 G. A., ch. 368, § 1; 40 G. A., ch. 33, § 4.]

1800. Eminent domain. The executive council may, upon the recommendation of the board, purchase or condemn lands for public parks. No contract for the purchase of such public parks shall be made to an amount in excess of funds appropriated therefor by the general assembly. [37 G. A., ch. 236, § 1; 39 G. A., ch. 135, § 1; 40 G. A., ch. 33, § 5.]

1801. Highways. The executive council may, upon the recommendation of the board, purchase or condemn highways connecting such parks with the public highways. When such highways have been purchased or condemned the same shall be public highways of this state and shall be maintained as other public highways of the county. [37 G. A., ch. 236, § 1; 38 G. A., ch. 368, § 1; 40 G. A., ch. 33, § 6.]

1802. Condemnation statutes. All the provisions of the law relating to the condemnation of lands for public state purposes shall apply to the provisions hereof in and so far as applicable. [39 G. A., ch. 135, § 1; 40 G. A., ch. 33, § 7.]

1803. Title to lands. The title to all lands purchased, condemned, or donated, hereunder, for park or highway purposes, shall be taken in the name of the state and if thereafter it shall be deemed advisable to sell any portion of the land so purchased or condemned, the proceeds of such sale shall be placed to the credit of the said public state parks fund to be used for such park purposes. [37 G. A., ch. 236, § 3; 38 G. A., ch. 368, § 2; 40 Ex. G. A., S. F. 55, § 1.]

1804. Gifts. The board of conservation with the written consent of the executive coun-

cil, may accept gifts of land or other property, or the use of lands or other property for a term of years, and improve and use the same as public state parks. [37 G. A., ch. 236, §§ 4, 5; 40 G. A., ch. 33, § 8; 40 Ex. G. A., S. F. 55, § 2.]

1805. Conditions—lands. The conditions attached to a gift shall be entered in writing as part of the record of the title by which the state takes the lands, and shall be inscribed upon any chart, map, or description of said park if the conditions are made by the grantor in lieu of money as a consideration paid by the state. [40 G. A., ch. 33, § 8; 40 Ex. G. A., S. F. 55, § 3.]

1806. Conditions—personalty. If the donation be other than real estate and a particular specification for its use be made by the donor, no part of such donation shall be used or expended for any other purpose. [37 G. A., ch. 236, § 5; 40 Ex. G. A., S. F. 55, § 3.]

1807. Reversion of gift. If the lands transferred to the state as a gift, or if lands purchased in whole or in part by the state from moneys given for that purpose, shall be abandoned or sold and not used for state park purposes, the donor shall reclaim the land or funds donated by filing his request in writing with the executive council within six months of the time of the abandonment or sale by the state of such lands, but no interest or other charge shall be demanded of or paid by the state. Any unclaimed funds shall be used for park purposes. [37 G. A., ch. 236, §§ 3, 4; 38 G. A., ch. 368, § 2; 40 G. A., ch. 33, § 8; 40 Ex. G. A., S. F. 55, § 4.]

1808. Use of private funds. The board may permit the improvement of parks, when established, or the improvement of bodies of water, upon the border of which such parks may be established, by the expenditure of private funds, such improvement to be done, however, under the direction of the state board of conservation, by and with the consent of the executive council. [37 G. A., ch. 236, § 6; 38 G. A., ch. 368, §§ 1, 2; 40 Ex. G. A., S. F. 55, § 5.]

1809. Landscape architect. The state board of conservation may call upon the state college of agriculture and mechanic arts for the services of at least one competent landscape architect, engineer, or gardener, who shall, under the direction of the board, proceed to work with it in the improvement of the state property under the control of said board. The president of said college shall, when called upon, designate the landscape architect, engineer, or gardener, as the case may be, who shall work with said board. [40 Ex. G. A., S. F. 55, § 6.]

1810. Assignment of students. Students who are enrolled in the landscaping department of said college may be assigned by the proper college authorities to assist with the landscaping and improvement of state property under the control of the board of con-

servation, when requested by said board, and when such service will not interfere materially with their college work. [40 Ex. G. A., S. F. 55, § 6.]

1811. Expense and compensation. All necessary expenses incurred by such landscape architect, engineer, or gardener, or the students of the college under the provisions of the last two preceding sections, shall be paid in the same manner as are other expenditures by the board, but no compensation shall be paid for such services. [40 Ex. G. A., S. F. 55, § 6.]

1812. Jurisdiction. Jurisdiction over all meandered streams and lakes of this state and of state lands bordering thereon, not now used by some other state body for state purposes, is conferred upon the board. The board, with the approval of the executive council, may establish parts of such property into state parks, and when so established all of the provisions of this chapter relative to public parks shall apply thereto. [37 G. A., ch. 236, § 6; 39 G. A., ch. 135, § 3; 40 G. A., ch. 33, § 9.]

1813. Boundaries. The board shall at once proceed to establish the boundary lines between the state-owned property under its jurisdiction and privately owned property, and shall where deemed advisable mark the same so that the boundaries of such state-owned property may be easily ascertainable to the public. [40 G. A., ch. 33, § 9.]

1814. Highway commission—duties. The board may call upon the highway commission for the services of at least one competent engineer, who shall, under the direction of the board, proceed to work in conjunction with it in carrying out the true spirit and purpose of this chapter. [40 G. A., ch. 33, § 10.]

1815. County engineer—duties. The board may call upon the county engineer of any county to advise relative to the true boundary between the state-owned property and private property in the county, and to furnish plats and surveys showing such true boundary lines, and when directed by the board, shall mark such boundary lines as herein provided. [40 G. A., ch. 33, § 10.]

1816. Surveys and plats. All surveys and plats shall be filed with the secretary of the board, and shall become public records of this state. [40 G. A., ch. 33, § 10.]

1817. Compensation. The compensation and expenses of the highway engineer shall be paid as a part of the maintenance of the highway commission, and of the county engineer by the county, as the case may be. [40 G. A., ch. 33, § 11.]

1818. Boundaries—adjustment. Whenever a controversy shall arise as to the true boundary line between state-owned property and private property, the board may, with the approval of the executive council, adjust said boundary line or take such other action in the premises, all

with the approval of the executive council, as in its judgment may seem right. When such disputed boundary line is fixed it shall be surveyed and marked as herein provided. [40 G. A., ch. 33, § 12.]

1819. Leases. The board may, with the approval of the executive council, lease for periods not exceeding one year such parts of the property under its jurisdiction as to it may seem advisable. All leases shall reserve to the public of the state the right to enter upon the property leased for any lawful purpose. [40 G. A., ch. 33, § 12.]

1820. Funds. All funds collected, from whatever source, by the board shall be deposited in the state treasury and shall be available for use by the board subject to the approval of the executive council for any purpose necessary in the carrying out of the terms and provisions hereof. [40 G. A., ch. 33, § 13.]

1821. Expenditures. All accounts and expenditures shall be subject to the approval of the executive council and shall be paid out on warrants drawn by the state auditor as is otherwise provided by law. [40 G. A., ch. 33, § 13.]

1822. Management by municipalities. The board may, subject to the approval of the executive council, enter into an agreement or arrangement with the board of supervisors of any county or the council of any city or town whereby such county, city, or town shall undertake the care and maintenance of any state park. Counties, cities, and towns are authorized to maintain such parks and to pay the expense thereof from the general fund of such county, city, or town as the case may be. [40 G. A., ch. 33, § 14.]

1823. Sale of islands. No islands, in any of the meandered streams and lakes of this state or in any of the waters bordering upon this state shall hereafter be sold, except with the majority vote of the executive council upon the majority recommendation of the board, and in the event any of such islands are sold as herein provided the proceeds thereof shall become a part of the funds to be expended under the terms and provisions of this chapter. [40 G. A., ch. 33, § 15.]

1824. Sale of park lands. The executive council may, upon the recommendation of the board of conservation, sell such parts of public

parks as in their judgment may be undesirable for park purposes. In the event that a sale is determined upon, the executive council shall have the land appraised by three appraisers to be appointed by the chief justice of the supreme court and such land shall not be sold for less than the appraised price. Reappraisements may be ordered when necessary. [37 G. A., ch. 236, § 3; 40 G. A., ch. 33, § 16.]

1825. Form of conveyance. Conveyances shall be in the name of the state, signed by the governor and secretary of state, with the great seal of the state attached. [37 G. A., ch. 236, § 3; 40 G. A., ch. 33, § 16.]

1826. Dams—resulting damages. The state board of conservation shall, under the direction of the executive council, have the power to erect dams across streams and across the outlets of lakes for the purpose of raising the water level therein, and any damages occasioned to riparian owners by reason of the raising of such water level shall be paid for out of the fund hereinafter provided for. [37 G. A., ch. 236, § 2; 38 G. A., ch. 368, § 1.]

1827. Powers in municipalities and individuals. Municipalities, or individuals, or corporations organized for that purpose only, acting separately or in conjunction with each other, may establish like parks outside the limits of cities or towns, and when established without the support of the public state parks fund, the municipalities, corporations, or persons establishing the same, as the case may be, shall have control thereof independently of the executive council; but none of the said municipalities, individuals, or corporations, acting under the provisions of this section shall establish, maintain or operate any such park as herein contemplated for pecuniary profit. [37 G. A., ch. 236, § 7; 38 G. A., ch. 368, § 2.]

1828. Regulations—mutilation. The board of conservation and the executive council, acting jointly, shall from time to time make such regulations as they deem necessary or advisable for the management, control, or policing of said lands, and shall cause said regulations to be printed on cardboard, wood, or metal signs and posted in said parks. The destruction or mutilation of said signs bearing said regulations shall be deemed a misdemeanor. Said regulation, however, shall in no wise interfere with the local police powers. [37 G. A., ch. 236, § 10; 38 G. A., ch. 368, § 1.]

CHAPTER 88

FENCES

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1829. Partition fences. The respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year. [C., '51, §§ 895, 900, 901; R., '60, §§ 1526, 1531, 1532; C., '73, §§ 1489, 1494, 1495; C., '97 § 2355; 38 G. A., ch. 52, § 1; 39 G. A., ch. 76.]

1830. Trimming and cutting back. If said fence be hedge, the owner thereof shall trim or cut it back twice during each calendar year, the first time during the month of June and the last time during the month of September, to within five feet from the ground, unless such owners otherwise agree in writing to be filed with and recorded by the township clerk. [C., '51, § 900; R., '60, § 1531; C., '73, § 1494; C., '97, § 2355; 39 G. A., ch. 76.]

1831. Powers of fence viewers. The fence viewers shall have power to determine any controversy arising under this chapter, upon giving five days' notice in writing to the opposite party or parties, prescribing the time and place of meeting to hear and determine the matter named in said notice. Upon request of any landowner, the fence viewers shall give such notice to all adjoining landowners liable for the erection, maintenance, rebuilding, trimming, or cutting back, or repairing of a partition fence, or to pay for an existing hedge or fence. [C., '51, §§ 896, 898, 902, 909; R., '60, §§ 1527, 1529, 1533, 1540; C., '73, §§ 1490, 1492, 1496, 1503; C., '97, § 2356.]

NOTE: Trustees as fence viewers, see § 5543.

1832. Decision. At said time and place the fence viewers shall meet and determine by written order the obligations, rights, and duties of the respective parties in such matter, and assign to each owner the part which he shall erect, maintain, rebuild, trim or cut back, or pay for, and fix the value thereof, and prescribe the time within which the same shall be com-

pleted or paid for, and, in case of repair, may specify the kind of repairs to be made. [C., '51, §§ 896, 898, 902, 909; R., '60, §§ 1527, 1529, 1533, 1540; C., '73, §§ 1490, 1492, 1496, 1503; C., '97, § 2356.]

1833. Contribution postponed. In case a landowner desires to erect a partition hedge or fence when the owner of the adjoining land is not liable to contribute thereto, the fence viewers may assign to each owner the part which he shall erect, maintain, rebuild, and repair, trim or cut back, by pursuing the method provided in the two preceding sections; but the adjoining owner shall not be required to contribute thereto until he becomes liable so to do, as elsewhere in this chapter provided. [C., '51, § 901; R., '60, § 1532; C., '73, § 1495; C., '97, § 2357.]

1834. Default—damages and fees collected as taxes. If the erecting, rebuilding or repairing of such fence be not completed within thirty days from and after the time fixed therefor in such order, the adjoining owner may do or complete the same, and the value thereof may be fixed by the fence viewers, and unless the sum so fixed, together with all fees of the fence viewers caused by such default, as taxed by them, is paid to the landowner so erecting, rebuilding, trimming or cutting back or repairing such fence, within ten days after the same is so ascertained; or when ordered to pay for an existing fence, and the value thereof is fixed by the fence viewers, and said sum, together with the fees of the fence viewers, as taxed by them, remains unpaid by the party in default for ten days, the fence viewers shall certify to the county auditor the full amount due from the party or parties in default, including all fees and costs taxed, together with a description of the real estate owned by the party or parties in default along or upon which the said fence exists, and the county auditor shall enter the same upon the tax list and the amount shall be collected as other taxes and when so col-

lected same shall be paid to the party or parties entitled thereto. [C., '51, §§ 897, 899, 902; R., '60, §§ 1528, 1530, 1533; C., '73, §§ 1491, 1493, 1496; C., '97, § 2358; S., '13, § 2358.]

NOTE: Fees of fence viewers, see § 5571.

1835. Service of notice on nonresidents. The notice by the fence viewers provided for in this chapter may be served upon any owner non-resident of the county where his land is situated, by publication thereof, once each week, for two consecutive weeks in a newspaper printed in the county in which the land is situated, proof of which shall be made as in case of an original notice and filed with the fence viewers, and a copy delivered to the occupant of said land, or to any agent of the owner in charge of the same. [C., '97, § 2359; S., '13, § 2359.]

1836. Orders. All orders and decisions made by the fence viewers shall be in writing, signed by at least two of them, and filed with the township clerk. [C., '97, § 2360.]

1837. Notice. All notices in this chapter required to be given shall be in writing, and return of service thereof made in the same manner as notices in actions before a justice of the peace. [C., '97, § 2360.]

1838. Entry and record of orders. Such orders, decisions, notices, and returns shall be entered of record at length by the township clerk, and a copy thereof certified by the township clerk to the county recorder, who shall record the same in his office in a book kept for that purpose, and index such record in the name of each adjoining owner as grantor to the other. [C., '97, § 2360; 38 G. A., ch. 33, § 1.]

1839. Record conclusive. The record in the recorder's office, unless modified, by appeal as hereinafter provided, shall be conclusive evidence of the matters therein stated, and such record or a certified copy thereof shall be competent evidence in all courts. [C., '97, § 2360; 38 G. A., ch. 33, § 1.]

1840. Division by agreement—record. The several owners may, in writing, agree upon the portion of partition fences between their lands which shall be erected and maintained by each, which writing shall describe the lands and the parts of the fences so assigned, be signed and acknowledged by them, and filed and recorded in the office of the recorder of deeds of the county or counties in which they are situated. [C., '51, § 905; R., '60, § 1536; C., '73, § 1499; C., '97, § 2361.]

1841. Orders and agreements—effect. Any order made by the fence viewers, or any agreement in writing between adjoining landowners, when recorded in the office of the recorder of deeds, as in this chapter provided, shall bind the makers, their heirs, and subsequent grantees, except, if the land of either shall cease to be used as a means for revenue or benefit, the same shall be inoperative while not thus

used. [C., '51, § 905; R., '60, § 1536; C., '73, § 1499; C., '97, § 2362; 38 G. A., ch. 33, § 2.]

1842. Lands in different townships. When the adjoining lands are situated in different townships in the same or different counties, the clerk of the township of the owner making the application shall select two trustees of his township as fence viewers, and the clerk of the other township one from his township, who shall possess, in such case, all the powers given to fence viewers in this chapter, but all orders, notices, and valuations and taxation of costs made by them must be recorded in both townships and in the office of the recorder of deeds of each county. [C., '51, § 906; R., '60, § 1537; C., '73, § 1500; C., '97, § 2363; 38 G. A., ch. 33, § 3.]

1843. Fence on another's land. When a person has made a fence or other improvement on an inclosure, which is found to be on land of another, such person may enter upon the land of the other and remove his fence or other improvement and material, upon his first paying, or offering to pay, the other party for any damage to the soil which may be occasioned thereby, and the value of any timber used in said improvement taken from the land of such other party, if any; and if the parties can not agree as to the damages, the fence viewers may determine them as in other cases; such removal shall be made as soon as practicable, but not so as to expose the crops of the other party. [C., '51, §§ 907, 908; R., '60, §§ 1533, 1539; C., '73, §§ 1501, 1502; C., '97, § 2364.]

1844. Right to build fence on line. A person building a fence may lay the same upon the line between him and the adjacent owners, so that it may be partly on one side and partly on the other, and the owner shall have the same right to remove it as if it were wholly on his own land. [C., '51, § 910; R., '60, § 1541; C., '73, § 1504; C., '97, § 2365.]

1845. Fence on one side of line. The provisions concerning partition fences shall apply to a fence standing wholly upon one side of the division line. [C., '51, § 911; R., '60, § 1542; C., '73, § 1505; C., '97, § 2366.]

1846. Lawful fence defined. A lawful fence shall consist of:

1. Three rails of good substantial material fastened in or to good substantial posts not more than ten feet apart.

2. Three boards not less than six inches wide and three-quarters of an inch thick, fastened in or to good substantial posts not more than eight feet apart.

3. Three wires, barbed with not less than thirty-six iron barbs of two points each, or twenty-six iron barbs of four points each, on each rod of wire, or of four wires, two thus barbed and two smooth, the wires to be firmly fastened to posts not more than two rods apart, with not less than two stays between posts, or with posts not more than one rod apart without such stays, the top wire to be

not more than fifty-four nor less than forty-eight inches in height.

4. Wire either wholly or in part, substantially built and kept in good repair, the lowest or bottom rail, wire, or board not more than twenty nor less than sixteen inches from the ground, the top rail, wire, or board to be between forty-eight and fifty-four inches in height and the middle rail, wire, or board not less than twelve nor more than eighteen inches above the bottom rail, wire, or board.

5. Any other kind of fence which, in the opinion of the fence viewers, shall be equivalent thereto. [R., '60, §§ 1544, 1545; C., '73, § 1507; C., '97, § 2367; S., '13, § 2367; 40 G. A., ch. 231, § 1.]

1847. **Duty to maintain tight fences.** All partition fences may be made tight by the party desiring it, and when his portion is so completed, and securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart, the adjoining property owner shall construct his portion of the adjoining fence, in a lawful tight manner, same to be securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart. [R., '60, § 1545; C., '73, § 1507; C., '97, § 2367; S., '13, § 2367; 40 G. A., ch. 231, § 2.]

1848. **Tight fence defined.** All tight partition fences shall consist of:

1. Not less than twenty-six inches of substantial woven wire on the bottom, with three strands of barbed wire with not less than thirty-six barbs of at least two points to the rod, on top, the top wire to be not less than forty-eight inches, nor more than fifty-four inches high.

2. Good substantial woven wire not less than forty-eight inches nor more than fifty-four inches high with one barbed wire of not less than thirty-six barbs of two points to the rod, not more than four inches above said woven wire.

3. Any other kind of a tight partition fence which, in the opinion of the fence viewers, is equivalent thereto. [C., '97, § 2367; S., '13, § 2367; 40 G. A., ch. 231, § 3.]

1849. **Duty to keep fence tight.** In case adjoining owners or occupants of land shall

use the same for pasturing sheep or swine, each shall keep his share of the partition fence in such condition as shall restrain such sheep or swine. [C., '73, § 1507; C., '97, § 2367; S., '13, § 2367; 40 G. A., ch. 231, § 4.]

1850. **Controversies.** Upon the application of either owner, after notice is given as prescribed in this chapter, the fence viewers shall determine all controversies arising under the four preceding sections, including the partition fences made sheep and swine tight. [C., '97, § 2367; S., '13, § 2367; 40 G. A., ch. 231, § 5.]

1851. **Appeal.** An appeal may be taken to the district court from any order or decision of the fence viewers by any person affected, in the same manner appeals are taken from justices of the peace, except that the appeal bond shall be approved by the township clerk, in which event the township clerk, after recording the original papers, shall file them in the office of the clerk of the district court, certifying them to be such, and the clerk shall docket them, entitling the applicant or petitioner as plaintiff, and it shall stand for trial as other cases. [C., '97, § 2369.]

1852. **Certification of decree.** Upon the final determination of said appeal the clerk of the district court shall certify to the recorder of deeds the fact that a judgment has been entered upon such appeal, with the book and page of such judgment, and the recorder shall thereupon enter on his record a notation that a judgment on appeal has been entered and that the same may be found in the office of the clerk of the district court, in the book and page designated in said certificate. [38 G. A., ch. 33, § 4.]

1853. **Record kept—fees of clerk.** The township clerk shall enter all matters herein required to be made of record in his record book, and shall receive ten cents for each one hundred words in entering of record and making certified copies of the matters herein provided for, and twenty-five cents additional for his certificate thereto when required, and shall also receive the costs of recording in the office of the recorder of deeds of any instrument required to be so recorded. [C., '97, § 2370; 38 G. A., ch. 33, § 5.]

CHAPTER 89

CIVIL ENGINEERS

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| 1854. Registered engineers and surveyors. | 1865. Engineering examiners fund. |
| 1855. Terms defined. | 1866. Examination fees. |
| 1856. Board of engineering examiners—qualifications. | 1867. Examinations—report required. |
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1854. Registered engineers and surveyors. No person shall practice professional engineering or land surveying in the state unless he be a registered professional engineer or a registered land surveyor as provided in this chapter, except as permitted by the last section thereof. [38 G. A., ch. 392, § 1; 40 Ex. G. A., H. F. 58, § 1.]

1855. Terms defined. The "board" means the Iowa state board of engineering examiners provided by this chapter.

"Professional engineering" means the practice of any branch of the profession of engineering other than military engineering. The practice of said profession embraces the designing and the supervision of the construction of public and private utilities, such as railroads, bridges, canals, harbors, river improvements, lighthouses, wet docks, dry docks, ships, barges, dredges, cranes, floating docks, and other floating property, the design and the supervision of the construction of steam engines, turbines, internal combustion engines and other mechanical structures, electrical machinery and apparatus, and of works for the development, transmission or application of power, and the designing and the supervision of the construction of municipal works, irrigation works, water supply works, sewerage works, drainage works, industrial works, sanitary works, hydraulic works, structural works, and other public and private utilities or works which require for their designing or the supervision of their construction such experience and technical knowledge as are required by this chapter.

The execution as a contractor of work designed by a professional engineer or the supervision of the construction of such work as a foreman or superintendent for such a contractor or the construction, improving, or extending of private drains or drainage works, private irrigation works, private water supply works, or other works of a private nature shall not be deemed to be the practice of professional engineering within the meaning of this chapter.

A "professional engineer" means any person who practices professional engineering.

"Land surveying" is surveying having to do with the boundaries or areas of tracts of land. The surveying of lands for the purpose of subdividing or determining boundary lines where no contest is involved shall not be deemed to be the practice of land surveying within the meaning of this chapter.

A "land surveyor" is any person who makes land surveys. [38 G. A., ch. 392, § 3.]

1856. Board of engineering examiners—qualifications. There is hereby created a state board of engineering examiners consisting of five members who shall be appointed by the governor. Each member of the board shall be a professional engineer at least thirty-five years of age, and shall have been a resident of this state for at least three years immediately preceding his appointment and shall have had at least ten years' active practice preceding his appointment and during such time shall have had charge of engineering work as principal or assistant for at least two years, and shall be a member in good standing of a recognized state or national engineering society. No two members of said board shall be from the same branch of the profession of engineering. [38 G. A., ch. 392, § 4; 40 Ex. G. A., H. F. 58, § 2.]

1857. Appointment and tenure. Appointments to said board shall be made as follows:

1. Two members on July 1, 1925, and each four years thereafter.

2. Three members on July 1, 1927, and each four years thereafter. [38 G. A., ch. 392, § 4; 40 Ex. G. A., H. F. 58, § 3.]

1858. Vacancies—how filled. Vacancies in the membership of the board caused by death, resignation, or removal from office, shall be filled by an appointment from the governor for the unexpired portion of the term. [38 G. A., ch. 392, § 4; 40 Ex. G. A., H. F. 58, § 4.]

1859. Official seal—by-laws. The board shall adopt and have an official seal which shall be affixed to all certificates of registration granted and may make all by-laws and rules, not inconsistent with law, necessary for the proper performance of its duty. [38 G. A., ch. 392, § 5; 40 Ex. G. A., H. F. 58, § 5.]

1860. Attorney general to assist—general powers. Such board, or any committee thereof, shall be entitled to the counsel and to the services of the attorney general, and shall have power to compel the attendance of witnesses, and may take testimony and proofs and may administer oaths concerning any matter within its jurisdiction. [38 G. A., ch. 392, § 5; 40 Ex. G. A., H. F. 58, § 6.]

1861. Compensation and expenses. Each member of the board shall receive as compensation the sum of ten dollars per day for the time actually spent in traveling to and from, and in attending sessions of the board and its committees, and shall receive all necessary traveling and incidental expenses incurred in the discharge of his duties, but in no event shall the state be chargeable with any expense incurred under the provisions of this chapter. [38 G. A., ch. 392, § 4; 40 Ex. G. A., H. F. 58, § 7.]

1862. Organization of the board—meetings—quorum. The board shall elect annually from its members a chairman and a vice chairman. The secretary of the executive council, or one of his assistants, to be designated by him, shall act as secretary of said board. The board shall hold at least one stated meeting on the first Tuesday of December of each year, and special meetings shall be called at other times by the secretary at the request of the chairman or of three members of the board. At any meeting of the board, three members shall constitute a quorum. [38 G. A., ch. 392, § 6; 40 G. A., ch. 35; 40 Ex. G. A., H. F. 58, § 8.]

1863. Annual report. At the time provided by law, the board shall submit to the governor a written report of its transactions for the preceding year, and shall file with the secretary of state a copy thereof, together with a complete statement of the receipts and expenditures of the board, attested by the affidavits of the chairman and the secretary, and a complete list of those registered under this chapter with their addresses and the dates of their certificates of registration. Said report shall be printed by the state and a copy mailed to, and placed on file in the office of the clerk of each incorporated city or town in the state and in the office of the auditor of each county therein. [38 G. A., ch. 392, § 6; 40 Ex. G. A., H. F. 58, § 9.]

NOTE: Annual report, see § 247.

1864. Secretary—duties of. The secretary shall keep on file a record of all certificates of registration granted and shall make annually such revisions of said record as may be necessary. In revising said record the secretary shall communicate annually by mail with every professional engineer and surveyor registered hereunder. In every case in which

a reply is not received within thirty days after the date of the first letter, the secretary shall send a second letter by registered mail and the failure on the part of any engineer or surveyor to reply within sixty days from the date of said second letter shall operate to revoke his certificate of registration, but he may be reinstated at any time upon due application therefor and upon the payment of a registration fee of ten dollars as hereinafter provided. [38 G. A., ch. 392, § 6; 40 Ex. G. A., H. F. 58, § 10.]

1865. Engineering examiners fund. The secretary shall collect and account for all fees provided for by this chapter and pay the same to the state treasurer who shall keep such moneys in a separate fund to be known as the fund of the board of engineering examiners, which shall be continued from year to year and shall be drawn on only for the expenses and compensation of said board of examiners as provided in this chapter. [38 G. A., ch. 392, § 6; 40 Ex. G. A., H. F. 58, § 11.]

1866. Examination fees. The board shall admit to examination any candidate who pays a fee of fifteen dollars and who under oath submits evidence prescribed by the board that he is more than twenty-five years of age, is of good character, and has been engaged in the practice of professional engineering or land surveying for at least six years and during that period has had charge as assistant, for at least one year. Each year of work satisfactorily completed at an engineering school of recognized standing shall count as one year of practice in fulfilling the six-year requirement of this section. [38 G. A., ch. 392, § 7.]

1867. Examinations—report required. Examinations for registration shall be given at stated or called meetings of the board. The scope of the examinations and the methods of procedure shall be prescribed by the board. As soon as practicable, after the close of each examination, a report shall be filed in the office of the secretary of the board by the members conducting such examinations. Said report shall show the action of the board upon each application, whereupon the secretary of the board shall notify each applicant of the result of his examination. [38 G. A., ch. 392, § 8.]

1868. Seal—certificate evidence of registration. Each registrant shall provide himself with a suitable seal with a uniform inscription thereon formulated by the board, with which he shall stamp all plans, specifications, surveys, and reports made or issued by him. A certificate of registration provided for in this chapter shall be presumptive evidence that the person named therein is legally registered. [38 G. A., ch. 392, §§ 9, 13; 40 Ex. G. A., H. F. 58, § 12.]

1869. Certificate. To any applicant who shall have passed the examination as a professional engineer and who shall have paid an additional fee of ten dollars, the board shall issue a certificate of registration as a profes-

sional engineer signed by the chairman and secretary of the board under the seal of such board, which certificate shall authorize the applicant to practice professional engineering as defined in this chapter. Such certificate shall not carry with it the right to practice land surveying, unless specifically so stated in said certificate, which permission shall be granted by the board without additional fee in cases where the applicant duly qualifies as a land surveyor as prescribed by the rules of said board. [38 G. A., ch. 392, § 9; 40 Ex. G. A., H. F. 58, § 13.]

1870. Land surveyors' certificate. To any applicant who shall have passed the examination as a land surveyor and who shall have paid an additional fee of ten dollars, the board shall issue a certificate of registration signed by its chairman and secretary under the seal of the board, which certificate shall authorize the applicant to practice land surveying as defined in this chapter and to administer oaths to his assistants and to witnesses produced for examination, with reference to facts connected with land surveys, being made by such land surveyor. [38 G. A., ch. 392, § 9; 40 Ex. G. A., H. F. 58, § 14.]

1871. Foreign registrants. The board shall from time to time examine the requirements for registration of professional engineers and land surveyors in other states, territories, and countries, and shall record those in which in the judgment of the board standards not lower than those provided by this chapter are maintained. The secretary of the board upon presentation to him of satisfactory evidence, by any person, that he holds a certificate of registration issued to him by proper authority in any state, territory, or country so recorded, and upon the receipt of a fee of ten dollars, shall issue to such person a certificate of registration to practice professional engineering or land surveying as provided by this chapter, signed by the chairman and the secretary under the seal of the board, whereupon the person to whom such certificate is issued shall be entitled to all the rights and privileges conferred by the certificate issued after examination by the board. [38 G. A., ch. 392, § 11.]

1872. Revocation of certificate. The board shall have the power by a four-fifths vote of the entire board to revoke the certificate of any professional engineer or land surveyor registered hereunder, found guilty of any fraud or deceit in his practice, or guilty of any fraud or deceit in obtaining his certificate, or in case he is found by the same vote to be incompetent. [38 G. A., ch. 392, § 12.]

1873. Procedure. Proceedings for the revocation of a certificate of registration shall be begun by filing with the secretary of the board written charges against the accused. The board shall designate a time and place for a hearing, and shall notify the accused of this action and furnish him a copy of all charges at least thirty days prior to the date of the hearing. The accused shall have the right to appear personally or by counsel, to cross-examine witnesses or

to produce witnesses in his defense. [38 G. A., ch. 392, § 12.]

1874. Expenditures. Warrants for the payment of expenses and compensations provided by this chapter shall be issued by the auditor of state and paid by the state treasurer upon presentation of vouchers regularly drawn by the chairman and secretary of the board and passed by the state board of audit, but at no time shall the total amount of warrants exceed the total amount of the examination and registration fees collected as herein provided. [38 G. A., ch. 392, § 2.]

1875. Violations. Any person who is not legally authorized to practice in this state according to the provisions of this chapter, and shall practice, or shall in connection with his name use any designation tending to imply or designate him as a registered practitioner within the meaning of this chapter, and any person presenting or attempting to file as his own the certificate or registration of another, or who shall give false or forged evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration, or who shall falsely impersonate another practitioner of like or different name, or who shall use or attempt to use a revoked certificate of registration shall be deemed guilty of a misdemeanor and shall for each offense of which he is convicted be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment for three months, or by both such fine and imprisonment. [38 G. A., ch. 392, § 14.]

1876. Applicability of chapter. This chapter shall not apply to any full-time employee of any corporation while doing work for that corporation, except in the case of corporations offering their services to the public as professional engineers or land surveyors.

Corporations engaged in designing and building works for public or private interests not their own shall be deemed to practice professional engineering within the meaning of this chapter. With respect to such corporations all principal designing or constructing engineers shall hold certificates of registration hereunder. This chapter shall not apply to corporations engaged solely in building said work. This chapter shall not apply to any professional engineer or land surveyor working for the United States government, nor to any professional engineer or land surveyor employed as an assistant to a professional engineer or land surveyor registered under this chapter, nor to purely operative services in connection with mechanical plants or systems, nor to any professional engineer or land surveyor from without this state until a reasonable length of time as prescribed by the rules of the board shall have elapsed to permit the registration of such a person under this chapter, provided that, before practicing within this state, he shall have applied for the issuance to him of a certificate of registration and shall have paid the fee prescribed in this chapter. [38 G. A., ch. 392, § 15.]

CHAPTER 90

CERTIFIED SHORTHAND REPORTERS

1877. Board of examiners.
 1878. Appointment—rules.
 1879. Examination—compensation.
 1880. Who eligible.
 1881. Temporary substitutes appointed.
1882. Unlawful use of title.
 1883. Examination fee—fund to pay examiners.
 1884. Revocation of certificates—oaths.
 1885. Violations punished.

1877. Board of examiners. The board of examiners for court reporters herein provided for shall consist of three members, two of whom shall be official shorthand reporters of the district court of Iowa and one of whom shall be a practicing attorney of the state of Iowa. [38 G. A., ch. 258, § 3; 40 G. A., ch. 232, § 1.]

1878. Appointment—rules. The said board of examiners shall be appointed by the chief justice of the supreme court for a term of three years, and the said board of examiners shall, subject to the approval of the chief justice of the supreme court, make such rules and regulations as may be necessary for the proper performance of its duties. [38 G. A., ch. 258, § 3; 40 G. A., ch. 232, § 2.]

1879. Examination—compensation. The board of examiners shall fix stated times for the examination of the candidates and shall receive for their services only their necessary traveling expenses, such expenses to be paid from such funds as may accrue hereunder. [38 G. A., ch. 258, § 4; 40 G. A., ch. 232, § 3.]

1880. Who eligible. No person shall be appointed to the position of shorthand reporter of any district, superior, or municipal court in this state, unless he be a certified shorthand reporter who has been found competent to report court proceedings, references, or proceedings of like character, by the board of examiners provided for in this chapter. [38 G. A., ch. 258, § 1; 40 G. A., ch. 232, § 4.]

1881. Temporary substitutes appointed. If the regularly appointed shorthand reporter should be disabled from performing his duty, the judge of such court may appoint a substitute whom he deems competent to act during the disability of the regular reporter, or until

his successor is appointed. [38 G. A., ch. 258, § 1; 40 G. A., ch. 232, § 5.]

1882. Unlawful use of title. Any citizen of the state of Iowa who shall have received from the board of examiners a certificate of his qualifications as a shorthand reporter, as herein provided, shall be styled and known as a certified shorthand reporter, and no other person shall assume such title or use the abbreviation C. S. R., or any words, letters, or figures to indicate that the person using the same is a certified shorthand reporter. [38 G. A., ch. 258, § 2; 40 G. A., ch. 232, § 6.]

1883. Examination fee—fund to pay examiners. Each applicant for examination shall pay to the clerk of the supreme court as an examination fee the sum of five dollars, payable before the examination is commenced. The fees thus paid to said clerk shall be by him paid into the state treasury upon receipt thereof, to be kept as a special fund to be used as provided for in this chapter. [38 G. A., ch. 258, § 4; 40 G. A., ch. 232, § 7.]

1884. Revocation of certificates—oaths. The board of examiners may revoke any such certificate for sufficient cause, after written notice to the holder thereof and hearing thereon. Any member of the board of examiners may, upon being duly designated by said board or a majority thereof, administer oaths or take testimony concerning any matter within the jurisdiction of said board. [38 G. A., ch. 258, § 5; 40 G. A., ch. 232, § 8.]

1885. Violations punished. Any violation of the provisions of this chapter shall be punished by a fine not exceeding one hundred dollars. [38 G. A., ch. 258, § 6; 40 G. A., ch. 232, § 9.]

CHAPTER 91

CERTIFIED PUBLIC ACCOUNTANTS.

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| <p>1886. Board of accountancy—appointment—tenure.
 1887. Vacancies.
 1888. Organization—meetings—quorum.
 1889. Rules.
 1890. Certified public accountants.
 1891. Examination—notice.
 1892. Qualifications.
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 1895. Certificate—register.</p> | <p>1896. Foreign certificates.
 1897. Fee.
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 1900. Compensation—expenses.
 1901. Deposit—bond.
 1902. Report.
 1903. Annual dues.
 1904. Violations.
 1905. Negligence and wilful falsification.</p> |
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1886. Board of accountancy—appointment—tenure. The governor shall appoint three persons as a board of accountancy. Each member of such board shall be a certified public accountant, and his term of office shall be for three years. [S. S., '15, § 2620-b; 40 G. A., ch. 233, § 1.]

1887. Vacancies. Any vacancies that may occur from any cause shall be filled by the governor for the unexpired term under the same conditions that govern regular appointments. [S. S., '15, § 2620-b; 40 G. A., ch. 233, § 2.]

1888. Organization—meetings—quorum. The board shall meet and organize by the selection of one of its members as chairman, and one as secretary, and shall meet at least twice each year, or oftener if deemed necessary, at such times and places within the state as it may select, and a majority shall constitute a quorum. Such meetings shall at all reasonable times be open to the public. [S. S., '15, § 2620-c; 40 G. A., ch. 233, § 3.]

1889. Rules. The board at its first meeting shall formulate rules and regulations for its guidance, not inconsistent with the provisions of this chapter, which may be changed or altered at any regular meeting by a majority vote. [S. S., '15, § 2620-c; 40 G. A., ch. 233, § 4.]

1890. Certified public accountants. Any citizen of the United States residing in this state, or having a place for the regular transaction of business in the state, as a practicing public accountant, and being over the age of twenty-five years, of good moral character, and who shall have received from the board of accountancy of the state a certificate as provided in this chapter, shall be styled and known as a certified public accountant, and be entitled to use the abbreviation C. P. A. in connection with his name. No other person, no firm all the members of which are not certified accountants as provided in this chapter, and no corporation shall use such title

or any abbreviation, letters, or figures to indicate that such person, firm, or corporation is a certified public accountant. [S. S., '15, § 2620-a; 40 G. A., ch. 233, § 5.]

1891. Examination—notice. The board shall at its regular meetings establish the time and place for holding examinations under the provisions of this chapter, and shall cause to be published a notice thereof, for not less than three consecutive days in two daily newspapers published in this state, not less than twenty days prior to the date of such examination, and notice of the same shall be mailed to all holders of certificates under this chapter, as well as applicants, not less than fifteen days prior to such examination. [S. S., '15, § 2620-d; 40 G. A., ch. 233, § 6.]

1892. Qualifications. Each applicant for a certificate before taking the examination must produce evidence satisfactory to the board that he is over twenty-five years of age, of good moral character, a graduate of a high school with a four years' course, or has an equivalent education, or pass a preliminary examination to be set by the board, and that he has had at least three years' practical accounting experience, at least one year of which shall have been as an accountant in the employ of a public accountant of recognized standing in the profession, or in public practice on his own account. [S. S., '15, § 2620-d; 40 G. A., ch. 233, § 7.]

1893. Examination. The examination shall consist of a written examination covering questions on the following subjects: Theory of accounts, practical accounting, auditing, and commercial law as pertaining to accountancy. [S. S., '15, § 2620-d; 40 G. A., ch. 233, § 8.]

1894. Fee. The fees for such examination shall be twenty-five dollars for each applicant, payable to the board at the time of filing application and at least ten days prior to the examination. [S. S., '15, § 2620-d; 40 G. A., ch. 233, § 9.]

1895. Certificate—register. After the examination provided by this chapter, the board shall, if in its judgment the applicants are entitled thereto, issue certificates as provided in this chapter. The board shall maintain a register of the names and addresses of all persons receiving certificates under this chapter, and shall keep a record of all persons whose certificates have been revoked. [S. S., '15, § 2620-d; 40 G. A., ch. 233, § 10.]

1896. Foreign certificates. The board of accountancy shall register the certificate of any person, whether resident or nonresident of this state, who is the lawful holder of an unrevoked certified public accountant's certificate issued under the laws of another state, provided that the requirements for said degree in the state which has granted it to the applicant are equivalent to those herein provided, and that equivalent of a degree of certified public accountant or chartered accountant or the equivalent thereof, issued by any foreign government, provided that the requirements for such degree are equivalent to those herein provided for the degree of certified public accountant. [S. S., '15, § 2620-f; 40 G. A., ch. 233, § 11.]

1897. Fee. Such applicant shall, before the registration of such certificate, pay to the board of accountancy the sum of twenty-five dollars and shall be likewise subject to all the provisions of the law applicable to certified public accountants including the payment of annual dues. [40 G. A., ch. 233, § 11.]

1898. Bond. Every person having been granted a certificate under the provisions of this chapter shall give a bond in the sum of five thousand dollars to the auditor of state before entering upon the discharge of his duties for the faithful performance of the same. [S. S., '15, § 2620-k; 40 G. A., ch. 233, § 12.]

1899. Revocation of registration. The board of accountancy may revoke or cancel the registration of any certificate issued under this chapter for unprofessional conduct of the holder or other sufficient cause, provided that written notice shall have been mailed to the holder of such certificate at least twenty days before any hearing thereon, stating the cause of such contemplated action, and appointing a day for full hearing thereon by the board. No certificate issued under this chapter shall be revoked until such hearing shall have been held or the opportunity for such hearing afforded the person charged. [S. S., '15, § 2620-g; 40 G. A., ch. 233, § 13.]

1900. Compensation—expenses. No compensation shall be paid any member of the board of accountancy for his services. All bills for expenses shall be audited and allowed by the state board of audit and shall be paid from the fees received. In no event shall the

state be chargeable with any expense incurred under the provisions of this chapter. [S. S., '15, § 2620-h; 40 G. A., ch. 233, § 14.]

1901. Deposit—bond. Any sum remaining after the payment of expenses shall be paid into the state treasury on or before the first day of January in each year. The treasurer of the board shall, on assuming his office, file with the secretary of state, a bond in the penal sum of one thousand dollars. [S. S., '15, § 2620-h; 40 G. A., ch. 233, § 15.]

1902. Report. The board shall make a report biennially to the governor of its proceedings with an account of all moneys received and disbursed, a list of names of all persons whose certificates have been revoked, together with recommendations, if any, for new legislation, and such other matters as the board may deem proper. [S. S., '15, § 2620-h; 40 G. A., ch. 233, § 16.]

NOTE: Annual report, see § 247.

1903. Annual dues. All holders of certificates and those whose certificates have been registered as provided in this chapter, shall pay to the treasurer of the board for disposition as provided herein, the sum of five dollars on the first day of January in each year. Failure to pay such annual dues shall operate to suspend the certificate of registration and all rights thereunder of the person failing so to pay during the period of delinquency. [40 G. A., ch. 233, § 17.]

1904. Violations. If any person, firm, or corporation shall hold himself or itself out to the public as having received a certificate as provided in this chapter, or shall assume to practice as certified public accountant or chartered accountant, or use the abbreviation thereof or any other letters, words, or figures to indicate that the person using the same is such certified public accountant, without having received such certificate, or after the same shall have been revoked, he or it shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense or be imprisoned in the county jail for a period not exceeding six months. [S. S., '15, § 2620-i; 40 G. A., ch. 233, § 18.]

1905. Negligence and wilful falsification. If any person engaged in the practice of public accountancy as a certified public accountant or otherwise, shall be found guilty of gross negligence or carelessness or shall wilfully falsify any report or statement bearing on any examination, investigation, or audit made by him or under his direction, he shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than three months nor more than one year, or both fine and imprisonment for each time he may be convicted of such offense. [S. S., '15, § 2620-j; 40 G. A., ch. 233, § 19.]

CHAPTER 92

GOLD AND SILVER ALLOY

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| 1906. Fraudulent marking of gold or alloy. | 1911 Tests for articles in three preceding sections. |
| 1907. Tests for fineness. | 1912. Marking of gold plated or gold filled articles. |
| 1908. Articles made of silver marked "sterling silver". | 1913. Marking of silver plated articles. |
| 1909. Articles made of silver marked "coin silver". | 1914. Violation—penalty. |
| 1910. Articles of silver marked other than "sterling" or "coin". | 1915. "Person" defined. |

1906. Fraudulent marking of gold or alloy. Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made, in whole or in part, of gold or any alloy of gold, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed, any mark indicating or designed to indicate that the gold or alloy in such article is of a greater degree of fineness than the actual fineness or quality thereof, unless the actual fineness thereof, in the case of flatware or watchcases, be not less by more than three one-thousandths parts, and in case of all other articles be not less by more than one-half carat than the fineness indicated by the marks stamped, branded, engraved, or imprinted upon any part of such article, or upon any tag, card, or label attached thereto, or upon any container in which such article is inclosed according to the standards and subject to the qualifications hereinafter set forth, is guilty of a misdemeanor. [S., '13, § 5077-b; 40 Ex. G. A., H. F. 61, § 1.]

1907. Tests for fineness. In any test for the ascertainment of the fineness of the gold or alloy in any such article, according to the foregoing standards, the part of the gold or alloy taken for the test shall be such portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article; and in addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold and its alloys contained in any article mentioned in this and the preceding section, except watchcases and flatware, including all solder or alloy of inferior metal used for brazing or uniting the parts of the article, all such gold, alloys, and solder being assayed as one piece, shall not be less than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed. [S., '13, § 5077-b; 40 Ex. G. A., H. F. 61, § 2.]

1908. Articles made of silver marked "sterling silver". Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto or upon any container in which said article is inclosed, the words "sterling silver" or "sterling" or any colorable imitation thereof, unless nine hundred twenty-five one-thousandths of the component parts of the metal purporting to be silver of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor, but in the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standard. [S., '13, § 5077-b1; 40 Ex. G. A., H. F. 61, § 3.]

1909. Articles made of silver marked "coin silver". Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is inclosed, the words "coin" or "coin silver", or any colorable imitation thereof, unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor; but in case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards. [S., '13, § 5077-b1; 40 Ex. G. A., H. F. 61, § 4.]

1910. Articles of silver marked other than "sterling" or "coin". Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made

in whole or in part of silver or of any alloy of silver and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed, any mark or word, other than the word "sterling" or the word "coin", indicating, or designed to indicate that the silver or alloy of silver in said article is of a greater degree of fineness than the actual fineness or quality, unless the actual fineness of the silver or alloy of silver of which said article is composed be not less by more than four one-thousandths parts than the actual fineness indicated by the said mark or word, other than the word "sterling" or "coin", stamped, branded, engraved, or imprinted upon any part of said article, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor. [S., '13, § 5077-b1; 40 Ex. G. A., H. F. 61, § 5.]

1911. Tests for articles in three preceding sections. In any test for the ascertainment of the fineness of any such article mentioned in this and the three preceding sections, according to the foregoing standards, the part of the article taken for the test shall be such portion as does not contain or have attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article, and provided further and in addition to the foregoing test and standards, that the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in the three preceding sections, including all solder or alloy of inferior fineness used for brazing or uniting the parts of any such article, all such silver, alloy, or solder being assayed as one piece, shall not be less by more than ten one-thousandths parts than the fineness indicated according to the foregoing standards, by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed. [S., '13, § 5077-b1; 40 Ex. G. A., H. F. 61, § 6.]

1912. Marking of gold plated or gold filled articles. Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or

plated thereon, or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of gold or of any alloy of gold and which article is known in the market as "rolled gold plate", "gold plate", "gold filled", or "gold electroplate", or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is inclosed, any word or mark usually employed to indicate the fineness of gold, unless said word be accompanied by other words plainly indicating that such article or part thereof is made of rolled gold plate, or gold plate, or gold electroplate, or is gold filled, as the case may be, is guilty of a misdemeanor. [S., '13, § 5077-b2; 40 Ex. G. A., H. F. 61, § 7.]

1913. Marking of silver plated articles. Any person making for sale, selling, or offering to sell or dispose of, or having in possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon, or brazed or otherwise affixed thereto, a plate, plating, covering, or sheet of silver or of any alloy of silver, and which article is known in the market as "silver plate" or "silver electroplate", or by any similar designation, and having stamped, branded, engraved, or imprinted thereon, or upon any tag, card, or label attached thereto, or upon any container in which said article is encased or inclosed, the word "sterling" or the word "coin" either alone or in conjunction with any other words or marks, is guilty of a misdemeanor. [S., '13, § 5077-b3; 40 Ex. G. A., H. F. 61, § 8.]

1914. Violation — penalty. Every person guilty of a violation of the provisions of this chapter, and every officer, manager, director, or agent of any such person directly participating in such violation or consenting thereto, shall be punished by a fine of not more than five hundred dollars or imprisonment for not more than three months, or both, at the discretion of the court; but nothing in this chapter shall apply to articles manufactured prior to June 13, 1907. [S., '13, § 5077-b4; 40 Ex. G. A., H. F. 61, § 9.]

1915. "Person" defined. The term "person" as used in this chapter shall embrace persons, firms, partnerships, companies, corporations, and associations. [40 Ex. G. A., H. F. 61, § 10.]

CHAPTER 93

ORGANIZATIONS SOLICITING PUBLIC DONATIONS

- 1916. Filing statement.
- 1917. License.
- 1918. Duration of license—revocation.

- 1919. Soliciting by local organizations.
- 1920. Annual report—filing fee.
- 1921. Violations—punishment.

1916. Filing statement. All organizations, institutions, or charitable associations which, through agents or representatives, solicit public donations in this state, shall be required to file with the secretary of state a statement setting forth the name and location of such organization, institution, or charitable association, the purposes for which such organization, institution, or charitable association exists, and the name of its principal officers and soliciting agents, and references or recommendations from at least three reputable freeholders of the state. [S., '13, § 5077-c; 39 G. A., ch. 59.]

1917. License. If, in the judgment of the secretary of state, such statement shall be deemed sufficient evidence that the moneys thus collected are to be used in the interest of the purposes represented, the secretary of state shall be authorized to issue to said organization, institution, or charitable association, its agents and representatives, a state license, upon the payment of a fee of one dollar, authorizing said organization, institution, or charitable association to solicit public donations in any county, city, or township in this state. [S., '13, § 5077-c; 39 G. A., ch. 59.]

1918. Duration of license—revocation. Said license shall expire annually on the thirty-first day of December following the date of issue, or may be suspended or revoked at any time at the discretion of the secretary of state, when in his judgment the authority vested therein is abused or the transactions consummated thereunder are not in conformity with the intent and purpose of this chapter. [39 G. A., ch. 59.]

1919. Soliciting by local organizations. Nothing in this chapter, however, shall be con-

strued to prohibit any person or local organization, church, school, or any recognized society or branch of any church or school from publicly soliciting funds or donations within the county or adjoining counties in which such person resides or such church, school, institution, organization, or charitable association is located. [S., '13, § 5077-c; 39 G. A., ch. 59.]

1920. Annual report—filing fee. Any such organization, institution, or charitable association licensed under the provisions of this chapter, shall file an annual report with the secretary of state, which report shall contain the following information:

1. The names and postoffice addresses of its officers and whether any change has been made during the year previous to making said report.

2. A detailed statement of all moneys received during the year previous to making said report.

3. A detailed statement of all moneys disbursed during the year previous to making said report, and for what purpose.

At the time of filing this annual report, said organization, institution, or charitable association shall pay to the secretary of state a filing fee in the sum of two dollars. [39 G. A., ch. 59.]

1921. Violations—punishment. Any person who shall wilfully violate the provisions of this chapter or who shall solicit funds under any such license and thereafter divert the same to purposes other than for which they were contributed shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail not to exceed thirty days. [S., '13, § 5077-d; 39 G. A., ch. 59.]

TITLE VI

INTOXICATING LIQUORS

CHAPTER 94

GENERAL PROHIBITIONS

NOTE: This chapter and the ten following chapters made applicable to special charter cities by § 6898.

- 1922. Rule of interpretation.
- 1923. Definition.
- 1924. Manufacture, sale, or keeping for sale prohibited.
- 1925. Accessories.
- 1926. First conviction.
- 1927. "Bootlegger" defined.
- 1928. Venue.
- 1929. Nuisance.
- 1930. Penalty for nuisance.
- 1931. Intoxication punished.
- 1932. When penalty remitted.
- 1933. Clubrooms.

- 1934. False statements.
- 1935. Packages in transit—search.
- 1936. Labeling legal shipments.
- 1937. Carrying or drinking on trains.
- 1938. Illegally transported liquors.
- 1939. Shipments for lawful purposes only.
- 1940. Record of shipments.
- 1941. Inspection of shipping records.
- 1942. Delivery is conditional.
- 1943. Unlawful delivery by carriers.
- 1944. Immunity from damage.
- 1945. Federal statutes.

1922. Rule of interpretation. Courts and jurors shall construe this title so as to prevent evasion. [C., '51, § 929; R., '60, § 1581; C., '73, § 1554; C., '97, § 2431; 40 Ex. G. A., S. F. 51, § 1.]

1923. Definition. The word "liquor" or the phrase "intoxicating liquor" when used in this title, shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, wine, spirituous, vinous, and malt liquor, and all intoxicating liquor whatever. [R., '60, § 1583; C., '73, § 1555; C., '97, § 2382; S. S., '15, § 2382; 40 Ex. G. A., S. F. 51, § 2.]

1924. Manufacture, sale, or keeping for sale prohibited. No one, by himself, clerk, servant, employee, or agent, shall, for himself or any person else, directly or indirectly, or upon any pretense, or by any device, manufacture, sell, exchange, barter, dispense, give in consideration of the purchase of any property or of any services or in evasion of the statute, or keep for sale, any intoxicating liquor, except as provided in this title; or own, keep, or be in any way concerned, engaged, or employed in owning or keeping, any intoxicating liquor with intent to violate any provision of this title, or authorize or permit the same to be done; or manufacture, own, sell, or have possession of any instrument intended for use and capable of being used in the manufacture of intoxicating liquor; or own or have possession of any material used exclusively in the manufacture of intoxicating liquor; or use or have possession of any material with intent to use it in the

manufacture of intoxicating liquors. [C., '51, §§ 924-928; R., '60, §§ 1559, 1563, 1583, 1587; C., '73, §§ 1523, 1540-1542, 1555; C., '97, § 2382; S. S., '15, § 2382; 37 G. A., ch. 248, § 1; 40 G. A., ch. 20; 40 Ex. G. A., S. F. 51, § 3.]

1925. Accessories. Any clerk, servant, employee, or agent engaged or aiding in any violation of this title shall be charged and convicted as principal. [C., '51, § 928; R., '60, §§ 1559, 1562, 1587; C., '73, §§ 1523, 1540-1542; C., '97, § 2382; S. S., '15, § 2382; 40 Ex. G. A., S. F. 51, § 4.]

1926. First conviction. Whoever is found guilty of violating any of the provisions of the second preceding section, shall be punished as a bootlegger as provided in this chapter. [C., '51, § 930; R., '60, §§ 1561-1563; C., '73, §§ 1525, 1540-1542; C., '97, § 2383; S., '13, § 2383; 40 Ex. G. A., S. F. 51, § 5.]

NOTE: Second and subsequent conviction, see §§ 1964, 1965.

1927. "Bootlegger" defined. Any person who shall, by himself, or his employee, servant, or agent, for himself or any person, company, or corporation, keep or carry around on his person, or in a vehicle, or leave in a place for another to secure, any intoxicating liquor as herein defined, with intent to sell or dispose of the same by gift or otherwise, or who shall within this state, in any manner, directly or indirectly, solicit, take, or accept any order for the purchase, sale, shipment, or delivery of intoxicating liquor, in violation of law, or aid in the delivery and distribution of any intoxi-

cating liquor so ordered or shipped, or who shall in any manner procure for, or sell, or give any intoxicating liquors to any minor for any purpose, or give to or in any manner procure for or sell the same to any intoxicated person, or to one in the habit of becoming intoxicated, shall be termed a bootlegger, and shall be fined not less than three hundred dollars nor more than one thousand dollars or be imprisoned in the county jail not less than three months nor more than one year, or be punished by both such fine and imprisonment. [C., '51, §§ 924-928; R., '60, §§ 1559, 1562, 1563, 1583, 1587; C., '73, §§ 1523, 1540-1542, 1555; C., '97, § 2382; S. S., '15, §§ 2382, 2461-a; 40 G. A., ch. 25, §§ 1, 2; 40 Ex. G. A., S. F. 51, § 7.]

1928. Venue. In case of a sale in which a shipment or delivery of such liquors is made by a person or corporation, the sale thereof shall be deemed to be made in the county wherein the delivery thereof is made by such carrier to the consignee, his agent or employee. [37 G. A., ch. 248, § 1; 40 Ex. G. A., S. F. 51, § 8.]

NOTE: Venue, see § 2060.

1929. Nuisance. The building, erection, or place, or the ground itself, in or upon which the unlawful manufacture or sale or keeping with intent to sell, use, or give away said liquors is carried on or continued or exists, and the furniture, fixtures, vessels and contents, are declared a nuisance, and in addition to all other penalties provided in this title, shall be abated as hereinafter provided. [C., '51, § 935; R., '60, § 1564; C., '73, § 1543; C., '97, § 2384; 40 Ex. G. A., S. F. 51, § 9.]

NOTE: Judgment of abatement, see § 2032.

1930. Penalty for nuisance. Whoever shall erect, establish, continue or use any building, erection, or place for any of the purposes herein prohibited, is guilty of a nuisance, and upon conviction shall pay a fine of not less than three hundred dollars nor more than one thousand dollars and costs of prosecution, which shall include a reasonable attorney's fee to be taxed by the court, and stand committed to the county jail until such fine and costs are paid, or be imprisoned in the county jail for a period of not less than three months nor more than one year, or be punished by both such fine and imprisonment. [C., '51, § 935; R., '60, § 1564; C., '73, § 1543; C., '97, § 2384; 40 Ex. G. A., S. F. 51, § 10.]

1931. Intoxication punished. If any person shall be found in a state of intoxication, any peace officer shall, without a warrant, take him into custody and detain him in some suitable place until an information can be made before a magistrate and a warrant of arrest issued, under which he shall at once be taken before the magistrate issuing the same, or, if for any reason he can not act, to the next nearest one, where he shall be tried, and, if found guilty, shall be fined in the sum of not less than five nor more than twenty-five dollars and costs of prosecution, or im-

prisoned in the county jail not more than thirty days. [R., '60, §§ 1568, 1586; C., '73, § 1548; C., '97, § 2402; 40 Ex. G. A., S. F. 51, § 11.]

1932. When penalty remitted. The penalty, or any portion of it, imposed under the preceding section, may be remitted by the magistrate before whom the trial is had, and the accused discharged from custody, upon his giving information in writing and under oath, stating when, where, and of whom he purchased or received the liquor which produced the intoxication, and the kind and character of the liquor, and, in addition, giving bail for his appearance before any court to give evidence in any action or complaint to be commenced or preferred against such party for furnishing the same. [R., '60, §§ 1568, 1586; C., '73, § 1548; C., '97, § 2402; 40 Ex. G. A., S. F. 51, § 12.]

1933. Clubrooms. Every person who shall, directly or indirectly, keep or maintain, by himself or by associating or combining with others, or who shall in any manner aid, assist, or abet in keeping or maintaining, any club-room or other place in which intoxicating liquors are received or kept for the purpose of use, gift, barter, or sale, or for distribution or division among the members of any club or association by any means whatever, and every person who shall use, barter, sell, or give away, or assist or abet another in bartering, selling, or giving away, any intoxicating liquors so received or kept, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months. [C., '97, § 2404; 40 Ex. G. A., S. F. 51, § 13.]

1934. False statements. If any person, for the purpose of procuring the shipment, transportation, or conveyance of any intoxicating liquors within this state, shall make to any company, corporation, or common carrier, or to any agent thereof, or other person, any false statements as to the character or contents of any box, barrel, or other vessel or package containing such liquors; or shall refuse to give correct and truthful information as to the contents of any such box, barrel, or other vessel or package so sought to be transported or conveyed; or shall falsely mark, brand, or label such box, barrel, or other vessel or package in order to conceal the fact that the same contains intoxicating liquors, for the purposes aforesaid; or shall by any device or concealment procure or attempt to procure the conveyance or transportation of such liquors as herein prohibited, he shall be fined for each offense one hundred dollars and costs of prosecution, and the costs shall include a reasonable attorney fee to be taxed by the court, and be committed to the county jail until such fine and costs are paid. [C., '97, § 2420; 40 Ex. G. A., S. F. 51, § 14.]

1935. Packages in transit—search. Any peace officer of the county under process or

warrant to him directed shall have the right to open any box, barrel, or other vessel or package for examination, if he has reasonable ground for believing that it contains intoxicating liquors, either before or while the same is being so transported or conveyed. [C., '97, § 2420; 40 Ex. G. A., S. F. 51, § 15.]

1936. Labeling legal shipments. It shall be unlawful for any common carrier or other person to transport or convey by any means, within this state, any intoxicating liquors, unless the vessel or other package containing such liquors shall be plainly and correctly labeled or marked, showing the quantity and kind of liquors contained therein, the name of the party to whom they are to be delivered, and the name of the shipper. No person shall be authorized to receive or keep such liquors unless the same be marked or labeled as herein required. The violation of any provision of this section by any common carrier, or any agent or employee of such carrier, or by any other person, shall be punished the same as provided in the second preceding section. [C., '97, § 2421; 40 Ex. G. A., S. F. 51, § 16.]

1937. Carrying or drinking on trains. Any person who shall, upon any railway car, street or interurban car, in service, carry upon his person or in any hand baggage, suit case, or otherwise, for unlawful purposes, any intoxicating liquor, and any person who shall drink any such liquors as a beverage on any such car, shall be guilty of a misdemeanor. [S., '13, § 2461-f; S. S., '15, § 2461-g1; 40 Ex. G. A., S. F. 51, § 17.]

1938. Illegally transported liquors. Liquors conveyed, carried, transported, or delivered in violation of either of the last two preceding sections, whether in the hands of the carrier or someone to whom they shall have been delivered, shall be subject to seizure and condemnation, as liquors kept for illegal sale. [C., '97, § 2421; 40 Ex. G. A., S. F. 51, § 18.]

1939. Shipments for lawful purposes only. It shall be unlawful for any person, firm, or corporation, or any agent or employee thereof, to carry any intoxicating liquor into the state or from one point to another within the state for the purpose of delivering, or to deliver same to any person, company, or corporation within the state, except for lawful purposes. [S. S., '15, § 2421-a; 40 Ex. G. A., S. F. 51, § 19.]

1940. Record of shipments. It shall be the duty of all common carriers, or corporations, or persons who shall for hire carry any intoxicating liquor into the state, or from one point to another within the state, for the purpose of delivery, and who shall deliver such intoxicating

liquor to any person, company, or corporation, to keep, at each station or office where it employs an agent or other person to make delivery of freight and keep records relative thereto, a record book, wherein such carrier shall, promptly upon receipt and prior to delivery, enter in ink, in legible writing, in full, the name of the consignor of each shipment of intoxicating liquor to be delivered from or through such station, from where shipped, the date of arrival, the quantity and kind of liquor, so far as disclosed by lettering on the package or by the carrier's records, and to whom and where consigned, and the date delivered. [S. S., '15, § 2421-b; 40 Ex. G. A., S. F. 51, § 20.]

1941. Inspection of shipping records. The record book required by the preceding section shall be kept in the said local office of such carrier and shall, during business hours, be open to inspection by any peace or law enforcing officer. It shall be a misdemeanor to refuse such inspection. [S. S., '15, §§ 2421-c, 2421-d; 40 Ex. G. A., S. F. 51, § 21.]

1942. Delivery is conditional. No shipment billed in whole or in part as intoxicating liquor shall be delivered to the consignee until such consignee upon such record book enters in ink, in legible writing, his full name and residence or place of business, giving the name of the town or city, and the street name and number where there is such, and certifies that such liquor is for his own lawful purposes. [S. S., '15, § 2421-b; 40 Ex. G. A., S. F. 51, § 22.]

1943. Unlawful delivery by carriers. It shall be a misdemeanor for any corporation, common carrier, person, or any agent or employee thereof:

1. To deliver any intoxicating liquors to any person other than to the consignee.
2. To deliver any intoxicating liquors without having the same receipted for as heretofore provided.
3. To deliver any intoxicating liquors where there is reasonable ground to believe that such liquor is intended for unlawful use. [S. S., '15, § 2421-c; 40 Ex. G. A., S. F. 51, § 23.]

1944. Immunity from damage. In no case shall any corporation, common carrier, person, or the agent thereof, be liable in damages for complying with any requirement of this title. [S. S., '15, § 2421-c; 40 Ex. G. A., S. F. 51, § 24.]

1945. Federal statutes. The requirements of this title relative to the shipment and delivery of intoxicating liquors and the records to be kept thereof shall be construed in harmony with federal statutes relating to interstate commerce in such liquors. [S. S., '15, § 2421-e; 40 Ex. G. A., S. F. 51, § 25.]

CHAPTER 95

INDICTMENT, EVIDENCE, AND PRACTICE

- 1946. Peace officers to file information.
- 1947. Peace officer to investigate.
- 1948. Violation of duty.
- 1949. Services and expense.
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- 1952. Unnecessary allegations.
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- 1957. Proof of sale.
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- 1960. Judgment lien.
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- 1963. Action to subject property—attorney fee.
- 1964. Second and subsequent conviction.
- 1965. Miscellaneous violations.
- 1966. Pleading former convictions.

1946. Peace officers to file information. Peace officers shall see that all provisions of this title are faithfully executed within their respective jurisdictions, and when informed, or they have reason to believe, that the law has been violated, and that proof thereof can be had, they shall file an information to that effect against the offending party before a magistrate, who shall thereupon proceed according to law. [R., '60, § 1578; C., '73, § 1551; C., '97, § 2428; S., '13, § 2428; 40 Ex. G. A., S. F. 51, § 26.]

[R., '60, §§ 1578, 4168; C., '73, §§ 1551, 3829; C., '97, § 2428; S., '13, § 2428; 40 Ex. G. A., S. F. 51, § 29.]

1947. Peace officer to investigate. Any peace officer shall, whenever directed in writing so to do by the county attorney, make special investigation of any alleged or supposed infraction of the law within his county, and report in writing with reference thereto within a reasonable time to such county attorney. [R., '60, § 1578; C., '73, § 1551; C., '97, § 2428; S., '13, § 2428; 40 Ex. G. A., S. F. 51, § 27.]

1950. Duty of county attorney. Upon trials of information for violations of this title, the county attorney shall appear for the state, unless some other attorney, selected by the peace officer who filed the information, shall have previously appeared. [R., '60, § 1578; C., '73, §§ 1551, 3829; C., '97, § 2428; S., '13, § 2428; 40 Ex. G. A., S. F. 51, § 30.]

1948. Violation of duty. Any peace officer failing to comply with any of the provisions of the last two preceding sections shall pay a fine of not less than ten nor more than fifty dollars, and a conviction shall work a forfeiture of his office. [R., '60, § 1578; C., '73, § 1551; C., '97, § 2428; S., '13, § 2428; 40 Ex. G. A., S. F. 51, § 28.]

1951. Attorney fee. The attorney selected by a peace officer in accordance with the provisions of the preceding section, shall receive, for prosecuting such charge before a justice of the peace, five dollars, to be taxed as costs in the case. [R., '60, § 1578; C., '73, § 3829; C., '97, § 2428; S., '13, § 2428; 40 Ex. G. A., S. F. 51, § 31.]

1949. Services and expense. The peace officer shall file with the county auditor a detailed, sworn statement of the services rendered and of his actual itemized expenses incurred in connection with said investigation, accompanied by the written order of the county attorney. If the officer be one who is receiving a definite and fixed salary, the board of supervisors shall audit and allow only so much of such expense account as it shall find reasonable and necessary. If the officer be one not receiving a fixed and definite salary, the board of supervisors shall allow such additional sum for services as it may deem reasonable and just, which allowance shall be final.

1952. Unnecessary allegations. In any indictment or information under this title, it shall not be necessary:

1. To set out exactly the kind or quantity of intoxicating liquors manufactured, sold, given in evasion of the statute, or kept for sale.
2. To set out the exact time of manufacture, sale, gift, or keeping for sale.
3. To negative any exceptions contained in the enacting clause or elsewhere, which may be proper ground of defense.

But proof of the violation by the accused of any provision of this title, the substance of which violation is briefly set forth, within the time mentioned in said indictment or information, shall be sufficient to convict such person. [R., '60, § 1569; C., '73, § 1549; C., '97, § 2424; 40 Ex. G. A., S. F. 51, § 32.]

1953. Counts. Informations or indictments under this title may allege any number of violations of its provisions by the same party, but the several charges must be set out in separate counts, and the accused may be convicted and punished upon each one as on separate informations or indictments, and a separate judgment shall be rendered on each

count under which there is a finding of guilty. [C., '51, § 931; R., '60, § 1562; C., '73, § 1540; C., '97, § 2425; 40 Ex. G. A., S. F. 51, § 33.]

1954. Former conviction—pleading. In any prosecution for a second or subsequent offense, as provided in this title, it shall not be requisite to set forth in the indictment or information the record of a former conviction, but it shall be sufficient briefly to allege such conviction. [R., '60, § 1569; C., '73, § 1549; C., '97, § 2424; 40 Ex. G. A., S. F. 51, § 34.]

1955. "Second conviction" defined. The second or subsequent convictions provided for in this title shall be convictions on separate informations or indictments, and, unless shown in the information or indictment, the charge shall be held to be for a first offense. [R., '60, § 1562; C., '73, § 1540; C., '97, § 2425; 40 Ex. G. A., S. F. 51, § 35.]

1956. Record of former conviction. On the trial of any cause, wherein the accused is charged with a second or subsequent offense, a duly authenticated copy of the former judgment in any court in which such judgment was so had, shall be competent and prima facie evidence of such former judgment. [S. S., '15, § 2461-n; 40 Ex. G. A., S. F. 51, § 36.]

1957. Proof of sale. It shall not be necessary in every case to prove payment in order to prove a sale within the true meaning and intent of this title. [R., '60, § 1569; C., '73, § 1549; C., '97, § 2424; 40 Ex. G. A., S. F. 51, § 37.]

1958. Purchaser as witness. The person purchasing any intoxicating liquor sold in violation of this title shall in all cases be a competent witness to prove such sale. [R., '60, § 1569; C., '73, § 1549; C., '97, § 2424; 40 Ex. G. A., S. F. 51, § 38.]

1959. Peace officer as witness. Every peace officer shall give evidence, when called upon, of any facts within his knowledge tending to prove a violation of the provisions of this title. [R., '60, § 1578; C., '73, § 1551; C., '97, § 2428; S., '13, § 2428; 40 Ex. G. A., S. F. 51, § 39.]

1960. Judgment lien. For all fines and costs assessed or judgments rendered of any kind against any person for a violation of any provision of this title, or costs paid by the county on account of such violation, the personal and real property, whether exempt or not, except the homestead, as well as the premises and property, personal and real, occupied and used for the purpose, with the knowledge of the owner or his agent, by the person manufacturing, selling, or giving, contrary to the provisions of this title, or keeping with intent to sell intoxicating liquors contrary to law, shall be liable, and the same shall be a lien on such real estate until paid. [R., '60, § 1579; C., '73, §§ 1552, 1558; C., '97, § 2422; 40 Ex. G. A., S. F. 51, § 40.]

1961. Enforcement of lien. Costs paid by the county for the prosecution of actions or

proceedings, civil or criminal, under this title, as well as the fines inflicted or judgments recovered, may be enforced against the property upon which the lien attaches by execution, or by action against the owner of the property to subject it to the payment thereof. [C., '73, § 1558; C., '97, § 2422; 40 Ex. G. A., S. F. 51, § 41.]

1962. Evidence of owner's knowledge. In actions under the two preceding sections, evidence of the general reputation of the place kept shall be admissible on the question of knowledge of the owner, and written notice given him or his agent by any citizen of the county shall be sufficient to charge him with the same. [C., '97, § 2422; 40 Ex. G. A., S. F. 51, § 42.]

1963. Action to subject property—attorney fee. The county attorney in the name of the state, or any citizen of the county in his own name, may maintain an action to subject real property to the payment of the costs and fines aforesaid, and in all such actions, if successful, there shall be added to the judgment, as additional costs, in favor of the county attorney or citizen, as the case may be, a reasonable attorney fee to be fixed by the court. [40 Ex. G. A., S. F. 51, § 42-a1.]

1964. Second and subsequent conviction. Whoever is convicted, or has entered a plea of guilty in a criminal action, in any district court of the state, of a violation of any provision of this title or of the laws amendatory thereof, and is thereafter convicted or enters a plea of guilty of a subsequent offense against any provision of this title or of said amendatory laws, shall be punished as follows:

1. For his second conviction, by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than six months nor more than one year, or by both such fine and imprisonment.

2. For his third and each subsequent conviction, by imprisonment in the state penitentiary for not more than three years. [R., '60, §§ 1561, 1563, 1577; C., '73, §§ 1525, 1538, 1540, 1542, 1559; S. S., '15, § 2461-m; 40 G. A., ch. 21, § 1; 40 Ex. G. A., S. F., 51, § 43.]

1965. Miscellaneous violations. Any person who, hereafter, is four times convicted either upon trial or a plea of guilty in separate civil or criminal proceedings in any court of this state of violations of this title and is thereafter convicted or enters a plea of guilty in the district court under an indictment or trial information of a fifth violation of this title, shall be imprisoned in the penitentiary for a term not exceeding three years. [40 Ex. G. A., S. F. 51, § 44.]

1966. Pleading former convictions. The indictment or information charging a fifth violation under the preceding section shall briefly refer to and identify said former convictions. [40 Ex. G. A., S. F. 51, § 45.]

CHAPTER 96

SEARCH WARRANTS

- 1967. Search warrant proceedings.
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- 1995. Writ for destruction or disposition.
- 1996. Execution and return.
- 1997. Transportation by carrier.
- 1998. Receipts and return.
- 1999. "Destruction" defined.

1967. Search warrant proceedings. Search warrant proceedings authorized by this title shall be in the name of the state. [37 G. A., ch. 322, § 1; 40 G. A., ch. 23, § 4; 40 Ex. G. A., S. F. 51, § 46.]

1968. Information for search warrant. Any credible resident of this state may, before a magistrate, make written information, supported by his oath or affirmation, that he has reason to believe and does believe that at a named place in the county wherein the information is filed:

1. Intoxicating liquors are being unlawfully kept; or
2. Instruments and utensils are being kept and used in the manufacture of intoxicating liquors, or are being kept with the intent to so use them; or
3. Materials are being kept and used in the manufacture of intoxicating liquors, or are being kept with the intent to so use them. [R., '60, § 1565; C., '73, § 1544; C., '97, § 2413; S. S., '15, § 2413; 37 G. A., ch. 322, § 1; 40 G. A., ch. 23, § 2; 40 Ex. G. A., S. F. 51, § 47.]

1969. Description of person, place, and things. Said information shall, in all cases, describe with reasonable certainty the place to be searched, and the liquors or instruments or material kept, used, or intended to be used in the manufacture of intoxicating liquors. The person in possession of said place and the person keeping said liquors and things shall be designated by name, if known. If the name of such person is unknown, the information shall state such fact. [R., '60, § 1565; C., '73, §§ 1544, 1545; C., '97, §§ 2413, 2414; S. S., '15, § 2413; 37 G. A., ch. 322, § 1; 40 G. A., ch. 23, §§ 2, 6; 40 Ex. G. A., S. F. 51, § 48.]

1970. Probable cause—warrant. Said magistrate shall, upon finding that complainant has

probable cause for the belief set forth in said information, issue his warrant of search. Said warrant shall be directed "To any peace officer in the county", shall designate and describe the liquors, instruments, utensils, materials, place, and persons substantially as set forth in said information, and shall command the said officer thoroughly to search said place and to seize the said liquors and the vessels containing them, and said instruments, utensils, and materials, and to keep the same securely until final action be had thereon. [R., '60, § 1565; C., '73, § 1544; C., '97, § 2413; S. S., '15, § 2413; 40 G. A., ch. 23, §§ 2, 4; 40 Ex. G. A., S. F. 51, § 50.]

1971. Execution of warrant. The peace officer to whom such warrant shall be delivered shall forthwith obey and execute, as effectually as possible, the commands of said warrant, and forthwith make return of his doings to said magistrate, and shall securely keep all liquors, instruments, utensils, and materials so seized by him and the vessels containing them until final action be had thereon. [R., '60, § 1565; C., '73, § 1544; C., '97, §§ 2413, 2415; S. S., '15, §§ 2413, 2415; 40 G. A., ch. 23, §§ 3, 8; 40 Ex. G. A., S. F. 51, § 51.]

1972. Notice of hearing. Said magistrate, in the event of a seizure under said warrant, shall, within forty-eight hours after the officer's return is filed with him, issue a notice of hearing on said seizure, which notice shall:

1. Be addressed:
 - a. To the person or persons named or described in said information as the owner or keeper of said liquors, instruments, utensils, and materials.
 - b. "To all persons whom it may concern".
2. Describe said liquors, vessels, instruments, utensils, and materials with reasonable

certainty, and state where, when, and why the same were seized.

3. Summon said persons and all others whom it may concern to appear before said magistrate within the county at a place and time named in said notice, which time shall not be less than five nor more than fifteen days after the posting and leaving of said notices, and show cause, if any they have, why said instruments, materials, or liquors, together with the vessels in which the same are contained, should not be forfeited.

4. Be signed by said magistrate. [R., '60, § 1566; C., '73, § 1546; C., '97, § 2415; S. S., '15, § 2415; 40 G. A., ch. 23, § 8; 40 Ex. G. A., S. F. 51, § 52.]

1973. Service of notice. Said notice shall be served:

1. By posting a copy thereof in some conspicuous place on or about the building or place where said liquors, vessels, instruments, utensils, and materials were seized.

2. If the person or persons named or described in the information as owner or keeper of said liquors, articles, and things so seized be resident of said county, then by leaving a copy of said notice at the last known usual place of residence of said person or persons. [R., '60, § 1566; C., '73, § 1546; C., '97, § 2415; S. S., '15, § 2415; 40 G. A., ch. 23, § 8; 40 Ex. G. A., S. F. 51, § 53.]

1974. Right to contest forfeiture. At the time and place prescribed in said notice, the person named in said information, or any other person claiming an interest in said liquors, vessels, instruments, utensils, or materials, or in any part thereof, may appear and show cause why the same should not be forfeited, providing such claimant at least three days prior to the time set for the hearing:

1. Has filed a written claim for said liquors, vessels, instruments, utensils, or materials, or for any part thereof, and has alleged therein under oath that the articles claimed were not obtained by him by means of unlawful transportation of the same and were not intended for unlawful sale or use.

2. Has entered into and filed with the magistrate a bond with proper security as determined by said magistrate, conditioned to pay all costs incurred in the proceeding from the beginning thereof in case the liquors, vessels, instruments, utensils, or materials, or any part thereof so claimed, are finally ordered forfeited. [R., '60, § 1566; C., '73, § 1546; C., '97, § 2415; S. S., '15, § 2415; 40 G. A., ch. 23, §§ 8, 9; 40 Ex. G. A., S. F. 51, § 54.]

1975. Procedure. The proceeding in the trial of such case may be the same, substantially, as in cases of misdemeanor triable before justices of the peace. [R., '60, § 1566; C., '73, § 1546; C., '97, § 2415; S. S., '15, § 2415; 40 G. A., ch. 23, § 10; 40 Ex. G. A., S. F. 51, § 55.]

1976. Right to jury. Any person may demand a jury, provided he has, within the time and in the manner heretofore provided,

acquired the right to contest said condemnation. [R., '60, § 1566; C., '73, § 1546; C., '97, § 2415; S. S., '15, § 2415; 37 G. A., ch. 322, § 2; 40 G. A., ch. 23, § 10; 40 Ex. G. A., S. F. 51, § 56.]

1977. Presumption. It shall be presumed, on the trial of said proceeding, that all intoxicating liquors seized under said search warrant and the vessels containing such liquors have come into the possession of the holder or claimant by means of unlawful transportation, and that such liquors were owned and kept by claimant with the intent to sell and use the same in violation of this title, and the burden to show the contrary shall rest upon the claimant. [40 Ex. G. A., S. F. 51, § 57.]

1978. Insufficiency of description no defense. When any liquors, instruments, utensils, or materials shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same by reason of any alleged insufficiency of description in the warrant of the liquors, instruments, utensils, materials, or place, but the claimant shall only have a right to be heard on the merits of the case. [C., '73, § 1545; C., '97, § 2414; 40 G. A., ch. 23, § 6; 40 Ex. G. A., S. F. 51, § 58.]

1979. Judgment of forfeiture. If, upon the evidence presented, the said magistrate or jury, as the case may be, shall, by verdict, find that said liquors, instruments, or materials were, when seized, owned or kept by any person, whether said party defendant or not, for the purpose of being used or sold in violation of this title or have been unlawfully manufactured or transported, the said magistrate shall render judgment that said liquors, instruments, or materials or said part thereof, with the vessels in which they are contained, are forfeited. [R., '60, § 1566; C., '73, § 1546; C., '97, § 2415; S. S., '15, § 2415; 37 G. A., ch. 322, § 2; 40 G. A., ch. 23, § 10; 40 Ex. G. A., S. F. 51, § 59.]

1980. Costs. If no person be made defendant in the manner aforesaid, or if judgment be in favor of all the defendants who appear and are made such, then the costs of the proceeding shall be paid as in ordinary criminal prosecution where the prosecution fails.

If the judgment shall be against only one party defendant appearing as aforesaid, he shall be adjudged to pay all the costs of proceedings in the seizure and detention of the liquors, instruments, utensils, or materials claimed by him, and of the trial, up to the time of judgment.

If such judgment shall be against more than one party defendant claiming distinct interests in said liquor, instruments, or material, then the costs of said proceedings and trial shall be, according to the discretion of said magistrate, equitably apportioned among said defendants.

Execution shall be issued on said judgments against said defendants for the amount of costs so adjudged against them. [R., '60, § 1566; C., '73, § 1546; C., '97, § 2415; S. S., '15, § 2415;

40 G. A., ch. 23, § 11; 40 Ex. G. A., S. F. 51, § 60.]

1981. Appeal by claimant. Any person appearing as aforesaid may appeal to the district court from said judgment or forfeiture, as to the whole or any part of said liquors, instruments, utensils, materials, or vessels claimed by him and so adjudged forfeited. [R., '60, § 1566; C., '73, § 1546; C., '97, § 2415; S. S., '15, § 2415; 37 G. A., ch. 322, § 2; 40 G. A., ch. 23, § 12; 40 Ex. G. A., S. F. 51, § 61.]

1982. Appeal by state. Where the judgment is against the state, it shall have the same right of appeal, except that no bond shall be required. [37 G. A., ch. 322, § 2; 40 G. A., ch. 23, § 12; 40 Ex. G. A., S. F. 51, § 62.]

1983. Stay of proceedings. If an appeal be taken by the state, the same shall operate as a stay of proceedings and the liquors, instruments, utensils, or materials seized under the warrant shall not be returned to any claimant thereof until, upon the final determination of said appeal, he is found entitled thereto. [37 G. A., ch. 322, § 2; 40 G. A., ch. 23, § 12; 40 Ex. G. A., S. F. 51, § 63.]

1984. Default judgment. If no person appears and claims such liquors, instruments, utensils, or materials, at least three days prior to the day set for the forfeiture hearing, the magistrate shall enter an order of forfeiture on default on the date set for the hearing. [R., '60, § 1566; C., '73, § 1546; C., '97, § 2415; S. S., '15, § 2415; 40 G. A., ch. 23, § 13; 40 Ex. G. A., S. F. 51, § 64.]

1985. Transcript to district court. When it shall be finally decided by any other than the district court that intoxicating liquors, instruments, utensils, or materials seized as aforesaid are forfeited, the court rendering final judgment of forfeiture shall forthwith file in the office of the clerk of the district court in the county a certified transcript of such judgment. [R., '60, § 1567; C., '73, § 1547; C., '97, § 2416; 38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 15; 40 Ex. G. A., S. F. 51, § 65.]

1986. Judgment docketed—effect. The clerk of the district court shall file the transcript as soon as received and enter a memorandum thereof and the date of filing in the judgment docket and from such entry it shall be treated in all respects and in its enforcement as a judgment in the district court. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 15; 40 Ex. G. A., S. F. 51, § 66.]

1987. Delivery to sheriff. When a judgment of forfeiture is transcribed to the district court, the officer having said liquors, instruments, utensils, or materials in custody shall forthwith deliver the same to the sheriff, taking itemized receipts therefor. One of said receipts shall be filed with the clerk of the district court and the other with the court rendering said judgment. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 15; 40 Ex. G. A., S. F. 51, § 67.]

1988. Restoration. When it shall be finally decided that any liquors, instruments, utensils, or materials so seized are not liable to forfeiture, the court rendering such final decision shall issue a written order to the officer having the same in custody or to some other peace officer, to restore said liquors, instruments, utensils, or materials with the vessels containing the same to the place where they were seized as nearly as may be or to the person entitled to receive them. [R., '60, § 1567; C., '73, § 1547; C., '97, § 2416; 40 G. A., ch. 23, § 16; 40 Ex. G. A., S. F. 51, § 68.]

1989. Execution, return, and costs. The officer shall obey said order and make return thereon to the court of his acts thereunder and the costs of the proceeding in such case attending the restoration shall be taxed to and paid by the state. [R., '60, § 1567; C., '73, § 1547; C., '97, § 2416; 40 G. A., ch. 23, § 16; 40 Ex. G. A., S. F. 51, § 69.]

1990. Utilizing condemned liquors. When a transcript has been filed or a judgment has been entered in the district court, decreeing a forfeiture of any intoxicating liquors, instruments, utensils, or materials, the court, or a judge thereof in vacation, may direct the disposition of such liquors, instruments, utensils, or materials, and the vessels containing the same:

1. By ordering the destruction thereof; or
2. By ordering any portion thereof consisting of alcohol, brandies, wine, or whiskey, to be delivered, for medical or scientific purposes, to any state or reputable hospital in the county, or in adjoining counties, or to the board of control of state institutions. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 17; 40 Ex. G. A., S. F. 51, § 70.]

1991. Dispensation by board of control. Liquors delivered to the board of control shall be dispensed by it to any state institution or reputable hospital in this state and solely for medical or scientific purposes. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 17; 40 Ex. G. A., S. F. 51, § 71.]

1992. Duty of board of control. The state board of control shall issue to the said court or judge a receipt stating the kind and quantity of liquor delivered to it and shall keep a strict account of all liquors received and dispensed and shall make a full and complete report of all such transactions each year to the governor of the state. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 17; 40 Ex. G. A., S. F. 51, § 72.]

1993. Destruction of instruments—sale of material. Said court or judge shall also direct that all instruments used in the manufacture of intoxicating liquors be converted by the sheriff into junk in such a manner that they can not again be used for manufacturing liquor, and shall direct the sheriff to destroy all material which has no value for any other purpose than making intoxicating liquor.

All material which may have legitimate uses and the junk referred to shall be sold by the

sheriff as chattels under execution and all moneys realized therefrom shall be turned into the treasury for the benefit of the school fund of the county. [40 G. A., ch. 23, § 18; 40 Ex. G. A., S. F. 51, § 73.]

1994. Undisposed cases—duty of clerk. The clerk of the district court shall call to the attention of the court on the first day of each term all judgments for the forfeiture of intoxicating liquors, instruments, utensils, or materials, and for the disposition of which no order has been theretofore made, and the court shall thereupon enter an order for the disposition of such liquors, instruments, utensils, or materials. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 19; 40 Ex. G. A., S. F. 51, § 74.]

1995. Writ for destruction or disposition. Upon the entry of any order for the disposition of any intoxicating liquors, instruments, or materials which have been adjudged forfeited, the clerk shall forthwith transmit a certified copy thereof to the sheriff for execution. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 19; 40 Ex. G. A., S. F. 51, § 75.]

1996. Execution and return. The sheriff shall immediately take possession of such liquors, instruments, utensils, or materials, and the vessels containing the same, and make disposition thereof in accordance with such order, and make return of his doing to the court. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 19; 40 Ex. G. A., S. F. 51, § 76.]

1997. Transportation by carrier. When any such liquor is ordered delivered or shipped, the sheriff shall securely attach to the box or package containing the same, a certified copy of the order of the court and thereupon any railway company, express company, or other common carrier may receive, transport, and deliver such liquor to the consignee.

The cost of packing and transportation shall be paid by the consignee receiving such liquor. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 20; 40 Ex. G. A., S. F. 51, § 77.]

1998. Receipts and return. The sheriff shall take receipts for any liquor disposed of under the provisions of the preceding section, showing in detail the kind and quantity of liquor delivered, the character of the vessels containing same, the date and manner of delivery and, if delivery is made by common carrier, the name of such carrier. Such receipt shall be attached to and filed with the return of his doings as herein provided. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 20; 40 Ex. G. A., S. F. 51, § 78.]

1999. "Destruction" defined. The delivery, for medicinal or scientific purposes, of intoxicating liquors to state institutions, hospitals, or to the board of control, under an order of the district court, shall be deemed a destruction thereof within the meaning of any statute of this state providing for such destruction. [38 G. A., ch. 266, § 1; 40 G. A., ch. 23, § 21; 40 Ex. G. A., S. F. 51, § 79.]

CHAPTER 97

SEIZURE AND SALE OF CONVEYANCES

- 2000. "Conveyance" defined.
- 2001. Seizure under transportation.
- 2002. Replevin not available.
- 2003. Custody of conveyance.
- 2004. Release of conveyance.
- 2005. Information—return required.
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- 2007. Optional procedure as to liquors.
- 2008. Optional procedure as to conveyance.

- 2009. Information against conveyance.
- 2010. Procedure—exceptions.
- 2011. Duty of secretary of state.
- 2012. Permissible claimants.
- 2013. Priority of liens.
- 2014. Distribution of proceeds.
- 2015. Balance to school fund.
- 2016. Duplicate receipts.

2000. "Conveyance" defined. The term "conveyance" as used in this chapter shall embrace wagons, buggies, teams, automobiles, motor vehicles, water and air craft, and all other forms of conveyances except railway, street, and interurban cars. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 80.]

2001. Seizure under transportation. A peace officer who discovers that intoxicating liquor has been or is being transported in violation of law, shall summarily arrest the offender and likewise seize said liquor and the conveyance used to effect said transportation. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 81.]

2002. Replevin not available. A conveyance seized under the preceding section shall not be subject to replevin. [40 Ex. G. A., S. F. 51, § 82.]

2003. Custody of conveyance. Said conveyance shall be turned over to the sheriff of the county in which the seizure was made, and shall be retained in his custody until disposed of as hereinafter provided. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 83.]

2004. Release of conveyance. Said conveyance shall be returned to the owner upon execution by him of a good and valid bond with sufficient sureties in a sum double the value of the property, which said bond shall

be approved by the sheriff of the county and shall be conditioned to pay the value of said conveyance, when seized, to said sheriff in case a judgment of forfeiture be entered against said conveyance. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 84.]

2005. Information—return required. The officer shall at once file an information against the accused before some court of the county other than the district court. In addition to the information, the officer shall also file with the said court a written return or statement setting forth a brief description of the conveyance, liquors, and vessels seized. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 85.]

2006. Forfeiture. The court, upon conviction of a person so arrested, shall enter an order of forfeiture of the liquors, vessels, and conveyance seized and forthwith file with the clerk of the district court a certified transcript of such order. The district court or a judge thereof shall, on such notice as the court or judge may prescribe, proceed to adjudicate the legality and priority of all claims to and liens on said conveyance, and shall proceed against said liquors and vessels as in case of transcripts filed in search warrant proceedings. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 86.]

2007. Optional procedure as to liquors. In lieu of declaring a forfeiture, under the last preceding section, of said liquors and vessels, the said court may, in any case, proceed against the said liquors and vessels, in the manner in which it would proceed had said liquors been seized on a duly issued search warrant. [40 Ex. G. A., S. F. 51, § 86-a1.]

2008. Optional procedure as to conveyance. In lieu of declaring a forfeiture, under the second preceding section, of said conveyance, the said court may, in any case, proceed as provided in the following section. [40 Ex. G. A., S. F. 51, § 86-a2.]

2009. Information against conveyance. An information, under oath, and in substantially the following form, shall be filed in the district court against a conveyance promptly upon the seizure thereof, to wit:

“State of Iowa
 vs.
 One certain automobile (or other conveyance as the case may be)
 being duly sworn do say on oath that (here describe the conveyance with reasonable certainty) was, on the.....day of....., 19....., in the county of....., in the state of Iowa, employed in the transportation of intoxicating liquors in violation of law, and, because of such unlawful use, was at said time and place seized and is now in the custody of the sheriff of said county; that to the best knowledge and belief of this affiant said conveyance belongs to..... Wherefore it is asked that said conveyance be dealt with as provided by law.” [40 Ex. G. A., S. F. 51, § 87.]

2010. Procedure—exceptions. Upon the filing of said information, the procedure for the forfeiture of said conveyance shall be the same as is provided for the forfeiture of intoxicating liquors seized under search warrant, except in the following particulars:

1. *Service of notice.* The notice of hearing of forfeiture shall, in addition to the service provided in section 1973, be published once a week for two weeks in some newspaper published in the city or county in which said conveyance was seized, and if the conveyance be a motor vehicle a copy of the aforesaid notice shall forthwith be mailed to the secretary of state.

2. *Hearing.* Said notice shall fix the day of hearing at a time not less than thirty days after the notice is fully served.

3. *Right to contest.* The written claim of the owner or other claimant shall allege, under oath, that said conveyance was not being employed, when seized, in the unlawful transportation of intoxicating liquors, or that if it was being so employed such use was without the knowledge or consent, directly or indirectly, of said claimant.

4. *Presumption.* If it be made to appear that any intoxicating liquors were found in or on said conveyance when it was seized, it shall be presumed that the conveyance was, when seized, employed with the knowledge and consent of all claimants, in the unlawful transportation of such liquors.

5. *Trial.* The trial shall be by the court.

6. *Judgment.* A judgment of forfeiture shall direct that said conveyance be sold by the sheriff as chattels under execution, and a certified copy of such order shall constitute an execution. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 88.]

2011. Duty of secretary of state. The secretary of state, upon receipt of the notice aforesaid, shall, if the owner appears of record in his office, notify such owner of the fact of seizure, and if not of record, said secretary shall mail such description to the county treasurer of each county, and to the state bureau of investigation. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 89.]

2012. Permissible claimants. No conveyance shall be returned to any claimant, either as owner or lien holder, nor shall any claim be established when such claimant:

1. Fails to establish a legal and bona fide claim; or

2. Knew or had reason to suspect that said conveyance was being employed in the illegal transportation of intoxicating liquors; or

3. Fails to overcome the presumption, if established, that such conveyance was being so used, with his knowledge and consent; or

4. Fails, in case of a motor vehicle, to establish the registration of the conveyance in the name of the claimant prior to the seizure; or

5. Fails to establish that his lien was duly recorded prior to the seizure. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 90.]

2013. Priority of liens. The judgment shall establish the amount and priority of all allowable claims. [40 Ex. G. A., S. F. 51, § 91.]

2014. Distribution of proceeds. The sheriff shall apply the proceeds of a sale, or of the forfeited bond, in the following order:

1. Expense of keeping the conveyance.
2. Court costs.
3. Liens in the order established by the court. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 92.]

2015. Balance to school fund. Any balance of said proceeds shall be paid by the sheriff to the county treasurer who shall credit the same to the county school fund. [40 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 51, § 93.]

2016. Duplicate receipts. The sheriff, in paying a balance to the county treasurer, shall take duplicate receipts therefor and file one of said receipts with the county auditor. [40 Ex. G. A., S. F. 51, § 94.]

CHAPTER 98

INJUNCTION AND ABATEMENT

- 2017. Action to enjoin.
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- 2019. Notice.
- 2020. Scope of injunction.
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- 2023. Attorney fees and commission.
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- 2030. Second and subsequent convictions.
- 2031. Bootleggers.
- 2032. Judgment of abatement.
- 2033. Use of abated premises.
- 2034. Fees.
- 2035. Proceeds—how applied.

- 2036. Abatement after judgment.
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- 2038. Effect of release.
- 2039. Abatement bonds—liens on real estate.
- 2040. Attested copies filed in proper counties.
- 2041. Forfeiture of abatement bond.
- 2042. Procedure.
- 2043. Method of trial.
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- 2045. Appeal.
- 2046. Limitation of actions of forfeiture.
- 2047. County attorney to prosecute.
- 2048. Advance payment of fees.
- 2049. Prompt service of papers.
- 2050. Costs.
- 2051. Mulet tax.
- 2052. Amount, manner, and effect of imposition.
- 2053. Evidence.

2017. Action to enjoin. Actions to enjoin nuisances may be brought in equity in the name of the state by the county attorney, who shall prosecute the same to judgment, or any citizen of the proper county may institute and maintain such a proceeding in his name. [R., '60, § 1564; C., '73, § 1543; C., '97, §§ 2405, 2406; S., '13, § 2406; S. S., '15, § 2405; 40 Ex. G. A., S. F. 51, § 95.]

2018. Temporary injunction. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the court or judge, by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as the plaintiff may elect, unless the court or judge, by previous order, shall have directed the form and manner in which it shall be presented, that the nuisance complained of exists. [R., '60, § 1564; C., '73, § 1543; C., '97, § 2405; S. S., '15, § 2405; 40 Ex. G. A., S. F. 51, § 96.]

2019. Notice. Three days' notice in writing shall be given the defendant of the hearing of the application, and, if then continued at his instance, the writ as prayed shall be granted as a matter of course. [C., '97, § 2405; S. S., '15, § 2405; 40 Ex. G. A., S. F. 51, § 97.]

2020. Scope of injunction. When an injunction has been granted, it shall be binding

on the defendant throughout the state, and any violation of the provisions of this title anywhere within the state shall be punished as a contempt, as provided in this chapter. [C., '97, § 2405; S. S., '15, § 2405; 40 Ex. G. A., S. F. 51, § 98.]

2021. Immediate trial. The action when brought shall be triable at the first term of court after due and timely service of notice of the commencement thereof has been given. [C., '97, § 2406; S., '13, § 2406; 40 Ex. G. A., S. F. 51, § 99.]

2022. Evidence of general reputation. In all actions to enjoin a nuisance or to establish a violation of the injunction, evidence of the general reputation of the place described in the petition or information shall be admissible for the purpose of proving the existence of the nuisance or the violation of the injunction. [C., '97, § 2406; S., '13, § 2406; 40 Ex. G. A., S. F. 51, § 100.]

2023. Attorney fees and commission. In all actions in equity against persons charged with keeping a nuisance, and to abate the same, and all proceedings for a contempt for violating any injunction, temporary or permanent, issued or decreed therein, the court or judge before whom the same shall be heard and determined shall, if the plaintiff be successful, allow the attorney prosecuting such cause an attorney's fee of

twenty-five dollars, such fee to be assessed against the defendant, together with the costs in such cause and in case a fine be assessed he shall be allowed ten per cent of the fine collected. [C., '97, §§ 2406, 2429; S., '13, § 2406; 40 Ex. G. A., S. F. 51, § 101.]

2024. Dismissal of action. Such action, when brought by a citizen, shall not be dismissed upon the motion of either the plaintiff or defendant until the county attorney shall have been notified in writing of the filing of such motion, and until such county attorney shall have made a personal investigation of the place of business sought to be enjoined, and of all matters set forth in said motion for dismissal, and shall have filed, in writing, a report of his findings in said cause, and his recommendation in reference to the disposition of the same. [C., '97, § 2406; S., '13, § 2406; 40 Ex. G. A., S. F. 51, § 102.]

2025. Delay in trial. If any such action by a citizen shall remain upon the docket for two terms of court, without trial, it shall be the duty of the judge of such court to order the plaintiff and his attorney or attorneys of record to appear in open court for examination as to the reasons why such cause has not been brought on for trial; and it shall be the duty of the county attorney to conduct such examination, if the judge shall so order. [S., '13, § 2406; 40 Ex. G. A., S. F. 51, § 103.]

2026. Bad faith in prosecution. Whenever the court shall have reason to believe that any such action to enjoin has not been brought or prosecuted in good faith, said court shall direct the grand jury to investigate all the facts and circumstances connected with the bringing and prosecution of the same. [S., '13, § 2406; 40 Ex. G. A., S. F. 51, § 104.]

2027. Violation—procedure—warrant. In case of the violation of any injunction granted under the provisions of this title, the court, or in vacation a judge thereof, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. [C., '97, § 2407; S. S., '15, § 2407; 40 Ex. G. A., S. F. 51, § 105.]

2028. Method of trial. The trial shall be as in equity and may be had upon affidavits, or either party may demand the production and oral examination of the witnesses. [C., '97, § 2407; S. S., '15, § 2407; 40 Ex. G. A., S. F. 51, § 106.]

2029. First conviction. A party found guilty of contempt under the provisions of the preceding section, shall for the first offense be punished by a fine of not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and

imprisonment. [C., '97, § 2407; S. S., '15, § 2407; 40 Ex. G. A., S. F. 51, § 107.]

2030. Second and subsequent convictions. A party who, having once been found guilty of contempt for violating the provisions of any such injunction, shall for each such subsequent violation be punished by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment in the county jail for not less than six months nor more than one year. [S. S., '15, § 2407; 39 G. A., ch. 271, § 1; 40 Ex. G. A., S. F. 51, § 108.]

2031. Bootleggers. A bootlegger, as defined in this title, may be restrained by injunction from doing or continuing to do any of the acts prohibited by law, and all the proceedings for injunctions, temporary and permanent, and for fines and costs for violation of same, as defined by law, shall be applicable to such person, company, or corporation, and the fact that an offender has no known or permanent place of business or base of supplies, or quits the business after the commencement of an action, shall not prevent a temporary or permanent injunction, as the case may be, from issuing. [S., '13, § 2461-b; 40 Ex. G. A., S. F. 51, § 109.]

2032. Judgment of abatement. If the existence of the nuisance be established in a civil or criminal action, an order of abatement shall be entered as a part of the judgment in the case; which order shall direct the destruction of the liquor, the removal from the building or place of all fixtures, furniture, vessels, or movable property used in any way in conducting the unlawful business, and sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building, erection, or place against its use for any purpose prohibited in this title, and so keeping it for a period of one year, unless sooner released. [C., '51, § 935; R., '60, § 1559; C., '73, §§ 1523, 1543; C., '97, § 2408; 40 Ex. G. A., S. F. 51, § 110.]

2033. Use of abated premises. If anyone shall break or use a building or place so directed to be closed, he shall be punished as for contempt as provided in this title. [C., '97, § 2408; 40 Ex. G. A., S. F. 51, § 111.]

2034. Fees. For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court. [C., '97, § 2408; 40 Ex. G. A., S. F. 51, § 112.]

NOTE: Sheriff fees, see § 5191.

2035. Proceeds—how applied. The proceeds of the sale of the personal property in abatement proceedings shall be applied, first, in payment of the costs of the action and abatement; second, to the satisfaction of any fine and costs adjudged against the proprietor of the premises and keeper of said nuisance, and the balance, if any, shall be paid to the

defendant. [C., '97, § 2409; 40 Ex. G. A., S. F. 51, § 113.]

2036. Abatement after judgment. If the owner appears and pays all costs of the proceedings, and files a bond with sureties to be approved by the clerk in the full value of the property, to be ascertained by the court, or, in vacation, by the clerk, auditor, and treasurer of the county, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or, in vacation, the judge, may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property. [C., '97, § 2410; S., '13, § 2410; 40 Ex. G. A., S. F. 51, § 114.]

2037. Abatement before judgment. If the proceeding be an action in equity, and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. [C., '97, § 2410; S., '13, § 2410; 40 Ex. G. A., S. F. 51, § 115.]

2038. Effect of release. The release of the property under the provisions of either of the two preceding sections shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law. [C., '97, § 2410; S., '13, § 2410; 40 Ex. G. A., S. F. 51, § 116.]

2039. Abatement bonds—liens on real estate. Undertakings of bond for abatement shall, immediately after filing by the clerk of the district court, be docketed and entered upon the lien index as required for judgments in civil cases, and, from the time of such entries, shall be liens upon real estate of the persons executing the same, with like effect as judgments in civil actions. [40 Ex. G. A., S. F. 51, § 116-a1.]

2040. Attested copies filed in proper counties. Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated, in the same manner and with like effect as attested copies of judgments, and shall be immediately docketed and indexed in the same manner. [40 Ex. G. A., S. F. 51, § 116-a2.]

2041. Forfeiture of abatement bond. If the owner of the property who has filed said abatement bond as in this chapter provided, fails to abate the said liquor nuisance on the premises covered by the bond or fails to prevent the maintenance of any liquor nuisance on said premises at any time within the period of one year, the court must, after a hearing in which the said fact is established, direct an entry of such violation of the terms of his said bond, to be made on the record, and the undertaking of his bond is thereupon forfeited. [40 Ex. G. A., S. F. 51, § 116-a3.]

2042. Procedure. The proceeding to forfeit said abatement bond shall be commenced by filing with the clerk of the court, by any citizen of the county where the bond is filed, an application, under oath, to forfeit said bond, setting out the alleged facts constituting the violation of the terms of said bond, upon which the judge or court shall direct by order attached to said application, that a notice be issued by the clerk of the district court, directed to the principal and sureties on said bond, to appear at a certain date fixed, to show cause, if any they have, why the said bond should not be forfeited and judgment entered for the penalty therein fixed. [40 Ex. G. A., S. F. 51, § 116-a4.]

2043. Method of trial. The trial shall be to the court and as in equity and be governed by the same rules as to evidence as in contempt proceedings. [40 Ex. G. A., S. F. 51, § 116-a5.]

2044. Judgment. If the court, after hearing, finds that a liquor nuisance has been maintained on the premises covered by the abatement bond and that liquor has been sold or kept for sale on the premises contrary to law, within one year from the date of the giving of said bond, then the court shall order the forfeiture of the bond and enter judgment for the full amount of said bond against the principal and sureties thereon and the lien on the real estate heretofore created shall be decreed foreclosed; and the court shall provide for a special and general execution for the enforcement of said decree and judgment. [40 Ex. G. A., S. F. 51, § 116-a6.]

2045. Appeal. Appeal may be taken as in any equity case and the cause be triable de novo, except that if applicant for forfeiture appeals, he need not file appeal or supersedeas bond. [40 Ex. G. A., S. F. 51, § 116-a7.]

2046. Limitation of actions of forfeiture. No application for forfeiture of abatement bond shall be considered or heard unless the same has been filed within one year after the termination of the one year period covered by the said bond; and after said period herein provided has fully elapsed, the bond shall be deemed absolutely void and the lien created thereby fully satisfied. [40 Ex. G. A., S. F. 51, § 116-a8.]

2047. County attorney to prosecute. It shall be the duty of the county attorney to prosecute all forfeitures of abatement bonds and the foreclosure of the same. [40 Ex. G. A., S. F. 51, § 116-a9.]

2048. Advance payment of fees. In an action brought by a citizen to enjoin a nuisance, as defined in this title, no officer or witness shall be entitled to receive in advance fees for service or attendance. [C., '97, § 2412; 40 Ex. G. A., S. F. 51, § 117.]

2049. Prompt service of papers. It shall be a misdemeanor for any peace officer to delay service of original notice, writ of injunction, writ of abatement, or warrant for contempt, in

any equity case filed for injunction or abatement, either by the state or a private citizen, under this chapter. [40 Ex. G. A., S. F. 51, § 117-a1.]

2050. Costs. If a prosecution brought by a citizen fails, or the costs can not be collected of the defendant, they shall be paid in the same manner as in criminal causes. If, however, the court shall find that the case was commenced without probable cause, or was maliciously brought, it may tax the costs to the plaintiff. [C., '97, § 2412; 40 Ex. G. A., S. F. 51, § 118.]

2051. Mulct tax. When a permanent injunction shall issue against any person for maintaining a nuisance as herein defined or against any owner or agent of the building kept or used for the purposes prohibited by this title, a tax shall be imposed upon said building and upon the ground upon which the same is located, and against the persons maintaining

said nuisance and against the owner or agent of said premises, when they knew, or ought in reason to have known, of said nuisance. [C., '97, §§ 2432-2447; S., '13, §§ 2433, 2437-2439, 2445; S. S., '15, § 2435; 40 Ex. G. A., S. F. 51, § 118-a1.]

2052. Amount, manner, and effect of imposition. Said tax shall be in the sum of six hundred dollars and shall be imposed in the same manner and with the same consequences as governs the imposition of a tax in injunction proceedings against places used for the purpose of lewdness, assignation, or prostitution. [40 Ex. G. A., S. F. 51, § 118-a2.]

NOTE: Houses of prostitution, see ch. 79.

2053. Evidence. On the issue whether a party knew or ought to have known of such nuisance, evidence of the general reputation of the place shall be admissible. [40 Ex. G. A., S. F. 51, § 118-a3.]

CHAPTER 99

CIVIL ACTIONS AND LIABILITY

2054. Liability for care of intoxicated person.
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2054. Liability for care of intoxicated person. Any person who shall, by the manufacture, sale, or giving away of intoxicating liquors contrary to the provisions of this title, cause the intoxication of any other person, shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, and five dollars per day in addition thereto for every day such intoxicated person shall be kept, in consequence of such intoxication, which sums may be recovered in a civil action before any court having jurisdiction thereof. [C., '73, § 1556; C., '97, § 2417; 40 Ex. G. A., S. F. 51, § 119.]

2055. Civil action for damages. Every wife, child, parent, guardian, employer, or other person who shall be injured in person or property or means of support by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her own name against any person who shall, by selling or giving to another contrary to the provisions of this title any intoxicating liquors, cause the intoxication of such person, for all damages actually sustained, as well as exemplary

damages. [C., '73, § 1557; C., '97, § 2418; 40 Ex. G. A., S. F. 51, § 120.]

NOTE: Liability of sureties, see § 2064.

2056. Married women. A married woman shall have the same right, under the preceding section, to bring suits, prosecute and control the same and the amount recovered, as a single woman. [C., '73, § 1557; C., '97, § 2418; 40 Ex. G. A., S. F. 51, § 121.]

2057. Damages recovered by minor. All damages recovered by a minor under the second preceding section shall be paid either to such minor or his parent, guardian, or next friend, as the court shall direct. [C., '73, § 1557; C., '97, § 2418; 40 Ex. G. A., S. F. 51, § 122.]

2058. Illegal transportation. Any person, firm, or corporation, and any agent or employee thereof, who engages in the transportation of intoxicating liquors shall for each act of transportation be fined in a sum not exceeding one thousand dollars or be imprisoned in the county jail not exceeding one year or be punished by both such fine and imprisonment and pay the cost of prosecution, including a reasonable attorney fee to be

taxed by the court. [R., '60, § 1580; C., '73, § 1553; C., '97, § 2419; 40 Ex. G. A., S. F. 51, § 122-a1.]

2059. Defenses. In any prosecution under this title for the unlawful transportation of intoxicating liquors it shall be a defense:

1. That the character and contents of the shipment or thing transported were not known to the accused or to his agent or employee, or

2. That the purchase and transportation of said liquors was authorized by a law of this state. [C., '97, § 2419; 40 Ex. G. A., S. F. 51, § 122-a2.]

2060. Venue. In any prosecution under this title for the unlawful transportation of intoxicating liquors, the offense shall be held to have been committed in any county in the state in which the liquors are received for transportation, through which they are transported, or in which they are delivered. [C., '97, § 2419; 40 Ex. G. A., S. F. 51, § 122-a3.]

NOTE: Venue, see § 1928.

2061. Proof of right to receive liquors. The consignee of intoxicating liquors shall, on demand of the carrier transporting such liquors, furnish the carrier, at the place of delivery, with legal proof of the consignee's legal right to receive such liquors at the time of delivery, and until such proof is furnished the carrier shall be under no legal obligation to make delivery nor be liable for failure to deliver. [40 Ex. G. A., S. F. 283, § 78-a1.]

2062. Delivery to sheriff. If such proof be not furnished the carrier within ten days after demand, the carrier may deliver such liquors to the sheriff of the county embracing the place of delivery, and such delivery shall absolve said carrier from all liability pertaining to said liquors. [40 Ex. G. A., S. F. 283, § 78-a2.]

2063. Destruction. The sheriff shall, on receipt of such liquors from the carrier, report the receipt to the district court of his county or to a judge thereof, and the court or judge shall proceed to summarily enter an order for the destruction of said liquors. [40 Ex. G. A., S. F. 283, § 78-a3.]

NOTE: Destruction defined, see § 1999.

2064. Principal and surety. Where anyone is required under the provisions of this title to give a bond, the principal and sureties shall be jointly and severally liable for all civil damages and costs which may be adjudged against the principal for any violation of any of the provisions of this title. [R., '60, § 1579; C., '73, §§ 1552, 1558; C., '97, § 2422; 40 Ex. G. A., S. F. 51, § 123.]

2065. Recovery of payments. All payments or compensation for intoxicating liquor sold in violation of this title, whether such payments or compensation be in money or anything else whatsoever, shall be held to have been received in violation of law, and to have been received upon a valid promise and agreement of the receiver to pay on demand to the person furnish-

ing such consideration the amount of said money, or the just value of such other thing. [R., '60, § 1571; C., '73, § 1550; C., '97, § 2423; 40 Ex. G. A., S. F. 51, § 124.]

2066. Transactions invalidated. All sales, transfers, liens, and securities of every kind which, either in whole or in part, shall have been made for or on account of intoxicating liquors sold in violation of this title shall be null and void against all persons, and no rights of any kind shall be acquired thereby. [R., '60, § 1571; C., '73, § 1550; C., '97, § 2423; 40 Ex. G. A., S. F. 51, § 125.]

2067. Action prohibited. No action shall be maintained for intoxicating liquors or the value thereof, sold in any other state or country, contrary to the law of said state or country, or with intent to enable any person to violate any provision of this title; nor shall any action be maintained for the recovery or possession of any intoxicating liquor, or the value thereof, except in cases where persons owning or possessing such liquor with lawful intent may have been illegally deprived of the same. [R., '60, § 1571; C., '73, § 1550; C., '97, § 2423; 40 Ex. G. A., S. F. 51, § 126.]

2068. Good faith holders. Nothing in the three preceding sections shall affect in any way negotiable paper in the hands of holders thereof in good faith for valuable consideration, without notice of any illegality in its inception or transfer, or the holders of land or other property who may have taken the same in good faith, without notice of any defect in the title of the person from whom the same was taken, growing out of a violation of the provisions of this title. [R., '60, § 1571; C., '73, § 1550; C., '97, § 2423; 40 Ex. G. A., S. F. 51, § 127.]

2069. Attempt to collect prohibited. The collection of payment, the solicitation of payment, and all attempts, directly or indirectly, to collect payment within this state for intoxicating liquor sold or shipped within or into this state to be used for illegal purposes within this state, is hereby prohibited and made illegal, and the violation hereof is hereby made a misdemeanor. [S. S., '15, § 2423-a; 40 Ex. G. A., S. F. 51, § 128.]

2070. Restraint of collection by injunction. Every person who for himself or for another violates any of the provisions of the preceding section, may be restrained by injunction from continuing to do any of the acts therein prohibited, and all the proceedings for injunctions, temporary and permanent, and for fines and costs for violation of same, as defined by law, shall be applicable to such person. [S. S., '15, § 2423-b; 40 Ex. G. A., S. F. 51, § 129.]

2071. Termination of lease. Upon a violation of any provision of this title committed upon real estate occupied by a tenant, his agent, servant, clerk, employee, or anyone claiming under him, the landlord of such premises, by himself or agent, may, in writing, notify such

agent, tenant, or the person in possession of said leased premises, to the effect that he has terminated such lease and demands possession thereof within three days after the giving of such notice, and, after the expiration of said three days, may recover possession thereof in

an action of forcible entry and detainer, without further notice to quit, upon proof of the violation of any provision of this title committed upon such real estate and of the giving of such notice. [C., '97, § 2426; 40 Ex. G. A., S. F. 51, § 130.]

CHAPTER 100

PERMITS TO LICENSED PHARMACISTS

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2072. Permits authorized. A licensed pharmacist may, in the manner hereinafter provided, obtain a permit to buy, keep, and sell intoxicating liquors, except malt liquors, for medical purposes. [R., '60, § 1575; C., '73, § 1526; C., '97, § 2385; 40 Ex. G. A., S. F. 283, § 1.]

2073. Petition for permit. All applications for a permit to sell intoxicating liquors for the purpose allowed in this chapter shall be by petition, in which the applicant shall show:

1. His name.
2. His residence and business at the time of making the application and during the two preceding years.
3. That he is a citizen of the United States and of this state.
4. That he is a registered pharmacist and is operating and for the last six months has lawfully operated a regular prescription pharmacy or drug store in the town, city, or township in which he proposes to engage in the business under the permit applied for, and that he owns not less than one-half interest in said pharmacy or drug store and desires a permit to buy, keep, and sell liquors for medicinal purposes only.
5. The place, particularly describing it, where the business is to be conducted.

6. That he has not been adjudged guilty of any violation of the law relating to intoxicating liquors and has never forfeited or surrendered a permit to sell intoxicating liquors in order to avoid a prosecution for a violation of the laws relating to intoxicating liquors.

7. That he is not the keeper of a hotel, eating house, saloon, restaurant, or place of public amusement, nor are any of said named businesses located in his said place of business or directly connected therewith.

8. That he is not addicted to the use of intoxicating liquors as a beverage, and that he will not, while holding a permit, employ or retain in his employment any person in his said business who is known to him to be so addicted. [R., '60, § 1575; C., '73, §§ 1526, 1527; C., '97, § 2387; 40 Ex. G. A., S. F. 283, § 2.]

2074. Signing, verification, and filing. Said petition shall be signed and sworn to by the applicant, and filed in the office of the clerk of the district court of the county in which the buying and selling is to be carried on, at least ten days before the term at which the matter is to be for trial. [C., '97, § 2387; 40 Ex. G. A., S. F. 283, § 4.]

2075. Notice of application. Notice of an application for a permit shall state the name of the applicant, with the firm name, if any, under which he is doing business, the purpose of the application, the particular location of the place where the proposed business is to be carried on; that the required petition is or will be on file in the clerk's office of the court, naming it, at least ten days before the first day of the term, naming it, when the application will be made. [C., '73, § 1529; C., '97, § 2388; S., '13, § 2388; 40 Ex. G. A., S. F. 283, § 5.]

2076. Service of notice. Said notice must be served in the following manner:

1. By publication thereof once each week for three consecutive weeks in a newspaper regularly published and printed in the English language, and of general circulation in the township, town, or city where the applicant proposes to conduct the business, or, if none be regularly published therein, then in one of the papers selected by the board of supervisors for the publication of its proceedings, the last publication of which shall be not less than ten nor more than twenty days before the first day of the term at which the hearing is to be had.

2. By serving a copy of said notice personally upon the county attorney in the same manner and for the same length of time as is required of original notices in said courts. [C., '73, § 1529; C., '97, § 2388; S., '13, § 2388; 40 Ex. G. A., S. F. 283, § 6.]

2077. Appearance. The county attorney shall appear in all cases, and any number of persons, not less than five, filing any remonstrance, may also appear in person or by counsel and resist the application. [C., '73, § 1530; C., '97, § 2389; 40 Ex. G. A., S. F. 283, § 7.]

2078. Hearing. All applications shall be tried at the first term after completed service has been made of the required notice, if the business of the court shall allow. [C., '97, § 2389; 40 Ex. G. A., S. F. 283, § 8.]

2079. Hearing in vacation. If for any reason the application can not be tried in term time, the same may be heard by the judge in vacation, at a time to be fixed by the court and made of record. [C., '97, § 2389; 40 Ex. G. A., S. F. 283, § 9.]

2080. Consolidation of applications. If more than one permit is applied for in the same locality, the applications shall be heard at the same time, unless for cause shown it be otherwise ordered. [C., '97, § 2389; 40 Ex. G. A., S. F. 283, § 10.]

2081. Remonstrances. The county attorney, or one or more citizens of the county wherein the application is made, may file a written remonstrance against the granting of the permit. All remonstrances shall specifically state the reasons therefor, and be filed in the clerk's office by noon of the first day of the term, unless further time be given, and shall be so filed before the day fixed for the trial. [C., '73, §

1530; C., '97, § 2389; 40 Ex. G. A., S. F. 283, § 11.]

2082. Limitation on granting permit. No permit shall be granted unless the court shall find from competent evidence that all the averments in the petition are true, that the reasonable convenience and necessities of the people, considering the population and all the surroundings, make the granting of the permit proper, and that the applicant is possessed of the character and qualifications required, worthy of the trust to be reposed in him, and likely to discharge the same with fidelity. Any licensed pharmacist who has been or is hereafter convicted of violating any provision of any statute relating to intoxicating liquors, or who for the purpose of avoiding a prosecution for such violation has surrendered or hereafter surrenders a permit issued under this chapter, shall be forever barred from securing a permit under this chapter. The court may grant or refuse any application. [C., '73, § 1530; C., '97, § 2389; 40 Ex. G. A., S. F. 283, § 12.]

2083. Bond. No permit shall issue until the applicant shall execute to the state a bond in the penal sum of one thousand dollars, with good and sufficient sureties to be approved by the clerk of the court, conditioned that he will well and truly observe and obey the laws of the state now or hereafter in force in relation to the sale of intoxicating liquors, that he will pay all fines, penalties, damages, and costs that may be assessed or recovered against him for a violation of such laws during the time for which the permit is granted. [R., '60, § 1575; C., '73, § 1528; C., '97, § 2390; S., '13, § 2390; 40 Ex. G. A., S. F. 283, § 13.]

2084. Liability of sureties. The principal and sureties in said bond shall be liable thereon, jointly and severally, for all civil damages and costs that may be recovered against the principal in any action brought by a wife, child, parent, guardian, employer, or other person under the provisions of this title. [C., '73, §§ 1528, 1532; C., '97, § 2390; S., '13, § 2390; 40 Ex. G. A., S. F. 283, § 14.]

2085. Custody of bond—action. The bond, after being approved and recorded by the clerk, shall be deposited with the county auditor, and suit may be brought thereon at any time by the county attorney, or by any person for whose benefit the same is given. [C., '73, §§ 1528, 1532; C., '97, § 2390; S., '13, § 2390; 40 Ex. G. A., S. F. 283, § 15.]

2086. New bond—cancellation of permit. If at any time the sureties on the bond shall file with the court or clerk a written request for release, or become insolvent, or be deemed insufficient by the court granting the permit, or its clerk, such court or clerk shall require a new bond to be executed within a reasonable time to be fixed. If the permit holder fails or neglects to furnish a new bond within the time so fixed, the permit shall from that date become null and void. [C., '97, § 2390; S., '13, § 2390; 40 Ex. G. A., S. F. 283, § 16.]

2087. Proceeds of forfeiture. The clear proceeds of all money which may be collected by the state for breaches of the bond shall go to the school fund of the county. [C., '73, §§ 1528, 1532; C., '97, § 2390; S., '13, § 2390; 40 Ex. G. A., S. F. 283, § 17.]

2088. Oath. In addition to giving the bond required, the applicant shall take and subscribe the following oath, which shall be indorsed upon the bond: "I,, do solemnly swear (or affirm) that I will well and truly perform all and singular the conditions of the within bond, and keep and perform the trust confided in me to purchase, keep, and sell intoxicating liquors. I will not sell, give, or furnish to any person any intoxicating liquors otherwise than as provided by law, and especially I will not sell or furnish any intoxicating liquors to any person who is not known to me personally, or duly identified, nor to any intoxicated person, or persons who are in the habit of becoming intoxicated; and I will make true, full, and accurate reports as required by law; and said reports shall show every sale and delivery of such liquors made by me, or for me, during the months embraced therein, and all the intoxicating liquors sold or delivered to any and every person, as returned." [C., '97, § 2391; 40 Ex. G. A., S. F. 283, § 18.]

2089. Issuance of permit. Upon taking said oath, filing said bond, and paying the costs and fee herein provided, the clerk of the court shall issue a permit to the applicant authorizing him to buy, keep, and sell intoxicating liquors, not including malt liquors, for medical purposes, as hereinafter provided. [C., '97, § 2392; S., '13, § 2392; 40 Ex. G. A., S. F. 283, § 19.]

2090. Location and tenure. The permit so issued shall specify the building, giving the street and number or location, in which intoxicating liquors may be sold by virtue of the same, and the length of time, not exceeding five years, the same shall be in force, unless sooner revoked. [C., '73, § 1531; C., '97, § 2392; S., '13, § 2392; 40 Ex. G. A., S. F. 283, § 20.]

2091. Fee. On and after January 1, 1925, each permit holder under this chapter shall, on the first day of January, April, July, and October of each year, pay into the county treasury, as a fee for the granting of such permit, all proceeds of all sales of intoxicating liquors in excess of two hundred per cent of the wholesale price of such liquors. [40 Ex. G. A., S. F. 283, § 21.]

2092. Price lists. The pharmacy examiners shall from time to time fix the fair and reasonable wholesale price of intoxicating liquors for all points in this state and furnish such price lists to permit holders. The fixing of said prices shall be for the sole purpose of furnishing a basis for the computation of said fee. [40 Ex. G. A., S. F. 283, § 21-a1.]

2093. Limitation on sales. A permit holder in making sales under his permit shall comply with the following:

1. Only spirituous and vinous liquor, the sale of which has been authorized by federal statutes or regulations and upon which the federal internal revenue tax has been paid, shall be sold.

2. Sales shall be made only on prescriptions which have been issued in accordance with federal and state statutes and regulations, and which have been issued by physicians licensed under the laws of this state and actually and in good faith engaged in this state in the general practice of their profession.

3. No permit holder shall sell or furnish, on any prescription, any vinous liquor that contains more than twenty-four per cent of alcohol by volume, nor sell or furnish on any prescription more than one-fourth of one gallon of vinous liquor, or any such vinous or spirituous liquor that contains separately or in the aggregate more than one-half pint of alcohol, for use by any person within any period of ten days.

4. No prescription for said liquors shall be filled if the permit holder has reason to believe that the physician issuing the same is prescribing for other than medical purposes or that a patient is securing, through one or more physicians, quantities of such liquors in excess of the amount necessary for medical purposes or in excess of the aggregate amount specified in paragraph three above.

5. No prescription for liquor shall be filled except by the permit holder himself or by a pharmacist licensed under the laws of this state and in the employ of such permit holder.

6. No prescription shall be filled more than once. [40 Ex. G. A., S. F. 283, § 22.]

2094. Request. Before selling or delivering any intoxicating liquors, a written request therefor must, after being fully, accurately, and legibly filled out in ink in the presence of the applicant and by the person making the sale, be signed by the applicant in his true name, and attested by the holder of the permit. [C., '97, § 2394; S., '13, § 2394; 40 Ex. G. A., S. F. 283, § 22-a1.]

2095. Form. Said written requests shall be in the following form:

Stub

No. (Official Form.....)
 Series
 CERTIFIED REQUEST OF
 PURCHASERS

No., Iowa, 19..
 To Reg. Phar. No.....
 I hereby make request for the
 purchase of the following
 intoxicating liquors:

	AMOUNT	KIND
....., 19..
My true name is I am		
Purchaser..... not a minor, and reside in ...		
Address..... township (or town of)		
Purchase..... at No., in the county of		
For Whom...., state of The		
Address..... actual purpose for which this		
Certifier..... request is made is to obtain		
Address..... said liquor for, residing		
at No., township		

(or town of), county of , state of , who is a member of my immediate family, (or a patient unable, because of illness, to call for the same) and the same is desired for medicinal use and is to fill a prescription issued to by Dr. , who offices at No. , township or town of , county, state of , and the same was issued to me in strict compliance with federal statutes and not in evasion thereof, and neither myself nor the said habitually use intoxicating liquors as a beverage, nor do we intend to use the above named liquor for that purpose.

.....
 (Signature of purchaser)

(If the applicant is unknown to the permit holder, the blank below shall also be filled out and signed by a witness.)

I, , hereby certify that I am acquainted with , the applicant for the purchase of the foregoing described liquors and the said is not a minor and is not in the habit of using intoxicating liquors as a beverage, and is worthy of credit as to the truthfulness of the statements in the foregoing request and my residence is No. street, state of

.....
 (Signature of certifier)

Attested by

Registered Pharmacist No.

[C., '97, § 2394; S., '13, § 2394; 40 Ex. G. A., S. F. 283, § 22-a2.]

2096. Furnishing of blanks. The blanks for such requests shall, with proper stubs, in all cases, be printed in book form and shall be furnished to the permit holder at cost by the county auditor of the county in which such permit is in force, and shall contain the facsimile signature of the county auditor; both stub and request shall be numbered consecutively. [S., '13, § 2394; 40 Ex. G. A., S. F. 283, § 22-a3.]

2097. Preservation and inspection. The permit holder shall preserve the stub in book form and shall keep them at all times, subject to the inspection of the pharmacy examiners, the county attorney, any grand jury, peace officer, or justice of the peace in the county in which the permit is in force. [S., '13, § 2394; 40 Ex. G. A., S. F. 283, § 22-a4.]

2098. Duty to refuse request. The request shall be refused unless the permit holder has reason to believe the statements to be true, and

in no case granted unless the permit holder filling it personally knows the person applying is not a minor, intoxicated, nor in the habit of using intoxicating liquors as a beverage. [C., '97, § 2394; S., '13, § 2394; 40 Ex. G. A., S. F. 283, § 22-a5.]

2099. Identification required. If the applicant is not so personally known, before filling the order or delivering the liquor, the permit holder shall require identification and the statement, in writing, of a reliable and trustworthy person, of good character and habit, known personally to him, that the applicant is not a minor nor in the habit of using intoxicating liquors as a beverage and is worthy of credit as to the truthfulness of the statements in the application. Said statement so made shall be legibly signed by the witness in his own name, stating his address correctly. [C., '97, § 2394; S., '13, § 2394; 40 Ex. G. A., S. F. 283, § 22-a6.]

2100. Penalties. If any person shall make any false or fictitious signature, or sign any name other than his own, to any request for the purchase of intoxicating liquors as heretofore provided, or as may be hereinafter provided, or to any other paper required to be signed, or make any false statement in any paper or application or request signed to procure liquors, he shall be punished by a fine of not less than twenty dollars, nor more than one hundred dollars and costs of prosecution, and shall be committed until said fine and costs are paid, or shall be imprisoned not less than ten nor more than thirty days. [R., '60, § 1577; C., '73, § 1559; C., '97, § 2395; 40 Ex. G. A., S. F. 283, § 22-a7.]

2101. Change in location. Upon the expiration of the lease or the destruction of the building where such business is conducted, or for other good and sufficient cause shown, consent in writing of the bondsmen having been obtained therefor, or a new bond given, the district court of the county which granted said permit, or a judge of said court, may change the place specified in said permit to some other place in the same city, town, or township upon motion therefor. [C., '97, § 2392; S., '13, § 2392; 40 Ex. G. A., S. F. 283, § 23.]

2102. Notice to county attorney. A copy of the application mentioned in the last preceding section, and notice of the time when and the place where the same will be heard, shall be given to the county attorney of the county where said place is situated, at least five days before said hearing. [S., '13, § 2392; 40 Ex. G. A., S. F. 283, § 24.]

2103. Violations. If any holder of a permit shall sell, give, dispose of, or use intoxicating liquors in any manner or for any purpose other than for medical purposes as heretofore authorized, he shall be liable to all the penalties and proceedings provided for in this title. [C., '97, § 2386; S., '13, § 2386; 40 Ex. G. A., S. F. 283, § 25.]

2104. Prescriptions prohibited. No physician shall issue a prescription for vinous or spirituous liquors for other than medical purposes, or in excess of the amount reasonably necessary for such purposes or in excess of the quantity heretofore specified; nor shall he issue or deliver such prescription to a person when he has reasonable grounds for believing that such person will use the liquors obtained thereunder for beverage purposes. [40 Ex. G. A., S. F. 283, § 25-a1.]

2105. Record of prescriptions. Every physician shall keep, in his own handwriting and in his office, a permanent record, legibly written in ink, of every prescription for intoxicating liquors issued by him. Said record shall be alphabetically arranged under the name of the patient and shall show:

1. The date of the prescription.
2. The amount and kind of liquors prescribed.
3. The name of the patient and his post-office address, including street number, if any.
4. The name of the person to whom the prescription was delivered and his postoffice address, including street number, if any.
5. The purpose or ailment for which the liquors are prescribed.
6. The directions for the use of said liquors, including the amount and frequency of the dose. [40 Ex. G. A., S. F. 283, § 25-a2.]

2106. Reports filed. Every physician shall, on or before the twentieth day of January, April, July, and October, each year, file with the county auditor of the county of his residence an exact duplicate of the record provided for in the preceding section. Each filing shall cover the three calendar months preceding the filing. [40 Ex. G. A., S. F. 283, § 25-a3.]

2107. Oath. Said physician shall securely attach to each duplicate record so filed by him his oath in the following form:

"I,, do say on oath that the hereto attached record is an exact duplicate of the record of prescriptions kept by me in my office for the months of,, and, 19....; that said record has been accurately prepared and kept by me and shows every prescription for intoxicating liquors issued and delivered by me during said month; that I have in no case issued a prescription for such liquors for other than medical purposes or for a quantity of such liquors in excess of the amount reasonably necessary for said purposes or for a quantity of such liquors in excess of the quantity permitted by state or federal statutes and regulations; nor have I issued such prescription to a person when I had reason to believe that such person would use the liquors obtained thereunder for beverage purposes." [40 Ex. G. A., S. F. 283, § 25-a4.]

2108. Penalty—suspension. Upon conviction for a violation of any provision of the four preceding sections, the court, as a part of the judgment, shall order the certificate or license of such physician to practice his pro-

fession suspended for a period of not less than one year nor more than five years. [40 Ex. G. A., S. F. 283, § 25-a5.]

2109. Effect of suspension. During the period of such suspension such physician shall be wholly barred from the practice of his profession in this state, and the clerk of said court shall forthwith notify the state department of health of such suspension and the period thereof; and any physician practicing or attempting to practice his profession during the interim of such a suspension shall be guilty of a misdemeanor. [40 Ex. G. A., S. F. 283, § 25-a6.]

2110. Conviction in federal courts. When a physician or pharmacist, licensed under the laws of this state, is convicted in any federal court of this state of a violation of the federal statutes or regulations relating to intoxicating liquors, or to narcotics, and said judgment has become final, the county attorney of the county where said physician or pharmacist resides shall forthwith file in the office of the clerk of the district court of said county a duly certified copy of said judgment and thereupon said district court, or a judge thereof, shall, on such notice to the defendant in said judgment as the court or judge may prescribe, enter an order suspending for a period of not less than one year nor more than five years the license of such physician or pharmacist to practice his profession in this state. In such proceeding the county attorney shall appear on behalf of the state. [40 Ex. G. A., S. F. 283, § 25-a7.]

2111. Revocation of license to practice pharmacy. Upon proof of such violation by a licensed pharmacist, the court shall order his license revoked without the formality of a special proceeding for that purpose, as provided in title 8 dealing with the practice of certain professions affecting the public health. In such event the clerk shall notify the state department of health as provided in such title. [C., '73, §§ 1534, 1535; C., '97, §§ 2386, 2400; S., '13, §§ 2386, 2400; 40 Ex. G. A., S. F. 283, § 26.]

2112. Records. The clerk of the court shall preserve as a part of the record and files all papers, except bonds, pertaining to the granting or revocation of permits, and keep suitable books in which bonds and permits shall be recorded. [C., '97, § 2393; S., '13, § 2393; 40 Ex. G. A., S. F. 283, § 27.]

2113. Costs. Whether said permit be granted or refused, the applicant shall pay the costs incurred in the case, and, when granted, he shall make payment before any permit issue, except the court may tax the cost of any witnesses summoned by private persons resisting said application, and the fees for serving such subpoenas, to such persons, when it is shown that such witnesses were summoned maliciously, or without probable cause to believe their evidence material. The fees shall be as provided in actions at law in the district court. [C., '97, § 2393; S., '13, § 2393; 40 Ex. G. A., S. F. 283, § 28.]

2114. False oath. If any permit holder or his clerk shall make false oath touching any matter required to be sworn to, the person so offending shall be punished as provided by law for perjury. [R., '60, § 1577; C., '73, § 1559; C., '97, § 2395; 40 Ex. G. A., S. F. 283, § 29.]

2115. False return. If any person holding a permit under this chapter purchases or procures any intoxicating liquor otherwise than as herein authorized, or fails to make the reports to the county auditor in the time or form required, or makes any false return to the county auditor, or fills a prescription for intoxicating liquors more than once, he shall be guilty of a misdemeanor and punished accordingly. [C., '97, § 2395; 40 Ex. G. A., S. F. 283, § 30.]

2116. Civil and criminal liability. Every permit holder or his clerk, violating this chapter, shall be subject to all the penalties, forfeitures, and judgments, and may be prosecuted by all the proceedings and actions, criminal and civil, whether at law or in equity, provided for or authorized by this title, and the permit shall not shield any person who abuses the trust imposed by it or violates the law. [C., '73, § 1538; C., '97, § 2399; 40 Ex. G. A., S. F. 283, § 34.]

2117. Destruction of liquor. In case of conviction in any proceeding, civil or criminal, the liquors in possession of the permit holder shall by order of the court be destroyed. [C., '97, § 2399; 40 Ex. G. A., S. F. 283, § 35.]

NOTE: Destruction defined, see § 1999.

2118. Evidence. On the trial of an action or proceeding against any person for manufacturing, selling, giving away, or keeping with intent to sell, intoxicating liquors in violation of law, or for any failure to comply with the conditions or duties imposed by law, the prescriptions for liquors, the returns made to the auditor, the quantity and kinds of liquors sold or kept, purchased or disposed of, the purpose for which liquors were obtained by or from him and for which they were used, and the character and habits of sobriety or otherwise of the purchasers, shall be competent evidence, and may be considered, so far as applicable to the particular case. [C., '97, § 2399; 40 Ex. G. A., S. F. 283, § 36.]

2119. Production of books and papers. In any suit, prosecution, or proceeding under this chapter, the court shall compel the production in evidence of any books or papers required to be kept by either federal or state statutes. [C., '97, § 2399; 40 Ex. G. A., S. F. 283, § 37.]

2120. Revocation of permit. Permits shall be deemed trusts reposed in the recipients, and may be revoked, upon sufficient showing, by order of a court or judge. Complaint may be presented at any time to the district court or a judge thereof, which shall be in writing and signed and sworn to by three citizens of

the county in which the permit was granted. [C., '73, § 1535; C., '97, § 2400; S., '13, § 2400; 40 Ex. G. A., S. F. 283, § 38.]

2121. Service of complaint. A copy of the complaint shall, with a notice in writing of the time and place of hearing, be served on the accused five days before the hearing, and if the complaint is sufficient, and the accused appear and deny the same, the court or judge shall proceed without delay, unless continued for cause, to hear and determine the controversy. [C., '73, § 1535; C., '97, § 2400; S., '13, § 2400; 40 Ex. G. A., S. F. 283, § 39.]

2122. Suspending permit. If continued or appealed at the instance of the permit holder, his permit may, in the discretion of the court, be suspended during the controversy. [C., '97, § 2400; S., '13, § 2400; 40 Ex. G. A., S. F. 283, § 40.]

2123. Trial and judgment of revocation. The complainant and accused may be heard in person or by counsel, or both, and proofs may be offered by the parties; and if it shall appear upon such hearing that the accused has in any way abused the trust, or that liquors are sold by the accused or his employees in violation of law, or dispensed unlawfully, or that he has in any proceeding, civil or criminal, been adjudged guilty of violating any of the provisions of this title, the court or judge shall revoke and set aside the permit. [C., '73, § 1535; C., '97, § 2400; S., '13, § 2400; 40 Ex. G. A., S. F. 283, § 41.]

2124. Record—entry of order. The papers and order in such case shall be immediately returned to and filed by the clerk of the court, and, if heard by a judge, the order shall be entered of record as if made in court. [C., '97, § 2400; S., '13, § 2400; 40 Ex. G. A., S. F. 283, § 42.]

2125. Automatic revocation. If for any cause a licensed pharmacist who holds a permit shall cease to hold a valid license, his permit shall be forfeited and be null and void. [C., '97, § 2401; S., '13, § 2401; 40 Ex. G. A., S. F. 283, § 44.]

2126. Clerks. The acts of clerks employed by a permit holder in conducting his business shall be considered the acts of the permit holder, who shall be liable therefor as if he had personally done them. [C., '97, § 2401; S., '13, § 2401; 40 Ex. G. A., S. F. 283, § 45.]

2127. Partners. A partner who is a licensed pharmacist, not holding a permit, shall have the same rights and be subject to the same restrictions as clerks, and for his acts the permit holder shall be held responsible the same in all respects as for his clerks. [C., '97, § 2401; S., '13, § 2401; 40 Ex. G. A., S. F. 283, § 46.]

2128. Death of permit holder. In case a permit holder shall die, his personal or legal representative may continue the business,

subject to the provisions hereof, through the agency of any reputable licensed pharmacist, upon the approval of the court or judge thereof, granting such permit, and the giving of a bond as hereinbefore provided. [C., '97, § 2401; S., '13, § 2401; 40 Ex. G. A., S. F. 283, § 47.]

2129. Existing permits. All unexpired, unexpired, and unrevoked permits to licensed pharmacists to sell and dispense intoxicating liquors, which have heretofore been issued under prior statutes, shall be deemed issued under and subject to the provisions of this chapter. [40 Ex. G. A., S. F. 283, § 48-a1.]

CHAPTER 101

PERMITS TO WHOLESALE DRUGGISTS

- 2130. Wholesale drug corporation.
- 2131. Application.
- 2132. Procedure.
- 2133. Name of pharmacist.
- 2134. Substitute authorized.
- 2135. Unlawful sales—cancellation of permit.
- 2136. Permit and authority thereunder.
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- 2138. Interpretative clause.
- 2139. Limitation.
- 2140. Manner of sale.
- 2141. Form, contents, and requirements.
- 2142. Requests—preparation—delivery.
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- 2145. Special requirement.
- 2146. Return of requests.
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- 2150. Affiant.
- 2151. Delivery.
- 2152. Undelivered shipments.
- 2153. Effect of delivery.
- 2154. Order.
- 2155. Violations by wholesale druggists.
- 2156. Violations by purchasers.
- 2157. "Corporation" construed.
- 2158. Sales under prior statutes.

2130. Wholesale drug corporation. A corporation which is located and doing a wholesale drug business within this state may be granted a permit to purchase and sell intoxicating liquors, not including malt liquors, for the purpose hereinafter specified, and for use in the compounding and manufacture of patent and proprietary medicines, toilet articles, tinctures, extracts, and other like commodities, none of which is susceptible to use as a beverage but which requires as one of its ingredients alcohol or vinous liquor. [S., '13, § 2401-a; 37 G. A., ch. 422, § 1; 40 Ex. G. A., S. F. 283, § 49.]

2131. Application. Application for such permit shall be by petition which shall show:

1. The name of the corporation, and that it is actually engaged within this state in the wholesale drug business.
2. The place, particularly describing it, where said business will be conducted and where sales will be made under the proposed permit.
3. That neither said corporation nor any person financially interested therein has been adjudged guilty of any violation of the law relating to intoxicating liquors.
4. That one or more licensed pharmacists, specifically naming them, are financially interested in said corporation and actually engaged in the conduct of said business and will have personal charge of the sales of said liquors in case the permit is granted, and are not users of intoxicating liquors as a beverage.
5. Sworn verification by some managing officer of the corporation. [S., '13, § 2401-a; 40 Ex. G. A., S. F. 283, § 49-a1.]

2132. Procedure. The petition shall be filed in the district court and all laws pertaining to permits granted to individual licensed pharmacists, in so far as applicable and not herein

otherwise provided, shall apply to said application by a wholesale druggist and to the permit issued thereon. [40 Ex. G. A., S. F. 283, § 50.]

2133. Name of pharmacist. A permit to a wholesale drug corporation, in addition to all other requirements, shall specify the name of each licensed pharmacist who will have personal charge of sales under said permit. [40 Ex. G. A., S. F. 283, § 51.]

2134. Substitute authorized. Should said pharmacist die or for any other reason terminate his connection with the permit holder, the district court or a judge thereof may, on written application by the permit holder, and on notice to the county attorney, order the substitution in said permit of the name of some other proper pharmacist. [40 Ex. G. A., S. F. 283, § 51-a1.]

2135. Unlawful sales—cancellation of permit. Sales of liquors not made under the personal supervision of a pharmacist named in said permit shall be illegal and shall automatically cancel said permit. [40 Ex. G. A., S. F. 283, § 52.]

2136. Permit and authority thereunder. The permit issued to a wholesale drug corporation shall authorize said corporation, under the limitations herein provided, to sell:

1. Alcohol for specified chemical and mechanical purposes to persons, firms, and corporations who have qualified, under federal and state statutes and regulations, to purchase and use alcohol for such purposes.
2. Alcohol and wine for the purpose of manufacturing patent and proprietary medicines and toilet articles and compounding medicines, tinctures, extracts, or other like commodities, none of which are susceptible of use

as a beverage, to pharmacists who are registered under the laws of this state and who are actively engaged in this state in the retail drug business and in such compounding.

3. Alcohol and wine for the purpose of manufacturing patent and proprietary medicines and toilet articles and compounding medicines, tinctures, extracts, or other like commodities, none of which are susceptible of use as a beverage, to firms or corporations which are actively engaged in this state in the retail drug business and in compounding such medicines, tinctures, extracts, or other like commodities under the immediate supervision of a pharmacist licensed under the laws of this state.

4. Alcohol and wines for the purpose of manufacturing patent and proprietary medicines, tinctures, extracts, toilet articles, and perfume, or other like commodities, which require such liquors as an ingredient thereof, and which are not susceptible of use as a beverage, to persons, firms, and corporations who are holders of permits to so manufacture.

5. Intoxicating liquors to licensed pharmacists holding a permit to sell such liquors on prescription for medical purposes.

6. Intoxicating liquors to manufacturing and industrial establishments for the purpose of furnishing first-aid treatment to injured persons as defined by federal statutes and regulations.

7. Intoxicating liquors for medical purposes, to bona fide hospitals or sanatoriums engaged in the treatment of persons suffering from recognized diseases and ailments.

8. Intoxicating liquors for medical purposes to bona fide hospitals or sanatoriums engaged in the treatment of chronic alcoholism by the tapering-off method.

9. Intoxicating liquors to licensed physicians for the purpose of use by them in accordance with federal statutes or regulations or in accordance with state statutes, for compounding such preparations as are necessary for use in their professional practice, and for sterilization and laboratory purposes.

10. Alcohol to licensed dentists for the purpose of sterilization, annealing gold, or other like nonbeverage purposes.

11. Alcohol to licensed veterinarians for any legitimate nonbeverage purpose.

12. Alcohol and other intoxicating liquors to any person, firm, or corporation located and doing business in any foreign state and legally entitled to purchase and receive such liquors under the laws of such foreign state.

The term "intoxicating liquors" as used in this section shall not embrace malt liquors. [S., '13, § 2401-a; 37 G. A., ch. 422, § 1; 40 Ex. G. A., S. F. 283, § 53.]

2137. **Good faith practice required.** The term "licensed physician", "licensed dentist", or "licensed veterinarian" as employed in the last preceding section shall be construed to embrace only those persons who are in good faith and actively engaged in the general practice of their respective professions. [40 Ex. G. A., S. F. 283, § 54.]

2138. **Interpretative clause.** Nothing herein contained shall be construed to authorize the manufacture or sale of any preparation or compound, under any name, form, or device, which may be used as a beverage, and which is intoxicating in its character. [C., '97, § 2385; 40 Ex. G. A., S. F. 283, § 54-a1.]

2139. **Limitation.** The authority granted to a wholesale druggist to sell intoxicating liquors shall in no case authorize a sale in a quantity in excess of that authorized by federal or state statutes and regulations. [40 Ex. G. A., S. F. 283, § 55.]

2140. **Manner of sale.** Such sales shall be made only on the written signed request of the purchaser. Said request shall also be countersigned by the licensed pharmacist, who has charge of the sale, with his name, the number of his license, and the date the liquors are delivered for transportation. [S., '13, § 2401-a; 37 G. A., ch. 422, § 1; 40 Ex. G. A., S. F. 283, § 57.]

2141. **Form, contents, and requirements.** The form, contents, and requirements of said written requests shall be substantially as follows:

....., Iowa, 19....

.....
(Name of permit holder)

..... hereby makes request for the
(Name of purchaser)

purchase of the following intoxicating liquors:

Amount	Kind
.....
.....

The purchaser named above:
(Here describe the business and state the purpose for which the liquors are desired, which description and statement of purpose must be in accordance with section 2136.)

.....

.....
(Signature of purchaser)

I,, being the licensed pharmacist having personal supervision of the above sale, hereby countersign said request and certify that said liquors were, on the day of....., 19...., delivered in the following manner, to wit:

.....

.....
Licensed pharmacist.

No.
[S., '13, § 2401-a; 40 Ex. G. A., S. F. 283, § 58.]

2142. **Requests—preparation—delivery.** Requests for intoxicating liquors may be made out and signed by the applicant at his place of business and forwarded to the permit holder of whom request is made, and the permit holder may, by his own conveyance, personally deliver said liquors to the applicant, or cause such delivery to be made by a common carrier. [S., '13, § 2401-b; 40 Ex. G. A., S. F. 283, § 60.]

2143. **Personal delivery.** The applicant may personally present said written request for

the purchase of such liquors to the permit holder and the permit holder may deliver said liquors directly to the applicant. [S., '13, § 2401-b; 40 Ex. G. A., S. F. 283, § 60-a1.]

2144. Reports. The permit holder in making the reports required herein shall specify the manner in which each sale of liquors was delivered, to wit: whether a delivery was made by his own conveyance, or by a common carrier, or by direct delivery to the applicant. [40 Ex. G. A., S. F. 283, § 60-a2.]

2145. Special requirement. No sale shall be made on a request unless such request is filled out with pen and ink. [40 Ex. G. A., S. F. 283, § 60-a3.]

2146. Return of requests. Said requests shall be preserved by the permit holder and filed with the county auditor at the time of the filing with the county auditor of the reports hereinafter provided for. [S., '13, § 2401-b; 40 Ex. G. A., S. F. 283, § 61.]

2147. Oath. Requests filed with the county auditor shall be accompanied by an affidavit by the licensed pharmacist or pharmacists having personal charge of the sales, showing that said requests comprise all the requests filled by said wholesale druggist during the time covered by said requests. [40 Ex. G. A., S. F. 283, § 62.]

2148. Manner of shipping. Intoxicating liquors shipped by a wholesale druggist under the aforesaid authorization shall not be inclosed in the same box, package, or carton with other drugs or merchandise. In all cases of such shipments the bill of lading shall set out the kind and amount of intoxicating liquors contained in the shipment, and one copy of the bill of lading shall be signed for the wholesale drug corporation by the licensed pharmacist having personal charge of the sale, or by an officer of such drug corporation. [S., '13, § 2401-c; 40 Ex. G. A., S. F. 283, § 63.]

2149. Transportation. Common carriers shall transport the liquors purchased or sold by a wholesale drug corporation under the authority of the permit herein provided, whether such shipment be interstate or intrastate:

1. When the consignor files with the agent of the carrier, at the point of origin, an affidavit stating:

a. That the consignee is a person, firm, or corporation who has a legal right to make such purchase;

b. That the liquors are consigned to the station nearest to the consignee's place of business; and

c. That the consignor and consignee are in all respects acting lawfully in the transportation of said liquor.

2. When bill of lading is made out and signed as heretofore provided.

3. When carrier is furnished with copy of the permit held by the wholesale drug corporation and said copy is duly certified to be

correct by the clerk of the court issuing the permit. [S., '13, § 2401-d; 40 Ex. G. A., S. F. 283, § 64.]

2150. Affiant. If the consignor is a corporation, the affidavit provided for in the last preceding section shall be made by the pharmacist having charge of the sales of such liquors or by some managing officer of the corporation. [40 Ex. G. A., S. F. 283, § 64-a1.]

2151. Delivery. The carrier shall not make delivery of such liquors:

1. Until the consignee files with the carrier an affidavit by the consignee himself or by the president, vice president, secretary, or general manager or superintendent of the consignee, that said liquors are solely for the use and purposes specified in the written request for the purchase of such liquors, naming said purpose, and

2. Until the consignee personally signs the record book of intoxicating liquor shipments and deliveries required to be kept by common carriers. [S., '13, § 2401-d; 40 Ex. G. A., S. F. 283, § 65.]

2152. Undelivered shipments. Should a consignee fail to comply with the law and obtain delivery of a shipment of intoxicating liquors within fifteen days after notice to him by mail, such carrier may make application to the district court, or to a judge thereof, of the county in which the liquors are being held, for an order for the delivery of said liquors by said carrier to the sheriff and for an order for the destruction thereof. [40 Ex. G. A., S. F. 283, § 65-a1.]

2153. Effect of delivery. A delivery of said liquors to the sheriff under an order of the court shall discharge the carrier from all civil liability for said liquors. [40 Ex. G. A., S. F. 283, § 65-a2.]

2154. Order. The court shall summarily hear said application and, upon proof of the truth thereof, shall enter an order for the delivery of said liquors to the sheriff and for the destruction of said liquors. [40 Ex. G. A., S. F. 283, § 65-a3.]

NOTE: Destruction defined, see § 1999.

2155. Violations by wholesale druggists. The failure of a permit holder hereunder to comply with any provision of this chapter shall render such holder subject to all the penalties, forfeitures, and proceedings, civil and criminal, provided in this title for the unlawful sale and keeping for sale of intoxicating liquors. [S., '13, § 2401-e; 40 Ex. G. A., S. F. 283, § 66.]

2156. Violations by purchasers. Any person, firm, or corporation, and the agents and officers thereof, who purchases or obtains any intoxicating liquors for any purpose authorized by this chapter or knows that such liquors have been so obtained, and uses or permits said liquors, or any part thereof, to be used for beverage purposes or for any purpose other than that for which it was purchased, or ob-

tained, shall be fined in a sum not exceeding one thousand dollars and, in addition, if a person, be imprisoned in the county jail for a period not exceeding one year. [40 Ex. G. A., S. F. 283, § 67.]

2157. "Corporation" construed. The term "corporation" as used in this chapter shall be construed to include corporations, firms, and persons engaged in the general wholesale drug

business within this state. [S., '13, § 2401-f; 40 Ex. G. A., S. F. 283, § 67-a1.]

2158. Sales under prior statutes. The right of a wholesale druggist under preexisting statutes to sell intoxicating liquors under a permit granted to a licensed pharmacist who is financially interested in said wholesale drug business, unless sooner terminated for cause, is hereby continued until its expiration. [40 Ex. G. A., S. F. 283, § 67-a2.]

CHAPTER 102

REPORTS BY PERMIT HOLDERS

- 2159. Reports required.
- 2160. Form of reports.
- 2161. When filed.

- 2162. Return of requests.
- 2163. Oath.

2159. Reports required. A permit holder under either of the last two preceding chapters shall make and file with the county auditor of the county in which the permit has been granted, the same reports covering all intoxicating liquors received, used, and sold as are required by federal statutes and regulations to be made and filed by said permit holder with the federal prohibition director. [C., '73, §§ 1533, 1537; C., '97, §§ 2397, 2398; 40 Ex. G. A., S. F. 283, § 68.]

September, and November of each year, each permit holder other than a wholesale druggist shall, in addition to all other requirements of this chapter, make full returns to the county auditor, under oath, of all requests filed by him and his clerks during the two preceding months. [C., '97, § 2397; 40 Ex. G. A., S. F. 283, § 70-a1.]

2160. Form of reports. A report under the preceding section may be in the form of an original draft made from the federal report, or it may consist of a carbon copy made at the time of the making of said federal report. Said blank forms may be exact reproductions of the blank forms furnished by the federal department. [40 Ex. G. A., S. F. 283, § 69.]

2163. Oath. The oath provided for in the last preceding section shall be in the following form:

2161. When filed. Said reports shall be filed with the county auditor within the time in which they are required to be filed with said director. [40 Ex. G. A., S. F. 283, § 70.]

I,, being duly sworn, on oath state that the requests for liquors herewith returned are all that were received and filled at my pharmacy during the months of, A. D.; that I have carefully preserved the same, and that they were filled out, signed, and attested on the date shown thereon, as provided by law; that said requests were filled by delivering the quantity and kinds of liquors required, and that no liquors have been sold or dispensed under color of my permit during said months except as shown by the requests herewith returned, and that I have faithfully observed and complied with the conditions of my bond and oath taken by me thereon indorsed, and with all the laws relating to my duties in the premises. [C., '97, § 2397; 40 Ex. G. A., S. F. 283, § 70-a2]

2162. Return of requests. On or before the fifteenth day of January, March, May, July,

CHAPTER 103

PERMITS TO MANUFACTURERS

- 2164. Patent and proprietary medicines.
- 2165. Application.
- 2166. Notice to county attorney.
- 2167. Granting permit—bond.

- 2168. Term of permit.
- 2169. Record.
- 2170. Violations.

2164. Patent and proprietary medicines. Patent and proprietary medicines, tinctures, extracts, toilet articles, and perfume, and other like commodities, none of which are susceptible of use as a beverage but which require as one of their ingredients alcohol or vinous liquors, may be manufactured within this state, pro-

vided a permit so to manufacture is first obtained as hereinafter provided. [37 G. A., ch. 133, § 1; 40 Ex. G. A., S. F. 283, § 72.]

2165. Application. Any person, firm, or corporation desiring such permit shall apply to the judge of the district court of the county in

which the principal place of business is located by filing with the clerk of said court the affidavit of the person, member of the firm, or secretary or other managing officer of the corporation, as the case may be, stating therein the following facts:

1. The name, place of business, and post-office address of the person, firm, or corporation desiring such permit.

2. The business in which said person, firm, or corporation is engaged and the articles manufactured by them which require in their manufacture the use of alcohol or vinous liquors, and approximately the amount required during a calendar month.

3. That neither the applicant nor any member of the firm nor officer of the corporation has been convicted of any violation of the laws of this state with reference to the sale of intoxicating liquors within three years last past prior to the date of said affidavit. [37 G. A., ch. 133, § 2; 40 Ex. G. A., S. F. 283, § 73.]

2166. Notice to county attorney. Upon the filing of said affidavit, together with other proof submitted, if any, the clerk shall immediately notify the county attorney of such application, and the county attorney shall appear in said proceeding on behalf of the state. [37 G. A., ch. 133, § 3; 40 Ex. G. A., S. F. 283, § 74.]

2167. Granting permit—bond. If, after a hearing, the judge is satisfied that the facts stated in said affidavit are true and that the applicant is a person fit and proper to be intrusted with the permit applied for, the same shall be issued upon the filing by the applicant of a bond in the sum of two thousand dollars, the sureties to be approved by the clerk, conditioned as the bond of licensed pharmacist permit holders. [37 G. A., ch. 133, § 3; 40 Ex. G. A., S. F. 283, § 75.]

2168. Term of permit. A permit issued under this chapter, unless revoked for cause, shall remain in force for a period of five years from the date of its issuance. [37 G. A., ch. 133, § 3; 40 Ex. G. A., S. F. 283, § 76.]

2169. Record. It shall be the duty of said clerk to keep a record of permits issued hereunder and to give each permit holder a serial number. [37 G. A., ch. 133, § 4; 40 Ex. G. A., S. F. 283, § 77.]

2170. Violations. Any person, firm, or corporation violating any provision of this chapter shall be guilty of a misdemeanor and punished accordingly. [37 G. A., ch. 133, § 9; 40 Ex. G. A., S. F. 283, § 78.]

CHAPTER 104

PERMITS TO CLERGYMEN

2171. Clergymen's permit.

2172. Application for permit.

2173. County attorney to represent petitioner.

2174. Permit record—shipping order.

2175. Shipping order in triplicate.

2176. Sales for sacramental use.

2177. Method of shipment.

2178. Carriers may transport—when.

2179. Use for other purposes punished.

2180. Violation revokes permit.

2171. Clergymen's permit. Any minister, priest, or rabbi of any church, sect, denomination, or creed which uses wines in its sacrificial ceremonies or sacraments, and who desires to purchase and have transported by either intrastate or interstate common carriers and have possession of such sacramental wines shall, before purchasing or transporting such sacramental wines, apply for and obtain a permit authorizing such sale or transportation as hereinafter provided. [38 G. A., ch. 221, § 1.]

2172. Application for permit. Any such minister, priest, or rabbi desiring such permit shall apply to the judge of the district court of the county in which such minister, priest, or rabbi resides, by filing with the clerk of the district court the affidavit of such minister, priest, or rabbi, as the case may be, stating therein the following facts:

1. The name and postoffice address of the applicant and the location of the church, building, or synagogue where such minister, priest, or rabbi, ministers or officiates.

2. The kind and character of the wine and approximately the amount required during the calendar month. [38 G. A., ch. 221, § 2.]

2173. County attorney to represent petitioner. It shall be the duty of the county attorney to appear for and represent the petitioner without expense to the petitioner. If, after a hearing, the judge is satisfied that the facts stated in said affidavit are true the permit shall be issued accordingly, which permit, unless revoked for cause, shall remain in force for five years from the date of its issuance. [38 G. A., ch. 221, § 3.]

2174. Permit record—shipping order. It shall be the duty of the clerk to keep a record of permits issued under the provisions of this chapter, giving each permit holder a serial number; and at the time of the issuance of said permit, or afterwards, while the same remains in force, on application of the permit holder the clerk shall deliver to him certificates showing his authority to buy, transport, and use such sacramental wines as may be

covered by said permit, which certificates shall be in triplicate and on red paper and in substantially the following form:

CLERGYMAN'S SHIPPING PERMIT

This is to certify that, of, county of and state of Iowa, is the holder of a clergyman's permit No., which will expire on the day of, 19...., and that such permit holder is authorized to purchase and have transported to him sacramental wines of the kinds and amounts specified below, providing one duplicate of this certificate is firmly pasted or affixed to the exterior of the package and one duplicate hereof is attached to the bill of lading; and after the delivery of said wine to such permit holder, said duplicate with the date of the delivery indorsed or stamped thereon shall be by the delivering carriers promptly mailed to the undersigned.

Kinds of Wine	Amount and purpose for which to be used.
.....
.....
Clerk of the District Court,	
..... County, Iowa.	

SHIPPING ORDER

.....
.....
Please ship to me via.....
(Here insert name of carrier)

the wine above specified.
[38 G. A., ch. 221, § 4.]

2175. Shipping order in triplicate. When the holder of any permit granted under the second preceding section desires to purchase and have transported any wine provided for in this chapter, he shall make a written order in triplicate upon the blanks provided in the preceding section, which shall be furnished to him by said clerk, setting forth the exact amount and kind of wine ordered, from whom and by what railway, express company, or other common carrier the said liquor is to be transported. One copy of this order shall be immediately filed with the clerk of the district court of the county in which the permit is issued, one copy shall be attached to the package in which shipment is made in a conspicuous place in such way that it can not be removed without showing evidence of mutilation where the entire order is shipped in one package, and if the said order shall be contained and shipped in more than one package, then the consignor shall attach the original copy to one of said packages and a duplicate thereof to each additional package required to ship said order, and the third copy shall be attached at the original point of shipment to the waybill of the common carrier transporting such wine. This copy, when the holder

of the permit or his authorized agent shall have received for said wine, shall be stamped with the date of delivery of such wine and immediately filed by the agent of the common carrier which has transported the said wine with the clerk of the district court of the county in which permit is granted. The clerk of the district court shall compare the copy of the order filed by the agent of the common carrier with the copy filed by the holder of the permit and, if any discrepancy exists, he shall report such fact to the county attorney. [38 G. A., ch. 221, § 5.]

2176. Sales for sacramental use. It shall be lawful for any person, firm, or corporation holding a permit in the state of Iowa for the sale of alcohol, spirituous or vinous liquors to sell sacramental wines to holders of permits under this chapter, and to deliver the same to common carriers for transportation to such permit holders under the conditions as provided by this chapter, anything to the contrary in any other law notwithstanding. [38 G. A., ch. 221, § 6.]

2177. Method of shipment. It shall be the duty of any permit holder within this state or dealer without the state filing such order to paste or otherwise attach firmly one duplicate of such certificate to the exterior of such package, which shall be sufficient authority for the transportation and delivery to such permit holders of the package containing such wine. [38 G. A., ch. 221, § 7.]

2178. Carriers may transport—when. When the provisions of this chapter have been fully complied with, common carriers are authorized to transport to such permit holders wine described in this chapter, in the manner specified therein, and the permit holder is authorized to carry or convey such wine to his place of business, anything in any other law to the contrary notwithstanding. [38 G. A., ch. 221, § 8.]

2179. Use for other purposes punished. Any person receiving or having shipped any wine under the provisions of this chapter, and using or permitting the same to be used for any purpose other than for sacramental purposes, or using or permitting the same to be used for beverage purposes shall be guilty of a misdemeanor and shall forfeit all his rights under any permit granted under the provisions of this chapter. [38 G. A., ch. 221, § 9.]

2180. Violation revokes permit. Any person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and any violation of any of the liquor laws of this state by a permit holder shall automatically revoke any permit held by him. [38 G. A., ch. 221, § 10.]

TITLE VII

PUBLIC HEALTH

CHAPTER 105

STATE DEPARTMENT OF HEALTH

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2181. **Definitions.** For the purposes of this title, unless otherwise defined:

1. "Commissioner" shall mean the commissioner of public health.

2. "State department" or "department" shall mean the state department of health.

3. "Health officer" shall mean the physician who is the health officer of the local board of health.

4. "Local board" shall mean the local board of health.

5. "Physician" shall mean a person licensed to practice medicine and surgery, osteopathy and surgery, osteopathy, or chiropractic under the laws of this state; but a person licensed as a physician and surgeon shall be designated as a "physician" or "surgeon", a person licensed as an osteopath and surgeon shall be designated as an "osteopathic physician" or "osteopathic surgeon", a person licensed as an osteopath shall be designated as an "osteopathic physician", and a person licensed as a chiropractor shall be designated as a "chiropractor".

6. "Rules" shall include regulations and orders.

7. "Sanitation officer" shall mean the policeman who is the permanent sanitation and quarantine officer and who is subject to the direction of the local board of health in the

execution of health and quarantine regulations. [S., '13, § 2583-b; 39 G. A., ch. 7, § 10; 39 G. A., ch. 77, § 15; 40 Ex. G. A., H. F. 260, § 1.]

2182. **Appointment of commissioner.** The governor shall, within sixty days after the convening of the general assembly in 1925, and every four years thereafter, appoint, with the approval of two-thirds of the members of the senate in executive session, a commissioner of public health who shall be a physician specially trained in public hygiene and sanitation. The senate shall not approve an appointment, however, on the same legislative day on which it is submitted for approval. [C., '97, § 2564; S., '13, § 2564; 40 Ex. G. A., H. F. 260, § 2.]

2183. **Disqualifications.** The commissioner shall not be an officer or member of the instructional staff of any of the state educational institutions nor of any college in which is taught any of the professions for which a license must be obtained from the department to practice the same in this state, nor shall the commissioner hold any other lucrative office of the state, elective or appointive, during his term, but he shall devote his entire time to the duties of his office. [C., '97, § 2564; S., '13, § 2564; 40 Ex. G. A., H. F. 260, § 3.]

2184. Term of office. The term of office of the commissioner shall be four years, commencing on July first of the year of appointment. [C., '97, § 2564; S., '13, § 2564; 40 Ex. G. A., H. F. 260, § 4.]

2185. Vacancies. All vacancies in the office of the commissioner of public health that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the date on which the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its approval an appointment for the unexpired portion of the regular term. Vacancies occurring during a session of the general assembly shall be filled as regular appointments before the end of said session and for the unexpired portion of the regular term. [C., '97, § 2564; S., '13, § 2564; 40 Ex. G. A., H. F. 260, § 5.]

2186. Assistants and employees. The commissioner shall employ such assistants and employees as may be authorized by law, and the persons thus appointed shall perform such duties as may be assigned to them by the commissioner, but the head of the division of examinations and licenses shall not be a person who has been licensed to practice any of the professions for which a license must be obtained from the department to practice the same in this state. [C., '97, § 2564; S., '13, § 2564; 40 Ex. G. A., H. F. 260, § 6.]

2187. Bonds of employees. The commissioner shall require every employee who collects fees or handles funds belonging to the state to give an official bond, properly conditioned and signed by sufficient sureties, in a sum to be fixed by the commissioner which bond shall be approved by him and filed in the office of the secretary of state. [40 Ex. G. A., H. F. 260, § 7.]

2188. Official seal. The state department of health shall have an official seal and every commission, license, order, or other paper executed by the department may be attested with its seal. [40 Ex. G. A., H. F. 260, § 8.]

2189. Expenses. The commissioner, field and office assistants, inspectors, and employees shall, in addition to salary, receive their necessary traveling expenses by the nearest traveled and practicable route and their necessary and incidental expenses when engaged in the performance of official business. [C., '97, § 2574; S., '13, §§ 2564, 2574; 39 G. A., ch. 209, §§ 41, 43; 40 Ex. G. A., H. F. 260, § 9.]

2190. Office. The state department of health shall be located at the seat of government. [C., '97, § 2564; S., '13, § 2564; 40 Ex. G. A., H. F. 260, § 13.]

2191. Powers and duties. The commissioner of public health shall be the head of the "State Department of Health", which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanita-

tion, and, unless otherwise provided, enforce the laws relating to the same.

2. Conduct campaigns for the education of the people in hygiene and sanitation.

3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.

4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the bacteriological and epidemiological laboratory at the state university.

5. Make inspections of the sanitary conditions in the educational, charitable, correctional, and penal institutions in the state.

6. Make inspections of the sanitary conditions in any locality of the state upon written petition of five or more citizens from said locality, and issue directions for the improvement of the same, which shall be executed by the local board.

7. Make inspections of the public water supplies, sewer systems, sewage treatment plants, and garbage and refuse disposal plants throughout the state, and direct the method of installation and operation of the same.

8. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities and towns and amend the same when deemed necessary in the manner prescribed in the following section. Said rules and amendments shall be published in the same manner as other rules of the department.

9. Exercise general supervision over the administration of the housing law and give aid to the local authorities in the enforcement of the same, and it shall institute in the name of the state such legal proceedings as may be necessary in the enforcement of said law.

10. Hear and determine all appeals from the order of any local board made in connection with the enforcement of the housing law, and enforce its orders therein.

11. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All antitoxin and vaccine thus distributed shall be labeled "Iowa State Department of Health".

12. Exercise general supervision over the administration and enforcement of the venereal disease law, chapter 109.

13. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation.

14. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 114.

15. Enforce the law relative to the "Practice of Certain Professions Affecting the Public Health", title 8.

16. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it, including a division of contagious and infectious

diseases, a division of venereal diseases, a division of housing, a division of sanitary engineering, a division of vital statistics, and a division of examinations and licenses; but the various services of the department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the department under the most economical methods.

17. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of this title and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department. 1. [C., '97, § 2565; 40 Ex. G. A., H. F. 260, § 14.] 2. [40 Ex. G. A., H. F. 260, § 14.] 3. [40 Ex. G. A., H. F. 260, § 14.] 4. [C., '97, § 2565; 38 G. A., ch. 388, § 1; 40 Ex. G. A., H. F. 260, § 14.] 5. [38 G. A., ch. 388, § 1; 40 Ex. G. A., H. F. 260, § 14.] 6. [S., '13, § 2569-a; 40 Ex. G. A., H. F. 260, § 14.] 7. [C., '97, § 2565; 40 Ex. G. A., H. F. 260, § 14.] 8. [38 G. A., ch. 378, § 2; 40 Ex. G. A., H. F. 260, § 14.] 9. [38 G. A., ch. 123, §§ 9, 105; 40 Ex. G. A., H. F. 260, § 14.] 10. [38 G. A., ch. 123, § 108; 40 Ex. G. A., H. F. 260, § 14.] 11. [S., '13, §§ 2572-a, 2572-b, 2572-c; 40 Ex. G. A., H. F. 260, § 14.] 12. [40 Ex. G. A., H. F. 260, § 14.] 13. [S., '13, § 2575-a42; 40 Ex. G. A., H. F. 260, § 14.] 14. [C., '97, § 2565; 39 G. A., ch. 222, §§ 1, 23; 40 Ex. G. A., H. F. 260, § 14.] 15. [40 Ex. G. A., H. F. 260, § 14.] 16. [40 Ex. G. A., H. F. 260, § 14.] 17. [C., '97, § 2565; 39 G. A., ch. 40, § 3; 40 Ex. G. A., H. F. 260, § 14.]

2192. Plumbing code committee. The code of rules governing the installation of plumbing provided for in the preceding section may be amended biennially as conditions may require. The necessary amendments shall be determined by a plumbing code committee which shall be appointed by the commissioner of public health on or before July 1, 1925, and every four years thereafter. Such committee shall consist of the engineer who is head of the division of sanitary engineering, the commissioner of health, the housing commissioner, one master plumber, and one journeyman plumber. The engineer member shall be chairman of the committee. [38 G. A., ch. 378, § 2; 40 Ex. G. A., H. F. 260, § 14-a1.]

2193. Powers of plumbing committee. The committee shall meet at the call of the chairman, which shall be issued during the month of December of each even-numbered year. It shall continue in session until it has agreed upon the amendments deemed necessary to the existing code governing the installation of plumbing. [40 Ex. G. A., H. F. 260, § 14-a2.]

2194. Compensation and expenses of committee. The members of the committee shall receive no compensation for their services, but they shall receive their necessary traveling and hotel expenses in discharging the duties prescribed in the preceding section. [40 Ex. G. A., H. F. 260, § 14-a3.]

2195. Plumbing code revision fund. Cities and towns licensing plumbers shall pay to the

treasurer of state one dollar for each license issued and twenty-five cents for each renewal thereof. The fees so received shall be kept by the treasurer of the state in a separate fund to be known as the plumbing code fund. Such fund shall be used in paying the claims arising under the preceding section and in paying the cost of printing the code of rules governing the installation of plumbing, plumbers' license, and application blanks. [40 Ex. G. A., H. F. 260, § 14-a4.]

2196. Housing law applicable to mining camps. When the health conditions in any mining camp become a menace to the health of the inhabitants thereof, the department shall require compliance with the provisions of the housing law in so far as the same may be reasonably applicable in such camp. [38 G. A., ch. 123, § 106; 40 Ex. G. A., H. F. 260, § 15.]

NOTE: For housing law, see ch. 323.

2197. Permits for construction of new mining camps. No new mining camp shall be constructed of more than five houses until a written permit is secured from the department. Application for said permit shall be made in writing, accompanied by a plat of the proposed camp showing in detail the location, topography, character of the houses to be built, and the provisions to be made for drainage, sewage, outside toilets, and water supply. Within three weeks from the receipt of such application the department shall inspect the proposed camp and, if satisfied that the same will comply with the general provisions of the housing law as far as reasonably applicable, shall issue the permit requested. [38 G. A., ch. 123, § 106; 40 Ex. G. A., H. F. 260, § 16.]

2198. Investigation of pollution of water. The department may upon its own initiative investigate the alleged pollution or corruption of any stream or body of water which is rendering the same unwholesome or unfit for domestic use, or as a public water supply, or which is rendering it deleterious to fish life, and the department shall make such investigation upon the written petition of:

1. The council of any city or town.
2. Any local board of health.
3. The trustees of any township.
4. Twenty-five residents of the state.

The power vested by this section in the department shall not apply, however, to the lower five thousand feet of any stream flowing into a river at a place where such river forms a part of the boundary line of the state. [40 G. A., ch. 37, §§ 1, 2, 5; 40 Ex. G. A., H. F. 260, § 16-a1.]

2199. Time and place of hearing. Upon the filing of such petition or upon the institution of such proceeding by the department, it shall make an order fixing the time and place for a hearing which shall not be less than ten days thereafter. Such hearing shall be public and shall be carried on as far as possible in the same manner as a court hearing and every alleged offender shall have the right to appear

by counsel, present testimony, and examine witnesses. [40 G. A., ch. 37, § 1; 40 Ex. G. A., H. F. 260, § 16-a2.]

2200. Notice. Notice of the time and place of hearing shall be served upon each alleged offender at least ten days before said hearing in the manner required for the service of notice of the commencement of an ordinary action in a court of record. [40 G. A., ch. 37, § 1; 40 Ex. G. A., H. F. 260, § 16-a3.]

2201. Order. After such hearing the department may, if it believes the alleged offender is guilty of the charges, enter an order directing such person to desist in the practice found to be the cause of such pollution or corruption, or it may order a change in the method of passing waste materials into the water so that the same will be rendered innocuous and harmless. [40 G. A., ch. 37, § 1; 40 Ex. G. A., H. F. 260, § 16-a4.]

2202. Reasonable time for compliance. If any such change is ordered, unless such practice is rendering such water dangerous to the public health, a reasonable time shall be granted to the offender in which to put in use the method ordered. [40 G. A., ch. 37, § 1; 40 Ex. G. A., H. F. 260, § 16-a5.]

2203. Record. The department shall keep a complete record of such proceeding, including all the evidence taken, and such record shall be open to public inspection. [40 G. A., ch. 37, § 3; 40 Ex. G. A., H. F. 260, § 16-a6.]

2204. Appeal. An appeal may be taken by the aggrieved party from any order entered in such proceeding to the district court of the county in which the alleged offense was committed. Such appeal shall be perfected by serving a written notice on the commissioner of public health within thirty days of the entry of such order. [40 Ex. G. A., H. F. 260, § 16-a7.]

2205. Transcript. Within thirty days after an application for an appeal is filed with the commissioner, he shall make, certify, and file in the office of the clerk of the court to which the appeal is taken, a full and complete transcript of all documents and papers relating to the case. [40 Ex. G. A., H. F. 260, § 16-a8.]

2206. Trial term—precedence. The first term after the appeal is taken shall be the trial term, and if the appeal is taken during a pending term, it shall be triable during such term at any time after ten days from the date that the transcript is filed by the commissioner. The hearing on appeal shall be tried as a suit in equity and shall be de novo. [40 Ex. G. A., H. F. 260, § 16-a9.]

2207. Violation of order—contempt. Failure to obey any order made by the department with reference to matters pertaining to the pollution of streams shall constitute contempt. In such event the department may certify to the district court of the county in which such

disobedience shall occur, or to the district court of Polk county, the fact of such failure. The district court shall then proceed to hear and determine the matter and to punish for contempt to the same extent as though such failure were in connection with an order made by the district court which is made punishable by contempt. [40 Ex. G. A., H. F. 260, § 16-a10.]

2208. Penalty. Any party found guilty of contempt under the preceding section shall be fined not to exceed one thousand dollars or be imprisoned for failure to pay such fine. The penalties provided in this section shall be considered as additional to any penalty which may be imposed under the law relative to nuisances or any other statute relating to the pollution of streams, and a conviction under the preceding section shall not be a bar to prosecution under any other penal statute. [40 Ex. G. A., H. F. 260, § 16-a10.]

2209. Notice of adoption of rules. Immediately after the adoption of any rule the department shall forward a certified copy of such rule to the county auditor of each county and to each local board of health. When such rule shall be amended, notice of said amendment shall be given in the same manner. [S., '13, § 2571-b; 40 Ex. G. A., H. F. 260, § 17.]

2210. Time rules take effect. The rules of the department shall take effect and be in force in the respective counties from and after the date stated in the certified copies of said rules which are forwarded to the county auditors. [40 Ex. G. A., H. F. 260, § 18.]

2211. Publication and distribution of rules. The department shall publish from time to time a sufficient number of its rules to supply the needs of the several counties. The county auditor shall annually forward to the department a certified list of the names and addresses of the clerks of all the local boards of health in his county. Upon receipt of said list the department shall forward to the local boards sufficient copies for distribution in each county; and the clerk of the local board shall upon request furnish a copy of said rules to any resident, physician, or citizen. [S., '13, § 2571-b; 40 Ex. G. A., H. F. 260, § 19.]

2212. Refusal of local board to enforce rules. If any local board shall fail to enforce the rules of the state department or carry out its lawful directions, the department may enforce the same within the territorial jurisdiction of such local board, and for that purpose it may exercise all of the powers given by statute to the local board, and may employ the necessary assistants to carry out its lawful directions. [C., '97, § 2572; S., '13, §§ 2569-a, 2572; 40 Ex. G. A., H. F. 260, § 20.]

NOTE: For powers of local board, see ch. 107.

2213. Expenses for enforcing rules of department. All expenses incurred by the state department in determining whether its rules are enforced by a local board, and in enforcing

the same when a local board has failed to do so, shall be paid in the same manner as the expenses of enforcing such rules when enforced by the local board. [S., '13, § 2572; 40 Ex. G. A., H. F. 260, § 21.]

2214. Duty of peace officers to enforce rules. All peace officers of the state when called upon by the department shall enforce its rules and execute the lawful orders of the department within their respective jurisdictions. [C., '97, § 2572; S., '13, § 2572; 40 Ex. G. A., H. F. 260, § 22.]

2215. Interference with health officer. Any person resisting or interfering with the department, its employees, or authorized agents, in the discharge of any duty imposed by law shall be guilty of a misdemeanor. [38 G. A., ch. 299, § 20; 40 Ex. G. A., H. F. 260, § 23.]

2216. Biennial report. The department shall make a report to the governor in each

even-numbered year, at the time provided by law, which shall include all receipts and disbursements for the year, such information and statistics concerning the public health and enforcement of the several laws administered by it, and such instruction upon the subject of hygiene and sanitation as may be thought useful for dissemination among the people, with such suggestions as to legislation as may be deemed advisable. [C., '97, § 2565; 39 G. A., ch. 222, § 1; 40 Ex. G. A., H. F. 260, § 24.]

NOTE: For time of making report, see § 246.

2217. Penalty. Any person who knowingly violates any provision of this chapter, or of the rules of the department, or any lawful order, written or oral, of the department or of its officers, or authorized agents, shall be guilty of a misdemeanor. [C., '73, § 419; C., '97, § 2573; S., '13, § 2575-a6; 40 Ex. G. A., H. F. 260, § 26.]

CHAPTER 106

STATE BOARD OF HEALTH

- 2218. Composition of board of health.
- 2219. Appointment of members.
- 2220. Duties of board of health.
- 2221. Questions submitted by department.
- 2222. Time of meetings.

2218. Composition of board of health. The state board of health shall consist of:

1. The commissioner of public health.
2. The members of the executive council.
3. Five health officers to be appointed by the governor. [S., '13, § 2564-a; 40 Ex. G. A., H. F. 260, § 27.]

2219. Appointment of members. The governor shall appoint, prior to the second Tuesday in January, 1925, and every two years thereafter, the five health officers provided for in the preceding section, who shall serve for a period of two years or until their successors are appointed and qualify. Not more than one of such health officers shall be appointed from any one congressional district. [40 Ex. G. A., H. F. 260, § 27-a1.]

2220. Duties of board of health. The state board of health shall be an advisory body to the state department of health and shall have the following powers and duties:

1. To consider and study the entire field of legislation and administration concerning public health, hygiene, and sanitation.
2. To advise the department relative to:
 - a. The causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health.
 - b. The sanitary conditions in the educational, charitable, correctional, and penal institutions in the state.

- 2223. Place of meetings.
- 2224. Officers.
- 2225. Supplies.
- 2226. Compensation and expenses of members.
- 2227. Publication of proceedings.

c. The public water supplies, sewer systems, sewage treatment plants, and garbage and refuse disposal plants, and the method of installing and operating the same.

d. Contagious and infectious diseases, quarantine and isolation, venereal diseases, anti-toxins and vaccines, housing, and vital statistics.

3. To recommend policies and practices to the department relative to any duty imposed upon it by law, which recommendations shall be given due consideration by the department.

4. To appoint a committee, upon the request of the department, to advise with the department relative to any duty imposed upon it by law.

5. To investigate the conduct of the work of the department, and for this purpose it shall have access at any time to all books, papers, documents, and records of the department.

6. To advise or make recommendations to the governor and general assembly relative to public health, hygiene, and sanitation.

7. To adopt rules, not inconsistent with law, for its internal control and management, a copy of which rules shall be filed with the department.

8. To act by committee, or by a majority of the board.

9. To keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the department. [C., '97, § 2565; 40 Ex. G. A., H. F. 260, § 28.]

2221. Questions submitted by department. The department may lay before the board, or any committee thereof, at any regular or special meeting, any matter upon which it desires the advice or opinion of such body or committee. [40 Ex. G. A., H. F. 260, § 29.]

2222. Time of meetings. The board shall meet semiannually, on the second Tuesday in July and January of each year, and at such other times as may be deemed necessary by the commissioner of public health or the governor. The officer calling a special meeting of the board shall give each member ten days' written notice by mail of such meeting. A majority of the members of the board shall constitute a quorum. [C., '97, § 2564; S., '13, § 2564; 40 Ex. G. A., H. F. 260, § 30.]

2223. Place of meetings. The meetings of the board shall be held at the seat of government unless otherwise ordered by the board. The executive council shall furnish the board with suitable quarters in which to hold its meetings. [C., '97, § 2564; S., '13, § 2564; 40 Ex. G. A., H. F. 260, § 31.]

2224. Officers. At the meeting held in July of each year a president and secretary shall be elected from the board, who shall serve for a period of one year. At the request of the board the department shall furnish an executive clerk from the regular employees of

the department to record the minutes of the meetings of the board. [C., '97, § 2564; S., '13, § 2564; 40 Ex. G. A., H. F. 260, § 33.]

2225. Supplies. The department shall furnish the board of health with all articles and supplies required for the public use and necessary to enable the board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and the same shall be considered and accounted for as if obtained for the use of the department. [S., '13, § 2564; 40 Ex. G. A., H. F. 260, § 34.]

2226. Compensation and expenses of members. The members of the board shall receive no compensation as such, but the traveling expenses of the members shall be paid from any funds in the state treasury not otherwise appropriated. [C., '97, § 2574; S., '13, §§ 2564, 2574; 39 G. A., ch. 209, §§ 41, 43; 40 Ex. G. A., H. F. 260, § 35.]

2227. Publication of proceedings. Upon request of the board the department shall incorporate the proceedings of the board, or any part thereof, in its biennial report to the governor, and the same shall be published as a part of the official report of the department. [40 Ex. G. A., H. F. 260, § 36.]

CHAPTER 107

LOCAL BOARD OF HEALTH

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 2246. Penalty.

2228. Organization of local board of health. The local board of health shall consist:

1. In cities and towns, of the mayor, health physician, and members of the city or town council.

2. In townships, of the members of the board of township trustees. [C., '73, §§ 393, 415; C., '97, §§ 574, 2568; 38 G. A., ch. 87; 40 Ex. G. A., H. F. 260, § 37.]

2229. Chairman of local board—duties. In cities and towns the mayor shall be chairman of the local board, and when said board is not in session he shall as mayor and as chairman of said board enforce the statutes of the state relative to public health and the rules of the state department and local board. In townships the trustees shall elect one of their number as chairman who shall have the same du-

ties as the chairman of the local board in cities and towns. [40 Ex. G. A., H. F. 260, § 38.]

2230. Clerk of local board—duties. The town, city, or township clerk, as the case may be, shall be clerk of the local board, keep its records, and perform such other duties as may be prescribed by the local board. [C., '73, § 418; C., '97, § 2568; 40 Ex. G. A., H. F. 260, § 39.]

2231. Health officer of local board. Each local board shall have a health officer who shall be a physician, or one specially trained in public hygiene and sanitation. In cities and towns the health physician shall be such health officer. In every other case the local board shall appoint said health officer who shall hold office during its pleasure. [C., '73, § 418; C., '97, §

2568; 38 G. A., ch. 87; 40 Ex. G. A., H. F. 260, § 40.]

2232. Appointment of sanitation and quarantine officer. Upon request of the local board, the mayor in every city or town shall appoint a member of the police force to be a permanent sanitation and quarantine officer who shall be subject to the orders and directions of the local board and its health officer in the execution of health and quarantine regulations. [37 G. A., ch. 73, § 1; 40 Ex. G. A., H. F. 260, § 41.]

2233. Meetings. The local board shall meet for the transaction of business on the first Monday of April and November in each year and at such other times as it may deem necessary. [S., '13, § 2571-b; 40 Ex. G. A., H. F. 260, § 42.]

2234. Duties of local board. The duties of the local board shall be:

1. To obey and enforce the rules and lawful orders of the state department.

2. To furnish the state department at the times and in the manner prescribed by the department, reports of its proceedings.

3. To establish, maintain, and terminate quarantines in all cases of quarantinable diseases as may be required by law or by the rules of the state department.

4. To make such rules, not inconsistent with law or the rules of the state department as may be necessary for the enforcement of the various laws, the administration of which is imposed upon the local board.

5. To have, subject to the rules of the state department, charge of the burial or disposal of the dead, and of all cemeteries dedicated to public use not legally controlled by other trustees or persons.

6. To regulate all fees and charges of persons employed by it in the execution of health laws, its own rules, and those of the state department. 1. [C., '97, § 2572; S., '13, § 2572; 40 Ex. G. A., H. F. 260, § 43.] 2. [S., '13, § 2571-b; 40 Ex. G. A., H. F. 260, § 43.] 3. [C., '73, §§ 415, 417, 418; C., '97, § 2568; 40 Ex. G. A., H. F. 260, § 43.] 4. [C., '73, §§ 415, 417; C., '97, § 2568; 40 Ex. G. A., H. F. 260, § 43.] 5. [C., '73, § 393; C., '97, §§ 574, 2568; 40 Ex. G. A., H. F. 260, § 43.] 6. [C., '97, § 2568; 40 Ex. G. A., H. F. 260, § 43.]

2235. Publication of rules. All rules adopted by the local board shall take effect after publication in some newspaper of general circulation in the city, town, or township in which said board has jurisdiction, or after posting a copy of the same in five public places therein. [S., '13, § 2571-b; 40 Ex. G. A., H. F. 260, § 44.]

2236. General duties of health officer. The health officer shall be the advisor of the local board in all matters pertaining to the public health, the control of communicable diseases, the establishment, maintenance, and termination of quarantine, sources of filth, disposal of garbage, refuse, and night soil, and the pollution of wells and other sources of water supply; and he shall recommend to the local board the

proper measures to be taken by it for the abatement of unhealthful conditions and for the preservation of the public health. [40 Ex. G. A., H. F. 260, § 45.]

2237. Special duties of health officer. At least twice each year, and oftener if necessary, the health officer shall personally inspect, or cause to be inspected, the schools, public buildings, and public utilities within the jurisdiction of the local board, and he shall recommend to the local board the necessary measures to be taken by it for the maintenance of such schools, public buildings, and public utilities in a sanitary condition. In case of sickness where no physician is in attendance, the health officer shall investigate the character of such sickness and report his findings to the local board. [40 Ex. G. A., H. F. 260, § 46.]

2238. Additional duties of health officer. In addition to his statutory duties the health officer shall perform such other duties as the local board may assign to him. [40 Ex. G. A., H. F. 260, § 47.]

2239. Right to enter premises to abate nuisance. The local board, health officer, or sanitation officer, may enter any building, vessel, or other place for the purpose of examining into, preventing, or removing any nuisance, source of filth, or cause of sickness. [C., '97, § 2569; 40 Ex. G. A., H. F. 260, § 48.]

2240. Abatement of nuisance. The local board may order the owner, occupant, or person in charge of any property, building, or other place, to remove at his own expense any nuisance, source of filth, or cause of sickness found thereon, by serving on said person a written notice, stating some reasonable time within which such removal shall be made, and if such person fails to comply with said order, the local board may cause the same to be executed at the expense of the owner or occupant. [C., '73, §§ 415, 417; C., '97, §§ 2568, 2569; 40 Ex. G. A., H. F. 260, § 49.]

2241. Closing of premises. In such cases the local board may order the occupants of said place to move therefrom and fix some reasonable time for compliance therewith. If the order is not complied with, said board may forcibly remove the occupants and close the premises; and said place shall not be again occupied as a dwelling or place of business without the written permission of the local board. [C., '73, §§ 415, 417; C., '97, § 2568; 40 Ex. G. A., H. F. 260, § 50.]

2242. Refusal of admittance—warrant. In case any member of the local board, the health officer, or the sanitation officer, in proceeding under the authority of the three preceding sections, shall be refused entry to any place, complaint may be made under oath to any magistrate of the county, whether a member of the local board or not, and said magistrate shall thereupon issue his warrant, directed to some peace officer of the county, commanding him between the hours of sunrise and sunset, ac-

accompanied by two or more members of said board, the health officer, or the sanitation officer, to prevent, remove, or destroy any nuisance, source of filth, or cause of sickness, found to exist in said place, which order shall be executed by said officer under the direction of the members of the local board, the health officer, or the sanitation officer. [C., '97, § 2569; 40 Ex. G. A., H. F. 260, § 51.]

2243. Collection of costs for abating nuisance. All expenses incurred by the local board in proceeding under the four preceding sections may be recovered by suit in the name of the local board, or said board may certify the amount of said expense, together with a description of the property, to the county auditor who shall enter the same upon the tax books as costs for removing a nuisance and said amount shall be collected as other taxes. [40 Ex. G. A., H. F. 260, § 52.]

2244. Peace officers to enforce rules and orders. Peace officers, when called upon by the local board, shall enforce its rules and execute the lawful orders of said board. [C., '97, §§ 2568, 2572; S., '13, § 2572; 40 Ex. G. A., H. F. 260, § 53.]

2245. Interference with health officers. No person shall interfere with the local board, or its officers, or authorized agents, in the discharge of any duty imposed by law, or the rules of the state department or the local board. [38 G. A., ch. 299, § 20; 40 Ex. G. A., H. F. 260, § 54.]

2246. Penalty. Any person who knowingly violates any provision of this chapter, or of the rules of the local board, or any lawful order, written or oral, of said board, or of its officers or authorized agents, shall be guilty of a misdemeanor. [C., '73, § 419; C., '97, § 2573; S., '13, § 2575-a6; 40 Ex. G. A., H. F. 260, § 55.]

CHAPTER 108

CONTAGIOUS AND INFECTIOUS DISEASES

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2247. Definitions. For the purposes of this chapter:

1. "Communicable disease" shall mean any infectious or contagious disease.

2. "Placard disease" shall mean whooping cough, measles, mumps, chickenpox, or any other disease designated as a placard disease by the state department.

3. "Quarantinable disease" shall mean scarlet fever (including scarlet rash and scarlatina), smallpox, diphtheria (including membranous croup), cholera, leprosy, cerebro-spinal meningitis, anterior poliomyelitis, Spanish influenza, bubonic plague, or any other disease designated as quarantinable by the state department.

4. "Quarantine" shall mean the complete detention of a person within his own residence or temporary place of abode and the exclusion of

the public from said place for the purpose of safeguarding the public from a communicable disease.

5. "Isolation" shall mean the removal of a person from his own residence or temporary place of abode and detention in some special place, from which the public is excluded, for the purpose of safeguarding the public from a communicable disease. [S., '13, § 2571-a; S. S., '15, § 2571-1a; 38 G. A., ch. 80, § 1; 40 Ex. G. A., H. F. 260, § 56.]

2248. Form of warning signs and reports. The form of quarantine, temporary quarantine, and warning signs shall be prescribed by the rules of the state department, and the forms for all reports required by this chapter shall be likewise prescribed. [38 G. A., ch. 397, § 1; 40 Ex. G. A., H. F. 260, § 57.]

2249. Report of quarantinable and placard diseases. The physician attending any person infected with a quarantinable disease or placard disease shall immediately report the same orally to the local board or to one of its officers and at once follow said report with a written report. Such reports shall be made in accordance with the rules of the state department and the local board. In case there is no attending physician, the parents, guardian, school teacher, or the householder of the premises wherein such disease exists shall report the same. [S. S., '15, § 2571-1a; 40 Ex. G. A., H. F. 260, § 58.]

2250. Report to department. All quarantinable and placard diseases shall be reported by the local board to the state department as prescribed by the rules of the department. [40 Ex. G. A., H. F. 260, § 59.]

2251. Persons infected with communicable diseases. In case any person shall be infected with any communicable disease, dangerous to the public health, whether a resident or otherwise, the local board shall make such orders in regard to the care of said person as are necessary to protect the public health, and said orders shall be executed by the mayor, township clerk, health officer, or sanitation officer as the local board may direct or provide by its rules. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 60.]

2252. Establishment of quarantine. A quarantine shall be established in every case of a quarantinable disease, and in such cases the infected person may be removed and isolated in a separate house or hospital for detention and treatment. All quarantines and isolations ordered under the authority of this section shall be executed in accordance with the rules of both the state department and the local board. [C., '73, §§ 415, 418; C., '97, § 2568; S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 61.]

2253. Placard diseases not quarantined. A quarantine shall not be established in case of a placard disease, but a warning sign shall be posted which shall serve merely as a warning to the public. [S. S., '15, §§ 2571-2a, 2571-3a; 40 Ex. G. A., H. F. 260, § 62.]

2254. Warning signs required. All quarantinable and placard diseases shall, as soon as possible, be definitely diagnosed and the proper warning sign placed in a conspicuous place on the house, dwelling, or place in which the quarantinable or placard disease exists. [38 G. A., ch. 397, § 1; 40 Ex. G. A., H. F. 260, § 63.]

2255. Temporary quarantine pending diagnosis. When the type of the disease can not be immediately determined or diagnosed, a temporary quarantine shall be established and all the requirements of quarantine shall be observed, but such temporary quarantine shall terminate within forty-eight hours after being established. [38 G. A., ch. 397, § 1; 40 Ex. G. A., H. F. 260, § 64.]

2256. Instructions to persons quarantined or isolated. Every official, when establishing a quarantine or removing an infected person for the purpose of isolation, shall furnish to said person printed instructions relative to the duties and restrictions imposed upon him by law and by the rules of the state department and local board. [S., '13, § 2571-b; 40 Ex. G. A., H. F. 260, § 65.]

2257. Temporary isolation hospitals. When no detention hospital has been established by the county, the local board shall provide a suitable place, when necessary, for the isolation of persons infected with communicable diseases dangerous to the public health, and the expense incident thereto shall be paid by the county in the same manner as other expenses incurred under the provisions of this chapter. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 66.]

2258. Forcible removal for isolation. The forcible removal and isolation of any infected person shall be accomplished by an application to any civil magistrate in the manner provided in section 2242 for the removal and abatement of nuisances; and such magistrate shall issue the warrant, as directed in such cases, to remove such person to the place designated by the local board, and to take possession of the infected house, lodging room, premises, or effects until the same have been properly fumigated or disinfected. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 67.]

2259. Fees for removing for isolation. The officers designated by the magistrate shall be entitled to receive for their services such reasonable compensation as shall be determined by the local board. The amount so determined shall be certified and paid in the same manner as other expenses incurred under the provisions of this chapter. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 68.]

2260. Removal to another jurisdiction. No person known to be infected with any communicable disease dangerous to the public health shall move or be removed from the jurisdiction of one local board to the jurisdiction of another local board without the written permission of the local board from whose jurisdiction the infected person is to be removed, and if the removal is to another county, then the written permission of the local board into whose jurisdiction the infected person is to be removed shall also be secured. [S., '13, § 2575-a3; 40 Ex. G. A., H. F. 260, § 69.]

2261. Removal to residence. When the infected person resides not more than fifteen miles from the place at which it is determined that he is infected with a communicable disease dangerous to the public health and said person requests that he be removed to his place of residence, the local board shall grant permission for his immediate removal, unless in its judgment such removal would involve great danger to the infected person or the public health. [S., '13, § 2575-a5; 40 Ex. G. A., H. F. 260, § 70.]

2262. Method of removal to residence. All removals of infected persons as provided in the two preceding sections shall be by private conveyance along the least frequented high-ways, under escort of the health officer or sanitation officer, and as thoroughly isolated as possible. [S., '13, § 2575-a5; 40 Ex. G. A., H. F. 260, § 71.]

2263. Payment of expenses in removal to residence. All expenses of removal under the preceding section shall be paid by the county in which the infected person has a legal settlement and all bills for said expenses shall be presented, allowed, and paid in the same manner as bills for quarantine and isolation. [S., '13, §§ 2575-a4, 2575-a5; 40 Ex. G. A., H. F. 260, § 72.]

NOTE: For method of presenting and allowing claims, see §§ 2274, 2275.

2264. Jurisdiction over detention hospitals. The local board of the city or town which is allowed to maintain a detention hospital for patients infected with communicable diseases, outside the limits of said municipality, shall have exclusive jurisdiction and control of such detention hospital and grounds for the enforcement of all sanitary and health regulations. [S., '13, § 2575-a2; 40 Ex. G. A., H. F. 260, § 73.]

2265. Controversies concerning location of detention hospitals. All controversies arising between local authorities respecting the location of detention hospitals and grounds for the treatment of communicable diseases, shall be referred to the state department, which shall give two days' notice to the parties interested, and after investigating the matter make such order as the facts warrant, which action shall be final. [S., '13, § 2575-a1; 40 Ex. G. A., H. F. 260, § 74.]

2266. Termination of quarantines and isolations. The quarantine or isolation authorized by this chapter may be terminated by the mayor or the township clerk, as the case may be, acting under the rules or directions of the local board. [C., '73, §§ 415, 418; C., '97, § 2568; 40 Ex. G. A., H. F. 260, § 75.]

2267. Report of termination. The termination of all quarantinable and placard diseases shall be reported by the local board to the state department as prescribed by the rules of the state department. [40 Ex. G. A., H. F. 260, § 76.]

2268. Disinfection in case of quarantinable disease. In case of death from or the termination of any quarantinable disease, the person who was infected and the place of quarantine or isolation, with all persons, furniture, bedding, clothing, and all other articles contained therein, shall be fumigated or disinfected in accordance with the rules of the state department and under the direction of the local board, which shall require the attending physician to superintend or perform the work. In case there be no attending

physician, or in case the attending physician refuses to perform this duty, then the local board shall employ some other suitable person to perform such work. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 77.]

2269. Disinfection from other communicable diseases. The undertaker or person in charge of the funeral of any person dying from any communicable disease which is not quarantinable shall within forty-eight hours after the death of such person report to one of the officers of the local board the name and residence of the deceased person, together with the cause of death. Upon receipt of said notice the officer receiving the same shall cause said premises to be disinfected in accordance with the rules of the state department. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 78.]

2270. Medical attendance and supplies for quarantined persons. In case any person under quarantine or the persons liable for the support of such person shall, in the opinion of the local board, be financially unable to secure the proper care, provisions, or medical attendance, the local board shall furnish such supplies and services during the period of quarantine and may delegate such duty by its rules to one of its officers or to the health officer. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 79.]

2271. Medical attendance and supplies for isolated persons. The local board shall provide the proper care, provisions and medical attendance for every person removed and isolated in a separate house or hospital for detention and treatment, and the same shall be paid for by the county in which the infected person has a legal settlement if patient or legal guardian is unable to pay same. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 80.]

2272. Rights of isolated persons. Any person removed and isolated in a separate house or hospital may employ, at his own expense, the physician or nurse of his choice, and may provide such supplies and commodities as he may require. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 81.]

2273. Authorization of supplies and services. All services and supplies furnished to individuals or families under the provisions of this chapter must be authorized by the local board or by one of its officers acting under the rules of said board, and a written order therefor designating the person or persons employed to furnish such services or supplies, issued before said services or supplies were actually furnished, shall be attached to the bill when the same is presented for audit and payment. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 82.]

2274. Filing of bills—approval by local board. All bills incurred in carrying out the provisions of this chapter in establishing, maintaining, and terminating quarantine and isolation, in providing a necessary house or hospital for isolation, and in making fumigations or disinfections, shall be filed with the

clerk of the local board. Said board at its next regular meeting or special meeting called for the purpose shall examine and audit the same and, if found correct, approve and certify the same to the county board of supervisors for payment. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 83.]

2275. Rules for allowing claims. All bills for supplies furnished and services rendered for persons removed and isolated in a separate house or hospital, or for persons financially unable to provide their own sustenance and care during quarantine, shall be allowed and paid for only on a basis of the local market price for such provisions, services, and supplies in the locality in which the same shall have been furnished. No bill for disinfecting or fumigating premises or effects shall be allowed unless it shall be found that the infected person or those liable for his support are financially unable to pay the same. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 84.]

2276. Approval and payment of claims by supervisors. The board of supervisors shall not be bound by the action of the local board in approving such bills, but shall allow the same from the poor fund for a reasonable amount and within a reasonable time. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 85.]

2277. Reimbursement from county of legal settlement. If any person receives services or supplies under this chapter who does not have a legal settlement in the county in which such bills were incurred and paid, the amount so paid shall be certified to the board of supervisors of the county in which said person claims settlement or owns property and the board of supervisors of such county shall reimburse the county from which such claim is certified, in the full amount originally paid by it. [S., '13, § 2571-a; 40 Ex. G. A., H. F. 260, § 86.]

2278. Penalty for exposing to contagious disease. Any person who knowingly exposes another to infection from any communicable disease, or knowingly subjects another to the danger of contracting such disease from a child or other irresponsible person, shall be liable for all damages resulting therefrom, and be punished as provided in this chapter. [C., '73, § 419; C., '97, § 2573; 40 Ex. G. A., H. F. 260, § 87.]

2279. Penalty. Any person who knowingly violates any provision of this chapter, or of the rules of the state department or the local board, or any lawful order, written or oral, of said department or board, or of their officers or authorized agents, shall be guilty of a misdemeanor. [C., '73, § 419; C., '97, § 2573; S., '13, § 2575-a6; 40 Ex. G. A., H. F. 260, § 88.]

CHAPTER 109

VENEREAL DISEASES

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2280. Venereal disease defined. For the purposes of this chapter "venereal disease" shall mean syphilis, gonorrhoea, or chancroid. [38 G. A., ch. 299, § 1; 40 Ex. G. A., H. F. 260, § 89.]

2281. Physicians to report to local board. Immediately after the first examination or treatment of any person infected with any venereal disease, the physician giving the same shall mail to the local board having jurisdic-

- 2299. Fee for making examination.
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tion over the place in which the examination or treatment was given a report stating the case number, age, sex, color, marital condition, and occupation of said person, and the nature, probable origin, and previous duration of such disease. [38 G. A., ch. 299, § 2; 40 Ex. G. A., H. F. 260, § 90.]

2282. Distribution of information. Every physician who examines or treats a person infected with any venereal disease shall give

said person at the time of the first examination or treatment a circular of information concerning venereal disease and a copy of the provisions of this chapter, and he shall include in the report required by the preceding section a statement that the requirements of this section have been complied with. [38 G. A., ch. 299, § 3; 40 Ex. G. A., H. F. 260, § 91.]

2283. Notification of the former physician. When a person applies for treatment of any venereal disease, the physician shall ascertain whether such person has previously consulted or employed some other physician for the same purpose, and if so, to immediately notify the physician last consulted or employed that the infected person is now under his care and treatment. [38 G. A., ch. 299, § 4; 40 Ex. G. A., H. F. 260, § 92.]

2284. Penalty for false information. Any person infected with a venereal disease who shall refuse to give or who falsely gives to a physician any information concerning prior treatment for the same, or relative to the name and address of the physician last consulted or employed, shall be punished as provided in this chapter. [38 G. A., ch. 299, § 4; 40 Ex. G. A., H. F. 260, § 93.]

2285. Conditions under which name to be reported. After a person infected with any venereal disease has consulted or employed a physician and fails to report to said physician for treatment during a period of ten days, the physician shall report the name and address of said person to the local board unless he shall receive during said period of time a report from some other physician that the infected person is now under his care and treatment. [38 G. A., ch. 299, § 4; 40 Ex. G. A., H. F. 260, § 94.]

2286. Circulars of information—laws—forms. All reports to the local board or by one physician to another concerning persons infected with venereal disease shall be made upon forms to be prescribed by the state department of health, and all circulars of information, copies of the venereal disease law, and forms for reports, which are required to be used or distributed by this chapter, shall be supplied by the department to the proper persons. [38 G. A., ch. 299, §§ 2-4; 40 Ex. G. A., H. F. 260, § 95.]

2287. Power of local board in certain cases. When it shall appear to the local board that any person infected with any venereal disease is not under the care and treatment of a physician or has not reported to said physician for a period of ten days, or is not taking recognized precautionary measures to prevent the infection of others, said board shall take such measures as it is authorized to take to protect the public health in the case of other communicable diseases dangerous to the public health, except as otherwise provided in this chapter. [38 G. A., ch. 299, §§ 5, 8; 40 Ex. G. A., H. F. 260, § 96.]

2288. Isolation in detention hospital. When in the judgment of the local board it is neces-

sary for the protection of the public health that any person infected with any venereal disease be isolated, the mayor or township clerk shall isolate such person in the detention hospital provided for in this chapter and shall cause to be administered to said person a proper course of treatment. [38 G. A., ch. 299, §§ 8, 13, 16; 40 Ex. G. A., H. F. 260, § 97.]

2289. Establishment of detention hospitals. When in the judgment of the board of supervisors of any county, or when advised by the state department acting with the United States public health service, that it is necessary to provide a detention hospital in the county for the isolation of persons infected with venereal diseases, said board of supervisors may provide such hospital and shall have power to construct, purchase, or rent a suitable place for such purposes and to equip and maintain the same in accordance with plans and specifications provided in advance by the state department. [38 G. A., ch. 299, § 13; 40 Ex. G. A., H. F. 260, § 98.]

2290. Tax levy for detention hospital. For the purposes of the preceding section, including the purchase of real estate for hospital purposes, the board of supervisors shall have power to levy a special tax for a period not to exceed fifty years, but such levy shall not exceed two mills on the dollar in any one year. [38 G. A., ch. 299, § 14; 40 Ex. G. A., H. F. 260, § 99.]

2291. Bond issue for detention hospital. Any county may anticipate the collection of the tax herein provided and may issue interest-bearing bonds at a rate of interest not to exceed five per cent per annum, to be denominated hospital bonds. Said bonds and the interest thereon shall be secured by said tax, and shall be payable only out of the hospital fund provided for in the preceding section. No bonds shall be issued in excess of taxes authorized to be levied. [38 G. A., ch. 299, § 15; 40 Ex. G. A., H. F. 260, § 100.]

2292. Conditions of bonds. Such bonds shall be issued and sold in accordance with the provisions of existing statutes relating to the issuance and sale of bonds by counties. In issuing such bonds the board of supervisors may cause portions of the same to become due at different definite periods, but no bonds so issued shall be due and payable in less than three or more than fifty years from date of issue. [38 G. A., ch. 299, § 15; 40 Ex. G. A., H. F. 260, § 101.]

2293. Physician and attendants. The board of supervisors shall appoint and fix the compensation of a physician and such nurses and other attendants as may be necessary to provide proper treatment and care for persons isolated in such detention hospital. In case the board of supervisors shall fail to make such provision the chairman of the local board shall name a physician to render the necessary medical and surgical service, and shall provide such other attendants as may be required. [38 G.

A., ch. 299, §§ 9, 13; 40 Ex. G. A., H. F. 260, § 102.]

2294. Rules for detention hospitals. The state department shall prescribe the rules for the maintenance and operation of the detention hospitals provided for in this chapter. [38 G. A., ch. 299, § 13; 40 Ex. G. A., H. F. 260, § 103.]

2295. Termination of isolation. In case of isolation the local board shall not terminate said isolation until the case has become non-infectious or until permission has been given by the state department. [38 G. A., ch. 299, § 10; 40 Ex. G. A., H. F. 260, § 104.]

2296. Test for determining infectiousness. In order to determine whether a venereal disease has become noninfectious an examination shall be made. Gonorrhoea shall be deemed to be infectious until at least two successive smears, taken not less than forty-eight hours apart, fail to show gonococci upon a microscopic examination of the same. [38 G. A., ch. 299, § 10; 40 Ex. G. A., H. F. 260, § 105.]

2297. Examination other than by health officer. Any person, subjected to examination under this chapter, may demand that some other physician than the health officer or physician representing the local board shall also make an examination; said physician shall be appointed by the chairman of the local board. In case the health officer or physician representing the local board and said physician can not agree upon the diagnosis they shall select a third physician to make an examination, and the decision of two of said physicians shall determine the diagnosis. [38 G. A., ch. 299, § 9; 40 Ex. G. A., H. F. 260, § 106.]

2298. Examination of women. In making examinations of women for the purpose of ascertaining the existence of any venereal disease, women physicians shall be appointed for said purpose, if practicable, when requested by the person to be examined. [38 G. A., ch. 299, § 9; 40 Ex. G. A., H. F. 260, § 107.]

2299. Fee for making examination. The compensation of physicians, other than health officers and those representing the local board, for making examinations under this chapter, shall be five dollars for each examination. [38 G. A., ch. 299, § 9; 40 Ex. G. A., H. F. 260, § 108.]

2300. Payment of expenses incident to isolation. The expenses incident to isolation under this chapter, including examinations, medical and surgical services, nursing and care, shall be paid as in cases of isolation for other diseases. [38 G. A., ch. 299, § 9; 40 Ex. G. A., H. F. 260, § 109.]

2301. Release on bond. Any person, except a prostitute, infected with any venereal disease may be released from isolation upon bond. Written application for such release shall be made to the local board, under oath, and must

state that the applicant is not a prostitute; and such written application shall be accompanied by a certificate to that effect signed by some peace officer, magistrate, township clerk, or trustee of the city, town, or township wherein the case occurs. [38 G. A., ch. 299, § 17; 40 Ex. G. A., H. F. 260, § 110.]

2302. Form—amount—conditions of bond. If the application is approved the applicant shall file with the county auditor a bond in the penal sum of one thousand dollars conditioned that the applicant will not permit or perform any act which might expose to infection any other person, and will continue treatment until cured, and will faithfully observe the rules and other requirements of the state department, local board, and health officer. Said bond shall run to and for the benefit of the county wherein the venereal disease occurs, and shall be signed by one or more freeholders as sureties, to be approved by the county auditor; but a cash guaranty in a like amount may be accepted in lieu of such bond. [38 G. A., ch. 299, § 17; 40 Ex. G. A., H. F. 260, § 111.]

2303. Examination before release from bond. Before any person is released from any such bond as cured, an examination shall be made in the manner provided in this chapter, and permission secured from the state department. [38 G. A., ch. 299, § 17; 40 Ex. G. A., H. F. 260, § 112.]

2304. Parents responsible for minors. The parents of minors acquiring venereal diseases and living with said parents shall be legally responsible for the compliance of such minors with the provisions of this chapter. [38 G. A., ch. 299, § 7; 40 Ex. G. A., H. F. 260, § 113.]

2305. Information and reports confidential. The identity of persons infected with venereal disease shall be kept secret, and all information, records, and reports concerning the same shall be confidential and shall be inaccessible to the public, but said records and reports shall be open to inspection by law-enforcing officers and to persons who have contracted venereal diseases from infected persons. [38 G. A., ch. 299, §§ 6, 12; 40 Ex. G. A., H. F. 260, § 114.]

2306. Druggists to keep record of remedies sold. Every pharmacist or person who sells any proprietary drug, preparation, or article of any kind used for the cure or treatment of any venereal disease shall keep a record of the name, address, and sex of each purchaser. A copy of said record shall be mailed each week to the health officer of the city, town, or township wherein the sale was made. [38 G. A., ch. 299, § 19; 40 Ex. G. A., H. F. 260, § 115.]

2307. Suppression of prostitution—certificates. The local board, health officer, sanitation officer, and all other officers enforcing the provisions of this chapter shall use all proper means of suppressing prostitution, and no certificate or other evidence of freedom

from venereal disease shall be issued by said officers. [38 G. A., ch. 299, § 11; 40 Ex. G. A., H. F. 260, § 116.]

2308. Penalty for transmitting disease. Any person infected with any venereal disease who shall transmit the same to another person, or expose another to infection by intercourse, shall be punished as provided in this chapter, and in addition thereto shall be liable to the party injured for all damages sustained by reason of said injury. [38 G. A., ch. 299, § 18; 40 Ex. G. A., H. F. 260, § 117.]

2309. Penalty for failing to report. Any physician who fails to make or falsely makes any of the reports required by this chapter concerning persons infected with any venereal disease, or who discloses the identity of such person, except as herein provided, shall be punished as provided in this chapter. [38 G. A., ch. 299, §§ 2, 21; 40 Ex. G. A., H. F. 260, § 118.]

2310. Inspection of suspected cases. In all suspected cases of venereal disease in the infectious stages, the local board shall immediately use every available means to determine whether the person suspected is infected with said disease and if so, to ascertain the sources of such infection. [38 G. A., ch. 299, § 8; 40 Ex. G. A., H. F. 260, § 119.]

2311. Health officer to make examinations. The health officer in each city, town, or township shall examine every person reasonably suspected of having any venereal disease in the infectious stages to ascertain if such person is so infected, but no person shall be subjected to such examination who is under the care and treatment of a physician and is taking recognized precautionary measures to prevent the infection of others. [38 G. A., ch. 299, §§ 8, 9; 40 Ex. G. A., H. F. 260, § 120.]

2312. Temporary isolation of suspects. Persons reasonably suspected of being infected

with any venereal disease may be temporarily isolated in the detention hospital provided for in this chapter by the local board until an examination can be made. [38 G. A., ch. 299, § 9; 40 Ex. G. A., H. F. 260, § 121.]

2313. Prophylactic treatment of eyes of new born. Every physician shall immediately, upon the birth of an infant, instill into the eyes of such newly born infant a prophylactic solution approved by the state department. [39 G. A., ch. 40, § 1; 40 Ex. G. A., H. F. 260, § 122.]

2314. Detection of eye infection after birth. Every physician who shall detect any inflammation, swelling, or redness in the eyes of any infant, or any unnatural discharge therefrom, within six months after its birth, shall immediately treat such child with the prophylactic solution prescribed in the preceding section. Any other person having the care of such child who shall discover any such condition of the eyes, within said time, shall immediately report the same and the location of such infant to the local board. [39 G. A., ch. 40, § 2; 40 Ex. G. A., H. F. 260, § 123.]

2315. Certain children exempted. Nothing in the two preceding sections shall be construed to require medical treatment for the minor child of any person who is a member of a well recognized church or religious denomination, and whose religious convictions in accordance with the tenets or principles of his church or religious denomination are against medical treatment for disease. [39 G. A., ch. 40, § 1; 40 Ex. G. A., H. F. 260, § 124.]

2316. Penalty. Any person violating any of the provisions of this chapter shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment. [38 G. A., ch. 299, § 21; 39 G. A., ch. 40, § 4; 40 Ex. G. A., H. F. 260, § 125.]

CHAPTER 110

DISPOSAL OF DEAD BODIES

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- 2349. Issuance of forged papers.
- 2350. Penalty.

2317. Definitions. For the purpose of this chapter:

- 1. "Local registrar" shall mean the local registrar of vital statistics.
- 2. "State registrar" shall mean the state registrar of vital statistics.
- 3. "Registration district" or "district" shall mean the district established by law for the registration of vital statistics.
- 4. "Person" shall include firm and corporation.
- 5. "Dead body" shall mean the dead body of a human being. [40 Ex. G. A., H. F. 260, § 126.]

NOTE: For registration district established for vital statistics, see §§ 2385, 2386.

2318. Death certificate and burial permit. No person, without securing a proper death certificate and a burial or removal permit, shall:

- 1. Keep a dead body for more than seventy-two hours after death or discovery of the same.
- 2. Remove such body from or into any registration district in this state.
- 3. Bury or make other final disposition of such body in this state. [39 G. A., ch. 222, §§ 5, 9; 40 Ex. G. A., H. F. 260, § 127.]

2319. Execution and filing of death certificates. The undertaker or other person in charge of the funeral or disposition of the body of every person dying in this state shall be responsible for the proper execution of a death certificate, which shall be filled out in durable black ink, in a legible manner, and filed with the local registrar of the registration district in which the death occurred or the body was found. [S. S., '15, § 587-b; 39 G. A., ch. 222, §§ 9, 19; 40 Ex. G. A., H. F. 260, § 128.]

2320. Contents of death certificate. The certificate of death shall be executed on the United

States standard form, approved by the bureau of the census, and shall contain the following items:

PART 1

CERTIFICATION OF PERSONAL PARTICULARS

- 1. *Place of death*, including state, county, township, town, city, or industrial camp. If in a city, the street and house number; if in a hospital or other institution, the name of the same shall be given in place of the street and house number.
- 2. *Full name*. If an unnamed child, the surname preceded by "unnamed".
- 3. *Residence*. Length of residence in city or town where death occurred, and in the United States, if of foreign birth.
- 4. *Sex*.
- 5. *Color or race*, as white, black, mulatto (or other Negro descent), Indian, Chinese, Japanese, or other race.
- 6. *Conjugal condition*, as single, married, widowed, or divorced.
- 7. *Date of birth*, including the year, month, and day.
- 8. *Age*, in years, months, and days. If less than one day, the hours or minutes.
- 9. *Occupation*. The occupation of every person, male or female, who had any remunerative employment, shall be reported stating:
 - a. Trade, profession, or particular kind of work.
 - b. General nature of industry, business, or establishment in which employed (or employer).
- 10. *Birthplace*, at least state or foreign country, if known.
- 11. *Name of father*.
- 12. *Birthplace of father*, at least state or foreign country, if known.

13. *Maiden name of mother.*
14. *Birthplace of mother, at least state or foreign country, if known.*
15. *Name and address of informant.*

PART II

CERTIFICATION OF DEATH AND LAST

SICKNESS PARTICULARS

16. *Date of death, year, month, day, and hour. Time last seen alive.*

17. *Period of medical attendance.*

18. *Cause of death, showing the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause) and the contributory (secondary) cause, if any, and the duration of each, and whether attributable to dangerous or insanitary conditions of employment.*

Causes of death which may be the result of either disease or violence shall be carefully defined; and if from violence, the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal.

Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be sufficient.

19. *For deaths in hospitals, institutions, or of nonresidents, the length of residence at place of death and in the state, together with the place where disease was contracted, if not at place of death, and former or usual residence shall be given.*

20. *Signature and address of physician, or official making the certification of death and last sickness particulars.*

PART III

CERTIFICATION OF BURIAL PARTICULARS

21. *Place of burial or removal.*
22. *Date of burial or removal.*
23. *Signature and address of undertaker, or person acting as such.*

PART IV

ATTESTATION

24. *Official signature of registrar, with the date when certificate was filed, and registration number. [39 G. A., ch. 222, §§ 7-9; 40 Ex. G. A., H. F. 260, § 129.]*

2321. Duty to furnish particulars. In the execution of a death certificate, the personal particulars shall be obtained from the person best qualified to supply them. The death and last sickness particulars shall be furnished by the attending physician, or in the absence of such person, or if there be no such person, by the health officer or coroner. The burial particulars shall be supplied by the undertaker or person acting as such. Each informant shall certify to the particulars supplied by him by signing his name below the list of items furnished. [39 G. A., ch. 222, §§ 7-9; 40 Ex. G. A., H. F. 260, § 130.]

2322. Deaths without medical attendance.

In case of any death occurring without medical attendance, the undertaker, or person acting as such, shall notify the local registrar of such death, and when so notified such registrar shall inform the local health officer and refer the case to him for immediate investigation. If the local registrar has reason to believe that the death may have been due to unlawful act or neglect, he shall report the case to the coroner. In such cases the coroner shall furnish such information as may be required by the state registrar in order to classify the death. [39 G. A., ch. 222, § 8; 40 Ex. G. A., H. F. 260, § 131.]

2323. Stillbirths. A certificate of death and a burial or removal permit shall be required for every stillborn child which has advanced to the fifth month of uterogestation. The cause of death in such certificate shall be stated as "stillborn", with the cause of the stillbirth, if known. If a premature birth, such fact shall be stated and the period of uterogestation, in months, if known. Stillbirth occurring without the attendance of a physician shall be treated as deaths without medical attendance as provided in the preceding section. [39 G. A., ch. 222, § 6; 40 Ex. G. A., H. F. 260, § 132.]

2324. Issuance of burial permit—correction of certificate. Upon receipt of a death certificate the local registrar shall:

1. If the certificate is properly executed and complete, issue a burial or removal permit, as may be desired, to the undertaker or other person filing the same.

2. If the certificate is incomplete or improperly executed, return such certificate to the undertaker or other person filing the same for immediate correction.

Any person supplying any of the particulars in such certificate shall complete or correct the same in accordance with the directions of the local registrar. [39 G. A., ch. 222, §§ 5, 7, 9, 19; 40 Ex. G. A., H. F. 260, § 133.]

2325. No fee for burial or removal permit. No fee shall be charged by a local registrar for the issuance of a burial or removal permit. [39 G. A., ch. 222, § 5; 40 Ex. G. A., H. F. 260, § 134.]

2326. Completeness of certificate of death. No certificate of death shall be held complete and correct that does not supply all of the particulars called for in the United States standard form certificate, detailed in accordance with the rules of the state department of health, or satisfactorily account for their omission. [39 G. A., ch. 222, §§ 7, 19; 40 Ex. G. A., H. F. 260, § 135.]

2327. Deaths from communicable diseases.

In case a death occurs from some communicable disease, as defined in the chapter on contagious and infectious diseases, no permit for the removal or other disposition of the body shall be issued by the local registrar, except under such rules as may be prescribed by the

state department. [39 G. A., ch. 222, § 19; 40 Ex. G. A., H. F. 260, § 136.]

2328. Contents of burial permit. The burial or removal permit shall be issued upon a form prescribed by the state department and shall state:

1. The name, age, sex, cause of death, and other necessary details required by the state department.

2. That a satisfactory certificate of death has been filed as required by law.

3. That permission is granted to inter, remove, or otherwise dispose of the body. [39 G. A., ch. 222, § 10; 40 Ex. G. A., H. F. 260, § 137.]

2329. Burial in district other than place of death. No burial permit shall be required from the local registrar of the district in which a burial is to be made, when a body is removed from one district to another district in this state, for purpose of final disposition. [39 G. A., ch. 222, § 5; 40 Ex. G. A., H. F. 260, § 138.]

2330. Transportation of bodies — shipping papers. No person or common carrier shall ship or receive for shipment within this state or to any point outside the state, by any public conveyance, a dead body unless the box containing the corpse shall have attached thereto an embalmer's certificate showing the name and official number of the embalmer by whom the body was prepared, and the method of preparation employed. [S., '13, § 2575-a43; 40 Ex. G. A., H. F. 260, § 139.]

2331. Shipping papers to be carried by escort. In addition to the requirements of the preceding section, the person accompanying the body shall have in his possession:

1. A copy of the physician's or coroner's certificate of cause of death.

2. A transit permit issued by the local board or local registrar. [S., '13, § 2575-a43; 40 Ex. G. A., H. F. 260, § 140.]

2332. Shipment of bodies by express. When the body is shipped by express a copy of the certificate of cause of death and the transit permit shall be attached to the waybill and delivered with the body at destination. [40 Ex. G. A., H. F. 260, § 141.]

2333. Issuance of shipping permit. All transit permits shall be issued by the local board or local registrar upon application of an embalmer and shall be signed by the local health officer or local registrar. No transit permit shall be issued to any embalmer who is not in good standing as shown by the records of the state department. [S., '13, §§ 2575-a39, 2575-a43; 40 Ex. G. A., H. F. 260, § 142.]

2334. Importation of dead bodies. A body imported from outside the state shall be subject to the same rules as to transportation as bodies shipped from within the state. [40 Ex. G. A., H. F. 260, § 144.]

2335. Burial permit for imported bodies. When a dead body is transported from outside this state into the state for final disposition, the transit or removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of the district into which the body is transported, as a basis upon which to issue a local burial permit. The fact that such body was shipped into this state for burial and the actual place of death shall be noted on the face of the burial permit by the local registrar. [39 G. A., ch. 222, § 5; 40 Ex. G. A., H. F. 260, § 145.]

2336. Shipments for scientific purposes. The provisions of this chapter relating to the transportation and importation of dead bodies, shall not be applicable to the shipment within this state of dead bodies intended for use for scientific purposes when the same are so designated by the shipper. Such bodies shall be prepared and shipped under special rules provided for that purpose by the state department. [S., '13, § 2575-a43; 40 Ex. G. A., H. F. 260, § 146.]

2337. Disinterment for reburial. No person shall disinter the dead body of a human being for removal from one grave to another in the same cemetery or for removal to another cemetery without obtaining from the state department a permit for that purpose, and the department may by rule entirely prohibit disinterments for such purpose of the bodies of persons who have died of extremely contagious diseases. A dead body, properly prepared by an embalmer and deposited in a receiving vault, however, shall not be considered as a buried body within the meaning of this section. [40 G. A., ch. 39, § 1; 40 Ex. G. A., H. F. 260, § 147.]

2338. Disinterment for autopsy. No person shall disinter the dead body of a human being for the purpose of holding an autopsy thereon in order to determine the cause of death without obtaining for that purpose either:

1. An order of the district court of the county in which the body is buried, or

2. A special permit from the state department of health. [40 G. A., ch. 39, § 1; 40 Ex. G. A., H. F. 260, § 147-a1.]

2339. Application for disinterment. An application to the state department for a disinterment permit either for the purpose of reburial or for holding an autopsy shall be upon a form furnished by the department and shall state:

1. Name of person whose body is to be disinterred.

2. Date of death.

3. Age at death.

4. Cause of death.

5. Name and location of the cemetery (county and township) from which the body is to be removed, and the same items concerning the cemetery in which the body is to be reinterred.

6. Relation of the applicant to the deceased person.

7. Name of the embalmer who is to perform the disinterment.

8. Such other information as the department may require. [40 G. A., ch. 39, § 2; 40 Ex. G. A., H. F. 260, § 147-a2.]

2340. Application for court order. An application for a court order for a disinterment for the purpose of holding an autopsy may be made by the county attorney, coroner, or any attorney representing any party in any criminal or civil proceedings. Such application shall contain substantially the items required in an application for a permit made to the state department of health, and such other information as the court may direct. [40 G. A., ch. 39, § 2; 40 Ex. G. A., H. F. 260, § 147-a3.]

2341. Granting of application. No application for a permit to disinter for the purpose of holding an autopsy shall be granted by the court or state department except under circumstances such as to cause the belief that someone is criminally or civilly liable for such death. A proper showing shall be made in every case and due consideration shall be given to the public health, the dead, and the feelings of relatives and friends. The limitations of this section shall not apply when the application is made by the surviving spouse or next of kin. [40 G. A., ch. 39, §§ 3, 4, 6; 40 Ex. G. A., H. F. 260, § 147-a4.]

2342. Authority under permit. No person who is granted a permit to disinter the dead body of a human being for the purpose of reburial shall open the casket containing such body or permit an autopsy thereon. Such acts may only be performed under a special permit granted by the state department or under an order of court as provided in this chapter. [40 Ex. G. A., H. F. 260, § 147-a5.]

2343. Method of making a disinterment. Every disinterment shall be made by an embalmer and shall be performed in accordance with the rules of the state department governing the same. [40 Ex. G. A., H. F. 260, § 147-a6.]

2344. Delivery of burial permit. The undertaker, or person acting as such, shall deliver the burial, removal, or disinterment permit to the person in charge of the cemetery before interring, disposing of, or disinterring any body therein. [S. S., '15, § 587-b; 39 G. A., ch. 222, § 9; 40 Ex. G. A., H. F. 260, § 148.]

2345. Duty of sexton. The person in charge of every cemetery shall see that all the requirements of this chapter relative to burial, removal, and disinterment permits have been complied with before any burial, disposal, or

disinterment is made in said cemetery. [39 G. A., ch. 222, § 11; 40 Ex. G. A., H. F. 260, § 149.]

2346. Indorsement and return of burial permit. Such person shall indorse upon said permit the date of burial, disposal, or disinterment, over his signature, and shall return the same to the local registrar of the district in which the cemetery is located within ten days from the date of burial, or within the time fixed by the state department. In case reburial is made in another cemetery after disinterment, the disinterment permit shall accompany the body and shall be dealt with as an original burial permit. [39 G. A., ch. 222, § 11; 40 Ex. G. A., H. F. 260, § 150.]

2347. Record of burials to be kept. The record-keeping officer of every cemetery shall make and keep a permanent record of all burials, disposals, disinterments, or reburials made in such cemetery, which record shall at all times be open to public inspection. This record shall, in each case, state the name of each deceased person, place of death, date of burial, disposal, disinterment, or reburial, and name and address of the undertaker. [S. S., '15, §§ 587, 587-a; 39 G. A., ch. 222, § 11; 40 Ex. G. A., H. F. 260, § 151.]

2348. Procedure when no person in charge of cemetery. In case there is no person in charge of the cemetery, the undertaker, or person acting as such, shall sign said permit, giving the date of burial, disposal, or disinterment, and shall write across the face of said permit the words "No person in charge", and file the same, within ten days, with the local registrar of the district in which the cemetery is located. [39 G. A., ch. 222, § 11; 40 Ex. G. A., H. F. 260, § 152.]

2349. Issuance of forged papers. Any person who shall issue a forged death certificate, burial, removal, disinterment, or transit permit, or who shall certify falsely as to the cause of death or the preparation of a dead body, shall be guilty of forgery and punished accordingly. [S., '13, § 2575-a45; 39 G. A., ch. 222, § 22; 40 Ex. G. A., H. F. 260, § 153.]

2350. Penalty. Any person who shall violate any provision of this chapter shall be fined not less than five dollars nor more than one hundred dollars, or be imprisoned not more than thirty days in the county jail, or be punished by both such fine and imprisonment. [S., '13, § 2575-a45; 39 G. A., ch. 222, § 22; 40 G. A., ch. 39, § 5; 40 Ex. G. A., H. F. 260, § 154.]

CHAPTER 111

DEAD BODIES FOR SCIENTIFIC PURPOSES

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- 2358. Purpose for which dead body may be used.
- 2359. Failure to deliver dead body—penalty.
- 2360. Use of dead body without proper record—penalty.
- 2361. Penalties.

2351. Delivery of bodies for scientific purposes. The body of every person dying in a public asylum, hospital, county home, penitentiary, or reformatory in this state, or found dead within the state, and which is suitable for scientific purposes, shall be delivered to the medical college of the state university, or some osteopathic or chiropractic college or school located in this state, which has been approved under the law regulating the practice of osteopathy or chiropractic; but no such body shall be delivered to any such college or school if the deceased person expressed a desire during his last illness that his body should be buried or cremated, nor if such is the desire of his relatives or friends. Such bodies shall be equitably distributed among said colleges and schools in accordance with such rules as may be adopted by the state department of health, but the number so distributed shall be in proportion to the number of students matriculated at each college or school. The expense of transporting said bodies to such college or school shall be paid by the college or school receiving the same. [C., '73, § 4018; C., '97, § 4946; S., '13, § 4946-b; 39 G. A., ch. 7, § 8; 39 G. A., ch. 77, § 15; 40 Ex. G. A., H. F. 260, § 155.]

NOTE: For law relative to approval of osteopathic and chiropractic colleges, see §§ 2553, 2558.

2352. Bodies furnished to physicians. When there are more dead bodies available for use under the preceding section than are desired by said colleges or schools, the same may be delivered to physicians in the state for scientific study under such rules as may be adopted by the state department. [S., '13, § 4946-b; 40 Ex. G. A., H. F. 260, § 156.]

2353. Notification of state department—instructions. Every coroner, undertaker, and the managing officer of every public asylum, hospital, county home, penitentiary, or reformatory, as soon as any dead body shall come into his custody which may be used for scientific purposes as provided in the two preceding sections, shall at once notify the nearest relative or friend of the deceased, if known, and the state department by telegram, and hold such body unburied for forty-eight hours. Upon re-

ceipt of such telegram the department shall telegraph instructions relative to the disposition to be made of said body. [S., '13, § 4946-c; 40 Ex. G. A., H. F. 260, § 157.]

2354. Surrender of bodies to relatives. When any dead body which has been delivered under this chapter for scientific purposes is subsequently claimed by any relative or friend, it shall be at once surrendered to such relative or friend for burial without public expense; and all bodies received under this chapter shall be held for a period of sixty days before being used. [C., '73, § 4018; C., '97, § 4946; S., '13, §§ 4946-c, 4946-d; 40 Ex. G. A., H. F. 260, § 158.]

2355. Disposition after dissection. The remains of every body received for scientific purposes under this chapter shall be decently buried or cremated after it has been used for said purposes, and a failure to do so shall be a misdemeanor. [C., '73, § 4019; C., '97, § 4947; 40 Ex. G. A., H. F. 260, § 159.]

2356. Record of receipt of dead bodies. Any college, school, or physician receiving the dead body of any human being for scientific purposes shall keep a record showing:

1. The name of the person from whom, and the time and place, such body was received.
2. The description of the receptacle in which the body was received, including the shipping direction attached to the same.
3. The description of the body, including the length, weight, and sex, apparent age at time of death, color of hair and beard, if any, and all marks or scars which might be used to identify the same.
4. The condition of the body and whether mutilated so as to prevent identification. [C., '97, § 4948; 40 Ex. G. A., H. F. 260, § 160.]

2357. Record and bodies subject to inspection. The record required by the preceding section and the dead body of every human being received under this chapter shall be subject to inspection by any peace officer, or relative of the deceased. [C., '97, §§ 4948, 4949; 40 Ex. G. A., H. F. 260, § 161.]

2358. Purpose for which dead body may be used. The dead bodies delivered under this chapter shall be used only within the limits of this state for the purpose of scientific, medical, and surgical study, and no person shall remove the same beyond the limits of this state or in any manner traffic therein. Any person who shall violate this section shall be punished by imprisonment for a term not exceeding one year in the county jail. [C., '73, § 4020; C., '97, § 4950; 40 Ex. G. A., H. F. 260, § 162.]

2359. Failure to deliver dead body—penalty. Any person having the custody of the dead body of any human being which is required to be delivered for scientific purposes by this chapter, who shall fail to notify the state department of the existence of such body, or fail to deliver the same in accordance with the instructions of the department, shall be punished by a fine not exceeding fifty dollars. [S., '13, § 4946-e; 40 Ex. G. A., H. F. 260, § 163.]

2360. Use of dead body without proper record—penalty. Any physician or member of the instructional staff of any college or school who uses, or permits others under his charge to use the dead body of a human being for the purpose of medical or surgical study without the record required in the fourth preceding section having been made, or who shall refuse to allow any peace officer or relative of the deceased to inspect said record or body, shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [C., '97, § 4949; 40 Ex. G. A., H. F. 260, § 164.]

2361. Penalties. Any person who shall receive or deliver any dead body of a human being knowing that any of the provisions of this chapter have been violated, shall be imprisoned in the penitentiary not more than two years, or fined not exceeding twenty-five hundred dollars, or both. [S., '13, § 4946-e; 40 Ex. G. A., H. F. 260, § 165.]

CHAPTER 112

PUBLIC HEALTH NURSES

2362. Authority to employ public health nurses.
2363. Cooperation of political subdivisions.

2362. Authority to employ public health nurses. The board of supervisors of any county, the council of any city or town, or the school board of any school district may employ public health nurses at such periods each year and in such numbers as may be deemed advisable. The compensation and expenses thereof shall be paid out of the general fund of the political subdivision employing said nurses. [38 G. A., ch. 290, § 1; 40 Ex. G. A., H. F. 260, § 166.]

2363. Cooperation of political subdivisions. The said boards and councils within any

2364. Duties of public health nurses.

county may cooperate in the employment of public health nurses and may apportion the expenses therefor to the various political subdivisions represented by said authorities. [38 G. A., ch. 290, § 2; 40 Ex. G. A., H. F. 260, § 167.]

2364. Duties of public health nurses. The authorities employing any public health nurses shall prescribe their duties which in a general way shall be for the promotion and conservation of the public health. [38 G. A., ch. 290, § 3; 40 Ex. G. A., H. F. 260, § 168.]

CHAPTER 113

MATERNITY HOSPITALS

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2365. Maternity hospital defined. For the purposes of this chapter "maternity hospital" shall mean any place maintained for the reception, care, and treatment of women during pregnancy, or maintained for adopting or aiding in the adoption or disposal of any child born therein. [S., '13, § 2575-a20; 40 Ex. G. A., H. F. 260, § 169.]

2366. General hospitals exempted. This chapter shall not apply to any general hospital for the treatment of diseases or for the care of obstetrical and surgical cases. [S., '13, § 2575-a20; 40 Ex. G. A., H. F. 260, § 170.]

2367. License required. No person shall operate a maternity hospital without obtaining a license from the state department of health. [S., '13, § 2575-a20; 40 Ex. G. A., H. F. 260, § 171.]

2368. Certain locations prohibited. No maternity hospital shall be operated within two hundred feet of any church building, school, educational institution, public park, or in a building situated within seventy-five feet of premises owned by another. [S., '13, § 2575-a20; 40 Ex. G. A., H. F. 260, § 172.]

2369. Applications for license. Every application for a license to operate a maternity hospital shall be made in writing to the state department, accompanied by the legal inspection fee, and said application shall contain the name and address of the person to whom the license is to be issued, and a description of the location of the place to be used. [S., '13, § 2575-a22; 40 Ex. G. A., H. F. 260, § 173.]

2370. Affidavit to accompany application. The application shall be accompanied by the affidavit of two physicians stating that the person named in said application is personally known to each of said physicians and that he is of good character and reputation; that said physicians have personally examined the place named in the application and that the same is properly equipped for a maternity hospital; and that the operation of such a maternity

hospital will be for the public convenience. [S., '13, § 2575-a22; 40 Ex. G. A., H. F. 260, § 174.]

2371. Examination of proposed hospital. Before issuing a license to operate a maternity hospital the state department shall cause the place described in said application to be inspected, and shall satisfy itself as to the correctness of the matters set forth therein and in the accompanying affidavit. [S., '13, § 2575-a22; 40 Ex. G. A., H. F. 260, § 175.]

2372. Form of license. Each license shall name the person to whom authority is given to operate a maternity hospital and shall describe the place in which said hospital is to be operated. Not more than one license shall be issued for the operation of a maternity hospital upon the same premises. [S., '13, §§ 2575-a21, 2575-a22; 40 Ex. G. A., H. F. 260, § 176.]

2373. Fees—expiration of license—renewals. The initial inspection fee for a proposed maternity hospital shall be five dollars, and the license fee for operating such a hospital shall be twenty-five dollars. Each license shall expire one year from the date of issue. The state department may renew any license upon payment of a renewal fee of five dollars. No fee provided in this section shall be required of any religious or charitable institution operating a maternity hospital. [S., '13, § 2575-a22; 40 Ex. G. A., H. F. 260, § 177.]

2374. Revocation of license. Any license issued under this chapter may be revoked after reasonable notice by the state department, and a conviction for any violation of this chapter or any rule of the department shall operate as a revocation of said license. [S., '13, § 2575-a26; 40 Ex. G. A., H. F. 260, § 178.]

2375. Hospital register. The person in charge of every maternity hospital shall keep a register showing the name, age, and sex of each person received or born in said hospital,

the date of entry, or birth, the date of removal, or death, and in case of death, the age at which the same occurred, and the disposition of every child, or its body, born in said hospital, and of the names and addresses of the persons who removed said child, or its body. All entries in said register shall be made within twenty-four hours after the occurrence of the event which is required to be recorded. [S., '13, §§ 2575-a23, 2575-a24; 40 Ex. G. A., H. F. 260, § 179.]

2376. Reports to state department. Within twenty-four hours after the birth or death of any person in a maternity hospital the person in charge of the same shall make a report to the state department upon blanks furnished by the department, containing all the items concerning each case which are required to be entered upon the register by the preceding section. [S., '13, § 2575-a23; 40 Ex. G. A., H. F. 260, § 180.]

2377. Use of assumed names and descriptions. In case the name of a mother cannot be ascertained for any record required by this chapter then the assumed name given by her shall be used; and under like circumstances, when a child has no name, a description of the child shall be used. [S., '13, §§ 2575-a23, 2575-a24; 40 Ex. G. A., H. F. 260, § 181.]

2378. Reports open to inspection of certain persons. All reports received by the state department under the second preceding section shall be kept of record and shall be accessible to the members of the board of control of state institutions, the attorney general, and any county attorney, but said reports shall not be accessible to any other person except on the order of a court of record. [S., '13, § 2575-a23; 40 Ex. G. A., H. F. 260, § 182.]

2379. Articles of adoption to be procured. The person in charge of any maternity hospital

who shall adopt or dispose of by adoption or assist in the adoption of any child born in said hospital shall have the proper articles of adoption executed and recorded as required by law. [S., '13, § 2575-a24; 40 Ex. G. A., H. F. 260, § 183.]

NOTE: For articles of adoption, see ch. 473.

2380. Access to hospitals to make inspections. The state department or local board or any person designated in writing by either of said agencies shall have full access to a maternity hospital at all times for the purpose of inspecting the same or examining the register required to be kept therein. [S., '13, § 2575-a25; 40 Ex. G. A., H. F. 260, § 184.]

2381. Local board to inspect and report. The local board shall inspect each maternity hospital within its jurisdiction at least once in six months, and shall file an accurate report of such inspection with the state department, and such report shall be preserved as a permanent record. [S., '13, § 2575-a25; 40 Ex. G. A., H. F. 260, § 185.]

2382. Unlawful operation of hospital a nuisance. Any place operated as a maternity hospital in violation of this chapter shall be deemed to be a nuisance, and the same may be abated by injunction proceedings. [S., '13, § 2575-a27; 40 Ex. G. A., H. F. 260, § 186.]

2383. Penalty. Any person violating any of the provisions of this chapter or making any false entry on the register required to be kept by this chapter shall be punished by a fine of not more than two hundred fifty dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment. [S., '13, § 2575-a27; 40 Ex. G. A., H. F. 260, § 187.]

CHAPTER 114

REGISTRATION OF VITAL STATISTICS

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2384. Definitions. For the purpose of this chapter:

- 1. "Local registrar" shall mean the local registrar of vital statistics.
- 2. "State registrar" shall mean the state registrar of vital statistics.
- 3. "Vital statistics" shall mean statistics concerning births, deaths, marriages, and divorces.
- 4. "Person" shall include firm and corporation. [40 Ex. G. A., H. F. 260, § 188.]

2385. Registration districts. For the purpose of this chapter the following areas shall constitute a primary registration district:

- 1. Each city and town.
- 2. Each civil township having no city or town within, or partly within, its limits.
- 3. The portion of each civil township lying outside of any city or town located within, or partly within, such township. [39 G. A., ch. 222, § 3; 40 Ex. G. A., H. F. 260, § 189.]

2386. Consolidation of districts. The state department of health may combine two or more primary registration districts when necessary to facilitate registration. [39 G. A., ch. 222, § 3; 40 Ex. G. A., H. F. 260, § 190.]

2387. State registrar. The commissioner of public health shall be the state registrar.

[39 G. A., ch. 222, § 1; 40 Ex. G. A., H. F. 260, § 191.]

2388. Quarters and equipment. Suitable quarters shall be provided by the executive council for the division of vital statistics at the seat of government, which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this chapter. [39 G. A., ch. 222, § 2; 40 Ex. G. A., H. F. 260, § 192.]

2389. Local registrars—appointment—tenure. The board of supervisors in each county shall appoint a local registrar for each registration district in the county. The term of office of each local registrar shall be four years, and he shall serve until his successor has been appointed and has qualified. [39 G. A., ch. 222, § 4; 40 Ex. G. A., H. F. 260, § 193.]

2390. Deputy registrars—appointment. Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, who shall act in his place in case of absence or disability; and such deputy shall, in writing, accept such appointment. [39 G. A., ch. 222, § 4; 40 Ex. G. A., H. F. 260, § 194.]

2391. Subregistrars—appointment. When it appears necessary for the convenience of the

people in any rural district, the local registrar may, with the approval of the state department, appoint one or more suitable persons to act as subregistrars, who shall be authorized to receive birth and death certificates and to issue burial or removal permits in and for such portions of the district as may be designated. [39 G. A., ch. 222, § 4; 40 Ex. G. A., H. F. 260, § 195.]

2392. Removal of registrars. Any local registrar, deputy registrar, or subregistrar, who in the judgment of the state department fails or neglects to make prompt and complete return of births and deaths, and otherwise efficiently discharge the duties of his office, shall be forthwith removed by the department. [39 G. A., ch. 222, § 4; 40 Ex. G. A., H. F. 260, § 196.]

2393. Duties of state registrar. The state registrar shall:

1. Have general supervision of the registration of vital statistics.

2. Have supervisory power over local registrars, deputy registrars, and subregistrars, and clerks of the district court in the enforcement of the law relative to the disposal of dead bodies and the registration of vital statistics.

3. Prepare and issue such detailed instructions as may be required to procure the uniform observance of the provisions of said law and the maintenance of a perfect system of registration.

4. Furnish blank certificates of births, deaths, and other forms and record books required by this chapter to all persons concerned with the administration of the same. No other blanks and records shall be used than those supplied by the state registrar.

5. Carefully examine the certificates received from the local registrars and clerks of the district court, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory.

6. Systematically arrange, bind, and deposit in the state historical building at the seat of government, the original certificates of births, deaths, and marriages for the preceding calendar year.

7. Prepare and maintain a comprehensive and continuous card index of all births, deaths, marriages, and divorces reported. Said index shall be arranged alphabetically:

a. In the case of deaths, by the names of decedents.

b. In the case of births, by the names of fathers, mothers, and children.

c. In the case of marriages and divorces, by the names of both parties. [39 G. A., ch. 222, §§ 1, 18, 23; 40 Ex. G. A., H. F. 260, § 197.]

NOTE: For law relative to disposal of dead bodies, see ch. 110.

2394. Duties of local registrar. The local registrar shall, subject to the direction and supervision of the state registrar:

1. Strictly and thoroughly enforce the law relative to the disposal of dead bodies and the registration of births and deaths in his registration district.

2. Issue instructions to all physicians, undertakers, and the people in general in his district, concerning the registration of births and deaths.

3. Distribute to the proper persons all forms and blanks required for the registration of births and deaths, and for the making of other records incident thereto.

4. Distribute to every physician, undertaker, and retail casket dealer registered in his district, a copy of the law relative to the registration of vital statistics and the disposal of dead bodies, and of the rules of the state department pertaining thereto.

5. Carefully examine each certificate of birth or death when presented for record, in order to ascertain whether it has been made out in accordance with law and the instructions of the state registrar; and if any such certificate is incomplete or unsatisfactory, he shall have the same corrected.

6. Number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attestation of the date of filing in his office.

7. Make a complete and accurate copy of each birth and death certificate registered by him in a record book supplied by the state registrar, to be preserved permanently in his office as the local record.

8. On the tenth day of each month, transmit to the state registrar, in a stamped return envelope furnished by the state registrar, all original certificates registered by him for the preceding month. If no births or deaths occur in any month, he shall on the tenth day of the following month report that fact to the state registrar, on a card provided for such purpose.

9. Make a return, within thirty days after the close of each calendar year, to the state registrar of all physicians, undertakers, or retail casket dealers, who have been registered in his district during the whole or any part of the preceding calendar year.

10. Make an immediate report to the state registrar of any violation of the law relative to registration of vital statistics and the disposal of dead bodies of which he has knowledge. [39 G. A., ch. 222, §§ 16, 19, 23; 40 Ex. G. A., H. F. 260, § 198.]

2395. Duties of subregistrars. Each subregistrar shall note on each certificate, over his signature, the date of filing, and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month. [39 G. A., ch. 222, § 4; 40 Ex. G. A., H. F. 260, § 199.]

2396. Regulation governing deputy and subregistrars. Every provision of this chapter, of the chapter relative to the disposal of dead bodies, and of the rules of the state department applicable to local registrars in the registra-

tion of births and deaths, and the issuance of burial permits, shall apply to deputy registrars and subregistrars. [39 G. A., ch. 222, § 4; 40 Ex. G. A., H. F. 260, § 200.]

2397. Birth certificate required. Within ten days after each birth there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth filled out with durable black ink in a legible manner. [39 G. A., ch. 222, §§ 12, 13, 19; 40 Ex. G. A., H. F. 260, § 201.]

2398. Contents of birth certificate. The certificate of birth shall be executed on the United States standard form, approved by the bureau of the census, and shall contain the following items:

1. *Place of birth*, including state, county, township, town, or city. If in the city, the street, and the house number; if in a hospital or other institution, the name of the same shall be given in place of the street and house number.

2. *Full name of child*. If the child dies without a name, before the certificate is filed, the words "died unnamed" shall be entered. If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" shall be left blank, to be filled out by a supplemental report, as hereinafter provided.

3. *Sex of child*.

4. *Plurality of birth*. Whether a twin, triplet, or other plural birth; number of each child in order of birth. A separate certificate shall be required for each child in case of plural births.

5. *Legitimacy of birth*, whether legitimate or illegitimate.

6. *Date of birth*, including the year, month, and day.

7. *Full name of father*. If the child is illegitimate, the name of the putative father shall not be entered without his consent, unless the paternity of the child has been determined in a regular legal proceeding instituted for that purpose, but the other particulars relating to the putative father (items nine to twelve, inclusive) shall be entered, if known, otherwise, as "unknown".

8. *Residence of father*.

9. *Color or race of father*.

10. *Age of father at last birthday*, in years.

11. *Birthplace of father*, at least state or foreign country, if known.

12. *Occupation of father*. The occupation shall be reported if engaged in any remunerative employment, stating:

a. Trade, profession, or particular kind of work.

b. General nature of industry, business, or establishment in which employed (or employer).

13. *Maiden name of mother*.

14. *Residence of mother*.

15. *Color or race of mother*.

16. *Age of mother at last birthday*, in years.

17. *Birthplace of mother*, at least state or foreign country, if known.

18. *Occupation of mother*. The occupation shall be reported if engaged in any remunerative employment, stating:

a. Trade, profession, or particular kind of work.

b. General nature of industry, business, or establishment in which employed (or employer).

19. *Number of children born to the mother*, including present birth.

20. *Number of children of the mother living*.

21. *Certification of attendance at birth*, including:

a. Statement of year, month, day (as given in item six).

b. Hour of birth.

c. Whether the child was born alive or still-born.

This certification shall be signed by the attending physician, with date of signature and address. If there is no physician in attendance, then by the father or mother of the child, householder, owner of the premises, or manager or superintendent of the public or private institution where the birth occurred, or other competent person.

22. *Exact date of filing in office of local registrar*, attested by his official signature, and registration number of birth. [39 G. A. ch. 222, § 14; 40 Ex. G. A., H. F. 260, § 202.]

2399. Duty of person in attendance at birth. The attending physician, or person acting as midwife, shall be responsible for the proper execution and return of a certificate for each birth, in accordance with the provisions of this chapter. [39 G. A., ch. 222, § 13; 40 Ex. G. A., H. F. 260, § 203.]

2400. Reporting occurrence of birth. In case there is no physician, or person acting as midwife, in attendance upon the birth, a report of the same shall be made within ten days thereafter to the local registrar of the district in which the birth occurred. It shall be the duty of the following persons, in the order named, to make such report:

1. The father or mother of the child.

2. The householder or owner of the premises where the birth occurred.

3. The manager or superintendent of the public or private institution in which the birth occurred. [39 G. A., ch. 222, §§ 13, 14; 40 Ex. G. A., H. F. 260, § 204.]

2401. Certificate of birth by registrar. When the report of a birth is received under the preceding section, the local registrar shall secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the proper certificate of birth. [39 G. A., ch. 222, § 13; 40 Ex. G. A., H. F. 260, § 205.]

2402. Incomplete certificates of birth. No certificate of birth shall be held complete and correct that does not supply all of the items of information called for in the United States

standard form certificate, detailed in accordance with the rules of the state department, or satisfactorily account for their omission. If a certificate of birth is incomplete, the local registrar shall immediately notify the informant and require him to supply the missing items of information if they can be obtained, or he may obtain them from any other person having the required knowledge. [39 G. A., ch. 222, § 19; 40 Ex. G. A., H. F. 260, § 206.]

2403. Interrogation of informants. Every person making a return of a birth or reporting the same, or who may be interrogated in relation thereto, shall answer correctly, and to the best of his knowledge, all questions put to him by the local registrar which may be calculated to elicit any information needed to make a complete record of the birth as provided in this chapter, and the informant, as to any statement made in accordance herewith, shall verify such statement by his signature, when requested to do so by the local registrar. [39 G. A., ch. 222, § 13; 40 Ex. G. A., H. F. 260, § 207.]

2404. Supplemental return of name of child. When any certificate of birth of a living child is presented without the statement of the given name, then the registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed and returned to the local registrar as soon as the child shall have been named. [39 G. A., ch. 222, § 15; 40 Ex. G. A., H. F. 260, § 208.]

2405. Stillborn children. A stillborn child shall be registered as a birth, and also as a death as provided in the chapter on "Disposal of Dead Bodies". A certificate of both the birth and death shall be filed with the local registrar, in the usual form and manner. The certificate of birth shall contain, in place of the name of the child, the word "stillbirth". Such certificates shall not be required for a child that has not advanced to the fifth month of uterogestation. [39 G. A., ch. 222, § 6; 40 Ex. G. A., H. F. 260, § 209.]

NOTE: For chapter on "Disposal of Dead Bodies", see ch. 110.

2406. Altering birth or death certificates. No certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this chapter, shall be altered or changed in any respect except by amendments properly dated, signed, and witnessed. [39 G. A., ch. 222, § 18; 40 Ex. G. A., H. F. 260, § 210.]

2407. Institutional records of personal particulars. Every superintendent in charge of any hospital, county home, jail, reformatory, penitentiary, or other institution, public or private, to which persons resort for treatment of diseases or for confinement, or are committed by process of law, shall keep a record, as directed by the state registrar, of all the

personal particulars and data relative to each patient, inmate, or prisoner in such institution which are required in the United States standard forms of birth and death certificates. [39 G. A., ch. 222, § 17; 40 Ex. G. A., H. F. 260, § 211.]

2408. Source of information. The personal particulars and data required by the preceding section shall be obtained from the individual himself if practicable to do so; and when not, the same shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. [39 G. A., ch. 222, § 17; 40 Ex. G. A., H. F. 260, § 212.]

2409. Time of making institutional record. Such record shall be made for each patient, inmate, or prisoner at the time of his admittance; and in case of each person admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. [39 G. A., ch. 222, § 17; 40 Ex. G. A., H. F. 260, § 213.]

2410. Physicians - undertakers - casket dealers. Every physician, undertaker, and retail casket dealer, shall, not later than the first day of January of each year, register his name, address, and occupation with the local registrar of the district in which he resides. Such registration shall also be made immediately upon removing to another registration district. [39 G. A., ch. 222, § 16; 40 Ex. G. A., H. F. 260, § 214.]

2411. Record of casket sales. Every person selling a casket at retail shall keep a record, which shall be open at all times to the state and local registrar for inspection, showing:

1. Name of the purchaser.
2. Purchaser's postoffice address.
3. Name of deceased.
4. Date and place of death of deceased.

This section shall not apply to any person selling caskets at wholesale to undertakers or other dealers. [39 G. A., ch. 222, § 9; 40 Ex. G. A., H. F. 260, § 215.]

2412. Report of casket sales. On the first day of each month every person selling caskets at retail shall report to the state registrar each sale for the preceding month, on a blank provided for that purpose. Such reports shall not be required from undertakers when they have direct charge of the disposition of the dead body for which a casket is sold. [39 G. A., ch. 222, § 9; 40 Ex. G. A., H. F. 260, § 216.]

2413. Information to accompany caskets. Every person selling a casket at retail, and not having charge of the disposition of the body, shall inclose within the casket the following:

1. A notice furnished by the state registrar, calling attention to the requirements of the law relative to the disposal of dead bodies and the registration of vital statistics.
2. A blank certificate of death.

3. The rules and regulations of the state department concerning the disposal of dead bodies. [39 G. A., ch. 222, § 9; 40 Ex. G. A., H. F. 260, § 217.]

2414. Duty to furnish information. Upon demand of the state registrar in person, by mail, or through the local registrar, every physician, informant, undertaker, or other person having knowledge of the facts relative to any birth or death, shall supply such information as he may possess, upon a form provided by the state registrar or upon the original birth or death certificate. [39 G. A., ch. 222, § 18; 40 Ex. G. A., H. F. 260, § 218.]

2415. Private genealogical records. If any person, organization, company, society, or association is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such person, company, society, or association may file such record, or a duly authenticated transcript thereof, with the state registrar. The state registrar shall preserve such record or transcript and make an index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to public inspection, subject to such reasonable conditions as the state registrar may prescribe. [39 G. A., ch. 222, § 18; 40 Ex. G. A., H. F. 260, § 219.]

2416. Certified copies of private records. The state registrar shall, upon request, supply to any applicant for any proper purpose, a certified copy of any record filed under the preceding section. For his services, the state registrar shall charge a fee of fifty cents for each hour or fractional part of an hour spent in making such copy, and twenty-five cents for attaching his certificate thereto. [39 G. A., ch. 222, § 18; 40 Ex. G. A., H. F. 260, § 220.]

2417. Fee for registering birth or death. Each local registrar shall be paid twenty-five cents for each birth or death certificate properly executed, filed, recorded, and returned to the state registrar, as required by law. [39 G. A., ch. 222, § 20; 40 Ex. G. A., H. F. 260, § 221.]

2418. Fee for reporting no registration. In case no birth or death is registered during any month, the local registrar shall be paid the sum of twenty-five cents for a report to that effect, made within the time prescribed in this chapter. [39 G. A., ch. 222, § 20; 40 Ex. G. A., H. F. 260, § 222.]

2419. No fee for registering physicians and others. No fee or other compensation shall be charged by any local registrar to any physician, undertaker, or casket dealer for registering his name under this chapter or making return thereof to the state registrar. [39 G. A., ch. 222, § 16; 40 Ex. G. A., H. F. 260, § 223.]

2420. Payment of local registrars. All amounts payable to a registrar under the provisions of this chapter shall be paid by the

county in which the registration district is located, immediately upon certification by the state registrar, in the manner in which other claims are paid by the county. The state registrar shall annually, or at such other times as he may deem expedient, certify to the auditor of each county the number of births and deaths properly registered in said county, with the name of each registrar and the amount due him as fees under the provisions of this chapter. [39 G. A., ch. 222, § 20; 40 Ex. G. A., H. F. 260, § 224.]

2421. Record book of marriages and divorces. The clerk of the district court in each county shall keep a record book for marriages and a record book for divorces. The form of said books shall be uniform throughout the state and shall be prescribed by the state department. Said books shall be provided at the expense of the county. [37 G. A., ch. 326, § 10; 40 Ex. G. A., H. F. 260, § 225.]

2422. Contents of record book for marriages. The record book for marriages shall show the same items and personal particulars for each marriage solemnized in the county as are required in the return of a marriage as prescribed by the chapter on "Marriage" in the title on "Domestic Relations". [40 Ex. G. A., H. F. 260, § 226.]

NOTE: For chapter on "Marriage", see ch. 469.

2423. Contents of record book for divorces. The record book for divorces shall show the following items for each divorce granted in the county:

1. Full name, color, age, nationality, and number of prior marriages of each of the parties.
2. Date of marriage.
3. Cause of divorce.
4. Date of divorce.
5. Person to whom divorce granted (husband or wife).
6. Such additional data respecting each divorce as the state department may prescribe. [40 Ex. G. A., H. F. 260, § 227.]

2424. Source of entries for record books. The items respecting each marriage shall be taken from the return thereof, and the items respecting each divorce shall be taken as far as possible from the court records. The other data necessary to complete the entries in the record book of divorces shall be supplied by the parties to the action or by their attorneys. [40 Ex. G. A., H. F. 260, § 228.]

2425. Reporting marriages and divorces. The clerk of the district court shall on or before the first day of February of each year transmit to the state registrar:

1. All the original returns of marriages filed in his office during the preceding calendar year.
2. A copy of the entries made in the record book for divorces for every divorce granted in the county during the preceding calendar year.

3. Such other data relative to marriages and divorces as the state registrar may prescribe. [37 G. A., ch. 326, § 10; 40 Ex. G. A., H. F. 260, § 229.]

2426. Certified copies of records—fees. The state registrar shall, upon request, supply to any applicant for any proper purpose, a certified copy of the record of any birth, death, or marriage registered under the provisions of this chapter, for the making and certifying of which he shall charge a fee of fifty cents. [39 G. A., ch. 222, § 21; 40 Ex. G. A., H. F. 260, § 230.]

2427. Search of records—fee. In cases in which search of the files and records is made, but no certified copy is requested, or the requested record is not found, the state registrar shall charge a fee of fifty cents for each hour or fractional part of an hour spent in search. [39 G. A., ch. 222, § 21; 40 Ex. G. A., H. F. 260, § 231.]

2428. Free certified copies. Upon request of any parent or guardian, the state registrar shall supply, without charge, a certificate limited to a statement as to the date of birth of any child, when the same shall be necessary for admission to school or for the purpose of securing employment. [39 G. A., ch. 222, § 21; 40 Ex. G. A., H. F. 260, § 232.]

2429. United States census bureau—records. The United States census bureau shall have the privilege of making, at its own expense and without paying the legal fees, copies of all records and vital statistics provided for in this chapter. [39 G. A., ch. 222, § 21; 40 Ex. G. A., H. F. 260, § 233.]

2430. Accounting for fees. The state registrar shall keep a true and correct account of all fees received by him and turn the same over to the state treasurer as provided by law. [39 G. A., ch. 222, § 21; 40 Ex. G. A., H. F. 260, § 234.]

NOTE: Payment of fees to state treasurer, see § 143.

2431. Certified copies of record as evidence. Any certified copy of the record of a birth, death, or marriage, made under this chapter, shall be presumptive evidence in all courts and places of the facts therein stated. [39 G. A., ch. 222, § 21; 40 Ex. G. A., H. F. 260, § 235.]

2432. System exclusive. No system for the registration of births, deaths, or marriages shall be maintained in the state or any of its political subdivisions other than the one pro-

vided for in this chapter. [39 G. A., ch. 222, § 26; 40 Ex. G. A., H. F. 260, § 236.]

2433. Investigation of violations. The state department shall have authority to investigate cases of irregularity or violation of the law relative to the registration of vital statistics and the disposal of dead bodies, and all registrars shall aid the department in such investigation. [39 G. A., ch. 222, § 23; 40 Ex. G. A., H. F. 260, § 237.]

2434. Duty of county attorney. The state department shall report, when deemed necessary, cases of violation of said law to the proper county attorney, with a statement of the facts and circumstances; and when any such case is reported to such county attorney he shall forthwith initiate and promptly follow up the necessary court proceedings against the person responsible for the alleged violation of law. [39 G. A., ch. 222, § 23; 40 Ex. G. A., H. F. 260, § 238.]

2435. Duty of attorney general. Upon request of the state department, the attorney general shall assist in the enforcement of the provisions of this chapter and of the chapter relative to the disposal of dead bodies. [39 G. A., ch. 222, § 23; 40 Ex. G. A., H. F. 260, § 239.]

2436. Penalty. Any person violating any of the provisions of this chapter or of any rule of the state department relative thereto, or falsifying any certificate of birth or any record established by this chapter, shall be fined not less than five dollars nor more than one hundred dollars, or be imprisoned not more than thirty days in the county jail, or be punished by both such fine and imprisonment. [39 G. A., ch. 222, §§ 4, 22; 40 Ex. G. A., H. F. 260, § 240.]

2437. Second offense—penalty. If any person who has been convicted under the preceding section shall be again convicted of a violation of any of the provisions of this chapter or of any rule of the state department relative thereto, on a similar charge, he shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail not to exceed sixty days, or by both such fine and imprisonment; and if a physician, he shall, in addition, have his license to practice his profession revoked; but such former conviction shall be referred to in the indictment or information, stating the court, date, and place that judgment was rendered. [C., '97, § 2578; S., '13, § 2578; 39 G. A., ch. 222, § 22; 40 Ex. G. A., H. F. 260, § 241.]

TITLE VIII

THE PRACTICE OF CERTAIN PROFESSIONS AFFECTING THE PUBLIC HEALTH

CHAPTER 115

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2438. Definitions. For the purpose of this and the following chapters of this title:

1. "Examining board" shall mean one of the boards appointed by the governor to give examinations to applicants for licenses.

2. "Licensed" when applied to a physician and surgeon, podiatrist, "osteopath", "osteopath and surgeon", chiropractor, nurse, dentist, dental hygienist, optometrist, pharmacist, or embalmer shall mean a person licensed under this title.

3. "Profession" shall mean medicine and surgery, podiatry, "osteopathy", "osteopathy and surgery", chiropractic, nursing, dentistry, dental hygiene, optometry, pharmacy, or embalming.

4. "Department" shall mean the state department of health. [40 Ex. G. A., H. F. 262, § 1.]

LICENSES

2439. License required to practice certain professions. No person shall engage in the practice of medicine and surgery, podiatry, "osteopathy", "osteopathy and surgery", chiropractic, nursing, dentistry, dental hygiene, optometry, pharmacy, or embalming as defined in the following chapters of this title, unless he shall have obtained from the state department of health a license for that purpose. [C., '97, §§ 2582, 2588; S., '13, §§ 2575-a28, 2575-a31, 2575-a36, 2582, 2583-a, 2583-d, 2583-r, 2600-o4; S. S., '15, § 2588; 37 G. A., ch. 213, § 2; 37 G. A., ch. 309, § 3; 39 G. A., ch. 7, § 11; 39 G. A., ch. 77, §§ 2, 12, 17; 39 G. A., ch. 113, § 2; 39 G. A., ch. 136, § 1; 40 G. A., ch. 38, § 6; 40 Ex. G. A., H. F. 262, § 2.]

2440. Age and character qualifications. No person shall be licensed to practice a profession under this title until he shall have furnished satisfactory evidence to the department that he has attained the age of twenty-one years and is of good moral character, except that women may be licensed as dental hygienists upon attaining the age of eighteen years. [S., '13, §§ 2575-a29, 2575-a37, 2583-a, 2583-l; 37 G. A., ch. 309, § 3; 39 G. A., ch. 7, §§ 1, 6, 9;

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39 G. A., ch. 77, § 7; 39 G. A., ch. 113, § 3; 40 G. A., ch. 38, § 1; 40 Ex. G. A., H. F. 262, § 3.]

2441. Grounds for refusing license. The department may refuse to grant a license to practice a profession to any person otherwise qualified upon any of the grounds for which a license may be revoked by the district court. [C., '97, § 2578; S., '13, §§ 2575-a33, 2575-a41, 2578, 2583-c; 39 G. A., ch. 7, § 9; 39 G. A., ch. 77, § 16; 39 G. A., ch. 113, § 6; 40 Ex. G. A., H. F. 262, § 4.]

2442. Form of license. Every license to practice a profession shall be in the form of a certificate under the seal of the department, signed by the commissioner of public health. Such license shall be issued in the name of the examining board which conducts examinations for that particular profession. The number of the book and page containing the entry of said license in the office of the department shall be noted on the face of the license. [C., '97, §§ 2576, 2577, 2591; S., '13, §§ 2575-a30, 2575-a38, 2576, 2583-k, 2600-d; 39 G. A., ch. 7, § 6; 40 Ex. G. A., H. F. 262, § 5.]

2443. Certificate presumptive evidence of right to practice. Every license issued under this title shall be presumptive evidence of the right of the holder to practice in this state the profession therein specified. [C., '97, § 2576; S., '13, §§ 2575-a30, 2575-a38, 2576, 2583-k, 2600-d; 40 Ex. G. A., H. F. 262, § 6.]

2444. Display of license. Every person licensed under this title to practice a profession shall keep his license displayed in the place in which he practices. [C., '97, § 2591; S., '13, § 2600-o1; 39 G. A., ch. 77, § 14; 39 G. A., ch. 113, § 5; 40 Ex. G. A., H. F. 262, § 7.]

2445. Record of licenses—open to public inspection. The name, age, nativity, location, number of years of practice of the person to whom a license is issued to practice a profession, the number of the certificate, and the date of registration thereof shall be entered in a book kept in the office of the department to be known as the registry book, and the same shall be open to public inspection. [C., '97, § 2591;

S., '13, §§ 2575-a40, 2583-a, 2583-k, 2600-d; 39 G. A., ch. 77, § 6; 40 Ex. G. A., H. F. 262, § 8.]

2446. Notice of change of residence. When any person licensed to practice a profession under this title changes his residence he shall notify the department and such change shall be noted in the registry book. [C., '97, § 2591; 40 Ex. G. A., H. F. 262, § 9.]

2447. Renewal of licenses. Every license to practice a profession shall expire on the thirtieth day of June following the date of issuance of such license, and shall be renewed annually upon application by the licensee, without examination. Application for such renewal shall be made in writing to the department accompanied by the legal fee at least thirty days prior to the expiration of such license. Every renewal shall be displayed in connection with the original license. Every year the department shall notify each licensee by mail of the expiration of his license. [C., '97, § 2590; S., '13, §§ 2575-a39, 2589-d; 37 G. A., ch. 213, § 1; 37 G. A., ch. 309, § 2; 38 G. A., ch. 95, § 1; 40 G. A., ch. 42, § 1; 40 Ex. G. A., H. F. 262, § 10.]

2448. Reinstatement of licensee. Any licensee who allows his license to lapse by failing to renew the same, as provided in the preceding section, may be reinstated without examination upon recommendation of the examining board for his profession and upon payment of the renewal fees then due. [37 G. A., ch. 309, § 2; 40 Ex. G. A., H. F. 262, § 10-a.]

EXAMINING BOARDS

2449. Examining boards. For the purpose of giving examinations to applicants for licenses to practice the professions for which a license is required by this title, the governor shall appoint a board of examiners for each of said professions. [C., '97, §§ 2576, 2584; S., '13, §§ 2575-a29, 2575-a37, 2576, 2583-a, 2583-h, 2600-b; S. S., '15, § 2584; 39 G. A., ch. 7, § 3; 39 G. A., ch. 77, § 6; 39 G. A., ch. 113, § 3; 40 G. A., ch. 41, § 1; 40 Ex. G. A., H. F. 262, § 11.]

2450. Designation of examining boards. The examining boards provided in the preceding section shall be designated as follows: For medicine and surgery, Medical Examiners; for podiatry, Podiatry Examiners; for "osteopathy" and "osteopathy and surgery", Osteopathic Examiners; for chiropractic, Chiropractic Examiners; for nursing, Nurse Examiners; for dentistry and dental hygiene, Dental Examiners; for optometry, Optometry Examiners; for pharmacy, Pharmacy Examiners; for embalming, Embalmer Examiners. [40 Ex. G. A., H. F. 262, § 12.]

2451. Composition of examining boards. Each examining board shall consist of three members, except the dental board which shall consist of five members. [C., '97, §§ 2564, 2576, 2584; S., '13, §§ 2564, 2575-a29, 2575-a37, 2576, 2583-a, 2583-h, 2600-b; S. S., '15, § 2584; 39 G. A., ch. 7, § 3; 39 G. A., ch. 77, § 6; 39 G.

A., ch. 113, § 3; 40 G. A., ch. 41, § 1; 40 Ex. G. A., H. F. 262, § 13.]

2452. Professional qualifications of examiners. Every medical, podiatry, chiropractic, nurse, optometry, pharmacy, and embalmer examiner shall be a person licensed to practice the profession for which the board, of which he is a member, conducts examinations for licenses to practice such profession. An osteopathic examiner shall be a licensed osteopath or an osteopath and surgeon, and a dental examiner shall be a licensed dentist. [C., '97, §§ 2564, 2576, 2584; S., '13, §§ 2564, 2575-a29, 2575-a37, 2576, 2583-a, 2583-h, 2600-b; S. S., '15, § 2584; 39 G. A., ch. 7, § 3; 39 G. A., ch. 77, § 6; 39 G. A., ch. 113, § 3; 40 G. A., ch. 41, § 1; 40 Ex. G. A., H. F. 262, § 14.]

2453. Active practice requirement for examiners. Each examiner shall be actively engaged in the practice of his profession and shall have been so engaged in this state for a period of five years just preceding his appointment. [C., '97, § 2584; S., '13, §§ 2583-a, 2583-h, 2600-b; S. S., '15, § 2584; 39 G. A., ch. 7, §§ 3, 4; 39 G. A., ch. 77, § 6; 39 G. A., ch. 113, § 3; 40 Ex. G. A., H. F. 262, § 15.]

2454. Special qualifications for medical examiners. In addition to the preceding requirements, each medical examiner shall be a graduate of some reputable school of medicine and not more than two of such examiners shall belong to the same school of medical practice. [C., '97, §§ 2564, 2576; S., '13, §§ 2564, 2576; 40 Ex. G. A., H. F. 262, § 16.]

2455. Disqualifications. No examiner shall be an officer or member of the instructional staff of any school in which any profession regulated by this title is taught, or be connected therewith in any manner, and no embalmer or optometry examiner shall be connected in any manner with any wholesale or jobbing house dealing in optical or embalming supplies. [C., '97, § 2564; S., '13, §§ 2564, 2583-a, 2583-j, 2600-k; 39 G. A., ch. 77, § 6; 40 Ex. G. A., H. F. 262, § 17.]

2456. Term of examiners. The members of each examining board shall be appointed for a term of three years, except the dental examiners who shall be appointed for a term of five years. The term of each examiner shall commence on July first in the year of appointment and the terms of the members of each board shall be rotated in such a manner that one examiner shall retire each year. [C., '97, §§ 2564, 2576, 2584; S., '13, §§ 2564, 2575-a29, 2575-a37, 2576, 2583-a, 2583-h, 2600-b; S. S., '15, § 2584; 39 G. A., ch. 7, § 4; 39 G. A., ch. 77, § 6; 39 G. A., ch. 113, § 3; 40 G. A., ch. 41, § 1; 40 Ex. G. A., H. F. 262, § 18.]

2457. Nomination of examiners by state associations. The regular state association or society or its managing board for each profession may submit each year to the governor a list of six persons of recognized ability in such profession, who have the qualifications

prescribed for examiners for that particular profession. If such list is submitted, the governor in making an appointment to the board of examiners for such profession may select one of the persons so named. [S., '13, §§ 2583-a, 2583-h, 2600-b; 39 G. A., ch. 77, § 6; 40 G. A., ch. 41, § 1; 40 Ex. G. A., H. F. 262, § 19.]

2458. Vacancies. Any vacancy in the membership of an examining board caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments. [C., '97, §§ 2564, 2576; S., '13, §§ 2564, 2576, 2583-h, 2600-b; 39 G. A., ch. 7, § 4; 40 Ex. G. A., H. F. 262, § 20.]

2459. Officers. Each examining board shall organize annually and shall select a chairman and a secretary from its own membership. [C., '97, §§ 2576, 2585; S., '13, §§ 2576, 2583-i, 2585, 2600-c; 39 G. A., ch. 7, § 4; 40 Ex. G. A., H. F. 262, § 21.]

2460. Transaction of business by mail. Each examining board shall, as far as practicable, provide by rule for the conducting of its business by mail, but all examinations shall be conducted in person by the board or by some representative of the board as provided in section 2476. Any official action or vote taken by mail shall be preserved by the secretary in the same manner as the minutes of regular meetings. [40 Ex. G. A., H. F. 262, § 22.]

2461. Compensation of examiners. Each member of an examining board shall, in addition to necessary traveling and hotel expenses, receive ten dollars per day for each day actually engaged in the discharge of his duties, including compensation for the time spent in traveling to and from the place of conducting the examination and for a reasonable number of days for the preparation of examination questions and the reading of papers, in addition to the time actually spent in conducting examinations. [C., '97, § 2574; S., '13, §§ 2574, 2575-a34, 2575-a44, 2583-a, 2583-p, 2600-g; 37 G. A., ch. 309, § 5; 39 G. A., ch. 7, § 12; 39 G. A., ch. 77, §§ 6, 7; 39 G. A., ch. 113, § 7; 39 G. A., ch. 209, §§ 43-45, 47; 40 G. A., ch. 40, § 1; 40 Ex. G. A., H. F. 262, § 23.]

2462. Appropriation. There is hereby annually appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to pay the compensation and expenses of the members of each examining board. [S., '13, §§ 2575-a34, 2575-a44, 2583-a, 2583-n, 2583-p, 2600-g; 37 G. A., ch. 309, § 5; 39 G. A., ch. 7, § 12; 39 G. A., ch. 77, § 6; 39 G. A., ch. 113, § 7; 40 Ex. G. A., H. F. 262, § 24.]

2463. Supplies. The department shall furnish each examining board with all articles and supplies required for the public use and necessary to enable said board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and

the same shall be considered and accounted for as if obtained for the use of the department. When examinations are held at the state university, the necessary articles and supplies for conducting the same shall be furnished by the university authorities. [C., '97, § 2583; S., '13, §§ 2575-a34, 2575-a44, 2583, 2583-a, 2583-p, 2600-g; 35 G. A., ch. 207, § 1; 37 G. A., ch. 309, § 5; 39 G. A., ch. 7, § 12; 39 G. A., ch. 77, § 7; 39 G. A., ch. 113, § 7; 40 G. A., ch. 38, § 7; 40 Ex. G. A., H. F. 262, § 25.]

2464. Quarters. The executive council shall furnish each examining board with suitable quarters in which to conduct the examinations held by said board at the seat of government. When examinations are held at the state university, the superintendent of buildings and grounds shall furnish such quarters. [S., '13, § 2583-a; 39 G. A., ch. 7, § 5; 39 G. A., ch. 77, § 7; 40 Ex. G. A., H. F. 262, § 26.]

2465. Representation at national meetings. Each examining board may select one of its members to attend either:

1. The annual meeting of the regular national association or society of the profession for which such board conducts examinations for licenses; or

2. The annual meeting of the national organization of state examining boards for such profession.

The member so selected shall receive his necessary traveling and hotel expenses in attending such meeting. [40 Ex. G. A., H. F. 262, § 27.]

EXAMINATIONS

2466. Applications for examination. Any person desiring to take the examination for a license to practice a profession shall make application to the state department of health at least fifteen days before the examination, on a form provided by the department. Such application shall be accompanied by the examination fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules of the department and shall be signed and verified by the oath of the applicant. [S., '13, § 2575-a37; 39 G. A., ch. 7, § 2; 39 G. A., ch. 77, § 7; 40 Ex. G. A., H. F. 262, § 28.]

2467. Notice of time and place of examinations. The department shall give public notice of the time and place of all examinations to be held under this title. Such notice shall be given in such manner as the department may deem expedient and in ample time to allow all candidates to comply with the provisions of this title. [S., '13, § 2576; 39 G. A., ch. 77, § 6; 40 G. A., ch. 38, § 3; 40 Ex. G. A., H. F. 262, § 28-a1.]

2468. List of accredited high schools. The department shall prepare and keep up to date a list of accredited high schools and other secondary schools for the purpose of passing upon the qualifications of an applicant for an

examination when such applicant is required by any provision of this title to be a graduate of such school. The secretary of the state board of education and the registrars of the state university, the state college of agriculture and mechanic arts, and the state teachers college shall supply the necessary data to the department for the preparation of said list. [40 Ex. G. A., H. F. 262, § 29.]

2469. List of accredited colleges. The state department of health shall prepare and keep up to date a list of accredited colleges in which are taught the professions which are regulated by this title. The examining board for each profession shall make recommendations relative thereto and shall approve the list for the profession for which it gives license examinations. No such school shall be accredited by the department unless it has been so recommended and approved by the proper examining board together with the commissioner of health. Such recommendations and approval shall be made at some regular session of the board held for the purpose of giving an examination. [40 Ex. G. A., H. F. 262, § 30.]

2470. Data relative to professional schools. As a basis for such action on the part of the examining board, the registrar of the state university and the dean of the professional school of said institution which teaches the profession for which said board gives license examinations, shall supply such data relative to any such professional school as said board may request. [40 Ex. G. A., H. F. 262, § 31.]

2471. Time of conducting examination. Each examining board shall hold regular sessions for the purpose of giving examinations at such times as the department may fix, not to exceed four in any one year. The medical examiners, dental examiners, and pharmacy examiners shall hold a similar session at the state university at the close of each school year to give examinations to students of the medical, dental, and pharmacy colleges of said institution and to other applicants who are qualified to take the same. In case there are other schools located in the state at which any of the professions regulated by this title are taught, two of the examinations for the profession taught at any such school may be held each year at such institution, if the examining board for that profession so desires. All other sessions of the examining boards shall be held at the seat of government unless otherwise ordered by the department. [C., '97, §§ 2576, 2582, 2589; S., '13, §§ 2575-a29, 2575-a37, 2576, 2582, 2583-a, 2583-i, 2583-k, 2600-c; S. S., '15, § 2589-a; 39 G. A., ch. 7, § 5; 39 G. A., ch. 77, § 6; 39 G. A., ch. 113, § 3; 40 G. A., ch. 38, § 3; 40 Ex. G. A., H. F. 262, § 32.]

2472. Transmittal of names of eligible candidates. Prior to each examination the department shall transmit to each examining board the list of candidates who are eligible to take the examination given by such board. In making up such list the department may

call upon any examining board, or any member thereof, for information relative to the eligibility of any applicant. [40 Ex. G. A., H. F. 262, § 33.]

2473. Rules relative to examinations. Each examining board shall establish rules for:

1. The conducting of examinations.
2. The grading of examinations and passing upon the technical qualifications of applicants, as shown by such examinations. [C., '97, § 2584; S., '13, §§ 2575-a38, 2583-a, 2583-i, 2600-e; S. S., '15, § 2584; 39 G. A., ch. 7, §§ 4, 6; 39 G. A., ch. 77, § 6; 39 G. A., ch. 113, § 4; 40 G. A., ch. 38, § 2; 40 G. A., ch. 41, § 1; 40 Ex. G. A., H. F. 262, § 34.]

2474. Examinations in theory. All examinations in theory shall be in writing, and the identity of the person taking the same shall not be disclosed upon the examination papers in such a way as to enable the members of the examining board to know by whom written until after the papers have been passed upon. In examinations in practice the identity of the candidate shall also be concealed as far as possible. [C., '97, § 2576; S., '13, §§ 2576, 2583-a; 39 G. A., ch. 77, § 6; 40 Ex. G. A., H. F. 262, § 35.]

2475. Quorum and representation at examinations. Two members of each board, except the dental board, shall constitute a quorum for conducting examinations but in the case of the medical examiners a quorum shall consist of one member from each school of medical practice represented on said board. Three members of the dental board shall constitute a quorum for conducting examinations. [C., '97, § 2576; S., '13, §§ 2575-a30, 2575-a38, 2576, 2583-i, 2600-c; 40 Ex. G. A., H. F. 262, § 36.]

2476. Clerk of examination. Upon the request of any examining board, the department shall detail some employee to act as clerk of any examination given by said examining board. Such clerk shall have charge of the candidates during the examination and perform such other duties as the examining board may direct. If the duties of such clerk are performed away from the seat of government, he shall receive his necessary railroad and hotel expenses, which shall be paid from the appropriations to the department in the same manner in which other similar expenses are paid. [40 Ex. G. A., H. F. 262, § 37.]

2477. Certification of successful applicants. Every examination shall be passed upon in accordance with the established rules of the examining board and shall be satisfactory to at least a majority of the members of said board. After each examination, the examining board shall certify the names of the successful applicants to the state department of health in the manner prescribed by it. The department shall then issue the proper license and make the required entry in the registry book. [C., '97, § 2576; S., '13, §§ 2575-a30,

2575-a38, 2576, 2583-i, 2600-c; 40 Ex. G. A., H. F. 262, § 38.]

2478. Special examinations. Any examining board may give a partial examination for a license to practice a profession to any applicant who has completed a portion of his professional course. For such purpose said board shall establish by rule:

1. The portion of such course which shall be completed prior to such examination.

2. The subjects to be covered by such examination and the subjects to be covered by the final examination to be taken by such applicant after the completion of his professional course and prior to the issuance of his license, but the subjects covered in the partial and final examinations shall be the same as those specified in this title for the regular examination. [40 Ex. G. A., H. F. 262, § 39.]

2479. Rules relative to partial examinations. In case any examining board shall provide for partial examinations under the preceding section, the department shall adopt rules establishing:

1. The portion of the license fee fixed in this chapter which shall be paid for a partial examination.

2. The credentials which shall be presented to the department by an applicant showing his qualifications to take such examination.

3. The method of certifying the list of the eligible applicants for such examination to the proper examining board.

4. The method of certifying back to the department the list of applicants who successfully pass such examination.

5. The method of keeping the records of such applicants for use at the time of completing the examination for a license.

6. The credentials which shall be presented to the department by such an applicant upon the completion of his professional course.

7. The method of certifying such applicant to the proper examining board for the remainder of his examination.

8. Such other matters of procedure as are necessary to carry into effect the preceding section. [40 Ex. G. A., H. F. 262, § 40.]

2480. Preservation of records. All matters connected with each examination for a license shall be filed with the state department of health and preserved for five years as a part of the records of the department, during which time said records shall be open to public inspection. [C., '97, § 2576; S., '13, §§ 2576, 2578-a, 2583-a; 39 G. A., ch. 77, § 6; 40 Ex. G. A., H. F. 262, § 41.]

RECIPROCAL LICENSES

2481. Reciprocal agreements. For the purpose of recognizing licenses which have been issued in other states to practice any profession for which a license is required by this title, the department shall enter into a reciprocal agreement with every state which is certified to it by the proper examining board under

the provisions of the following section and with which this state does not have an existing agreement at the time of such certification. [C., '97, § 2582; S., '13, § 2582; 39 G. A., ch. 136, § 1; 40 Ex. G. A., H. F. 262, § 42.]

2482. Certification of states entitled to reciprocal relations. The department shall at least once each year lay before the proper examining board the requirements of the several states for a license to practice the profession for which such examining board conducts examinations for licenses in this state. Said examining board shall immediately examine such requirements and after making such other inquiries as it deems necessary, shall certify to the department the states having substantially equivalent requirements to those existing in this state for that particular profession and with which said examining board desires this state to enter into reciprocal relations. [S., '13, §§ 2575-a30, 2575-a39, 2589-b, 2600-m; 37 G. A., ch. 430, § 4; 39 G. A., ch. 7, § 7; 39 G. A., ch. 77, § 13; 39 G. A., ch. 113, § 3; 40 Ex. G. A., H. F. 262, § 43.]

2483. Rules governing reciprocal agreements. In negotiating any reciprocal agreement, the department shall be governed by the following regulations:

1. *Protection to licensees of this state.* When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person licensed in this state to practice any profession regulated by this title which affects the right of said person to be licensed or to practice his profession in said state, then the same requirement or disability shall be placed upon any person licensed in said state when applying for a license to practice in this state.

2. *Special conditions.* When any examining board has established by rule any special condition upon which reciprocal agreements shall be entered into, as provided in the following section, such condition shall be incorporated into the reciprocal agreements negotiated with reference to licenses to practice the professions for which such examining board conducts examinations. [S., '13, §§ 2575-a30, 2575-a39, 2582-a, 2589-b, 2600-m; 37 G. A., ch. 430, § 4; 39 G. A., ch. 113, § 3; 40 Ex. G. A., H. F. 262, § 44.]

2484. Special conditions in re reciprocal agreements. An examining board shall have power to provide by rule that no reciprocal relation shall be entered into by the department with any state with reference to licenses to practice the profession for which such examining board conducts examinations, unless every person licensed in another state when applying for a license to practice in this state shall comply with one or both of the following conditions:

1. Furnish satisfactory proof to the department that he has been actively engaged in the practice of his profession for a certain period of years to be fixed by such examining board.

2. Pass a practical examination in the practice of his particular profession as prescribed by such examining board. [S., '13, § 2600-m; 40 Ex. G. A., H. F. 262, § 45.]

2485. Termination of reciprocal agreements. When the requirements for a license in any state with which this state has a reciprocal agreement are changed by any law or rule of the authorities therein so that such requirements are no longer substantially as high as those existing in this state, then such agreement shall be deemed terminated and licenses issued in such state shall not be recognized as a basis of granting a license in this state until a new agreement has been negotiated. The fact of such change shall be determined by the proper examining board and certified to the department for its guidance in enforcing the provisions of this section. [40 Ex. G. A., H. F. 262, § 46.]

2486. License granted upon basis of license of another state. The department shall, upon presentation of a license to practice a profession issued by the duly constituted authority of another state, with which this state has established reciprocal relations, and subject to the rules of the examining board for such profession, license said applicant to practice in this state, unless under the rules of said examining board a practical examination is required in such cases. [C., '97, § 2582; S., '13, §§ 2575-a30, 2575-a39, 2582, 2583-l, 2589-b, 2600-m; 37 G. A., ch. 430, § 4; 39 G. A., ch. 7, § 7; 39 G. A., ch. 77, § 13; 39 G. A., ch. 113, § 3; 39 G. A., ch. 136, § 1; 40 Ex. G. A., H. F. 262, § 47.]

2487. Application for practical examinations. If the rules of any examining board require an applicant for a license under a reciprocal agreement to pass a practical examination in the practice of his profession, then such applicant shall make application therefor to the department upon a form provided by it. [40 Ex. G. A., H. F. 262, § 48.]

2488. Applicability of other provisions. All the provisions of this chapter relative to applications, transmittal of the names of eligible candidates, certification of successful applicants, and issuance of licenses thereto, in the case of regular examinations, shall apply as far as applicable to applicants for practical examinations. [40 Ex. G. A., H. F. 262, § 49.]

2489. Reciprocity for graduates of state schools. When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person holding a diploma or certificate from any college in this state in which one of the professions regulated by this title is taught, which affects the right of said person to be licensed in said state, the same requirement or disability shall be placed upon any person holding a diploma from a similar college situated therein, when applying for a license to practice in this state. [S., '13, § 2582-a; 40 Ex. G. A., H. F. 262, § 50.]

2490. Power to adopt rule. The department and each examining board shall have power to establish the necessary rules, not inconsistent with law, for carrying out the reciprocal relations with other states which are authorized by this chapter. [40 Ex. G. A., H. F. 262, § 51.]

2491. Change of residence to another state. Any licensee who is desirous of changing his residence to that of another state or territory shall upon application to the department, and payment of the legal fee, receive a certified statement that he is a duly licensed practitioner in this state. [S., '13, § 2600-n; 40 Ex. G. A., H. F. 262, § 52.]

REVOCATION OF LICENSES

2492. Grounds for revocation of license. A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

1. Fraud in procuring his license.
 2. Incompetency in the practice of his profession.
 3. Immoral, unprofessional, or dishonorable conduct.
 4. Habitual intoxication or addiction to the use of drugs.
 5. Conviction of an offense involving turpitude.
 6. Fraud in representations as to skill or ability.
 7. Use of untruthful or improbable statements in advertisements.
 8. Distribution of intoxicating liquors or drugs for any other than lawful purposes.
 9. Wilful or repeated violations of this title, the title on "Public Health", or the rules of the state department of health.
 10. Continued practice while knowingly having an infectious or contagious disease.
1. [C., '97, § 2578; S., '13, §§ 2575-a33, 2575-a41, 2578, 2583-c, 2600-o5; 39 G. A., ch. 77, § 16; 39 G. A., ch. 113, § 6; 40 Ex. G. A., H. F. 262, § 53.] 2. [C., '97, § 2578; S., '13, §§ 2578, 2583-c, 2583-m; 39 G. A., ch. 77, § 16; 39 G. A., ch. 113, § 6; 40 Ex. G. A., H. F. 262, § 53.] 3. [C., '97, § 2578; S., '13, §§ 2575-a33, 2575-a41, 2578, 2583-m, 2600-o5; 39 G. A., ch. 7, § 9; 39 G. A., ch. 113, § 6; 40 Ex. G. A., H. F. 262, § 53.] 4. [C., '97, § 2578; S., '13, §§ 2575-a41, 2578, 2583-c, 2583-m, 2600-o5; 39 G. A., ch. 77, § 16; 39 G. A., ch. 113, § 6; 40 Ex. G. A., H. F. 262, § 53.] 5. [C., '97, § 2578; S., '13, §§ 2578, 2583-c, 2600-o5; 39 G. A., ch. 7, § 11; 39 G. A., ch. 77, § 16; 40 Ex. G. A., H. F. 262, § 53.] 6. [C., '97, § 2578; S., '13, §§ 2578, 2583-c; 39 G. A., ch. 77, § 16; 39 G. A., ch. 113, § 6; 40 Ex. G. A., H. F. 262, § 53.] 7. [C., '97, § 2578; S., '13, §§ 2578, 2583-c, 2600-o5; 39 G. A., ch. 77, § 16; 40 Ex. G. A., H. F. 262, § 53.] 8. [C., '73, § 1535; C., '97, § 2386, 2400; S., '13, §§ 2386, 2400; 39 G. A., ch. 113, § 6; 40 Ex. G. A., H. F. 262, § 53.] 9. [C., '97, § 2596; S., '13, §§ 2575-a33, 2575-a41; 39 G. A., ch. 7, § 11; 39 G. A., ch. 113, § 6; 40 G. A., ch. 38, §§ 4, 6; 40 Ex. G. A., H. F. 262, § 53.] 10. [S., '13, § 2583-c; 39 G. A., ch. 77, § 16; 40 Ex. G. A., H. F. 262, § 53.]

2493. Unprofessional conduct defined. For the purposes of the preceding section "unprofessional conduct" shall consist of any of the following acts:

1. Solicitation of professional patronage by agents or persons popularly known as "cappers" or "steerers", or profiting by the acts of those representing themselves to be agents of the licensee.

2. Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured.

3. Acceptance of a fee for service as a witness, without the knowledge of the court, in addition to the fee allowed by the court.

4. Division of fees or agreeing to split or divide the fees received for professional services with any person for bringing or referring a patient or assisting in the care or treatment of a patient without the consent of said patient or his legal representative.

5. Advertisement of any medicine or means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed.

6. Procurement or aiding or abetting in the procurement of a criminal abortion.

7. Wilful betrayal of a professional secret.

8. Wilful neglect of a patient in a critical condition. [C., '97, § 2578; S., '13, § 2578; 40 Ex. G. A., H. F. 262, § 54.]

2494. Dental hygienist and dentist. The practice of dentistry by a dental hygienist shall also be grounds for the revocation of her license, and the permitting of such practice by the dentist under whose supervision said dental hygienist is operating shall be grounds for revoking the license of said dentist. [S., '13, § 2600-o5; 37 G. A., ch. 309, § 4; 40 Ex. G. A., H. F. 262, § 55.]

2495. Jurisdiction of revocation proceedings. The district court of the county in which a licensee resides shall have jurisdiction of the proceeding to revoke or suspend his license. [40 Ex. G. A., H. F. 262, § 56.]

2496. Petition for revocation of license. The petition for the revocation or suspension of a license may be filed:

1. By the attorney general in all cases.

2. By the county attorney of the county in which the licensee resides.

Said petition shall be filed in the office of the clerk of the district court having jurisdiction. [40 Ex. G. A., H. F. 262, § 57.]

2497. Duty of department of health. The state department of health shall direct the attorney general to file such petition against any licensee upon its own motion, or it may give such direction upon the sworn information of some person who resides in the county wherein the licensee practices. [C., '97, §§ 2578, 2596; S., '13, §§ 2575-a33, 2575-a41, 2578, 2578-a, 2583-c, 2583-m, 2600-o5; 39 G. A., ch. 7, § 11; 39 G. A., ch. 77, § 16; 39 G. A., ch. 113, § 6; 40 Ex. G. A., H. F. 262, § 58.]

2498. Duty of attorney general and county attorney. The attorney general shall comply with such direction of the department and prosecute such action on behalf of the state, but the county attorney, at the request of the attorney general, shall appear and prosecute such action when brought in his county. [39 G. A., ch. 7, § 11; 40 Ex. G. A., H. F. 262, § 59.]

2499. Rules governing petition. The following rules shall govern the petition in such cases:

1. The state shall be named as plaintiff and the licensee as defendant.

2. The charges against the licensee shall be stated in full.

3. Amendments may be made as in ordinary actions.

4. All allegations shall be deemed denied but the licensee may plead thereto if he desires. [40 Ex. G. A., H. F. 262, § 60.]

2500. Time and place of trial. Upon the presentation of the petition, or a copy thereof, to the court or judge, he shall make an order fixing the time and place for the hearing, which shall be not less than ten nor more than twenty days thereafter. [S., '13, §§ 2575-a33, 2575-a41, 2578-a, 2583-c, 2583-m, 2600-o5; 39 G. A., ch. 77, § 16; 40 Ex. G. A., H. F. 262, § 61.]

2501. Notice to licensee. Notice of the filing of such petition and of the time and place of hearing shall be served upon the licensee at least ten days before said hearing in the manner required for the service of notice of the commencement of an ordinary action. [S., '13, §§ 2575-a33, 2575-a41, 2578-a, 2583-c, 2583-m, 2600-o5; 39 G. A., ch. 77, § 16; 40 Ex. G. A., H. F. 262, § 62.]

2502. Nature of action—when triable. The proceeding shall be summary in its nature, triable as an equitable action, and may be heard either in vacation or term time. [S., '13, §§ 2575-a33, 2575-a41, 2578-a, 2583-c, 2583-m, 2600-o5; 39 G. A., ch. 77, § 16; 40 Ex. G. A., H. F. 262, § 63.]

2503. Judgment of revocation or suspension. Judgment of revocation or suspension of the license shall be entered of record and the licensee shall not engage in the practice of his profession after his license is revoked or during the time for which it is suspended. The clerk of the court shall, upon the entry of such judgment, forthwith furnish the state department of health with a certified copy thereof. [C., '73, § 1535; C., '97, §§ 2386, 2400; S., '13, §§ 2386, 2400, 2575-a33, 2575-a41, 2578-a; 40 Ex. G. A., H. F. 262, § 64.]

2504. Failure of licensee to appear. In case the licensee fails to appear, either in person or by counsel at the time and place designated in said notice, the court, after receiving satisfactory evidence of the truth of the charges, shall order the license revoked or suspended. [S., '13, §§ 2575-a33, 2575-a41, 2578-a; 40 Ex. G. A., H. F. 262, § 65.]

2505. Costs. If the judgment is adverse to the licensee the costs shall be taxed to him as in ordinary civil actions, but if the state is the unsuccessful party the costs shall be paid out of any money in the state treasury not otherwise appropriated. [40 Ex. G. A., H. F. 262, § 66.]

2506. Unpaid costs. All costs accrued at the instance of the state, when the successful party, which the attorney general certifies cannot be collected from the defendant, shall be paid out of any money in the state treasury not otherwise appropriated. [40 Ex. G. A., H. F. 262, § 67.]

2507. Hearing on appeal. Both parties shall have the right of appeal, and in such event, the supreme court shall fix the time of hearing, and for filing abstracts and arguments. Said cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the appeal is taken, provided the abstracts and arguments are filed in said court in time for said action to be heard. [S., '13, §§ 2578-b, 2600-o5; 39 G. A., ch. 7, § 9; 40 Ex. G. A., H. F. 262, § 68.]

2508. Effect of appeal. The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the district court or judge, or restore the right of said defendant to practice his profession pending such appeal. [40 Ex. G. A., H. F. 262, § 69.]

USE OF TITLES AND DEGREES

2509. Professional titles and abbreviations. Any person licensed to practice a profession under this title may append to his name any recognized title or abbreviation, which he is entitled to use, to designate his particular profession, but no other person shall assume or use such title or abbreviation, and no licensee shall advertise himself in such a manner as to lead the public to believe that he is engaged in the practice of any other profession than the one which he is licensed to practice. [S., '13, §§ 2575-a28, 2575-a31, 2583-q; 39 G. A., ch. 7, § 11; 39 G. A., ch. 113, § 5; 40 Ex. G. A., H. F. 262, § 70.]

2510. Titles used by holder of degree. Nothing in the preceding section shall be construed:

1. As authorizing any person licensed to practice a profession under this title to use or assume any degree or abbreviation of the same unless such degree has been conferred upon said person by an institution of learning accredited by the appropriate board herein created, together with the commissioner of health, or by some recognized state or national accrediting agency.

2. As prohibiting any holder of a degree conferred by an institution of learning accredited by the appropriate board herein created, together with the commissioner of health,

or by some recognized state or national accrediting agency, from using the title which such degree authorizes him to use, but he shall not use such degree or abbreviation in any manner which might mislead the public as to his qualifications to treat human ailments. [40 Ex. G. A., H. F. 262, § 71.]

ITINERANTS

2511. Itinerant defined. "Itinerant physician", "itinerant osteopath", "itinerant chiropractor", or "itinerant optometrist" as used in the following sections of this title shall mean any person engaged in the practice of medicine and surgery, "osteopathy", "osteopathy and surgery", chiropractic, or optometry, as defined in the chapter relative to the practice of said professions who, by himself, agent, or employee goes from place to place, or from house to house, or by circulars, letters, or advertisements, solicits persons to meet him for professional treatment at places other than his office maintained at the place of his residence. [C., '97, § 2581; S., '13, §§ 2581, 2583-e; 39 G. A., ch. 77, § 18; 40 Ex. G. A., H. F. 262, § 72.]

2512. License required of itinerants. Every itinerant physician, itinerant osteopath, itinerant chiropractor, or itinerant optometrist shall, in addition to his regular license to practice his profession, procure from the state department of health a license to practice as an itinerant. [C., '97, § 2581; S., '13, §§ 2581, 2583-e; 39 G. A., ch. 77, § 18; 40 Ex. G. A., H. F. 262, § 73.]

2513. Issuance of license. Upon receipt of an application from a licensed physician and surgeon, licensed "osteopath", licensed "osteopath and surgeon", licensed chiropractor, or licensed optometrist, for an itinerant's license, accompanied by the legal fee, the department shall issue to the applicant, when the provisions of this title have been complied with, a license to practice as an itinerant physician and surgeon, itinerant "osteopath", itinerant "osteopath and surgeon", itinerant chiropractor, or itinerant optometrist, as the case may be, for a period of one year. [C., '97, § 2581; S., '13, §§ 2581, 2583-e; 39 G. A., ch. 77, § 18; 40 Ex. G. A., H. F. 262, § 74.]

2514. Exception—rule of construction. The three preceding sections shall not be construed to prevent any physician and surgeon, "osteopath", "osteopath and surgeon", chiropractor, or optometrist, otherwise legally qualified, from attending patients in any part of the state to which he may be called in the regular course of business, or in consultation with other practitioners. [C., '97, § 2581; S., '13, § 2581; 40 Ex. G. A., H. F. 262, § 75.]

2515. Refusal and revocation of itinerant's license. The department may, for satisfactory reasons, refuse to issue an itinerant's license or may revoke such license upon satisfactory evidence of incompetency or gross immorality. [C., '97, § 2581; S., '13, §§ 2581, 2583-e; 39 G. A., ch. 77, § 18; 40 Ex. G. A., H. F. 262, § 78.]

FEES

2516. License—examination—renewal fees. The following fees shall be collected by the state department of health:

1. For a license to practice medicine and surgery, osteopathy and surgery, and dentistry, issued upon the basis of an examination given by an examining board, twenty-five dollars.

2. For a license to practice any of the professions enumerated in the preceding paragraph issued under a reciprocal agreement, fifty dollars.

3. For a license to practice podiatry, osteopathy, chiropractic, and optometry, issued upon the basis of an examination given by an examining board, twenty dollars.

4. For a license to practice any of the professions enumerated in the preceding paragraph issued under a reciprocal agreement, forty dollars.

5. For a license to practice nursing, dental hygiene, pharmacy, and embalming, issued upon the basis of an examination given by an examining board, ten dollars.

6. For a license to practice any of the professions enumerated in the preceding paragraph issued under a reciprocal agreement, twenty dollars.

7. For the renewal of a license to practice any of the professions enumerated in the preceding paragraphs, one dollar.

8. For a license to practice as an itinerant physician and surgeon, itinerant "osteopath", itinerant "osteopath and surgeon", itinerant chiropractor, or itinerant optometrist, two hundred fifty dollars.

9. For a certified statement that a licensee is licensed in this state, five dollars.

10. For an examination to determine whether an applicant has the educational attainments of a high school graduate, five dollars.

1. [C., '97, § 2576; S., '13, §§ 2576, 2583-a, 2600-d; 39 G. A., ch. 77, § 7; 40 Ex. G. A., H. F. 262, § 79.] 2. [C., '97, § 2582; S., '13, §§ 2582, 2583-a, 2600-m; 39 G. A., ch. 77, § 7; 40 Ex. G. A., H. F. 262, § 79.] 3. [S., '13, §§ 2583-a, 2583-n; 39 G. A., ch. 7, §§ 2, 6; 39 G. A., ch. 77, § 7; 39 G. A., ch. 113, § 4; 40 Ex. G. A., H. F. 262, § 79.] 4. [S., '13, §§ 2583-a, 2583-l; 39 G. A., ch. 7, § 7; 39 G. A., ch. 77, § 7; 39 G. A., ch. 113, § 3; 40 Ex. G. A., H. F. 262, § 79.] 5. [C., '97, § 2590; S., '13, §§ 2575-a30, 2575-a38, 2589-d; 37 G. A., ch. 309, § 3; 38 G. A., ch. 95, § 1; 40 Ex. G. A., H. F. 262, § 79.] 6. [S., '13, §§ 2575-a30, 2575-a39, 2589-b; 37 G. A., ch. 430, § 4; 38 G. A., ch. 176, § 1; 40 Ex. G. A., H. F. 262, § 79.] 7. [C., '97, §§ 2590, 2591; S., '13, §§ 2575-a39, 2589-d; 37 G. A., ch. 213, § 1; 38 G. A., ch. 95, § 1; 39 G. A., ch. 113, § 5; 40 G. A., ch. 38, § 4; 40 G. A., ch. 42, § 1; 40 Ex. G. A., H. F. 262, § 79.] 8. [C., '97, § 2581; S., '13, §§ 2581, 2583-e; 39 G. A., ch. 77, § 18; 40 Ex. G. A., H. F. 262, § 79.] 9. [S., '13, § 2600-n; 40 Ex. G. A., H. F. 262, § 79.] 10. [S., '13, § 2583-a; 39 G. A., ch. 77, § 7; 40 Ex. G. A., H. F. 262, § 79.]

2517. Second examination. Any applicant for a license who fails in his examination shall

be entitled to a second examination without further fee at any time within a period of fourteen months after the first examination. [C., '97, §§ 2576, 2590; S., '13, §§ 2576, 2583-n, 2589-d; 37 G. A., ch. 309, § 3; 39 G. A., ch. 7, § 6; 40 Ex. G. A., H. F. 262, § 81.]

2518. Fees paid into state treasury. All fees collected under this chapter shall be paid into the state treasury. [C., '97, § 2583; S., '13, §§ 2575-a44, 2583, 2583-a, 2583-s; 35 G. A., ch. 207, § 1; 37 G. A., ch. 309, § 2; 39 G. A., ch. 77, § 6; 40 Ex. G. A., H. F. 262, § 82.]

NOTE: For time of paying fees into state treasury, see § 143.

VIOLATIONS—CRIMES—PUNISHMENT

2519. Injunction against illegal practice. Any person engaging in any business or in the practice of any profession for which a license is required by this title without such license may be restrained by permanent injunction. [37 G. A., ch. 213, § 2; 40 Ex. G. A., H. F. 262, § 83.]

2520. Forgeries in procuring licenses. Any person who shall file or attempt to file with the state department of health any false or forged diploma, or certificate or affidavit of identification or qualification, shall be guilty of forgery and punished accordingly. [C., '97, §§ 2580, 2595; S., '13, § 2583-d; 39 G. A., ch. 77, § 17; 40 Ex. G. A., H. F. 262, § 84.]

2521. Fraud in procuring license—penalty. Any person who shall present to the department a diploma or certificate of which he is not the rightful owner, for the purpose of procuring a license, or who shall falsely personate anyone to whom a license has been issued by said department shall be punished as provided in the following section. [C., '97, §§ 2580, 2581, 2595; S., '13, §§ 2575-a45, 2581, 2583-c, 2583-d; 39 G. A., ch. 7, § 11; 39 G. A., ch. 77, §§ 16, 17; 40 Ex. G. A., H. F. 262, § 85.]

2522. Penalties. Any person violating any provision of this or the following chapters of this title shall be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned in the county jail for not more than six months or by both such fine and imprisonment. [C., '97, § 2580, 2581, 2588, 2590, 2591, 2595; S., '13, §§ 2575-a35, 2575-a45, 2581, 2583-d, 2583-r, 2589-d, 2600-o4; S. S., '15, § 2588; 37 G. A., ch. 213, § 2; 38 G. A., ch. 95, § 1; 39 G. A., ch. 77, § 17; 39 G. A., ch. 113, § 8; 40 G. A., ch. 38, § 4; 40 G. A., ch. 42, § 1; 40 Ex. G. A., H. F. 262, § 86.]

ENFORCEMENT PROVISIONS

2523. Enforcement. The state department of health shall enforce the provisions of this and the following chapters of this title and for that purpose shall make necessary investigations relative thereto. Every licensee and member of an examining board shall furnish the department such evidence as he may have relative to any alleged violation which is being investigated. [40 Ex. G. A., H. F. 262, § 87.]

2524. Report of violators by licensee. Every licensee and member of an examining board shall report, also, to the department the name of every person, without a license, that he has reason to believe is engaged in:

1. Practicing any profession for which a license is required.

2. Operating as an itinerant practitioner of such profession. [40 Ex. G. A., H. F. 262, § 88.]

2525. Rules and forms. The state department of health shall establish the necessary rules and forms for carrying out the duties imposed upon it by the provisions of this and the following chapters of this title. [39 G. A., ch. 7, § 4; 40 G. A., ch. 38, § 2; 40 Ex. G. A., H. F. 262, § 89.]

2526. Publication of laws and rules. The department shall have printed in pamphlet form for each profession the following matter which is pertinent to the particular profession for which such pamphlet is published:

1. The law regulating the practice of the profession.

2. The rules of the department relative to licenses.

3. The rules of the examining board relative to examinations.

Such pamphlet shall be supplied to any person applying for the same. [39 G. A., ch. 7, § 4; 40 G. A., ch. 38, § 2; 40 Ex. G. A., H. F. 262, § 90.]

2527. Duty of attorney general and county attorney. Upon request of the state department of health the attorney general shall institute in the name of the state the proper proceedings against any person charged by the department with violating any provision of this or the following chapters of this title and the county attorney, at the request of the attorney general, shall appear and prosecute such action when brought in his county. [S., '13, § 2600-o7; 39 G. A., ch. 7, § 11; 40 G. A., ch. 38, § 6; 40 Ex. G. A., H. F. 262, § 91.]

2528. Prima facie evidence of practicing. The opening of an office or place of business for the practice of any profession for which a license is required by this title, the announcing to the public in any way the intention to practice any such profession, the use of any professional degree or designation, or of any sign, card, circular, device, or advertisement, as a practitioner of any such profession, or as a person skilled in the same, shall be prima facie evidence of engaging in the practice of such profession. [S., '13, §§ 2575-a28, 2575-a31, 2600-o; 40 Ex. G. A., H. F. 262, § 92.]

EXCEPTIONS

2529. Licensing of pharmacists. The provisions of this chapter relative to the making of application for a license, the issuance of a license, the negotiation of reciprocal agreements for recognition of foreign licenses, the collection of license and renewal fees, and the preservation of records shall not apply to the

licensing of persons to practice pharmacy, but such licensing shall be governed by the following regulations:

1. Every application for a license to practice pharmacy shall be made direct to the secretary of the Pharmacy Examiners.

2. Such license and all renewals thereof shall be issued by said examiners.

3. Every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by said examiners.

4. All license and renewal fees exacted from persons licensed to practice pharmacy shall be paid to and collected by the secretary of the Pharmacy Examiners.

5. All records in connection with the licensing of pharmacists shall be kept by said secretary. 1. [C., '97, § 2589; S., '13, § 2589-b; S. S., '15, § 2589-a; 37 G. A., ch. 430, § 2; 40 Ex. G. A., H. F. 262, § 92-a1.] 2. [C., '97, § 2590; S., '13, § 2589-d; 38 G. A., ch. 95, § 1; 40 G. A., ch. 42, § 1; 40 Ex. G. A., H. F. 262, § 92-a1.] 3. [S., '13, § 2589-b; 37 G. A., ch. 430, § 4; 38 G. A., ch. 176, § 1; 40 Ex. G. A., H. F. 262, § 92-a1.] 4. [C., '97, § 2590; S., '13, § 2589-d; 38 G. A., ch. 95, § 1; 40 G. A., ch. 42, § 1; 40 Ex. G. A., H. F. 262, § 92-a1.] 5. [C., '97, § 2586, 2595; 40 Ex. G. A., H. F. 262, § 92-a1.]

2530. Enforcement of title as to pharmacy. The provisions of this title in so far as they affect the practice of pharmacy shall be enforced by the Pharmacy Examiners and the provisions of sections 2523 and 2524 shall not apply to said profession. [C., '97, § 2584; S., '13, § 2596-c; S. S., '15, § 2584; 40 Ex. G. A., H. F. 262, § 92-a2.]

2531. Regulations governing Pharmacy Examiners. In discharging the duties and exercising the powers provided for in the two preceding sections the Pharmacy Examiners and their secretary shall be governed by all the provisions of this chapter which govern the department of health when discharging a similar duty or exercising a similar power with reference to any of the professions regulated by this title. [40 Ex. G. A., H. F. 262, § 92-a3.]

2532. Secretary of Pharmacy Examiners. The Pharmacy Examiners shall have the right to employ a full time secretary, who shall not be a member of the examining board, at such compensation as may be fixed from time to time in the biennial salary act and the provisions of section 2459 providing for a secretary for each examining board shall not apply to the Pharmacy Examiners. [C., '97, § 2585; S., '13, § 2585; 38 G. A., ch. 183, § 1; 39 G. A., ch. 209, § 49; 40 Ex. G. A., H. F. 262, § 92-a4.]

2533. Duties of secretary of Pharmacy Examiners. The secretary of the Pharmacy Examiners shall, upon the direction of said examiners, make inspections of alleged violations of the provisions of this title relative to the practice of pharmacy and of chapters 155 and 156. Said secretary shall be allowed his necessary traveling and hotel expenses in making such inspections, which shall be paid out of the appropriation provided for in section 2462. [C.,

'97, § 2585; S., '13, § 2585; 38 G. A., ch. 183, § 1; 40 Ex. G. A., H. F. 262, § 92-a5.]

2534. Renewal fee for pharmacy association. The secretary of the Pharmacy Examiners shall annually add one dollar to the renewal fee provided in this chapter for a person licensed to practice pharmacy. Such additional amount shall be considered as a part of the regular renewal fee and payment of the same shall be a prerequisite to the renewal of his license. The funds derived from the additional renewal fee collected under this section shall be paid to the state pharmacy association upon the order of its treasurer and secretary. Said funds shall be used by such association in the advancement of the art and science of pharmacy. [C., '97, § 2590; S., '13, § 2589-d; 38 G. A., ch. 95, § 1; 40 G. A., ch. 42, § 1; 40 Ex. G. A., H. F. 262, § 92-a9.]

2535. Licensing of chiropractors and osteopaths. Notwithstanding the provisions of this title, every application for a license to practice chiropractic, osteopathy, or "osteopathy and surgery", shall be made direct to the secretary of the examining board of such profession, and every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by the examining board for such profession, and all examination, license, and renewal fees received from such persons licensed to practice any of such professions shall be paid to and collected by the secretary of the examining board of such profession, which secretary shall turn the same over to the department of health on

the first day of January, 1925, and quarterly thereafter. [S., '13, § 2583-a; 39 G. A., ch. 7, §§ 2, 7; 39 G. A., ch. 77, §§ 7, 13; 40 G. A., ch. 38, § 4; 40 Ex. G. A., H. F. 262, § 92-a6.]

2536. Clerical help and supplies. Subject to the approval of the executive council, the examining boards for chiropractic, osteopathy, and "osteopathy and surgery", may employ such clerical assistance as may be necessary to enable said boards to perform the duties imposed upon them by law. Payment for such assistance shall be made out of the appropriation provided for in section 2462. The executive council shall also furnish said boards with the necessary quarters and all articles and supplies required for the public use, and the provisions of section 2463 shall not apply to said boards. [39 G. A., ch. 7, § 12; 39 G. A., ch. 77, § 7; 40 G. A., ch. 38, § 7; 40 Ex. G. A., H. F. 262, § 92-a7.]

2537. Records. The secretary of each of said boards shall keep a correct record of the proceedings of said board, and upon the granting of any license to practice any of said professions the board shall, at the time of granting said license, certify to the department of health the application upon which such license was issued, together with the questions submitted in the examination of such applicant and the answers thereto, and such secretary shall deposit with the department of health all records not needed for the current use of his examining board. [S., '13, § 2583-a; 39 G. A., ch. 77, § 6; 40 Ex. G. A., H. F. 262, § 92-a8.]

CHAPTER 116

PRACTICE OF MEDICINE AND SURGERY

2538. Persons engaged in practice of medicine.
2539. Persons not engaged in practice of medicine.

2538. Persons engaged in practice of medicine. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery:

1. Persons who publicly profess to be physicians or surgeons or who publicly profess to assume the duties incident to the practice of medicine or surgery.

2. Persons who prescribe and furnish medicine for human ailments or treat the same by surgery. [C., '97, § 2579; 39 G. A., ch. 243, § 1; 40 Ex. G. A., H. F. 262, § 93.]

2539. Persons not engaged in practice of medicine. The preceding section shall not be construed to include the following classes of persons:

1. Persons who advertise or sell patent or proprietary medicines.

2540. Requirements for license.

2541. Recognition of certificates of national board.

2. Persons who advertise, sell, or prescribe natural mineral waters flowing from wells or springs.

3. Students of medicine or surgery who have completed at least two years' study in a medical school, approved by the medical examiners, and who prescribe medicine under the supervision of a licensed physician and surgeon, or who render gratuitous service to persons in case of emergency.

4. Licensed podiatrists, "osteopaths", "osteopaths and surgeons", chiropractors, nurses, dentists, optometrists, and pharmacists who are exclusively engaged in the practice of their respective professions.

5. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or to physicians and surgeons licensed in another state, when incidentally called into

this state in consultation with a physician and surgeon licensed in this state. [C., '97, §§ 2579, 2581; S., '13, § 2581; 39 G. A., ch. 243, § 1; 40 Ex. G. A., H. F. 262, § 94.]

2540. Requirements for license. Each applicant for a license to practice medicine shall:

1. Present a diploma issued by a medical college approved by the Medical Examiners.

2. Pass an examination prescribed by the Medical Examiners in the subjects of anatomy, chemistry, physiology, materia medica and therapeutics, obstetrics, pathology, theory and practice, and surgery; but in the subjects of materia medica and therapeutics, and theory and practice, each applicant shall be examined in accordance with the teachings of the school of medicine which he desires to practice. 1.

[C., '97, § 2582; S., '13, § 2582; 40 Ex. G. A., H. F. 262, § 95.] 2. [C., '97, § 2576; S., '13, § 2576; 40 Ex. G. A., H. F. 262, § 95.]

NOTE: For general provision as to approved colleges, see § 2469.

2541. Recognition of certificates of national board. The state department of health may, with the approval of the Medical Examiners, accept in lieu of the examination prescribed in the preceding section a certificate of examination issued by the national board of medical examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the fee prescribed for licenses issued under reciprocal agreements. [S., '13, § 2582; 39 G. A., ch. 136, § 1; 40 Ex. G. A., H. F. 262, § 96.]

CHAPTER 117

PRACTICE OF PODIATRY

2542. Persons engaged in practice of podiatry.

2543. Persons not engaged in practice of podiatry.

2544. Requirements for license.

2542. Persons engaged in practice of podiatry. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of podiatry:

1. Persons who publicly profess to be podiatrists or who publicly profess to assume the duties incident to the practice of podiatry.

2. Persons who diagnose and give medical or surgical treatment to ailments of the human foot. [39 G. A., ch. 113, §§ 1, 2; 40 Ex. G. A., H. F. 262, § 97.]

2543. Persons not engaged in practice of podiatry. The preceding section shall not be construed to include:

1. Licensed "physicians and surgeons" nor licensed "osteopaths and surgeons".

2. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state. [39 G. A., ch. 113, § 9; 40 Ex. G. A., H. F. 262, § 98.]

2544. Requirements for license. Every applicant for a license to practice podiatry shall:

1. Present a diploma issued by a school of podiatry approved by the Podiatry Examiners.

2. Pass an examination prescribed by the Podiatry Examiners in the subjects of anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, and therapeutic, clinical, and orthopedic podiatry, but said subjects shall be limited in scope to the treatment of the foot. [39 G. A., ch. 113, §§ 3, 4; 40 Ex. G. A., H. F. 262, § 99.]

2545. Requirements for approved school.

2546. Amputations—general anesthetics.

2547. Use of title or abbreviation.

2545. Requirements for approved school. No school of podiatry shall be approved by the Podiatry Examiners as a school of recognized standing unless said school:

1. Requires for graduation or for the receipt of any podiatric degree the completion of a course of study covering a period of at least two years.

2. Gives an adequate course of study in the subjects enumerated in paragraph two of the preceding section.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified. [39 G. A., ch. 113, § 3; 40, Ex. G. A., H. F. 262, § 100.]

NOTE: For general provision as to approved schools, see § 2469.

2546. Amputations—general anesthetics. A license to practice podiatry shall not authorize the licensee to amputate the human foot or toe, or use any anesthetic other than local. [39 G. A., ch. 113, § 9; 40 Ex. G. A., H. F. 262, § 101.]

2547. Use of title or abbreviation. Every licensee shall be designated as a registered podiatrist and he shall not use any title or abbreviation without the designation "licensed podiatrist", "practice limited to the foot", nor mislead the public in any way as to his limited qualifications to treat human ailments. [39 G. A., ch. 113, § 5; 40 Ex. G. A., H. F. 262, § 102.]

NOTE: For general provision relative to titles and degrees, see §§ 2509, 2510.

CHAPTER 118

PRACTICE OF OSTEOPATHY AND SURGERY

2548. Persons engaged in practice of osteopathy.
 2549. Persons not engaged in practice of osteopathy.
 2550. Requirements for license—osteopathy.

2551. Requirements for license—osteopathy and surgery.
 2552. Preliminary education—examination.
 2553. Requirements for approved college.
 2554. Drugs and operative surgery prohibited.

2548. Persons engaged in practice of osteopathy. For the purpose of this title:

1. The following classes of persons shall be deemed to be engaged in the practice of osteopathy:

a. Persons publicly professing to be osteopaths or publicly professing to assume the duties incident to the practice of osteopathy.

b. Persons who treat human ailments by that system of the healing art which places the chief emphasis on the structural integrity of the body mechanism as being the most important factor for maintaining the organism in health.

2. The following classes of persons shall be deemed to be engaged in the practice of osteopathy and surgery:

a. Persons publicly professing to be osteopaths and surgeons or publicly professing to assume the duties incident to the practice of osteopathy and surgery.

b. Persons who treat human ailments by osteopathy and surgery. [39 G. A., ch. 77, § 3; 40 Ex. G. A., H. F. 262, § 103.]

2549. Persons not engaged in practice of osteopathy. The preceding section shall not be construed to include the following classes of persons:

1. Licensed physicians and surgeons, podiatrists, nurses, and dentists, who are exclusively engaged in the practice of their respective professions.

2. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or to "osteopaths" or "osteopaths and surgeons", licensed in another state, when incidentally called into this state in consultation with an "osteopath" or "osteopath and surgeon", licensed in this state. [39 G. A., ch. 77, § 4; 40 Ex. G. A., H. F. 262, § 104.]

2550. Requirements for license—osteopathy. Every applicant for a license to practice osteopathy shall:

1. Present a diploma issued by a college of osteopathy approved by the Osteopathic Examiners.

2. Pass an examination in the science of osteopathy and the practice of the same as prescribed by the Osteopathic Examiners, including minor surgery. [S., '13, § 2583-a; 39

G. A., ch. 77, §§ 8, 11; 40 Ex. G. A., H. F. 262, § 105.]

2551. Requirements for license—osteopathy and surgery. In addition to the requirements of the preceding section, every applicant for a license to practice osteopathy and surgery shall:

1. Present satisfactory evidence that he has completed either:

a. A two year post-graduate course of nine months each, in an accredited college of osteopathy, involving a thorough and intensive study in the subject of surgery as prescribed by the Osteopathic Examiners, or

b. A one year post-graduate course of nine months, as prescribed in the preceding paragraph, and, in addition thereto, has completed a one year course of training as a surgical assistant in a hospital having at least twenty-five beds for patients and equipped for doing major surgical work.

2. Pass an examination as prescribed by the Osteopathic Examiners in the subject of surgery, which shall be of such character as to thoroughly test the qualifications of the applicant as a practitioner of surgery. [S., '13, § 2583-a; 39 G. A., ch. 77, §§ 9, 11; 40 Ex. G. A., H. F. 262, § 106.]

2552. Preliminary education—examination. The Osteopathic Examiners may, notwithstanding the presentation of a diploma from an osteopathic college in good standing, subject the applicant to an examination to ascertain whether he has the educational attainments usually possessed by one who has completed the regular course of study in an accredited high school. [39 G. A., ch. 77, § 7; 40 Ex. G. A., H. F. 262, § 107.]

NOTE: For general provision as to accredited high schools, see § 2468.

2553. Requirements for approved college. No college of osteopathy shall be approved by the Osteopathic Examiners as a college of recognized standing unless said college:

1. Requires for admission to its course of study a preliminary education equal to the requirements for graduation from an accredited high school or other secondary school.

2. Requires for graduation or for the receipt of any osteopathic degree the completion of a

course of study covering a period of not less than four school years of nine months each year in actual continuous attendance, of which not more than one school year is completed in any period of twelve months and during which time the following subjects are taught for at least the number of hours specified:

Subject	hours
Anatomy (descriptive, regional, applied surgical, and dissection)	600
Embryology	70
Chemistry (advanced to include organic and physiological chemistry and toxicology)	300
Histology	180
Physiology	300
Pathology	240
Bacteriology	150
Hygiene	60
X-Radiance and electrical diagnosis.....	36
Hydrotherapy	16
Dietetics	32
Osteopathy:	
a. Principles of osteopathy.	
b. Osteopathic technique.	
c. Practice of osteopathy, to include diseases of the nervous system, alimentary tract, heart and vascular system, genito-urinary diseases, ductless glands, metabolism, respiratory tract, bone and joint diseases, corrective gymnastics, acute and infectious diseases, pediatrics, dermatology, syphilis, psychiatry, diagnosis (phys-	

ical, laboratory, and differential), clinical practice and case recording....	1,466
Minor surgery with emphasis on fractures, dislocations, principles of surgery, surgical diagnosis, orthopedics, orificial and chemical	400
Eye, ear, nose, and throat.....	180
Gynecology	160
Obstetrics	200
Professional ethics and efficiency.....	16
Jurisprudence	16

Total

4,422
The number of hours herein prescribed for the study of any subject may be reduced not more than thirty per cent, but the total number of hours prescribed shall not be reduced.

3. Publishes in a regularly issued catalogue the requirements for admission, graduation, and degrees as herein specified. [S., '13, § 2583-a; 39 G. A., ch. 77, §§ 8, 9-a, 10; 40 Ex. G. A., H. F. 262, § 108.]

NOTE: For general provision as to approved high schools and colleges, see §§ 2468, 2469.

2554. Drugs and operative surgery prohibited. A license to practice "osteopathy" or "osteopathy and surgery" shall not authorize the licensee to prescribe or give internal curative medicines and a license to practice "osteopathy" shall not authorize the licensee to engage in major operative surgery. [S., '13, § 2583-b; 39 G. A., ch. 77, § 15; 40 Ex. G. A., H. F. 262, § 109.]

CHAPTER 119

PRACTICE OF CHIROPRACTIC

- 2555. Chiropractic defined.
- 2556. Persons not engaged in practice of chiropractic.
- 2557. Requirements for license.

2555. Chiropractic defined. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of chiropractic:

1. Persons publicly professing to be chiropractors or publicly professing to assume the duties incident to the practice of chiropractic.

2. Persons who treat human ailments by the adjustment by hand of the articulations of the spine or by other incidental adjustments. [39 G. A., ch. 7, § 10; 40 Ex. G. A., H. F. 262, § 110.]

2556. Persons not engaged in practice of chiropractic. The preceding section shall not be construed to include the following classes of persons:

1. Licensed physicians and surgeons, licensed "osteopaths", and licensed "osteopaths and surgeons" who are exclusively engaged in the practice of their respective professions.

- 2558. Requirements for approved college.
- 2559. Operative surgery—drugs—osteopathy.
- 2560. Signs—display of word "chiropractor".

2. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or to chiropractors licensed in another state, when incidentally called into this state in consultation with a chiropractor licensed in this state.

3. Students of chiropractic who have entered upon a regular course of study in a chiropractic college approved by the Chiropractic Examiners, who practice chiropractic under the direction of a licensed chiropractor and in accordance with the rules of said examiners. [39 G. A., ch. 7, § 10; 40 G. A., ch. 38, § 6; 40 Ex. G. A., H. F. 262, § 111.]

2557. Requirements for license. Every applicant for a license to practice chiropractic shall:

1. Present satisfactory evidence that he possesses a preliminary education equal to the

requirements for graduation from an accredited high school or other secondary school.

2. Present a diploma issued by a college of chiropractic approved by the Chiropractic Examiners.

3. Pass an examination prescribed by the Chiropractic Examiners in the subjects of anatomy, physiology, symptomatology and diagnosis, hygiene and sanitation, chemistry, histology, pathology, and principles and practice of chiropractic, including a clinical demonstration of vertebral palpation, nerve tracing and adjusting. [39 G. A., ch. 7, §§ 1, 6; 40 G. A., ch. 38, § 1; 40 Ex. G. A., H. F. 262, § 112.]

2558. Requirements for approved college. No college of chiropractic shall be approved by the Chiropractic Examiners as a college of recognized standing unless said college:

1. Requires for graduation or for the receipt of any chiropractic degree the completion of a course of study covering a period of not less than three school years of six months each year in actual continuous attendance.

2. Gives an adequate course of study in the subjects enumerated in paragraph three of the preceding section, and including practical clinical instruction.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified. [39 G. A., ch. 7, § 8; 40 G. A., ch. 38, § 5; 40 Ex. G. A., H. F. 262, § 113.]

NOTE: For general provision as to approved colleges, see § 2469.

2559. Operative surgery—drugs—osteopathy. A license to practice chiropractic shall not authorize the licensee to practice operative surgery, osteopathy, nor administer or prescribe any drug or medicine included in materia medica. [39 G. A., ch. 7, § 10; 40 Ex. G. A., H. F. 262, § 114.]

2560. Signs—display of word “chiropractor”. Every licensee shall place upon all signs used by him, and display prominently in his office the word “chiropractor”. [39 G. A., ch. 7, § 10; 40 Ex. G. A., H. F. 262, § 115.]

NOTE: For general provision relative to use of titles and degrees, see §§ 2509, 2510.

CHAPTER 120

PRACTICE OF NURSING

2561. Nursing defined.

2562. Certain nurses exempted.

2561. Nursing defined. For the purpose of this title any person shall be deemed to be engaged in the practice of nursing who practices nursing as a graduate or registered nurse or publicly professes to be a graduate or registered nurse and to assume the duties incident to such profession. [S., '13, § 2575-a32; 40 Ex. G. A., H. F. 262, § 116.]

2562. Certain nurses exempted. The preceding section shall not apply to any person nursing the sick with or without pay who does not in any way assume to be a registered or graduate nurse, but such person shall not use the abbreviations “R. N.” or “G. N.” [S., '13, §§ 2575-a28, 2575-a31, 2575-a32; 40 Ex. G. A., H. F. 262, § 117.]

NOTE: For general provision relative to use of titles and degrees, see §§ 2509, 2510.

2563. Requirements for license. Every applicant for a license to practice nursing shall:

1. Present a diploma issued by a nurses' training school approved by the Nurse Examiners.

2. Pass an examination prescribed by the Nurse Examiners in the subjects of elementary

2563. Requirements for license.

2564. Requirements for schools of good standing.

hygiene, anatomy, physiology, materia medica, dietetics, practical nursing, medical and surgical nursing, obstetrics, nursing of children, the rules of the state department of health relating to communicable diseases, and quarantine, and other proper subjects.

1. [S., '13, § 2575-a29; 40 Ex. G. A., H. F. 262, § 118.] 2. [S., '13, § 2575-a30; 40 Ex. G. A., H. F. 262, § 118.]

2564. Requirements for schools of good standing. No training school shall be approved by the Nurse Examiners as a school of recognized standing unless said school is attached to a general hospital and:

1. Requires for graduation or any degree the completion of a course of study covering a period of at least three years of actual attendance.

2. Gives an adequate course of study in the subjects enumerated in paragraph 2 of the preceding section.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified. [S., '13, § 2575-a29; 40 Ex. G. A., H. F. 262, § 119.]

NOTE: For general provision as to approved schools, see § 2469.

CHAPTER 121

PRACTICE OF DENTISTRY

- 2565. Practice of dentistry defined.
- 2566. Persons not engaged in practice of dentistry.
- 2567. Requirements for license.
- 2568. Names of employed dentists to be posted.

2565. Practice of dentistry defined. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of dentistry:

1. Persons publicly professing to be dentists, dental surgeons, or skilled in the science of dentistry, or publicly professing to assume the duties incident to the practice of dentistry.
2. Persons who treat, or attempt to correct by any medicine, appliance, or method, any disorder, lesion, injury, deformity, or defect of the oral cavity, teeth, gums, or maxillary bones of the human being, or give prophylactic treatment to any of said organs. [S., '13, § 2600-o; 40 Ex. G. A., H. F. 262, § 120.]

2566. Persons not engaged in practice of dentistry. The preceding section shall not be construed to include the following classes:

1. Students of dentistry who practice dentistry upon patients at clinics in connection with their regular course of instruction at the state dental college.
2. Licensed "physicians and surgeons" or licensed "osteopaths and surgeons" who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their professions.
3. Persons who are members of an incorporated society and practice dentistry solely for and among the members of such incorporated society without charge.
4. Persons licensed to practice dental hygiene who are exclusively engaged in the practice of said profession. 1. [S., '13, §§ 2600-l, 2600-o; 40 Ex. G. A., H. F. 262, § 121.] 2. [S., '13, §§ 2600-l, 2600-o; 40 Ex. G. A., H. F. 262, § 121.] 3. [S., '13, § 2600-l; 40 Ex. G. A., H. F. 262, § 121.] 4. [37 G. A., ch. 309, § 3; 40 Ex. G. A., H. F. 262, § 121.]

2567. Requirements for license. Every applicant for a license to practice dentistry shall:

1. Present a diploma issued by a dental college approved by the Dental Examiners.
2. Pass an examination prescribed by the Dental Examiners in the science of dentistry and the practice of dental surgery. [S., '13, § 2600-d; 40 Ex. G. A., H. F. 262, § 122.]

NOTE: For general provision as to approved colleges, see § 2469.

- 2569. Employment of unlicensed dentist.
- 2570. Dentists to practice under their own names.
- 2571. Practice of dental hygiene—defined.
- 2572. Requirements for dental hygienists.
- 2573. Requirements for approved hygiene school.

2568. Names of employed dentists to be posted. Every person who owns, operates, or controls a dental office in which anyone other than himself is practicing dentistry shall display the name of such person in a conspicuous manner at the public entrance to said office. [S., '13, § 2600-o1; 40 Ex. G. A., H. F. 262, § 123.]

2569. Employment of unlicensed dentist. No person owning or conducting any place where dental work of any kind is done or contracted for, shall employ or permit any unlicensed dentist to practice dentistry in said place, but persons who are not licensed dentists may perform laboratory work. [S., '13, § 2600-o2; 40 Ex. G. A., H. F. 262, § 124.]

2570. Dentists to practice under their own names. No person shall operate any place in which dentistry is practiced under any other name than his own, or display, in connection with his practice, on any advertising matter any other than his own name; but two or more licensed dentists who are associated in the practice may use all of their names, and a widow, heir, or any legal representative of a deceased dentist, may operate such office for a reasonable time for the purpose of disposing of the same. [37 G. A., ch. 309, § 1; 40 Ex. G. A., H. F. 262, § 125.]

2571. Practice of dental hygiene defined. Any woman may be licensed as a dental hygienist and such license shall authorize her to remove lime deposits, accretions, and stains upon the exposed surfaces of the teeth and directly beneath the free margins of the gums, but such practice must be carried on in a dental office, a public or private school, or in a public institution, and under the supervision of a licensed dentist. Dental hygienists shall not otherwise engage in the practice of dentistry. [37 G. A., ch. 309, § 3; 40 Ex. G. A., H. F. 262, § 126.]

2572. Requirements for dental hygienists. Every applicant for a license to practice dental hygiene shall:

1. Present satisfactory evidence of a preliminary education equivalent to two years in an accredited high school or other secondary school.

2. Present a diploma from a training school for dental hygiene approved by the Dental Examiners.

3. Pass an examination prescribed by the Dental Examiners in the subjects taught in the curriculum of an accredited training school for dental hygiene. [37 G. A., ch. 309, § 3; 40 Ex. G. A., H. F. 262, § 127.]

2573. Requirements for approved hygiene school. No training school for dental hygiene shall be approved by the Dental Examiners as a school of recognized standing unless said school:

1. Requires for graduation or any degree the completion of a course of study covering a period of not less than one year of at least nine months in actual continuous attendance.

2. Gives a suitable course covering the subject of dental hygiene.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as specified herein. [37 G. A., ch. 309, § 3; 40 Ex. G. A., H. F. 262, § 128.]

NOTE: For general provision as to approved schools, see § 2469.

CHAPTER 122

PRACTICE OF OPTOMETRY

2574. Optometry defined.

2575. Persons not engaged in the practice of optometry.

2574. Optometry defined. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of optometry:

1. Persons who employ any means other than drugs for the measurement of the powers of vision of the human eyes, and adapt lenses for aiding the same.

2. Persons who allow the public to use any mechanical device for such purpose.

3. Persons who publicly profess to be optometrists and to assume the duties incident to said profession. [S., '13, § 2583-g; 40 Ex. G. A., H. F. 262, § 129.]

2575. Persons not engaged in the practice of optometry. This chapter shall not be construed to include the following classes:

1. Merchants or dealers who sell glasses as merchandise in an established place of business and who do not profess to be optometrists or practice optometry as herein defined.

2. Licensed practitioners of medicine. [S., '13, § 2583-q; 40 Ex. G. A., H. F. 262, § 130.]

2576. Requirements for license. Every applicant for a license to practice optometry shall:

1. Present satisfactory evidence of a preliminary education equivalent to at least four years' study in an accredited high school or other secondary school.

2576. Requirements for license.

2577. Requirements for approved school.

2. Present a diploma from an accredited school of optometry.

3. Pass an examination prescribed by the Optometry Examiners in the subjects of physiology of the eye, optical physics, anatomy of the eye, ophthalmology, and practical optometry. [S., '13, § 2583-l; 40 Ex. G. A., H. F. 262, § 131.]

NOTE: For general provision as to accredited high schools, see § 2468.

2577. Requirements for approved school. No school of optometry shall be approved by the Optometry Examiners as a school of recognized standing unless said school:

1. Requires for graduation or any degree the completion of a course of study covering a period of at least two school years of nine months each year of actual continuous attendance.

2. Gives an adequate course of study in which at least one hundred fifty hours of the instruction are devoted to each of the subjects enumerated in paragraph three of the preceding section.

3. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified. [S., '13, § 2583-l; 40 Ex. G. A., H. F. 262, § 132.]

NOTE: For general provision as to approved schools, see § 2469.

CHAPTER 123

PRACTICE OF PHARMACY

- 2578. Persons engaged in practice of pharmacy.
- 2579. Persons not engaged in practice of pharmacy.
- 2580. Definitions.

2578. Persons engaged in practice of pharmacy. For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of pharmacy:

- 1. Persons who engage in the business of selling, or offering or exposing for sale, drugs and medicines at retail.
- 2. Persons who compound or dispense drugs and medicines or fill the prescriptions of licensed physicians and surgeons, dentists, or veterinarians. [C., '97, § 2588; S. S., '15, § 2588; 40 Ex. G. A., H. F. 262, § 133.]

2579. Persons not engaged in practice of pharmacy. The preceding section shall not be construed to include the following classes:

- 1. Persons who assist in the selling or dispensing of drugs and medicines under the supervision of a licensed pharmacist.
- 2. Persons who sell, offer or expose for sale, completely denatured alcohol or concentrated lye, insecticides or fungicides in original packages.
- 3. Persons licensed to practice medicine, dentistry, or veterinary medicine who dispense drugs and medicines as an incident to the practice of their professions.
- 4. Persons who sell, offer or expose for sale proprietary medicines or domestic remedies which are not in themselves poisonous or in violation of the law relative to intoxicating liquors. [C., '97, § 2588; S. S., '15, § 2588; 40 Ex. G. A., H. F. 262, § 134.]

NOTE: For title on "Intoxicating Liquors", see chs. 94 to 104, inc.

2580. Definitions. For the purposes of this chapter:

- 1. "Drugs and medicines" shall include all substances and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or animals.

- 2581. Requirements for license.
- 2582. Unlicensed person not to dispense drugs.
- 2583. Requirements for approved colleges.

2. "Pharmacy" shall mean a drug store in which the prescriptions of licensed physicians and surgeons, dentists, or veterinarians are compounded. [S., '13, § 4999-a33; 40 Ex. G. A., H. F. 262, § 135.]

2581. Requirements for license. Every applicant for a license to practice pharmacy shall:

1. Present satisfactory evidence of possessing the qualifications enumerated in one of the following paragraphs:

a. The completion of two years' work in an accredited college of pharmacy and at least two years of practical experience as a clerk under the supervision of a licensed pharmacist in a pharmacy.

b. The completion of three years' work in an accredited college of pharmacy and at least one year of practical experience as specified in the preceding paragraph.

2. Pass an examination prescribed by the Pharmacy Examiners in the science and practice of pharmacy. [S., '13, § 2589-b; 37 G. A., ch. 430, §§ 1, 3; 40 Ex. G. A., H. F. 262, § 136.]

2582. Unlicensed person not to dispense drugs. No licensed pharmacist shall allow anyone who is not a licensed pharmacist to sell, or offer or expose for sale, or dispense drugs and medicines, or fill the prescriptions of licensed physicians, dentists, and veterinarians, unless the same be done under the supervision of a licensed pharmacist. [C., '97, § 2588; S. S., '15, § 2588; 40 Ex. G. A., H. F. 262, § 137.]

2583. Requirements for approved colleges. After July 1, 1925, no college of pharmacy shall be approved by the Pharmacy Examiners as a college of recognized standing unless the entrance and graduation requirements are equivalent to those prescribed from time to time by the American conference of pharmaceutical faculties. [S., '13, § 2589-b; 37 G. A., ch. 430, § 2; 40 Ex. G. A., H. F. 262, § 138.]

NOTE: For general provision as to approved colleges, see § 2469.

CHAPTER 124

PRACTICE OF EMBALMING

2584. Embalming defined.

2584. Embalming defined. For the purpose of this title any person shall be deemed to be engaged in the practice of embalming who makes a practice of preparing the dead bodies of human beings for burial or other final disposition or who publicly professes to be an embalmer and to assume the duties incident to said profession. [S., '13, § 2575-a36; 40 Ex. G. A., H. F. 262, § 139.]

2585. Requirements for license. Every applicant for a license to practice embalming shall:

1. Present satisfactory evidence of two years of practical experience under a licensed embalmer in this state, or one year of such practical experience, and the completion of the regular course of instruction in an accredited school of embalming.

2585. Requirements for license.

2. Present satisfactory evidence of having actually embalmed ten bodies, under the supervision of a licensed embalmer.

3. Pass an examination prescribed by the Embalmer Examiners in the subjects of anatomy, sanitary science, the care, disinfection, preservation, transportation, and burial or other final disposition of dead bodies, and the rules of the state department of health relating to communicable diseases and quarantine.

4. At the request of the Embalmer Examiners, demonstrate his proficiency as an embalmer by operations on a cadaver. [S., '13, §§ 2575-a37, 2575-a38; 40 Ex. G. A., H. F. 262, § 140.]

NOTE: For general provision as to approved schools, see § 2469.

TITLE IX

AGRICULTURE, HORTICULTURE, AND ANIMAL INDUSTRY

CHAPTER 125

DEPARTMENT OF AGRICULTURE

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| 2586. Definitions and rules of construction. | 2595. Iowa Year Book of Agriculture. |
| 2587. Object of department. | 2596. Assessor to collect statistics. |
| 2588. Cooperation with other agricultural agencies. | 2597. Returns by assessor. |
| 2589. Location of department. | 2598. Official seal. |
| 2590. Powers and duties. | 2599. Bonds of employees. |
| 2591. Additional duties. | 2600. Biennial report. |
| 2592. Notice of adoption of rules. | 2601. Duty of peace officers to enforce rules. |
| 2593. Time rules take effect. | 2602. Interference with department. |
| 2594. Publication and distribution of rules. | 2603. State farmers' institute. |

2586. Definitions and rules of construction. For the purposes of this title, unless otherwise provided:

1. "Secretary" shall mean the secretary of agriculture.

2. "Department" shall mean the Iowa department of agriculture and wherever such department is required or authorized to do an act, unless otherwise provided, it shall be construed as authorizing performance by an officer, regular assistant, or duly authorized agent of such department.

3. "Person" shall include an individual, a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in such capacity shall also be liable for violation of this title. [S., '13, § 2341-f; 39 G. A., ch. 173, § 2; 40 G. A., ch. 50, § 1; 40 Ex. G. A., H. F. 65, § 1.]

2587. Object of department. The object of the department of agriculture shall be:

1. To encourage, promote, and advance the interests of agriculture, including horticulture, live stock industry, dairying, cheese making, poultry raising, bee keeping, forestry, production of wool, and other kindred and allied industries.

2. To promote and devise methods of conducting said industries with the view of increasing production and facilitating an adequate distribution of the same at the least cost to the producer.

3. To administer efficiently and impartially the inspection service of the state as is now or may hereafter be placed under its supervision.

[S., '13, §§ 1657-b, 1657-g; 40 G. A., ch. 46, §§ 1, 2, 15, 16; 40 Ex. G. A., H. F. 65, § 2.]

2588. Cooperation with other agricultural agencies. The department of agriculture and the Iowa state college of agriculture and mechanic arts shall cooperate in all ways that may be beneficial to the agricultural interests of the state, but without duplicating research or educational work conducted by said college. Nothing herein contained shall be construed to subordinate either the department or the college in their several spheres of action.

The department of agriculture is hereby authorized to cooperate with the United States department of agriculture as the Iowa department may deem wise and just. [C., '97, § 1677; S., '13, § 1657-g; 38 G. A., ch. 287, § 18; 39 G. A., ch. 178, § 1; 40 G. A., ch. 46, § 2; 40 Ex. G. A., H. F. 65, § 3.]

2589. Location of department. The department of agriculture shall be located at the seat of government. [C., '97, § 1678; S. S., '15, § 2507; 39 G. A., ch. 178, § 2; 40 G. A., ch. 46, § 8; 40 Ex. G. A., H. F. 65, § 4.]

2590. Powers and duties. The secretary of agriculture shall be the head of the department of agriculture which shall:

1. Carry out the objects for which the department is created and maintained.

2. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it.

3. Consolidate the inspection service of the state in respect to the laws administered by the department so as to eliminate duplication of inspection in so far as practicable.

4. Maintain a weather and crop bureau which shall, in cooperation with the United States weather bureau, collect and disseminate weather statistics and meteorological data, and promote knowledge of the meteorology and climatology of the state. Said bureau shall be in charge of a director who shall be appointed by the secretary of agriculture, and shall be an officer of the United States weather bureau, if one be detailed for that purpose by the federal government.

5. Establish volunteer weather and crop service stations in one or more places in each county, appoint observers thereat, supervise such stations, receive reports of meteorological events and crop conditions, and tabulate the same for permanent record.

6. Issue weekly weather and crop bulletins from April first to October first of each year, and edit and cause to be published monthly weather, crop, and live stock reports, containing meteorological and agricultural matter of public interest.

7. Compile statistics and information, in cooperation with the federal government, relative to crop production, farm economics, the production and marketing of beef, pork, mutton, wool, poultry, milk, butter, cheese, and all other dairy and agricultural products, in so far as such statistical information may be deemed of value to agriculture and its allied interests in the state. Such statistics when published shall constitute the official agricultural statistics of the state, and shall be published in the "Iowa Year Book of Agriculture".

8. Inspect and supervise all cold storage plants and food producing or distributing establishments including the furniture, fixtures, utensils, machinery, and other equipment so as to prevent the production, preparation, packing, storage, or transportation of food in a manner detrimental to its character or quality.

9. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of this title and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department. 1. [40 Ex. G. A., H. F. 65, § 5.] 2. [S., '13, § 1657-g; 40 G. A., ch. 46, § 2; 40 Ex. G. A., H. F. 65, § 5.] 3. [40 G. A., ch. 334, § 32; 40 Ex. G. A., H. F. 65, § 5.] 4. [C., '97, §§ 1677, 1678; 39 G. A., ch. 178, §§ 1, 2; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 65, § 5.] 5. [C., '97, §§ 1679, 1680; S., '13, § 1679; 39 G. A., ch. 178, § 5; 40 Ex. G. A., H. F. 65, § 5.] 6. [C., '97, § 1679; S., '13, § 1679; 39 G. A., ch. 178, § 5; 40 Ex. G. A., H. F. 65, § 5.] 7. [C., '97, § 1680; S., '13, § 1363; 39 G. A., ch. 178, §§ 3, 5; 40 G. A., ch. 46, § 2; 40 Ex. G. A., H. F. 65, § 5.] 8. [S., '13, §§ 4527-m, 2528-d5; 40 Ex. G. A., H. F. 65, § 5.] 9. [S., '13, § 2528-d10; 38 G. A., ch. 287, § 1; 40 Ex. G. A., H. F. 65, § 5.]

2591. Additional duties. In addition to the duties imposed by the preceding section the department shall enforce the law relative to:

1. Forest and fruit-tree reservations, chapter 126.

2. Registration of animals, chapter 127.

3. Infectious and contagious diseases among animals, chapter 128.

4. Eradication of bovine tuberculosis, chapter 129.

5. Hog cholera virus and serum, chapter 130.

6. Use and disposal of dead animals, chapter 131.

7. Practice of veterinary medicine and surgery, chapter 132.

8. Hotels, restaurants, and food establishments, chapter 133.

9. Cold storage, chapter 134.

10. Regulation and inspection of foods, drugs, and other articles, title 10, but chapters 155 and 156 of said title shall be enforced as therein provided.

11. State aid received by certain associations as provided in chapters 137 to 143, inclusive. 1. [40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 65, § 6.] 2. [40 G. A., ch. 46, §§ 1, 15, 16; 40 Ex. G. A., H. F. 65, § 6.] 3. [40 G. A., ch. 46, §§ 11, 12; 40 Ex. G. A., H. F. 65, § 6.] 4. [40 G. A., ch. 46, §§ 11, 12; 40 Ex. G. A., H. F. 65, § 6.] 5. [40 G. A., ch. 46, §§ 11, 12; 40 Ex. G. A., H. F. 65, § 6.] 6. [40 G. A., ch. 46, §§ 11, 12; 40 Ex. G. A., H. F. 65, § 6.] 7. [40 G. A., ch. 46, §§ 11, 12; 40 Ex. G. A., H. F. 65, § 6.] 8. [40 G. A., ch. 46, §§ 1, 13, 14; 40 Ex. G. A., H. F. 65, § 6.] 9. [40 G. A., ch. 46, §§ 1, 11, 12; 40 Ex. G. A., H. F. 65, § 6.] 10. [40 G. A., ch. 46, §§ 1, 11, 12; 40 Ex. G. A., H. F. 65, § 6.] 11. [40 G. A., ch. 46, §§ 1, 15, 16; 40 Ex. G. A., H. F. 65, § 6.]

2592. Notice of adoption of rules. Immediately after the adoption of any rule, the department shall forward a certified copy thereof to the auditor of each county. When any rule is amended, notice of such amendment shall be given in the same manner. [40 Ex. G. A., H. F. 65, § 7.]

2593. Time rules take effect. The rules of the department shall take effect and be in force in the respective counties from and after the date stated in the certified copies of said rules which are forwarded to the county auditors. [40 Ex. G. A., H. F. 65, § 8.]

2594. Publication and distribution of rules. A sufficient number of the rules of the department shall be published from time to time to supply the various needs for the same. A copy of the rules shall be furnished to any resident of the state upon request. [40 Ex. G. A., H. F. 65, § 9.]

2595. Iowa Year Book of Agriculture. The Iowa Year Book of Agriculture shall contain such information and data as in the discretion of the secretary concern the agricultural interests of the state, including data relative to or the reports of:

1. The state fair board, the county and district fair societies, the farmers' institutes and short courses, and the farm aid associations.

2. The state horticultural society, the state dairy association, the beef cattle producers'

association, the corn and small grain growers' association, and the poultry associations.

3. Other agricultural, horticultural, and live stock associations in the state organized for the promotion of agriculture.

Any section of such year book may, on the order of the secretary, be published in pamphlet or book form for separate distribution. [R., 60, § 1703; C., '73, § 1107; C., '97, § 1656; S., '13, § 1657-k; 40 Ex. G. A., H. F. 65, § 9-a1.]

2596. Assessor to collect statistics. Agricultural statistics shall be collected each year by the township, town, and city assessors under the supervision of the department, which shall design and distribute blank forms and instructions therefor. [C., '97, § 1363; S., '13, § 1363; 39 G. A., ch. 178, § 3; 40 Ex. G. A., H. F. 65, § 10.]

2597. Returns by assessor. The assessor shall require each person whose property is listed, to make answers to such inquiries as may be necessary to enable him to return the foregoing statistics, carefully footed and summarized, to the department on or before the fifteenth day of April of each year. [C., '97, § 1363; S., '13, § 1363; 39 G. A., ch. 178, § 4; 40 Ex. G. A., H. F. 65, § 11.]

2598. Official seal. The department shall have an official seal, and every commission, license, order, or other paper executed by or under the authority of the department may be attested with such seal. [S., '13, § 4999-a31b; 38 G. A., ch. 284, § 2; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 65, § 12.]

2599. Bonds of employees. The secretary shall require every inspector or employee who collects fees or handles funds belonging to the state to give an official bond, properly conditioned and signed by sufficient sureties, in a sum to be fixed by the secretary, which bond shall be approved by him and filed in the office of the secretary of state. This section shall not apply to the deputy secretary of agricul-

ture. [C., '97, § 2503; S. S., '15, §§ 2503, 2514-p; 40 Ex. G. A., H. F. 65, § 13.]

NOTE: For bond of deputy, see § 1069.

2600. Biennial report. The secretary shall make a report to the governor in each even-numbered year, at the time provided by law, which shall include all receipts and disbursements for the year, and such information and statistics concerning the enforcement of the several laws administered by the department as may be thought useful, with such suggestions as to legislation as may be deemed advisable. [C., '97, §§ 1680, 2515; S., '13, § 1657-g; S. S., '15, §§ 2509-a, 2515; 39 G. A., ch. 178, § 5; 40 Ex. G. A., H. F. 65, § 14.]

NOTE: For time of making report, see § 246.

2601. Duty of peace officers to enforce rules. All peace officers of the state when called upon by the secretary or any officer or authorized agent of the department shall enforce its rules and execute its lawful orders within their respective jurisdictions, and upon the request of the secretary such officers shall make such inspections as directed by the secretary and report the results thereof to him. [40 Ex. G. A., H. F. 65, § 15.]

2602. Interference with department. Any person resisting or interfering with the department, its employees or authorized agents, in the discharge of any duty imposed by law shall be guilty of a misdemeanor. [C., '97, § 2526; S., '13, §§ 2528-c, 2528-f3, 4999-a25, 4999-a39, 5077-a23; S., '15, § 3009-r; 38 G. A., ch. 287, § 6; 39 G. A., ch. 236, § 15; 40 Ex. G. A., H. F. 65, § 16.]

2603. State farmers' institute. In connection with the annual convention to elect members of the state fair board, either preceding or following the day on which the officers are elected, the secretary may hold a state farmers' institute, for the discussion of practical and scientific topics relating to the various branches of agriculture, the substance of which may be published in the Iowa Year Book of Agriculture. [S., '13, § 1657-f; 40 Ex. G. A., H. F. 65, § 17.]

CHAPTER 126

FRUIT-TREE AND FOREST RESERVATIONS

- 2604. State forestry commissioner.
- 2605. Tax exemption.
- 2606. Forest and fruit-tree reservations.
- 2607. Forest reservation.
- 2608. Annual removal of trees.
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- 2611. Fruit-tree reservation.
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- 2613. Replacing trees.
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- 2615. Penalty.
- 2616. Duties of assessor.
- 2617. Duty of county auditor.

2604. State forestry commissioner. The secretary of agriculture shall be the state forestry commissioner. It shall be his duty to promote the objects of this chapter, and he shall have power to appoint deputies without salary for each county, or group of counties, who

shall assist him, and who shall make an annual report to him of forestry matters and of the operations of this chapter, within their respective territories. [S., '13, § 1400-p; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 65, § 19.]

2605. Tax exemption. Any person who establishes a forest or fruit-tree reservation as provided in this chapter shall be entitled to the tax exemption provided by law. [40 Ex. G. A., H. F. 65, § 20.]

NOTE: For tax exemption, see § 7110.

2606. Forest and fruit-tree reservations. On any tract of land in the state of Iowa, the owner or owners may select a permanent forest reservation or reservations, each not less than two acres in continuous area, or a fruit-tree reservation or reservations, not less than one nor more than ten acres in total area, or both, and upon compliance with the provisions of this chapter, such owner or owners shall be entitled to the benefits provided by law. [S., '13, § 1400-c; 38 G. A., ch. 224, § 1; 40 G. A., ch. 234, § 4.]

2607. Forest reservation. A forest reservation shall contain not less than two hundred growing forest trees on each acre. If the area selected is a forest containing the required number of growing forest trees, it shall be accepted as a forest reservation under the provisions of this chapter. If the area selected is a forest containing less than two hundred forest trees to the acre, or if it is a grove, the owner or owners thereof shall have planted, cultivated, and otherwise properly cared for the number of forest trees necessary to bring the total number of growing trees to not less than two hundred on each acre, during a period of not less than two years, before it can be accepted as a forest reservation within the meaning of this chapter. No ground upon which any farm buildings stand shall be recognized as part of any such reservation. [S., '13, § 1400-d; 40 G. A., ch. 234, § 5.]

2608. Annual removal of trees. Not more than one-fifth of the total number of trees in any forest reservation may be removed in any one year, excepting in cases where the trees die naturally. [S., '13, § 1400-e.]

2609. What considered forest trees. The ash, black cherry, black walnut, butternut, catalpa, coffee tree, the elms, hackberry, the hickories, honey locust, Norway and Carolina poplars, mulberry, the oaks, sugar maple, European larch and other coniferous trees, and all other forest trees introduced into the state for experimental purposes, shall be considered forest trees within the meaning of this chapter. In forest reservations which are artificial groves, the willows, box elder, soft maple, cottonwood, and other poplars shall be included among forest trees for the purposes of this chapter when they are used as protecting borders not exceeding two rows in width around a forest reservation, or when they are used as nurse trees for forest trees in such forest reservation, the number of such nurse

trees not to exceed one hundred on each acre; provided that only box elder and soft maple shall be used as nurse trees. [S., '13, § 1400-f.]

2610. Groves. The trees of a forest reservation shall be in groves not less than four rods wide. [S., '13, § 1400-g.]

2611. Fruit-tree reservation. A fruit-tree reservation shall contain on each acre, at least forty apple trees, or seventy other fruit trees, growing under proper care and annually pruned and sprayed. Such reservation may be claimed as such, under this chapter, for a period of eight years after planting. [S., '13, § 1400-h; 38 G. A., ch. 224, § 2; 40 G. A., ch. 234, § 6.]

2612. What considered fruit trees. The cultivated varieties of apples, crabs, plums, cherries, peaches, and pears shall be considered fruit trees within the meaning of this chapter. [S., '13, § 1400-i.]

2613. Replacing trees. When any tree or trees on a fruit-tree or forest reservation shall be removed or die, the owner or owners of such reservation shall, within one year, plant and care for other fruit or forest trees, in order that the number of such trees may not fall below that required by this chapter. [S., '13, § 1400-j.]

2614. Restraint of live stock. Cattle, horses, mules, sheep, goats, and hogs shall not be permitted upon a fruit-tree or forest reservation. [S., '13, § 1400-k.]

2615. Penalty. If the owner or owners of a fruit-tree or forest reservation violate any provision of this chapter within the two years preceding the making of an assessment, the assessor shall not list any tract belonging to such owner or owners, as a reservation within the meaning of this chapter, for the ensuing two years. [S., '13, § 1400-m.]

2616. Duties of assessor. It shall be the duty of the assessor to secure the facts relative to fruit-tree and forest reservations by taking the sworn statement, or affirmation, of the owner or owners making application under this chapter; and to make special report to the county auditor of all reservations made in the county under the provisions of this chapter. [S., '13, § 1400-n.]

2617. Duty of county auditor. It shall be the duty of the county auditor in every county to keep a record of all forest and fruit-tree reservations within his county; and to make a report of the same to the department of agriculture on or before June fifteenth of each year. [S., '13, § 1400-o; 40 G. A., ch. 234, § 7; 40 Ex. G. A., H. F. 65, § 21.]

CHAPTER 127

REGISTRATION OF ANIMALS

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- 2639. Transfer of certificate—fee.
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- 2641. Violations—penalties.
- 2642. Prior certificates of soundness.

2618. Offering services of stallion. No person shall offer for public service any stallion unless he shall have had said animal enrolled with the department of agriculture as a registered animal, and shall have procured from the department a certificate of soundness; provided, however, that no stallion entitled, under the provisions of section 2341-o of the supplemental supplement to the code, 1915, to a permanent state certificate of soundness shall be denied renewal. [S., '13, § 2341-f; 40 G. A., ch. 52, § 1; 40 Ex. G. A., H. F. 68, § 1.]

NOTE: § 2341-o of the supplemental supplement to the code, 1915, was repealed by 40 Ex. G. A., H. F. 68, and therefore could not be converted into a code number. In connection with the proviso in the above section, see § 2642.

2619. Offering services of jack. No person shall offer for public service any jack unless he has procured from the department a certificate of soundness. Such certificate shall state whether the animal is registered or unregistered. [S., '13, § 2341-f; S. S., '15, § 2341-i; 40 G. A., ch. 52, § 2; 40 Ex. G. A., H. F. 68, § 2.]

2620. Sale of registered animals. No person shall offer for sale, transfer, or exchange any stallion or jack over two years old as registered unless he shall have had said animal enrolled with the department as a registered animal, and shall have procured from the department a certificate of soundness. [S., '13, § 2341-f; 40 Ex. G. A., H. F. 68, § 3.]

2621. Sale of unregistered jacks. No person shall offer for sale, transfer, or exchange for public service any unregistered jack over two years old unless he shall have procured from the department a certificate of soundness. [S. S., '15, § 2341-i; 40 G. A., ch. 52, § 2; 40 Ex. G. A., H. F. 68, § 4.]

2622. Application for certificate for pure bred. Every application for enrollment as a

registered animal shall set forth, under oath, the name, age, color, and ownership of the animal, and be accompanied by a certificate of registry and an affidavit of an Iowa licensed veterinarian that such animal has been examined by him and is free from any unsoundness or any hereditary, infectious, or contagious disease. [S., '13, § 2341-f; S. S., '15, § 2341-g; 40 Ex. G. A., H. F. 68, § 5.]

2623. Application for certificate for grade jack. Every application for a certificate of soundness for an unregistered jack shall be made in the same manner and form, except as to the certificate of pedigree, as provided in the preceding section. [S. S., '15, § 2341-g; 40 Ex. G. A., H. F. 68, § 6.]

2624. Animals subject to enrollment as registered. No animal shall be subject to enrollment as a registered animal unless he has been recorded in some stud book recognized by the department. [S., '13, § 2341-f; 40 Ex. G. A., H. F. 68, § 7.]

2625. Diseases which disqualify. No certificate of soundness shall be granted for an animal affected with glanders, farcy, maladie du coit (dourine), coital exanthema, urethral gleet, mange, melanosis, blindness, cataract or periodic ophthalmia (moon blindness). [S. S., '15, § 2341-h; 40 Ex. G. A., H. F. 68, § 8.]

2626. Defects which do not disqualify. A certificate of soundness may be granted when an animal is affected with any of the following defects, unless such defects appear to be aggravated, or in a serious form: Amaurosis, laryngeal hemiplegia (roaring or whistling), pulmonary emphysema (heaves, broken wind), bog spavin, bone spavin, ringbone, sidebone, navicular disease, curb, with curby formation of hock, chorea (St. Vitus' dance), crampiness, shivering, stringhalt. [S. S., '15, § 2341-h; 40 Ex. G. A., H. F. 68, § 9.]

2627. Certificate when animal defective—advertisements. Certificates of soundness issued under the preceding section shall distinctly specify the defect with which the animal is affected. All advertisements of an animal so affected shall enumerate in large type, or prominent writing, the defect with which the animal is affected. [S. S., '15, § 2341-h; 40 Ex. G. A., H. F. 68, § 10.]

2628. Issuance of certificate. Upon receipt of an application for enrollment as a registered animal, the department shall, if satisfied that the same is reliable and that the animal is pure bred, make such enrollment and issue to the applicant a certificate of soundness. Upon receipt of an application for a certificate of soundness for an unregistered jack the department shall also issue the proper certificate. [40 G. A., ch. 52, § 1; 40 Ex. G. A., H. F. 68, § 11.]

2629. Posting certificate. Every certificate of soundness, or a true copy thereof, shall be kept posted upon the door or stall of the stable where the animal for which it was issued is usually kept, and, when such animal is advertised, each advertisement shall contain a copy of such certificate or the substance thereof. [S. S., '15, § 2341-i; 40 G. A., ch. 52, § 2; 40 Ex. G. A., H. F. 68, § 12.]

2630. Examination on complaint. Complaint may be made to the department that a stallion or jack is diseased. The department shall determine whether an examination of said animal is reasonably necessary. If it is so determined the owner shall be notified accordingly, and an examination shall be made by a board of three licensed veterinarians, one member to be selected by the department, one member to be selected by the owner of the animal, and the third member to be selected by the other two members so selected. [S., '13, § 2341-j; 40 Ex. G. A., H. F. 68, § 13.]

2631. Department to appoint examiners. If the owner neglects for ten days after being so notified to appoint a veterinarian to act for him, the department shall appoint such veterinarian, who shall proceed as though appointed by the owner. [40 Ex. G. A., H. F. 68, § 14.]

2632. Decision of board. The board shall determine whether said animal is:

1. Affected with a disease which would prevent the issuance of a certificate of soundness.
2. Affected with any other disease or defect in such a serious or aggravated form as to render the animal unfit for breeding.
3. Transmitting any disease or defect enumerated in this chapter as not disqualifying him for a certificate of soundness.

A decision by a majority of the board shall be certified to the department and shall be final. [S., '13, § 2341-j; S. S., '15, § 2341-h; 40 Ex. G. A., H. F. 68, § 15.]

NOTE: For defects which do not disqualify, see § 2626.

2633. Revocation of certificate. If the decision is to the effect that such animal is

affected as specified in the preceding section, the department shall not issue a certificate of soundness, and if one has been issued the department shall immediately revoke the same and notify the owner accordingly. [S., '13, § 2341-j; 40 Ex. G. A., H. F. 68, § 16.]

2634. Expense. If the board finds that said animal is eligible to receive or retain a certificate of soundness, the reasonable costs of the examination shall be paid from any funds in the state treasury not otherwise appropriated; otherwise such costs shall be collected from the owner. [S., '13, § 2341-j; 40 Ex. G. A., H. F. 68, § 17.]

2635. Blindness — examination — certificate. The owner of any blind stallion or jack otherwise entitled to a certificate of soundness may, upon application to the department, have the same examined at his own expense by a board of three licensed veterinarians, one member to be selected by the department, one member to be selected by the owner of the animal, and the third member to be selected by the two members so selected. If upon examination and proof furnished, a majority of said board declare that such blindness was caused by accident or disease not transmissible, then upon affidavit of a majority of said board, the department shall issue a state certificate of soundness. [S., '13, § 2341-p; 40 Ex. G. A., H. F. 68, § 18.]

2636. Renewal of certificate of soundness. If an animal for which a certificate of soundness has been issued is retained for sale, transfer, or exchange, or for public service, such certificate shall be renewed between January first and April first of each year. Such renewal shall be obtained by presenting an affidavit of soundness to the department as hereinbefore provided. [S. S., '15, § 2341-g; 40 Ex. G. A., H. F. 68, § 19.]

2637. Renewal without examination. The owner of every stallion or jack which has successfully passed the veterinary examination provided in this chapter for two consecutive years shall be entitled to a renewal of the certificate of soundness thereafter without further examination, provided application for such renewal is made in every year following the last examination. [S. S., '15, § 2341-o; 40 Ex. G. A., H. F. 68, § 20.]

2638. Fee. The department shall collect a fee of one dollar for each certificate of soundness and for each annual renewal thereof. [S., '13, § 2341-f; 40 Ex. G. A., H. F. 68, § 21.]

2639. Transfer of certificate—fee. When the holder of a certificate of soundness sells or otherwise transfers the title to such animal, he shall indorse on the certificate a transfer thereof to the new owner, and file the certificate, accompanied by a fee of fifty cents, with the department, which shall thereupon issue a certificate to the new owner. [S. S., '15, § 2341-k; 40 Ex. G. A., H. F. 68, § 22.]

2640. False affidavit. Any veterinarian who knowingly makes a false affidavit as to the disease or freedom from disease, or soundness or unsoundness, of any animal examined by him or who fails to file with the department a report of his findings in accordance with the provisions of this chapter, shall be guilty of a misdemeanor and punished accordingly and his license to practice shall be revoked. [S. S., '15, § 2341-g; 40 Ex. G. A., H. F. 68, § 23.]

NOTE: For general law as to revocation of licenses, see § 2492.

2641. Violations—penalties. Any person who shall commit any of the following acts shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment:

1. Fraudulently represents any animal to be registered.

2. Fraudulently posts or publishes any false pedigree or certificate of soundness.

3. Uses any stallion or jack for public service, or sells any such animal over two years old, representing him to be registered, without first having obtained a certificate of soundness as provided in this chapter.

4. Violates any of the provisions of this chapter in any manner. [C., '97, §§ 2341, 2342; S. S., '15, § 2341-q; 38 G. A., ch. 262, § 1; 40 Ex. G. A., H. F. 68, § 24.]

2642. Prior certificates of soundness. Where a permanent certificate of soundness for a registered animal has heretofore been issued by the former state board of agriculture an additional state certificate shall not be required, but a renewal of the same shall be secured as herein provided. [S. S., '15, § 2341-i; 40 G. A., ch. 52, § 1; 40 Ex. G. A., H. F. 68, § 25.]

CHAPTER 128

INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

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2645. Veterinary assistants.

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2654. Certificate of freedom from disease.

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2659. Duty of local boards of health.

2660. False representation as to stock shipments.

2661. Sale or exposure of infected animals.

2662. Glanders.

2663. Penalties.

2664. Annual estimate of expenditures.

2643. Powers of department. In the enforcement of this chapter the department of agriculture shall have power to:

1. Make all necessary rules for the suppression and prevention of infectious and contagious diseases among animals within the state.

2. Provide for quarantining animals affected with infectious or contagious diseases, or that have been exposed to such diseases, whether within or without the state.

3. Determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of contagious or infectious diseases among animals.

4. Establish, maintain, enforce, and regulate quarantine and other measures relating to the movements and care of diseased animals.

5. Provide for the disinfection of suspected yards, buildings, and articles, and the destruction of such animals as may be deemed necessary.

6. Enter any place where any animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was

or is infected with any contagious or infectious disease.

7. Regulate or prohibit the arrival in, departure from, and passage through the state, of animals infected with or exposed to any contagious disease; and in case of violation of any such regulation or prohibition, to detain any animal at the owner's cost.

8. Regulate or prohibit the bringing of animals into the state, which, in its opinion, for any reason, may be detrimental to the health of animals in the state.

9. Cooperate with and arrange for assistance from the United States department of agriculture in performing its duties under this chapter. [S., '13, § 2538-s; 38 G. A., ch. 287, §§ 1, 4, 8, 18; 40 Ex. G. A., H. F. 68, § 27.]

2644. Infectious and contagious diseases defined. For the purpose of this chapter, infectious and contagious diseases shall be deemed to embrace glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, hog cholera, necrotic enteritis, or tuberculosis. [38 G. A., ch. 287, § 14; 40 Ex. G. A., H. F. 68, § 27-a1.]

2645. Veterinary assistants. The department may appoint one or more licensed veter-

inarians in each county as assistant veterinarians. It may also appoint such special assistants as may be necessary in cases of emergency. [38 G. A., ch. 287, § 9; 39 G. A., ch. 209, § 38; 40 Ex. G. A., H. F. 68, § 28.]

2646. Powers of assistants. Such assistant veterinarians shall have power, under the direction of the department, to perform all acts necessary to carry out the provisions of law relating to infectious and contagious diseases among animals, and shall be furnished by the department with the necessary supplies and materials which shall be paid for out of the appropriation for the eradication of infectious and contagious diseases among animals. [38 G. A., ch. 287, § 9; 40 Ex. G. A., H. F. 68, § 29.]

2647. Oaths—power to administer. Such assistant veterinarians shall have power to administer oaths and affirmations to appraisers acting under this and the following chapters of this title. [38 G. A., ch. 287, § 9; 40 Ex. G. A., H. F. 68, § 30.]

2648. Adoption of rules—approval—publication. All rules adopted by the department under this chapter, in addition to the other requirements concerning promulgation of rules by the department, shall be published at least one week prior to their taking effect in at least two daily papers of general circulation within the state, except in such cases as require immediate action. [S., '13, § 2538-s; 38 G. A., ch. 287, § 4; 40 Ex. G. A., H. F. 68, § 31.]

2649. Rules to harmonize with federal rules. The rules adopted by the department regarding interstate shipments of animals shall not be in conflict with the rules of the federal department of agriculture, unless there is an outbreak of a malignant contagious disease in any locality, state, or territory, in which event the department shall have the right to place an embargo on such locality, state, or territory. [38 G. A., ch. 287, § 1; 40 Ex. G. A., H. F. 68, § 32.]

2650. Enforcement of rules. The assistant veterinarians appointed under this chapter shall enforce all rules of the department, and in so doing may call to their assistance any peace officer. [S., '13, § 2538-s; 40 Ex. G. A., H. F. 68, § 33.]

2651. Veterinary division at Ames to assist. The dean of the veterinary division of the Iowa state college of agriculture and mechanic arts is authorized to use the equipment and facilities of the division in assisting the department in carrying out the provisions of this chapter. [40 Ex. G. A., H. F. 68, § 34.]

2652. Quarantining or killing animal. The department may quarantine or condemn any animal which is infected with any contagious or infectious disease, but no cattle infected with tuberculosis shall be killed without the owner's consent, unless there shall be sufficient funds, to pay for such cattle, in the allotment

made for that purpose from the appropriation for the eradication of infectious and contagious diseases among animals as provided in this chapter. [38 G. A., ch. 287, §§ 4, 5, 18; 40 Ex. G. A., H. F. 68, § 35.]

2653. Inspection of imported animals. No person shall bring into this state, except to public live-stock markets where federal inspection of live stock is maintained, any animal for work, breeding, or dairy purposes, unless such animal has been examined and found free from all contagious or infectious diseases. Animals for feeding purposes, however, may be brought into the state without inspection, under such regulations as the department may prescribe. [38 G. A., ch. 287, §§ 14, 16; 40 Ex. G. A., H. F. 68, § 36.]

2654. Certificate of freedom from disease. Freedom from disease as specified in the preceding section shall be established by a certificate of health signed by a veterinarian acting under either the authority of the federal department of agriculture, or of the state department of agriculture. [38 G. A., ch. 287, § 14; 40 Ex. G. A., H. F. 68, § 37.]

2655. Certificate attached to bill of lading. A copy of such certificate shall be attached to the waybill accompanying the shipment, and a copy thereof shall be mailed to the department. [38 G. A., ch. 287, § 14; 40 Ex. G. A., H. F. 68, § 38.]

2656. Intrastate shipments. All animals, except those intended for immediate slaughter, shall be inspected when required by the department, and accompanied by the aforesaid certificate when shipped from a public stockyard in this state to another point within the state where federal inspection is not maintained. [38 G. A., ch. 287, § 14; 40 Ex. G. A., H. F. 68, § 39.]

2657. Foot and mouth disease—appropriation. Any animal killed on account of what is known as "foot and mouth disease" shall be appraised and paid for in the same manner as prescribed in the following chapter for the appraisement and payment of animals killed on account of tuberculosis, except that the deduction of five per cent of the appraised value of the animals tested as provided in said chapter shall not be made. There is appropriated from any funds in the state treasury not otherwise appropriated sufficient funds to carry out the provisions of this section. [S. S., '15, §§ 2538-1a-2538-8a; 40 Ex. G. A., H. F. 68, § 40.]

2658. Limitation on right to receive pay. Unless an animal was examined at the time of importation into the state and found free from contagious or infectious diseases as provided in this chapter, no person importing the same and no transferee who receives such animal knowing that the provisions of this chapter have been violated shall receive any compensation under the preceding section for the destruction of such animal by the department. [40 Ex. G. A., H. F. 68, § 41.]

2659. Duty of local boards of health. All local boards of health shall assist the department in the prevention, suppression, control, and eradication of contagious and infectious diseases among animals, whenever requested to do so. [38 G. A., ch. 287, § 3; 40 Ex. G. A., H. F. 68, § 42.]

2660. False representation as to stock shipments. Any person who knowingly makes any false representation as to the purpose for which a shipment of animals is being or will be made, with intent to avoid or prevent an inspection of such animals for the purpose of determining whether the animals are free from disease, shall be guilty of a misdemeanor and punished as provided in this chapter. [40 Ex. G. A., H. F. 68, § 43.]

2661. Sale or exposure of infected animals. No owner or person having charge of any animal, knowing the same to have any infectious or contagious disease, shall sell or barter the same for breeding, dairy, work, or feeding purposes, or permit such animal to run at large or come in contact with any other animal. [C., '97, § 5018; 38 G. A., ch. 287, §§ 5, 7; 40 Ex. G. A., H. F. 68, § 44.]

2662. Glanders. No owner or person having charge of any animal, knowing the same to be affected with glanders, shall permit such animal to be driven upon any highway, and

no keeper of a public barn shall knowingly permit any animal having such disease to be stabled in such barn. [38 G. A., ch. 287, § 5; 40 Ex. G. A., H. F. 68, § 45.]

2663. Penalties. Any person who shall violate any provision of this chapter or any rule adopted thereunder by the department shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year. [38 G. A., ch. 287, §§ 5, 6, 7, 15, 19; 40 Ex. G. A., H. F. 68, § 46.]

2664. Annual estimate of expenditures. The department of agriculture shall each year make an estimate of expenditures to be made from the annual appropriation for the eradication of contagious and infectious diseases among animals. Such estimate shall set aside:

1. A sufficient sum for the general administration of this chapter.

2. A sufficient sum for the inspection of herds for tuberculosis under the following chapter, except herds in counties which have been enrolled under the county area plan of eradication.

3. The remainder of said appropriation for allotment among the counties in accordance with the number of breeding cattle owned therein for the eradication of bovine tuberculosis in such counties. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 47.]

CHAPTER 129

ERADICATION OF BOVINE TUBERCULOSIS

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GENERAL PROVISIONS

2665. Cooperation of state and federal authorities. The state department of agriculture is hereby authorized to cooperate with the federal department of agriculture for the purpose of eradicating tuberculosis from the dairy and beef breeds of cattle in the state. [40 Ex. G. A., H. F. 68, § 48.]

2666. Testing and examining herds. The owner of any herd kept for breeding or dairy purposes may petition the department of agriculture for an examination of such herd for tuberculosis. The department shall grant the petition when satisfied that the petitioner intends to permanently maintain his herd and has applied for such examination for the sole purpose of detecting the presence of such disease and freeing his herd therefrom. Such examination shall be conducted as soon as practicable after the granting of the petition. [38 G. A., ch. 287, § 10; 40 Ex. G. A., H. F. 68, § 49.]

2667. Petition blank. A blank for such petition shall be furnished by the department, which shall include an agreement on the part of the person making the petition that he will conform to and abide by the rules laid down by the state and federal departments of agriculture and follow their instructions designed to suppress the disease, prevent its spread, and avoid reinfection of the herd. [38 G. A., ch. 287, §§ 10, 12; 40 Ex. G. A., H. F. 68, § 50.]

2668. Appraisal. Before being tested, such animals shall be appraised at their cash value for breeding, dairy, or beef purposes by the owner and a representative of the state department of agriculture, or a representative of the federal department of agriculture, or by the owner and both of such representatives. If these parties can not agree as to the amount of the appraisal, there shall be appointed three competent and disinterested persons, one by the state department of agriculture, one by the owner, and the third by the first two appointed, to appraise such animals, which appraisal shall be final. Every appraisal shall be under oath or affirmation and the expense of the same shall be paid by the state, except as provided in this chapter. [38 G. A., ch. 287, § 10; 40 Ex. G. A., H. F. 68, § 51.]

2669. Presence of tuberculosis—use of infected animals. If, after such examination, tubercular animals are found, the department shall have authority to order such disposition of them as it considers most desirable and economical. If the department deems that a due regard for the public health warrants it, it may enter into a written agreement with the owner, subject to such conditions as it may prescribe, for the separation and quarantine of such diseased animals. Subject to such conditions, the diseased animals may continue to be used for breeding purposes. [38 G. A., ch. 287, §§ 10, 11; 40 Ex. G. A., H. F. 68, § 52.]

2670. Forfeiture of right to receive compensation. Any animal retained, under the preceding section, by the owner for ninety days after it has been adjudged infected with tuberculosis shall not be made the basis of any claim for compensation against the state. [39 G. A., ch. 194, § 1; 40 Ex. G. A., H. F. 68, § 53.]

2671. Amount of indemnity to be paid owner. When breeding animals are slaughtered following any test there shall be deducted from their appraised value:

1. Five per cent of the appraised value of the breeding animals tested.

2. The proceeds from the sale of the salvage.

The owner shall be paid by the state one-third of the sum remaining after the above deductions are made.

The state shall in no case pay to such owner a sum in excess of fifty dollars for any registered pure-bred animal or twenty-five dollars for any grade animal. [38 G. A., ch. 287, § 10; 40 G. A., ch. 48; 40 G. A., ch. 49, § 1; 40 Ex. G. A., H. F. 68, § 54.]

2672. Pedigree. The pedigree of pure-bred cattle shall be proved by a certificate of registry from the herd books where registered. [38 G. A., ch. 287, § 10; 39 G. A., ch. 44, § 1; 40 Ex. G. A., H. F. 68, § 55.]

2673. Limitation on right to receive pay. No compensation shall be paid to any person for an animal condemned for tuberculosis:

1. Unless said animal, if produced in the state, has been owned by such person for at least six months prior to condemnation, or was raised by such person.

2. Unless said animal, if imported into the state, was examined at the time of importation and found free from tuberculosis. [38 G. A., ch. 287, § 10; 40 G. A., ch. 49, § 2; 40 Ex. G. A., H. F. 68, § 56.]

2674. Preference in examinations. The department, in passing upon petitions for examinations of herds, shall give priority to petitions for the testing of dairy herds from which are sold, or offered for sale, in cities or towns, milk or milk products in liquid or condensed form. [38 G. A., ch. 287, § 10; 39 G. A., ch. 44, § 1; 40 Ex. G. A., H. F. 68, § 57.]

2675. Examination by department on its own motion. The department may at any time, on its own motion, make an examination of any herd, and in case animals are destroyed, the appraisement and payment shall be made as provided in this chapter. [38 G. A., ch. 287, § 10; 40 G. A., ch. 49, § 1; 40 Ex. G. A., H. F. 68, § 58.]

2676. Records public. All records pertaining to animals infected with tuberculosis shall be open for public inspection and the department shall furnish such information relative thereto as may be requested. [39 G. A., ch. 194, § 1; 40 Ex. G. A., H. F. 68, § 59.]

2677. Accrediting tuberculosis-free herds. The department shall establish rules for de-

termining when a herd of cattle, tested and maintained under the provisions of this chapter, the laws of the United States, and the rules of the state and federal departments of agriculture, shall be considered as tuberculosis-free. When any herd meets such requirements the owner shall be entitled to a certificate from the department showing that the herd is a tuberculosis-free accredited herd. Such certificate shall be revoked whenever the herd no longer meets the necessary requirements for an accredited herd, but the herd may be reinstated as an accredited herd upon subsequent compliance with such requirements. [38 G. A., ch. 287, § 12; 40 Ex. G. A., H. F. 68, § 60.]

2678. Tuberculin. The department shall have control of the sale, distribution, and use of all tuberculin in the state, and shall formulate rules for its distribution and use. Only a licensed veterinarian shall apply a tuberculin test to cattle within this state. [38 G. A., ch. 287, § 13; 40 Ex. G. A., H. F. 68, § 61.]

2679. Appointment of inspectors and assistants. The department may appoint one or more accredited veterinarians as inspectors for each county and one or more persons as assistants to such inspectors. Such inspectors, with the assistance of such person or persons, shall test the breeding cattle subject to test, as provided in this chapter, and shall be subject to the direction of the department in making such tests. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 62.]

2680. Accredited veterinarian defined. An accredited veterinarian is one who has successfully passed an examination set by the state and federal departments of agriculture and is authorized to make tuberculin tests of accredited herds of cattle under the uniform methods and rules governing accredited herd work which are approved by the United States department of agriculture. [37 G. A., ch. 342, § 1; 39 G. A., ch. 169, § 3; 40 Ex. G. A., H. F. 68, § 63.]

2681. Equipment for inspector. The department may furnish each inspector with the necessary tuberculin and other material, not including instruments and utensils, necessary to make the tests provided for in this chapter. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 64.]

2682. Compensation. An inspector shall receive a compensation not to exceed ten dollars per diem and ten cents for every mile traveled while engaged in such work. Unless such compensation is fixed in the biennial salary act it shall be approved by the committee on retrenchment and reform. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 65.]

COUNTY AREA ERADICATION PLAN AND ACCREDITED AREA PLAN

2683. Establishment by petition of breeders. When any number of resident owners of breeding cattle constituting a number equal to fifty-one per cent of the number of owners

of breeding cattle in said county, as shown by the last assessors' rolls, petition the board of supervisors for the establishment of a county area eradication plan, such petition including an agreement on the part of the respective signers thereof for the testing of their respective herds, as provided in this chapter, the board shall cause a notice to be published for two consecutive weeks in two official county papers of the date of the hearing on said petition, which shall not be less than five nor more than ten days after the last publication, said date to be set by the county auditor. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 66.]

2684. Sufficiency of petition—enrollment. If, after such hearing, or if no objections are filed to such petition on or before such date, the petition shall be found sufficient, the board shall make application to the secretary of agriculture for the enrollment of the county under such plan. The application shall be accompanied by a copy of the petition and agreements, together with the action of the board thereon, duly certified by the county auditor. The secretary of agriculture, upon receiving the application, shall enroll the county under such plan. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 66.]

2685. Agreements filed with department. Certified copy of the agreements as filed with the secretary of agriculture shall have the same force and effect as originals on file with him. Subsequent agreements may be filed with the department. [40 Ex. G. A., H. F. 68, § 66.]

2686. Levy for eradication fund. In each county enrolled under either of the plans provided in this chapter, the board of supervisors shall each year when it makes the levy for taxes, levy a tax sufficient to provide a fund to pay the indemnity and other expenses provided in this chapter, except as hereinafter provided, but such levy shall not exceed three mills in any year upon the taxable value of all the property in the county. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 68.]

2687. Collection—use of fund. Such levy shall be placed upon the tax list by the county auditor and collected by the county treasurer in the same manner and at the same time as other taxes of the county. The money derived from such levy shall be placed in a fund to be known as the county tuberculosis eradication fund, and the same shall only be used for the payment of claims as provided in this chapter. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 68.]

2688. Report by auditor as to fund. The county auditor of each county shall, not later than August fifteenth of each year, certify to the secretary of agriculture a report showing the amount in the tuberculosis eradication fund on August first of each year. [40 Ex. G. A., H. F. 68, § 68.]

2689. Levy omitted in certain years. Should it appear to the secretary of agriculture that the balance in such fund is sufficient, with

the county's allotment of state and federal funds available, to carry on the work in such county for the ensuing year, he shall so certify to the county auditor and when such certification has been made the board shall make no levy for such tuberculosis eradication fund for such year. [40 Ex. G. A., H. F. 68, § 68.]

2690. Availability of county fund. After the amount allotted in any year by the department to any county enrolled under the county area plan has been expended in said county, or at any time that there ceases to be available for such county any federal funds for the eradication of bovine tuberculosis, the county eradication fund provided in this chapter shall become available as a substitute for either or both such funds for the payment of materials, indemnities, inspectors, and assistants as herein provided. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 70.]

2691. Notice of exhaustion of state allotment. Immediately upon the exhaustion of such allotment the department shall certify such fact to the county auditor, which certificate shall be full authority for the board of supervisors to pay claims out of the county eradication fund. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 70.]

2692. Notice of exhaustion of county fund. Whenever the balance in such fund becomes less than twenty-five hundred dollars the county auditor shall notify the department in writing of such fact and no expense shall be incurred on such account in excess of the cash available in such fund. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 71.]

2693. Certification of claims. All claims presented under the third preceding section shall be certified by the department and filed with the county auditor who shall present them to the board of supervisors and such board shall allow and pay the same as other claims against the county. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 72.]

2694. Accredited counties. Whenever seventy-five per cent of the owners of breeding cattle in any county operating under the county area plan, shall have signed agreements with the department of agriculture, the department shall enroll the county under the accredited area plan and notify the board of supervisors of such county accordingly. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 73.]

2695. Notice and effect of enrollment. The board shall cause to be published a notice of such enrollment once in two official newspapers of the county and thereafter every owner of breeding cattle within the county shall cause his cattle to be tested for tuberculosis as provided in this chapter and shall comply with all the requirements for the establishment and maintenance of a tuberculosis-free accredited herd. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 73.]

2696. Certification of number of owners in county. For the purpose of determining the number of owners of breeding cattle in the county constituting the per cent required by the second preceding section, the county auditor of each county which has been enrolled under the county area eradication plan shall certify to the department after each assessment in the county the number of owners of breeding cattle in such county as shown by the last assessors' rolls. [40 Ex. G. A., H. F. 68, § 73-a1.]

2697. Establishment by vote of people. Whenever any number of electors of the county equal to fifteen per cent of the voters of the county as shown by the vote for the head of the ticket at the last general election, petition the board of supervisors for the establishment of the accredited area plan and file the same in the office of the county auditor, the board shall, if it finds such petition complies with the requirements of this chapter, submit at the next general election the following proposition: Shall county levy a tax of not more than three mills on the taxable value of the property of the county for the purpose of establishing a county tuberculosis eradication fund and entering upon the accredited area plan? [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 73-a2.]

2698. Sufficiency of vote—enrollment. If the proposition receives sixty-five per cent of the votes cast at such election the board shall notify the department, which shall enroll the county under the accredited area plan. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 73-a2.]

2699. Notice and effect of enrollment. When the county is so enrolled the board of supervisors shall cause a notice of such enrollment to be published once in two official newspapers of the county and thereafter every owner of breeding cattle within the county shall cause his cattle to be tested for tuberculosis as provided in this chapter and shall comply with all the requirements for the establishment and maintenance of the tuberculosis-free accredited herd. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 73-a2.]

2700. Penalty. Any owner of breeding cattle in any county which has been enrolled under the accredited area plan, as provided in this chapter, who does not apply for and sign an agreement for such test or fails to have his cattle tested as provided therein within a period of ninety days from the publication of the notice of enrollment, shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars. [S., '13, § 2538-s; 38 G. A., ch. 287, §§ 1, 4, 8; 40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 74.]

2701. Prima facie evidence of infection—quarantine. It shall be prima facie evidence that the breeding cattle of any such owner who does not permit said cattle to be tested as herein provided are affected with tuberculosis and

may be quarantined by the department until such test is made. [40 Ex. G. A., H. F. 68, § 74.]

2702. Notice. Before any action is commenced under the second preceding section, the board of supervisors of the county shall cause such owner to be served with a written notice of the provisions of the eight preceding sections, at least fifteen days before the commencement of the action. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 75.]

2703. Allotment of funds to counties. The department shall allot, on or before November first of each year, among the counties of the

state in proportion to the number of breeding cattle owned in each county, as shown by the last assessors' books, the amount of the state funds estimated to be available for the testing of cattle for tuberculosis. The department shall also attempt to secure a similar allotment each year of the available federal funds by the federal department of agriculture. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 76.]

2704. Transfer of funds. The amount of state funds allotted to each county shall be expended therein, but the department, whenever such moneys are not needed in any county, may transfer the same to any other county. [40 G. A., ch. 48; 40 Ex. G. A., H. F. 68, § 77.]

CHAPTER 130

HOG CHOLERA VIRUS AND SERUM

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2705. Definitions. When used in this chapter:

1. The words "biological products" shall include and be deemed to embrace only anti-hog-cholera serum and virus.

2. "Manufacturer" includes every person engaged in the preparation, at any stage of the process, of biological products, except those engaged in such preparation in the biological laboratory in the Iowa state college of agriculture and mechanic arts, or in any other state or governmental institution.

3. "Dealer" includes every person who, for profit, sells, dispenses, or distributes, or offers to do so, either as principal or agent, biological products, except:

a. A manufacturer selling direct to any person licensed under this chapter to sell, dispense, or distribute such biological products.

b. A regularly licensed veterinarian who uses such biological products in his professional practice and does not use it for sale or distribution to any other person. [S. S., '15, § 2538-w12; 38 G. A., ch. 379, § 6; 39 G. A., ch. 173, §

2; 40 G. A., ch. 50; 40 Ex. G. A., H. F. 68, § 79.]

2706. Power to make rules. The department shall have power to make such rules governing the manufacture, sale, and distribution of biological products as it deems necessary to maintain their potency and purity. [S. S., '15, § 2538-w3; 38 G. A., ch. 379, § 1; 39 G. A., ch. 173, § 1; 40 Ex. G. A., H. F. 68, § 80.]

2707. Permit to manufacture or sell. Every person, before engaging as a manufacturer of, or dealer in, biological products shall obtain from the department of agriculture a permit for that purpose. [S. S., '15, § 2538-w3; 38 G. A., ch. 379, § 1; 39 G. A., ch. 173, § 3; 40 Ex. G. A., H. F. 68, § 81.]

2708. Application for permit to manufacture or sell. Every application for such a permit shall be made on a form provided by the department, which form shall call for such information as the department shall deem necessary, including the name and place of business

of the applicant. [S. S., '15, § 2538-w3; 38 G. A., ch. 379, § 1; 39 G. A., ch. 173, § 4; 40 Ex. G. A., H. F. 68, § 82.]

2709. Application for manufacturer's permit. An application for a permit to manufacture biological products shall be accompanied by evidence satisfactory to the department that the applicant is the holder of a valid, unrevoked, United States department of agriculture license for the manufacture and sale of such biological products. [38 G. A., ch. 379, § 1; 39 G. A., ch. 173, § 5; 40 Ex. G. A., H. F. 68, § 83.]

2710. Application for dealer's permit. An application for a permit to deal in biological products shall be accompanied by a bond, with sureties to be approved by the department, in the sum of five thousand dollars, which bond shall be conditioned:

1. To faithfully comply with all laws governing the warehousing, sale, and distribution of biological products, and with all the rules of the department relating to such biological products.

2. To indemnify any person who uses any such biological products sold by the principal and is damaged by the negligence of the principal, or any of his agents, in the warehousing, handling, sale, or distribution of such biological products.

3. To pay to the state all penalties which may be adjudged against the principal. [S. S., '15, § 2538-w; 39 G. A., ch. 173, § 6; 40 Ex. G. A., H. F. 68, § 84.]

2711. Liability of principal on bond. The principal on such bond shall be liable to every person for any damage caused by the negligence of the principal or of his agents, notwithstanding the execution of the bond. [39 G. A., ch. 173, § 7; 40 Ex. G. A., H. F. 68, § 85.]

2712. New or additional bond. When judgment is rendered on such bond, the principal shall immediately execute and file with the department a new or additional bond, conditioned as the original bond, and in an amount to be fixed by the department, which will furnish the same amount of security that was furnished before the original bond was impaired. [39 G. A., ch. 173, § 7; 40 Ex. G. A., H. F. 68, § 86.]

2713. Liability of manufacturer. A manufacturer shall be liable to an injured person for all damages which occur:

1. By reason of the negligence of the manufacturer or his employees in the manufacture, warehousing, handling, or distribution of biological products.

2. By reason of the failure of the manufacturer, or his employees, to discharge any duty imposed by law, or by the rules of the department. [39 G. A., ch. 173, § 8; 40 Ex. G. A., H. F. 68, § 87.]

2714. Fees. Fees for permits shall be paid by the manufacturer or dealer to the depart-

ment when the application for such permit is made and shall be:

1. In case of a manufacturer, twenty-five dollars for each plant at which it is proposed to manufacture biological products.

2. In case of a dealer, fifteen dollars for each warehouse or distributing agency of the dealer. [S. S., '15, § 2538-w3; 38 G. A., ch. 379, § 1; 39 G. A., ch. 173, § 10; 40 Ex. G. A., H. F. 68, § 88.]

2715. Inspection of premises. The premises upon which the business authorized by such permit is carried on shall be subject at all times to inspection by the department. Before issuing an original permit, the department may cause the proposed premises to be inspected, and shall make such requirements regarding the physical conditions and sanitation of said premises as it may deem necessary to secure and maintain the potency and purity of the biological products. If such requirements are not complied with and maintained, the permit shall be refused or revoked as the case may be. [S. S., '15, § 2538-w3; 38 G. A., ch. 379, § 1; 39 G. A., ch. 173, § 9; 40 Ex. G. A., H. F. 68, § 89.]

2716. Duration of manufacturer's or dealer's permit. Every permit issued to a manufacturer or dealer shall expire one year from the date of issuance. A renewal of the same shall be subject to all the conditions, including fees, that are required in the case of an original permit. [S. S., '15, § 2538-w3; 38 G. A., ch. 379, § 1; 39 G. A., ch. 173, § 10; 40 Ex. G. A., H. F. 68, § 90.]

2717. Revocation of manufacturer's or dealer's permit. Such a permit shall be automatically revoked:

1. In case of a dealer, by his failure to execute and file with the department a new and approved bond when required by law.

2. In case of a manufacturer, by his ceasing to be the holder of a United States department of agriculture license for the manufacture and sale of biological products.

3. In case of either a manufacturer or dealer, for discrimination in the price at which such biological products are sold, and such permit shall not in such case be renewed for one year. [S. S., '15, § 2538-w3; 38 G. A., ch. 379, § 1; 39 G. A., ch. 173, §§ 5, 7, 23; 40 Ex. G. A., H. F. 68, § 91.]

2718. Revocation by department. Such a permit may also be revoked by the department at any time after a reasonable notice and hearing:

1. For violation of the terms, conditions, and requirements on which it was issued.

2. For violation of any law, or of any rule of the department, relating to the business authorized by such permit.

3. In case of a dealer's permit, when a judgment has been rendered on the bond, or when the security of such bond has become impaired in any other way and no new bond is given as required by the department. [S. S., '15, § 2538-w3; 38 G. A., ch. 379, § 1; 39 G. A.,

ch. 173, §§ 7, 12; 40 G. A., ch. 51, § 3; 40 Ex. G. A., H. F. 68, § 92.]

2719. Prohibited sales. No biological products shall be sold, offered for sale, distributed, or used, unless produced at a plant which, at the time of producing, held a United States department of agriculture license for the manufacture of such biological products. [S. S., '15, § 2538-w3; 38 G. A., ch. 379, § 1; 39 G. A., ch. 173, § 13; 40 Ex. G. A., H. F. 68, § 93.]

2720. Sales to permit holders only. No person shall sell, distribute, or offer to sell or distribute, virulent blood or virus from cholera infected hogs except to persons who are holders of valid, unrevoked, written permits to administer the same. [S. S., '15, § 2538-w5; 37 G. A., ch. 329, § 1; 38 G. A., ch. 379, § 2; 39 G. A., ch. 173, § 14; 40 Ex. G. A., H. F. 68, § 94.]

2721. Permits to administer virus. No person shall administer hog cholera virus unless he is the holder of a permit issued by the department for that purpose or is the holder of a license to practice veterinary medicine. [S. S., '15, § 2538-w5; 37 G. A., ch. 329, § 1; 38 G. A., ch. 379, § 2; 39 G. A., ch. 173, § 15; 40 G. A., ch. 51, § 4; 40 Ex. G. A., H. F. 68, § 95.]

2722. County school of instruction. Provision shall be made by the extension division of the state college of agriculture and mechanic arts for instruction in each county in the use of anti-hog-cholera serum and virus. Whenever there are ten applicants in any county for such instruction, said division shall make the necessary arrangements, including a sufficient number of competent instructors, at a convenient time and place, which shall be within thirty days after the filing of the requisite number of applications. [39 G. A., ch. 173, §§ 16, 17; 40 G. A., ch. 51, §§ 5, 6; 40 Ex. G. A., H. F. 68, § 96.]

2723. Application for instruction—fee. Applications for such school shall be made to the county agent, or in the event there is no county agent, to some other person appointed by the board of supervisors to receive such applications, accompanied by a fee of three dollars. When there are sufficient applications to authorize a school, said agent or person, shall forward the applications to the extension division. [39 G. A., ch. 173, §§ 16, 17; 40 G. A., ch. 51, §§ 5, 6; 40 Ex. G. A., H. F. 68, § 97.]

2724. Instruction—examinations. Said school shall consist of necessary instruction in the use and administration of anti-hog-cholera serum and virus, and, if reasonably possible, of actual demonstrations. Examinations shall be conducted in such manner as will, in the opinion of the instructor, best test the applicant's understanding of the instructions, and his ability to practically apply them. [39 G. A., ch. 173, § 17; 40 G. A., ch. 51, § 6; 40 Ex. G. A., H. F. 68, § 98.]

2725. Report by instructor. The instructor shall at once report to the extension divi-

sion the names and postoffice addresses of those persons who are found by him to be competent to use and administer hog cholera virus. The names and addresses shall then be certified by the extension division to the department of agriculture. [39 G. A., ch. 173, § 17; 40 G. A., ch. 51, § 6; 40 Ex. G. A., H. F. 68, § 99.]

2726. Issuance of permits. Upon receipt of such names the department shall at once issue and forward to each person a permit to administer hog cholera virus. [S. S., '15, § 2538-w5; 37 G. A., ch. 329, § 1; 38 G. A., ch. 379, § 2; 39 G. A., ch. 173, §§ 15, 17; 40 G. A., ch. 51, §§ 4, 6; 40 Ex. G. A., H. F. 68, § 100.]

2727. Transmittal and refund of fees. The names of the successful and unsuccessful applicants for a permit from each county shall also be certified by the extension division to the county agent of their respective counties. In the event there is no county agent, such certification shall be made to the person appointed by the board of supervisors to receive the applications and fees for instruction. Upon receipt of such list the county agent, or the person in possession of such fees, shall forthwith forward the fees received from the successful applicants to the extension division and refund the fee received from each unsuccessful applicant to him. [39 G. A., ch. 173, § 17; 40 G. A., ch. 51, § 6; 40 Ex. G. A., H. F. 68, § 100-a1.]

2728. Duration of virus permit—revocation. A permit to administer hog cholera virus shall continue in force until revoked by the department on a showing that the holder has become incompetent to administer such virus. [S. S., '15, § 2538-w5; 37 G. A., ch. 329, § 1; 38 G. A., ch. 379, § 2; 39 G. A., ch. 173, § 15; 40 G. A., ch. 51, § 4; 40 Ex. G. A., H. F. 68, § 101.]

2729. Right of holder of virus permit. The person to whom a permit to administer hog cholera virus has been issued is authorized only to administer such virus to hogs owned by the holder of the permit, and the permit shall so state. [39 G. A., ch. 173, § 17; 40 G. A., ch. 51, § 6; 40 Ex. G. A., H. F. 68, § 102.]

2730. Compensation and expenses. The compensation of the instructors and other expenses connected with the instruction of applicants for permits shall be paid as far as possible out of the fees collected from such applicants, and any surplus shall be paid into the state treasury on July first of each year. [39 G. A., ch. 173, § 17; 40 G. A., ch. 51, § 6; 40 Ex. G. A., H. F. 68, § 103.]

2731. Schools of instruction at Ames. The state college of agriculture and mechanic arts may hold a school for the purpose of giving instruction in the method of administering anti-hog-cholera serum and virus at any time when there are at least ten applicants for such instruction. [39 G. A., ch. 173, § 18; 40 G. A., ch. 51, § 7; 40 Ex. G. A., H. F. 68, § 104.]

2732. Conducting school—permits. Schools of instruction held at said college shall be con-

ducted substantially in the same manner as county schools. Permits to administer virus shall be issued to all applicants who are found to be competent upon the same condition and in the same manner as those taking instruction in county schools. [39 G. A., ch. 173, § 18; 40 G. A., ch. 51, § 7; 40 Ex. G. A., H. F. 68, § 105.]

2733. Reports by manufacturers and dealers. A person holding a permit as manufacturer or dealer shall make such written reports to the department relative to biological products as it may from time to time require. [S. S., '15, § 2538-w5; 38 G. A., ch. 379, § 2; 39 G. A., ch. 173, § 11; 40 G. A., ch. 51, § 2; 40 Ex. G. A., H. F. 68, § 106.]

2734. Reports by virus permit holder. Every holder of a permit to administer hog cholera virus shall, upon request of the department, make a report to the department giving such information as the department may require. Such information shall be on a form furnished by the department. [40 G. A., ch. 51, § 9; 40 Ex. G. A., H. F. 68, § 107.]

2735. Delivery of report. Within ten days after being requested in writing by the department such report shall be delivered or sent by registered mail to the department by the permit holder. The department may suspend the permit of any holder who fails to make such report until he has complied with the preceding section. [40 G. A., ch. 51, § 9; 40 Ex. G. A., H. F. 68, § 108.]

2736. Lists of manufacturers and dealers. The department shall, without additional charge, and when it issues a permit to administer hog cholera virus, inclose with such permit a complete list of every manufacturer and dealer licensed to manufacture or distribute biological products. A similar list shall also be sent to every county agent, and any necessary corrections or changes shall be sent to such agent at least once every three months. [40 G. A., ch. 51, § 9; 40 Ex. G. A., H. F. 68, § 109.]

2737. Lists of virus permit holders. The department shall also upon the request of any manufacturer, dealer, or other person furnish a complete list of the names and addresses of the holders of unrevoked permits to administer virus immediately upon the issuance of such permits. A sufficient charge shall be made for such list as will cover the cost of preparation

and distribution. [40 G. A., ch. 51, § 9; 40 Ex. G. A., H. F. 68, § 110.]

2738. Seizure of samples. The department may seize, at any time or place, for examination, samples of biological products manufactured or kept for use or sale within the state. [S., '13, § 2538-w6; 38 G. A., ch. 379, § 3; 39 G. A., ch. 173, § 19; 40 Ex. G. A., H. F. 68, § 111.]

2739. Condemnation and destruction. The department shall have power to condemn and destroy any biological products which it deems unsafe. [S., '13, § 2538-w6; 38 G. A., ch. 379, § 3; 39 G. A., ch. 173, § 20; 40 Ex. G. A., H. F. 68, § 112.]

2740. Defacing labels. No person shall remove or deface any label upon the bottles or packages containing any biological products or change the contents from the original container except for immediate use. [S. S., '15, § 2538-w8; 38 G. A., ch. 379, § 5; 39 G. A., ch. 173, § 21; 40 Ex. G. A., H. F. 68, § 113.]

2741. Price of virus—rebates prohibited. Persons holding permits, either as manufacturers or dealers, shall sell all biological products at a uniform price to all persons to whom sales are made. No rebate on said price shall be given, either directly or indirectly, in any manner whatsoever. [39 G. A., ch. 173, § 23; 40 Ex. G. A., H. F. 68, § 114.]

2742. Collection of compensation by veterinarian. No licensed veterinarian shall receive, directly or indirectly, any compensation of any kind for the handling, sale, or use of any biological products, other than his charges for administering the same, unless he makes known in writing the amount of such compensation, if requested to do so by the person using biological products. Any veterinarian violating this section shall forfeit his license to practice and the same shall not be renewed for a period of one year. [39 G. A., ch. 173, § 24; 40 Ex. G. A., H. F. 68, § 115.]

2743. Violations—penalty. Any person who violates any provision of this chapter, or any rule of the department, or who shall hinder or attempt to hinder the department or any duly authorized agent or official thereof in the discharge of his duty, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars. [S., '13, § 2538-w7; 38 G. A., ch. 379, § 4; 39 G. A., ch. 173, § 26; 40 Ex. G. A., H. F. 68, § 116.]

CHAPTER 131

USE AND DISPOSAL OF DEAD ANIMALS

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2744. **Scope of chapter.** This chapter shall not apply to the disposal of the bodies of animals slaughtered for human food. [40 Ex. G. A., H. F. 68, § 117.]

2745. **Disposal of dead animals—license.** No person shall engage in the business of disposing of the bodies of dead animals without first obtaining a license for that purpose from the department of agriculture. [38 G. A., ch. 248, § 9; 40 Ex. G. A., H. F. 68, § 118.]

2746. **Disposing of dead animals defined.** Any person who shall receive from any other person the body of any dead animal for the purpose of obtaining the hide, skin, or grease from such animal, in any way whatsoever, shall be deemed to be engaged in the business of disposing of the bodies of dead animals. [38 G. A., ch. 248, § 11; 40 Ex. G. A., H. F. 68, § 119.]

2747. **Application for license—fee.** Application for such license shall be made to the department on forms provided by it, which application shall set forth the name and residence of the applicant, his proposed place of business, and the particular method which he intends to employ in disposing of such dead bodies, and such other information as the department may require. Said application shall be accompanied by a fee of twenty-five dollars. [38 G. A., ch. 248, §§ 1, 3, 8; 40 Ex. G. A., H. F. 68, § 120.]

2748. **Inspection of place—certificate.** On receipt of such application, the secretary of agriculture or some person appointed by him, shall at once inspect the building in which the applicant proposes to conduct such business. If the inspector finds that said building complies with the requirements of this chapter, and with the rules of the department, and that the applicant is a responsible and suitable person, he shall so certify in writing to such specific findings, and forward the same to the department. [38 G. A., ch. 248, §§ 2, 3, 6; 40 Ex. G. A., H. F. 68, § 121.]

2749. **Issuance of license—fee.** On the receipt of the foregoing certificate, and the additional payment of twenty-five dollars, the department shall issue a license to the applicant to conduct such business, at the place specified in the application, for one calendar year. [38 G. A., ch. 248, §§ 1, 3; 40 Ex. G. A., H. F. 68, § 122.]

2750. **Record of licenses.** The department shall keep a record of all licenses applied for or issued, which shall show the date of application and by whom made, the cause of all rejections, the date of issue, to whom issued, the date of expiration, and the location of the licensed business. [40 Ex. G. A., H. F. 68, § 123.]

2751. **Inspection revealing unsuitable place.** If the inspector find that said building does not comply with the requirements of this chapter or with the rules of the department, he shall notify the applicant wherein the same fails to so comply. If within a reasonable time thereafter, to be fixed by the inspector, the specified defects are remedied, the department shall make a second inspection, and proceed therewith as in case of an original inspection. Not more than two inspections need be made under one application. [38 G. A., ch. 248, § 3; 40 Ex. G. A., H. F. 68, § 124.]

2752. **No return of application fee.** In case such applicant is refused a license, no part of the fees paid by him shall be refunded. [38 G. A., ch. 248, § 3; 40 Ex. G. A., H. F. 68, § 125.]

2753. **Renewal of license.** An original license shall be renewed for each subsequent calendar year on the payment of twenty-five dollars, provided the holder, in the opinion of the department, remains responsible and suitable to carry on said business, and the place of business continues to comply with this chapter and the rules of the department, as they then exist. [38 G. A., ch. 248, §§ 1, 3; 40 Ex. G. A., H. F. 68, § 126.]

2754. Disposal plants—specifications. Each place for the carrying on of said business shall, to the satisfaction of the department, be provided with floors constructed of concrete, or some other nonabsorbent material, adequate drainage, be thoroughly sanitary, and adapted to carrying on the business. [38 G. A., ch. 248, § 4; 40 Ex. G. A., H. F. 68, § 127.]

2755. Manner and time of disposing of bodies. The following requirements shall be observed in the disposal of such bodies:

1. Cooking vats or tanks shall be air-tight, except proper escapes for live steam.

2. Steam shall be so disposed of as not to cause unnecessary annoyance or create a nuisance.

3. The skinning and dismembering of bodies shall be done within said building.

4. The building shall be so situated and arranged, and the business therein so conducted, as not to interfere with the comfortable enjoyment of life and property.

5. Such portions of bodies as are not entirely consumed by cooking or burning shall be disposed of by burying as hereafter provided, or in such manner as the department may direct.

6. In case of disposal by burying, the burial shall be to such depth that no part of such body shall be nearer than four feet to the natural surface of the ground, and every part of such body shall be covered with quicklime, and by at least four feet of earth.

7. All bodies shall be disposed of within twenty-four hours after death. [38 G. A., ch. 248, § 4; 40 Ex. G. A., H. F. 68, § 128.]

2756. Rules. The department shall make such reasonable rules for the carrying on and conducting of such business as it may deem advisable, and all persons engaging in such business shall comply therewith. [38 G. A., ch. 248, § 5; 40 Ex. G. A., H. F. 68, § 129.]

2757. Annual inspection—revocation of license. The department shall inspect each place licensed under this chapter at least once each year, and as often as it deems necessary, and shall see that the licensee conducts the business in conformity to this chapter and the rules made by the department. For a failure or refusal by any licensee to obey the provisions of this chapter or said rules, the department shall suspend or revoke the license held by such licensee. [38 G. A., ch. 248, § 7; 40 Ex. G. A., H. F. 68, § 130.]

2758. Transportation of dead animals. Any person holding a license under the provisions of this chapter may haul and transport the carcasses of animals that have died from disease, except those prohibited by the department, in a covered wagon bed or tank which is watertight, and is so constructed that no drippings or seepings from such carcasses can escape from

such wagon bed or tank, and said carcasses shall not be moved from said wagon bed or tank except at the place of final disposal. The department may prescribe additional requirements governing the construction of such vehicles and such transportation not inconsistent with the above. [38 G. A., ch. 248, § 10; 39 G. A., ch. 99, § 2; 40 Ex. G. A., H. F. 68, § 131.]

2759. Driving upon premises of another. Vehicles when loaded with the carcass of an animal which has died of disease shall be driven directly to the place of disposal, except that the driver in so driving may stop on the highway for other like carcasses, but he shall not drive into the yard or upon the premises of any person unless he first obtains the permission of the person to do so. [38 G. A., ch. 248, § 10; 39 G. A., ch. 99, § 2; 40 Ex. G. A., H. F. 68, § 132.]

2760. Disinfecting outfit. The driver or owner of a vehicle used in conveying animals which said driver or owner has reason to believe died of disease, shall, immediately after unloading said animals, cause the wagon box, tank, or other vehicle, the wheels thereof, all canvassing and covers, the feet of the animals drawing said conveyance, and the outer clothing of all persons who have handled said carcasses to be disinfected with a solution of at least one part of cresol dip to four parts of water, or with some other equally effective disinfectant. [38 G. A., ch. 248, § 10; 39 G. A., ch. 99, § 2; 40 Ex. G. A., H. F. 68, § 133.]

2761. Duty to dispose of dead bodies. No person caring for or owning any animal that has died shall allow the carcass to lie about his premises. Such carcass shall be disposed of within twenty-four hours after death by cooking, burying, or burning, as provided in this chapter, or by disposing of it, within said time, to a person licensed to so dispose of it, but the carcass of an animal which has not died of a contagious disease may be fed to hogs. [38 G. A., ch. 248, § 12; 39 G. A., ch. 99, § 1; 40 Ex. G. A., H. F. 68, § 134.]

2762. Penalty. The violation of any of the provisions of this chapter or any rule adopted thereunder by the department shall be punishable by a fine of not less than five dollars nor more than five hundred dollars or by imprisonment in the county jail not more than ninety days. [C., '97, § 5019; 38 G. A., ch. 248, § 13; 40 Ex. G. A., H. F. 68, § 135.]

2763. Appropriation. The expense attending the inspection provided for in this chapter shall be paid from any unappropriated funds in the state treasury. [40 Ex. G. A., H. F. 68, § 136.]

CHAPTER 132

VETERINARY MEDICINE AND SURGERY

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2764. Persons engaged in practice of veterinary medicine. For the purpose of this chapter the following classes of persons shall be deemed to be engaged in the practice of veterinary medicine:

1. Persons practicing veterinary medicine, surgery, or dentistry, or any of the branches thereof.

2. Persons who profess to be veterinarians, or who profess to assume the duties incident to the practice of veterinary medicine.

3. Persons who make a practice of prescribing or who do prescribe and furnish medicine for the ailments of animals. [40 Ex. G. A., H. F. 68, § 137.]

2765. Persons not engaged in practice of veterinary medicine. The preceding section shall not be construed to include the following classes of persons:

1. Veterinarians of the United States army, navy, or in the service of the federal department of agriculture, not engaged in private practice.

2. Persons who dehorn cattle or castrate animals.

3. Persons who treat diseased or injured animals gratuitously. [S., '13, § 2538-m; 40 Ex. G. A., H. F. 68, § 138.]

2766. License required. No person shall engage in the practice of veterinary medicine unless he shall have obtained from the department of agriculture a license for that purpose. [S., '13, § 2538-a; 40 Ex. G. A., H. F. 68, § 139.]

2767. Form of license. Every license to practice veterinary medicine shall be in the form of a certificate under the seal of the department, and signed by the secretary. The number of the book and page containing the entry of the license in the office of the department shall be noted on the face of the license. [S., '13, § 2538-i; 40 Ex. G. A., H. F. 68, § 140.]

2768. Display of license. Every person licensed under this chapter shall keep his license displayed in the place in which he maintains an office. [40 Ex. G. A., H. F. 68, § 141.]

2769. Renewal of license. Every license issued under this chapter shall expire on the thirtieth day of June following the date of issuance, and shall be renewed annually upon application by the licensee, without examination. Application for such renewal shall be made in writing to the department of agriculture, accompanied by the legal fee, at least thirty days prior to the expiration of such license. The department shall notify each licensee by mail of the expiration of his license. Every renewal shall be displayed in connection with the original license. [S., '13, § 2538-j; 40 Ex. G. A., H. F. 68, § 142.]

2770. Prima facie evidence. The opening of an office or place of business for the practice of veterinary medicine, the use of a sign, card, device, or advertisement as a practitioner of veterinary medicine or as a person skilled in such practice, shall be prima facie evidence of

engaging in the practice of veterinary medicine. [40 Ex. G. A., H. F. 68, § 143.]

2771. Unlawful use of degree. No person shall use any veterinary degree or abbreviation for the same unless such degree has been conferred upon him by an institution of learning recognized by the state board of education. [S., '13, § 2538-n; 40 Ex. G. A., H. F. 68, § 145.]

2772. Requirement for license. Each applicant for a license to practice veterinary medicine, surgery, and dentistry, shall:

1. Present satisfactory evidence that he is at least twenty-one years of age, and of good character.

2. Present a diploma showing that he is a graduate of a recognized school of veterinary medicine.

3. Pass satisfactorily an examination in veterinary medicine, surgery, and dentistry. [S., '13, § 2538-i; 40 Ex. G. A., H. F. 68, § 146.]

2773. Fees. The following fees shall be collected by the department of agriculture:

1. For a license to practice veterinary medicine, issued upon an examination given by the examining board, twenty-five dollars, which shall be paid in advance to the department of agriculture.

2. For a license to practice veterinary medicine, issued upon the basis of a license issued in another state, fifty dollars.

3. For the renewal of a license to practice veterinary medicine, two dollars and fifty cents.

4. For a certified statement that a licensee is licensed in this state, five dollars.

5. For the issuance of a duplicate license in case the original has been lost or destroyed, five dollars. [S., '13, §§ 2538-h, 2538-i, 2538-j; 40 Ex. G. A., H. F. 68, § 147.]

2774. Reexaminations. In case an applicant fails in his examination, he shall be permitted to take a subsequent examination within any period not exceeding twelve months thereafter without paying any additional fee. After the expiration of twelve months such applicant shall pay the regular fee. [S., '13, § 2538-o; 40 Ex. G. A., H. F. 68, § 148.]

2775. Record of licenses—open to public inspection. The name, age, nativity, location, number of years of practice of the person to whom a license is issued, the number of the certificate, and the date of registration thereof shall be entered in a book kept in the office of the department of agriculture, to be known as the registry book, and the same shall be open to public inspection. [S., '13, §§ 2538-i, 2538-j; 40 Ex. G. A., H. F. 68, § 149.]

2776. Notice of change of residence. When any person licensed to practice under this chapter changes his residence, he shall notify the department of agriculture and such change shall be noted in the registry book. [40 Ex. G. A., H. F. 68, § 150.]

2777. Examining board. For the purpose of giving examinations to applicants for license

to practice veterinary medicine, the department of agriculture shall appoint a board of three examiners, who shall be licensed veterinarians. [S., '13, § 2538-t; 40 Ex. G. A., H. F. 68, § 151.]

2778. Term of examiners. The members of the examining board shall be appointed for a term of three years. The term of each examiner shall commence on July first in the year of appointment and the terms of the members of the board shall be rotated in such a manner that one examiner shall retire each year and a successor be appointed to take his place. [40 Ex. G. A., H. F. 68, § 152.]

2779. Vacancies. Any vacancy in the membership of the examining board caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments. [40 Ex. G. A., H. F. 68, § 153.]

2780. Compensation of examiners. Each member of the examining board shall receive ten dollars a day for each day actually engaged in the discharge of his duties, including compensation for a reasonable number of days for the preparation of examination questions and the reading of papers in addition to the time actually spent in conducting examinations, but if any member of the examining board is in the full-time employ of the department he shall not receive any compensation as a member of such board other than his regular salary. Each member of the board shall also receive five cents per mile for the number of miles actually traveled in the discharge of his duties. [40 Ex. G. A., H. F. 68, § 154.]

2781. Appropriation. There is hereby annually appropriated out of any funds in the state treasury, not otherwise appropriated, a sum sufficient to pay the compensation and expenses of the members of the examining board. [40 Ex. G. A., H. F. 68, § 155.]

2782. Supplies. The department of agriculture shall furnish the examining board with all articles and supplies required for the public use and necessary to enable said board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained, and the same shall be considered and accounted for as if obtained for the use of said department. [40 Ex. G. A., H. F. 68, § 156.]

2783. Quarters. The executive council shall furnish the examining board with suitable quarters in which to conduct the examinations held by said board. [40 Ex. G. A., H. F. 68, § 157.]

2784. Meetings—quorum. The board shall meet at least once a year, and oftener if necessary, at the capitol, for the purpose of holding examinations. A majority shall constitute a

quorum. [S., '13, § 2538-f; 40 Ex. G. A., H. F. 68, § 158.]

2785. Representation at national meetings. The department may designate one of the members of the examining board to attend either:

1. The annual meeting of the regular national association or society of the veterinary profession, or
2. The annual meeting of the national organization of state examining boards for such profession. [40 Ex. G. A., H. F. 68, § 159.]

2786. Applications for examination. Any person desiring to take the examination for a license to practice veterinary medicine shall make application to the department of agriculture, on a form provided by the department, at least fifteen days before the examination. Such application shall be accompanied by the license fee and such documents and affidavits as are necessary to show the eligibility of the candidate to take such examination. All applications shall be in accordance with the rules of the department and shall be signed and verified by the oath of the applicant. [S., '13, § 2538-e; 40 Ex. G. A., H. F. 68, § 160.]

2787. List of accredited colleges. The department of agriculture shall prepare and keep up to date a list of accredited colleges in which is taught the science of veterinary medicine, surgery, and dentistry. [40 Ex. G. A., H. F. 68, § 161.]

2788. Data relative to professional schools. As a basis for such action on the part of the department the registrar of the state college of agriculture and mechanic arts and the dean of the division of veterinary medicine of said college shall supply such data relative to any veterinary school as the department may request. [40 Ex. G. A., H. F. 68, § 162.]

2789. Transmittal of names of eligible candidates. Prior to each examination the department of agriculture shall transmit to the examining board the list of candidates who are eligible to take such examination. In making up such list, the department may call upon the examining board, or any member thereof, for information relative to the eligibility of any applicant. [40 Ex. G. A., H. F. 68, § 163.]

2790. Rules relative to examinations. The examining board shall establish rules for:

1. The conducting of examinations.
2. The grading of examinations and passing upon the technical qualifications of applicants, as shown by such examinations. [S., '13, § 2538-e; 40 Ex. G. A., H. F. 68, § 164.]

2791. Examinations in theory. All examinations shall be in writing, and the identity of the person taking the same shall not be disclosed upon the examination papers in such a way as to enable the members of the examining board to know by whom written until after the papers have been passed upon. [40 Ex. G. A., H. F. 68, § 165.]

2792. Certification of successful applicants. Every examination shall be passed upon in accordance with the established rules of the examining board and shall be satisfactory to at least a majority of the members of said board. After each examination, the examining board shall certify the names of the successful applicants to the department of agriculture, in the manner prescribed by said department, which shall issue the proper license and make the required entry in the registry book. [S., '13, § 2538-f; 40 Ex. G. A., H. F. 68, § 166.]

2793. Preservation of records. All matters connected with each examination for license shall be filed with the department of agriculture and preserved for five years as a part of the records of the department, during which time said records shall be open to public inspection. [40 Ex. G. A., H. F. 68, § 167.]

2794. Reciprocal agreements. For the purpose of recognizing licenses to practice veterinary medicine which have been issued in other states, the department of agriculture, upon recommendation of the examining board, is authorized to establish reciprocal relations with the duly constituted and proper authorities of such other states. [S., '13, § 2538-i; 40 Ex. G. A., H. F. 68, § 168.]

2795. Reciprocal disabilities. When the laws of such other states or the rules of such authorities place any requirement or disability upon a person licensed under this chapter or on any person holding a diploma from the division of veterinary medicine of the college of agriculture and mechanic arts of this state which affects the rights of said persons to be licensed or to practice in said other states, then the same requirement or disability shall be placed upon any person licensed in said state or holding a diploma from any veterinary college situated therein, when applying for a license to practice in this state. [S., '13, § 2538-il; 40 Ex. G. A., H. F. 68, § 169.]

2796. Foreign licenses recognized. After reciprocal relations are entered into, the department may, in lieu of the examination herein provided for, issue a license to practice veterinary medicine, on the basis of a certificate of registration or license issued by the duly constituted and proper authorities of another state with which such reciprocal relations exist, provided such certificate of registration or license has been issued by such other state on requirements substantially equivalent to those required in this state at the time of the issuance of such certificate of registration or license. [S., '13, § 2538-i; 40 Ex. G. A., H. F. 68, § 170.]

2797. Termination of reciprocal agreements. When the requirements for a license in any state with which this state has a reciprocal agreement are changed by any law or rule of the authorities therein so that such requirements are no longer substantially as high as those existing in this state, then such agreement shall be deemed terminated and licenses

issued in such state shall not be recognized as a basis for granting a license in this state until a new agreement has been negotiated. The fact of such change shall be determined by the examining board and certified to the department of agriculture for its guidance in enforcing the provisions of this section. [40 Ex. G. A., H. F. 68, § 171.]

2798. Change of residence to another state. Any licensee who is desirous of changing his residence to another state or territory shall, upon application to the department of agriculture and payment of the legal fee, receive a certified statement that he is a duly licensed practitioner in this state. [40 Ex. G. A., H. F. 68, § 172.]

2799. Grounds for revocation of license. A license to practice shall be revoked or suspended by the district court in the county in which the licensee resides when the licensee is found guilty of any of the following acts or offenses:

1. Fraud in procuring the license.
2. Incompetency in the practice of the profession.
3. Immoral, unprofessional, or dishonorable conduct.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of an offense involving turpitude.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Distribution of alcohol or drugs for any other than legitimate purposes.
9. Wilful or repeated violations of this title, the title on "Public Health", or the rules of the department of agriculture. [S., '13, § 2538-e; 40 Ex. G. A., H. F. 68, § 173.]

NOTE: For law relative to distribution of alcohol, see title 6; for law relative to distribution of drugs, see chs. 155 and 156; for title on "Public Health", see title 7.

2800. Revocation proceedings. All the provisions of sections 2492 to 2508, inclusive, relative to the revocation of licenses to practice certain professions, in so far as applicable, shall govern all proceedings for the revocation of licenses issued under this chapter. [40 Ex. G. A., H. F. 68, § 174.]

2801. Secretary to direct bringing of action. The secretary of agriculture shall direct

the attorney general to bring the necessary proceedings against any licensee for the revocation or suspension of his license upon his own motion or he may give such direction upon the sworn information of any resident of the state. [40 Ex. G. A., H. F. 68, § 175.]

2802. Duty of attorney general and county attorney. The attorney general shall comply with such direction of the secretary of agriculture and prosecute such action on behalf of the state, but the county attorney, at the request of the attorney general, shall appear and prosecute such action when brought in his county. [S., '13, § 2538-1; 40 Ex. G. A., H. F. 68, § 176.]

2803. Forgeries in procuring licenses. Any person who shall file or attempt to file with the department of agriculture any false or forged diploma, or certificate or affidavit of identification or qualification, shall be guilty of forgery and punished accordingly. [40 Ex. G. A., H. F. 68, § 178.]

2804. Fraud in procuring license—penalty. Any person who shall present to the department of agriculture a diploma or certificate of which he is not the rightful owner, for the purpose of procuring a license, or who shall falsely personate anyone to whom a license has been granted by said department, shall be punished as provided in the following section. [40 Ex. G. A., H. F. 68, § 179.]

2805. Penalty. Any person who violates any provision of this chapter shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail for a period of not exceeding thirty days for each offense. [S., '13, § 2538-1; 40 Ex. G. A., H. F. 68, § 180.]

2806. Enforcement. The department of agriculture shall enforce the provisions of this chapter and for that purpose shall make necessary investigations relative thereto. Every licensee and member of the examining board shall furnish said department such evidence as he may have relative to any alleged violation which is being investigated. [40 Ex. G. A., H. F. 68, § 181.]

2807. Duty of county attorney. The county attorney of the county in which any violation of this chapter occurs shall conduct the necessary prosecution for such violation. [S., '13, § 2538-1; 40 Ex. G. A., H. F. 68, § 182.]

CHAPTER 133

HOTELS, RESTAURANTS, AND FOOD ESTABLISHMENTS

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2808. Definitions. For the purpose of this chapter:

1. "Hotel" shall mean any building or structure equipped, used, advertised as, or held out to the public to be an inn, hotel, or public lodging house or place where sleeping accommodations are furnished transient guests for hire, whether with or without meals.
2. "Guest room" shall mean office, parlor, dining room, kitchen, and sleeping apartment of a hotel, whether for transient or permanent guests.
3. "Sleeping apartment" shall mean bedroom or other sleeping quarters in a hotel.
4. "Restaurant" shall mean any building or structure equipped, used, advertised as, or held out to the public to be a restaurant, cafe, cafeteria, dining hall, lunch counter, lunch wagon, or other like place where food is served for pay, except hotels and such places as are used by churches, fraternal societies, and civic organizations which do not regularly engage in the serving of food as a business.

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5. "Food" shall include any article used by man for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound.

6. "Food establishment" shall include any building, room, basement, or other place, used as a bakery, confectionery, cannery, packing-house, slaughterhouse, dairy, creamery, cheese factory, restaurant or hotel kitchen, retail grocery, meat market, or other place in which food is kept, produced, prepared, or distributed for commercial purposes.

7. "Slaughterhouse" shall mean a food establishment in which animals or poultry are killed or dressed for food. 1. [S., '13, § 2514-h; 38 G. A., ch. 182, § 1; 40 Ex. G. A., H. F. 69, § 1.] 2. [38 G. A., ch. 182, § 1; 40 Ex. G. A., H. F. 69, § 1.] 3. [40 Ex. G. A., H. F. 69, § 1.] 4. [39 G. A., ch. 199, § 1; 40 Ex. G. A., H. F. 69, § 1.] 5. [S., '13, § 2527-a; 40 Ex. G. A., H. F. 69, § 1.] 6. [S., '13, § 2527-a; 38 G. A., ch. 202, § 1; 40 Ex. G.

A., H. F. 69, § 1.] 7. [S., '13, § 2527-i; 40 Ex. G. A., H. F. 69, § 1.]

LICENSES

2809. License required—expiration—transferable. No person shall maintain or conduct a hotel, restaurant, bakery, candy factory, ice cream factory, bottling works, canning factory, slaughterhouse, meat market, or place where fresh meats are sold at retail until he shall obtain a license from the department of agriculture. Each license shall expire one year from the date of issuance except a hotel or restaurant license which shall expire on the last day of December following the date of issuance. A hotel license shall be transferable upon the payment of a fee of one dollar to the department, but no other license shall be transferable. [S., '13, § 2527-l; 38 G. A., ch. 182, § 1; 39 G. A., ch. 199, § 4; 40 Ex. G. A., H. F. 69, § 2.]

2810. Application for license. Every application for a license under this chapter shall be made upon a blank furnished by the department and shall contain the items required by it as to ownership, management, location, buildings, equipment, rates, and other data concerning the business for which a license is desired. An application for a license to operate an existing business shall be made at least thirty days before the expiration of the existing license. [S., '13, § 2527-l; 38 G. A., ch. 182, § 1; 39 G. A., ch. 199, §§ 2, 3; 40 Ex. G. A., H. F. 69, § 3.]

2811. Operation without license. After application has been made for a license, accompanied by the legal fee, as provided in this chapter, the applicant may operate his business without a license until his application has been denied. [38 G. A., ch. 182, § 1; 39 G. A., ch. 199, §§ 3, 4; 40 Ex. G. A., H. F. 69, § 4.]

2812. License fees. The department shall collect the following fees for licenses:

1. For a hotel containing fifteen guest rooms or less, four dollars.

2. For a hotel containing more than fifteen or less than thirty-one guest rooms, six dollars.

3. For a hotel containing more than thirty and less than seventy-six guest rooms, eight dollars.

4. For a hotel containing more than seventy-five and less than one hundred fifty guest rooms, ten dollars.

5. For a hotel containing one hundred fifty or more guest rooms, fifteen dollars.

6. For a restaurant, candy factory, ice cream factory, bottling works, bakery, canning factory, slaughterhouse, meat market, or place where fresh meats are sold at retail, three dollars. [S., '13, § 2527-l; 38 G. A., ch. 182, § 1; 39 G. A., ch. 199, § 5; 40 Ex. G. A., H. F. 69, § 5.]

2813. Revocation of license. Any license issued under this chapter may be revoked by the department for violation by the licensee of any provision of this chapter or any rules of the department. [S., '13, §§ 2514-w, 2527-l; 38 G.

A., ch. 182, § 7; 39 G. A., ch. 199, § 14; 40 Ex. G. A., H. F. 69, § 6.]

SANITARY CONSTRUCTION

2814. Plumbing in buildings connected with sewers. Every hotel, restaurant, or food establishment located in a city or town having a sewerage system, shall be constructed and drained according to an approved sanitary system and maintained in a sanitary condition free from any gas or offensive odors arising from any sewer, drain, privy, or other source within the control of the owner or person in charge. [S., '13, §§ 2514-m, 2527-a; 38 G. A., ch. 182, § 2; 38 G. A., ch. 202, § 1; 39 G. A., ch. 199, § 9; 40 Ex. G. A., H. F. 69, § 7.]

2815. Plumbing in buildings not connected with sewers. Every hotel, restaurant, or food establishment located in a city or town not having a sewerage system shall be constructed and drained in the same manner and the drain shall be connected with an approved cesspool. Such cesspools shall be cleaned and disinfected as often as necessary to maintain them in an approved sanitary condition. [S., '13, §§ 2514-m, 2527-a; 38 G. A., ch. 182, § 2; 38 G. A., ch. 202, § 1; 39 G. A., ch. 199, § 9; 40 Ex. G. A., H. F. 69, § 8.]

2816. Certain restaurants exempted. The two preceding sections shall not apply to restaurants temporary in character and location. [39 G. A., ch. 199, § 9; 40 Ex. G. A., H. F. 69, § 9.]

2817. Floors—killing beds. The floors in every food establishment shall be made of some suitable nonabsorbent and impermeable material, approved by the department, which can be flushed and washed clean with water. All new slaughterhouses shall be constructed with cement, vitrified brick, tile, or other impervious material floors and killing beds. [S., '13, §§ 2527-c, 2527-i; 38 G. A., ch. 202, § 2; 40 Ex. G. A., H. F. 69, § 10.]

2818. Interior finish. The side walls and ceilings of every bakery, confectionery, creamery, cheese factory, slaughterhouse, and restaurant or hotel kitchen, shall be made of some suitable material approved by the department, and shall be either oil painted so that they can be washed clean, or they shall be kept well lime-washed. [S., '13, §§ 2527-c, 2527-i; 38 G. A., ch. 202, § 2; 40 Ex. G. A., H. F. 69, § 11.]

2819. Screens. The doors, windows, and other openings of every hotel, restaurant, and food establishment during the fly season shall be fitted with self-closing screen doors and wire window screens of not coarser than fourteen mesh wire gauze. [S., '13, §§ 2527-d, 2527-i; 38 G. A., ch. 182, § 2; 40 Ex. G. A., H. F. 69, § 12.]

2820. Certain places exempted. The preceding section shall not apply to sheds used for husking corn, nor to warehouses or storerooms used for the storage or handling of the finished

product when sealed in original packages. [S., '13, § 2527-d; 40 Ex. G. A., H. F. 69, § 13.]

2821. Toilet rooms. Food establishments shall have convenient toilet rooms and urinals separate from other rooms with floors as prescribed for such establishments, with separate ventilating flues discharging into soil pipes, or on the outside of the building. [S., '13, § 2527-e; 39 G. A., ch. 199, § 10; 40 Ex. G. A., H. F. 69, § 14.]

2822. Lavatories. The lavatories in food establishments shall be adjacent to toilet rooms and shall be supplied with soap, running water, and clean towels, and shall be maintained in a sanitary condition. [S., '13, § 2527-e; 39 G. A., ch. 199, § 10; 40 Ex. G. A., H. F. 69, § 15.]

SANITATION IN CONDUCTING BUSINESS

2823. Lighting and ventilation. Every food establishment shall be properly lighted, ventilated, and conducted with strict regard to the influence of such conditions upon the food handled therein. [S., '13, § 2527-a; 38 G. A., ch. 202, § 1; 39 G. A., ch. 199, § 9; 40 Ex. G. A., H. F. 69, § 16.]

2824. Sanitary regulations. The following sanitary regulations shall be complied with in every hotel, restaurant, and food establishment:

1. The floors, walls, ceilings, woodwork, utensils, machinery, and other equipment, and all vehicles and equipment used in the transportation of food shall be kept in a thoroughly clean condition.

2. Food shall be at all times adequately protected from flies, dirt, and contamination from any source.

3. Dirt, refuse, and waste products subject to decomposition or fermentation shall be removed daily.

4. The clothing of all persons employed shall be kept clean, and those who handle food shall keep themselves clean and wash their hands and arms before beginning work and after visiting the toilet. [S., '13, §§ 2527-b, 2527-c, 2527-e, 2527-i, 2527-k; 38 G. A., ch. 182, § 2; 38 G. A., ch. 202, § 2; 39 G. A., ch. 199, § 10; 40 Ex. G. A., H. F. 69, § 17.]

2825. Additional requirements for slaughterhouses. In addition to the requirements of the preceding section the following regulations shall also be complied with in the operation of slaughterhouses:

1. The building and yard shall be properly drained so as to prevent accumulations of water or mud.

2. The dressing room shall be supplied with pure and wholesome water.

3. In case a slaughterhouse is not in continuous use the refuse and waste products shall be removed within twenty-four hours after each using.

4. No blood pit, dung pit, offal pit, or privy well shall be maintained upon the premises, and refuse and waste products shall be burned or buried.

5. The premises shall be kept free from maggots and foul odors.

6. Swine shall not be kept or fed within fifty feet of the slaughterhouse.

7. Dead animals shall not be used for feeding purposes without first being thoroughly cooked.

8. Carcasses shall be covered with clean, white cloths before being transported, and shall be kept only in sanitary refrigerators or storage rooms. [S., '13, § 2527-i; 40 Ex. G. A., H. F. 69, § 18.]

2826. Common towel—paper towels. No roller or common towel shall be kept or used in the toilet room or wash room of any hotel, restaurant, or food establishment, but individual sanitary paper towels may be provided for use in said places. [38 G. A., ch. 182, § 2; 39 G. A., ch. 199, § 10; 40 Ex. G. A., H. F. 69, § 19.]

2827. Common drinking cup. No common drinking cup shall be kept or used in any place or room in any hotel, restaurant, or food establishment. [38 G. A., ch. 182, § 2; 39 G. A., ch. 199, § 10; 40 Ex. G. A., H. F. 69, § 20.]

2828. Tableware. No soiled or insanitary tableware, tablecloths, napkins, or other table linen, shall be used in any hotel or restaurant. [38 G. A., ch. 182, § 2; 39 G. A., ch. 199, § 10; 40 Ex. G. A., H. F. 69, § 21.]

2829. Expecterating—cupidors. No person shall expectorate within any food establishment except into cuspidors which shall be provided when necessary. Said cuspidors shall be emptied and thoroughly washed daily with some disinfectant solution, five ounces of which shall be left in each cuspidor while in use. [S., '13, § 2527-f; 40 Ex. G. A., H. F. 69, § 22.]

2830. Use as living room. No person shall be allowed to use as a dwelling, or sleep in, any workroom of any bakeshop, kitchen, or dining room where food is prepared for commercial purposes, confectionery, creamery, ice cream factory, cheese factory, cream station, meat market, or any other place where, in the opinion of the department, food will be contaminated thereby. [S., '13, § 2527-g; 39 G. A., ch. 199, § 10; 40 Ex. G. A., H. F. 69, § 23.]

2831. Employment of diseased persons. No person infected with any communicable disease as defined in chapter 108 shall work in any food establishment nor shall any employer permit any such person to work at any such establishment. [S., '13, § 2527-h; 40 Ex. G. A., H. F. 69, § 24.]

2832. Street display of food. No person shall make any sidewalk or street display of any meat products; but other food products may be so displayed if they are inclosed in a show case or similar device which shall protect the same from flies, dust, or other contamination, and in such display the bottom of the display case shall be at least two feet above the surface of the sidewalk. [S., '13,

§§ 2527-j, 2527-k; 40 Ex. G. A., H. F. 69, § 25.]

2833. Polishing fruit. No person shall polish fruit or any other food product by any insanitary or unclean process. [S., '13, § 2527-j; 40 Ex. G. A., H. F. 69, § 26.]

SPECIAL SANITATION PROVISIONS IN RE HOTELS

2834. Bedding. Every bed, bunk, cot, or other sleeping place in a hotel shall be supplied with white cotton or linen under sheets, top sheets, and pillow slips. The sheets shall be ninety-six inches in length and of sufficient width to completely cover the mattress and springs. The pillow slips and sheets after being used by any guest shall be washed and ironed, and a clean set furnished each succeeding guest. The other bedding shall be thoroughly aired and kept clean at all times. All mattresses, quilts, blankets, pillows, sheets, comforts, and other bedding which have become worn or insanitary so as to be unfit for use shall be condemned by the inspector, and shall not be again used after such condemnation. [S., '13, § 2514-m; 38 G. A., ch. 182, § 2; 40 Ex. G. A., H. F. 69, § 27.]

2835. Extermination of vermin. Every room or article in any hotel which has become infested with bedbugs or other vermin shall be renovated until the same are exterminated. [S., '13, § 2514-m; 38 G. A., ch. 182, § 2; 40 Ex. G. A., H. F. 69, § 28.]

2836. Towels. Individual towels shall be provided for the use of each guest in a hotel, so that two or more guests will not be required to use the same towel. [38 G. A., ch. 182, § 2; 40 Ex. G. A., H. F. 69, § 29.]

2837. Ventilation of sleeping apartments. Every hotel shall be properly ventilated and each sleeping apartment shall be provided with at least one window or ventilating skylight equal in area to at least one-eighth of the floor space of the room, and the same shall open onto the outside of the building or court. No room the floor of which is three feet below the average level of the ground shall be used as a sleeping apartment. Where storm windows are used the same shall be constructed so that proper ventilation may be had by the guest and hung in such a manner that they may be readily opened to insure safe exit in case of fire. [38 G. A., ch. 182, § 2; 40 Ex. G. A., H. F. 69, § 30.]

2838. Ventilation of sleeping apartments in new hotels. Every hotel hereafter constructed and every building remodeled for the purpose of use as a hotel, in addition to the requirements of the preceding section, shall have sufficient ventilation in the door or doorway of each sleeping apartment, or some equivalent improvement. [38 G. A., ch. 182, § 2; 40 Ex. G. A., H. F. 69, § 31.]

2839. Free use of locked toilets. When a hotel is equipped with locked sanitary toilets

accessible to guests, they shall be furnished with slugs for admittance to the same without expense. [38 G. A., ch. 182, § 2; 40 Ex. G. A., H. F. 69, § 32.]

2840. Outside water-closets. Outside water-closets for guests of a hotel shall be properly screened from flies and separated for the use of males and females and shall be cleaned and disinfected as often as necessary to maintain them in an approved sanitary condition. [S., '13, § 2514-m; 38 G. A., ch. 182, § 2; 40 Ex. G. A., H. F. 69, § 33.]

2841. List of rooms and rates to be posted. A complete list of rooms by number, together with the number of the floor and the rate per diem per person for each room, shall be kept continuously and conspicuously posted on the wall near the office in the lobby of every hotel in such a way as to be accessible to the public without request to the management. The rate per diem per person for each room shall also be posted in the same manner in the respective rooms. No greater charge than the one thus posted shall be made. [38 G. A., ch. 182, §§ 1, 2; 40 Ex. G. A., H. F. 69, § 34.]

2842. Increase of rates. The rate posted under the preceding section shall not be increased until sixty days' notice of the proposed increase has been given to the department. [38 G. A., ch. 182, § 2; 40 Ex. G. A., H. F. 69, § 35.]

FIRE PROTECTION IN HOTELS

2843. New hotels to be constructed with halls. Every new hotel constructed of three or more stories in height shall be provided with a hall on each floor above the ground floor, extending from one outside wall to another, and such hall shall be equipped at the end with fire escapes, as provided by law. But in hotels of approved fireproof construction the provisions with reference to the hall extending from one outside wall to another may be modified, with the approval of the labor commissioner, when such buildings are equipped with class A fire escapes. [S. S., '15, § 2514-o; 40 Ex. G. A., H. F. 69, § 36.]

NOTE: For general fire escape law, see ch. 82; see also §§ 6361 to 6372, inc., of the housing law.

2844. Construction of inside courts and light wells. Every hotel, except those which are of approved fireproof construction, in which the sleeping apartments have no outside opening except into an inside court or light well which does not extend to the ground, shall have such court or light well supplied with a suitable runway, platform, or balcony, connecting the bottom of the court or light well with some easy way of egress to the fire escapes. Doors or windows interposed between said runway, platform, or balcony and the fire escapes shall not be fastened against exit. [S. S., '15, § 2514-n; 40 Ex. G. A., H. F. 69, § 37.]

2845. Special construction required in certain cases. If the roof or covering at the bottom of the court or light well may be easily destroyed by fire, the runway, platform, or balcony shall be attached to the walls of the court or light well in the manner required by the department. [S. S., '15, § 2514-n; 40 Ex. G. A., H. F. 69, § 38.]

2846. Exits from ground courts. When a court or light well extends to the ground it shall be provided with some suitable means for exit to the outside in case of fire. [S. S., '15, § 2514-n; 40 Ex. G. A., H. F. 69, § 39.]

2847. Rope fire escapes. Every hotel of more than one story, except hotels which are of approved fireproof construction, in addition to other fire escapes required by law, shall have in each sleeping apartment a manila rope at least five-eighths of an inch in diameter and of sufficient length to reach the ground with knots or loops not more than fifteen inches apart, and the same shall have sufficient tensile strength to sustain a weight of at least five hundred pounds. Said rope shall be securely fastened to the building as near an outside window as practicable and shall not be covered by curtains or other obstructions but shall be kept coiled in plain sight at all times. In lieu of such rope some other appliance approved by the department may be provided. [S. S., '15, § 2514-i; 40 Ex. G. A., H. F. 69, § 40.]

NOTE: For general fire escape law, see ch. 82; see also §§ 6361 to 6372, inc., of the housing law.

2848. Fire escape signs. In every hotel there shall be posted at the entrance to each hall, elevator shaft, or stairway, or in each sleeping apartment above the ground floor, signs printed in black ink on a white background with type not less than one inch in height stating the directions for reaching the fire escapes. There shall also be posted in each sleeping apartment a notice printed in large bold-face type calling attention and giving directions for the use of the rope fire escape or other appliance with which the room is equipped. [S., '13, § 2514-j; 40 Ex. G. A., H. F. 69, § 41.]

2849. Fire extinguishers. Every hotel shall be provided with at least one efficient chemical fire extinguisher on each floor for every twenty-five hundred feet of floor space, placed and maintained in the hallway outside the sleeping apartments and kept in condition for immediate use. In lieu of such extinguisher a standpipe may be provided in the hall which shall not be less than one and one-fourth inches in diameter with hose always attached of sufficient length and supplied with the proper pressure of water to reach any and all parts of the interior of the building. [S., '13, § 2514-k; 40 Ex. G. A., H. F. 69, § 42.]

2850. Elevator shafts. Every hotel, except those of approved fireproof construction which is equipped with an elevator shaft extending

below the level of the first floor shall have the shaft enclosed, as nearly air-tight as practicable, with iron or steel sheeting, wire glass, or other fireproof material. In lieu of such construction, the elevator shaft may be provided with an automatic floor trap at the first floor, which shall be constructed in the most approved manner for preventing the spread of fire. [S., '13, § 2514-l; 40 Ex. G. A., H. F. 69, § 43.]

INSPECTION

2851. Annual inspection. The department shall cause to be inspected at least once each calendar year, every hotel, restaurant, and food establishment in the state, and any inspector of said department may enter any such place at any reasonable hour to make such inspection. The management shall afford free access to every part of the premises and render all aid and assistance necessary to enable the inspector to make a thorough and complete examination. [S., '13, §§ 2514-q, 2527-m, 2528-d5; 38 G. A., ch. 182, § 3; 39 G. A., ch. 199, § 7; 40 Ex. G. A., H. F. 69, § 44.]

2852. Inspection upon complaint. Upon receipt of a verified complaint, signed by any patron of any hotel, restaurant, or food establishment, stating facts showing such place to be in an insanitary condition, or that the fire escapes and appliances are not kept in accordance with law, the department shall cause an examination to be made. If the complaint is found to be justifiable, the actual expenses necessarily incurred in making such inspection shall be charged and collected from the person conducting such place; but if such complaint is found to be without reasonable grounds, the actual expense necessarily incurred in making such inspection shall be collected from the person or persons making the complaint. [S. S., '15, § 2514-s; 38 G. A., ch. 182, § 4; 39 G. A., ch. 199, § 8; 40 Ex. G. A., H. F. 69, § 45.]

2853. Report of violation of fire protection laws. After each inspection the department shall report all infringements of the fire protection laws and regulations to the proper state and local authorities, who shall take the necessary action to compel compliance with the same. [40 Ex. G. A., H. F. 69, § 46.]

NOTE: For proper authorities under general fire escape law, see ch. 82; for said authorities under the housing law, see ch. 323.

ENFORCEMENT

2854. Penalty. Any person who shall violate any provision of this chapter shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding thirty days. [C., '97, § 2527; S., '13, §§ 2514-w, 2527-m, 2527-n; 38 G. A., ch. 182, § 7; 39 G. A., ch. 199, § 14; 40 Ex. G. A., H. F. 69, § 47.]

2855. Injunction. Any person conducting a hotel, restaurant, or food establishment, in violation of any provision of this chapter, may

be restrained by injunction from operating such place of business. No injunction shall issue until after the defendant has had at least five days' notice of the application therefor, and the time fixed for hearing thereon. [S., '13, § 2514-x; 39 G. A., ch. 199, § 15; 40 Ex. G. A., H. F. 69, § 48.]

2856. Duty of county attorney. The county attorney in each county shall assist in the enforcement of the provisions of this chapter. [S., '13, § 2514-x; 39 G. A., ch. 199, § 15; 40 Ex. G. A., H. F. 69, § 49.]

CHAPTER 134

COLD STORAGE

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2858. License required.
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2861. Receipt and withdrawal of food—records.
2862. Reports by licensee.
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2866. Date of deposit and withdrawal to be marked.
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2869. Report of extensions of storage period.
2870. Notice of sale of cold storage goods.
2871. Return of goods to cold storage prohibited.
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2857. Definitions and rules of construction. For the purposes of this chapter:

1. "Food" shall include any article used by man for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound.

2. "Cold storage plant" shall mean a place artificially cooled to a temperature of forty degrees Fahrenheit or below, in which food is kept, but it shall not include a like place in a private home, hotel, or restaurant, or a refrigerator car.

3. "Cold stored" shall mean the keeping of articles of food in a cold storage plant or plants for a period exceeding thirty days, and food which has been so kept shall be deemed to be cold storage food, but this paragraph shall not be construed as applying to meat or meat products in the process of manufacture. [S., '13, § 2528-d; 40 Ex. G. A., H. F. 69, § 50.]

2858. License required. Every person engaged in the business of operating a cold storage plant and who charges a fee for the service rendered shall obtain a license from the department for each establishment at which said business is conducted. Applications for such licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department. [S., '13, § 2528-d1; 40 Ex. G. A., H. F. 69, § 51.]

2859. Examination of plant. Before issuing a license to operate a cold storage plant the department shall make an examination of the proposed plant to ascertain if the proper sanitary conditions and equipment have been provided. [S., '13, § 2528-d1; 40 Ex. G. A., H. F. 69, § 52.]

2860. License fee—expiration of license. The license fee shall be twenty-five dollars per annum, and all licenses shall expire on Decem-

ber thirty-first following the date of issue. [S., '13, § 2528-d1; 40 Ex. G. A., H. F. 69, § 53.]

2861. Receipt and withdrawal of food—records. Every licensee shall keep an accurate record of the receipt and the withdrawal of all food which is cold stored, and said record shall be open to inspection by the department at all reasonable times. [S., '13, § 2528-d3; 40 Ex. G. A., H. F. 69, § 54.]

2862. Reports by licensee. Every licensee shall quarterly, or at such times as may be required by the department, report upon blanks furnished by the department in itemized particulars the quantity of food which is being cold stored in his plant. Quarterly reports shall be filed not later than the sixth day of January, April, July, and October of each year, and the reports so rendered shall show the conditions existing on the first day of the month in which the report is filed. [S., '13, § 2528-d3; 40 Ex. G. A., H. F. 69, § 55.]

2863. Storing of impure food prohibited. No article of food shall be cold stored unless it is in a proper condition for storage and meets all the requirements of the pure food and food sanitation laws, and such rules as may be established by the department for the sanitary preparation of food products which are to be cold stored. [S., '13, § 2528-d4; 40 Ex. G. A., H. F. 69, § 56.]

NOTE: For pure food law, see chs. 148, 149; for food sanitation law, see ch. 133.

2864. Sanitary conditions—revocation of license. Every cold storage plant shall be maintained in a sanitary condition and conducted with strict regard to the influence of such condition upon the food handled therein. If any licensee under this chapter fails to comply with this section the department shall

revoke his license. [S., '13, § 2528-d2; 40 Ex. G. A., H. F. 69, § 57.]

2865. Marking food not intended for human consumption. Every article of food not intended for human consumption, before being placed in a cold storage plant shall be so marked by the owner in accordance with the rules established by the department. [S., '13, § 2528-d4; 40 Ex. G. A., H. F. 69, § 58.]

2866. Date of deposit and withdrawal to be marked. Each article of food when deposited in a cold storage plant shall have marked upon the package, container, or article the date of deposit, and when removed said article shall be marked in like manner with the date of removal. Said markings shall be in accordance with the rules established by the department. [S., '13, § 2528-d6; 40 Ex. G. A., H. F. 69, § 59.]

2867. Period for storage. No person shall keep in a cold storage plant any article of food for a longer period than twelve calendar months, except with the consent of the department. [S., '13, § 2528-d7; 40 Ex. G. A., H. F. 69, § 60.]

2868. Application for extension of period—order. Upon application the department shall grant permission to extend the period of storage beyond twelve months for a particular consignment of goods, if the goods in question are found upon examination to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting such permission. [S., '13, § 2528-d7; 40 Ex. G. A., H. F. 69, § 61.]

2869. Report of extensions of storage period. A report on each case in which such extension of storage is permitted, including the reason for such action, the kind and the amount of goods for which the storage period was extended, and the length of time for which the

continuance was granted, shall be included in the annual report of the department. [S., '13, § 2528-d7; 40 Ex. G. A., H. F. 69, § 62.]

2870. Notice of sale of cold storage goods. No person shall represent or advertise as fresh goods articles of food which have been cold stored, and every person who sells or offers or exposes for sale, uncooked articles of cold storage food shall display at all times in a conspicuous place a placard with only the words "Cold Storage Goods Sold Here" printed in black roman letters not less than three inches high and two inches wide upon a white card fifteen by twenty-five inches in dimensions. [S., '13, § 2528-d8; 40 Ex. G. A., H. F. 69, § 63.]

2871. Return of goods to cold storage prohibited. No article of food which has once been cold stored and placed on the market for sale to consumers, shall again be placed in a cold storage plant, but transfers of goods from one cold storage plant to another may be made if not for the purpose of evading the provisions of this chapter. The operator of a cold storage plant shall label all goods with the date when stored, which date shall not be removed when goods are removed, and in determining whether goods are "cold stored" the time same have been stored in different plants shall be added together and the aggregate shall be the time stored and shall be so marked when sold. [S., '13, § 2528-d9; 40 Ex. G. A., H. F. 69, § 64.]

2872. Penalties. Any person violating any of the provisions of this chapter shall be punished for the first offense by a fine of not less than twenty-five dollars nor more than one hundred dollars, and for the second offense by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment. [S., '13, § 2528-d11; 40 Ex. G. A., H. F. 69, § 65.]

CHAPTER 135

STATE FAIR AND EXPOSITION

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2873. State fair board. The Iowa state fair board shall consist of:

1. The governor of the state, the state secretary of agriculture, and the president of the state college of agriculture and mechanic arts.

2. A president and a vice president, and one director from each congressional district, to be elected at a convention as hereinafter provided.

3. A secretary and a treasurer to be elected by the state fair board. [S., '13, § 1657-c; 40 G. A., ch. 46, § 10; 40 Ex. G. A., H. F. 66, § 1.]

2874. Convention—composition. A convention shall be held at the capitol, on the second Wednesday of December of each year, to elect members of the state fair board. The convention shall be composed of:

1. The members of the state fair board as then organized.

2. The president or secretary of each county or district agricultural society entitled to receive aid from the state, or a regularly elected delegate therefrom accredited in writing, who shall be a resident of the county.

3. One delegate, a resident of the county, to be appointed by the board of supervisors in each county where there is no such society, or when such society fails to report to the state fair board in the manner provided by law as a basis for state aid. The board shall promptly report such failure to the county auditor.

4. The president, or an accredited representative, of each farmers' institute organized under chapter 137 which is entitled to receive aid from the state.

5. The president, or an accredited representative, of the Iowa state horticultural society.

6. The president, or an accredited representative, of the Iowa state dairy association.

7. The president, or an accredited representative, of the Iowa beef cattle producers' association.

8. The president, or an accredited representative, of the Iowa corn and small grain growers' association. [R., '60, §§ 1701, 1704; C.,

'73, §§ 1103, 1112; C., '97, §§ 1653, 1661; S., '13, § 1657-d; S. S., '15, § 1661-a; 38 G. A., ch. 175, § 3; 39 G. A., ch. 264, § 3; 40 Ex. G. A., H. F. 66, § 2.]

2875. Certification of state aid associations.

On or before November fifteenth of each year the secretary of agriculture shall certify to the secretary of the state fair board the names of the various associations and societies which have qualified for state aid under the provisions of chapters 137 to 143, inclusive, and which are entitled to representation in the convention as provided in the preceding section. [40 Ex. G. A., H. F. 66, § 3.]

2876. Voting power. On all questions arising for determination by the convention, each member present shall be entitled to but one vote, and no proxies shall be recognized by the convention. [S., '13, § 1657-d; 40 Ex. G. A., H. F. 66, § 4.]

2877. Elections to be made by convention. The convention shall elect:

1. A president and a vice president of the state fair board.

2. A successor to each congressional district director on the board whose term expires at noon on the day following the adjournment of the convention. [R., '60, § 1700; C., '73, § 1104; C., '97, § 1654; S., '13, § 1657-e; 40 Ex. G. A., H. F. 66, § 5.]

2878. Terms of office. The term of the president and vice president of the board shall be one year and that of a director two years. Such term shall begin at noon on the day following the adjournment of the convention at which such officer or director was elected and shall continue until a successor is elected and qualifies as provided in this chapter. [R., '60, § 1700; C., '73, § 1104; C., '97, § 1654; S., '13, § 1657-e; 40 Ex. G. A., H. F. 66, § 6.]

2879. Vacancies. If, after the adjournment of the convention, a vacancy occurs in

the office of any member of the board elected by the convention the board shall fill the same, and the member so elected shall qualify at once and serve until noon of the day following the adjournment of the next convention. If, by that time, the member elected by the board will not have completed the full term for which his predecessor was elected, said convention shall elect a member to serve out the unexpired portion of such term. The member so elected shall qualify at the same time as other members elected by the convention. [S., '13, § 1657-e; 40 Ex. G. A., H. F. 66, § 7.]

2880. Elective members—compensation. The members of the board elected at the annual convention shall be allowed ten dollars a day and necessary traveling and hotel expenses for attending the meetings of the board, and for services rendered in carrying on the state fair. [S., '13, § 1657-p; 38 G. A., ch. 365, § 3; 40 Ex. G. A., H. F. 66, § 8.]

2881. Secretary. The board shall elect a secretary who shall hold office for one year, and he shall:

1. Keep a complete record of the annual convention and of all meetings of the board.
2. Draw all warrants on the treasurer of the board and keep a correct account thereof.
3. Perform such other duties as the board may direct. [R., '60, §§ 1700, 1703; C., '73, §§ 1104, 1107; C., '97, §§ 1654, 1656; S., '13, § 1657-k; 40 Ex. G. A., H. F. 66, § 9.]

2882. Salary of secretary. The secretary shall receive such compensation for his services as the board may fix, but said salary shall in no event be more than four thousand dollars a year. [S., '13, § 1657-n; 38 G. A., ch. 365, § 1; 40 Ex. G. A., H. F. 66, § 10.]

2883. Treasurer. The board shall elect a treasurer who shall hold office for one year, and he shall:

1. Keep a correct account of the receipts and disbursements of all moneys belonging to the board.
2. Make payments on all warrants signed by the president and secretary from any funds available for such purpose.
3. Execute and file with the secretary of the board a bond, to be approved by the board, for the faithful performance of his duties. [R., '60, § 1700; C., '73, § 1104; C., '97, § 1654; S., '13, § 1657-o; 40 Ex. G. A., H. F. 66, § 11.]

2884. Salary of treasurer. The treasurer shall receive such compensation for his services as the board may fix, not to exceed two hundred fifty dollars a year, and necessary traveling and hotel expenses. [S., '13, § 1657-o; 38 G. A., ch. 365, § 2; 40 Ex. G. A., H. F. 66, § 12.]

2885. Executive committee—meetings. The president, vice president, and secretary shall constitute an executive committee, which shall transact such business as may be delegated to it by the board. The president may call

meetings of the board or executive committee when the interests of the work require it. [C., '73, § 1700; R., '60, § 1104; C., '97, § 1654; S., '13, § 1657-h; 40 Ex. G. A., H. F. 66, § 13.]

2886. Powers and duties of board. The state fair board shall have the custody and control of the state fair grounds, including the buildings and equipment thereon belonging to the state, and shall have power to:

1. Erect and repair buildings on said grounds and make other necessary improvements thereon.

2. Regulate the construction of street railways within said grounds and determine the motive power by which the same shall be propelled.

3. Hold an annual fair and exposition on said grounds of the productive resources of the state.

4. Prepare premium lists and establish rules of exhibition for such fair which shall be published by the board not later than the first day of June in each year.

5. Take and hold property by gift, devise, or bequest for fair purposes, and the president, secretary, and treasurer of the board shall have charge and control of the same, subject to the action of the board. Such officers shall give bonds as required in the case of executors, to be approved by the board and filed with the secretary of state.

6. Adopt all necessary rules in the discharge of its duties and in the exercise of the powers herein conferred. [R., '60, § 1702; C., '73, § 1106; C., '97, § 1655; S., '13, §§ 1657-i, 1657-j, 1657-r; 38 G. A., ch. 365, § 4; 40 Ex. G. A., H. F. 66, § 14.]

2887. Delegating management of state fair. The board may delegate the management of the state fair to the executive committee and two or more additional members of the board; and in carrying on such fair it may employ such assistance as may be deemed necessary. [S., '13, § 1657-i; 40 Ex. G. A., H. F. 66, § 15.]

2888. Maintenance of state fair. All expenses incurred in maintaining the state fair grounds and in conducting the annual fair thereon, including the compensation and expenses of the officers, members, and employees of the board, shall be recorded by the secretary and paid from the state fair receipts, unless a specific appropriation has been provided for such purpose, but in the absence of any such appropriation the state shall not be liable for any expenses or liabilities incurred by the board. [S., '13, §§ 1657-i, 1657-t; 40 Ex. G. A., H. F. 66, § 16.]

2889. Presentation and payment of claim. The board shall prescribe rules for the presentation and payment of claims out of the state fair receipts and other funds of the board and no claim shall be allowed which does not comply therewith. [40 Ex. G. A., H. F. 66, § 17.]

2890. Warrants. No claim shall be paid by the treasurer except upon a warrant signed by the president and secretary of the board, but this section shall not apply to the payment of state fair premiums. [S., '13, § 1657-o; 40 Ex. G. A., H. F. 66, § 18.]

2891. Auditing of accounts. Prior to the annual convention, an accountant of the executive council shall examine and report to the council upon all financial affairs of the board. Such report shall be edited as provided by law and included in the biennial expense report of the auditor of state. [S., '13, § 1657-q; 40 Ex. G. A., H. F. 66, § 20.]

NOTE: For provision as to editing, see § 216.

2892. Report. The board shall file each year with the department of agriculture, at such time as the department may specify, a report containing such information relative

to the state fair and exposition and the district and county fairs as the department may require. [40 G. A., ch. 334, § 32; 40 Ex. G. A., H. F. 66, § 20-a1.]

2893. Annual report to governor. The state fair board shall each year at the time provided by law make a report to the governor containing:

1. A complete account of the annual state fair and exposition.

2. The proceedings of the annual state agricultural convention.

3. The proceedings of the annual county and district fair managers' convention. [R., '60, § 1703; C., '73, § 1107; C., '97, § 1656; S., '13, § 1657-k; 40 Ex. G. A., H. F. 66, § 20-a2.]

NOTE: The time for making annual reports is provided in § 247, but this section does not cover the state fair board; see, however, §§ 255, 270.

CHAPTER 136

COUNTY AND DISTRICT FAIRS

- 2894. Terms defined.
- 2895. Powers of society.
- 2896. Control of grounds.
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- 2898. Appointment of police.
- 2899. Removal of obstructions.
- 2900. Refusal to remove obstructions.
- 2901. Publication of financial statement.
- 2902. State aid.
- 2903. Amount allowed as state aid.
- 2904. Payment of state aid.

2894. Terms defined. For the purposes of this chapter:

1. "Fair" shall mean a bona fide exhibition of agricultural, dairy, and kindred products, live stock, and farm implements.

2. "Society" shall mean a county or district fair or agricultural society incorporated under the laws of this state for the purpose of holding such fair. [38 G. A., ch. 175, § 6; 39 G. A., ch. 264, § 6; 40 Ex. G. A., H. F. 66, § 21.]

2895. Powers of society. Each society may hold annually a fair to further interest in agriculture and to encourage the improvement of agricultural products, live stock, articles of domestic industry, implements, and other mechanical devices. It may offer and award such premiums as will induce general competition. [R., '60, § 1697; C., '73, § 1109; C., '97, § 1658; S., '13, § 1658; 38 G. A., ch. 175, § 2; 39 G. A., ch. 264, § 2; 40 Ex. G. A., H. F. 66, § 22.]

2896. Control of grounds. During the time a fair is being held, no ordinance or resolution of any city or town shall in any way impair the authority of the society, but it shall have sole and exclusive control over and management of such fair. [C., '73, § 1116; C., '97, § 1664; 39 G. A., ch. 264, § 9; 40 Ex. G. A., H. F. 66, § 23.]

- 2905. County aid.
- 2906. Additional county aid.
- 2907. Purchase and management.
- 2908. Termination of rights of society.
- 2909. Tax aid.
- 2910. Expenditure of fund.
- 2911. Report to supervisors.
- 2912. Fraudulent entries of horses.
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- 2914. Entry under changed name.
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2897. Permits to sell articles. The president of any society may grant a written permit to such persons as he thinks proper, to sell fruit, provisions, and other articles not prohibited by law, under such regulations as the board of directors may prescribe. [C., '73, § 1115; C., '97, § 1663; 39 G. A., ch. 264, § 8; 40 Ex. G. A., H. F. 66, § 24.]

2898. Appointment of police. The president of any society may appoint such number of special police as he may deem necessary. Such officers are hereby vested with the powers and charged with the duties of peace officers. [C., '97, § 1664; 39 G. A., ch. 264, § 9; 40 Ex. G. A., H. F. 66, § 25.]

2899. Removal of obstructions. All shows, swings, booths, tents, carriages, or any other thing that may obstruct the grounds of any society or the driveways thereof may be removed from the grounds on the order of the president. [C., '73, § 1116; C., '97, § 1664; 39 G. A., ch. 264, § 9; 40 Ex. G. A., H. F. 66, § 26.]

2900. Refusal to remove obstructions. Any person owning, occupying, or using any such obstruction who shall refuse or fail to remove the same when ordered to do so by the presi-

dent shall be liable to a fine of not less than five dollars nor more than one hundred dollars for each such offense. [C., '73, § 1116; C., '97, § 1664; 39 G. A., ch. 264, § 9; 40 Ex. G. A., H. F. 66, § 27.]

2901. Publication of financial statement. Each society shall annually publish in one newspaper of the county an itemized list of the awards paid, and a financial statement of receipts and disbursements for the current year. [R., '60, § 1698; C., '73, § 1110; C., '97, § 1659; S., '13, § 1659; 40 Ex. G. A., H. F. 66, § 28.]

2902. State aid. Each society shall be entitled to receive aid from the state if it files with the state fair board on or before November first of each year, a sworn statement which shall show:

1. The actual amount paid by it in cash premiums at its fair for the current year, which statement must correspond with its published offer of premiums.

2. That no part of said amount was paid for speed events, or to secure games or amusements, and that no gambling devices, sales of intoxicating liquors or other violations of law were permitted on its grounds.

3. A full and accurate statement of the receipts and expenditures of the society for the current year and other statistical data relative to exhibits and attendance for the year.

4. A copy of the published list of awards and financial statement published as required by law, together with proof of such publication, and such other information as the state fair board may require. [R., '60, §§ 1698, 1704; C., '73, §§ 1110, 1112; C., '97, §§ 1659, 1661; S., '13, § 1659; S. S., '15, § 1661-a; 38 G. A., ch. 175, § 4; 39 G. A., ch. 264, § 4; 40 Ex. G. A., H. F. 66, § 29.]

2903. Amount allowed as state aid. The amount allowed to any society as state aid shall be a sum equal to eighty per cent of the first one thousand dollars, seventy per cent of the second one thousand dollars, and sixty per cent of the third one thousand dollars paid in cash by the society for premiums at its annual fair for the current year, but the total aid shall not in any one year exceed two thousand dollars to any one society. [R., '60, § 1704; C., '73, § 1112; C., '97, § 1661; S. S., '15, § 1661-a; 38 G. A., ch. 175, § 3; 39 G. A., ch. 264, § 3; 40 Ex. G. A., H. F. 66, § 30.]

2904. Payment of state aid. The auditor of state shall issue his warrant to any society for the amount due as state aid, less one hundred dollars, provided the secretary of the state fair board certifies to the auditor that such society has complied with the law relative thereto and that a named amount is due the society. The auditor shall issue a like warrant for one hundred dollars provided the secretary of the state fair board certifies that such society had an accredited delegate in attendance at the annual convention for the election of members of the state fair board.

[R., '60, § 1698; C., '73, § 1110; C., '97, § 1659; S., '13, § 1659; 38 G. A., ch. 175, § 5; 39 G. A., ch. 264, §§ 3, 5; 40 Ex. G. A., H. F. 66, § 31.]

2905. County aid. The board of supervisors of the county in which any such society is located may pay to such society from the general fund of the county, a sum not exceeding one hundred dollars for each one thousand inhabitants of the county, and in no case exceeding one thousand dollars to any one society in any one year, for the sole purpose of fitting up or purchasing fair grounds for the society, provided such society shall be the owner, in fee simple, or the lessee, of at least ten acres of land for fair ground purposes, and shall own buildings and improvements thereon, of at least two thousand dollars in value. [C., '73, § 1111; C., '97, § 1660; S. S., '15, § 1660; 37 G. A., ch. 89, § 1; 38 G. A., ch. 140, § 1; 39 G. A., ch. 213, § 1; 40 Ex. G. A., H. F. 66, § 32.]

2906. Additional county aid. The board of supervisors may upon a petition signed by twenty-five per cent of the qualified voters of the county as shown by the poll books of the last preceding general election, submit to the voters of the county, at a general election, the proposition to purchase, for county or district fair purposes, real estate exceeding one thousand dollars in value. Notice of such election shall be published in the official newspapers of the county for four weeks previous to such election. [S. S., '15, § 1660; 37 G. A., ch. 89, § 1; 40 Ex. G. A., H. F. 66, § 33.]

2907. Purchase and management. If a majority of the votes cast are in favor of such proposition, the board shall make the authorized purchase and pay for the same out of the general fund. Title shall be taken in the name of the county, but the board of supervisors shall place such real estate under the control and management of an incorporated county or district fair society. Such society is authorized to erect and maintain buildings and make such other improvements on the real estate as is necessary, but the county shall not be liable for such improvements nor the expenditures therefor. [S. S., '15, § 1660; 37 G. A., ch. 89, § 1; 40 Ex. G. A., H. F. 66, § 34.]

2908. Termination of rights of society. The right of such society to the control and management of said real estate may be terminated by the board of supervisors whenever well-conducted agricultural fairs are not annually held thereon by such society. [S. S., '15, § 1660; 37 G. A., ch. 89, § 1; 40 Ex. G. A., H. F. 66, § 35.]

2909. Tax aid. The board of supervisors of any county which has acquired real estate for county or district fair purposes and which has a society using said real estate, may levy a tax of not to exceed one-half mill upon all the taxable property of the county, the funds realized therefrom to be known as the fair ground fund. [37 G. A., ch. 89, § 1; 39 G. A., ch. 213, § 1; 40 Ex. G. A., H. F. 66, § 36.]

2910. Expenditure of fund. The fair ground fund shall be expended only for the erection and repair of buildings or other permanent improvements on said real estate, or for the payment of debts contracted in such erection or repair. [S. S., '15, § 1660; 37 G. A., ch. 89, § 1; 39 G. A., ch. 213, § 1; 40 Ex. G. A., H. F. 66, § 37.]

2911. Report to supervisors. Each society receiving an appropriation from the county shall, through its secretary, make to the board of supervisors a detailed statement, accompanied with vouchers, showing the legal disbursement of all moneys so received. [C., '73, § 1113; C., '97, § 1662; 39 G. A., ch. 264, § 7; 40 Ex. G. A., H. F. 66, § 38.]

2912. Fraudulent entries of horses. No person, partnership, company, or corporation shall knowingly enter or cause to be entered any horse of any age or sex under an assumed name, or out of its proper class, to compete for any purse, prize, premium, stake, or sweepstake offered or given by any agricultural or other society, association, person, or persons in the state, or drive any such horse under an assumed name, or out of its proper class, where such prize, purse, premium, stake, or sweep-

stake is to be decided by a contest of speed. [C., '97, § 1665; 39 G. A., ch. 264, § 10.]

2913. Violations—penalty. Any person convicted of a violation of the preceding section shall be imprisoned in the penitentiary for a period of not more than three years, or in the county jail for not more than one year, and be fined in a sum not exceeding one thousand dollars. [C., '97, § 1666; 39 G. A., ch. 264, § 11.]

2914. Entry under changed name. The name of any horse for the purpose of entry for competition in any contest of speed shall not be changed after having once contested for a prize, purse, premium, stake, or sweepstake, except as provided by the code of printed rules of the society or association under which the contest is advertised to be conducted, unless the former name is given. [C., '97, § 1667; 39 G. A., ch. 264, § 12.]

2915. Class determined. The class to which a horse belongs for the purpose of an entry in any contest of speed, as provided by the printed rules of the society or association under which such contest is to be made, shall be determined by the public record of said horse in any such former contest. [C., '97, § 1668; 39 G. A., ch. 264, § 13.]

CHAPTER 137

FARMERS' INSTITUTES AND SHORT COURSES

2916. State aid to farmers' institutes.
2917. Certification by department.
2918. Auditor to draw warrant.
2919. Farmers' institute fund.

2916. State aid to farmers' institutes. A farmers' institute shall be entitled to state aid only under the following conditions:

1. The institute must be organized by at least forty farmers of the county and have a president, secretary, treasurer, and executive committee of not less than three members other than said officers.

2. It must hold, for not less than two days each year, an institute devoted to farm and kindred subjects.

3. It must file with the department of agriculture on or before the first day of June of each year a sworn, itemized report of such institute, which report must show the organization of such institute, the fact that such institute was held, the purposes for which held and for which the money used by it was expended, and such other information as the department may require. [C., '97, § 1675; S., '13, §§ 1657-d, 1675; 40 Ex. G. A., H. F. 66, § 39.]

2917. Certification by department. The department, on receipt of such report, if the same is sufficient and filed within the time named, shall certify to the auditor of state that all of said conditions have been complied with by such institute and that a named

2920. Division of fund.
2921. State aid for short courses in agriculture.
2922. Certification by department.
2923. Payment of state aid.

amount is due it as state aid. Such amount shall not exceed the amount shown to have been legally expended. [C., '97, § 1675; S., '13, § 1675; 40 Ex. G. A., H. F. 66, § 40.]

2918. Auditor to draw warrant. The auditor of state, on receipt of such certificate, shall draw a warrant in favor of the county where such institute is located for the amount specified in said certificate, but the amount drawn shall not in any case exceed seventy-five dollars for any one year. [C., '97, § 1675; S., '13, § 1675; 40 Ex. G. A., H. F. 66, § 41.]

2919. Farmers' institute fund. Such money shall be kept by the county treasurer as a farmers' institute fund, and no warrant shall be drawn thereon except on a written order signed by a majority of the members of the executive committee of said institute. No officer of any such institute shall receive any part of said fund as compensation for services as such officer. [C., '97, §§ 1675, 1676; S., '13, § 1675; 40 Ex. G. A., H. F. 66, § 42.]

2920. Division of fund. If there be, in a county, two or more institutes claiming right to such fund under this chapter, the board of supervisors shall equitably divide the fund

among such institutes as may be legally entitled thereto, but in no case shall more than three institutes be held in one year in any county under the provisions of this chapter. [C., '97, § 1676; 40 Ex. G. A., H. F. 66, § 43.]

2921. State aid for short courses in agriculture. An organization for the purpose of holding a short course in agriculture and domestic science shall be entitled to state aid under the following conditions:

1. The organization must be formed by at least one hundred citizens of a county which has no county or district fair receiving state aid as provided in the preceding chapter of this title, or in which a county fair is not held in the year in question.

2. It must have a president, secretary, treasurer, and an executive committee of not less than five members.

3. It must hold a short course consisting of a session of four or more days at some place within the county and give a program designed to promote agriculture and domestic science.

4. It must, through one of said named officers, file a sworn statement with the department of agriculture, setting forth the facts showing compliance with all the foregoing conditions, an itemized list of cash premiums paid by it at said short course, and such other in-

formation as the department may require. [S., '13, § 1661-a1; 40 Ex. G. A., H. F. 66, § 45.]

2922. Certification by department. The department of agriculture, on receipt of such statement, shall, if it complies with the preceding section, certify to the auditor of state that said organization has fully complied with the required conditions and that a named amount is due it as state aid. [S., '13, § 1661-a1; 40 Ex. G. A., H. F. 66, § 46.]

2923. Payment of state aid. The state auditor, on receipt of such certificate, shall draw a warrant in favor of the president, secretary, or treasurer of said organization for a sum equal to forty per cent of the amount paid in premiums by it, but in no case shall the amount exceed two hundred dollars in any county. In all counties where no regular farmers' institute is held and where a short course is held, the money appropriated for such farmers' institute shall be payable on account of such short course upon proof being made as provided in the second preceding section. [S., '13, §§ 1661-a1, 1661-a2; 40 Ex. G. A., H. F. 66, § 47.]

NOTE: The appropriation for carrying out this chapter is only for the biennium and therefore does not appear in the code.

CHAPTER 138

FARM AID ASSOCIATIONS

- 2924. Incorporation authorized.
- 2925. Method of incorporation.
- 2926. Articles of incorporation.
- 2927. Additional provisions.
- 2928. Private property exempt from debts—seal.
- 2929. Powers of association.
- 2930. Appropriation by board of supervisors.
- 2931. Limitation on aid.

- 2932. Funds advanced by federal government.
- 2933. Funds—how expended.
- 2934. Bond of treasurer.
- 2935. Compensation.
- 2936. Dividends—diversion of funds or property.
- 2937. False certificate.
- 2938. Annual reports—records open to inspection.

2924. Incorporation authorized. For the purpose of improving and advancing agriculture, domestic science, animal husbandry, and horticulture, a body corporate may be organized in each county of the state. [S. S., '15, § 1683-a; 40 Ex. G. A., H. F. 66, § 49.]

2925. Method of incorporation. Such body corporate may be formed by the acknowledging and filing articles of incorporation with the county recorder, signed by at least ten farmers, landowners, or other business men of the county. [S., '13, § 1683-b; 37 G. A., ch. 90, § 1; 40 Ex. G. A., H. F. 66, § 50.]

2926. Articles of incorporation. Such articles of incorporation shall be as follows:

We, the undersigned farmers, landowners, and business men of county, Iowa, do hereby adopt the following articles of incorporation:

Article 1. The objects of this corporation shall be to advance and improve, in..... county, Iowa, agriculture, domestic science, horticulture, and animal husbandry.

Article 2. The name of this corporation shall be (the name of the county of which the incorporators are, residents shall appear as part of the name of the corporation).

Article 3. The affairs of this corporation shall be conducted by a president, a vice president, a secretary, and a treasurer, who shall perform the duties usually pertaining to such positions, and by a board of nine directors. Such officers and directors shall be elected by the members of the corporation at an annual meeting held on the first Monday in January of each year; they shall serve for a term of one year and until their successors are elected. Not more than two of such directors shall be residents of the same township at the time of election.

We, the said incorporators, have elected the following provisional officers to hold their re-

spective positions until their successors are elected at the annual meeting in the year :

- President
- Vice president
- Secretary
- Treasurer
- Board of directors:
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9

Article 4. The yearly dues of the members of this corporation shall be one dollar, payable at the time of applying for membership and on the first Monday in January of each year thereafter. No member having once paid his dues shall forfeit his membership until his subsequent dues are six months in arrears.

Article 5. Any citizen of the county and any nonresident owning land in the county shall have the right to become a member of the corporation by paying the annual dues and thereafter complying with the articles and by-laws of the corporation.

Article 6. This corporation shall endure until terminated by operation of law. [S. S., '15, § 1683-c; 40 Ex. G. A., H. F. 66, § 51.]

2927. **Additional provisions.** Such articles may include other provisions which are not inconsistent with the provisions of this chapter and shall be recorded by the county recorder without fee. [S., '13, § 1683-f; 40 Ex. G. A., H. F. 66, § 52.]

2928. **Private property exempt from debts—seal.** Such association may sue and be sued, but the private property of the members shall be exempt from corporate debts. It may have a seal which it may alter at pleasure. [S., '13, § 1683-d; 40 Ex. G. A., H. F. 66, § 53.]

2929. **Powers of association.** Such association shall have power:

1. To establish and maintain a permanent agricultural school, in which agriculture, horticulture, animal industry, and domestic science shall be taught.
2. To employ one or more teachers, experts, or advisers to teach, advance, and improve agriculture, horticulture, animal industry, and domestic science, in the county, under such terms, conditions, and restrictions as may be deemed advisable by the board of directors.
3. To use part or all of the sum annually received as dues from its members in payment of prizes offered in any department of its work, including agricultural fairs, short courses, or farmers' institutes.
4. To adopt by-laws.
5. To take by gift, purchase, devise, or bequest, real or personal property.
6. To do all things necessary, appropriate, and convenient for the successful carrying out

of the objects of the association. [S. S., '15, § 1683-e; 40 Ex. G. A., H. F. 66, § 54.]

2930. **Appropriation by board of supervisors.** When articles of incorporation have been filed as provided by this chapter and the secretary and treasurer of the corporation have certified to the board of supervisors that the organization has among its membership at least two hundred farmers or farm owners in the county and that the association has raised from among its members a yearly subscription of not less than one thousand dollars, the board of supervisors shall appropriate to such organization, from the general fund of the county, a sum double the amount of such subscription. Such sum shall not exceed, in any year, a total of five thousand dollars in counties with a population of twenty-five thousand or over, nor a total of three thousand dollars in counties with a smaller population. [37 G. A., ch. 90, § 2; 38 G. A., ch. 36, § 1; 40 Ex. G. A., H. F. 66, § 55.]

2931. **Limitation on aid.** The only farm improvement association which shall be entitled to receive such county aid shall be one organized to cooperate with the United States department of agriculture, the state department of agriculture, and the Iowa state college of agriculture and mechanic arts. [37 G. A., ch. 90, § 4; 40 Ex. G. A., H. F. 66, § 56.]

2932. **Funds advanced by federal government.** The president and the secretary of the association shall, prior to the time of advancing any funds, as herein provided, certify to the board of supervisors the amount, if any, advanced to the association by the government of the United States for the ensuing year in aid of the objects of the association. [S., '13, § 1683-p; 40 Ex. G. A., H. F., 66, § 57.]

2933. **Funds—how expended.** The treasurer of the association shall receive all funds advanced or belonging to it and pay out the same only on bills allowed by the board of directors, such allowance to be certified to by the president or secretary. [S., '13, § 1683-m; 40 Ex. G. A., H. F. 66, § 58.]

2934. **Bond of treasurer.** The treasurer of such association shall give a bond with proper sureties. The amount of such bond shall be fixed by the board of directors but shall not be less than five thousand dollars nor less than double the amount likely to come into his hands at any time. Such bond shall be filed with and approved by the county auditor and recorded without fee. [S., '13, § 1683-i; 40 Ex. G. A., H. F. 66, § 59.]

2935. **Compensation.** No salary or compensation of any kind shall be paid to the president, vice president, treasurer, or to any director of the association. [S., '13, § 1683-g; 40 Ex. G. A., H. F. 66, § 60.]

2936. **Dividends—diversion of funds or property.** No dividend shall ever be declared by the association and any diversion of the funds or property of such organization to any

other purpose than that for which such organization was incorporated shall constitute larceny and be punished accordingly. [S., '13, §§ 1683-h, 1683-o; 40 Ex. G. A., H. F. 66, § 61.]

2937. False certificate. Any officer of the association making any certificate herein required, knowing the same to be false or incorrect in any particular, shall be guilty of a misdemeanor and punished accordingly. [S., '13, § 1683-n; 40 Ex. G. A., H. F. 66, § 62.]

2938. Annual reports—records open to inspection. The outgoing president and treasurer shall, on the first Monday of January of

each year, file with the county auditor full and detailed reports under oath of all receipts and expenditures of such association, showing from whom received and to whom paid and for what purpose. One duplicate of such report shall be laid before the members of the corporation at the annual meeting, and one duplicate shall be forwarded to the department of agriculture, together with such additional information as it may require. The books, papers, and records of the association shall at all times be open to the inspection of the department and to the board of supervisors or anyone appointed by the board to make such inspection. [S., '13, § 1683-j; 40 Ex. G. A., H. F. 66, § 63.]

CHAPTER 139

CORN AND SMALL GRAIN GROWERS' ASSOCIATION

2939. Recognition of organization.
2940. Duties and objects of association.
2941. Executive committee.

2939. Recognition of organization. The organization now existing in and incorporated under the laws of this state and known as the Iowa corn and small grain growers' association, shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proofs of its organization and of the names of its president, vice president, secretary, and treasurer, and that five hundred persons are bona fide members of the association, together with such other information as the department of agriculture may require. [37 G. A., ch. 187, § 9; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 64.]

2940. Duties and objects of association. The Iowa corn and small grain growers' association shall:

1. Advance the interests of the farmers in securing better methods of selecting and caring for seed corn and small grain.
2. Improve and develop varieties of corn and small grain especially adapted to Iowa.
3. Encourage better and more thorough methods of production.
4. Hold an annual convention for instruction in corn and small grain growing at the same time as the farmers' winter short course at the state college of agriculture and mechanic arts.
5. Issue certificates of qualification to experts in judging of corn and small grain.
6. Publish a seed directory which will indicate the places where good seed may be secured.
7. Help in disseminating good seed especially adapted to Iowa conditions.
8. Promote in such other ways as the association may think advisable the objects set out in this section.

2942. Employees of executive committee—compensation.
2943. Expenses of officers.

9. Make an annual report of the proceedings and expenditures to the secretary of agriculture. [37 G. A., ch. 187, § 10; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 65.]

2941. Executive committee. The business of the association shall be transacted by an executive committee which shall consist of:

1. The president and the secretary of the association.
2. The dean of the division of agriculture of the Iowa state college of agriculture and mechanic arts.
3. A member of the faculty of said college engaged in the teaching of agronomy to be designated by said dean.
4. The secretary of agriculture. [37 G. A., ch. 187, § 11; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 66.]

2942. Employees of executive committee—compensation. The executive committee may employ one or more competent persons who shall devote their entire time, while employed by the association, to carrying out the provisions of this chapter. Such persons shall receive such compensation as the executive committee may fix and their necessary expenses incurred while engaged in such work. [37 G. A., ch. 187, § 12; 39 G. A., ch. 304, § 3; 40 Ex. G. A., H. F. 66, § 67.]

2943. Expenses of officers. The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [40 Ex. G. A., H. F. 66, § 68.]

NOTE: The appropriation for carrying out this chapter is only for the biennium and therefore does not appear in the code.

CHAPTER 140

STATE DAIRY ASSOCIATION

2944. Recognition of organization.
 2945. Duties and objects of association.
 2946. Executive committee.

2944. Recognition of organization. The organization known as the Iowa state dairy association shall be entitled to the benefits of this chapter by filing each year with the department of agriculture verified proofs of its organization, the names of its president, vice president, secretary, and treasurer, and that five hundred persons are bona fide members of said association, together with such other information as the department of agriculture may require. [37 G. A., ch. 187, §§ 1, 4; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 70.]

2945. Duties and objects of association. The Iowa state dairy association shall:

1. Cause inspection to be made of dairy products, farms, cattle, barns, and other buildings, appliances, and methods used or employed in connection with the dairy industry of the state.

2. Promote dairy test associations, shows, and sales.

3. Publish a breeders' directory.

4. Furnish such general instruction and assistance, either by institutes or otherwise, as it may deem proper, to advance the general interests of the dairy industry.

5. Make an annual report of the proceedings and expenditures to the secretary of agriculture. [37 G. A., ch. 187, § 2; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 71.]

2946. Executive committee. The association shall conduct its business through an executive committee which shall consist of:

2947. Employees of executive committee—compensation.
 2948. Expenses of officers.

1. The president and the secretary of the association.

2. The dean of the division of agriculture of the Iowa state college of agriculture and mechanic arts.

3. A member of the faculty of said college engaged in the teaching of dairying to be designated by said dean.

4. The secretary of agriculture. [37 G. A., ch. 187, § 2; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 72.]

2947. Employees of executive committee—compensation. The executive committee may employ two or more competent persons who shall devote their entire time, under the direction of the executive committee, in carrying out the provisions of this chapter. Such persons shall hold office at the pleasure of the committee, and each shall receive a salary of not to exceed three thousand dollars per annum, and their necessary expenses incurred while engaged in such work. [37 G. A., ch. 187, § 3; 38 G. A., ch. 350, § 2; 39 G. A., ch. 304, § 1; 40 Ex. G. A., H. F. 66, § 73.]

2948. Expenses of officers. The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [37 G. A., ch. 187, § 3; 40 Ex. G. A., H. F. 66, § 74.]

NOTE: The appropriation for carrying out this chapter is only for the biennium and therefore does not appear in the code.

CHAPTER 141

BEEF CATTLE PRODUCERS' ASSOCIATION

2949. Recognition of organization.
 2950. Duties and objects of association.
 2951. Executive committee.

2949. Recognition of organization. The Iowa beef cattle producers' association now existing in and incorporated under the laws of this state shall be entitled to the benefits of this chapter by filing, each year, with the department of agriculture, verified proof of the names of its president, vice president, secre-

2952. Employees of executive committee—compensation.
 2953. Expenses of officers.

tary, and treasurer, and that five hundred persons are bona fide members of said association, together with such other information as the department of agriculture may require. [37 G. A., ch. 187, § 5; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 76.]

2950. Duties and objects of association. The Iowa beef cattle producers' association shall:

1. Aid in the promotion of the beef cattle industry of the state.
2. Provide for practical and scientific instruction in the breeding and raising of beef cattle.
3. Provide for the inspection of herds, premises, appliances, methods, and feedstuffs used in the raising of beef cattle.
4. Make demonstrations in the feeding of beef cattle and publish suggestions beneficial to such business.
5. Aid and promote beef cattle feeding contests, shows, and sales.
6. Publish a breeders' directory.
7. Make an annual report of the proceedings and expenditures to the secretary of agriculture. [37 G. A., ch. 187, § 6; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 77.]

2951. Executive committee. The association shall act through an executive committee which shall consist of:

1. The president and the secretary of the association.
2. The dean of the division of agriculture of the Iowa state college of agriculture and mechanic arts.

3. A member of the faculty of said college engaged in the teaching of animal husbandry to be designated by said dean.

4. The secretary of agriculture. [37 G. A., ch. 187, § 6; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 78.]

2952. Employees of executive committee—compensation. The executive committee may employ two or more competent persons who shall devote their entire time, under the direction of the committee, in carrying out the provisions of this chapter. Such persons shall hold office at the pleasure of the committee and shall each receive a salary not to exceed three thousand dollars per annum, and their necessary expenses incurred while engaged in such work. [37 G. A., ch. 187, § 7; 38 G. A., ch. 350, § 3; 39 G. A., ch. 304, § 2; 40 Ex. G. A., H. F. 66, § 79.]

2953. Expenses of officers. The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association. [37 G. A., ch. 187, § 7; 40 Ex. G. A., H. F. 66, § 80.]

NOTE: The appropriation for carrying out this chapter is only for the biennium and therefore does not appear in the code.

CHAPTER 142

POULTRY ASSOCIATIONS

- 2954. State aid.
- 2955. Certification by department.
- 2956. Payment of state aid.
- 2957. Division of state aid.
- 2958. State-wide show—management.

2954. State aid. Every poultry association which complies with the following conditions shall be entitled to the aid herein provided:

1. The association shall be composed of at least fifteen bona fide poultry raisers or dealers in poultry, residing in any one county.
2. The membership of the association must be open to all persons on an equal basis, with a minimum membership fee of twenty-five cents, or a maximum fee not exceeding one dollar.
3. The association shall have a president, vice president, secretary, treasurer, and a board of directors of at least three persons other than said officers.
4. The annual income in cash of the association, exclusive of state aid, shall be at least one hundred dollars.
5. The association shall hold a bona fide poultry show, each year, of not less than two working days.
6. The association shall, on or before the second Wednesday in December of each year, file with the department of agriculture a sworn statement showing compliance with the foregoing conditions, and, in detail, the manner in

- 2959. Location of state-wide poultry show.
- 2960. Statement of expenditures.
- 2961. Certification by department.
- 2962. Payment of state aid.

which its funds for the preceding twelve months have been expended, together with such other information as the department may require. [37 G. A., ch. 363, §§ 1, 2, 4; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 82.]

2955. Certification by department. The department of agriculture shall on receipt of such statement, if it complies with the preceding section, and the expenditures listed therein appear to be bona fide, certify to the auditor of state after the time for filing such statement has expired, that the association has complied with all conditions imposed by this chapter and is entitled to the state aid herein provided. [37 G. A., ch. 363, § 2; 40 Ex. G. A., H. F. 66, § 83.]

2956. Payment of state aid. The auditor of state, on receipt of such statement, shall issue his warrant to the treasurer of such association for one hundred dollars. [37 G. A., ch. 363, § 2; 40 Ex. G. A., H. F. 66, § 84.]

2957. Division of state aid. If more than one such association from the same county is entitled to state aid, the one hundred dollars

shall be equally divided among such associations and the state auditor shall draw the warrants accordingly. [37 G. A., ch. 363, § 3; 40 Ex. G. A., H. F. 66, § 85.]

2958. State-wide show—management. An annual state-wide poultry show is hereby authorized. Such show shall be conducted or managed by the officers of the local poultry association of the place at which such show is held. [37 G. A., ch. 363, § 8; 40 Ex. G. A., H. F. 66, § 87.]

2959. Location of state-wide poultry show. At each state poultry show, a convention shall be held to determine the place of holding the next state show, but such show shall not be held oftener than once in three years in the same city or town. Each association that has complied with the provisions of this chapter, for state aid, shall be entitled to send one delegate, who shall have one vote on all questions that arise. The officers of the local association conducting the show shall officiate at the convention. [37 G. A., ch. 363, §§ 7, 9; 40 Ex. G. A., H. F. 66, § 88.]

2960. Statement of expenditures. Such local poultry association, through its treasurer, shall, upon the adjournment of the state-wide poultry show, file with the department of agriculture a sworn statement which shall show the

time and place of holding such show and an itemized statement of all expenditures on account thereof, and the specific purposes for which the same were expended, together with such other information as the department may require. [37 G. A., ch. 363, § 8; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 89.]

2961. Certification by department. The department of agriculture, on receipt of such statement, if the same is, in its judgment, sufficient, and the expenditures bona fide, shall certify to the auditor of state that such state-wide poultry show has been held under the management of such local association. Said certificate shall show the amount of the bona fide expenditures on account of such convention. [37 G. A., ch. 363, § 8; 40 Ex. G. A., H. F. 66, § 90.]

2962. Payment of state aid. The auditor of state, on receipt of such certificate, shall issue his warrant to the treasurer of such association for the amount of said expenditures, but in no case shall such warrant exceed five hundred dollars in any one year. [37 G. A., ch. 363, § 8; 40 Ex. G. A., H. F. 66, § 91.]

NOTE: The appropriation for carrying out this chapter is only for the biennium and therefore does not appear in the code.

CHAPTER 143

STATE HORTICULTURAL SOCIETY

2963. Meetings and organization of society.
2964. Horticultural exposition.

2963. Meetings and organization of society. The state horticultural society shall hold meetings each year, at such times as it may fix, for the transaction of business. The officers and board of directors of the society shall be chosen as provided for in the constitution of the society, for the period and in the manner prescribed therein, but the secretary of agriculture shall be a member of the board of directors and of the executive committee. Any vacancy in the offices filled by the society may be filled by the executive committee for the unexpired portion of the term. [C., '73, § 1117; C., '97, § 1669; 39 G. A., ch. 254, § 1; 40 G. A., ch. 46, § 1; 40 Ex. G. A., H. F. 66, § 93.]

2964. Horticultural exposition. The society is authorized to hold, at such time and in such place in Iowa, as it may select, a horticultural exposition, including honey products and manufactured plant products, with practical and scientific demonstrations of approved methods of crop production, grading, packing, marketing, and establishment of standard market grades pertaining to horticulture. It may delegate to its executive committee the duty and power to make and execute all plans for the holding of such an exposition. [38 G.

2965. Affiliation with allied societies.
2966. Annual report.

A., ch. 395, § 1; 39 G. A., ch. 254, § 3; 40 Ex. G. A., H. F. 66, § 93-a1.]

2965. Affiliation with allied societies. The society shall encourage the affiliation with itself of societies organized for the purpose of furthering the horticultural, honey bee, or forestry interests of the state. [C., '73, § 1118; C., '97, § 1670; 39 G. A., ch. 254, § 2; 40 Ex. G. A., H. F. 66, § 94.]

2966. Annual report. The secretary shall make an annual report to the department of agriculture at such time as the department may require. Such report shall contain the proceedings of the society, an account of the exposition, a summarized statement of the expenditures for the year, the general condition of horticultural, honey bee, and forestry interests throughout the state, together with such additional information as the department may require. [C., '73, § 1119; C., '97, § 1671; 38 G. A., ch. 395, § 2; 39 G. A., ch. 254, §§ 3, 4; 40 G. A., ch. 234, § 1; 40 Ex. G. A., H. F. 66, § 95.]

NOTE: The appropriation for carrying out this chapter is only for the biennium and therefore does not appear in the code.

CHAPTER 144

LIEN FOR SERVICES OF ANIMALS

- 2967. Nature of lien—forfeiture.
- 2968. Period of lien—sale or removal.
- 2969. Sale or removal prohibited—penalty.
- 2970. Affidavit of foreclosure.
- 2971. Possession and notice.
- 2972. Service.
- 2973. Joinder of liens.
- 2974. Sale—application of proceeds.
- 2975. Right of contest—injunction.

2967. Nature of lien—forfeiture. The owner or keeper of any stallion or jack kept for public service shall have a prior lien on the progeny of such stallion or jack, to secure the amount due such owner or keeper for the service resulting in such progeny, but no such lien shall obtain where the owner or keeper misrepresents his animal by a false or spurious pedigree, or fails to substantially comply with the laws of Iowa relating to such animals. [S., '13, § 2341-s; 39 G. A., ch. 267, § 2.]

NOTE: For law relative to stallions and jacks, see ch. 127.

2968. Period of lien—sale or removal. The lien herein provided for shall attach at the birth of such progeny and shall remain in force on such progeny for one year and shall not be lost by reason of any sale, exchange, or removal from the county of the animals subject to such lien. [S., '13, § 2341-t; 39 G. A., ch. 267, § 3.]

2969. Sale or removal prohibited—penalty. It shall be unlawful to sell, exchange, or remove permanently from the county any animal subject to the lien herein provided for, without the written consent of the holder of such lien, and any person violating this provision, shall, on conviction be punished by a fine of not less than twenty-five dollars nor more than fifty dollars. [39 G. A., ch. 267, § 4.]

2970. Affidavit of foreclosure. Liens may be enforced by the holder filing with any constable of the county in which the progeny is kept, or with the sheriff of such county, an affidavit which shall, in addition to a demand for foreclosure, contain:

1. A description of the stallion or jack, and of the dam and its progeny.
2. The time and terms of said service.
3. A statement of the amount due for said service. [S., '13, § 2341-u; 39 G. A., ch. 267, § 5; 40 G. A., ch. 235, § 1.]

2971. Possession and notice. The constable or sheriff shall, under said affidavit, take immediate possession of said progeny, and give

written notice of the sale thereof, which notice shall contain:

1. A copy of the said affidavit.
2. The date and hour when, and the particular place at which, said property will be sold. [S., '13, § 2341-u; 39 G. A., ch. 267, § 5; 40 G. A., ch. 235, § 2.]

2972. Service. Said notice shall be served as follows:

1. By posting a duplicate copy for ten days prior to the day of sale in three public places in the township in which the sale is to take place, and
2. If the owner of the progeny resides in the said county, by also serving a duplicate copy on the owner in the manner in which original notices are served, at least ten days prior to the day of sale. [S., '13, § 2341-u; 39 G. A., ch. 267, § 5; 40 G. A., ch. 235, § 3.]

2973. Joinder of liens. A foreclosure may embrace liens on more than one progeny of the same stallion or jack when all of said progenies are owned by the same person. In such case there shall be separate sales until an amount is realized sufficient to pay all liens and costs. [40 G. A., ch. 235, § 4.]

2974. Sale—application of proceeds. If payment of the service fee, and constable costs, be not made prior to the time of sale, as fixed in such notice, the constable may sell property so held by him, or so much thereof as may be necessary, at public auction to the highest bidder, and the proceeds shall be applied, first, to the payment of the costs, and second, in payment of amount due for service fee. Any surplus arising from such sale shall be forthwith paid to the owner of the property sold. [S., '13, 2341-u; 39 G. A., ch. 267, § 6.]

2975. Right of contest—injunction. The right of the owner or keeper to foreclose, as well as the amount claimed to be due, may be contested by anyone interested in so doing, and the proceeding may be transferred to the district court, for which purpose an injunction may issue, if necessary. [S., '13, § 2341-v.]

CHAPTER 145

MARKING AND BRANDING OF ANIMALS

2976. Marks and brands.
2977. Record.

2976. Marks and brands. The board of supervisors of each county shall procure, at the expense of the county, a book for each civil township, to be in the custody of the township clerk, in which to record the marks and brands of horses, sheep, hogs, and other animals. [C., '51, § 920; R., '60, § 1555; C., '73, § 1479; C., '97, § 2334.]

2977. Record. Any person wishing to mark or brand his domestic animals with any distinguishing mark may adopt his own mark, and have a description thereof recorded by the

2978. Mark previously recorded.

clerk of the township in which the owner lives, for which such clerk shall receive a fee of twenty-five cents. [C., '51, §§ 921, 923; R., '60, §§ 1556, 1558; C., '73, §§ 1480, 3809; C., '97, § 2335.]

2978. Mark previously recorded. No person shall adopt a mark or brand previously recorded to another person residing in the same township, nor shall the clerk record the same one to two persons, unless on their joint application. [C., '51, § 922; R., '60, § 1557; C., '73, § 1481; C., '97, § 2336.]

CHAPTER 146

ESTRAYS AND TRESPASSING ANIMALS

2979. Definition of terms.
2980. Restraint of animals.
2981. Trespass on lawfully fenced land.
2982. Neglect to maintain partition fence.
2983. Trespass on unfenced land.
2984. Trespass on highway.
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3024. Penalty against officer.
3025. Bond to release.
3026. Compensation and fees.
3027. Neglected animals.
3028. Disabled animals killed.

2979. Definition of terms. As used in this chapter:

1. "Owner" when used with reference to animals, means any person in possession or entitled to the present possession thereof, or having care or charge of them, or holding the legal title to them.

2. "Owner" when used with reference to lands, means the person having title thereto, or the lessee or occupant thereof.

3. "Animal" or "animals" when used in this chapter shall include and embrace horses, cattle, swine, sheep, goats, mules, and asses.

4. "Estray" shall mean any animal unlawfully running at large the ownership of which can not, with reasonable inquiry in the neighborhood, be ascertained, or any animal which has been abandoned by its owner.

5. "Trespassing animals" means those unlawfully upon land, or running at large contrary

to law or police regulations. [C., '97, § 2311; 40 Ex. G. A., H. F. 71, § 1.]

2980. Restraint of animals. All animals shall be restrained by the owners thereof from running at large. [C., '51, § 114; R., '60, §§ 250, 287, 1522; C., '73, §§ 309, 1446, 1447, 1457, 1461-1463; C., '97, §§ 444, 445, 2312, 2314; 40 Ex. G. A., H. F. 71, § 2.]

2981. Trespass on lawfully fenced land. Any animal trespassing upon land, fenced as provided by law, may be distrained by the owner of such land, and held for all damages done thereon by it, unless it escaped from adjoining land in consequence of the neglect of such landowner to maintain his part of a lawful partition fence. [C., '51, §§ 913, 914; R., '60, §§ 1548, 1549; C., '73, §§ 1448, 1449; C., '97, § 2313; 40 Ex. G. A., H. F. 71, § 3.]

NOTE: Fences, see ch. 88.

2982. Neglect to maintain partition fence. The owner of the land from which such animal escaped shall also be liable for such damages if it escaped therefrom in consequence of his neglect to maintain his part of a lawful partition fence, or if the trespassing animal was not lawfully upon his land, and he had knowledge thereof. [C., '51, §§ 913, 914; R., '60, §§ 1548, 1549; C., '73, §§ 1446, 1448, 1449, 1452; C., '97, §§ 2313, 2314; 40 Ex. G. A., H. F. 71, § 4.]

NOTE: Fences, see ch. 88.

2983. Trespass on unfenced land. If there be no lawful partition fence, and the line thereof has not been assigned either by the fence viewers or by agreement of the parties, any animal trespassing across such partition line shall not be distrained, nor shall there be any liability therefor. [C., '97, § 2313; 40 Ex. G. A., H. F. 71, § 5.]

2984. Trespass on highway. Animals which are unlawfully running at large on the highway may be distrained by the owner of the adjoining land and held for damages done by them and for the costs provided in this chapter. [R., '60, § 287; C., '73, §§ 1446, 1448, 1452; C., '97, § 2314; 40 Ex. G. A., H. F. 71, § 6.]

2985. Animals under control. An animal shall not be considered as running at large so long as it is under the reasonable care and control of the owner upon the public road for driving or travel thereon. [C., '97, § 2314; 40 Ex. G. A., H. F. 71, § 7.]

2986. Action in lieu of distraint. Instead of distraining trespassing animals, the injured person may recover all damages caused thereby in an action against the owner thereof, and may join therein the owner of the land from which it escaped, if he is liable therefor, and all or any of the different owners of the animals who have not paid their proportion of the damages or costs. [C., '97, §§ 2315, 2316; 40 Ex. G. A., H. F. 71, § 8.]

2987. Action when stock is released or has escaped. If distrained animals escape or are

released without the consent of the distraining party, he may recover his damages as above provided, with costs, and the costs of distraint made prior to such escape or release. [C., '97, § 2315; 40 Ex. G. A., H. F. 71, § 9.]

2988. Release on payment of ratable share. If there is more than one owner of distrained animals, each may pay his ratable share of the damages and costs, and release his animals. [C., '73, § 1447; C., '97, §§ 2312, 2316; 40 Ex. G. A., H. F. 71, § 10.]

2989. Procedure on distraint. The person distraining animals shall, within twenty-four hours after such distraint, Sunday not included, notify the owner of the animals of such distraint and of the actual amount of damages and costs caused by such animals. If the said owner fails to satisfy such damages and costs within twenty-four hours after such notification, the person distraining shall immediately notify the township trustees and demand that they appear upon the premises where the damages occurred and assess the damages. The trustees shall immediately fix a time for the assessment of such damages and notify the owner of the animal accordingly. [C., '51, § 919; R., '60, §§ 1552, 1554; C., '73, §§ 1447, 1454; C., '97, §§ 2312, 2317; 40 Ex. G. A., H. F. 71, § 11.]

2990. Appointee in lieu of trustee. If for any reason one or more trustees shall be unable to act, the trustees present shall appoint one or more disinterested citizens in place of such trustees. [C., '51, § 916; R., '60, § 1551; C., '73, § 1454; C., '97, § 2317; 40 Ex. G. A., H. F. 71, § 14.]

2991. Tender of damages and costs. The owner of the animals may tender to the person suffering damage an amount less than that demanded by claimant, as damages and costs, and if such tender be refused, and the final assessment of damages be no more than such tender, then all costs, and compensation for keeping the animals accruing after such tender, shall be paid by the person distraining the animals. [40 Ex. G. A., H. F. 71, § 15.]

NOTE: Tender in general, see ch. 421.

2992. Assessment of damages. The trustees, or a majority thereof, shall meet on the premises where the damages occurred at the time fixed and assess the damages and costs and file their written report with the township clerk, who shall record the same. Said assessment shall be final unless appealed from. [C., '73, §§ 1454, 1455; C., '97, §§ 2317, 2318, 2319; 40 Ex. G. A., H. F. 71, § 16.]

2993. Failure to pay damages—notice of sale. If the owner of the distrained animals neglects for two days after such assessment to pay the amount thereof, the township clerk shall at once post up in three conspicuous places in the township a notice of the time and place at which he will sell said animals, describing them. The place of sale shall be at

the place of distraint. The sale shall be between the hours of one and three o'clock p. m. and on a day not less than five nor more than ten days after the posting. [C., '73, § 1454; C., '97, § 2317; 40 Ex. G. A., H. F. 71, § 17.]

2994. Escape or release—recapture. If any distrained animal escape, or is unlawfully released, the injured person may recapture the same. If the recapture is effected before the day of sale as already fixed in the notice, the sale shall proceed under such notice. If the recapture is effected after the day of sale has passed, the township clerk shall issue new notices of sale and proceed anew. [C., '97, § 2319; 40 Ex. G. A., H. F. 71, § 25.]

2995. Sale. The clerk shall, at the time and place named in said notice, sell the animals at public sale to the highest bidder for cash, but only such number of animals shall be sold as is necessary to satisfy the damages and costs. Animals unsold shall be at once returned to the owner, and also the surplus remaining, if any, out of any sold. [C., '51, § 918; R., '60, § 1553; C., '73, §§ 1447, 1454; C., '97, §§ 2312, 2317; 40 Ex. G. A., H. F. 71, § 18.]

2996. Unknown owner. Should the owner of the surplus be unknown the same shall be paid to the county treasurer, who shall give duplicate receipts therefor, one of which shall be filed with the county auditor. The owner of said animal, on filing a claim therefor within twelve months after payment to the treasurer, shall be entitled to receive said surplus from the county. [C., '51, § 918; R., '60, § 1553; C., '73, §§ 1447, 1454; C., '97, §§ 2312, 2317; 40 Ex. G. A., H. F. 71, § 18.]

2997. Appeal—time. Any person aggrieved by the assessment made by the trustees may appeal to the district court by filing with the township clerk, within four days after the report of the trustees is filed with such clerk, an appeal bond with sureties to be approved by said clerk and conditioned to pay all damages and costs. [C., '73, § 1455; C., '97, § 2318; 40 Ex. G. A., H. F. 71, § 19.]

2998. Appeal bonds—amount. Appeal bonds shall be in the following amounts:

1. When the appeal is taken by the person distraining the animals, twice the value of the animals, as fixed by the clerk.

2. When the appeal is taken by the owner of the distrained animals, twice the value of the animals, so fixed, or twice the amount of damages and costs in those cases where the value of the animals exceeds the amount of the damages claimed. [C., '73, § 1455; C., '97, § 2318; 40 Ex. G. A., H. F. 71, § 20.]

2999. Appeal by claimant—effect. When an appeal is thus taken by the person distraining such animals the animals shall be held for the satisfaction of such judgment as may be rendered on appeal, except as provided in the next section. [C., '97, § 2318; 40 Ex. G. A., H. F. 71, § 21.]

3000. Release pending appeal. The owner of said animals may secure the release of the same at any time before judgment by filing with the township clerk before the appeal is certified, or with the clerk of the district court thereafter, a bond with sufficient sureties to be approved by the clerk with whom filed, conditioned to pay all damages and costs recovered in said cause on appeal. The clerk receiving such bond shall file the same, and forthwith certify the fact to the person having charge of the distrained animals, who shall thereupon release the same to the owner. [C., '97, § 2318; 40 Ex. G. A., H. F. 71, § 22.]

3001. Appeal by owner—effect. Where the owner appeals and files a bond, as herein provided, it shall operate as a supersedeas, and the distrained animals shall be released to him. [C., '73, § 1455; C., '97, § 2318; 40 Ex. G. A., H. F. 71, § 23.]

3002. Transcript—clerk to file. Within five days after the taking of the appeal, the township clerk shall make out a certified transcript of the record of the finding of the trustees, and file the same, together with the notice of appeal, if in writing, and the bond, with the clerk of the district court. [C., '97, § 2318; 40 Ex. G. A., H. F. 71, § 24.]

3003. Unlawful release. Any person who releases any animal, distrained as provided in this chapter, without the consent of the person distraining the same, shall be guilty of a misdemeanor. [C., '97, § 2320; 40 Ex. G. A., H. F. 71, § 26.]

3004. Taking up estray. Any resident of a county may take up an estray when the same is on his premises. He may also take up an estray which is upon the premises of any other person when such other person had knowledge that such estray was on his premises and fails for five days to take up such estray. [R., '60, §§ 1511-1513; C., '73, §§ 1464, 1465; C., '97, §§ 2321, 2322; 40 Ex. G. A., H. F. 71, § 28.]

3005. Procedure on taking up estray. A person taking up an estray shall, within five days thereafter, post up, for ten days, a written notice in three of the most public places in the township, which notice shall be signed by him and shall embrace:

1. A full description of said animal.

2. The time and place of taking up such estray. [R., '60, §§ 1511-1513; C., '73, § 1466; C., '97, § 2323; 40 Ex. G. A., H. F. 71, § 29.]

3006. Proof of service. Immediately after the expiration of said ten days of posting, the person taking up the estray shall, unless such estray has been previously claimed by the owner, file with a justice of the peace in the township in which the estray was taken up, or, in case there is no justice in the township, then with the next nearest justice in the county, his affidavit which shall show:

1. The time and place of taking up such estray.

2. The time and places of posting said notice, together with a copy of said notice.

3. That said animal remains unclaimed.

4. Whether the marks or brands of said animal have been altered to his knowledge, either before or after the same was taken up. [R., '60, §§ 1511-1513; C., '73, §§ 1465, 1466; C., '97, §§ 2322, 2323; 40 Ex. G. A., H. F. 71, § 30.]

3007. Justice to record return. The justice shall record such return in his docket and at once forward the same to the county auditor, together with the fees due to such auditor in order to enable him to perform his duty. [R., '60, §§ 1511-1513; C., '73, §§ 1465, 1466; C., '97, § 2323; 40 Ex. G. A., H. F. 71, § 31.]

3008. Record and posting by county auditor. The county auditor shall record the affidavit in the estray book in his office and cause a copy thereof to be posted at the door of the courthouse. [R., '60, §§ 1511-1513; C., '73, §§ 1465, 1466; C., '97, § 2323; 40 Ex. G. A., H. F. 71, § 32.]

3009. Publication. The auditor shall cause the affidavit to be published once each week for three weeks in some newspaper in the county. [R., '60, §§ 1511-1513; C., '73, § 1468; C., '97, § 2324; 40 Ex. G. A., H. F. 71, § 33.]

3010. Fees and expenses. The person taking up an estray shall pay to the justice of the peace, with whom the affidavit is filed, the legal fees due the said justice, and the legal fees due to the county auditor for entering said affidavit in the estray book, and posting and publishing the same, which amounts, together with the compensation provided by law, shall be refunded to the person taking up such estray by the owner thereof in case the animal is restored to the owner. [R., '60, § 1520; C., '73, §§ 3822, 3823; C., '97, § 2325; 40 Ex. G. A., H. F. 71, § 34.]

3011. Two or more estrays—procedure. If two or more estrays are taken up at the same time by the same person, they shall be included in one notice and affidavit and but one fee shall be paid therefor, and if fewer than the whole number of animals thus included are restored to the owner, a proportionate amount of such fees and expenses shall be refunded. [R., '60, § 1520; C., '73, §§ 3822, 3823; C., '97, 2325; 40 Ex. G. A., H. F. 71, § 35.]

3012. Property vests when. If the estray be not claimed by the owner within six months from the time it is taken up, the property therein shall vest in the taker-up, if he has complied with the provisions of this chapter. [R., '60, § 1515; C., '73, §§ 1471, 1472; C., '97, § 2326; 40 Ex. G. A., H. F. 71, § 36.]

3013. Recovery by owner. At any time before the property in the estray vests in the person who has taken it up, the owner shall be entitled to recover possession of it on paying to the person who has taken it up:

1. The compensation to which he is entitled by law.

2. The fees and expenses which the taker-up has paid in advance.

3. Any reward which has been offered by the owner.

4. A reasonable allowance for the expenses of keeping such estray, taking into account the use which the person taking up has had of it, which latter allowance shall be made by the court before whom a proceeding to recover the animal shall be brought in the event the owner and the taker-up can not agree with reference thereto. [C., '73, § 1474; C., '97, § 2327; 40 Ex. G. A., H. F. 71, § 37.]

3014. Former owner—rights after vesting of title. At any time within six months after the property in an estray has vested in the taker-up, the former owner shall be entitled to receive from the taker-up, on demand, the value of the estray, not including any increased value which has accrued since it was taken up, after deducting therefrom the compensation, reward, fees, and expenses referred to in the preceding section; or the taker-up may, at his option, elect to surrender the estray, if still in his possession, in which case the owner must pay such compensation, reward, fees, and expenses. [C., '73, § 1475; C., '97, § 2328; 40 Ex. G. A., H. F. 71, § 38.]

3015. Lawful use of estray. Any person legally taking up an estray may use or work it, if he does so with care and moderation, and does not abuse or injure it. Estrays adapted thereto may be milked by the taker-up. [C., '73, § 1473; C., '97, § 2329; 40 Ex. G. A., H. F. 71, § 39.]

3016. Unlawful use of estray. Any person who unlawfully takes up any estray, or takes up any estray and fails to comply with any of the provisions of this chapter, or uses or works it in any manner contrary to this chapter, or works it before having it appraised, or keeps it out of the county for more than five days at any one time before he acquires a title to it, shall be liable to the owner of the estray for double the amount of any injury to the estray. [C., '73, § 1473; C., '97, § 2329; 40 Ex. G. A., H. F. 71, § 40.]

3017. Nonliability of taker-up. If any estray, legally taken up, escape from the finder or die without any fault on his part, he shall not be liable for the loss. [C., '73, § 1476; C., '97, § 2330; 40 Ex. G. A., H. F. 71, § 41.]

3018. Penalty against finder. If any person shall sell, trade, or take out of the state any estray before the legal title shall have vested in him, he shall forfeit to the owner double its value, and shall also be guilty of a misdemeanor. [C., '73, § 1477; C., '97, § 2331; 40 Ex. G. A., H. F. 71, § 42.]

3019. Transfer of estrays. The personal representatives of a taker-up shall succeed to all the rights of such taker-up. The county auditor may authorize the taker-up or his personal representative to transfer an estray to another person who shall take the place of his predecessor. [C., '97, § 2331; 40 Ex. G. A., H. F. 71, § 43.]

3020. Sale of estrays. When an estray has damaged property and is taken up by the owner of such property, such owner, instead of proceeding against said animal as an estray as hereinbefore provided, may proceed against it as provided for the distraint and sale of animals, the ownership of which is known. [40 Ex. G. A., H. F. 71, § 44.]

3021. Notice. In cases contemplated by the last preceding section, a notice of the taking up and the amount of the claim for damages shall be served on the unknown owner by two publications of a notice in at least two of the official newspapers of the county, which notice shall:

1. Be signed by the taker-up, with his post-office address.

2. Be addressed to the unknown owner.

3. Contain a full description of the animal, including all marks or brands thereon.

4. Specify the time and place of the taking up, and the amount of damages and costs claimed.

5. Notify the unknown owner that unless he appears within six months and pays said damages and all legal costs, said taker-up will apply to the township clerk for an assessment of damages caused by said animal and costs, and will take proceedings for the sale of such animal for the payment thereof. [40 Ex. G. A., H. F. 71, § 45.]

3022. Assessment of damages and costs. At any time after six months from the date of the last publication, or at any time after the owner appears and fails to pay said damages and costs, the taker-up may apply to the township clerk for an assessment of his damages and costs, and all subsequent proceedings shall be as provided in case of distraint of animals, the ownership of which is known. The legal fees for publishing said notice shall be included in the assessment of costs. [40 Ex. G. A., H. F. 71, § 46.]

3023. Owner discovered. Should the taker-up mentioned in the preceding section discover the owner of said animal prior to the expiration of said six months, he shall immediately serve written notice upon such owner of the taking up of said animal and of the amount of his said claim, and unless the owner discharges said claim within twenty-four hours such taker-up shall proceed in the same manner as provided in case of the distraint of animals the ownership of which is known. [40 Ex. G. A., H. F., 71, § 47.]

3024. Penalty against officer. Any officer who fails to perform the duties enjoined upon him in this chapter in relation to estrays, shall be fined not less than five dollars nor more than fifty dollars. [C., '73, § 1478; C., '97, § 2332; 40 Ex. G. A., H. F. 71, § 48.]

3025. Bond to release. Before any property held under this chapter is sold under distraint, or before the title to an estray vests in the taker-up, it may be released at once upon the owner giving to the distrainer or taker-up

a bond, with sureties, to be approved by the township clerk, justice of the peace or county auditor, before whom the matter is then pending, conditioned to pay to the holder of the property, within twenty days after such approval, all costs, damages and compensation to which he is entitled. In case the obligee in said bond is compelled to begin action on such bond, the court may tax a reasonable attorney's fee in favor of such obligee. [C., '73, § 1486; C., '97, § 2333; 40 Ex. G. A., H. F. 71, § 49.]

3026. Compensation and fees. The compensation for services under this chapter shall be as follows:

1. For distraining all animals except as otherwise provided, fifty cents for each head not exceeding two, and twenty-five cents for each additional head taken on one distraint.

2. For distraining each stallion, jack, bull, boar, or buck, one dollar.

3. For keeping horses, cattle, mules, and asses, fifty cents a day, from the time the same is taken up.

4. For keeping any other animals, twenty-five cents a day from the time the same is taken up.

5. For posting notices and selling animals, the same fees as are allowed constables for like services upon execution.

6. For taking up as an estray one head, fifty cents, and twenty-five cents for each additional head at one time.

7. To the justice of the peace, for all services in each case of taking up estrays, fifty cents.

8. To the county auditor, for all services in each case of estrays, including posting and publishing notice, but not including the fee of the printer, fifty cents.

9. To the township clerk, for posting notices, twenty-five cents, and services not otherwise provided for, the same fees as are allowed in assessing damages done by trespassing animals, with ten cents mileage each way.

10. To the township clerk, ten cents per each hundred words entered of record, the same fees for a copy thereof, and in addition twenty-five cents for his certificate thereto, and fifty cents for filing and approving any bond. [C., '51, § 893; R., '60, § 1520; C., '73, §§ 3821, 3822; C., '97, § 2349; 40 Ex. G. A., H. F. 71, § 50.]

3027. Neglected animals. Any person may take charge of any animal when the owner fails to properly take care and provide for it, and may furnish the same with proper care, either on his own premises or on the premises of the owner, and shall have a lien on the animal for the same, and the reasonable value of such care may be collected by him from the said owner. [C., '73, §§ 1482, 1483; C., '97, §§ 2337, 2338; 40 Ex. G. A., H. F. 71, § 51.]

3028. Disabled animals killed. The sheriff, constable, police officer, officer of any society for the prevention of cruelty to animals, or any magistrate, shall destroy any estray animal disabled and unfit for further use. [C., '73, § 1484; C., '97, § 2339; 40 Ex. G. A., H. F. 71, § 52.]

TITLE X

REGULATION AND INSPECTION OF FOODS, DRUGS, AND OTHER ARTICLES

CHAPTER 147

GENERAL PROVISIONS

3029. Definitions and rules of construction.
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3044. Possession—prima facie evidence.

3029. Definitions and rules of construction.
For the purpose of this title:

1. "Article" shall include food, commercial feed, agricultural seed, commercial fertilizer, drug, insecticide, fungicide, paint, linseed oil, turpentine, and illuminating oil, in the sense in which they are defined in the various provisions of this title.

2. "Department" shall mean the department of agriculture, and, wherever said department is required or authorized to do an act, it shall be construed as authorizing performance by a regular assistant or a duly authorized agent of said department.

3. "Secretary" shall mean the secretary of agriculture.

4. "Package" or "container", unless otherwise defined, shall include wrapper, box, carton, case, basket, hamper, can, bottle, jar, tube, cask, vessel, tub, firkin, keg, jug, barrel, tank, tank car, and other receptacles of a like nature; and wherever the expression "offered or exposed for sale or sold in package or wrapped form" is used it shall mean the offering or exposing for sale, or selling of an article which

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is contained in a package or container as herein defined.

5. "Person" shall include a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in said capacity shall also be liable for violations of this title.

6. "Rules" shall include regulations and orders by the department of agriculture.

7. "United States Pharmacopoeia" or "National Formulary" shall mean the latest revision of said publications official at the time of any transaction which may be in question. [S., '13, §§ 2510-o, 3009-a; S. S., '15, § 4999-a31c; 37 G. A., ch. 385, § 12; 39 G. A., ch. 236, § 1; 40 Ex. G. A., H. F. 261, § 1.]

3030. Duties of department of agriculture.
The department of agriculture shall:

1. Execute and enforce the provisions of this title, except chapters 155 and 156, which shall be executed and enforced by the Pharmacy Examiners.

2. Make and publish all necessary rules, not inconsistent with law, for enforcing the provisions of this title.

3. Provide such educational measures and exhibits, and conduct such educational campaigns as are deemed advisable in fostering and promoting the production and sale of the articles dealt with in this title in accordance with the regulations herein prescribed.

4. Issue from time to time, bulletins showing the results of inspections, analyses, and prosecutions under this title. These bulletins shall be printed in such numbers as may be approved by the state printing board and shall be distributed to the newspapers of the state and to all interested persons. 1. [C., '97, § 2515; S., '13, §§ 2510-g, 2510-t, 2510-v4, 2528-f2, 3009-a, 4999-a31b, 5077-a22; S. S., '15, § 2515; 37 G. A., ch. 406, § 12; 38 G. A., ch. 127, § 3; 38 G. A., ch. 274, § 5; 38 G. A., ch. 284, § 2; 39 G. A., ch. 236, § 12; 40 G. A., ch. 36, § 7; 40 G. A., ch. 44, § 3; 40 G. A., ch. 46, §§ 1, 11, 12, 13, 14; 40 Ex. G. A., H. F. 261, § 2.] 2. [S., '13, §§ 4999-a18, 5077-a22; 37 G. A., ch. 385, § 3; 38 G. A., ch. 206, § 5; 38 G. A., ch. 274, § 5; 38 G. A., ch. 284, § 1; 39 G. A., ch. 236, § 12; 40 Ex. G. A., H. F. 261, § 2.] 3. [C., '97, § 2515; S. S., '15, § 2515; 40 Ex. G. A., H. F. 261, § 2.] 4. [S., '13, §§ 2510-g, 2510-t, 2510-v4, 2528-f2, 3009-s, 4999-a26, 4999-a37, 5077-a11; 39 G. A., ch. 236, § 12; 40 Ex. G. A., H. F. 261, § 2.]

INSPECTION—SAMPLES

3031. Procuring samples. The department shall, for the purpose of examination or analysis, procure from time to time, or whenever said department has occasion to believe any of the provisions of this title are being violated, samples of the articles dealt with in this title which have been shipped into this state, offered or exposed for sale, or sold in the state. [C., '97, §§ 2521, 2524; S., '13, §§ 2528-f2, 4999-a18, 5077-a11, 5077-a22; 38 G. A., ch. 284, § 1; 39 G. A., ch. 236, § 13; 40 Ex. G. A., H. F. 261, § 3.]

3032. Access to factories and buildings. The department shall have full access to all places, factories, buildings, stands, or premises, and to all wagons, auto trucks, vehicles, or cars used in the preparation, production, distribution, transportation, offering or exposing for sale, or sale of any article dealt with in this title. [C., '97, § 2505; S., '13, §§ 2528-a, 5077-a22; S. S., '15, §§ 2505, 2510-4a, 3009-n; 38 G. A., ch. 99, § 2; 38 G. A., ch. 127, § 5; 39 G. A., ch. 236, § 13; 40 Ex. G. A., H. F. 261, § 4.]

3033. Dealer to furnish samples. Upon request and tender of the selling price by the department any person who prepares, manufactures, offers or exposes for sale, or delivers to a purchaser any article dealt with in this title shall furnish, within business hours, a sample of the same, sufficient in quantity for a proper analysis or examination as shall be provided by the rules of the department. [S., '13, §§ 4999-a24, 5077-a11; 40 Ex. G. A., H. F. 261, § 5.]

3034. Taking of samples without consent of owner. The department may, without the consent of the owner, examine or open any package containing, or believed to contain, any article or product which it suspects may be prepared, manufactured, offered, or exposed for sale, sold, or held in possession in violation of the provisions of this title, in order to secure a sample for analysis or examination, and said sample and damage to container shall be paid for at the current market price out of the contingent fund of the department. [C., '97, §§ 2521, 2526; S., '13, §§ 2528-b, 2528-f2, 5077-a11, 5077-a22; 38 G. A., ch. 127, § 5; 39 G. A., ch. 236, § 13; 40 Ex. G. A., H. F. 261, § 6.]

3035. Preservation of sample. After the sample is taken it shall be carefully sealed with the seal of the department and labeled with the name or brand of the article, the name of the party from whose stock it was taken, and the date and place of taking such sample. Upon request a duplicate sample, sealed and labeled in the same manner, shall be delivered to the person from whose stock the sample was taken. The label and duplicate shall be signed by the person taking the same. The method of taking samples of particular articles may be prescribed by the rules of the department. [C., '97, § 2521; S., '13, §§ 4999-a24, 5077-a11, 5077-a22; 39 G. A., ch. 236, § 13; 40 Ex. G. A., H. F. 261, § 7.]

3036. Witnesses—subpoenas—examination. In the enforcement of the provisions of this title the department shall have power to issue subpoenas for witnesses, enforce their attendance, and examine them under oath. Such witnesses shall be allowed the same fees as witnesses in justice of the peace courts. Said fees shall be paid out of the contingent fund of the department. [C., '97, § 2515; S. S., '15, § 2515; 40 Ex. G. A., H. F. 261, § 8.]

LABELING—ADULTERATIONS

3037. Labeling. All articles in package or wrapped form which are required by this title to be labeled, unless otherwise provided, shall be conspicuously marked in the English language in legible letters of not less than eight-point heavy gothic caps on the principal label with the following items:

1. The true name, brand, or trademark of the article.

2. The quantity of the contents in terms of weight, measure, or numerical count. Under this requirement reasonable variations shall be permitted, and small packages shall be excepted in accordance with the rules of the department.

3. The name and place of business of the manufacturer, packer, importer, dispenser, distributor, or dealer.

The above items shall be printed in such a way that there shall be a distinct contrast between the color of the letters and the background upon which printed. [C., '73, § 4042; C., '97, §§ 2517, 4989-4991, 5070; S., '13, §§ 2510-d, 2510-q, 2510-r, 2510-v1, 2510-v2, 2515-b-

2515-d, 2528-f, 4999-a35, 5070-a, 5077-a6; S. S., '15, § 4999-a31c; 37 G. A., ch. 377, § 3; 37 G. A., ch. 385, §§ 8, 10; 38 G. A., ch. 127, § 2; 38 G. A., ch. 206, § 2; 38 G. A., ch. 284, § 3; 39 G. A., ch. 236, § 17; 40 G. A., ch. 44, § 4; 40 Ex. G. A., H. F. 261, § 9.]

NOTE: For "unless otherwise provided" as used in the above section, see as to:

Agricultural seeds, §§ 3129 and 3132.
Commercial feeds, §§ 3114 and 3116.
Commercial fertilizer, § 3141.
Drugs, §§ 3145 and 3147.
Foods, §§ 3067 and 3068.
Insecticides and fungicides, §§ 3183 and 3184.
Oils, §§ 3189 and 3190.
Paints, § 3188.

3038. Small packages excepted. In case the size of the package or container will not permit the use of the type specified in the preceding section, the same may be reduced in size proportionately in accordance with the rules of the department. [S., '13, § 4999-a35; 40 Ex. G. A., H. F. 261, § 10.]

3039. Labeling of mixtures—compounds—imitations. In addition to the requirements of the second preceding section, unless otherwise provided, articles which are mixtures, compounds, combinations, blends, or imitations shall be marked as such and immediately followed, without any intervening matter and in the same size and style of type, by the names of all the ingredients contained therein, beginning with the one present in the largest proportion. [S., '13, §§ 2510-d, 2510-r, 2510-v2, 5077-a7; S. S., '15, § 4999-a31c; 37 G. A., ch. 385, §§ 8, 10; 38 G. A., ch. 284, § 3; 40 Ex. G. A., H. F. 261, § 11.]

NOTE: For "unless otherwise provided" as used in the above section, see as to:

Agricultural seeds, §§ 3130 and 3131.
Commercial feeds, §§ 3114 and 3116.
Commercial fertilizer, § 3141.
Drugs, §§ 3145 and 3147.
Foods, §§ 3067 and 3068.
Insecticides and fungicides, §§ 3183 and 3184.
Oils, §§ 3189 and 3190.
Paints, § 3188.

3040. Trade formulas excepted. Nothing in the preceding section shall be construed as requiring the printing of a patented or proprietary trade formula on a label. [S., '13, § 5077-a7; S. S., '15, § 4999-a31c; 38 G. A., ch. 284, § 3; 40 Ex. G. A., H. F. 261, § 12.]

3041. False labels—defacement of labels. No person shall use any label required by this title which bears any representations of any kind which are deceptive as to the true character of the article or the place of its production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this title. [C., '73, § 4042; C., '97, §§ 2517, 4989-4991; S., '13, §§ 2510-s, 2510-v3, 2515-b-2515-d, 4999-a35, 5077-a7; S. S., '15, § 4999-a31c; 37 G. A., ch. 377, § 3; 37 G. A., ch. 385, § 8; 37 G. A., ch. 406, § 6; 38 G. A., ch. 206, § 2; 38 G. A., ch. 284, § 3, 40 G. A., ch. 36, § 5; 40 Ex. G. A., H. F. 261, § 13.]

3042. Dealing in mislabeled articles. No person shall knowingly introduce into this state, solicit orders for, deliver, transport, or have in his possession with intent to sell, any article which is labeled in any other manner than that prescribed by this title for the label of said article when offered or exposed for sale, or sold in package or wrapped form in this state. [C., '73, § 4042; C., '97, §§ 2516, 2517, 2519, 4989-4991, 5070; S., '13, §§ 2510-b, 2510-q, 2510-r, 2510-v1, 2510-v2, 2515-b-2515-d, 2528-f, 4999-a20, 5070-a; S. S., '15, § 4999-a32; 37 G. A., ch. 385, §§ 1, 2; 37 G. A., ch. 406, §§ 2-5, 7, 8; 38 G. A., ch. 127, §§ 1, 2; 38 G. A., ch. 206, § 2; 40 G. A., ch. 36, § 2; 40 Ex. G. A., H. F. 261, § 14.]

3043. Manufacture or sale of adulterated articles. No person shall knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in his possession with the intent to sell, or offer or expose for sale, any article which is adulterated according to the provisions of this title. [C., '73, §§ 3901, 4042; C., '97, §§ 2508, 2516, 4989-4991; S., '13, §§ 2508, 2510-q, 2510-r, 2510-v1, 2510-v2, 2515-b-2515-d, 4999-a20; S. S., '15, § 4999-a32; 37 G. A., ch. 385, §§ 1, 2; 38 G. A., ch. 206, § 2; 40 Ex. G. A., H. F. 261, § 15.]

3044. Possession—prima facie evidence. Any person having in his possession or under his control any article which is adulterated or which is improperly labeled according to the provisions of this title shall be presumed to know its true character and name, and such possession shall be prima facie evidence of having the same in possession with intent to violate the provisions of this title. [C., '97, §§ 2519, 2521; S., '13, §§ 4999-a24, 4999-a40; 40 Ex. G. A., H. F. 261, § 16.]

LICENSES

3045. Licenses. The following regulations shall apply to all licenses issued or authorized under this title:

1. *Applications.* Applications for licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department.

2. *Refusal and revocation.* For good and sufficient grounds the department may refuse to grant a license to any applicant; and it may revoke a license for a violation of any provision of this title, or for the refusal or failure of any licensee to obey the lawful directions of the department.

3. *Expiration.* Unless otherwise provided all licenses shall expire one year from the date of issue. [C., '97, § 2525; S., '13, § 2515-a; S. S., '15, §§ 2515-f, 3009-m; 37 G. A., ch. 377, § 2; 38 G. A., ch. 274, §§ 4, 6; 39 G. A., ch. 182, § 1; 40 Ex. G. A., H. F. 261, § 17.]

3046. Injunction against persons not licensed. Any person engaging in any business for which a license is required by this title, without obtaining such license, may be restrained by injunction, and shall pay all costs made necessary by such procedure. [40 Ex. G. A., H. F. 261, § 18.]

OFFENSES—PENALTIES

3047. Penalty. Unless otherwise provided, any person violating any provision of this title, or any rule made by the department and promulgated under the authority of said department, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not to exceed thirty days. [C., '73, §§ 2068, 3901; C., '97, §§ 2508, 2527, 2592, 2594, 3029, 5070; S., '13, §§ 2508, 2510-2a, 2510-h, 2510-j, 2510-u, 2510-v5, 2515-g, 2522, 2528-c, 2528-f3, 2596-b, 4989-b, 4999-a25, 4999-a39, 5070-a, 5077-a23; S. S., '15, §§ 2505, 2506, 3009-j, 3009-r; 37 G. A., ch. 377, § 4; 37 G. A., ch. 385, §§ 1, 2; 37 G. A., ch. 406, § 11; 38 G. A., ch. 99, § 1; 38 G. A., ch. 127, § 4; 38 G. A., ch. 206, §§ 3, 4, 7; 38 G. A., ch. 274, § 6; 39 G. A., ch. 236, § 15; 40 G. A., ch. 36, § 8; 40 G. A., ch. 44, § 2; 40 Ex. G. A., H. F. 261, § 19.]

NOTE: For "unless otherwise provided" as used in the above section, see as to drugs, §§ 3168 and 3169.

3048. Information may charge more than one offense. In any criminal proceeding brought for violation of this title an information or indictment may charge as many offenses as it appears have been committed and the defendant may be convicted of any or all of said offenses. [40 G. A., ch. 36, § 6; 40 Ex. G. A., H. F. 261, § 23.]

3049. Common carrier excepted. None of the penalties provided in this title shall be imposed upon any common carrier for introducing into the state, or having in its possession, any article which is adulterated or improperly labeled according to the provisions of this title when the same was received by said carrier for transportation in the ordinary course of its business and without actual knowledge of its true character. [C., '97, § 2516; S., '13, § 4999-a20; S. S., '15, § 4999-a32; 40 Ex. G. A., H. F. 261, § 24.]

ENFORCEMENT

3050. Report of violations to county attorney. When it shall appear that any of the provisions of this title have been violated, the department shall at once certify the facts to the proper county attorney, with a copy of the results of any analysis, examination, or inspection said department may have made, duly authenticated by the proper person under oath, and with any additional evidence which may be in possession of said department. [C., '97, § 4998; S., '13, § 4999-a19; 37 G. A., ch. 385, § 4; 40 Ex. G. A., H. F. 261, § 25.]

3051. Duty of county attorney. The county attorney may at once institute the proper proceedings for the enforcement of the penalties provided in this title for such violations. [C., '97, § 4998; S., '13, §§ 2596-c, 4999-a19; 37 G. A., ch. 385, § 5; 39 G. A., ch. 236, § 14; 40 Ex. G. A., H. F. 261, § 26.]

3052. Refusal of county attorney. If the county attorney refuses to act, the governor may, in his discretion, appoint an attorney to represent the state. [S., '13, § 4999-a19; 40 Ex. G. A., H. F. 261, § 27.]

3053. Institution of proceedings by department. In any case when it appears that any of the provisions of this title have been violated, the inspector having the investigation in charge shall, when instructed by the department, file an information against the suspected party. [40 Ex. G. A., H. F. 261, § 27-a1.]

MISCELLANEOUS

3054. Goods for sale in other states. Any person may keep articles specifically set apart in his stock for sale in other states which do not comply with the provisions of this title as to standards, purity, or labeling. [S., '13, §§ 4999-a20, 4999-a40; 37 G. A., ch. 385, § 2; 40 Ex. G. A., H. F. 261, § 28.]

3055. Reports by dealers. Every person who deals in or manufactures any of the articles dealt with in this title shall make upon blanks furnished by the department such reports and furnish such statistics as may be required by said department and certify to the correctness of the same. [C., '97, § 2522; S., '13, § 2522; 38 G. A., ch. 206, § 4; 40 Ex. G. A., H. F. 261, § 29.]

3056. Contracts invalid. No action shall be maintained in any of the courts of the state upon any contract or sale made in violation of or with the intent to violate any provision of this title by one who was knowingly a party thereto. [C., '97, § 2520; 40 Ex. G. A., H. F. 261, § 30.]

3057. Fees paid into state treasury. All fees collected under the provisions of this title shall be paid into the state treasury. [C., '97, § 2507; S. S., '15, §§ 2507, 2515-f, 3009-m; 39 G. A., ch. 182, § 1; 40 Ex. G. A., H. F. 261, § 31.]

NOTE: For time of paying fees into state treasury, see § 143.

CHAPTER 148

ADULTERATION OF FOODS

3058. Definitions and standards.
 3059. Additional standards.
 3060. Food adulterations.
 3061. Adulterations of certain dairy products.
 3062. Adulteration of dairy products with fats and oils.

3063. Coloring imitation butter or cheese.
 3064. Coloring vinegar.
 3065. Adulteration of candies.
 3066. Sale of food by false name.

3058. Definitions and standards. For the purpose of this chapter the following definitions and standards of food are established:

1. **Butter.** Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, with or without the addition of salt, or harmless coloring matter, and containing at least eighty per cent, by weight, of milk-fat.

2. **Imitation butter.** Imitation butter is any product containing any fat other than that derived from milk or cream, as provided in paragraph 1 above, and made in the appearance of butter or designed to be used for any of the purposes for which butter is used.

3. **Renovated butter.** Renovated butter is butter produced by taking original packing stock butter, or other butter, or both, and melting the same so that the milk-fat can be extracted, then by mixing the said milk-fat with skimmed milk, milk, cream, or some milk product, and rechurning or reworking the said mixture; or butter made by any method which produces a product commonly known as boiled, processed, or renovated butter.

4. **Cheese—whole milk or cream.** Whole milk or cream cheese is the sound, ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without the addition of ripening ferments, seasonings, or color, and containing at least thirty per cent of milk-fat.

5. **Imitation cheese.** Imitation cheese is a product containing any substance other than that produced from milk or cream, as provided in paragraph 4 above, and made in the appearance of or designed to be used for any of the purposes for which cheese produced from milk or cream is used.

6. **Skimmed milk cheese.** Skimmed milk cheese is a product made from skimmed milk by one of the processes by which whole milk or cream cheese is made, and containing less than thirty per cent of milk-fat.

7. **Cream.** Cream is the fresh portion of milk containing at least sixteen per cent of milk-fat, which rises to the surface of milk on standing or is separated from it by centrifugal force.

8. **Flavoring extract.** A flavoring extract is a solution in ethyl alcohol or other suitable

medium of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation.

9. **Almond extract.** Almond extract is the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one per cent by volume of oil of bitter almonds.

10. **Anise extract.** Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three per cent by volume of oil of anise.

11. **Cassia extract.** Cassia extract is the flavoring extract prepared from oil of cassia, and contains not less than two per cent by volume of oil of cassia.

12. **Celery seed extract.** Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three-tenths per cent by volume of oil of celery seed.

13. **Cinnamon extract.** Cinnamon extract is the flavoring extract prepared from oil of cinnamon, and contains not less than two per cent by volume of oil of cinnamon.

14. **Clove extract.** Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two per cent by volume of oil of cloves.

15. **Ginger extract.** Ginger extract is the flavoring extract prepared from ginger, and contains in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger.

16. **Lemon extract.** Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five per cent by volume of oil of lemon.

17. **Terpeneless extract of lemon.** Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of lemon in such medium, and contains not less than two-tenths per cent by weight of citral derived from oil of lemon.

18. **Nutmeg extract.** Nutmeg extract is the flavoring extract prepared from oil of nutmeg,

and contains not less than two per cent by volume of oil of nutmeg.

19. *Orange extract.* Orange extract is the flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five per cent by volume of oil of orange.

20. *Terpeneless extract of orange.* Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of orange in such medium, and corresponds in flavoring strength to orange extract.

21. *Peppermint extract.* Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three per cent by volume of oil of peppermint.

22. *Rose extract.* Rose extract is the flavoring extract prepared from attar of roses, with or without red rose petals, and contains not less than four-tenths per cent by volume of attar of roses.

23. *Savory extract.* Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths per cent by volume of oil of savory.

24. *Spearmint extract.* Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three per cent by volume of oil of spearmint.

25. *Star anise extract.* Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three per cent by volume of oil of star anise.

26. *Sweet basil extract.* Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth per cent by volume of oil of sweet basil.

27. *Sweet marjoram extract.* Sweet marjoram extract is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one per cent by volume of oil of marjoram.

28. *Thyme extract.* Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths per cent by volume of oil of thyme.

29. *Tonka extract.* Tonka extract is the flavoring extract prepared from tonka bean, with or without sugar or glycerin, and contains not less than one-tenth per cent by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof.

30. *Vanilla extract.* Vanilla extract is the flavoring extract prepared from vanilla bean, with or without sugar or glycerin, and contains in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean, and contains not less than thirty per cent by volume of absolute ethyl alcohol, or other suitable medium.

31. *Wintergreen extract.* Wintergreen extract is the flavoring extract prepared from oil of wintergreen, and contains not less than three per cent by volume of oil of wintergreen.

32. *Food.* Food shall include any article used by man or domestic animals for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound. The term "blended" shall be construed to mean a mixture of like substances.

33. *Ice cream.* Ice cream is the frozen product made from pure sweet cream and sugar, with or without flavoring, or with the addition of not to exceed one per cent by weight of a harmless thickener, and containing not less than twelve per cent by weight of milk-fat, with an acidity not to exceed three-tenths of one per cent.

34. *Fruit ice cream.* Fruit ice cream is a similar product, consisting of the same ingredients with the addition of sound, clean, mature fruits, and containing not less than ten per cent by weight of milk-fat.

35. *Nut ice cream.* Nut ice cream is a frozen product, consisting of the same ingredients as ice cream with the addition of sound, non-rancid nuts, and containing not less than ten per cent by weight of milk-fat.

36. *Milk.* Milk is the fresh lacteal secretion obtained by the complete milking of one or more cows, which contains at least three per cent of milk-fat and eleven and one-half per cent of milk solids.

37. *Skimmed milk.* Skimmed milk is milk from which the cream has been removed or which is poor in fat, containing less than three per cent of milk-fat or less than eleven and one-half per cent of milk solids.

38. *Oysters.* Oysters shall not contain ice, nor more than sixteen and two-thirds per cent by weight of free liquid.

39. *Vinegar.* Vinegar is the product made by the alcoholic and subsequent fermentation of fruits, grain, vegetables, sugar, or syrups without the addition of any other substance and containing an acidity of not less than four per cent by weight of absolute acetic acid. The product may be distilled, but when not distilled it shall not carry in solution any other substance except the extractive matter derived from the substances from which it was made.

40. *Cider or apple vinegar.* Cider or apple vinegar is a similar product made by the same process solely from the juice of apples. Such vinegar which during the course of manufacture has developed in excess of four per cent acetic acid may be reduced to said strength.

41. *Corn sugar vinegar.* Corn sugar vinegar is a similar product made by the same process solely from solutions of starch sugar.

42. *Malt vinegar.* Malt vinegar is a similar product made by the same process solely from barley malt or cereals whose starch has been converted by malt.

43. *Sugar vinegar.* Sugar vinegar is a similar product made by the same process solely from sucrose. [C., '73, § 4042; C., '97, §§ 2516, 2518, 4989-4991; S., '13, §§ 2515-b, 2515-d;

S. S., '15, §§ 4999-a31, 4999-a31c; 37 G. A., ch. 377, § 3; 38 G. A., ch. 127, § 1; 38 G. A., ch. 206, § 2; 40 Ex. G. A., H. F. 261, § 32.]

3059. Additional standards. The department may establish and publish standards for foods when such standards are not fixed by law, but the same shall conform with those proclaimed by the secretary of agriculture of the United States. [S., '13, § 4999-a18; 38 G. A., ch. 284, § 1; 40 Ex. G. A., H. F. 261, § 33.]

3060. Food adulterations. For the purposes of this chapter any food shall be deemed to be adulterated:

1. If any substance has been mixed or packed with it so as to reduce or injuriously affect its quality.

2. If any substance has been substituted to any extent.

3. If any valuable constituent has been removed to any extent.

4. If it has been mixed, colored, powdered, coated, or stained whereby damage or inferiority is concealed.

5. If it contains saccharine, formaldehyde, or boron compound, or any poisonous or other ingredient injurious to health.

6. If it consists to any extent of a diseased, filthy, or decomposed animal or vegetable substance, whether manufactured or otherwise.

7. If it consists to any extent of an animal that has died otherwise than by slaughter.

8. If it is the product of or obtained from a diseased or infected animal.

9. If it has been damaged by freezing.

10. If it does not conform to the standards established by law or by the department. [C., '73, § 4042; C., '97, §§ 4989, 4990; S., '13, §§ 2515-b, 2515-d; S. S., '15, § 4999-a31e; 37 G. A., ch. 377, § 3; 38 G. A., ch. 206, § 2; 40 Ex. G. A., H. F. 261, § 34.]

3061. Adulterations of certain dairy products. In addition to the adulterations enumerated in the preceding section, milk, cream, or skimmed milk shall be deemed to be adulterated:

1. If it contains visible dirt or is kept or placed at any time in an unclean container.

2. If obtained from a cow within fifteen days before or five days after calving.

3. If obtained from a cow stabled in an unhealthful place, or fed upon any substance in a state of putrefaction or of unhealthful nature. [C., '97, §§ 4989, 4990; S., '13, §§ 2515-b, 2515-d; 37 G. A., ch. 377, § 3; 38 G. A., ch. 206, § 2; 40 Ex. G. A., H. F. 261, § 35.]

3062. Adulteration of dairy products with fats and oils. No milk, cream, skimmed milk, buttermilk, condensed or evaporated milk, powdered or desiccated milk, condensed skimmed milk, ice cream, or any fluid derivatives of any of them shall be made from or have added thereto any fat or oil other than milk fat, and no product so made or prepared shall be sold, offered or exposed for sale, or possessed with the intent to sell, under any trade name or other designation of any kind. [40 G. A., ch. 44, § 1; 40 Ex. G. A., H. F. 261, § 35-a1.]

3063. Coloring imitation butter or cheese. No imitation butter or imitation cheese shall be colored with any substance and no such imitation product shall be made by mixing animal fats, vegetable oils, or other substances for the purpose or with the effect of imparting to the mixture the color of yellow butter or cheese. [C., '97, § 2518; 40 Ex. G. A., H. F. 261, § 36.]

3064. Coloring vinegar. Vinegar shall not be colored with coloring matter and distilled vinegar shall not have a brown color in imitation of cider vinegar. [S. S., '15, § 4999-a31; 40 Ex. G. A., H. F. 261, § 37.]

3065. Adulteration of candies. In addition to the adulterations enumerated in section 3060, candy shall be deemed to be adulterated if it contains terra alba, barytes, talc, paraffin, chrome yellow, or other mineral substance. [S. S., '15, § 4999-a31e; 40 Ex. G. A., H. F. 261, § 38.]

3066. Sale of food by false name. No person shall offer or expose for sale, sell, or deliver any article of food which is defined in this chapter under any other name than the one herein specified or offer or expose for sale, sell, or deliver any article of food which is not defined in this chapter under any other name than its true name, trade name, or trademark name. [40 Ex. G. A., H. F. 261, § 39.]

CHAPTER 149

LABELING FOODS

3067. Label requirements.

3068. Labeling certain dairy products and imitations.

3067. Label requirements. All food, as defined in the preceding chapter, offered or exposed for sale, or sold in package or wrapped form, shall be labeled on the package or container as prescribed in sections 3037 to 3040, inclusive, unless otherwise provided in this chapter. [C., '97, §§ 2517, 2519, 4989; S., '13,

3069. Notice of sale of imitation products.

3070. Labeling baking powder and vinegar.

§§ 2515-b, 2515-c; S. S., '15, § 4999-a31c; 38 G. A., ch. 127, § 2; 38 G. A., ch. 206, § 2; 38 G. A., ch. 284, § 3; 40 Ex. G. A., H. F. 261, § 40.]

3068. Labeling certain dairy products and imitations. The products enumerated below

shall be labeled on the side or top of the container or package in which placed, kept, offered or exposed for sale, or sold as prescribed in sections 3037 to 3040, inclusive, except that the label shall be printed in letters not less than three-quarters inch in height and one-half inch in width and subject to the following regulations:

1. *Skimmed milk.* Skimmed milk shall be labeled with the words "Skimmed Milk"; but if in bottles it shall be deemed properly marked if the required words are printed on the cap of each bottle in letters not smaller than twelve-point gothic caps.

2. *Renovated butter.* Renovated butter shall be labeled with the words "Renovated Butter", and if offered or exposed for sale or sold in prints or rolls the wrapper of each and the container as required above shall be so labeled. If such butter is offered or exposed for sale uncovered and not in a container or package, a placard containing the required label shall be attached to the mass so as to be easily seen by the purchaser.

3. *Imitation butter.* Imitation butter shall be labeled "Oleomargarine".

4. *Skimmed milk cheese.* Skimmed milk cheese shall be labeled with the words "Skimmed Milk Cheese" on the cheese and on the package.

5. *Imitation cheese.* Imitation cheese shall be labeled with the words "Imitation Cheese"

on the cheese and on the package. [C., '97, §§ 2517, 4989; S., '13, §§ 2515-b, 2515-c; 38 G. A., ch. 127, § 2; 38 G. A., ch. 206, § 2; 40 Ex. G. A., H. F. 261, § 41.]

3069. Notice of sale of imitation products. Every person owning or in charge of any place where food or drink is sold who uses or serves therein imitation butter or cheese, as in this title defined, shall display at all times opposite each table or place of service a placard for each such imitation, with the words "Imitation served here", without other matter, printed in black roman letters not less than three inches in height and two inches in width, on a white card twelve by twenty-two inches in dimensions. The blank after the word "imitation" in the above form shall be filled with the name of the product imitated. [C., '97, § 2517; 38 G. A., ch. 206, § 2; 40 Ex. G. A., H. F. 261, § 42.]

3070. Labeling baking powder and vinegar. Baking powder and distilled vinegar shall show on the label the name of each ingredient from which made. Distilled vinegar shall be marked as such; and cider vinegar which, having been in excess of the standard of acidity, has been reduced to the standard, shall have that fact indicated on the label. [S. S., '15 §§ 4999-a31, 4999-a31c; 40 Ex. G. A. H. F. 261, § 43.]

CHAPTER 150

PRODUCTION AND SALE OF DAIRY PRODUCTS

- 3071. Milk license required.
- 3072. Exemptions.
- 3073. License fee—expiration of license.
- 3074. Requirements of licensee—contents of license.
- 3075. Requirements as to milk wagons.
- 3076. Pasteurization of skimmed milk and butter-milk.
- 3077. Purity of milk and cream.
- 3078. Sanitary regulations for milk dealers.
- 3079. Testing milk or cream—tester's license.
- 3080. Examination required.
- 3081. Supplying standard measures for testing.
- 3082. Fees.
- 3083. Bottles and pipettes—inspection by vendor.
- 3084. Appointment of substitute tester.

3071. Milk license required. Every person engaging in the sale of milk or cream at retail, in any city or town, shall obtain a milk dealer's license from the department. [C., '97, § 2525; S., '13, § 2515-a; 40 Ex. G. A., H. F. 261, § 44.]

3072. Exemptions. The preceding section shall not apply:

1. To persons who supply milk or cream to establishments engaged in the manufacture of dairy products.

2. To persons who do not sell milk or cream from a store or vehicle. [S., '13, § 2515-a; 40 Ex. G. A., H. F. 261, § 45.]

- 3085. False tests—evidence.
- 3086. Tests by unlicensed person.
- 3087. Actions for purchase price—proof.
- 3088. State trademark for butter.
- 3089. Supervision of use of trademark.
- 3090. Rules in re trademark—labels and stamps.
- 3091. Distribution of rules—compliance.
- 3092. Copyright of trademark.
- 3093. Sale of imitation butter.
- 3094. Definition of container.
- 3095. Milk bottles to be marked.
- 3096. Adoption of brand or mark.
- 3097. Retention of marked container.
- 3098. Return of milk and cream bottles.
- 3099. Stray containers.
- 3100. Use of registered mark.

3073. License fee—expiration of license. The fee for said license shall be one dollar for each place and for each vehicle from which sales are made. The license shall expire on July fourth after the date of issue and shall not be transferable. [C., '97, § 2525; S., '13, § 2515-a; 40 Ex. G. A., H. F. 261, § 46.]

3074. Requirements of licensee—contents of license. Such license shall be issued only to the person owning or leasing the vehicle or place from which sales are to be made; and each license shall contain the name, residence, and place of business of the licensee. [C., '97,

§ 2525; S., '13, § 2515-a; 40 Ex. G. A., H. F. 261, § 47.]

3075. Requirements as to milk wagons. The name of the dairy or the name of the person to whom such license is issued shall appear on both sides of each vehicle from which sales are made, in letters not less than two inches in height and there shall be such contrast between the color of the letters and the background as shall render the letters plainly legible. [S., '13, § 2515-a; 40 Ex. G. A., H. F. 261, § 48.]

3076. Pasteurization of skimmed milk and buttermilk. Every owner, manager, or operator of a creamery shall before delivering to any person any skimmed milk or buttermilk cause the cream or milk from which the same is derived to be pasteurized according to the rules and regulations of the department. [S., '13, § 4989-a; 40 Ex. G. A., H. F. 261, § 49.]

3077. Purity of milk and cream. No wholesaler or retailer of milk or cream, except the producer, shall offer or expose for sale any milk or cream unless the same is produced from cows known to be free from tuberculosis, as evidenced by a certificate issued within one year by a licensed veterinarian, or unless the same shall have been pasteurized according to the established regulations of the department of agriculture. [40 Ex. G. A., H. F. 261, § 49-a1.]

3078. Sanitary regulations for milk dealers. Every person who deals in or manufactures dairy products or imitations thereof shall maintain his premises, utensils, wagons, and equipment in a clean and hygienic condition. [C., '97, § 2522; S., '13, § 2522; 38 G. A., ch. 206, § 4; 40 Ex. G. A., H. F. 261, § 50.]

3079. Testing milk or cream—tester's license. Every person testing cream or milk to determine the per cent of milk-fat as a basis for fixing the purchase price shall secure a milk tester's license from the department and shall make tests only by such process as has been approved by said department. [S. S., '15, § 2515-f; 40 Ex. G. A., H. F. 261, § 51.]

3080. Examination required. Each applicant for such a license shall be required to submit to examination and by actual demonstration show that he is competent to test cream and milk according to an approved process. [S. S., '15, § 2515-f; 40 Ex. G. A., H. F. 261, § 52.]

3081. Supplying standard measures for testing. The department shall furnish each licensee one standard test bottle and one standard pipette adapted to the use of the testing machine approved for the licensee. Said bottle and pipette shall be certified to by the department as standard and shall bear the official stamp of the department. Any person not a licensee may secure test bottles and pipettes from the department at the legal price. [C., '97, § 2515; S. S., '15, § 2515; 40 Ex. G. A., H. F. 261, § 53.]

3082. Fees. The fee for each license shall be two dollars and fifty cents, and standard test bottles and pipettes shall be furnished at actual cost. [C., '97, § 2515; S. S., '15, §§ 2515, 2515-f; 40 Ex. G. A., H. F. 261, § 54.]

3083. Bottles and pipettes—inspection by vendor. The standard bottle and pipette received from the department shall be used by the licensee in verifying test tubes and pipettes used by him in making tests; and the same shall be subject to inspection by the owner or vendor of the cream or milk which is the subject of the test. [C., '97, § 2523; 40 Ex. G. A., H. F. 261, § 55.]

3084. Appointment of substitute tester. With the approval of the department any licensee may for valid reasons appoint a person to act for him, not to exceed a period of fourteen days. [S. S., '15, § 2515-f; 37 G. A., ch. 377, § 2; 40 Ex. G. A., H. F. 261, § 56.]

3085. False tests—evidence. No person shall falsely manipulate or misread the Babcock test or any other milk or cream testing apparatus. The writing of a check or payment of money for cream or milk at any given test shall constitute prima facie evidence that such test was made. [S., '13, § 2515-e; 40 Ex. G. A., H. F. 261, § 57.]

3086. Tests by unlicensed person. The testing of each lot of milk or cream by an unlicensed person shall constitute a separate offense. [S. S., '15, § 2515-f; 40 Ex. G. A., H. F. 261, § 58.]

3087. Actions for purchase price—proof. In an action by the vendor for the purchase price of cream or milk, sold on test to be made by the vendee, the burden of establishing the proper use of an approved test shall be upon the vendee. [C., '97, § 2523; 40 Ex. G. A., H. F. 261, § 59.]

3088. State trademark for butter. The state trademark for butter manufactured in this state shall consist of the words "Iowa Butter" printed within an outline map of Iowa. Above said map shall be printed the words "First Quality, License No....." and below, the words "State Butter Control". Said map and printed matter shall be circumscribed by a double circle, the outer circle being printed with a heavier line than the inner circle. [S. S., '15, § 2515-f; 40 Ex. G. A., H. F. 261 § 60.]

3089. Supervision of use of trademark. The use of said trademark shall be under the supervision of an executive committee consisting of the president of the Iowa state dairy association, the president of the Iowa state buttermakers' association, the dean of the division of agriculture of the Iowa state college of agriculture and mechanic arts, the professor of dairying of the same institution, and the secretary of agriculture. [S. S., '15, § 2515-f; 40 Ex. G. A., H. F. 261, § 61.]

3090. Rules in re trademark—labels and stamps. The executive committee shall make

such rules concerning the manufacture, distribution, and use of said trademark as may be deemed necessary. Labels, stamps, and other devices for imprinting the trademark shall be supplied by the department at cost. [S. S., '15, § 2515-f; 40 Ex. G. A., H. F. 261, § 62.]

3091. Distribution of rules — compliance. The rules adopted for use of said trademark shall be published through bulletins issued by the department, and no person shall use said trademark before complying therewith. [S. S., '15, § 2515-f; 40 Ex. G. A., H. F. 261, § 63.]

3092. Copyright of trademark. The executive committee shall procure a copyright of said trademark, and may modify the statutory specifications of the same in order to comply with the copyright laws. Expenses for procuring such copyright shall be paid out of the contingent fund of the department. [S. S., '15, § 2515-f; 40 Ex. G. A., H. F. 261, § 64.]

3093. Sale of imitation butter. Imitation butter shall be sold only under the name of oleomargarine, and no person shall use in any way, in connection or association with the sale or exposure for sale or advertisement of any such butter, the word "butter", "creamery", or "dairy", or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter. [C., '97, § 2517; 38 G. A., ch. 206, § 6; 40 Ex. G. A., H. F. 261, § 65.]

3094. Definition of container. The term "container" used in the following sections of this chapter shall mean cans, bottles, casks, kegs, barrels, and other receptacles of like nature. [38 G. A., ch. 206, § 5; 40 Ex. G. A., H. F. 261, § 66.]

3095. Milk bottles to be marked. Bottles or jars used for the sale of milk shall have clearly blown or permanently marked in the side of the bottle, the capacity of the bottle, and on the bottom of the bottle the name, initials, or trademark of the manufacturer. The designating number shall be furnished by the department on request. [S., '13, § 3009-k; 40 Ex. G. A., H. F. 261, § 67.]

3096. Adoption of brand or mark. With the approval of the department any person who deals in or transports milk, cream, skimmed milk, buttermilk, or ice cream may adopt a distinctive mark or brand to be placed upon any container owned or used by him, and the same may be registered with the department. [38 G. A., ch. 206, § 5; 40 Ex. G. A., H. F. 261, § 68.]

3097. Retention of marked container. No person shall, without the consent of the owner, retain for a longer period than three days a container bearing a registered mark, and any person receiving such a container shall immediately return it to the owner by a common carrier. A receipt from a common carrier shall be prima facie evidence that such container was returned. [38 G. A., ch. 206, § 5; 40 Ex. G. A., H. F. 261, § 69.]

3098. Return of milk and cream bottles. Milk and cream bottles bearing registered marks shall be returned by delivering them to the owner or his agent in person or by leaving them where they may be picked up by the owner. [38 G. A., ch. 206, § 5; 40 Ex. G. A., H. F. 261, § 70.]

3099. Stray containers. When any person comes into possession of a container bearing a registered mark which belongs to another whose name and address he does not know, he shall immediately notify the department in writing, giving the size, shape, and mark of the container. Upon receipt of shipping directions from the department he shall at once forward the container by a common carrier, collect, to the address furnished him. Milk or cream bottles need not be returned when the cost of return is greater than the market value of the bottles. [38 G. A., ch. 206, § 5; 40 Ex. G. A., H. F. 261, § 71.]

3100. Use of registered mark. No person shall for any purpose use any registered mark or any container bearing such mark, or remove or alter any such mark placed upon a container without the consent of the owner. [38 G. A., ch. 206, § 5; 40 Ex. G. A., H. F. 261, § 72.]

CHAPTER 151

PRODUCTION AND SALE OF EGGS

- 3101. License required.
- 3102. Retailers exempted.
- 3103. Fee—expiration of license.
- 3104. Sale of eggs unfit for human food.
- 3105. Eggs unfit for human food.
- 3106. Equipment required of egg dealers.

- 3107. Candling defined.
- 3108. Candling required.
- 3109. Candling records.
- 3110. Candling certificate.
- 3111. Rules for recandling.
- 3112. Deduction to be determined by candling.

3101. License required. Every person engaged in the business of buying, selling, or dealing in eggs shall obtain a license from the department for each establishment at which said business is conducted. [38 G. A., ch. 274, § 4; 40 Ex. G. A., H. F. 261, § 73.]

3102. Retailers exempted. Retailers who buy direct from dealers licensed under this chapter and who do not sell in lots greater than one case shall not be required to procure a license. [38 G. A., ch. 274, § 4; 40 Ex. G. A., H. F. 261, § 74.]

3103. Fee—expiration of license. The license fee shall be one dollar per annum and each license shall expire on March first after the date of issue. [38 G. A., ch. 274, § 4; 40 Ex. G. A., H. F. 261, § 75.]

3104. Sale of eggs unfit for human food. No person shall sell, offer or expose for sale, or have in his possession any egg unfit for human food, unless the same is broken in shell and then denatured so that it cannot be used for human food. [38 G. A., ch. 274, § 1; 40 Ex. G. A., H. F. 261, § 76.]

3105. Eggs unfit for human food. For the purpose of this chapter, an egg shall be deemed unfit for human food:

1. If it is addled or moldy, containing black rot, white rot, or a blood ring.
2. If it has an adherent yolk, or a bloody or green white.
3. If it has been incubated beyond the blood ring stage.
4. If it consists to any extent of a filthy or decomposed substance. [38 G. A., ch. 274, § 1; 40 Ex. G. A., H. F. 261, § 77.]

3106. Equipment required of egg dealers. Every person engaged in the business of buying eggs intended for human food for resale shall maintain an adequate place for the proper candling and handling of the same. [38 G. A., ch. 274, § 2; 40 Ex. G. A., H. F. 261, § 78.]

3107. Candling defined. The term "candling" as used in this chapter shall mean the careful

examination, in a partially dark room or place, of the whole egg by means of a strong light, and the apparatus and method employed shall be approved by the department. [38 G. A., ch. 274, § 2; 40 Ex. G. A., H. F. 261, § 79.]

3108. Candling required. Every person buying eggs from the producer for resale shall candle all eggs offered to him and shall refuse to buy eggs unfit for human food as herein defined. Such candling shall be done in the presence of the producer if he so requests. [40 Ex. G. A., H. F. 261, § 80.]

3109. Candling records. Each licensee shall keep such candling records as may be required by the department, which records shall be open at all reasonable times for examination by said department. [38 G. A., ch. 274, § 2; 40 Ex. G. A., H. F. 261, § 81.]

3110. Candling certificate. There shall be placed on the top layer of every case of candled eggs a certificate showing the date of candling, the name, initials, or number of the person doing the candling, the name of this state, and the license number of the person for whom the eggs were candled, which certificates shall be printed on sheets not smaller than two and three-eighths by four and one-fourth inches. [38 G. A., ch. 274, § 3; 40 Ex. G. A., H. F. 261, § 82.]

3111. Rules for recandling. The department shall determine the conditions under which eggs once candled shall be recandled in order to prevent the sale of eggs unfit for human food; and said department shall establish the necessary rules for carrying this section into effect. [38 G. A., ch. 274, § 5; 40 Ex. G. A., H. F. 261, § 83.]

3112. Deduction to be determined by candling. No person shall in buying or selling eggs take or give a greater or less deduction for eggs candled out as unfit for food than the actual loss which has been determined by the careful candling of the same. [38 G. A., ch. 274, § 2; 40 Ex. G. A., H. F. 261, § 84.]

CHAPTER 152

COMMERCIAL FEEDS

3113. Definitions and rules of construction.
 3114. Labeling.
 3115. Stock tonic—labeling.
 3116. Written labels permitted.
 3117. Dealers to furnish samples—affidavit.
 3118. Inspection fee.
 3119. Inspection fee for stock tonic.
 3120. Feeds not subject to inspection fee.
3121. Retailers exempted.
 3122. Method of paying inspection fee.
 3123. Delivery of tags in case of large sales.
 3124. Ground feeds not to contain poisonous substances.
 3125. Counterfeiting inspection fee tags—penalty.
 3126. Analyses of feeds for personal use—fee.

3113. Definitions and rules of construction. For the purpose of this chapter:

1. "Commercial feed" shall mean "food" as defined in the chapter relative to the adulteration of foods, except that it shall only include food in concentrated form, and mineral mixtures, intended for feeding to domestic animals, and it shall not include hay, straw, whole seeds, unmixed meals made from entire grains of wheat, rye, barley, oats, Indian corn, buckwheat, or broom corn; nor shall it include wheat flour or other flours fit for human consumption.

2. "Stock tonic" shall mean a class of commercial feed such as medicated stock or poultry foods, including such preparations as are composed wholly of drugs—except liquids—which contain any substance claimed to possess medicinal, condimental, or nutritive properties. [S., '13, § 5077-a8; 40 Ex. G. A., H. F. 261, § 85.]

NOTE: For chapter on adulteration of foods, see ch. 148.

3114. Labeling. All commercial feed offered or exposed for sale or sold in package or wrapped form shall be labeled on each package or container as provided in sections 3067 and 3145, depending upon whether the preparation is a food or drug as defined in this title, and in addition thereto shall have printed on the label in the manner prescribed in said sections the chemical analysis of the contents, stating the percentages of crude protein, crude fat, nitrogen free extract, and crude fiber, allowing one per cent of nitrogen to equal six and twenty-five one-hundredths per cent of protein, and in case of feeding molasses the per cent of total sugars—all constituents to be determined by the latest methods adopted by the association of official agricultural chemists of the United States. [S., '13, §§ 5077-a6, 5077-a7; 39 G. A., ch. 236, § 17; 40 Ex. G. A., H. F. 261, § 86.]

3115. Stock tonic—labeling. In the case of stock tonic, in addition to the requirements of the preceding section, the label shall state the English name of each drug and the total percentage of all drugs and the actual percentage of salt, charcoal, and sulphur, and the actual percentage and name of any other ingredient

contained in such stock tonic. [S., '13, § 5077-a7; 40 Ex. G. A., H. F. 261, § 87.]

3116. Written labels permitted. Labels on packages or containers of commercial feeds may be written instead of being printed; but when written, the writing must be plain and legible. [S., '13, § 5077-a6; 40 Ex. G. A., H. F. 261, § 88.]

3117. Dealers to furnish samples—affidavit. Before any commercial feed is offered or exposed for sale, or sold, the person who desires to offer or expose it for sale, or sell it, shall pay the department a registration fee of fifty cents accompanied by an affidavit containing the items required by this chapter to be printed on the label of such feed. Upon request a sealed glass jar or bottle containing not less than one pound of said feed shall accompany the registration fee and affidavit. [S., '13, § 5077-a9; 40 Ex. G. A., H. F. 261, § 89.]

3118. Inspection fee. Before any person shall solicit orders for, deliver, offer or expose for sale, or sell any commercial feed, he shall, except as otherwise provided in the following section, pay to the department an inspection fee of ten cents per ton for each ton of said feed sold or offered or exposed for sale. [S., '13, § 5077-a10; 40 Ex. G. A., H. F. 261, § 90.]

3119. Inspection fee for stock tonic. Before any person shall solicit orders for, deliver, offer or expose for sale, or sell any stock tonic, he shall, in lieu of the inspection fee provided in the preceding section, pay to the department, on or before the fifteenth day of July each year, a general inspection fee of six dollars per annum for each product manufactured. Inspections shall be made as provided in chapter 147. [S., '13, § 5077-a10; 40 Ex. G. A., H. F. 261, § 90-a1.]

3120. Feeds not subject to inspection fee. Unadulterated wheat, rye, and buckwheat bran; wheat, rye, and buckwheat middlings; or wheat, rye, and buckwheat shorts manufactured in this state shall not be subject to any inspection fee required by this chapter. [S., '13, § 5077-a10; 40 Ex. G. A., H. F. 261, § 91.]

3121. Retailers exempted. Payment of any inspection fee provided in this chapter by the manufacturer or importer of any commercial feed or stock tonic shall exempt all other persons from such payment upon said products. [S., '13, § 5077-a10; 40 Ex. G. A., H. F. 261, § 92.]

3122. Method of paying inspection fee. The inspection fee provided in section 3118 shall be paid by attaching a tag to each lot shipped in bulk and to each package or container of commercial feed. Tags for such use shall be procured from the department, which shall issue them in denominations suitable for all quantities. [S., '13, § 5077-a10; 40 Ex. G. A., H. F. 261, § 93.]

3123. Delivery of tags in case of large sales. Any person who sells at one time one ton or more of commercial feed shall be held to have complied with the inspection fee requirement of this chapter if he delivers to the purchaser the tags required, even though they may not be attached to the various packages or con-

tainers. [S., '13, § 5077-a10; 40 Ex. G. A., H. F. 261, § 94.]

3124. Ground feeds not to contain poisonous substances. No person shall sell in ground form wheat or rye screenings containing cockle or other poisonous or deleterious substances. [S., '13, § 5077-a13; 40 Ex. G. A., H. F. 261, § 96.]

3125. Counterfeiting inspection fee tags—penalty. Any person who shall counterfeit or use a counterfeit of any of the inspection fee tags prescribed by this chapter shall be guilty of a misdemeanor and punished as provided in chapter 147. [S., '13, § 5077-a23; 40 Ex. G. A., H. F. 261, § 97.]

3126. Analyses of feeds for personal use—fee. Any person purchasing any commercial feed in this state for his own use may submit fair samples of said feed to the department, accompanied by an analysis fee of one dollar for each sample, and a proper analysis of the same shall be made and furnished. [S., '13, § 5077-a12; 40 Ex. G. A., H. F. 261, § 98.]

CHAPTER 153

AGRICULTURAL SEEDS

3127. Definitions and rules of construction.

3128. Additional noxious weeds—hearing—determination.

3129. Labeling agricultural seed.

3130. Labeling of certain mixed seed.

3131. Labeling other mixtures of seed.

3132. Written labels.

3133. Sales from bulk.

3134. Presumption of freedom from weed seed.

3135. Analyses of seed for personal use—fee.

3136. Exemptions.

3137. Certain sales prohibited.

3127. Definitions and rules of construction. For the purpose of this chapter:

1. "Agricultural seed" shall mean the seeds of Canada or Kentucky bluegrass, brome grass, fescues, millet, tall meadow oatgrass, orchard grass, redtop, Italian, perennial, or western rye grass, Kaffir corn, sorghum or cane, Sudan grass, timothy, alfalfa, alsike, crimson, mammoth or sapling, red, sweet, or white clover, Canada field peas, cowpeas, soy beans, vetches, and other grasses and forage plants, buckwheat, flax, rape, barley, field corn, oats, rye, wheat, and other cereals.

2. "Weed seed" shall mean the seeds of noxious weeds listed herein, and all seeds not listed above as agricultural seed.

3. "Noxious weeds" shall mean common wild mustard or charlock, Indian mustard, perennial sow thistle, sour, curled, or smooth dock, wild oats, corn cockle, sheep or horse sorrel, and such other plants as may be declared to be noxious weeds as provided in the next succeeding section.

4. "Purity" of agricultural seed shall mean freedom from inert matter, and from other agricultural or weed seed distinguishable by their appearance. [S., '13, §§ 5077-a14-5077-a17; 39 G. A., ch. 236, § 1; 40 Ex. G. A., H. F. 261, § 99.]

3128. Additional noxious weeds—hearing—determination. Whenever it shall appear to the department that any plant, other than those specifically enumerated in the last preceding section, has become, or threatens to become, a menace to the agricultural industry of this state, the secretary of agriculture shall call a committee of three experts in plant life, one of whom shall be the botanist of the state college of agriculture and mechanic arts. If the said committee shall find that such plant has become, or threatens to become, a menace to the agricultural industry it shall so report to the department, which shall then declare the same to be a noxious weed. Notice of such declaration shall be given by posting same at the courthouse in each county of the state and the provisions of this chapter shall apply to such plant from and after thirty days from the posting of said notice. [39 G. A., ch. 236, § 2; 40 Ex. G. A., H. F. 261, § 100.]

3129. Labeling agricultural seed. All agricultural seed offered or exposed for sale, or sold in package or wrapped form, for seeding purposes shall be labeled on the package or container as provided in sections 3037 and 3038, and in addition thereto shall have printed on the label prescribed in said sections:

1. Variety of seed.

2. The approximate percentage by weight of the purity of the seed.

3. The approximate total percentage by weight of weed seed.

4. The name of each kind of seed or bulblet of noxious weeds which is present.

5. The approximate percentage of germination of such agricultural seed, together with the month and year said seed was tested, and year grown, and, if corn, the county and state where grown, and if clover of any variety or alfalfa, the state or country where grown. [S., '13, §§ 5077-a18, 5077-a19, 5077-a21; 39 G. A., ch. 236, § 3; 40 Ex. G. A., H. F. 261, § 101.]

3130. Labeling of certain mixed seed. Mixtures of alsike and timothy, alsike and white clover, redtop and timothy, alsike and red clover, offered or exposed for sale, or sold as mixtures in package or wrapped form, for seeding purposes and in lots of ten pounds or more shall be labeled on the package or container as to the quantity, percentage of weed seed present, and name of vendor, in the manner prescribed for pure agricultural seed, and in addition the label shall contain the following specific items:

1. The statement that such seed is a mixture.

2. The name and approximate percentage by weight of each kind of agricultural seed present in such mixture in excess of five per cent by weight of the total mixture.

3. The name of each kind of seed or bulblet of noxious weeds which is present singly or collectively in excess of one seed or bulblet in each fifteen grams (approximately three-fifths ounce) of such mixture.

4. The approximate percentage of germination of each kind of agricultural seed present in such mixture in excess of five per cent by weight, together with the month and year said seed was tested, and year grown. [S., '13, §§ 5077-a18, 5077-a19, 5077-a21; 39 G. A., ch. 236, § 4; 40 Ex. G. A., H. F. 261, § 102.]

3131. Labeling other mixtures of seed. Special mixtures of agricultural seed except as provided in the preceding section, offered or exposed for sale, or sold in package or wrapped form for seeding purposes, and in quantities of eight ounces or more, shall be labeled on the package or container as prescribed in the preceding section, except that the percentage of germination need not be stated, but the label shall contain a statement showing the approximate percentage by weight of inert matter. [S., '13, §§ 5077-a18, 5077-a19, 5077-a21; 39 G. A., ch. 236, § 5; 40 Ex. G. A., H. F. 261, § 103.]

3132. Written labels. The label on a package or container of agricultural seed may be written instead of being printed, but when written, the writing must be plain and legible. [S., '13, § 5077-a6; 39 G. A., ch. 236, § 6; 40 Ex. G. A., H. F. 261, § 104.]

3133. Sales from bulk. In case agricultural seed or mixtures of the same are offered or exposed for sale in bulk, or sold from bulk, there shall be conspicuously displayed in connection therewith a placard containing the items required on the label of such seed when

offered or exposed for sale, or sold in package or wrapped form, or in lieu of this requirement the vendor may furnish the vendee with a printed or written statement containing the said items. [S., '13, § 5077-a6; 39 G. A., ch. 236, § 7; 40 Ex. G. A., H. F. 261, § 105.]

3134. Presumption of freedom from weed seed. In every sale of agricultural seed or mixture of the same it shall be presumed that the said seed is free from weed seed unless the label on the package or container specifies the presence of such weed seed or the purchaser is informed of the presence of the same in the manner provided in the preceding section. [39 G. A., ch. 236, § 8; 40 Ex. G. A., H. F. 261, § 106.]

3135. Analyses of seed for personal use-fee. Any person purchasing any agricultural seed in this state for his own use may submit fair samples of said seed to the department, accompanied by an analysis fee of fifty cents for each sample and a proper analysis of the same shall be made and furnished. [S., '13, § 5077-a12; 39 G. A., ch. 236, § 9; 40 Ex. G. A., H. F. 261, § 107.]

3136. Exemptions. Agricultural seed or mixtures of same shall be exempt from the provisions of this title:

1. When possessed, exposed or offered for sale, or sold for food purposes only.

2. When sold or in store for the purpose of recleaning.

3. When sold by one farmer to another and delivered upon the vendor's premises; but if such seed is advertised for sale or is delivered through a common carrier, then the seed shall be subject to all the requirements of this title, but this exemption shall in no event be construed as permitting the sale of agricultural seed containing the seeds or bulblets of Canada thistle, quack grass, buckhorn, wild carrot, horse nettle, or dodder (clover, alfalfa, or field) in violation of the next succeeding section. [S., '13, § 5077-a20; 39 G. A., ch. 236, § 10; 40 Ex. G. A., H. F. 261, § 108.]

3137. Certain sales prohibited. No person shall sell, offer or expose for sale, or distribute, for seeding purposes, any agricultural seed if the seeds or bulblets of Canada thistle, quack grass, buckhorn, wild carrot, horse nettle, or dodder (clover, alfalfa, or field) are present, singly or collectively, as follows:

1. In excess of one seed or bulblet in each five grams of timothy, redtop, tall meadow oatgrass, orchard grass, crested dog's-tail, Canada or Kentucky bluegrass, fescues, brome grass, Italian, perennial or western rye grass, crimson, mammoth or sapling, red, white, alsike, or sweet clover, alfalfa, or any other grass or clover not otherwise classified.

2. One in twenty-five grams of millet, rape, flax, or other agricultural seed not specified in subsections 1 or 3 of this section.

3. One in one hundred grams of wheat, oats, rye, barley, buckwheat, vetches, or other agricultural seed as large or larger than wheat. [S., '13, § 5077-a15; 39 G. A., ch. 236, § 11; 40 Ex. G. A., H. F. 261, § 109.]

CHAPTER 154

COMMERCIAL FERTILIZERS

- 3138. License required—fee.
- 3139. Retailers exempted.
- 3140. Affidavit of items on label.

3138. License required—fee. Every person dealing in commercial fertilizers shall obtain a license from the department. The fee for said license shall be twenty dollars for each brand of fertilizer offered or exposed for sale, or sold, and such license shall expire on May first after the date of issue. [S., '13, § 2528-f1; 40 Ex. G. A., H. F. 261, § 110.]

3139. Retailers exempted. Payment of said license fee by the manufacturer or importer shall exempt all other persons from such requirement. [S., '13, § 2528-f1; 40 Ex. G. A., H. F. 261, § 111.]

3140. Affidavit of items on label. Before any commercial fertilizer is offered or exposed for sale, or sold, the person who desires to offer or expose it for sale, or sell it, shall file with the department a certificate containing the items required to be printed on the label by the following section, accompanied by an affidavit that said items are true and correct. [S., '13, § 2528-f1; 40 Ex. G. A., H. F. 261, § 112.]

- 3141. Labeling.
- 3142. Bulk sales.

3141. Labeling. Any commercial fertilizer, the price of which exceeds three dollars per ton, offered or exposed for sale, or sold in package or wrapped form, shall be labeled on the package or container as provided in sections 3037 to 3040, inclusive, and in addition thereto shall have printed on the label in the manner prescribed in said sections the chemical analysis, showing the minimum percentages of nitrogen in available form, of potassium soluble in water, of phosphorus in available form, soluble or reverted, and of insoluble phosphorus. [S., '13, § 2528-f; 40 Ex. G. A., H. F. 261, § 113.]

3142. Bulk sales. In case of sales of commercial fertilizer from bulk or in bulk a certificate printed in the same manner as the label required by the preceding section may be delivered to the purchaser in fulfillment of the requirements of said section. [S., '13, § 2528-f; 40 Ex. G. A., H. F. 261, § 114.]

CHAPTER 155

ADULTERATION AND LABELING OF DRUGS

- 3143. Drug defined.
- 3144. Adulteration defined.
- 3145. Labeling of drugs.
- 3146. Curative or therapeutic mislabeling.

3143. Drug defined. For the purposes of this chapter "drug" shall include all substances and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary and any substances or mixture of substances intended to be used for the cure, mitigation, or prevention of diseases of either man or animal. [S., '13, § 4999-a33; 40 Ex. G. A., H. F. 261-A, § 115.]

3144. Adulteration defined. For the purposes of this chapter a drug shall be deemed to be adulterated:

1. If it is sold by a name recognized in the United States Pharmacopoeia or National Formulary and it differs from the standard of strength, quality, or purity as determined by the test laid down therein.

- 3147. Certain drugs exempted.
- 3148. Itinerant vendor of drugs defined.
- 3149. License required of itinerant—fee.
- 3150. Pharmacopoeia and National Formulary.

2. If its strength, quality, or purity falls below the standard under which sold. [S., '13, 4999-a34; 40 Ex. G. A., H. F. 261-A, § 116.]

3145. Labeling of drugs. Every drug offered or exposed for sale, or sold in package or wrapped form, shall be labeled on the package or container as prescribed in sections 3037 and 3038, except that the quantity of the contents need not be stated; and in addition thereto shall have printed on the label the name and the exact quantity or proportion of any alcohol, morphine, opium, heroin, chloroform, cannabis indica, chloral hydrate, acetanilide, or any derivative or preparation of any such substances contained in said drug. In case the principal package or container is enclosed in an outside wrapper or carton, the same label prescribed by this section for the package or con-

tainer shall also be printed upon said wrapper or carton. [S., '13, § 4999-a35; 40 Ex. G. A., H. F. 261-A, § 117.]

3146. Curative or therapeutic mislabeling. In addition to the requirements of the preceding section a drug shall also be deemed to be improperly labeled if the package or container or printed matter accompanying it bears or contains any representation regarding the curative or therapeutic effect of such drug or any of the ingredients contained therein which is false and fraudulent. [S., '13, § 4999-a35; 40 Ex. G. A., H. F. 261-A, § 118.]

3147. Certain drugs exempted. Nothing in the second preceding section shall be construed to apply:

1. To any drug specified in the United States Pharmacopoeia or National Formulary, which is in accordance therewith, and which is sold under the name given therein.

2. To the filling of prescriptions furnished by licensed physicians, dentists, or veterinarians, the originals of which are retained and filed by the pharmacist filling the same.

3. To any drug or medicine personally dispensed by any licensed physician, dentist, or veterinarian in the course of his practice. [S.,

'13, § 4999-a35; 40 Ex. G. A., H. F. 261-A, § 119.]

3148. Itinerant vendor of drugs defined. "Itinerant vendor of drugs" shall mean any person who, by himself, agent, or employee goes from place to place, or from house to house, and sells, offers or exposes for sale any drug as defined in this chapter. [C., '97, § 2594; S., '13, § 2594; 40 Ex. G. A., H. F. 261-A, § 119-a1.]

3149. License required of itinerant—fee. Every itinerant vendor of drugs or medicines shall procure an annual license from the pharmacy examiners. The fee for such license shall be one hundred dollars; such license may be transferred by the licensee upon the payment of a fee of one dollar to the pharmacy examiners. [C., '97, § 2594; S., '13, § 2594; 40 Ex. G. A., H. F. 261-A, § 119-a2.]

3150. Pharmacopoeia and National Formulary. There shall be kept in every place in which drugs or medicines are compounded, a copy of the latest revision of the United States Pharmacopoeia and the National Formulary, which books shall be subject at all times to the inspection of the pharmacy examiners. [40 Ex. G. A., H. F. 261-A, § 120.]

CHAPTER 156

SALE AND DISTRIBUTION OF POISONS

- 3151. Narcotic drugs defined.
- 3152. Sale of narcotics prohibited.
- 3153. Exception as to sale of narcotics.
- 3154. Possession of narcotic prohibited—prescriptions.
- 3155. Exception as to possession of narcotics.
- 3156. Indictments—burden of proof.
- 3157. Limitation on exemptions.
- 3158. Prima facie evidence of illegal purchase.
- 3159. Seizure and confiscation of narcotics.
- 3160. Procedure.
- 3161. Seizure and confiscation of vehicles.
- 3162. Procedure.
- 3163. Common nuisance—injunction.
- 3164. Evidence—general reputation.
- 3165. Contempt proceedings.

3151. Narcotic drugs defined. For the purpose of this chapter "narcotic drugs" shall mean:

1. Opium, coca (erthroxyllum coca), cocaine, alpha or beta eucaine, morphine, heroin, Indian hemp (cannabis indica or cannabis americana), or any derivative of any of said drugs.

2. Any preparation containing any of the drugs enumerated in the preceding paragraph, except:

a. Medicines or remedies which do not contain more than:

1. Two grains of opium, one-fourth of a grain of morphine, one-eighth of a grain of heroin, one grain of codeine, or a like amount of any salt or derivative of any of said drugs, in one fluid ounce, or if a solid or semisolid preparation, in one avoirdupois ounce.

- 3166. Forms.
- 3167. Rule of construction.
- 3168. Penalty.
- 3169. Penalty for corporations.
- 3170. Sale of abortifacients—prescriptions.
- 3171. Exception as to sale of abortifacients.
- 3172. Filling of prescriptions.
- 3173. Use of wood or denatured alcohol.
- 3174. Regulations as to sale of certain poisons.
- 3175. Poison register.
- 3176. Labeling poisons.
- 3177. Certain sales exempted.
- 3178. Obtaining poisons by false representations.
- 3179. Enforcement by pharmacy examiners.
- 3180. Chemical analysis of drugs.
- 3181. Applicability of other statutes.

2. One-half grain solid extract of Indian hemp (cannabis indica or cannabis americana), or the equivalent thereof, in one fluid ounce.

b. Liniments, ointments, or other preparations which are prepared for external use only, but which do not contain cocaine, alpha or beta eucaine, or any salt or derivative of any of them, or any synthetic substitute for any of said drugs.

The exceptions provided in subdivisions "a" and "b" shall only apply when such medicines, remedies, liniments, ointments, and preparations are sold, distributed, given away, dispensed, or possessed for medicinal purposes only and not for the purpose of trafficking in or disposing of narcotic drugs as such. [C., '51, § 2728; R., '60, § 4374; C., '73, § 4038; C.,

'97, § 2593; S., '13, §§ 2593, 2596-a; 39 G. A., ch. 282, § 1; 40 G. A., ch. 43, §§ 1, 4; 40 Ex. G. A., H. F. 261-A, § 120-a1.]

3152. Sale of narcotics prohibited. No person shall sell, offer or expose for sale, deliver, give away, or have in his possession with intent to sell any narcotic drugs. [C., '51, § 2728; R., '60, § 4374; C., '73, § 4038; C., '97, § 2593; S., '13, §§ 2593, 2596-a; 39 G. A., ch. 282, § 1; 40 G. A., ch. 43, § 2; 40 Ex. G. A., H. F. 261-A, § 120-a2.]

3153. Exception as to sale of narcotics. The preceding section shall not apply to persons registered or exempt from registration under the federal law regulating the traffic in narcotic drugs. [40 G. A., ch. 43, § 2; 40 Ex. G. A., H. F. 261-A, § 120-a3.]

3154. Possession of narcotic prohibited—prescriptions. No person shall have any narcotic drug in his possession or control for any purpose, unless he obtained the same upon the original written prescription of a licensed physician, dentist, or veterinarian, who has registered under the federal law regulating the traffic in narcotic drugs. [40 G. A., ch. 43, §§ 1, 2; 40 Ex. G. A., H. F. 261-A, § 120-a4.]

3155. Exception as to possession of narcotics. The preceding section shall not apply to:

1. Any person registered under the federal law regulating the traffic in narcotic drugs who is engaged in practicing any profession, in conducting any business, or in doing any act in compliance with said law, nor to any employee or assistant under the supervision of such person, having the possession or control of any narcotic drugs by virtue of his employment and not on his own account.

2. To any United States, state, city, county, or municipal official who has possession of any of said drugs by reason of his official duties.

3. To a warehouseman holding possession for a person registered under said federal law.

4. To a common carrier engaged in transporting such drugs. [40 G. A., ch. 43, §§ 1, 2; 40 Ex. G. A., H. F. 261-A, § 120-a5.]

3156. Indictments—burden of proof. It shall not be necessary to negative any of the aforesaid exemptions under any complaint, information, indictment, or other writ or proceeding, brought under this chapter; and the burden of proof of any such exemption shall be on the defendant. [40 G. A., ch. 43, § 1; 40 Ex. G. A., H. F. 261-A, § 120-a6.]

3157. Limitation on exemptions. The exemptions of the second preceding section shall not apply to any person unless it be shown by competent evidence that such person has not purchased or received any narcotic drugs from a person unauthorized to sell the same. [40 G. A., ch. 43, § 10; 40 Ex. G. A., H. F. 261-A, § 120-a7.]

3158. Prima facie evidence of illegal purchase. The possession of any narcotic drugs unaccounted for by the legal authority to purchase and have possession of the same, or

having possession of any such drugs concealed or stored in any other place than that provided for the storage of a stock of such drugs which have been purchased legally, shall be prima facie evidence of the purchase of such drugs from a person unauthorized to sell or dispense the same. [40 G. A., ch. 43, § 10; 40 Ex. G. A., H. F. 261-A, § 120-a8.]

3159. Seizure and confiscation of narcotics. Any narcotic drugs kept, manufactured, or dispensed in violation of the laws of the United States or of this chapter, or any instrument, container, or other equipment used or intended to be used in manufacturing, keeping, or dispensing such drug may be seized, confiscated, and disposed of under a search warrant proceeding. [40 G. A., ch. 43, §§ 3, 6, 7; 40 Ex. G. A., H. F. 261-A, § 120-a9.]

3160. Procedure. The procedure under the preceding section shall be the same as a search warrant proceeding under the law regulating the traffic in intoxicating liquor and all the provisions of chapter 96 shall govern such a proceeding under this chapter as far as applicable. [40 G. A., ch. 43, §§ 3, 6, 7; 40 Ex. G. A., H. F. 261-A, § 120-a10.]

3161. Seizure and confiscation of vehicles. Any animal-drawn or motor vehicle, or other conveyance of any kind, that is being used for transporting narcotic drugs which have been manufactured, sold, purchased, delivered, or received in violation of the laws of the United States or of this chapter, may be seized and confiscated by any peace officer in any county in which such shipment originates, or through which it passes, or in the county in which it is to be delivered. [40 G. A., ch. 43, § 3; 40 Ex. G. A., H. F. 261-A, § 120-a11.]

3162. Procedure. The procedure under the preceding section shall be the same as a proceeding for the seizure and forfeiture of a vehicle under the law regulating the traffic in intoxicating liquor and all the provisions of chapter 97 shall govern such a proceeding under this chapter as far as applicable. [40 G. A., ch. 43, § 3; 40 Ex. G. A., H. F. 261-A, § 120-a12.]

3163. Common nuisance—injunction. Any building, erection, or place resorted to by habitual users of narcotic drugs for the purpose of using such drugs, or which is used for the illegal keeping of the same, and any building, erection, or place in which narcotic drugs are kept, sold, or dispensed in violation of the laws of the United States or of this state, shall be deemed a common nuisance, and it may be enjoined and abated under the law provided for enjoining and abating an intoxicating liquor nuisance and all the provisions of chapter 98 shall govern such a proceeding under this chapter as far as applicable. [C., '97, § 5003; 40 G. A., ch. 43, § 5; 40 Ex. G. A., H. F. 261-A, § 120-a13.]

3164. Evidence—general reputation. The state, in any proceeding under the preceding

section, may, for the purpose of establishing the character of the place kept by the defendant, introduce evidence of the general reputation of such place, and such evidence shall be competent for such purpose. [C., '97, § 5003; 40 G. A., ch. 43, § 5; 40 Ex. G. A., H. F. 261-A, § 120-a14.]

3165. Contempt proceedings. For the violation of any such injunction, temporary or permanent, the offender may be punished for contempt of court, under the laws provided for the punishment of contempt for the violation of an injunction against an intoxicating liquor nuisance, and all the provisions of said law shall govern such a proceeding under this chapter as far as applicable. [40 G. A., ch. 43, § 5; 40 Ex. G. A., H. F. 261-A, § 120-a15.]

NOTE: For contempt proceedings under intoxicating liquor law, see §§ 2027 and 2028.

3166. Forms. All forms necessary for use under the preceding sections of this chapter shall be prepared and provided by the attorney general. [40 G. A., ch. 43, § 8; 40 Ex. G. A., H. F. 261-A, § 120-a16.]

3167. Rule of construction. All the preceding provisions of this chapter shall be construed as mandatory and not directory, and the same shall be construed so as to prevent evasion. [40 G. A., ch. 43, § 9; 40 Ex. G. A., H. F. 261-A, § 120-a17.]

3168. Penalty. Any person violating any of the preceding provisions of this chapter shall be punished by imprisonment in the penitentiary for not more than ten years, or by a fine not to exceed one thousand dollars or by both such fine and imprisonment. [C., '97, § 5003; 40 G. A., ch. 43, §§ 1, 2; 40 Ex. G. A., H. F. 261-A, § 120-a18.]

3169. Penalty for corporations. Any company or corporation violating any of the preceding provisions of this chapter shall be fined not more than five thousand dollars nor less than five hundred dollars, and the costs of prosecution. [40 G. A., ch. 43, § 2; 40 Ex. G. A., H. F. 261-A, § 120-a19.]

3170. Sale of abortifacients—prescriptions. No person shall sell, offer or expose for sale, deliver, give away, or have in his possession with intent to sell, except upon the original written prescription of a licensed physician, dentist, or veterinarian, any cotton root, ergot, oil of tansy, oil of savin, or derivatives of any of said drugs. [C., '51, § 2728; R., '60, § 4374; C., '73, § 4038; C., '97, § 2593; S., '13, §§ 2593, 2596-a; 40 Ex. G. A., H. F. 261-A, § 120-a20.]

3171. Exception as to sale of abortifacients. The requirements of the preceding section that certain drugs shall be furnished only upon written prescription, shall not apply to the sale of such drugs to persons who wholesale or retail the same, nor to any licensed physician, dentist, or veterinarian for use in the practice of his profession. [S., '13, § 2596-a; 40 Ex. G. A., H. F. 261-A, § 120-a21.]

3172. Filling of prescriptions. No person shall fill any prescription calling for any of the drugs required by this chapter to be furnished only upon written prescription unless the same be for medical, dental, or veterinary purposes only, and unless the physician, dentist, or veterinarian prescribing the same be personally known to such person, and no such prescription shall be refilled. [S., '13, § 2596-a; 40 Ex. G. A., H. F. 261-A, § 120-a22.]

3173. Use of wood or denatured alcohol. No person shall have in his possession or dispose of in any manner any article intended for use of man or domestic animals, for internal or external use, for cosmetic purposes, for inhalation, or for perfumes, which contains methyl (wood) alcohol, crude or refined, or completely denatured alcohol. Nothing in this section shall be construed to apply to specially denatured alcohols the formula of which has been approved and the manufacture and use regulated by the federal government. [S., '13, § 4999-a36; 40 Ex. G. A., H. F. 261-A, § 120-a23.]

3174. Regulations as to sale of certain poisons. No person shall sell at retail any of the following enumerated poisons unless he ascertains that the purchaser is aware of the character of the drug and represents that it is to be used for a proper purpose: Carbolic or hydrocyanic acid, chloral hydrate, oils of bitter almonds or pennyroyal, strychnine or any of its salts, arsenic, chloroform, ammoniated mercury, atropine, arsenate of copper, aconitine, benzaldehyde, bromine, cyanide of potassium, corrosive sublimate, dionin, ether sulphuric, hyoscine, kermes mineral, cantharides, croton oil, digitalis, nux vomica, phosphorus, or veratrum. [C., '51, § 2728; R., '60, § 4374; C., '73, § 4038; C., '97, § 2593; S., '13, § 2593; 40 Ex. G. A., H. F. 261-A, § 120-a24.]

3175. Poison register. Every sale or delivery of any poison enumerated in the preceding section, except in insecticides and fungicides as defined in the following chapter, shall be entered in a book kept for that purpose to be known as a "poison register", and the same shall show the date of sale, and name and address of purchaser, the name of the poison, the purpose for which it was represented to be purchased, and the name of the dispenser, which book shall be open for inspection by the pharmacy examiners, or any magistrate or peace officer of the state, and preserved for at least five years. [C., '97, § 2593; S., '13, § 2593; 40 Ex. G. A., H. F. 261-A, § 120-a25.]

3176. Labeling poisons. Every package or container in which any of the poisons enumerated in the second preceding section or in which any nitric, hydrochloric, sulphuric, or oxalic acid, concentrated lye, denatured or wood alcohol is sold or delivered shall be labeled with the name of the article, the name and place of business of the manufacturer, distributor, or dealer, the most available antidote, and with the word "poison" in a conspicuous place. [C., '51, § 2728; R., '60, § 4374; C., '73, § 4038; C., '97,

§§ 2588, 2593, 4976; S., '13, § 2593; S. S., '15, § 2588; 40 Ex. G. A., H. F. 261-A, § 120-a26.]

3177. Certain sales exempted. Nothing in the three preceding sections shall apply:

1. To the sale of proprietary medicines.
2. To the filling of prescriptions from licensed physicians, dentists, or veterinarians.
3. To the sale of wood or completely denatured alcohol for mechanical purposes. [C., '97, § 2593; S., '13, §§ 2593, 2593-a; 40 Ex. G. A., H. F. 261-A, § 120-a27.]

3178. Obtaining poisons by false representations. Any person who obtains any poison enumerated in the fourth preceding section under a false name or statement shall be guilty of a misdemeanor and punished as provided in chapter 147. [C., '51, § 2728; R., '60, § 4374; C., '73, § 4038; C., '97, § 2593; S., '13, § 2593; 40 Ex. G. A., H. F. 261-A, § 120-a28.]

3179. Enforcement by pharmacy examiners. The provisions of this and the preceding chapter shall be administered and enforced by the pharmacy examiners. In discharging any duty

or exercising any power under said chapters, the pharmacy examiners shall be governed by all the provisions of chapter 147, which govern the department of agriculture when discharging a similar duty or exercising a similar power with reference to any of the articles dealt with in this title. [40 Ex. G. A., H. F. 261-A, § 120-a29.]

3180. Chemical analysis of drugs. Any chemical analysis deemed necessary by the pharmacy examiners in the enforcement of this and the preceding chapter shall be made by the department of agriculture when requested by said examiners. [40 Ex. G. A., H. F. 261-A, § 120-a29a.]

3181. Applicability of other statutes. In so far as applicable the provisions of chapter 147, shall apply to the articles dealt with in this and the preceding chapter. The powers vested in the department of agriculture by said chapter shall be deemed for the purpose of this and the preceding chapter to be vested in the pharmacy examiners. [40 Ex. G. A., H. F. 261-A, § 120-a30.]

CHAPTER 157

INSECTICIDES AND FUNGICIDES

3182. Definitions and rules of construction.
 3183. Labeling.
 3184. Special requirements as to labeling.

3185. Adulteration.
 3186. Standard for lime and sulphur liquid.

3182. Definitions and rules of construction. For the purpose of this chapter:

1. "Insecticide" shall include paris green, lead arsenate, and any other substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any insect which may infest vegetation, man, animals, households, or other environment.
2. "Paris green" shall include the product sold in commerce as paris green and chemically known as aceto-arsenite of copper.
3. "Lead arsenate" shall include the product sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead.
4. "Fungicide" shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any and all fungi which may infest vegetation or be present in any environment. [37 G. A., ch. 385, § 6; 40 Ex. G. A., H. F. 261, § 130.]

3183. Labeling. All insecticides and fungicides offered or exposed for sale, or sold in package or wrapped form, shall be labeled on each package or container as provided in sections 3037 to 3039, inclusive. [37 G. A., ch. 385, § 8; 40 Ex. G. A., H. F. 261, § 131.]

3184. Special requirements as to labeling. In addition to the requirement of the preceding

section, the following regulations shall also govern in labeling insecticides and fungicides:

1. When composed of any poison enumerated in section 3174, the word "poison" and its antidote shall appear on the label in a conspicuous manner.
2. When composed of arsenic in combination or elemental form, the total amount of arsenic present and the amount of arsenic in water-soluble form—both expressed in per cent of metallic arsenic—shall also be stated on the label in the same manner prescribed for other items.
3. When composed partially or completely of an inert substance which does not effectively prevent, destroy, repel, or mitigate insects or fungi, the names and percentage amounts of each inert ingredient and the fact that they are inert, or the names and percentage amounts of each ingredient of the insecticide or fungicide having insecticidal or fungicidal properties without mention of the inert ingredients, except to state the total percentage of inert ingredients present, shall also appear upon the label in the same manner prescribed for other items.
4. Spray solution known as a lime and sulphur liquid shall also have stated on the label the strength of the solution and its gravity test, showing a guaranteed strength of lime and sulphur combined in solution as sulphates and sulphides, and the label shall contain a direction as to the proportions of water to be

used to produce a mixture containing a four per cent solution by weight of lime and sulphur combined as sulphates and sulphides. The printing of said label shall be in black-faced type, in letters not less than one-half inch in height. [C., '97, § 2588; S. S., '15, § 2588; 37 G. A., ch. 385, §§ 8, 10; 40 Ex G. A., H. F. 261, § 132.]

3185. Adulteration. In addition to the adulterations specified in paragraphs 1 to 3, inclusive, of section 3060 the following products shall be deemed to be adulterated:

1. In the case of paris green—

a. If it does not contain at least fifty per cent of arsenious oxide.

b. If it contains arsenic in water-soluble forms equivalent to more than three and one-half per cent of arsenious oxide.

2. In the case of lead arsenate—

a. If it contains more than fifty per cent of water.

b. If it contains total arsenic equivalent to

less than twelve and one-half per cent of arsenic oxide (As_2O_3).

c. If it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths of one per cent arsenic oxide (As_2O_3).

3. In the case of an insecticide or fungicide other than paris green and lead arsenate—

a. If its strength or purity falls below the professed standard or quality under which it is sold.

b. If it is intended for use on vegetation and contains any substance which, although preventing, destroying, repelling, or mitigating insects or fungi, shall be injurious to such vegetation when used as recommended by the manufacturer. [37 G. A., ch. 385, § 7; 40 Ex. G. A., H. F. 261, § 133.]

3186. Standard for lime and sulphur liquid. Spray solution known as a lime and sulphur liquid shall be not less than seventy per cent by weight of sulphur. [37 G. A., ch. 385, § 10; 40 Ex. G. A., H. F. 261, § 134.]

CHAPTER 158

PAINTS AND OILS

3187. Definitions and standards.

3188. Labeling paints.

3187. Definitions and standards. For the purposes of this chapter:

Raw linseed oil. "Raw linseed oil" shall be obtained wholly from the seeds of the flax plant (*linum usitatissimum*) and shall comply with all the requirements of the United States Pharmacopoeia.

Boiled linseed oil. "Boiled linseed oil" or "boiled oil" shall be prepared by heating pure raw linseed oil to a temperature of at least one hundred seven degrees centigrade, and if desired incorporating not to exceed three per cent by weight of dryer, and it shall fulfill the following requirements: §

1. Its specific gravity at 20/20 degrees centigrade must be not less than nine hundred thirty-five thousandths and not greater than nine hundred forty-five thousandths.

2. Its saponification number must not be less than one hundred eighty-six.

3. Its iodine absorption number must not be less than one hundred sixty.

4. Its acid value must not exceed ten.

5. The volatile matter expelled at one hundred degrees centigrade must not exceed one-half of one per cent.

6. No mineral oil shall be present, and the amount of unsaponifiable matter as determined by standard methods, must not exceed two per cent.

7. The film left after flowing the oil over glass and allowing it to drain in a vertical position, must dry free from tackiness in not to exceed twenty hours, at a temperature of about twenty degrees centigrade.

3189. Labeling oils.

3190. Labeling substitutes for oils.

Oil of turpentine. "Oil of turpentine", "spirits of turpentine", "turpentine", or "turps" shall consist wholly of the volatile portion obtained by distillation of the oleoresinous exudation from various species of coniferous trees and shall fulfill the following requirements:

1. Its specific gravity at 20/20 degrees centigrade must be not less than eight hundred sixty thousandths and not greater than eight hundred seventy-five thousandths.

2. Its index of refraction at twenty degrees centigrade must not be less than one and four hundred sixty-eight thousandths and not greater than one and four thousand seven hundred twenty-five ten thousandths.

3. Its iodine absorption number must not be less than three hundred forty.

4. The undissolved (unpolymerized) residue on treatment of ten cubic centimeters with forty cubic centimeters of a sulphuric acid containing twenty per cent of the fuming acid must not exceed ten per cent by volume of the sample.

5. The initial boiling point must not be lower than one hundred fifty degrees centigrade under ordinary atmospheric pressure, and ninety-five per cent by volume must distill below one hundred sixty-six degrees centigrade.

6. The residue left after evaporation over a steam bath must not exceed two per cent.

7. Mineral oil must not be present.

Paint. "Paint" shall include white lead in oil or any compound intended for the same use, paste or semipaste, and liquid or mixed paint ready for use, or any compound intended for

the same purpose. [S., '13, §§ 2510-c, 2510-n, 2510-p, 2510-v; 40 Ex. G. A., H. F. 261, § 135.]

3188. Labeling paints. All paint offered or exposed for sale or sold in package or wrapped form shall be labeled on each package or container as provided in sections 3037 to 3040, inclusive, except that in listing the ingredients and the percentage of each in the total contents of any paint, all substances other than coloring matter may be treated as one hundred per cent in which case the description or trade name of such coloring matter, with its chemical analysis, shall appear on the label in the same manner as provided in said sections. [S., '13, §§ 2510-b, 2510-d; 40 Ex. G. A., H. F. 261, § 136.]

3189. Labeling oils. All linseed oil or oil of turpentine offered or exposed for sale or sold in package or wrapped form shall be labeled on each package or container as provided in section 3037, except that the label shall be printed with ordinary bold-faced type in capital letters not less than five-line pica in size. [S., '13, §§ 2510-q, 2510-v1; 40 Ex. G. A., H. F. 261, § 137.]

3190. Labeling substitutes for oils. Any compound or mixture consisting of linseed oil (raw or boiled) and any other product, or any compound or mixture consisting of oil of turpentine and any other product, or any product which is intended to be used as a substitute for linseed oil (raw or boiled) or for oil of turpentine, which is offered or exposed for sale or sold in package or wrapped form shall be labeled on each package or container as provided in sections 3037 to 3040, inclusive, except that the label shall be printed with ordinary bold-faced type in capital letters not less than five-line pica in size and the words "substitute for linseed oil" or "substitute for oil of turpentine", as the case may be, shall also appear upon the label in the same manner prescribed for other items. Every storage receptacle containing any such product shall be labeled in the manner herein prescribed for the labeling of the package or container in which such product is offered or exposed for sale, or sold. [S., '13, §§ 2510-r, 2510-v2; 40 Ex. G. A., H. F. 261, § 138.]

CHAPTER 159

PETROLEUM PRODUCTS

- 3191. Definitions.
- 3192. Labeling of gasoline—benzine—naphtha.
- 3193. Inspection of gasoline—benzine—naphtha.
- 3194. Gasoline containers.
- 3195. Storage tanks for manufacturing purposes exempted.
- 3196. Use of gasoline containers for kerosene.
- 3197. Inspection of illuminating oil.
- 3198. Method of making inspection.
- 3199. Branding—certificate of inspection.
- 3200. Brand on empty containers to be destroyed.
- 3201. Adulteration of illuminating oil.
- 3202. General standard for illuminating oil.
- 3203. Exceptions.
- 3204. Standard for use on trains and boats.

3191. Definitions. For the purpose of this chapter:

1. "Container" shall include can, cask, barrel, tank, vessel, and other receptacles of like nature.

2. "Illuminating oil" shall mean any product of petroleum which is used or intended to be used for illuminating purposes. [40 Ex. G. A., H. F. 261, § 139.]

3192. Labeling of gasoline—benzine—naphtha. Gasoline, benzine, or naphtha, offered or exposed for sale, or sold in containers within this state, shall be conspicuously marked in the English language with figures showing the Baume gravity test at a temperature of sixty degrees Fahrenheit. If such products are sold from a tank wagon, the person selling or delivering the same shall indicate on each sale ticket said gravity test. [S., '13, §§ 2510-1a; 2510-2a; 40 Ex. G. A., H. F. 261, § 140.]

- 3205. Approval of lamps for lighter petroleum products.
- 3206. Cancellation of approvals.
- 3207. Notification of inspectors.
- 3208. Notification of uninspected oils.
- 3209. Dealer to report receipts of illuminating oils.
- 3210. Inspection fee.
- 3211. Reduction of inspection fee.
- 3212. Increase of inspection fee.
- 3213. Rebates on sales outside the state.
- 3214. Determination of rebate.
- 3215. Record of inspections.
- 3216. False branding—punishment.
- 3217. False branding and misconduct by inspectors.
- 3218. Civil liability.

3193. Inspection of gasoline—benzine—naphtha. The department shall, upon complaint, and may at other times when deemed advisable, cause to be inspected any gasoline, benzine, or naphtha for the purpose of determining whether the same is up to the specifications adopted by the United States Department of Interior. [S., '13, § 2510-3a; 40 Ex. G. A., H. F. 261, § 141.]

3194. Gasoline containers. No person shall keep, sell, or deliver in this state any gasoline except in a container painted bright red and plainly marked "gasoline" in the manner prescribed by the department. [C., '97, § 2505; S., '13, § 2510-j; S. S., '15, § 2505; 40 Ex. G. A., H. F. 261, § 142.]

3195. Storage tanks for manufacturing purposes exempted. The requirements of the preceding section shall not apply to storage tanks

having a capacity of not less than ten gallons from which gasoline is used for manufacturing or mechanical purposes. [S., '13, § 2510-k; 40 Ex. G. A., H. F. 261, § 143.]

3196. Use of gasoline containers for kerosene. No person shall keep, sell, or deliver any kerosene in a container painted or marked as prescribed in the second preceding section. [S., '13, § 2510-j; 40 Ex. G. A., H. F. 261, § 144.]

3197. Inspection of illuminating oil. No person shall offer or expose for sale, or sell, any illuminating oil unless the same shall have been inspected and branded as provided in this chapter. [C., '73, § 3901; C., '97, § 2508; S. '13, § 2508; 40 Ex. G. A., H. F. 261, § 145.]

3198. Method of making inspection. All inspections of illuminating oils shall be made in accordance with the rules of the department of agriculture and said department shall prescribe the instruments and apparatus to be used, and the same shall have inscribed thereon the words, "Department of Agriculture". [C., '97, § 2504; S., '13, § 2504; 40 Ex. G. A., H. F. 261, § 146.]

3199. Branding—certificate of inspection. After each inspection of an illuminating oil the container shall be branded by the inspector with the result of the inspection, and the person for whom it was made shall be given a certificate of inspection. The form of brands and certificates of inspection shall be prescribed by the rules of the department. [C., '97, § 2505; S. S., '15, § 2505; 40 Ex. G. A., H. F. 261, § 147.]

3200. Brand on empty containers to be destroyed. No person, except as otherwise provided by the rules of the department, shall buy, use, sell, offer or expose for sale, or otherwise dispose of any empty container upon which there is a state oil inspection brand unless the same shall have been completely destroyed. [C., '97, § 2508; S., '13, § 2508; 40 Ex. G. A., H. F. 261, § 148.]

3201. Adulteration of illuminating oil. An illuminating oil shall be deemed to be adulterated if mixed with any substance in such a manner as to render it dangerous or impair its efficiency for use for illuminating purposes. [C., '73, § 3901; C., '97, § 2508; S., '13, § 2508; 40 Ex. G. A., H. F. 261, § 149.]

3202. General standard for illuminating oil. No person shall use, offer or expose for sale, or sell any illuminating oil, except as provided in the two following sections, which will emit a combustible vapor at a temperature of less than one hundred degrees Fahrenheit, when tested by the flash test as prescribed by the rules of the department. [C., '73, § 3901; C., '97, § 2505; S. S., '15, § 2505; 40 Ex. G. A., H. F. 261, § 150.]

3203. Exceptions. The preceding section shall not apply to illuminating oil when used or sold for use under the following conditions:

1. When said oil is stored in closed reservoirs outside the building which is lighted by gas generated from the same.

2. When said oil is burned in a lamp or apparatus approved by the department for the lighter products of petroleum.

3. When said oil is burned in street lamps. [C., '97, § 2508; S., '13, § 2508; 40 Ex. G. A., H. F. 261, § 151.]

3204. Standard for use on trains and boats. No person shall use, burn, or carry for use on any railway passenger car, baggage, mail, or express car, street railway car, boat, or other means of public conveyance, any illuminating oil or other fluid composed to any extent of petroleum or its products which will ignite and burn at a temperature below three hundred one degrees Fahrenheit, when tested by the igniting and burning test as prescribed by the rules of the department. [C., '97, § 2508; S., '13, § 2508; 40 Ex. G. A., H. F. 261, § 152.]

3205. Approval of lamps for lighter petroleum products. The department shall examine the particular design, mechanism, and workmanship of any lamp or apparatus for burning the lighter products of petroleum for illuminating purposes, which may be presented to it for approval, and after testing the same, if it finds such lamp or apparatus to be safe, it shall enter the findings in the records of said department. No person shall sell or use any such lamp or apparatus unless the same has been approved as provided in this section. [S., '13, § 2508-a; 40 Ex. G. A., H. F. 261, § 153.]

3206. Cancellation of approvals. If the department ascertains that any lamp or apparatus which it has approved as safe, because of change of design, the use of unsuitable material, poor workmanship in construction, or for any other cause, is unsafe as then manufactured, and dangerous to public safety, it shall cancel its approval of such lamp or apparatus, and no person shall sell or use the same in burning the lighter products of petroleum for illuminating purposes. [S., '13, § 2508-a; 40 Ex. G. A., H. F. 261, § 154.]

3207. Notification of inspectors. The department shall notify by registered letter each of its inspectors of any approval or disapproval of any lamp or apparatus. [S., '13, § 2508-a; 40 Ex. G. A., H. F. 261, § 155.]

3208. Notification of uninspected oils. Every person who receives illuminating oils for use or sale which have not been inspected as provided in this chapter shall, within five days after the receipt thereof, notify the department or one of its inspectors that the same is in his possession. [S. S., '15, § 2505; 40 Ex. G. A., H. F. 261, § 156.]

3209. Dealer to report receipts of illuminating oils. Every person receiving any illuminating oil, subject to inspection under this chapter, shall file with the department before the tenth day of each month a duly verified certificate in the form prescribed by said de-

partment showing every receipt of illuminating oil during the preceding month. Said report shall contain the following items:

1. The number of tanks or barrels received.
2. The tank number, if in tanks, of each product inspected by the state.
3. The amount of fees paid for such inspection.
4. The person to whom the fees were paid. [C., '97, § 2506; S. S., '15, § 2506; 40 Ex. G. A., H. F. 261, § 157.]

3210. Inspection fee. A charge of seven cents per barrel shall be collected from the person for whom any illuminating oil is inspected, fifty-five gallons for this purpose constituting a barrel, and said charge shall be a lien upon the oil inspected and be collected by the inspector making the same. All fees collected under this chapter shall be turned over to the department. [C., '97, § 2505; S. S., '15, § 2505; 40 Ex. G. A., H. F. 261, § 158.]

3211. Reduction of inspection fee. On the first day of July of each year the department shall ascertain the total receipts and expenses for the inspection of illuminating oil during the preceding year and if the receipts exceed the total expenses of inspection by the sum of four thousand dollars, it shall reduce the inspection fee for the ensuing year to such sum per barrel as will approximately yield revenue equal to the expenses during the preceding year, plus the sum of four thousand dollars. [S. S., '15, § 2505; 40 Ex. G. A., H. F. 261, § 159.]

3212. Increase of inspection fee. If in any year such reduced inspection fee proves insufficient to meet the total expenses for the inspection of petroleum products for said year, the department shall increase said inspection fee in an amount sufficient to pay the entire expenses of such inspection, but not to exceed the sum of seven cents per barrel. [S. S., '15, § 2505; 40 Ex. G. A., H. F. 261, § 160.]

3213. Rebates on sales outside the state. The department shall adopt rules for granting rebates upon oils sold outside the state, but no refund of charges paid for inspection shall be made except upon a duly verified certificate of the owner that the goods for which the refund is asked have been disposed of outside of the state. [S. S., '15, § 2505; 40 Ex. G. A., H. F. 261, § 161.]

3214. Determination of rebate. The amount of such rebate per barrel allowed during any fiscal year, shall be determined by the department during the month of July of each year and shall equal approximately the net proceeds per barrel from the inspection service of the state during the preceding fiscal year. [S. S., '15, § 2505; 40 Ex. G. A., H. F. 261, § 162.]

3215. Record of inspections. The department shall keep an accurate record of all illuminating oils inspected and branded, the number of gallons, the number and kind of containers, the date and number of gallons approved, the number rejected, the name of the person for whom inspection was made, the amount of money received therefor, and the necessary traveling expenses incurred, and the expense incurred in prosecutions, which record shall be open at all reasonable times to public inspection. [C., '97, § 2506; S. S., '15, § 2506; 40 Ex. G. A., H. F. 261, § 163.]

3216. False branding—punishment. Any person who shall knowingly alter or deface a state inspection brand upon any container of illuminating oil, before the same is emptied, or who shall falsely brand any container of illuminating oil in imitation of a state inspection brand, shall be guilty of forgery and punished accordingly. [C., '97, § 2508; S., '13, § 2508; 40 Ex. G. A., H. F. 261, § 167.]

3217. False branding and misconduct by inspectors. Any inspector who shall be guilty of any of the following acts shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars and shall be liable in a civil action for all damages resulting from said act:

1. Falsely branding any container of illuminating oil.
2. Practicing any fraud or deceit in the discharge of his duties.
3. Official misconduct or culpable negligence to the injury of another.
4. Dealing in or having pecuniary interest, directly or indirectly, in the sale of any illuminating oils. [C., '97, § 2508; S., '13, § 2508; 40 Ex. G. A., H. F. 261, § 168;]

3218. Civil liability. Any person violating any of the provisions of this chapter shall be liable in a civil action for all damages resulting from such violation. [C., '73, § 3901; C., '97, § 2508; S., '13, § 2508; 40 Ex. G. A., H. F. 261, § 169.]

CHAPTER 160

MATTRESSES AND COMFORTS

3219. Definitions.
 3220. Materials used in mattresses.
 3221. Labeling mattresses.
 3222. Form of label.

3223. Registration of manufacturers.
 3224. Factory inspection—fees.
 3225. Prima facie evidence.
 3226. Exceptions—remade mattresses.

3219. Definitions. For the purpose of this chapter:

1. A mattress shall include what is commonly known as a bed mattress, and also any other article for use as a bed pad, consisting of an outer covering of cloth, ticking, or other fabric, and stuffed or filled with hair, wool, moss, cotton, excelsior, or any other material.

2. A comfort shall include what is commonly known as a bed comfort, and also any other article for use as a bed cover, consisting of an outer covering of cloth, or any other fabric, with wool, cotton, or other material between. [37 G. A., ch. 406, § 9; 40 G. A., ch. 36, § 1; 40 Ex. G. A., H. F. 261, § 169-a1.]

3220. Materials used in mattresses. No person shall knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in possession with the intent to sell, or offer or expose for sale any mattress or comfort which is made from any infectious, insanitary, or unhealthful material, or any material which has been previously used, except sterilized feathers. [37 G. A., ch. 406, §§ 2, 7, 8; 40 G. A., ch. 36, § 2; 40 Ex. G. A., H. F. 261, § 169-a2.]

3221. Labeling mattresses. Every mattress and comfort offered or exposed for sale shall have attached upon the outside thereof, a cloth, or cloth-lined, label not less than two by three inches in size, upon which shall be legibly written or printed, in the English language, in letters not less than one-eighth of an inch in height, a description of the materials used in the filling, with the name and address of the maker of such mattress or comfort. The sewing of one edge of said label securely to said article shall be sufficient. [37 G. A., ch. 406, §§ 1, 3, 4, 5; 40 G. A., ch. 36, § 2; 40 Ex. G. A., H. F. 261, § 169-a3.]

3222. Form of label. The label provided in the preceding section shall be in substantially the following form, but may contain thereon additional statements or information:

OFFICIAL STATEMENT

Manufactured of New Material.

(Here describe kind and character of filling.)

This article is made in compliance with chapter 160 of the code of Iowa.

(Here state manufacturer's name and address.)

Factory Number.....

[37 G. A., ch. 406, §§ 2, 5; 40 G. A., ch. 36, §§ 2, 3; 40 Ex. G. A., H. F. 261, § 169-a4.]

3223. Registration of manufacturers. Every manufacturer of mattresses or comforts shall register with the department of agriculture and be assigned by it a factory number, which shall show on each label as required by the preceding section. [40 G. A., ch. 36, § 9; 40 Ex. G. A., H. F. 261, § 169-a5.]

3224. Factory inspection—fees. Each factory in the state, where mattresses or comforts are made, shall be inspected at least once each year, for which inspection a fee of ten dollars shall be paid to the state by the owner of the factory inspected, but no owner shall be required to pay fees in excess of twenty dollars for any one calendar year. [40 G. A., ch. 36, § 7; 40 Ex. G. A., H. F. 261, § 169-a6.]

3225. Prima facie evidence. The finding of any infectious, insanitary, unhealthful, or second-hand material in that part of any factory devoted to the manufacture of mattresses or comforts, shall be prima facie evidence that such material has been and is being used in violation of this chapter. [40 G. A., ch. 36, § 7; 40 Ex. G. A., H. F. 261, § 169-a7.]

3226. Exceptions—remade mattresses. This chapter shall not apply to any mattress or comfort made by any person for his individual or family use, nor to the remaking of any mattress or comfort not thereafter to be sold or offered for sale.

A remade mattress or comfort shall have attached thereto a label of the kind hereinbefore provided, except that such label shall bear the words "Remade from Used Material" in lieu of the words "Manufactured of New Material". [40 G. A., ch. 36, § 4; 40 Ex. G. A., H. F. 261, § 169-a8.]

CHAPTER 161

STANDARD WEIGHTS AND MEASURES

- 3227. Standard established.
- 3228. Length and surface measure.
- 3229. Land measure.
- 3230. Weight.
- 3231. Liquids.
- 3232. Dry measure.
- 3233. Bottomless measure.
- 3234. Sales of dry commodities to be by weight.
- 3235. Drugs and section comb honey exempted.
- 3236. Bushel measured by avoirdupois weight.
- 3237. Sale of certain fruits and vegetables by dry measure.
- 3238. Sale of fruits and vegetables in climax baskets.
- 3239. Berry boxes and climax baskets.
- 3240. Hop boxes.
- 3241. Milk bottles.
- 3242. Flour.
- 3243. Mason work or stone.
- 3244. Sales to be by standard weight or measure.

3227. Standard established. The weights and measures which have been presented by the department to the federal bureau of standards and approved, standardized, and certified by said bureau in accordance with the laws of the congress of the United States shall be the standard weights and measures throughout the state. [C., '51, § 937; R., '60, § 1775; C., '73, § 2037; C., '97, § 3009; S., '13, § 3009-c; 40 Ex. G. A., H. F. 261, § 170.]

3228. Length and surface measure. The unit or standard measure of length and surface from which all other measures of extension shall be derived and ascertained, whether they be lineal, superficial, or solid, shall be the standard yard secured in accordance with the provisions of the preceding section. It shall be divided into three equal parts called feet, and each foot into twelve equal parts called inches, and for the measure of cloth and other commodities commonly sold by the yard it may be divided into halves, quarters, eighths, and sixteenths. The rod, pole, or perch shall contain five and one-half such yards, and the mile, one thousand seven hundred sixty such yards. [C., '51, § 937; R., '60, § 1775; C., '73, §§ 2038-2040; C., '97, § 3010; S., '13, § 3009-d; 40 Ex. G. A., H. F. 261, § 171.]

3229. Land measure. The acre for land measure shall be measured horizontally and contain ten square chains and be equivalent in area to a rectangle sixteen rods in length and ten rods in breadth, six hundred and forty such acres being contained in a square mile. The chain for measuring land shall be twenty-two yards long, and be divided into one hundred equal parts, called links. [C., '73, § 2041; C., '97, § 3011; S., '13, § 3009-d; 40 Ex. G. A., H. F. 261, § 172.]

3230. Weight. The units or standards of weight from which all other weights shall be derived and ascertained shall be the standard avoirdupois and troy weights secured in accordance with the provisions of section 3227. The avoirdupois pound, which bears to the

troy pound the ratio of seven thousand to five thousand seven hundred sixty, shall be divided into sixteen equal parts called ounces; the hundredweight shall consist of one hundred avoirdupois pounds, and twenty hundredweight shall constitute a ton. The troy ounce shall be equal to the twelfth part of a troy pound. [C., '51, § 938; R., '60, § 1776; C., '73, §§ 2042, 2043; C., '97, § 3012; S., '13, § 3009-e; 40 Ex. G. A., H. F. 261, § 173.]

3231. Liquids. The unit or standard measure of capacity for liquids from which all other measures of liquids shall be derived and ascertained shall be the standard gallon secured in accordance with the provisions of section 3227. The gallon shall be divided by continual division by the number two so as to make half-gallons, quarts, pints, half-pints, and gills. The barrel shall consist of thirty-one and one-half gallons, and two barrels shall constitute a hogshead. [C., '73, §§ 2044, 2045; C., '97, § 3013; S., '13, § 3009-g; 40 Ex. G. A., H. F. 261, § 174.]

3232. Dry measure. The unit or standard measure of capacity for substances not liquids from which all other measures of such substances shall be derived and ascertained shall be the standard half-bushel secured in accordance with the provisions of section 3227. The peck, half-peck, quarter-peck, quart, pint, and half-pint measures for measuring commodities which are not liquids, shall be derived from the half-bushel by successively dividing the cubic inch capacity of that measure by two. [C., '73, §§ 2046, 2047; C., '97, § 3014; S., '13, § 3009-f; 40 Ex. G. A., H. F. 261, § 175.]

3233. Bottomless measure. Bottomless dry measures shall not be used unless they conform in shape to the United States standard dry measures. [S. S., '15, § 3009-j; 38 G. A., ch. 99, § 1; 40 Ex. G. A., H. F. 261, § 176.]

3234. Sales of dry commodities to be by weight. All dry commodities unless bought or sold in package or wrapped form shall be

bought or sold only by the standard weight or measure herein established, or by numerical count, unless the parties otherwise agree in writing, except as provided in the four following sections. [S. S., '15, § 3009-j; 38 G. A., ch. 99, § 1; 40 Ex. G. A., H. F. 261, § 177.]

3235. Drugs and section comb honey exempted. The requirements of the preceding section shall not apply to drugs or section comb honey. [S. S., '15, § 3009-j; 38 G. A., ch. 99, § 1; 40 Ex. G. A., H. F. 261, § 178.]

3236. Bushel measured by avoirdupois weight. When any of the commodities enumerated in this section shall be sold by the bushel or fractional part thereof, except when sold as provided in the two following sections, the measure shall be determined by avoirdupois weight and shall be computed as follows:

<i>Commodities</i>	<i>Pounds</i>
Apples	48
Apples, dried	24
Alfalfa seed	60
Barley	48
Beans, green, unshelled	56
Beans, dried	60
Beans, lima	56
Beets	56
Blue grass seed	14
Bran	20
Bromus inermis	14
Broom corn seed	50
Buckwheat	48
Carrots	50
Castor beans, shelled	50
Charcoal	20
Cherries	40
Clover seed	60
Coal	80
Coke	40
Corn on the cob (field)	70
Corn in the ear, unhusked (field)	75
Corn, shelled (field)	56
Corn meal	48
Cucumbers	48
Emmer	40
Flaxseed	56
Grapes, with stems	40
Hempseed	44
Hickory nuts, hulled	50
Hungarian grass seed	50
Kaffir corn	56
Lime	80
Millet seed	50
Oats	32
Onions	52
Onion top sets	28
Onion bottom sets	32
Orchard grass seed	14
Osage Orange seed	32
Parsnips	45
Peaches	48
Peaches, dried	33
Peanuts	22
Pears	45
Peas, green, unshelled	50
Peas, dried	60
Plums	48
Popcorn, on the cob	70

<i>Commodities</i>	<i>Pounds</i>
Popcorn, shelled	56
Potatoes	60
Quinces	48
Rape seed	50
Redtop seed	14
Rutabagas	60
Rye	56
Salt	80
Sand	130
Shorts	20
Sorghum saccharatum seed	50
Spelt	40
Sweet corn	50
Sweet potatoes	50
Timothy seed	45
Tomatoes	50
Turnips	55
Walnuts, hulled	50
Wheat	60
All root crops not specified above	50

[C., '51, § 940; R., '60, §§ 1778, 1781-1784; C., '73, § 2049; C., '97, § 3016; S., '13, § 3009-h; 40 Ex. G. A., H. F. 261, § 179.]

3237. Sale of certain fruits and vegetables by dry measure. Blackberries, blueberries, cranberries, currants, gooseberries, raspberries, cherries, strawberries, and similar berries, also onion sets in quantities of one peck or less, may be sold by the quart, pint, or half-pint, dry measure. [S. S., '15, § 3009-i; 40 Ex. G. A., H. F. 261, § 180.]

3238. Sale of fruits and vegetables in climax baskets. Grapes, other fruits, and vegetables may be sold in climax baskets; but when said commodities are sold in such manner and the containers are labeled with the net weight of the contents in accordance with the provisions of section 3037, all the provisions of the chapter relative to labeling foods shall be deemed to have been complied with. [37 G. A., ch. 251, § 1; 40 Ex. G. A., H. F. 261, § 181.]

3239. Berry boxes and climax baskets. Berry boxes sold, used, or offered or exposed for sale shall have an interior capacity of one quart, pint, or half-pint dry measure. Climax baskets sold, used, or offered or exposed for sale shall be of the standard size fixed below:

1. Two-quart basket: length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches, and width five inches, outside measurement; basket to have a cover five by eleven inches, when a cover is used.

2. Four-quart basket: length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches, width six and one-fourth inches, outside measurement; basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

3. Twelve-quart basket: length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch, outside measurement; top of basket, length nineteen inches, height of basket, seven and one-sixteenth inches, width nine inches, outside measurement; basket to have cover nine inches by nineteen inches, when cover is used. [S. S., '15, § 3009-i; 37 G. A., ch. 251, § 1; 40 Ex. G. A., H. F. 261, § 182.]

3240. Hop boxes. The standard box used in packing hops shall be thirty-six inches long, eighteen inches wide, and twenty-three and one-fourth inches deep, inside measurement. [C., '73, § 2051; C., '97, § 3018; 40 Ex. G. A., H. F. 261, § 183.]

3241. Milk bottles. The standard bottle used for the sale of milk and cream shall be of a capacity of one-half gallon, three pints, one quart, one pint, one-half pint, one gill, filled full to the bottom of the lip. [S., '13, § 3009-k; 40 Ex. G. A., H. F. 261, § 184.]

3242. Flour. A barrel of flour shall consist of one hundred ninety-six pounds avoirdupois, and one-fourth barrel consisting of forty-nine pounds shall be a sack of flour.

No barrel or sack of flour shall be sold which contains less than the amount herein specified. [37 G. A., ch. 57, § 1; 40 Ex. G. A., H. F. 261, § 185.]

3243. Mason work or stone. The perch of mason work or stone shall consist of twenty-five feet, cubic measure. [C., '51, § 939; R., '60, § 1777; C., '73, § 2050; C., '97, § 3017; 40 Ex. G. A., H. F. 261, § 186.]

3244. Sales to be by standard weight or measure. All commodities bought or sold by weight or measure shall be bought or sold only by the standards established by this chapter, unless the vendor and vendee otherwise agree. Sales by weight shall be by avoirdupois weight unless troy weight is agreed upon by the vendor and vendee. [S. S., '15, § 3009-j; 38 G. A., ch. 99, § 1; 40 Ex. G. A., H. F. 261, § 187.]

CHAPTER 162

SALES OF CERTAIN COMMODITIES FROM BULK

- 3245. Sales of coal, charcoal, and coke.
- 3246. Delivery tickets required.
- 3247. Disposition of delivery tickets.

3245. Sales of coal, charcoal, and coke. No person shall sell, offer or expose for sale any coal, charcoal, or coke in any other manner than by weight, or represent any of said commodities as being the product of any county, state, or territory, except that in which mined or produced, or represent that said commodities contain more British thermal units than are present therein. [S., '13, § 3009-l; 37 G. A., ch. 80, § 1; 40 Ex. G. A., H. F. 261, § 188.]

3246. Delivery tickets required. No person shall deliver any of said commodities without each such delivery being accompanied by duplicate delivery tickets, on each of which shall be written in ink or other indelible substance, distinctly expressed in pounds, the gross weight of the load, the tare of the delivering vehicle, and the net amount in weight of the commodity, with the names of the purchaser and the dealer from whom purchased. [S., '13, § 3009-l; 40 Ex. G. A., H. F. 261, § 189.]

3247. Disposition of delivery tickets. One of said duplicate tickets shall be delivered to the vendee and the other one shall be returned to the vendor. Upon demand of the department the person in charge of the load shall surrender one of said duplicate tickets to the person making such demand. If said ticket is retained an official weight slip shall be delivered by said department to the vendee or his agent.

- 3248. Sales without delivery.
- 3249. Sales of hay or straw by bale.
- 3250. Inspection of loaded vehicles.

[S., '13, § 3009-l; 40 Ex. G. A., H. F. 261, § 190.]

3248. Sales without delivery. When the vendee carries away the commodity purchased, a delivery ticket, showing the actual number of pounds received by him, shall be issued to him by the vendor. [S., '13, § 3009-l; 40 Ex. G. A., H. F. 261, § 191.]

3249. Sales of hay or straw by bale. No person shall sell, offer or expose for sale any bales of hay or straw without first attaching thereto a plain and conspicuous statement of the minimum net weight contained in such bales; but nothing in this section shall be construed to require a statement of weight on each bale where hay or straw is sold by the ton and a ticket showing the gross, tare, and net weight accompanies the delivery. [38 G. A., ch. 99, § 1; 40 Ex. G. A., H. F. 261, § 192.]

3250. Inspection of loaded vehicles. The department may stop any wagon, auto truck, or other vehicle loaded with any commodity being bought, offered or exposed for sale, or sold, and compel the person having charge of the same to bring the load to a scale designated by said department and weighed for the purpose of determining the true net weight of the commodity. [S., '13, § 3009-l; S. S., '15, § 3009-n; 38 G. A., ch. 99, § 2; 40 Ex. G. A., H. F. 261, § 193.]

CHAPTER 163

STATE AND CITY SEALERS

3251. State sealer.
 3252. Preservation of standards.
 3253. Testing weights and measures.
 3254. Sealing milk bottles not required.

3255. Sealer for cities and towns.
 3256. Duties of city sealer.
 3257. Expenses.

3251. State sealer. The department shall designate one of its assistants to act as state sealer of weights and measures. All weights and measures sealed by him shall be impressed with the word "Iowa". [C., '73, §§ 2053-2055; C., '97, § 3020; S., '13, § 3009-b; 40 Ex. G. A., H. F. 261, § 194.]

3252. Preservation of standards. The department shall maintain the state standards in good order, shall take all necessary precautions for their safekeeping, and shall submit them once in ten years to the national bureau of standards for certification. [C., '73, §§ 2053, 2054; C., '97, § 3020; S., '13, § 3009-b; 40 Ex. G. A., H. F. 261, § 195.]

3253. Testing weights and measures. Upon written request of any citizen, firm, or corporation, city, town, or county, or educational institution of the state made to the department, a test or calibration of any weights, measures, weighing or measuring devices, and instruments or apparatus to be used as standards shall be made. [S., '13, § 3009-b; 40 Ex. G. A., H. F. 261, § 196.]

3254. Sealing milk bottles not required. The state sealer shall not be required to seal

bottles for milk or cream, but they shall be inspected from time to time in order to ascertain whether they are standard. [S., '13, § 3009-k; 40 Ex. G. A., H. F. 261, § 197.]

3255. Sealer for cities and towns. A sealer of weights and measures may be appointed in any city or town by the council, who shall hold his office during its pleasure, and may obtain from the department such standard weights and measures as the council may deem necessary. [C., '73, §§ 2059, 2060; C., '97, § 3023; 40 Ex. G. A., H. F. 261, § 198.]

3256. Duties of city sealer. Each sealer in cities and towns shall take charge of and provide for the safekeeping of the town or city standards, and see that the weights, measures, and all apparatus used for determining the quantity of commodities used throughout the town or city, agree with the standards in his possession. [C., '73, §§ 2059, 2060; C., '97, § 3023; 40 Ex. G. A., H. F. 261, § 199.]

3257. Expenses. All expenses directly incurred in furnishing the several cities and towns with standards, or in comparing those that may be in their possession, shall be borne by said cities and towns. [C., '73, § 2061; C., '97, § 3024; 40 Ex. G. A., H. F. 261, § 200.]

CHAPTER 164

PUBLIC SCALES AND OIL METERS

3258. Definitions.
 3259. License required.
 3260. Fee—expiration of license.
 3261. Form of license.

3262. License to be displayed—removal—penalty.
 3263. Oath of weighmasters.
 3264. Weighmasters to keep registers.
 3265. Penalty.

3258. Definitions. For the purpose of this chapter:

1. "Public scale" shall mean any scale or weighing device for the use of which a charge is made or compensation is derived.

2. "Gasoline pump" shall mean any pump, meter, or similar measuring device used for measuring gasoline. [C., '73, § 2065; C., '97, § 3027; S. S., '15, § 3009-m; 40 Ex. G. A., H. F. 261, § 201.]

3259. License required. Every person who shall use or display for use any public scale

or gasoline pump shall secure a license for said scale or pump from the department. [S. S., '15, § 3009-m; 39 G. A., ch. 182, § 1; 40 Ex. G. A., H. F. 261, § 202.]

3260. Fee—expiration of license. The license fee shall be three dollars per annum and each license for a public scale shall expire on December thirtieth and for a gasoline pump on June thirtieth of each year. [S. S., '15, § 3009-m; 39 G. A., ch. 182, § 1; 40 Ex. G. A., H. F. 261, § 203.]

3261. Form of license. The license shall be in the form of a metal plate bearing the words "Licensed by the State of Iowa, No." Each plate shall be numbered consecutively and bear the year for which the license is granted. [S. S., '15, § 3009-m; 39 G. A., ch. 182, § 1; 40 Ex. G. A., H. F. 261, § 204.]

3262. License to be displayed—removal—penalty. The license plate shall be displayed prominently on the front of the scale or pump, and the defacing or wrongful removal of such plate shall be punished as provided in chapter 147. Absence of license plate shall be prima facie evidence that the weighing or measuring device is being operated contrary to law. [S. S., '15, § 3009-m; 39 G. A., ch. 182, § 1; 40 Ex. G. A., H. F. 261, § 205.]

3263. Oath of weighmasters. All persons keeping public scales, before entering upon their duties as weighmasters, shall be sworn before some person having authority to ad-

minister oaths, to keep their scales correctly balanced, to make true weights, and to render a correct account to the person having weighing done. [C., '73, § 2065; C., '97, § 3027; 40 Ex. G. A., H. F. 261, § 206.]

3264. Weighmasters to keep registers. Weighmasters are required to make true weights and keep a correct register of all weighing done by them, giving the amount of each weight, date thereof, and the name of the person or persons for whom done, and give, upon demand, to any person having weighing done, a certificate showing the weight, date, and for whom weighed. [C., '73, §§ 2066, 2067; C., '97, § 3028; 40 Ex. G. A., H. F. 261, § 207.]

3265. Penalty. Any weighmaster violating any of the provisions of the two preceding sections, shall be guilty of a misdemeanor, and punished as provided in chapter 147 and be liable to the person injured for all damages sustained. [C., '73, § 2068; C., '97, § 3029; 40 Ex. G. A., H. F. 261, § 208.]

CHAPTER 165

INSPECTION OF WEIGHTS AND MEASURES

- 3266. Duty to inspect.
- 3267. Inspection fees.
- 3268. Payment by party complaining.
- 3269. Limitation on number of inspections.
- 3270. Confiscation and condemnation of scales.

3266. Duty to inspect. The department shall make an inspection of all weights and measures wherever the same are kept for use in connection with the sale of any commodity sold by weight or measurement, or where the price to be paid for producing any commodity is based upon the weight or measurement thereof; and when complaint is made to the department that any false or incorrect weights or measures are being made under said conditions, said department shall have the same inspected. [S., '13, § 3009-o; S. S., '15, § 3009-n; 38 G. A., ch. 99, § 2; 40 Ex. G. A., H. F. 261, § 209.]

3267. Inspection fees. An inspection fee shall be charged the person owning or operating the scale so inspected in accordance with the following schedule: Scales with a five hundred pounds' capacity up to and including four thousand pounds' capacity, one dollar each; scales over four thousand pounds' capacity up to and including twenty-one thousand pounds' capacity, three dollars each; scales over twenty-one thousand pounds' capacity not including railroad track scales, five dollars each; railroad track scales, ten dollars each; all hopper or automatic scales, two dollars each. [S. S., '15, § 3009-n; 40 Ex. G. A., H. F. 261, § 210; 40 Ex. G. A., H. F. 332, § 1.]

3268. Payment by party complaining. When such inspection shall be made upon the complaint of any person other than the owner of the scale, and upon examination the scale is

- 3271. Possession of false weights or measures.
- 3272. Transactions by false weights or measures.
- 3273. Reasonable variations—small packages.
- 3274. Power of cities and towns limited.

found by the department to be accurate for weighing, the inspection fee for such inspection shall be paid by the person making complaint. [S. S., '15, § 3009-n; 40 Ex. G. A., H. F. 261, § 211.]

3269. Limitation on number of inspections. No person shall be required to pay more than two inspection fees for any one scale in any one year unless additional inspections are made at the request of the owner of said scale. [S. S., '15, § 3009-n; 40 Ex. G. A., H. F. 261, § 212.]

3270. Confiscation and condemnation of scales. The department may seize without warrant and confiscate any incorrect scales, weights, or measures, or any weighing apparatus or part thereof which do not conform to the state standards or upon which the license fee has not been paid. If any weighing or measuring apparatus or part thereof be found out of order the same may be tagged by the department "Condemned until repaired", which tag shall not be altered or removed until said apparatus is properly repaired. [S., '13, § 3009-q; 40 Ex. G. A., H. F. 261, § 213.]

3271. Possession of false weights or measures. If any person engaged in the purchase or sale of any commodity by weight or measurement, or in the employment of labor where the price thereof is to be determined by weight or measurement of the articles upon which

such labor is bestowed, has in his possession any inaccurate scales, weights, or measures, or other apparatus for determining the quantity of any commodity, which do not conform to the standard weights and measures, he shall be punished as provided in chapter 147. [S. S., '15, § 3009-p; 40 Ex. G. A., H. F. 261, § 214.]

3272. Transactions by false weights or measures. Any person shall be deemed to have violated the provisions of this chapter and shall be punished as provided in chapter 147:

1. If such person sell, trade, deliver, charge for or claim to have delivered to a purchaser an amount of any commodity which is less in weight or measure than that which is asked for, agreed upon, claimed to have been delivered, or noted on the delivery ticket.

2. If such person make settlement for or enter credit, based upon any false weight or measurement, for any commodity purchased.

3. If such person make settlement for or enter credit, based upon any false weight or measurement, for any labor where the price

of producing or mining is determined by weight or measure.

4. If such person record a false weight or measurement upon the weight ticket or book. [S. S., '15, § 3009-j; 38 G. A., ch. 99, § 1; 40 Ex. G. A., H. F. 261, § 215.]

3273. Reasonable variations—small packages. In enforcing the provisions of the preceding section reasonable variations shall be permitted and exemptions as to small packages shall be established by rules of the department. [S. S., '15, § 3009-j; 38 G. A., ch. 99, § 1; 40 Ex. G. A., H. F. 261, § 216.]

3274. Power of cities and towns limited. Commodities weighed upon any scale bearing the inspection card, issued by the department, shall not be required to be reweighed by any ordinance of any city or town or city under special charter or under the commission form of government, nor shall their sale, at the weights so ascertained, and because thereof, be, by such ordinance, prohibited or restricted. [S. S., '15, § 3009-m; 39 G. A., ch. 182, § 1; 40 Ex. G. A., H. F. 261, § 217.]

TITLE XI

CHARITABLE, CORRECTIONAL, AND PENAL INSTITUTIONS

CHAPTER 166

BOARD OF CONTROL OF STATE INSTITUTIONS

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3275. How constituted—tenure. The board of control of state institutions shall be composed of three electors of the state, not more than two of whom shall belong to the same political party, and no two of whom shall, at the time of appointment, reside in the same congressional district. Each member shall devote his entire time to the duties of his office, and hold office for a period of six years, commencing on July first of the year of appointment. The term of office of one member shall expire in each odd-numbered year. [S., '13, § 2727-a1; 40 Ex. G. A., H. F. 84, § 1.]

3276. Appointment. The governor shall, within sixty days following the organization of each regular session of the general assembly, appoint, with the approval of two-thirds of the members of the senate in executive session, a successor to the member on said board whose term of office will expire on July first following. No appointment shall be considered by the senate until the same shall have been referred to a committee of five, not more than three of whom shall belong to the same political party, to be appointed by the president of the senate, which committee shall report to the senate in executive session. The consideration of appointments by the senate shall not be had on the same legislative day the nominations are referred. [S., '13, § 2727-a1; 40 Ex. G. A., H. F. 84, § 2.]

3277. Vacancies. Vacancies on said board that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term.

Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [S., '13, § 2727-a1; 40 Ex. G. A., H. F. 84, § 3.]

3278. Removal. The governor may, with the approval of the senate, during a session of the general assembly, remove any member of the board for malfeasance or nonfeasance in office, or for any cause that renders him ineligible to appointment, or incapable or unfit to discharge the duties of his office, and his removal when so made shall be final. [S., '13, § 2727-a1; 40 Ex. G. A., H. F. 84, § 4.]

NOTE: Removal by court or executive council, see §§ 1091, 1114.

3279. Political activity. No member, officer, or employee of the board, or of any of the institutions under the control of the board, shall, directly or indirectly, exert his influence to induce other officers or employees of the state to adopt his political views, or to favor any particular candidate for office, nor shall such member, officer, or employee contribute in any manner, money or other thing of value to any person for election purposes. Any person violating this section shall be removed from his office or position. [S., '13, § 2727-a35; 40 Ex. G. A., H. F. 84, § 5.]

3280. Disqualification. No member of the board shall be eligible to any other lucrative office, elective or appointive, in the state during his term of service, or for one year thereafter. [S., '13, § 2727-a2; 40 Ex. G. A., H. F. 84, § 6.]

3281. Organization. The member whose term first expires shall be the chairman of the board for each biennial period. The board shall employ a competent secretary and such other as-

sistants as may be necessary. In the absence or disability of the secretary, the board may, by order entered of record, appoint a member of the board as acting secretary during such absence or disability, who shall at such time have the powers of the secretary of the board. No additional compensation shall be paid because of the service of such acting secretary. [S., '13, § 2727-a1; S. S., '15, § 2727-a3; 39 G. A., ch. 209, §§ 24, 25; 40 Ex. G. A., H. F. 84, § 7.]

3282. Official seal. The board shall have an official seal, and every commission, order, or other paper executed by the board may, under its direction, be attested with its seal. [S., '13, § 2727-a7; 40 Ex. G. A., H. F. 84, § 8.]

3283. Expenses. The members of said board, its secretary, and employees, shall, in addition to salary, receive their necessary traveling expenses by the nearest traveled and practicable route, when engaged in the state in the performance of official business. [S., '13, § 2727-a5; 40 Ex. G. A., H. F. 84, § 9.]

3284. Trips to other states. No authority shall be granted to any person to make a trip to another state at the expense of the state, except by resolution, which shall state the purpose of the trip and why the same is necessary, adopted by the board, entered of record, and approved in writing by the governor prior to the making of such trip. [S., '13, § 2727-a5; 40 Ex. G. A., H. F. 84, § 10.]

NOTE: Trips to other states, see § 398.

3285. Biennial report. The board shall, in each even-numbered year, at the time provided

by law, make a report to the governor and general assembly, and cover therein the biennial period ending with June thirtieth preceding, which report shall embrace:

1. An itemized statement of its expenditures concerning each institution under its control.

2. A detailed statement of the management of all said institutions.

3. A statement of all visits made to said institutions and when and by whom made.

4. The observations and conclusions of the board relative to said institutions.

5. Such recommendations as to changes in the laws relative to such institutions as the board may deem advisable.

6. The name and salary of every officer or employee of said board, and of the various institutions controlled by the board.

7. The annual reports made to the board by the executive officers of the several institutions.

8. Such other matters as the governor may direct. [S., '13, §§ 2727-a9, 2727-a12, 2727-a16, 2727-a34; S. S., '15, § 2727-a3; 40 Ex. G. A., H. F. 84, § 11.]

NOTE: Time of report, see § 246.

3286. Books of accounts. The board shall keep at its office a complete system of books and accounts with each institution under its control. Said books shall show every expenditure authorized and made at said institution and shall exhibit an account of each extraordinary or special appropriation made by the legislature, with every item of expenditure thereof. [S., '13, § 2727-a13; 40 Ex. G. A., H. F. 84, § 12.]

CHAPTER 167

GOVERNMENT OF INSTITUTIONS

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3287. Institutions controlled. The board of control shall have full power to contract for, manage, control, and govern, subject only to the limitations imposed by law, the following institutions:

1. Soldiers' Home.
2. Institution for Feeble-minded Children.
3. State Sanatorium.
4. Hospital for Epileptics and School for Feeble Minded.
5. Cherokee State Hospital.
6. Clarinda State Hospital.
7. Independence State Hospital.
8. Mount Pleasant State Hospital.
9. Training School for Boys.
10. Training School for Girls.
11. Juvenile Home.
12. Soldiers' Orphans' Home.
13. Women's Reformatory.
14. Men's Reformatory.
15. State Penitentiary.

[S., '13, §§ 2727-a8, 2727-a77; S. S., '15, §§ 2713-n2, 2727-a96; 37 G. A., ch. 160, § 1; 38

G. A., ch. 165, § 14; 40 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 14.]

3288. Power of governor. Nothing contained in the foregoing section shall limit the general supervisory or examining powers vested in the governor by the laws or constitution of the state, or legally vested by him in any committee appointed by him. [S., '13, § 2727-a9; 40 Ex. G. A., H. F. 84, § 15.]

3289. Report of abuses. The board shall report, in writing, to the governor any abuses found to exist in any of the said institutions. [S., '13, § 2727-a18; 40 Ex. G. A., H. F. 84, § 16.]

3290. Rules—fire—additional duties. The board shall prescribe such rules, not inconsistent with law, as it may deem necessary for the discharge of its duties, the management of each of said institutions, the admission of inmates thereto, and the treatment, care, custody, education, and discharge of inmates. It

is made the particular duty of the board to establish rules by which danger to life and property from fire will be minimized. In the discharge of its duties and in the enforcement of its rules it may require any of its appointees to perform duties in addition to those required by statute. [S., '13, §§ 2727-a30, 2727-a48, 5718-a3; S. S., '15, §§ 2727-a50, 2727-a96; 40 Ex. G. A., H. F. 84, § 17.]

3291. Uniform accounts. Said board shall prescribe and install in all of said institutions the most modern, complete, and uniform system of accounts, records, and reports possible, which system, among other matters, shall clearly show the detailed facts relative to the handling and use of all purchases. [S., '13, §§ 2727-a9, 2727-a14, 2727-a45; 40 Ex. G. A., H. F. 84, § 18.]

3292. Executive officers—tenure—removal. The board shall appoint a superintendent, warden, or other chief executive officer of each institution under its control who shall have the immediate custody and control, subject to the orders of the board, of all property used in connection with the institution. The tenure of office of said officers shall be four years from the date of their appointment, but they may be removed by the board for inability or refusal to properly perform the duties of the office, but such removal shall be had only after an opportunity is given such person to be heard before such board upon preferred written charges. Such removal, when made, shall be final. [S., '13, § 2727-a24; 40 Ex. G. A., H. F. 84, § 19.]

3293. Subordinate officers and employees. The board shall determine the number and compensation of subordinate officers and employees for each institution. Such officers and employees shall be appointed and discharged by the chief executive officer. Such officer shall keep, in the record of each subordinate officer and employee, the date of employment, the compensation, and the date of each discharge, and the reasons therefor. [S., '13, § 2727-a37; S. S., '15, §§ 2713-n2, 2727-a96; 40 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 20.]

3294. Influence in appointments. Any member of the board, and any officer thereof, who, by solicitation or otherwise, exerts any influence on the chief executive officer of any institution under the control of said board in the selection of any employee for such institution, shall be guilty of a misdemeanor. [S., '13, § 2727-a37; 40 Ex. G. A., H. F. 84, § 21.]

3295. Bonds. The board shall require its secretary and each officer and employee of said board, and of every institution under its control who may be charged with the custody or control of any money or property belonging to the state, to give an official bond, properly conditioned, and signed by sufficient sureties, in a sum to be fixed by the board, which bond shall be approved by the board, and filed in the office of secretary of state. It may require bonds of other officers and employees not enumerated above. [S., '13, § 2727-a31; 40 Ex. G. A., H. F. 84, § 22.]

3296. Salaries. The board shall, annually, with the written approval of the governor, fix the annual or monthly salaries of all officers and employees for the year beginning July first of said year, except such salaries as are fixed by the general assembly. The board shall classify the officers and employees into grades and the salary and wages to be paid in each grade shall be uniform in similar institutions. [S., '13, § 2727-a38; 40 Ex. G. A., H. F. 84, § 23.]

3297. Dwelling house and provisions. The board shall furnish the executive head of each of said institutions, in addition to salary, with a dwelling house or with appropriate quarters in lieu thereof, and, from supplies purchased for the institution, the necessary household provisions for himself, wife, and minor children. [S., '13, § 2727-a38; S. S., '15, §§ 2713-n2, 2727-a96; 40 Ex. G. A., H. F. 84, § 24.]

3298. Salaries—how paid. The salaries and wages shall be included in the monthly pay rolls and paid in the same manner as other expenses of the several institutions. [S., '13, § 2727-a38; 40 Ex. G. A., H. F. 84, § 25.]

3299. Vacations. Each officer and employee of each of said institutions shall be granted an annual vacation, on full pay, as follows:

1. Seven days to those who have been in the service of the state one continuous year.

2. Ten days to those who have been in such service two continuous years.

3. Fourteen days to those who have been in such service three or more continuous years. [S., '13, §§ 2727-a74c, 2727-a74e; 40 Ex. G. A., H. F. 84, § 26.]

3300. Authority for vacation. Such vacations shall only be taken at such times as the executive officer may direct, and only after written authorization by him, and for the number of days specified therein. A copy of such permit shall be attached to the pay roll of the institution for the month during which the vacation was taken, and the pay roll shall show the number of days the person was absent under the permit. [S., '13, §§ 2727-a74c, 2727-a74d; 40 Ex. G. A., H. F. 84, § 27.]

3301. Record of employees and inmates. The board shall require the proper officer of each institution to keep in a book prepared for the purpose, a record, to be made each day, of the number of hours of service of each employee. The monthly pay roll shall be made from such time book, and shall be in accord therewith. When an appropriation is based on the number of inmates in or persons at an institution the board shall require a daily record to be kept of the persons actually residing at and domiciled in such institution. [S., '13, § 2727-a34; 40 Ex. G. A., H. F. 84, § 28.]

3302. Districts. The board shall, from time to time, divide the state into districts from which the several institutions may receive inmates. It shall promptly notify the

proper county or judicial officers of all changes in such districts. [S., '13, § 2727-a21; 40 Ex. G. A., H. F. 84, § 29.]

3303. Place of commitments—transfers. Commitments, unless otherwise permitted by the board, shall be to the institution located in the district embracing the county from which the commitment is issued. The board may, at the expense of the state, transfer an inmate of one institution to another like institution. [S., '13, § 2727-a26; 40 Ex. G. A., H. F. 84, § 30.]

NOTE: Power of the board to transfer inmates, see §§ 3456, 3472, 3477, 3482, 3512, 3526, 3528, 3648, 3701, 3710, 3732, 3751, 3752, 3753, 3755.

3304. Record of inmates. The board shall, as to every person committed to any of said institutions, keep the following record: Name, residence, sex, age, nativity, occupation, civil condition, date of entrance or commitment, date of discharge, whether a discharge was final, condition of the person when discharged, the name of the institutions from which and to which such person has been transferred, and, if dead, the date, and cause of death. [S., '13, § 2727-a22; 40 Ex. G. A., H. F. 84, § 31.]

3305. Record privileged. Except with the consent of the board, or on an order of a judge or court of record, the record provided in the foregoing section shall be accessible only to the members, secretary, and proper clerks of the board. [S., '13, § 2727-a22; 40 Ex. G. A., H. F. 84, § 32.]

3306. Reports to board. The managing officer of each institution shall, within ten days after the commitment or entrance of a person to the institution, cause a true copy of his entrance record to be made and forwarded to the board. When a patient or inmate leaves, or is discharged, or transferred, or dies in any institution, the superintendent or person in charge shall within ten days thereafter send such information to the office of the board on forms which the board may prescribe. [S., '13, § 2727-a22; 40 Ex. G. A., H. F. 84, § 33.]

3307. Questionable commitment. The superintendent is required to immediately notify the board if there is any question as to the propriety of the commitment or detention of any person received at such institution, and said board, upon such notification, shall inquire into the matter presented, and take such action as may be deemed proper in the premises. [S., '13, § 2727-a29; 40 Ex. G. A., H. F. 84, § 34.]

3308. Religious beliefs. The chief executive officer, receiving a person committed to any of said institutions, shall inquire of such person as to his religious preference and enter the same in the book kept for the purpose, and cause said person to sign the same. [S., '13, § 5718-a1; 40 Ex. G. A., H. F. 84, § 35.]

3309. Religious worship. Any such inmate, during the time of his detention, shall be allowed, for at least one hour on each Sunday

and in times of extreme sickness, and at such other suitable and reasonable times as is consistent with proper discipline in said institution, to receive spiritual advice, instruction, and ministrations from any recognized clergyman of the church or denomination which represents his religious belief. [S., '13, §§ 5718-a1, 5718-a2; 40 Ex. G. A., H. F. 84, § 36.]

3310. Religious belief of minors. In case such inmate is a minor and has formed no choice, his preference may, at any time, be expressed by himself with the approval of parents or guardian, if he has any such. [S., '13, § 5718-a3; 40 Ex. G. A., H. F. 84, § 37.]

3311. Investigation. The board, or a committee thereof, shall visit, and minutely examine, at least once in six months, and oftener if necessary or required by law, the institutions named, and the financial condition and management thereof. [S., '13, §§ 2727-a10, 2727-a19; 40 Ex. G. A., H. F. 84, § 38.]

3312. Scope of investigation. The board shall, during such investigation and as far as possible, see every inmate of each institution, especially those admitted since the preceding visit, and shall give such inmates as may require it, suitable opportunity to converse with them apart from the officers and attendants. [S., '13, § 2727-a19; 40 Ex. G. A., H. F. 84, § 39.]

3313. Investigation of other institutions. Said board, or any member thereof, may investigate charges of abuse, neglect, or mismanagement on the part of any officer or employee of any county home in which insane persons are kept, and of any private institution which is subject to the supervision of said board. [S., '13, § 2727-a74b; 40 Ex. G. A., H. F. 84, § 40.]

3314. Witnesses. In aid of any investigation the board shall have the power to summon and compel the attendance of witnesses; to examine the same under oath, which any member thereof shall have power to administer; to have access to all books, papers, and property material to such investigation, and to order the production of any other books or papers material thereto. Witnesses other than those in the employ of the state shall be entitled to the same fees as in civil cases in the district court. [S., '13, § 2727-a10; 40 Ex. G. A., H. F. 84, § 41.]

3315. Contempt. Any person failing or refusing to obey the orders of the board issued under the preceding section, or to give or produce evidence when required, shall be reported by the board to the district court in the county where the offense occurs or any judge thereof, and shall be dealt with by the court or judge as for contempt of court. [S., '13, § 2727-a10; 40 Ex. G. A., H. F. 84, § 42.]

3316. Transcript of testimony. The board shall cause the testimony taken at such investigation to be transcribed and filed in its office at the seat of government within ten days after

the same is taken, or as soon thereafter as practicable, and when so filed the same shall be open for the inspection of any person. [S., '13, § 2727-a10; 40 Ex. G. A., H. F. 84; § 43.]

3317. State agents. The board may appoint, and discharge at its pleasure, such number of persons as may be authorized by law to act as state agents for the soldiers' orphans' home, the two training schools, the juvenile home, and the women's reformatory. [S. S., '15, § 2692-a; 37 G. A., ch. 54, § 1; 37 G. A., ch. 370, § 1; 37 G. A., ch. 427, § 1; 38 G. A., ch. 105, § 1; 39 G. A., ch. 209, § 22; 40 Ex. G. A., H. F. 84, § 44.]

3318. Rooms and supplies. The board shall furnish such agents office rooms and all necessary supplies in the same manner supplies are furnished other officers of the board. Such agents, while stopping at any of said institutions, may be furnished with rooms, board, and facilities therein, free of cost. [S. S., '15, § 2692-a; 37 G. A., ch. 349, § 1; 40 Ex. G. A., H. F. 84, § 45.]

3319. Duties of agents. Said agents shall:

1. Perform such duties as may be required by law or by said board.
2. Find suitable homes and employment for inmates of said institutions who are to be or who have been released.
3. Inspect such homes.
4. Exercise supervision over such discharged or released persons and examine into their conduct and environment.
5. Return to the institution from which released, all inmates who have been conditionally released and whose conduct has been bad, or in violation of their release.
6. Obtain new homes or new employment for released inmates when their environment is bad.
7. Keep records of their acts as agents and make all reports called for by the board. [S., '13, § 2692-b; 40 Ex. G. A., H. F. 84, § 46.]

3320. Advancing expense fund. The board of control may cause to be advanced to each agent, from time to time, from the funds appropriated for such purpose, sums to be used in defraying the official expenses of such agent. The aggregate amount of money so advanced and not expended at any time shall not exceed the sum of two hundred fifty dollars. The agent shall give security, to be approved by the board, for the proper use and accounting each month of all money so advanced. [S. S., '15, § 2692-c; 37 G. A., ch. 349, § 2; 37 G. A., ch. 370, § 2; 38 G. A., ch. 105, §§ 2, 3; 39 G. A., ch. 209, § 23; 40 Ex. G. A., H. F. 84, § 47.]

3321. Expenses. Said agents shall receive their actual and necessary expenses incurred in the discharge of their duties. [S. S., '15, § 2692-c; 40 Ex. G. A., H. F. 84, § 48.]

3322. Receiving officers—duties. The stewards of the hospitals for the insane, the clerks of the prisons, and the proper officers, who shall be designated by the board, of the other institutions, shall each:

1. Have charge of and be accountable for all supplies and stores of such institution and be chargeable therewith, at their invoice value.

2. Issue stores and supplies upon requisition approved by the superintendent or other officer designated by the board, which requisition shall be his voucher therefor.

3. Present, monthly, to the board, an abstract of all expenditures, together with the accounts and pay rolls for the preceding month.

4. Examine and register all goods delivered, as to their amount and quality, and certify to the correctness of the bills therefor, if the goods correspond to the samples, are in good order, and correct in prices.

5. Take an invoice, quarterly, of the subsistence supplies and stock in his possession and control, and transmit a copy thereof, duly verified by him, to the board.

6. Make to the board, at the close of the biennial period, a consolidated report of all purchases and transactions of his department.

7. Pay into the state treasury, from time to time, such amount as the board may determine is necessary to reimburse the state for his negligent loss of such stores or supplies, and shall so do within sixty days of such determination by the board. If default be made in such payment, he shall be discharged and suit shall be brought on his bond. [S., '13, § 2727-a46; 40 Ex. G. A., H. F. 84, § 49.]

3323. Services required. Inmates of said institutions subject to the provisions hereinafter provided, may be required to render any proper and reasonable service either in the institutions proper or in the industries established in connection therewith. [S., '13, § 2727-a51; S. S., '15, § 5718-a11; 40 Ex. G. A., H. F. 84, § 50.]

3324. Custody. When an inmate of an institution is so working outside the institution proper, he shall be deemed at all times in the actual custody of the head of the institution. [S. S., '15, § 5718-a11; 40 Ex. G. A., H. F. 84, § 51.]

3325. Wages of inmates. When an inmate performs services for the state at an institution, the board of control may, when it deems such course practicable, pay such inmate such wage as it deems proper in view of the circumstances, and in view of the cost attending the maintenance of such inmate. In no case shall such wage exceed the amount paid to free labor for a like service or its equivalent. [S. S., '15, § 5718-a11a; 40 Ex. G. A., H. F. 84, § 52.]

3326. Deduction to pay court costs. If such wage be paid, the board may deduct therefrom an amount sufficient to pay all or a part of the costs taxed to such inmate by reason of his commitment to said institution. In such case the amount so deducted shall be forwarded to the clerk of the district court or proper official. [S. S., '15, § 5718-a11a; 40 Ex. G. A., H. F. 84, § 53.]

3327. Wages paid to dependent—deposits. If such wage be paid, the board may pay all

or any part of the same directly to any dependent of such inmate, or may deposit such wage to the account of such inmate, or may so deposit part thereof and allow the inmate a portion for his own personal use. All deposits shall be on the best attainable terms. [S. S., '15, § 5718-a11a; 40 Ex. G. A., H. F. 84, § 54.]

3328. Conferences. Quarterly conferences of the chief executive officers of said institutions shall be held with the board at Des Moines, for the consideration of all matters relative to the management of said institutions. Full minutes of such meetings shall be preserved in the records of the board. The board may cause papers to be prepared and read, at such conferences, on appropriate subjects. [S., '13, § 2727-a20; 40 Ex. G. A., H. F. 84, §§ 55, 56.]

3329. Scientific investigation. The board shall encourage the scientific investigation, on the part of the executive heads and medical staffs of the various institutions, as to the most successful methods of managing such institutions and treating the persons committed thereto, shall procure and furnish to such heads and staffs information relative to such management and treatment, and, from time to time, publish bulletins and reports of scientific and clinical work done in said institutions. [S., '13, § 2727-a27; 40 Ex. G. A., H. F. 84, § 57.]

3330. Monthly report. The chief executive officer of each institution shall, on the first day of each month, account to the board for all state funds received during the preceding month, and, at said time, remit the same to the treasurer of state. [S., '13, § 2727-a40; 40 Ex. G. A., H. F. 84, § 58.]

3331. Annual reports. The executive head of each institution shall make an annual report to the board and embrace therein a minute and accurate inventory of the stock and supplies on hand, and the amount and value thereof, under the following heads: Live stock, farm produce on hand, vehicles, agricultural implements, machinery, mechanical fixtures, real estate, furniture, and bedding in inmates' department, state property in superintendent's department, clothing, dry goods, provisions and groceries, drugs and medicine, fuel, library, and all other state property under appropriate heads to be determined by the board. [S., '13, §§ 2705-b, 2727-a32; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 59.]

3332. Contingent fund. The board may permit the executive head of each institution to retain a stated amount of funds in his possession as a contingent fund for the payment of freight, postage, commodities purchased on authority of the board on a cash basis, salaries, and bills granting discount for cash. [S. S., '15, § 2727-a44; 40 Ex. G. A., H. F. 84, § 60.]

3333. Requisition for contingent fund. If necessary, the board shall make proper requisition

upon the auditor of state for a warrant on the state treasurer to secure the said contingent fund for each institution. [S. S., '15, § 2727-a44; 40 Ex. G. A., H. F. 84, § 61.]

3334. Monthly reports of contingent fund. A full, minute, and itemized statement of every expenditure made during the month from such contingent fund shall be submitted by the proper officer of said institution to the board under such rules as said board may establish. [S. S., '15, § 2727-a44; 40 Ex. G. A., H. F. 84, § 62.]

3335. Supplies—competition. The board shall, in the purchase of supplies, afford all reasonable opportunity for competition, and shall give preference to local dealers and Iowa producers when such can be done without loss to the state. [S., '13, § 2727-a46; S. S., '15, § 2727-a50; 40 Ex. G. A., H. F. 84, § 63.]

3336. Dealers may file addresses. Jobbers or others desirous of selling supplies shall, by filing with the board a memorandum showing their address and business, be afforded an opportunity to compete for the furnishing of supplies, under such rules as the board may prescribe. [S. S., '15, § 2727-a50; 40 Ex. G. A., H. F. 84, § 64.]

3337. Samples preserved. When purchases are made by sample, the same shall be properly marked and retained for six months after the delivery of such purchase. [S. S., '15, § 2727-a50; 40 Ex. G. A., H. F. 84, § 65.]

3338. Purchase from institutions. The board may purchase supplies of any institution under its control, for use in any other such institution, and reasonable payment therefor shall be made as in case of other purchases. [S., '13, § 2727-a47; 40 Ex. G. A., H. F. 84, § 66.]

3339. Purchase of supplies. The board shall, from time to time, adopt and make of record, rules and regulations governing the purchase of all articles and supplies needed at the various institutions, and the form, verification, and audit of vouchers for such purchases. [S., '13, §§ 2727-a41, 2727-a42, 2727-a49; 40 G. A., ch. 53, § 1; 40 Ex. G. A., H. F. 84, § 67.]

3340. Certified abstracts. When vouchers for expenditures other than salaries have been duly audited, the secretary of the board shall prepare, in duplicate, an abstract showing the name, residence, and amount due each claimant and the institution and fund thereof on account of which the payment is made. The correctness of said abstracts shall, under the seal of the board, be certified by said secretary and by at least one member of the board. The original abstract shall be delivered to the auditor of state. The duplicate shall be retained in the office of the board. [S., '13, § 2727-a43; 40 G. A., ch. 53, § 1; 40 Ex. G. A., H. F. 84, § 68.]

3341. Warrants. Upon such certificate the auditor of state shall, if the institution named has sufficient funds, issue his warrants upon the treasurer of state for the amounts and to the claimants indicated thereon. The auditor of state shall deliver the warrants thus issued to the board, who will cause same to be transmitted to the payees thereof. [S., '13, § 2727-a43; 40 G. A., ch. 53, § 1; 40 Ex. G. A., H. F. 84, § 68-a1.]

3342. Monthly pay rolls. At the close of each month, the chief executive officer of each institution shall prepare and forward to the board a monthly pay roll which shall show the name of each officer and employee, when first employed, the monthly pay, time paid for, the amount of pay, and any deductions for the careless loss or destruction of property.

In no event shall a substitute be permitted to receive compensation in the name of the employee for whom he is acting. [S., '13, § 2727-a43; 40 G. A., ch. 53, § 1; 40 Ex. G. A., H. F. 84, § 68-a2.]

3343. Payment. After said pay roll has been audited by the board, abstracts thereof shall be prepared, certified to, and filed with the auditor of state and in the records of the board and warrants issued thereon as provided in case of disbursements other than salaries, except that the auditor of state shall draw one warrant in favor of the executive head of the institution in question for the sum total of said pay roll. [S., '13, § 2727-a43; 40 G. A., ch. 53, § 1; 40 Ex. G. A., H. F. 84, § 68-a3.]

3344. Combining appropriations. The auditor of state is authorized to combine the balances carried in all specific appropriations into a special account for each institution under the control of the board of control, except that the support fund for each institution shall be carried as a separate account. [S., '13, § 2727-a43; 40 G. A., ch. 53, § 1; 40 Ex. G. A., H. F. 84 § 68-a6.]

3345. State architect. Said board may employ a competent architect, and such draftsmen as may be authorized by law. Said architect shall, in addition to salary, be reimbursed for his actual and necessary expenses within the state while engaged in official business. In cases of sufficient magnitude the board may secure the advice of a consulting architect, or may secure plans and specifications from other architects, at a cost not exceeding one thousand five hundred dollars in any year. [S., '13, § 2727-a23; 39 G. A., ch. 209, § 27; 40 Ex. G. A., H. F. 84, § 69.]

3346. Plans and specifications. Said board shall cause plans and specifications to be prepared for all improvements authorized and costing over one thousand dollars. No appropriation for any improvement shall be expended until the adoption of suitable plans and specifications, prepared by a competent architect, and accompanied by a detailed statement of the amount, quality, and description of all material

and labor required for the completion of such improvement.

No plans shall be adopted, and no improvement shall be constructed, which contemplates an expenditure of money in excess of the appropriation. [S., '13, § 2727-a17; 40 Ex. G. A., H. F. 84, § 70.]

3347. Letting of contracts. The board shall, in writing, let all contracts for authorized improvements costing in excess of three hundred dollars to the lowest responsible bidder, after such advertisement for bids as the board may deem proper in order to secure full competition. The board may reject all bids and readvertise. [S., '13, § 2727-a51; 40 Ex. G. A., H. F. 84, § 71.]

3348. Preliminary deposit. A preliminary deposit of money, or certified check upon a solvent bank in such amount as the board may prescribe, shall be required as an evidence of good faith, upon all proposals for the construction of said improvements, which deposit or certified check shall be held under the direction of the board. [S., '13, § 2727-a51; 40 Ex. G. A., H. F. 84, § 72.]

3349. Improvements by day labor. Authorized improvements costing three hundred dollars or less may, under authorization of the board, be made by the executive head of any institution by day labor. [S., '13, § 2727-a51; 40 Ex. G. A., H. F. 84, § 73.]

3350. Improvements at institutions. The requirement that contracts in excess of three hundred dollars shall be let under contract shall not be mandatory as to improvements at any institution where the labor of inmates may be utilized on the particular work to be done, to the advantage of the inmates or of the state. [S., '13, § 2727-a51; 40 Ex. G. A., H. F. 84, § 74.]

3351. Payment for improvements. No payment shall be authorized for construction purposes until satisfactory proof has been furnished to the board of control, by the proper officer or supervising architect, that the contract has been complied with by the parties; and all payments shall be made in a manner similar to that in which the current expenses of the several institutions are paid. [S., '13, § 2727-a51; 40 Ex. G. A., H. F. 84, § 75.]

3352. Property of deceased inmate. The chief executive officer of each institution shall, upon the death of any inmate or patient, immediately take possession of all property of the deceased left at said institution, and deliver the same to the duly appointed and qualified representative of the deceased. [S., '13, § 2727-a72; 40 Ex. G. A., H. F. 84, § 76.]

3353. Property of small value. If administration be not granted within one year from the date of the death of the decedent, and the value of the estate of decedent is so small as to make the granting of administration inadvisable, then delivery of the money and other property

left by the decedent may be made to the surviving spouse and heirs of the decedent. [S., '13, § 2727-a72; 40 Ex. G. A., H. F. 84, § 77.]

3354. When no administration granted. If administration be not granted within one year from the death of decedent, and no surviving spouse or heir is known, said executive officer may convert all said property into money and in so doing he shall have the powers possessed by a general administrator. [S., '13, § 2727-a72; 40 Ex. G. A., H. F. 84, § 78.]

3355. Money deposited with treasurer of state. Said money shall be transmitted to the treasurer of state as soon after one year after the death of the intestate as practicable, and be credited to the support fund of the institution of which the intestate was an inmate. [S., '13, § 2727-a72; 40 Ex. G. A., H. F. 84, § 79.]

3356. Permanent record. A complete permanent record of the money so sent, showing by whom and with whom it was left, its amount, the date of the death of the owner, his reputed place of residence before he became an inmate of the institution, the date on which it was sent to the state treasurer and any other facts which may tend to identify the intestate and explain the case, shall be kept by the chief executive officer of the institution and a transcript thereof shall be sent to, and kept by, the treasurer of state. [S., '13, § 2727-a72; 40 Ex. G. A., H. F. 84, § 80.]

3357. Payment to party entitled. Said money shall be paid, at any time within ten years from the death of the intestate, to any person who is shown to be entitled thereto. Payment shall be made from the state treasury out of the support fund of such institution in the manner provided for the payment of other claims from that fund. [S., '13, §§ 2727-a73, 2727-a74; 40 Ex. G. A., H. F. 84, § 81.]

3358. Special policemen. The board may, by order entered of record, commission one or more of the employees at each of said institutions as special police. Such police shall, on the premises of the institution of which they are employees, and in taking an inmate into custody, have and exercise the powers of regular peace officers. No additional salary shall be granted by reason of such appointment. [S., '13, § 2727-a71; 40 Ex. G. A., H. F. 84, § 82.]

3359. Temporary quarters in emergency. In case the buildings at any institution under the management of the board of control are destroyed or rendered unfit for habitation by reason of fire, storms, or other like causes, to such an extent that the inmates can not be there confined and cared for, said board shall make temporary provision for the confinement and care of the inmates at some other place in the state. Like provision may be made in case any pestilence breaks out among the inmates. The

reasonable cost of the change, including transfer of inmates, shall be paid from any money in the state treasury not otherwise appropriated. [C., '51, § 3143; R., '60, § 5156; C., '73, § 4795; C., '97, § 5693; S. S., '15, § 2713-n18; 40 Ex. G. A., H. F. 84, § 83.]

3360. Industries. The board may establish such industries as it may deem advisable at or in connection with any of said institutions. [S. S., '15, § 5718-a11; 40 Ex. G. A., H. F. 84, § 84.]

3361. Sterilization of patients. The operation of sterilization may be performed on any inmate of any of the institutions under the control and management of the board of control when such patient is afflicted with insanity, idiocy, imbecility, feeble mindedness, or syphilis, but only after all the following conditions have been complied with:

1. The superintendent of the hospital must determine, and a majority of his medical staff must concur therein, that the performance of such operation is for the best interests of the patient and society.

2. The performance of such operation must be approved by a majority of the members of the board of control.

3. The husband or wife of the patient, if known and living in this state, must consent in writing to such operation; if the patient is unmarried the parent, guardian, or next of kin, if known and living in this state, must so consent. [S. S., '15, § 2600-s2; 40 Ex. G. A., H. F. 84, § 85.]

3362. Operation defined. The operation to be performed upon a male person shall be what is known as vasectomy, and upon a female patient what is known as section of the fallopian tubes with implantation in the uterine muscles. [S. S., '15, § 2600-s3; 40 Ex. G. A., H. F. 84, § 86.]

3363. Performance of operation. The operation shall be performed by some capable physician or surgeon to be selected by the superintendent of the hospital. [S. S., '15, § 2600-s2; 40 Ex. G. A., H. F. 84, § 87.]

3364. Unlawful operation. Every person who shall, except as authorized in the last three preceding sections, perform on any person either of the operations named, for the purpose of destroying the power of procreation, unless the performance of such operation is a medical necessity, shall be guilty of a misdemeanor. [S. S., '15, § 2600-s5; 40 Ex. G. A., H. F. 84, § 88.]

3365. Biennial report. The board of control shall include in its regular biennial report, all proceedings under the preceding sections relating to sterilization, with such observations and statistics as may be deemed advisable. [S. S., '15, § 2600-s4; 40 Ex. G. A., H. F. 84, § 89.]

CHAPTER 168
SOLDIERS' HOME

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3366. Right to admission. The following named persons are entitled to admission into the Iowa soldiers' home if they do not have sufficient means or ability to support themselves:

1. A person who has been commissioned, enlisted, or inducted into the military or naval service of the United States and who served in Iowa military organizations, or who was accredited to Iowa, or who was a resident of Iowa when he was so commissioned, enlisted, or inducted, a member of the northern border brigade, and the lawful wife, if any, of such person at the time of his original admission, without regard to residence in this state at the time original application is made.

2. A person who has been so commissioned, enlisted, or inducted, and who served in military organizations of other states, or was accredited to another state, and the lawful wife, if any, of such person, if they have been residents of Iowa for three years next preceding the date of application.

3. A woman who, prior to 1910, married any man within the above classes, and who, at the time of application for admission to the home, is his widow, or who, at said time, has been divorced without fault on her part. A subsequent marriage shall not deprive such woman of the right to admission to said home, nor, in case of divorce, shall such right to admission depend upon the presence of the former husband in the home as a member, but if said woman was the wife of a person of the class named in paragraph 2 hereof, she shall not be admitted except on proof of a residence which would have entitled the husband to admission. [C., '97, §§ 2601, 2602, 2606; S., '13, §§ 2601, 2602; S. S., '15, § 2606; 38 G. A., ch. 196, § 1; 39 G. A., ch. 148, §§ 1-3; 40 Ex. G. A., H. F. 84, § 90.]

3367. Eligibility of applicants. The board of control shall determine the eligibility of all applicants for admission to the home. [C., '97, § 2603; 40 Ex. G. A., H. F. 84, § 91.]

3368. Husband and wife. Husbands and wives may be permitted to occupy, together, cot-

tages or other quarters on the grounds of the home. [C., '97, § 2606; S. S., '15, § 2606; 39 G. A., ch. 148, § 3; 40 Ex. G. A., H. F. 84, § 92.]

3369. Certificate as to residence—records. Before admission, such person, if a resident of this state, shall file with the commandant an affidavit, signed by the board of supervisors of the county in which such person resides, that such person, to the best of its knowledge and belief, is a resident of such county. If such person is not a resident of this state, he shall file proof, by affidavit, showing his place of residence. Such affidavit shall be conclusive evidence of the residence of such person in all matters affecting the liability of the county with respect to any expenses of such person for which the county may be liable. All records of admission shall show the residence of the applicant. [C., '97, § 2602; S., '13, § 2602; 40 Ex. G. A., H. F. 84, § 93.]

3370. Residence of members. The residence of a member who is discharged or who voluntarily leaves the home shall be that of the county of which he was a resident at the time of his admission. [C., '97, § 2605; 40 Ex. G. A., H. F. 84, § 94.]

3371. Nondependents. The board may, if there is room for all dependent applicants and members, admit and allow to remain in the home, persons who have sufficient means for their own support, but are otherwise eligible to become members of the home, on payment of the cost of their support, which cost shall be fixed from time to time by the board of control. [S., '13, § 2602-a; 40 Ex. G. A., H. F. 84, § 95.]

3372. Funds from nondependents. All money paid under the provisions of the preceding section shall be received by the commandant and remitted each month to the treasurer of state and placed to the credit of the general fund of the state. [S., '13, § 2602-a; 40 Ex. G. A., H. F. 84, § 96.]

3373. Salary. The commandant shall be the chief executive officer and receive an annual

salary of twenty-eight hundred dollars. [C., '97, § 2604; S. S., '15, § 2604; 37 G. A., ch. 395, § 1; 38 G. A., ch. 307, § 1; 40 Ex. G. A., H. F. 84, § 97.]

3374. Qualifications of commandant. The commandant shall possess an honorable discharge from the United States army or navy, except that when such person is not available for the office any other suitable person may be appointed. [C., '97, § 2604; S. S., '15, § 2604; 40 Ex. G. A., H. F. 84, § 98.]

3375. Subordinate officers. Among the subordinate officers of said home there shall be an adjutant, a quartermaster, and a chief surgeon, each of whom shall possess the same qualifications as the commandant, provided such a person is obtainable. [C., '97, § 2604; S. S., '15, § 2604; 40 Ex. G. A., H. F. 84, § 99.]

3376. Home and supplies. The adjutant, quartermaster, chief surgeon, and chaplain shall be furnished, without charge, the use of the houses erected by the state and now occupied by such officers, together with lights, heat, fuel, ice, and water. [S. S., '15, § 2604; 40 Ex. G. A., H. F. 84, § 100.]

3377. Pension money. Pension money received from the federal government shall not be applied to the support, in said home, of any member, nor shall such member be deprived of any part of such pension money except as hereinafter provided. [S., '13, §§ 2602-a, 2606-a; 40 Ex. G. A., H. F. 84, § 101.]

3378. Effect of convictions. Any person who, while a member of the home, is twice convicted of an offense against the statutes of the state, or twice convicted by the commandant or a court martial of intoxication or other infraction of the rules of the home, shall be required to deposit all his pension money with the commandant immediately upon receipt of his pension warrant. In lieu of a trial by the commandant, the member may demand a court martial. [S., '13, § 2606-b; 40 Ex. G. A., H. F. 84, § 102.]

3379. Payment to dependents. When said money is so deposited, the commandant shall pay one-half thereof to the pensioner's wife, child, or parent who is dependent on him for support. If there be two or more such dependent relatives, the commandant shall pay said one-half to those dependents who are most

needy. [S., '13, § 2606-b; 40 Ex. G. A., H. F. 84, § 103.]

3380. Money deposited. The remaining one-half of such pension money, and all of said money in case the pensioner has no such dependents, shall, in case of such conviction, be deposited by the commandant for and on behalf of such pensioner, and the commandant shall, under such rules as the board of control may provide, pay the same out, with the consent of the pensioner, in such manner and for such purposes as the board may approve. [S., '13, § 2606-b; 40 Ex. G. A., H. F. 84, § 104.]

3381. Return of deposit. If, after such deposit is made, the pensioner abstains from all violations of the law for a period of ten months after such conviction, he shall be entitled to receive, from said deposit, two dollars for the eleventh month, and four dollars for the twelfth month. If, during said two months, the pensioner shall conduct himself in an orderly and sober manner, said deposit shall be returned to him. [S., '13, § 2606-b; 40 Ex. G. A., H. F. 84, § 105.]

3382. Deposit in case of discharge. If the depositor be discharged from the said home, any balance of such deposit, after his railroad ticket has been purchased, shall be paid to such pensioner within thirty days after his discharge. [S., '13, § 2606-b; 40 Ex. G. A., H. F. 84, § 106.]

3383. Assignment of deposit. No assignment of pension money deposited with the commandant nor any claim therefor shall be valid. [S., '13, § 2606-b; 40 Ex. G. A., H. F. 84, § 107.]

3384. In case of dependents. Each member of the home who receives a pension, and who has a dependent wife or minor children, shall deposit with the commandant forthwith on receipt of his pension check one-half of the amount thereof, which shall be sent at once to the wife if she be dependent upon her own labor or others for support, or, if there be no wife, to the guardian of the minor children if dependent upon others for support. The commandant, if satisfied that the wife has deserted her husband, or is of bad character, or is not dependent upon others for support, may pay the money deposited as aforesaid to the guardian of the dependent minor children. [S., '13, § 2606-c; 40 Ex. G. A., H. F. 84, § 108.]

CHAPTER 169

STATE SANATORIUM

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3385. Designation. The state sanatorium for the treatment of tuberculosis shall hereafter be known as the state sanatorium. [S., '13, § 2727-a75; 40 Ex. G. A., H. F. 84, § 111.]

3386. Object and purposes. The state sanatorium shall be devoted solely to the care and treatment of pulmonary tuberculosis, both in its incipient and advanced stages, of residents of this state. [S., '13, § 2727-a75; 40 Ex. G. A., H. F. 84, § 112.]

3387. Qualifications of superintendent. The superintendent shall be a well educated physician of at least five years' experience in the practice of medicine. He shall reside at the sanatorium. [S., '13, §§ 2727-a76, 2727-a81; 38 G. A., ch. 171, § 1; 40 Ex. G. A., H. F. 84, § 113.]

3388. Salaries. The annual salary of the superintendent shall be fixed by the board of control at an amount not exceeding twenty-five hundred dollars. [S., '13, § 2727-a76; 40 Ex. G. A., H. F. 84, § 114.]

3389. Duties. Said superintendent shall:
 1. Perform such duties as may be provided by law or by said board.

2. Oversee and secure the individual treatment and professional care of each patient.

3. Prescribe rules, subject to the approval of said board, for the application, examination, reception, discharge, and government of patients.

4. Keep a full record of the condition of each patient.

5. Encourage and assist in the establishment of hospitals throughout the state, especially in cities, for the treatment of tuberculosis.

6. Furnish to each applicant for admission proper blanks on which to make the application. [S., '13, § 2727-a81; 40 Ex. G. A., H. F. 84, § 115.]

3390. Admission. An applicant for admission to the sanatorium shall first secure a thorough examination of his condition by a physician licensed to practice medicine in this state, for the purpose of determining whether

said applicant is afflicted with pulmonary tuberculosis. Said examining physician shall, as accurately as possible, fill out the blanks furnished for that purpose, and at once mail the same to the superintendent. [S., '13, § 2727-a82; 38 G. A., ch. 171, § 2; 40 Ex. G. A., H. F. 84, § 116.]

3391. Additional showing. The superintendent, in addition to the record of said examination, may demand of the applicant further showing as to his eligibility for admission. In case of doubt, the superintendent shall personally examine said applicant in case the applicant presents himself at the institution. If the applicant appears to be a bona fide resident of this state and is otherwise eligible for admission, he shall be received at the institution, provided there is room for him. [S., '13, § 2727-a82; 38 G. A., ch. 171, § 2; 40 Ex. G. A., H. F. 84, § 117.]

3392. Waiting list. If, at the time admission is granted, the applicant can not, for any reason, be then received, his name shall be regularly entered on a waiting list and applicants shall be admitted in that order. [S., '13, § 2727-a82; 38 G. A., ch. 171, § 2; 40 Ex. G. A., H. F. 84, § 118.]

3393. Department for advanced stages. The superintendent shall create a separate department for persons afflicted with pulmonary tuberculosis in advanced stages. If it be impossible to receive all such patients, preference shall be given to those most in need of treatment, and those whose condition is most dangerous to the public. [S., '13, § 2727-a91; 40 Ex. G. A., H. F. 84, § 119.]

3394. Transfers. Patients may be transferred from the department for incipient cases to the department for advanced cases and vice versa. [S., '13, § 2727-a91; 40 Ex. G. A., H. F. 84, § 120.]

3395. Indigent patients. The state shall, on certificate of the superintendent approved by the board of control, pay, out of any money in the state treasury not otherwise appropri-

ated, the actual and necessary expense attending the transportation of an accepted applicant for admission, to and from the sanatorium, and the expense of treating said applicant at said institution, if said applicant is unable to pay the same and such fact is certified to by the board of health of the city, town, or township, as the case may be, depending on the residence of said applicant. [S., '13, § 2727-a84; 40 Ex. G. A., H. F. 84, § 121.]

3396. Advancing transportation expense. In cases contemplated by the preceding section, the superintendent shall certify an itemized estimate of the expense attending such transportation, which certificate when approved by the board of control shall be filed with the auditor of state who shall thereupon issue his warrant to the superintendent for said amount. Within thirty days thereafter the superintendent shall file with said auditor, an itemized and verified statement, approved by the board, of the actual and necessary expense attending said transportation, together with the receipt of the treasurer of state for any part of said warrant not expended. If said warrant prove insufficient, said certificate shall show the amount of such deficiency, and the auditor shall at once issue his warrant therefor. [40 Ex. G. A., H. F. 84, § 122.]

3397. Certificates as to number of inmates. The superintendent, on the first day of each month, shall certify to the board the average number of inmates supported by the state in said institution for the preceding month. [S., '13, § 2727-a85; 40 Ex. G. A., H. F. 84, § 124.]

3398. Certificate of monthly allowance. Upon receipt of such certificate, the board

shall, on the basis of the per capita allowance as fixed by it, certify to the auditor and treasurer of state the total amount payable for the care, treatment, and maintenance of the patients supported by the state for the preceding month, and the auditor and treasurer of state shall credit said institution with said amount. The amount so credited shall be drawn from the state treasury in the manner provided in chapter 167. [S., '13, § 2727-a85; 40 Ex. G. A., H. F. 84, § 125.]

3399. Liability of county. Each county shall be liable to the state for the support of all patients from that county in the state sanatorium. The amounts due shall be certified by the superintendent to the auditor of state, who shall collect the same from the counties liable, at the times and in the manner required for the certification and collection of money from counties for the support of insane patients. [S., '13, § 2727-a86; 40 Ex. G. A., H. F. 84, § 127.]

3400. Liability of patients and others. Patients in the sanatorium and persons legally bound for their support shall be liable for the maintenance of patients in the sanatorium. [S., '13, § 2727-a86; 40 Ex. G. A., H. F. 84, § 128.]

3401. Patients and others liable. The provisions of law for the collection by boards of supervisors of amounts paid by their respective counties from the estates of insane patients and from persons legally bound for their support shall apply in cases of patients cared for in the sanatorium. [S., '13, § 2727-a86; 40 Ex. G. A., H. F. 84, § 129.]

CHAPTER 170

INSTITUTION FOR FEEBLE MINDED

- 3402. Objects.
- 3403. Salary.
- 3404. Departments.
- 3405. Admission and discharge.
- 3406. Clothing.

3402. Objects. The institution for the feeble minded at Glenwood shall be maintained for the training, instruction, care, and support of feeble-minded residents of the state. [C., '97, §§ 2693, 2695, 2699; S., '13, §§ 2695-a, 2695-c; 39 G. A., ch. 129, §§ 1, 2; 40 Ex. G. A., H. F. 84, § 131.]

3403. Salary. The superintendent shall receive a salary of three thousand dollars per year. [S., '13, § 2727-3a; 38 G. A., ch. 75, § 1; 40 Ex. G. A., H. F. 84, § 132.]

3404. Departments. The board of control shall, as far as possible, create separate departments for separate classes of inmates. [C., '97, § 2699; 40 Ex. G. A., H. F. 84, § 133.]

3405. Admission and discharge. Admission to said institution may be either volun-

- 3407. Certificate to auditor of state.
- 3408. Duplicate receipts.
- 3409. Liability of inmate.
- 3410. Release from liability.

tary, by parents, guardian, or county attorney, under such rules as the board may prescribe, or by commitments under the following chapter of this title. The board may at any time return any inmate to its parent or guardian. [C., '97, §§ 2693, 2696, 2698; 40 Ex. G. A., H. F. 84, § 134.]

3406. Clothing. The superintendent shall supply all inmates with clothing when not otherwise supplied. The actual cost thereof, together with the cost of transporting said inmate, shall be certified by the superintendent to the auditor of the county of the inmate's residence, and the board of supervisors shall allow the same and cause the amount to be remitted to the treasurer of state. Said certificate shall be presumed to be correct. [C., '97, § 2697; 40 Ex. G. A., H. F. 84, § 135.]

3407. Certificate to auditor of state. A duplicate of said certificate shall be forwarded to the auditor of state who shall charge the county accordingly, and the treasurer and auditor of state shall credit the home with the same amount. [C., '97, § 2697; 40 Ex. G. A., H. F. 84, § 136.]

3408. Duplicate receipts. The treasurer of state, on receipt of payment from the county, shall forward duplicate receipts to the county auditor who shall in return forward one of said receipts to the auditor of state. [40 Ex. G. A., H. F. 84, § 137.]

3409. Liability of inmate. Said inmate and those legally liable for his support shall be liable to the county for all clothing aforesaid and for all costs of transporting said inmate. [C., '97, § 2697; 40 Ex. G. A., H. F. 84, § 138.]

3410. Release from liability. The board of supervisors, on proper showing of the financial condition of the parties named in the preceding section, may release any of said parties from said liability. [C., '97, § 2697; 40 Ex. G. A., H. F. 84, § 139.]

CHAPTER 171

GUARDIANSHIP AND CUSTODY OF FEEBLE MINDED

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3411. "Feeble minded" defined. The words "feeble-minded person" in this chapter shall be construed to mean any person afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of controlling himself and his affairs and requires supervision, control, and care for his own welfare, or for the welfare of others, or for the welfare of the community, and who is not classifiable as an "insane person" within the meaning of the provisions of the chapters of this title relating to the insane. [C., '97, § 2699; 38 G. A., ch. 356, § 1; 40 Ex. G. A., H. F. 84, § 141.]

3412. Duty of county attorney. The county attorney shall, if requested, appear on behalf of any petitioner for the appointment of a guardian or commitment of an alleged feeble-minded person, under this chapter, and on behalf of all public officials and superintendents in all matters pertaining to the duties herein imposed upon them. [40 Ex. G. A., H. F. 84, § 142.]

3413. Petition. A petition for the adjudication of the feeble mindedness of a person within the meaning of this chapter may, with the permission of the court, or judge, be filed, without fee, against such person, with the clerk of the district, superior, or municipal court of the county or city in which such alleged feeble-minded person resides or is found, by any relative of such person, or by his or her guardian, or by any reputable citizen of the county of such residence or of such place of finding. [38 G. A., ch. 356, § 2; 40 Ex. G. A., H. F. 84, § 143.]

3414. Sufficiency of petition. Said petition shall be verified by affidavit, may be on information or belief, and shall state:

1. That such person is feeble minded within the meaning of this chapter.

2. That it is dangerous to the welfare of the community for such person to be at large without care or control and the facts tending to show such danger.

3. The name and residence of all persons, so far as known, supervising, caring for, or supporting such person, or assuming, or under obligations, to do so.

4. The name and residence, if known, of the parents of such person, and of all other persons legally chargeable with the supervision, care, or support of such person.

5. Whether such person has been examined by a qualified physician with a view of determining his mental condition. [38 G. A., ch. 356, § 2; 40 Ex. G. A., H. F. 84, § 144.]

3415. Names of witnesses. There shall be indorsed on the petition the names of all obtainable witnesses known to the petitioner by which the allegations of the petition may be established. [38 G. A., ch. 356, § 2; 40 Ex. G. A., H. F. 84, § 145.]

3416. Additional parties. The following persons, in addition to the alleged feeble-minded person, shall be made party defendants if they reside in this state and their names and residences are known:

1. The parent or parents of said principal defendant.

2. The person with whom said principal defendant is living.

3. The person or persons assuming to give the principal defendant care and attention.

4. The guardian, if there be such, of the person or property of the principal defendant. [38 G. A., ch. 356, § 2; 40 Ex. G. A., H. F. 84, § 146.]

3417. Notice. Notice of the pendency of said petition and of the time and place of hearing thereon shall be served upon all defendants who are residents of the county in which the petition is filed, in the manner in which original notices are served. The court or judge shall, by written order, direct the manner and time of service on all other parties. No notice need be served on those who are personally before the court. Said notice shall require the defendants to bring said alleged feeble-minded person into court at the time and place named. [38 G. A., ch. 356, §§ 2, 3; 40 Ex. G. A., H. F. 84, § 147.]

3418. Time of appearance. The time of appearance shall not be less than five days after completed service, unless the court or judge orders otherwise. [38 G. A., ch. 356, § 3; 40 Ex. G. A., H. F. 84, § 148.]

3419. Hearing—default. The hearing may be had in term time or in vacation. The petition shall be taken as confessed by all defendants, except the principal defendant, who are duly served and who do not appear at the time required by the notice. [38 G. A., ch. 356, § 3; 40 Ex. G. A., H. F. 84, § 149.]

3420. Custody pending hearing. Pending final hearing, the court may, at any time after the filing of the petition, and on satisfactory showing that it is for the best interest of the alleged feeble-minded person and of the community that such person be at once taken

into custody, or that service of notice will be ineffectual if he is not taken into custody, issue a warrant for the immediate production of such person before the court. In such case the court or judge may make any proper order for the custody or confinement of such person as will protect the defendant and the community and insure the presence of such person at the hearing. Such person shall not be confined with those accused or convicted of crime. [38 G. A., ch. 356, § 4; 40 Ex. G. A., H. F. 84, § 150.]

3421. Interrogatories. The court may require the petitioner to answer under oath such interrogatories as may be propounded by the board of control on forms provided by said board. [38 G. A., ch. 356, § 5; 40 Ex. G. A., H. F. 84, § 151.]

3422. Pleadings—trial. Answers need not be, but may be, filed. The hearing on the allegations of the petition shall be as in equitable proceedings. [38 G. A., ch. 356, § 3; 40 Ex. G. A., H. F. 84, § 152.]

3423. Trial. Trials shall be public, unless otherwise requested by the parent, guardian, or other person having the custody of the feeble-minded person. [40 Ex. G. A., H. F. 84, § 153.]

3424. Commission to examine. The court shall, at or prior to the final hearing, appoint a commission of two qualified physicians, or of one qualified physician and one qualified psychologist, each of whom shall be residents of the county, who shall make a personal examination of the alleged feeble-minded person for the purpose of determining his mental condition. [38 G. A., ch. 356, §§ 5, 6; 40 Ex. G. A., H. F. 84, § 154.]

3425. Report of commission. Said commission shall report in writing to the court the facts attending the mental condition of said person and its conclusion based thereon and its recommendations concerning such person. It shall also report to the court sworn answers to such questions as may be required on forms to be prepared and furnished by the board of control. Such reports shall be filed with the clerk of the court. [38 G. A., ch. 356, § 6; 40 Ex. G. A., H. F. 84, § 155.]

3426. Ruling on report. No objections or exceptions need be made to said report. The court may set the report aside, and may order a new examination by the same or by a new commission, or may make such findings of fact in lieu of said report as may be justified by the evidence before the court. [38 G. A., ch. 356, § 7; 40 Ex. G. A., H. F. 84, § 156.]

3427. Commission omitted. No commission need be appointed in those cases where the feeble mindedness of the person is manifest to the court or judge. [40 Ex. G. A., H. F. 84, § 157.]

3428. Guardianship or commitment. If it be found that said person is feeble minded,

and that it will be conducive to the welfare of such person and to the community to place such person under guardianship, or to commit such person to some proper institution for treatment, the court or judge shall, by proper order:

1. Appoint a guardian of the person of such person, provided no such guardian has already been appointed.

2. Commit such person to any state institution for the feeble minded.

3. Commit such person to a private institution of this state, duly incorporated for the care of such persons, and approved by the board of control, provided such institution is willing to receive such person. [38 G. A., ch. 356, § 8; 40 Ex. G. A., H. F. 84, § 158.]

3429. Jurisdiction over commitment. The person committed to any private institution shall remain under the jurisdiction of the court and the order of commitment may at any time be set aside or modified by changing the place of or terminating the commitment, and appointing a guardian in lieu thereof; but this section shall not deprive the board of power to transfer committed patients from one institution to another. [38 G. A., ch. 356, § 8; 40 Ex. G. A., H. F. 84, § 159.]

3430. Powers of guardian. A guardian appointed hereunder shall have the same power over the person of his ward as possessed by a parent over a minor child, but shall be subordinate to any duly appointed guardian of the property of such ward. [38 G. A., ch. 356, §§ 8, 9; 40 Ex. G. A., H. F. 84, § 160.]

3431. Jurisdiction of court — removal. Guardianship proceedings shall remain under the jurisdiction of the court. The court or judge may at any time, on application of any reputable person, terminate such guardianship, or remove the guardian and appoint a new guardian, or may order that such feeble-minded person be removed from the custody of the guardian and committed to an institution of the class heretofore specified. [38 G. A., ch. 356, § 10; 40 Ex. G. A., H. F. 84, § 161.]

3432. Modification of order. No order shall be made discharging or varying a prior order placing the feeble-minded person under guardianship without giving one or more of the relatives or a friend of the feeble-minded person, his guardian, or the board of control, notice and an opportunity to be heard. [38 G. A., ch. 356, § 10; 40 Ex. G. A., H. F. 84, § 162.]

3433. Inability to receive patient. If the state institution is unable forthwith to receive such person, the superintendent shall notify the court or judge of the time when such person will be received and in the meantime the said person shall be restrained and cared for under such order as the court may enter. [38 G. A., ch. 356, § 11; 40 Ex. G. A., H. F. 84, § 163.]

3434. Warrant of commitment. Upon the entry of an order of commitment, the clerk

shall deliver to any suitable person designated by the court or judge, a warrant of commitment, and a duplicate thereof, commanding such person forthwith to deliver the committed person to the institution designated by the court. [38 G. A., ch. 356, §§ 11, 12; 40 Ex. G. A., H. F. 84, § 164.]

3435. Assistants. The judge may, for the purpose of committing said person, direct the clerk to authorize the employment of one or more assistants. No feeble-minded female shall be taken to the institution by any male person not her husband, father, brother, or son, without the attendance of some woman of good character and mature age. [38 G. A., ch. 356, § 12; 40 Ex. G. A., H. F. 84, § 165.]

3436. Receipt for patient. The superintendent shall, on the warrant of commitment, receipt for said person. The duplicate warrant shall be left with the superintendent and shall be his sufficient authority to restrain and care for said committed person. [38 G. A., ch. 356, § 12; 40 Ex. G. A., H. F. 84, § 166.]

3437. Return on warrant. The person executing said warrant shall make due return thereon of his doings and forthwith file the same with the clerk. [38 G. A., ch. 356, § 12; 40 Ex. G. A., H. F. 84, § 167.]

3438. Discharge—habeas corpus. No person committed hereunder shall be discharged from the institution except as herein provided, except that nothing herein shall abridge the right of petition for a writ of habeas corpus. [38 G. A., ch. 356, § 13; 40 Ex. G. A., H. F. 84, § 168.]

3439. Petition for discharge. A petition for the discharge of a person who has been committed to an institution under this chapter, or to vary such order of commitment, may at any time after six months from the date of such commitment be filed by the person committed or by any reputable person. If the commitment be to a private institution, the petition shall be filed with the court or judge ordering such commitment. If the commitment be to a state institution, the petition shall be filed in the proper court of the county where the institution is situated. [38 G. A., ch. 356, § 13; 40 Ex. G. A., H. F. 84, § 169.]

3440. Discharge—modifications of orders. Discharges and modifications of orders may be made on any of the following grounds:

1. That the person adjudged to be feeble minded is not feeble minded.

2. That said person has so far improved as to be capable of caring for himself.

3. That the relatives or friends of the feeble-minded person are able and willing to support and care for him and request his discharge, and in the judgment of the superintendent of the institution having the person in charge, no evil consequences are likely to follow such discharge.

4. That, for any other cause, said discharge should be made or such modification should

be entered. [38 G. A., ch. 356, § 13; 40 Ex. G. A., H. F. 84, § 170.]

3441. Notice of application. Notice of the hearing shall be served on the superintendent of the institution and on such parties as the court or judge may find from the record are interested. [38 G. A., ch. 356, § 13; 40 Ex. G. A., H. F. 84, § 171.]

3442. Discharge or modification of order. On the hearing, the court may discharge the feeble-minded person from all supervision, control, and care, or may place him under guardianship, or may transfer him from a public institution to a private institution, or vice versa, as the court thinks fit under all the circumstances. [38 G. A., ch. 356, § 13; 40 Ex. G. A., H. F. 84, § 172.]

3443. Adjudication. The denial of one petition for discharge or modification shall be no bar to another on the same or different grounds within a reasonable time thereafter, such reasonable time to be determined by the court. [38 G. A., ch. 356, § 13; 40 Ex. G. A., H. F. 84, § 173.]

3444. Examination of patient. When a person is committed to an institution, the superintendent, under regulations of the board of control, shall cause the person to be examined, touching his mental condition, and if, on such examination, it is found that the person is not feeble minded, it shall be the duty of the superintendent to petition the court immediately for his discharge or a modification of the order sending such person to the institution. [38 G. A., ch. 356, § 13; 40 Ex. G. A., H. F. 84, § 174.]

3445. Communications. Persons admitted to any such institution shall have all reasonable opportunity and facility for communication with their friends. They shall be permitted to write and send letters, provided they contain nothing of an offensive character. Letters written by any inmate to any member of the board of control, or to any state or county official, shall be forwarded unopened. [38 G. A., ch. 356, § 14; 40 Ex. G. A., H. F. 84, § 175.]

3446. Leave of absence. No leave of absence from any such institution shall be granted to any inmate except for good cause to be determined and approved by the board of control, who shall take appropriate measures to secure for the feeble-minded person proper supervision, control, and care during such leave of absence. [38 G. A., ch. 356, § 14; 40 Ex. G. A., H. F. 84, § 176.]

3447. Inquest. In the event of a sudden or mysterious death of an inmate of any public or private institution for the feeble minded, a coroner's inquest shall be held. Notice of the death of such person, and the cause thereof, shall in all cases be sent to the judge of the court having jurisdiction over such person, and the fact of the death, with the time, place, and alleged cause shall be entered upon the docket. [38

G. A., ch. 356, § 15; 40 Ex. G. A., H. F. 84, § 177.]

3448. Penalties. Any person who shall seek to have any person adjudged feeble minded, knowing that such person is not feeble minded, shall be fined not exceeding one thousand dollars, or imprisoned not exceeding one year in the county jail. [38 G. A., ch. 356, § 16; 40 Ex. G. A., H. F. 84, § 178.]

3449. Witness fees. The fees for attendance of witnesses and execution of legal process shall be the same as are allowed by law for similar service in other cases. For service as commissioner, the sum of five dollars a day and the actual and necessary traveling expenses shall be allowed. [38 G. A., ch. 356, § 17; 40 Ex. G. A., H. F. 84, § 179.]

3450. Costs. The costs of proceedings shall be defrayed from the county treasury, unless otherwise ordered by the court. When the person alleged to be feeble minded is found not to be feeble minded, the court may render judgment against the person filing the petition, except when the petition is filed by order of court. [38 G. A., ch. 356, § 17; 40 Ex. G. A., H. F. 84, § 180.]

3451. Foreign county liable. When the proceedings are instituted in a county in which the alleged feeble-minded person was found, but of which he is not a resident, and the costs are not taxed to the petitioner, the county of which such feeble-minded person is a resident shall, on presentation of a properly itemized bill for such costs, repay the same to the former county. [38 G. A., ch. 356, § 17; 40 Ex. G. A., H. F. 84, § 181.]

3452. Persons liable for costs and maintenance. Costs incident to guardianship and to the trial and commitment of a feeble-minded person to such institution, including the cost of maintenance therein, may be collected of such feeble-minded person and of all persons legally chargeable with the support of such feeble-minded person. [38 G. A., ch. 356, § 18; 40 Ex. G. A., H. F. 84, § 182.]

3453. Juvenile court—delinquent child. When in proceedings against an alleged delinquent or dependent child, the court or judge is satisfied from any evidence that such child is probably feeble minded, the court or judge may order a continuance of such proceeding, and may direct an officer of court or other proper person to file a petition against said child under this chapter, and, pending hearing, may, by order, provide proper custody for such child. [38 G. A., ch. 356, § 19; 40 Ex. G. A., H. F. 84, § 183.]

3454. Suspending criminal proceeding. If, on the conviction in the district, superior, or municipal court of any person for any crime, or for any violation of any municipal ordinance, or if, on the conviction in said courts of a child for dependency or delinquency, it appears to the court or judge before sentence,

from any evidence, that such convicted person is probably feeble minded within the meaning of this chapter, the court or judge may suspend sentence or order, and may order any officer of the court or other proper person to file a petition under this chapter against said person and pending hearing thereon shall provide for the custody of said person as directed in the preceding section. [38 G. A., ch. 356, § 20; 40 Ex. G. A., H. F. 84, § 184.]

3455. Passing sentence. Should it be found, under the two preceding sections, that said person is not feeble minded, the court shall proceed with the original proceedings as though no petition had been filed. [38 G. A., ch. 356, § 20; 40 Ex. G. A., H. F. 84, § 185.]

3456. Transfers. The board of control may at any time transfer any patient from the institution for the feeble minded to the hospitals for the insane, and vice versa. [38 G. A., ch. 356, § 21; 40 Ex. G. A., H. F. 84, § 186.]

3457. Inquest as to sanity. If it appears at any time that a person has been, under the provisions of this chapter, placed under guardianship or committed to a private institution and ought to be committed to a hospital for the insane, he may be proceeded against under the chapters relating to the insane. [38 G. A., ch. 356, § 21; 40 Ex. G. A., H. F. 84, § 187.]

3458. Inmates in private asylums. When the mental condition of a person in a private institution for the insane is found to be such that such patient ought to be transferred to an institution for the feeble minded, or placed under guardianship, such person may be proceeded against under this chapter. [38 G. A., ch. 356, § 21; 40 Ex. G. A., H. F. 84, § 188.]

3459. Clothing and money on discharge. All persons discharged from a state institution for the feeble minded shall, unless otherwise supplied, be furnished at state expense with suitable clothing and money, not exceeding twenty dollars, sufficient to defray his expenses home. Said expense shall be charged to the county of the person's residence and collected as in case of clothing furnished to inmates while in the custody of the institution. [38 G. A., ch. 356, § 22; 40 Ex. G. A., H. F. 84, § 189.]

3460. Escape. If any feeble-minded person shall escape from an institution for the feeble minded, or is removed therefrom without the written order of the board of control, it shall be the duty of the superintendent of the institution and his assistants, and all peace officers of any county in which such inmate may be found, to take and detain him without a warrant and at once report such detention to the superintendent, who shall immediately provide for the return of said inmate to the institution. [38 G. A., ch. 281, §§ 1, 2; 38 G. A., ch. 356, § 23; 40 Ex. G. A., H. F. 84, § 190.]

3461. Expense of capture. All actual and necessary expenses incurred in the capture, restraint, and return of the inmates to the hospital shall be paid on itemized vouchers, sworn to by the claimants and approved by the superintendent and the board of control, from any money in the state treasury not otherwise appropriated. [38 G. A., ch. 281, § 2; 38 G. A., ch. 356, § 23; 40 Ex. G. A., H. F. 84, § 191.]

3462. Court docket. Each court having jurisdiction under this chapter shall keep a separate docket of proceedings in which shall be made such entries as will, together with the papers filed, preserve a complete and perfect record of each case. The original petitions, writs, and returns made thereto and the reports of commissions shall be filed with the clerk of the court. [38 G. A., ch. 356, § 24; 40 Ex. G. A., H. F. 84, § 192.]

3463. Record by board of control. The board of control shall keep a record of all persons adjudged to be feeble minded, and of the orders respecting them by the courts throughout the state, copies of which orders shall be furnished by the clerk of the court without the board's application therefor. [38 G. A., ch. 356, § 25; 40 Ex. G. A., H. F. 84, § 193.]

3464. Admission of voluntary patients. Nothing in this chapter shall be construed to prevent the reception at the institution for the feeble minded, or at the hospital for epileptics and school for feeble minded, of voluntary patients under such rules as the board of control may prescribe. [40 Ex. G. A., H. F. 84, § 194.]

CHAPTER 172

HOSPITAL FOR EPILEPTICS AND SCHOOL FOR FEEBLE MINDED

- 3465. Objects.
- 3466. Qualifications of superintendent—salary.
- 3467. Duties.
- 3468. Admission.
- 3469. Compensation for private patients.
- 3470. Voluntary patients rendered custodial patients.

- 3471. Statutes applicable.
- 3472. Transfer of inmates.
- 3473. Discharge.
- 3474. Clothing.
- 3475. Feeble minded.
- 3476. Districting state.
- 3477. Transfers.

3465. Objects. The hospital for epileptics and school for feeble minded, hereinafter in this chapter referred to as "hospital", shall be maintained for the purpose of securing humane, curative, and scientific care and treatment of epileptics, and for the training, instruction, care, and support of feeble-minded residents of this state. [S. S., '15, § 2727-a96; 40 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 195.]

3466. Qualifications of superintendent—salary. The superintendent shall be a well educated physician with at least five years' experience in the actual practice of medicine, and shall receive a salary not exceeding three thousand dollars per annum. [S. S., '15, § 2727-a96; 40 Ex. G. A., H. F. 84, § 196.]

- 3467. Duties.** The superintendent shall:
1. Perform all duties required by law, and by the board of control, not inconsistent with law.
 2. Oversee and secure the individual treatment and professional care of each patient in the hospital.
 3. Keep a full and complete record of the condition of each patient.
 4. Have the general superintendency of said hospital and all property connected therewith.
 5. Direct and control all subordinate officers, employees, and inmates under such rules as the board may prescribe.
 6. Have the custody of, and restrain and discipline all patients in such manner as he may deem best, subject to the regulations of the board. [S. S., '15, § 2727-a96; 40 Ex. G. A., H. F. 84, § 197.]

3468. Admission. All adults afflicted with epilepsy who have been residents of Iowa for at least one year preceding the application for admission, and all children so afflicted whose parents or guardians have been residents of Iowa for a like period, shall be eligible for admission. [S., '13, § 2727-a95; 40 Ex. G. A., H. F. 84, § 198.]

3469. Compensation for private patients. The board shall fix and enforce the rate of compensation to be paid in said hospital by private patients so afflicted. All money paid under the provisions of this section shall be received by

the chief executive officer of the institution and remitted each month to the treasurer of state and placed to the credit of the general fund of the state. [S. S., '15, § 2727-a96; 40 Ex. G. A., H. F. 84, § 199.]

3470. Voluntary patients rendered custodial patients. When a sane patient has voluntarily entered said hospital, either through his own action or through the action of the parent or guardian, and afterward, while in the hospital, becomes violent or insane, the board of control, on written complaint, may, after due hearing, commit said patient to said hospital as an insane epileptic. Such order of commitment shall be noted upon the records of the hospital, and shall have the same force and effect as an order of commitment by the commissioners of insanity, and with the same right of appeal. [S., '15, § 2727-a96; 40 Ex. G. A., H. F. 84, § 200.]

3471. Statutes applicable. All laws relating to the commitment of insane persons to the hospitals for the insane, in so far as applicable, shall apply to commitments of epileptics to said hospital and school. [S. S., '15, § 2727-a96; 40 Ex. G. A., H. F. 84, § 201.]

3472. Transfer of inmates. The board shall have power to transfer epileptics from any other institution under its control to said hospital and school, to transfer insane epileptics from the said hospital for epileptics to other state institutions, and to retransfer such epileptics if deemed expedient. [S. S., '15, § 2727-a96; 40 Ex. G. A., H. F. 84, § 202.]

3473. Discharge. Any person who has voluntarily entered said hospital as an epileptic patient and is sane, may at any time obtain his discharge by giving at least ten days' written notice of his desire for discharge. The parent or guardian of a minor child, which child has been voluntarily placed in said hospital as an epileptic patient and who is sane, may obtain the discharge of such child by giving such notice. A patient discharged under this section may not be again admitted except under a warrant of commitment. [S. S., '15, § 2727-a96; 40 Ex. G. A., H. F. 84, § 203.]

3474. Clothing. The superintendent of the hospital shall furnish each inmate afflicted with epilepsy with suitable clothing, unless said clothing is otherwise provided, the cost of which shall be certified and paid in the same manner in which clothing for inmates of the institution for feeble minded is certified and paid. [40 Ex. G. A., H. F. 84, § 204.]

3475. Feeble minded. Feeble-minded residents of this state may be admitted to said hospital and school and shall be clothed, maintained, and supported in the manner provided in the chapter relating to the institution for feeble minded at Glenwood. [39 G. A., ch. 5, §§ 1, 2, 4; 40 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 204-a1.]

3476. Districting state. At its discretion the board of control shall district the state into two districts and in such manner that the institution for the feeble minded at Glenwood

and the hospital for epileptics and school for feeble minded at Woodward shall each be located within one of such districts. Such districts may from time to time be changed. After such districts have been established, the board of control shall notify all county attorneys and all committing officers of its action, and thereafter, unless for good cause the board otherwise orders, all commitments of feeble minded from a district shall be to the institution located within such district. Until the state is so districted, commitments shall be made to either of said institutions as the board of control may direct. [40 Ex. G. A., H. F. 84, § 204-a2.]

3477. Transfers. Feeble-minded inmates in the institution at Glenwood may be transferred by the board to the hospital and school at Woodward or from the latter institution to the former. [39 G. A., ch. 5, § 3; 40 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 204-a3.]

CHAPTER 173

DRUG ADDICTS

3478. Commitment.

3479. Statutes applicable.

3480. Term of commitment—parole.

3478. Commitment. Persons addicted to the excessive use of intoxicating liquors, morphine, cocaine, or other narcotic drugs may be committed by the commissioners of insanity of each county to such institutions as the board of control may designate. [S., '13, §§ 2310-a6-2310-a8, 2310-a10-2310-a19, 2310-a19a, 2310-a20-2310-a22, 2310-a24, 2310-a28-2310-a30, 2310-a30a, 2310-a31-2310-a36; S. S., '15, § 2310-a37; 38 G. A., ch. 366, §§ 2-4; 39 G. A., ch. 187, §§ 1-4; 40 Ex. G. A., H. F. 84, § 207.]

3479. Statutes applicable. All statutes governing the commitment, custody, treatment, and maintenance of the insane shall, so far as applicable, govern the commitment, custody, treatment, and maintenance of those addicted to the excessive use of such drugs and intoxicating liquors. [S., '13, §§ 2310-a6-2310-a8, 2310-a10-2310-a19, 2310-a19a, 2310-a20-2310-a22, 2310-a24, 2310-a28-2310-a30, 2310-a30a, 2310-a31-2310-a36; S. S., '15, § 2310-a37; 38 G. A., ch. 366, §§ 2-4; 39 G. A., ch. 187, §§ 1-4; 40 Ex. G. A., H. F. 84, § 208.]

3480. Term of commitment—parole. Persons committed under the two preceding sections shall be retained in custody until cured, except that such inmates may be paroled under such conditions as the board of control may prescribe. [S., '13, §§ 2310-a6-2310-a8, 2310-a10-2310-a19, 2310-a19a, 2310-a20-2310-a22, 2310-a24, 2310-a28-2310-a30, 2310-a30a, 2310-a31-2310-a36; S. S., '15, § 2310-a37; 38 G. A.,

3481. Places of commitment.

3482. Insanity of narcotic addicts.

ch. 366, §§ 2-4; 39 G. A., ch. 187, §§ 1-4; 40 Ex. G. A., H. F. 84, § 209.]

3481. Places of commitment. The board of control shall designate the institutions to which commitments may be made under this chapter, and to that end may divide the state into districts, and shall promptly notify each clerk of the district court of such designation and all changes therein. [S., '13, §§ 2310-a6-2310-a8, 2310-a10-2310-a19, 2310-a19a, 2310-a20-2310-a22, 2310-a24, 2310-a28-2310-a30, 2310-a30a, 2310-a31-2310-a36; S. S., '15, § 2310-a37; 38 G. A., ch. 366, §§ 2-4; 39 G. A., ch. 187, §§ 1-4; 40 Ex. G. A., H. F. 84, § 210.]

3482. Insanity of narcotic addicts. Should a person, committed because of his excessive use of narcotic drugs or intoxicating liquors, become insane, the board of control, on complaint of the superintendent having the custody of such person, and on due hearing, may order such person committed to a hospital for the insane. Such order shall have the same force and effect as though entered by the commissioners of insanity of the county of the patient's residence, and such person may appeal from such order in the same manner in which appeals are allowed from the orders of the commissioners of insanity. [S., '13, §§ 2310-a6-2310-a8, 2310-a10-2310-a19, 2310-a19a, 2310-a20-2310-a22, 2310-a24, 2310-a28-2310-a30, 2310-a30a, 2310-a31-2310-a36; S. S., '15, § 2310-a37; 38 G. A., ch. 366, §§ 2-4; 39 G. A., ch. 187, §§ 1-4; 40 Ex. G. A., H. F. 84, § 211.]

CHAPTER 174

STATE HOSPITALS FOR INSANE

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- 3485. Assistant physicians.
- 3486. Salary of superintendent.
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- 3497. Letters to members of board.
- 3498. Escape and recapture.
- 3499. Expense attending recapture.

3483. Official designation. The hospitals for the insane shall be designated as follows:

1. Mount Pleasant state hospital.
2. Independence state hospital.
3. Clarinda state hospital.
4. Cherokee state hospital.

[R., '60, § 1471; C., '73, § 1383; C., '97, § 2253; S., '13, § 2253-a; 40 Ex. G. A., H. F. 84, § 212.]

3484. Qualifications of superintendent. The superintendent of each hospital shall be a physician of acknowledged skill and ability in his profession and authorized to practice medicine in this state. The same person shall not hold the office of superintendent and steward. [R., '60, §§ 1430, 1474; C., '73, §§ 1386, 1391; C., '97, §§ 2255, 2258; 40 Ex. G. A., H. F. 84, § 213.]

3485. Assistant physicians. The assistant physicians shall be of such character and qualifications as to be able to perform the ordinary duties of the superintendent during his absence or inability to act. [R., '60, § 1432; C., '73, § 1394; C., '97, § 2260; 40 Ex. G. A., H. F. 84, § 214.]

3486. Salary of superintendent. The salary of the superintendent of each hospital shall not exceed three thousand dollars per annum. [R., '60, §§ 1469, 1496; C., '97, § 2258; 40 Ex. G. A., H. F. 84, § 215.]

3487. Superintendent as witness. The superintendents and assistant physicians of said hospitals, when called as witnesses in any court, shall be paid the same mileage which other witnesses are paid and in addition thereto shall be paid a fee of twenty-five dollars per day, said fee to revert to the support fund of the hospital he serves. [C., '73, § 1429; C., '97, § 2293; 40 Ex. G. A., H. F. 84, § 216.]

- 3500. Investigation as to sanity.
- 3501. Discharge—certificate.
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- 3504. Clothing furnished.
- 3505. Harmless incurables.
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- 3509. Patient accused of crime.
- 3510. Return by sheriff.
- 3511. Discharge of criminal insane.
- 3512. Transfer of dangerous inmates.
- 3513. Examination by court—notice.
- 3514. Overcrowded conditions.
- 3515. Notice to commissioners.
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3488. Duties of superintendent. The superintendent shall:

1. Have the entire control of the medical, mental, moral, and dietetic treatment of the patients in his custody.

2. Require all subordinate officers and employees to perform their respective duties.

3. Have an official seal with the name of the hospital and the word "Iowa" thereon and affix the same to all notices, orders of discharge, or other papers required to be given by him.

4. Keep proper books in which shall be entered all moneys and supplies received on account of any patient and a detailed account of the disposition of the same.

5. Report, in December of each year, to each county, the mental and physical condition of each patient from said county and the probable safety of removing any such patient to the county hospital. [R., '60, §§ 1430, 1431; C., '73, §§ 1391, 1393, 1430; C., '97, §§ 2258, 2294; 40 Ex. G. A., H. F. 84, § 217.]

3489. Order of receiving patients. Preference in the reception of patients into said hospitals shall be exercised in the following order:

1. Cases of less duration than one year.

2. Chronic cases, where the disease is of more than one year's duration, presenting the most favorable prospect for recovery.

3. Those for whom application has been longest on file, other things being equal.

Where cases are equally meritorious in all other respects, the indigent shall have the preference. [R., '60, § 1438; C., '73, § 1422; C., '97, § 2286; 40 Ex. G. A., H. F. 84, § 218.]

3490. Idiots not receivable. No idiot shall be admitted to a state hospital for the insane. The term "idiot" is restricted to persons foolish from birth, supposed to be naturally with-

out mind. [R., '60, §§ 1468, 1491; C., '73, § 1434; C., '97, § 2298; 40 Ex. G. A., H. F. 84, § 219.]

3491. Custody of patient. The superintendent, upon the receipt of a duly executed warrant of commitment of a patient into the hospital for the insane, accompanied by the physician's certificate provided by law, shall take such patient into custody and restrain him as provided by law and the rules of the board of control, without liability on the part of such superintendent and all other officers of the hospital to prosecution of any kind on account thereof, but no person shall be detained in the hospital who is found by the superintendent to be sane. [C., '73, § 1411; C., '97, § 2278; 40 Ex. G. A., H. F. 84, § 220.]

3492. Equal treatment. The several patients, according to their different conditions of mind and body, and their respective needs, shall be provided for and treated with equal care. [C., '73, § 1420; C., '97, § 2284; 40 Ex. G. A., H. F. 84, § 221.]

3493. Special care permitted. Patients may have such special care as may be agreed upon with the superintendent, if the friends or relatives of the patient will pay the expense thereof. Charges for such special care and attendance shall be paid quarterly in advance. [C., '73, §§ 1420, 1421; C., '97, §§ 2284, 2285; 40 Ex. G. A., H. F. 84, § 222.]

3494. Monthly visitation—women inspectors. The board shall make monthly and thorough examinations of each hospital. It may appoint a woman to make examinations of any hospital and to make written report thereof to the board. Such woman inspector shall be paid four dollars for each day actually employed in the discharge of her duties and in addition her necessary traveling expenses. Such compensation and expenses shall be paid from the funds of the institution in the manner provided for the payment of current expenses. [C., '73, §§ 1435, 1441; C., '97, § 2299; S. S., '15, § 2727-a11; 40 Ex. G. A., H. F. 84, § 223.]

3495. Inmates allowed to write. The names of the members of the board and their post-office addresses shall be kept posted in every ward in each hospital. Every inmate shall be allowed to write once a week what he pleases to said board and to any other person. The superintendent may send letters addressed to other parties to the board of control for inspection before forwarding them to the individual addressed. [C., '73, § 1436; C., '97, § 2300; 40 Ex. G. A., H. F. 84, § 224.]

3496. Writing material. Every inmate shall be furnished by the superintendent or party having charge of such person, at least once in each week, with suitable materials for writing, inclosing, sealing, and mailing letters, if he requests and uses the same. [C., '73, § 1437; C., '97, § 2301; 40 Ex. G. A., H. F. 84, § 225.]

3497. Letters to members of board. The superintendent or other officer in charge of an

inmate shall, without reading the same, receive all letters addressed to members of the board, if so requested, and shall properly mail the same, and deliver to such inmate all letters or other writings addressed to him. Letters written to the person so confined may be examined by the superintendent, and if, in his opinion, the delivery of such letters would be injurious to the person so confined, he shall return the letters to the writer with his reasons for not delivering them. [C., '73, § 1438; C., '97, § 2302; 40 Ex. G. A., H. F. 84, § 226.]

3498. Escape and recapture. It shall be the duty of the superintendent and of all other officers and employees of any of said hospitals, in case of the escape of any patient, to exercise all due diligence to recapture and return said patient to the hospital. A notification by the superintendent of such escape to any peace officer of the state or to any private person shall be sufficient authority to such officer or person to take and return such patient to the hospital. [R., '60, § 1445; C., '73, § 1423; C., '97, § 2287; S., '13, § 2287; 40 Ex. G. A., H. F. 84, § 227.]

3499. Expense attending recapture. All actual and necessary expenses incurred in the capture, restraint, and return to the hospital of the patient shall be paid on itemized vouchers, sworn to by the claimants and approved by the superintendent and the board of control, from any money in the state treasury not otherwise appropriated. [R., '60, § 1445; C., '73, § 1423; C., '97, § 2287; S., '13, § 2287; 40 Ex. G. A., H. F. 84, § 228.]

3500. Investigation as to sanity. The board may investigate the mental condition of any inmate and shall discharge any person, if, in its opinion, such person is not insane, or can be cared for after such discharge without danger to others, and with benefit to the patient; but in determining whether such patient shall be discharged, the recommendation of the superintendent shall be secured. The power to investigate the mental condition of an inmate is merely permissive, and does not repeal or alter any statute respecting the discharge or commitment of inmates of the state hospitals. [S., '13, § 2727-a25; 40 Ex. G. A., H. F. 84, § 229.]

3501. Discharge—certificate. All patients shall be discharged immediately on regaining their sanity, and the superintendent shall issue duplicate certificates of full recovery, one of which he shall deliver to the recovered patient, and the other of which he shall forward to the clerk of the district court of the county from which the patient was committed. [R., '60, § 1485; C., '73, § 1424; C., '97, § 2288; 40 Ex. G. A., H. F. 84, § 230.]

3502. Duty of clerk. The said clerk shall, immediately on receipt of such certificate, record the same at length in the record of the proceedings against said party as an insane person. [C., '97, § 2288; 40 Ex. G. A., H. F. 84, § 231.]

3503. Certificate and record as evidence. Either of said certificates or the record thereof shall be presumptive evidence of the recovery of such person, and shall restore him to all his civil rights. [C., '97, § 2288; 40 Ex. G. A., H. F. 84, § 232.]

3504. Clothing furnished. Upon such discharge the superintendent shall furnish such person, unless otherwise supplied, with suitable clothing and a sum of money not exceeding twenty dollars, which shall be charged with the other expenses of such patient in the hospital. [R., '60, § 1485; C., '73, § 1424; C., '97, § 2288; 40 Ex. G. A., H. F. 84, § 233.]

3505. Harmless incurables. The relatives of any patient not susceptible of cure by remedial treatment in the hospital, and not dangerous to be at large, shall have the right to take charge of and remove him with the consent of the board of control. [C., '73, § 1424; C., '97, § 2288; 40 Ex. G. A., H. F. 84, § 234.]

3506. Certificate covering subsequent recovery. When a patient is discharged at a time when he has not fully recovered his sanity, he may at any time, under such rules as the board of control may prescribe, apply to the superintendent of the hospital where he was confined for a certificate of recovery. The superintendent, under like rules, shall examine such person or cause such examination to be made and if satisfied that such person has regained his sanity, shall issue duplicate certificates showing such recovery. [40 Ex. G. A., H. F. 84, § 235.]

3507. Certificate and effect thereof. The duplicate certificates mentioned in the preceding section shall be delivered as in case of a discharge when cured, and the same record shall be made with the same effect. [40 Ex. G. A., H. F. 84, § 236.]

3508. Dangerous incurables. The board of control, on the recommendation of the superintendent, and on the application of the relatives or friends of a patient who is not cured and who cannot be safely allowed to go at liberty, may release such patient when fully satisfied that such relatives or friends will provide and maintain all necessary supervision, care, and restraint over such patient. [R., '60, § 1482; C., '73, § 1408; C., '97, § 2276; 40 Ex. G. A., H. F. 84, § 237.]

3509. Patient accused of crime. When an inmate of any state hospital who was committed to such hospital at a time when he was formally accused of crime in any county of the state, regains his reason, the superintendent shall thereupon issue his warrant for the return of such person to the jail of the county in which such charge is pending and notify the sheriff of such county accordingly who shall proceed to such hospital and execute such warrant. [R., '60, § 1460; C., '73, § 1413; C., '97, § 2280; 40 Ex. G. A., H. F. 84, § 238.]

3510. Return by sheriff. The sheriff shall in writing make his return of service on said

warrant and deliver such warrant and return to the clerk of the district court of his county. Said clerk shall forthwith make a copy of the warrant and return and mail the same to the said superintendent who shall file and preserve it. [C., '97, § 2280; 40 Ex. G. A., H. F. 84, § 239.]

3511. Discharge of criminal insane. No patient who may be under criminal charge or conviction shall be discharged without the order of the district court or judge, and notice to the county attorney of the proper county. [R., '60, § 1482; C., '73, § 1408; C., '97, § 2276; 40 Ex. G. A., H. F. 84, § 240.]

3512. Transfer of dangerous inmates. When an inmate of any hospital for insane becomes incorrigible, and unmanageable to such an extent that he is dangerous to the safety of others in the hospital, the board may apply in writing to the district court or to any judge thereof, of the county in which such hospital is situated, for an order to transfer said inmate to the department for the insane in the men's reformatory and if such order be granted such inmate shall be so transferred. The county attorney of said county shall appear in support of such application on behalf of the board. [40 Ex. G. A., H. F. 84, § 241.]

3513. Examination by court—notice. Before granting the order authorized in the preceding section the court or judge shall investigate the allegations of the petition and before proceeding to a hearing thereon shall require notice to be served on any relative, friend, or guardian of the person in question of the filing of said application. On such hearing the court or judge shall appoint a guardian ad litem for said person, if it deems such action necessary to protect the rights of such person. [40 Ex. G. A., H. F. 84, § 242.]

3514. Overcrowded conditions. The board shall order the discharge or removal from the hospital of incurable and harmless patients whenever it is necessary to make room for recent cases. [R., '60, § 1483; C., '73, § 1425; C., '97, § 2289; 40 Ex. G. A., H. F. 84, § 243.]

3515. Notice to commissioners. When a patient who has not fully recovered is discharged from the hospital without application therefor, notice of the order shall at once be sent to the commissioners of insanity of the county of which the patient is a resident, and the commissioners shall forthwith cause the patient to be removed, and shall at once provide for his care in the county as in other cases. [R., '60, § 1484; C., '73, § 1426; C., '97, § 2290; 40 Ex. G. A., H. F. 84, § 244.]

3516. Inquest. A coroner's inquest shall be held in those cases where a death shall occur suddenly and without apparent cause, or a patient die and his relatives so request, but in the latter case the relatives making the request shall be liable for the expense of the same, and payment therefor may be required in advance. [C., '73, § 1439; C., '97, § 2303; 40 Ex. G. A., H. F. 84, § 245.]

CHAPTER 175

COUNTY AND PRIVATE HOSPITALS FOR INSANE

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- 3519. Patients to have hearing.
- 3520. Compensation of inspectors.
- 3521. Rules.
- 3522. Removal of patients.
- 3523. Cost—collection from county.
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- 3525. Investigating sanity.

- 3526. Transfers from county or private institutions.
- 3527. Transfers from state hospitals—exceptions.
- 3528. Transfers generally.
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- 3530. Discharge of transferred patient.
- 3531. Caring for insane of other counties.
- 3532. Authority of private asylums.

3517. Supervision. All county and private institutions wherein insane persons are kept shall be under the supervision of the board of control of state institutions. [S., '13, § 2727-a58; 40 Ex. G. A., H. F. 84, § 249.]

3518. Inspection. Said board shall make, or cause to be made, at least two inspections each year of every private and county institution wherein insane persons are kept. Such inspection shall be made by the members of the board or by some competent and disinterested person appointed by it. Written report as to such inspections shall be filed with the board and shall embrace:

1. The capacity of said institution for the care of patients.
2. The number and sex of the inmates kept therein.
3. The arrangement, method of construction, and adaptability of buildings for the purposes intended.
4. The condition of buildings as to sewerage, ventilation, light, heat, cleanliness, means of water supply, fire escapes, and fire protection.
5. The care of patients, their food, clothing, medical treatment, and employment.
6. The number, kind, sex, duties, and salaries of all employees.
7. The cost to the state or county of maintaining insane patients therein, separate from the cost of maintaining sane paupers.
8. Such other matters as the board of control may require. [S., '13, § 2727-a59; 40 Ex. G. A., H. F. 84, § 250.]

3519. Patients to have hearing. The inspector shall see all patients in the institutions and give each an opportunity to converse with him out of the hearing of any officer or employee of the institution, and shall fully investigate all complaints and report the result thereof in writing to said board. The board before acting on said report adversely to the institution, shall give the persons in charge thereof a copy of such report and an opportunity to be heard. [S., '13, § 2727-a60; 40 Ex. G. A., H. F. 84, § 251.]

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3520. Compensation of inspectors. Inspectors under appointment by the board shall receive a salary of not to exceed six dollars per day for the time actually and necessarily employed in making the inspection and in going to and from the place of inspection, and actual expenses as an employee of the board. [S., '13, § 2727-a61; 40 Ex. G. A., H. F. 84, § 252.]

3521. Rules. The board of control shall, from time to time, adopt reasonable rules touching the care and treatment of, and make orders in relation to, such insane patients as may be kept in said institutions, which rules shall not interfere with the medical treatment given to private patients by competent physicians. Copies of such rules, when adopted, shall be mailed to the chief executive officer of each private institution, and to the clerk of the district court, the chairman of the board of supervisors, and the officer in charge of the institution in all counties having county institutions caring for insane persons. [S., '13, § 2727-a62; 40 Ex. G. A., H. F. 84, § 254.]

3522. Removal of patients. Said board, in case of failure to comply with such rules, is authorized to remove all said insane persons kept in such institutions at public expense, to the proper state hospital, or to some private or county institution or hospital for the care of the insane that has complied with the rules prescribed by said board, such removal of patients, if to a state hospital, to be made by an attendant or attendants sent from the state hospital. If a female is removed under the provisions of this section, at least one attendant shall be a female. [S., '13, § 2727-a63; 40 Ex. G. A., H. F. 84, § 255; 40 Ex. G. A., H. F. 329, § 1.]

3523. Cost—collection from county. The cost of such removal, including all expenses of said attendant, shall be certified by the superintendent of the hospital receiving the patient, to the auditor of state, who shall draw his warrant upon the treasurer of state for said sum, which shall be credited to the support fund of said hospital and charged against the general revenues of the state and collected by the auditor of state from the county which sent

said patient to said institution. [S., '13, § 2727-a63; 40 Ex. G. A., H. F. 84, § 256.]

3524. Notification to guardians. The board of control shall notify the guardian, or one or more of the relatives, of patients kept at private expense, of all violations of said rules by said private or county institutions, and of the action of the board as to all other patients. [S., '13, § 2727-a63; 40 Ex. G. A., H. F. 84, § 257.]

3525. Investigating sanity. Should the board believe that any person in any such county or private institution is sane, or illegally restrained of liberty, it shall institute and prosecute proceedings in the name of the state, before the proper officer, board, or court, for the discharge of such person. [S., '13, § 2727-a63; 40 Ex. G. A., H. F. 84, § 258.]

3526. Transfers from county or private institutions. Patients who are suffering from acute insanity, and who are violent, and confined at public expense in any such institution, may be removed by the board of control to the proper state hospital for the insane when, on competent medical testimony, the board finds that said patient can be better cared for and with better hope of recovery in the state hospital. Such removal shall be at the expense of the proper county. Said expense shall be recovered as provided in the third preceding section. [S., '13, § 2727-a64; 40 Ex. G. A., H. F. 84, § 259.]

3527. Transfers from state hospitals—exceptions. A county chargeable with the expense of a patient in a state hospital for the insane shall remove such patient to a county or private institution for the insane which has complied with the aforesaid rules when the board so orders on a finding that said patient is suffering from chronic insanity and will receive equal benefit by being so transferred. In no case shall a patient, the relative or guardian of whom pays the expense of his keep in a state hospital, be thus transferred except upon the written consent of such relative or guardian. [S., '13, § 2727-a64; 40 Ex. G. A., H. F. 84, § 260.]

3528. Transfers generally. Any patient in a state hospital for the insane, who is main-

tained at public expense, may, with the approval of the board of control, be transferred to a county or private institution for the insane on the written request of the board of supervisors and of the commissioners of insanity. [S., '13, § 2727-a64; 40 Ex. G. A., H. F. 84, § 261.]

3529. Difference of opinion. When a difference of opinion exists between the board of control and the authorities in charge of any private or county asylum in regard to the removal of a patient or patients as herein provided, the matter shall be submitted to the district court, or judge thereof, of the county in which such asylum is situated and shall be summarily tried as an equitable action, and the judgment of the district court or judge shall be final. [S., '13, § 2727-a68; 40 Ex. G. A., H. F. 84, § 262.]

3530. Discharge of transferred patient. Patients transferred from a state hospital to such county or private institutions shall not be discharged, when not cured, without the consent of the board of control. [S., '13, § 2727-a64; 40 Ex. G. A., H. F. 84, § 263.]

3531. Caring for insane of other counties. Boards of supervisors of counties having no proper facilities for caring for the insane, may, with the consent of the board of control, provide for such care at the expense of the county in any convenient and proper county or private institution for the insane which is willing to receive them. [S., '13, § 2727-a65; 40 Ex. G. A., H. F. 84, § 264.]

3532. Authority of private asylums. No person shall be confined and restrained in any private institution or hospital for the care or treatment of the insane, except upon the certificate of the commission of insanity of the county in which such person resides, or of two reputable physicians, at least one of whom shall be a bona fide resident of this state, who shall certify that such person is a fit subject for treatment and restraint in said institution or hospital, which certificate shall be the authority of the owners and officers of said hospital or institution for receiving and confining said patient or person therein. [S., '13, § 2727-a66; 40 Ex. G. A., H. F. 84, § 265.]

CHAPTER 176

COMMISSION OF INSANITY

3533. Number of members.
 3534. Personnel of commission.
 3535. Appointment and term.
 3536. Organization.
 3537. Temporary vacancy.
 3538. Duty of clerk.

3533. Number of members. In each county there shall be a commission of insanity which shall be composed of three members. In counties having two places where district court is held there shall be one such commission at each place. [C., '73, § 1395; C., '97, § 2261; 40 Ex. G. A., H. F. 84, § 266.]

3534. Personnel of commission. Said commission shall consist of the clerk of the district court, one reputable physician in actual practice, and one reputable attorney in actual practice. Said two latter members shall reside as near as may be convenient to the place where the district court is held. In the absence or inability of the clerk to act in any case, his deputy may act. [C., '73, § 1395; C., '97, § 2261; 40 Ex. G. A., H. F. 84, § 267.]

3535. Appointment and term. Said commission shall be appointed by the district court or judges thereof. If made in vacation the appointment shall be by written order, signed by the judges and recorded by the clerk. Appointments shall be for two years and be so arranged that the term of one member shall expire each year. The appointment of successors may be made at any time within three months prior to the expiration of the term of the incumbent. [C., '73, § 1395; C., '97, § 2261; 40 Ex. G. A., H. F. 84, § 268.]

3536. Organization. The members shall organize by choosing one of their number president. The clerk of the district court or his deputy shall be clerk of the commission. The commission shall hold its meetings at the office of the clerk, unless for good reasons it shall fix on some other place, and shall also meet on notice from the clerk or his deputy. [C., '73, § 1396; C., '97, § 2261; 40 Ex. G. A., H. F. 84, § 269.]

3537. Temporary vacancy. In the temporary absence or inability of two members to act, the member present may call to his aid, temporarily, a person possessed of the qualifications required for a member, who, after qualifying as in other cases, may act in the same capacity. If one of the absent members is a clerk, his deputy shall act. The record in such cases must show the facts. [C., '73, §

3539. Service of notice—reports.
 3540. Jurisdiction—holding under criminal charge.
 3541. Compensation and expenses.
 3542. Costs—how paid.
 3543. Transportation expenses.

1395; C., '97, § 2261; 40 Ex. G. A., H. F. 84, § 270.]

3538. Duty of clerk. The clerk of said commission shall:

1. Issue all processes required to be given by the commission, and affix thereto his seal as clerk of the court.

2. File and preserve in his office all papers and records connected with any inquest by the commission.

3. Keep separate books of the proceedings of the commission with entries sufficiently full to show, with the papers filed, a complete record of its findings, orders, and proceedings. [C., '73, § 1397; C., '97, § 2262; 40 Ex. G. A., H. F. 84, § 271.]

3539. Service of notice—reports. The notices, reports, and communications required to be given or made by said commission may be sent by mail, unless otherwise expressed, and the facts and date of such sending and their reception must be noted on the proper record. [C., '73, § 1397; C., '97, § 2262; 40 Ex. G. A., H. F. 84, § 272.]

3540. Jurisdiction—holding under criminal charge. Said commission shall, except as otherwise provided, have jurisdiction of all applications for the commitment to the state hospitals for the insane, or for the otherwise safe keeping, of insane persons within its county, unless the application is filed with the commission at a time when the alleged insane person is being held in custody under an indictment returned by the grand jury or under a trial information filed by the county attorney. [R., '60, §§ 1458, 1459; C., '73, §§ 1398, 1412; C., '97, §§ 2263, 2279; 40 Ex. G. A., H. F. 84, § 273.]

3541. Compensation and expenses. Compensation and expenses shall be allowed as follows:

1. To each member of the commission three dollars for each day actually employed in the duties of his office as such member and necessary and actual expenses, not including charges for board.

2. To the clerk, in addition to compensation as a member, one-half as much more for mak-

ing the required record entries in all cases of inquest and of meetings of the commission, and twenty-five cents for each process issued under seal.

3. To the examining physician, when not a member of the commission, the same fees as a member and in addition mileage of five cents per mile each way.

4. To witnesses, the same fees as witnesses in the district court.

5. Fees on appeal shall be the same as in ordinary actions. [C., '73, §§ 1410, 3825; C., '97, § 2309; 40 Ex. G. A., H. F. 84, § 274.]

3542. Costs—how paid. The compensation and expenses provided for above, and the fees of the sheriff provided for in such cases, shall be allowed and paid out of the county treasury in the usual manner. [C., '73, §§ 1410, 3825; C., '97, § 2309; 40 Ex. G. A., H. F. 84, § 275.]

3543. Transportation expenses. When funds to pay the expenses of transporting a patient to a hospital are needed in advance, the commission shall estimate the probable expense, including the necessary assistance, and not including the compensation allowed the sheriff, and on such estimate, certified by the clerk, the auditor of the county shall issue a county warrant for the amount, as estimated, in favor of the sheriff or other person intrusted with the execution of such warrant of commitment. The sheriff or other person executing such warrant shall accompany his return with a statement of the expenses incurred, and the excess or deficiency may be deducted from or added to his compensation, as the case may be. If funds are not so advanced, such expenses shall be certified and paid in the manner above prescribed on the return of the warrant. When the commission orders the return of a patient, compensation and expenses shall be in like manner allowed. [C., '73, §§ 1410, 3825; C., '97, § 2309; 40 Ex. G. A., H. F. 84, § 276.]

CHAPTER 177

COMMITMENT AND DISCHARGE OF INSANE

- 3544. Form of information.
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- 3547. Hearings.
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- 3555. Record and commitment of one accused of crime.
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- 3577. Habeas corpus.
- 3578. Cruelty or official misconduct.
- 3579. Failure to furnish writing material.
- 3580. "Insane" defined.

3544. Form of information. Applications for admission to the hospitals for the insane shall be by sworn information which shall allege and show:

1. That the person in whose behalf the application is made is believed to be insane, and a fit subject for custody and treatment in the hospital.

2. That such person has been found in the county.

3. The place of residence of such person or where it is believed to be, or that such residence is not known. [R., '60, § 1480; C., '73, § 1399; C., '97, § 2264; 40 Ex. G. A., H. F. 84, § 277.]

3545. Hearing—custody. On the filing of such information, the commission, if satisfied that there is reasonable cause therefor, may require the alleged insane person to be brought before it and, to this end, may issue its warrant

to any peace officer of the county. The commission may provide for the custody of such person until its investigation is concluded. [R., '60, § 1480; C., '73, § 1400; C., '97, § 2265; 40 Ex. G. A., H. F. 84, § 278.]

3546. Subpoenas and oaths. The commission shall have power to issue subpoenas. Each member of the commission shall have power to administer oaths to witnesses. In case a witness fails to appear or refuses to testify, the commission shall, in writing, report such refusal to the district court or to a judge thereof, and said court or judge shall proceed as though such refusal occurred in a legal proceeding before said court or judge. [C., '73, § 1398; C., '97, § 2263; 40 Ex. G. A., H. F. 84, § 279.]

3547. Hearings. Hearings shall be had in the presence of such person unless the commission finds that such course would probably be injurious to such person or attended with no

advantage. [R., '60, § 1480; C., '73, § 1400; C., '97, § 2265; 40 Ex. G. A., H. F. 84, § 280.]

3548. Appearance. Appearance on behalf of such alleged insane person may be made by any citizen of the county, or by any relative, either in person or by counsel. [C., '73, § 1400; C., '97, § 2265; 40 Ex. G. A., H. F. 84, § 281.]

3549. Examining physician. The commission shall, in all cases, appoint, either from, or outside, its own membership, some regular practicing physician of the county to make a personal examination of the person in question for the purpose of determining his mental and physical condition. Said physician shall certify to the commission whether said person is sane or insane. [C., '73, § 1400; C., '97, § 2265; 40 Ex. G. A., H. F. 84, § 282.]

3550. Answers to interrogatories. The examining physician shall accompany his certificate with correct answers to the following questions so far as correct answers can be obtained:

1. Name of patient? Age? Married or single?
2. Number of children? Age of youngest child?
3. Place of birth?
4. Residence?
5. Past occupation?
6. Present occupation?
7. Is this the first attack?
8. If there were other attacks when did they occur?
9. Duration of other attacks?
10. When were the first symptoms of the present attack manifested? In what way were they manifested?
11. Is disease increasing, decreasing, or stationary?
12. Is the disease variable?
13. Are there rational intervals?
14. Do rational intervals occur at regular periods?
15. State fully on what subjects or in what way is derangement now manifested?
16. Disposition to injure others?
17. Has suicide ever been attempted? If so, in what way? Is the propensity to suicide now active?
18. Is there a disposition to filthy habits, destruction of clothing, breaking of glass, etc.?
19. What relatives, including grandparents and cousins, have been insane?
20. Did the patient manifest any peculiarities of temper, habits, disposition, or pursuits before the accession of the disease? Any predominant passion, religious impressions, etc.?
21. Was the patient ever addicted to intemperance in any form?
22. Has the patient been subject to epilepsy? Suppressed eruptions? Discharge of sores?
23. Other bodily diseases suffered by patient? If so, name them?
24. Has patient ever had any injury of the head? If so, explain nature of injury?
25. Has restraint or confinement been employed? If so, what kind, and how long?

26. What is supposed to be the cause of the disease?

27. What treatment has been pursued for the relief of the patient? Mention particulars and effects.

28. State any other matter supposed to have a bearing on the case. [R., '60, § 1490; C., '73, § 1407; C., '97, § 2275; 40 Ex. G. A., H. F. 84, § 283.]

3551. Correction of answers. If the commission on further examination after the answers are given finds that any of said answers are incorrect, it shall correct the same. [C., '73, § 1407; C., '97, § 2275; 40 Ex. G. A., H. F. 84, § 284.]

3552. Findings and order. If the commission finds from the evidence that said person is insane and a fit subject for custody and treatment in the state hospital, it shall order his commitment to the hospital in the district in which the county is situated, and in connection with such finding and order shall determine and enter of record the county which is the legal settlement of such person. If such settlement is unknown the record shall show such fact. [R., '60, § 1479; C., '73, § 1401; C., '97, § 2266; 40 Ex. G. A., H. F. 84, § 285.]

3553. Warrant. Unless an appeal is taken, the commission shall forthwith issue its warrant of commitment and a duplicate thereof, stating such finding, with the settlement of the person, if found, and, if not found, its information, if any, in regard thereto, authorizing the superintendent of the hospital to receive and keep him as a patient therein. [C., '73, § 1401; C., '97, § 2266; 40 Ex. G. A., H. F. 84, § 286.]

3554. Service. Said warrant and duplicate, with the certificate and finding of the physician, shall be delivered to the sheriff, who shall execute the same by conveying such person to the hospital, and delivering him, with such duplicate and physician's certificate and finding, to the superintendent, who shall, over his official signature, acknowledge such delivery on the original warrant, which the sheriff shall return to the clerk of the commission, with his costs and expenses indorsed thereon. [R., '60, §§ 1458, 1459, 1479; C., '73, §§ 1401, 1412; C., '97, §§ 2266, 2279; 40 Ex. G. A., H. F. 84, § 287.]

3555. Record and commitment of one accused of crime. If, after the commission has acquired jurisdiction over a person under a charge of insanity, the district court also acquires jurisdiction over such person under a formal charge of crime, the findings of the commission and the warrant of commitment, if any, shall state the fact of jurisdiction in the district court, and the name of the criminal charge. [R., '60, § 1459; C., '73, § 1412; C., '97, § 2279; 40 Ex. G. A., H. F. 84, § 288.]

3556. Appointment in lieu of sheriff. If the sheriff and his deputies are otherwise engaged, the commission may appoint some other suit-

able person to execute the warrant, who shall take and subscribe an oath faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff. [C., '73, § 1401; C., '97, § 2266; 40 Ex. G. A., H. F. 84, § 289.]

3557. Assistants—females. The sheriff, or any person appointed, may call to his aid such assistants as he may need to execute such warrant; but no female shall thus be taken to the hospital without the attendance of some other female or some relative. The superintendent, in his acknowledgment of delivery, must state whether there was any such person in attendance, and give the name or names, if any. [C., '73, § 1401; C., '97, § 2266; 40 Ex. G. A., H. F. 84, § 290.]

3558. Preference in executing warrant. If any relative or immediate friend of the patient, who is a suitable person, shall so request, he shall have the privilege of executing such warrant, in preference to the sheriff or any other person, without taking such oath, and for so doing shall be entitled to his necessary expenses, but no fees. [C., '73, § 1401; C., '97, § 2266; 40 Ex. G. A., H. F. 84, § 291.]

3559. Confinement of insane—females. No person who shall be found to be insane shall, during investigation or after such finding, and pending commitment to the hospital, or when on the way there, be confined in any jail, prison, or place of solitary confinement, except in cases of extreme violence, when it may be necessary for the safety of such person or of the public; and if such person be so confined, there shall, at all times during its continuance, be some suitable person or persons in attendance in charge of such person; but at no time shall any female be placed in such confinement without at least one female attendant remaining in charge of her. [C., '97, § 2266; 40 Ex. G. A., H. F. 84, § 292.]

3560. Appeal. Any person found to be insane, or his next friend, may appeal from such finding to the district court by giving the clerk thereof, within ten days after such finding has been made, notice in writing that an appeal is taken, which may be signed by the party, his agent, next friend, guardian, or attorney, and, when thus appealed, it shall stand for trial anew. Upon appeal it shall be the duty of the county attorney, without additional compensation, to prosecute the action on behalf of the informant. [C., '97, § 2267; S., '13, § 2267; 40 Ex. G. A., H. F. 84, § 293.]

3561. Custody pending appeal. The appellant, pending the appeal, shall be discharged from custody, unless the commission finds that he can not with safety be allowed to go at large, in which case it shall require him to be suitably provided for in the manner hereinafter specified. [C., '97, § 2268; 40 Ex. G. A., H. F. 84, § 294.]

3562. Final order. If, upon the trial of the appeal, such person is found insane, and a fit subject for custody and treatment in the hos-

pital, an order of commitment shall be entered, and the clerk shall issue a warrant therefor, and the proceedings thereunder shall be as provided in cases before the commission. [C., '97, § 2269; 40 Ex. G. A., H. F. 84, § 295.]

3563. Blanks. The board of control shall furnish the commissions of insanity of the counties with such forms for blanks for warrants, certificates, and other papers as will enable them with regularity and facility to comply with the provisions of this chapter, and also with copies of the regulations of the hospital, when printed. [C., '73, § 1431; C., '97, § 2295; 40 Ex. G. A., H. F. 84, § 296.]

3564. Temporary custody in certain cases. If any person found to be insane can not at once be admitted to the hospital, or, in case of appeal from the finding of the commission, if such person can not with safety be allowed to go at liberty, the commission of insanity shall require that such person shall be suitably provided for otherwise until such admission can be had, or until the occasion therefor no longer exists. [R., '60, § 1436; C., '73, § 1403; C., '97, § 2271; S., '13, § 2271; 40 Ex. G. A., H. F. 84, § 297.]

3565. Care by relatives or friends. Such patients may be cared for as private patients when relatives or friends will obligate themselves to provide such care without public charge. In such case the commission shall in writing appoint some suitable person special custodian who shall have authority and shall in all suitable ways restrain, protect, and care for such patient, in such manner as to best secure his safety and comfort, and to best protect the persons and property of others. [C., '73, § 1403; C., '97, § 2271; S., '13, § 2271; 40 Ex. G. A., H. F. 84, § 298.]

3566. Care by county. If care and custody of the patient is not provided as authorized in the preceding section the commission shall require that he be restrained and cared for by the board of supervisors, at the expense of the county, at the county home or some other suitable place, and the commission of insanity shall issue its mandate to the board of supervisors, which shall forthwith comply therewith. [R., '60, § 1436; C., '73, § 1403; C., '97, § 2271; S., '13, § 2271; 40 Ex. G. A., H. F. 84, § 299.]

3567. Custody outside state hospitals. The commission of insanity may grant applications, made in substantially the form provided in this title, for the restraint, protection and care, within the county and outside the state hospitals, of alleged insane persons, either as public or private patients, but all patients so cared for shall be reported to the board of control. [R., '60, § 1437; C., '73, § 1404; C., '97, § 2272; 40 Ex. G. A., H. F. 84, § 300.]

3568. Neglected insane. On information laid before the commission of insanity of any county that an insane person in the county is suffering for want of proper care, it shall forthwith inquire into the matter, and, if it finds that

such information is true, it shall make all needful provisions for the care of such person as provided in other cases. [R., '60, § 1467; C., '73, § 1405; C., '97, § 2273; 40 Ex. G. A., H. F. 84, § 301.]

3569. Transfers from county and private asylums. Insane persons who have been under care, either as public or private patients, outside of the hospital, by authority of the commission of insanity may, on application, be transferred to the state hospital, whenever they can be admitted thereto. Such admission may be had without another inquest, at any time within six months after the inquest already had, unless the commission shall think further inquest advisable. [C., '73, § 1406; C., '97, § 2274; 40 Ex. G. A., H. F. 84, § 302.]

3570. Discharge from custody. When it shall be shown to the satisfaction of the commission of insanity that cause no longer exists for the care within the county of any person as an insane patient, it shall, with the approval of the board of control, order his immediate discharge, and shall find if such person is sane or insane at the time of such discharge, which finding shall be entered of record by the clerk of the commission of insanity. [C., '73, § 1409; C., '97, § 2277; 40 Ex. G. A., H. F. 84, § 303.]

3571. Commission of inquiry. A sworn complaint, alleging that a named person is not insane and is unjustly deprived of his liberty in any hospital in the state, may be filed by any person with the clerk of the district court of the county in which such named person is so confined, or of the county in which such named person has a legal settlement, and thereupon a judge of said court shall appoint a commission of not more than three persons to inquire into the truth of said allegations. One of said commissioners shall be a physician and if additional commissioners are appointed, one of such commissioners shall be a lawyer. [C., '73, § 1442; C., '97, § 2304; 40 Ex. G. A., H. F. 84, § 304.]

3572. Duty of commission. Said commission shall at once proceed to the place where said person is confined and make a thorough and discreet examination for the purpose of determining the truth of said allegations and shall promptly report its findings to said judge in writing. Said report shall be accompanied by a written statement of the case signed by the superintendent. [C., '73, § 1442; C., '97, § 2304; 40 Ex. G. A., H. F. 84, § 305.]

3573. Hearing. If, on such report and statement, and the hearing of testimony if any is offered, the judge shall find that such person is sane, he shall order his discharge; if the contrary, he shall so state, and authorize his continued detention. [C., '73, § 1442; C., '97, § 2304; 40 Ex. G. A., H. F. 84, § 306.]

3574. Finding and order filed. The finding and order of the judge, with the report

and other papers, shall be filed in the office of the clerk of the court where the complaint was filed. Said clerk shall enter a memorandum thereof on his record, and forthwith notify the superintendent of the hospital of the finding and order of the judge, and the superintendent shall carry out the order. [C., '73, § 1442; C., '97, § 2304; 40 Ex. G. A., H. F. 84, § 307.]

3575. Compensation—payment. Said commissioners shall be entitled to their necessary expenses and a reasonable compensation, to be allowed by the judge, who shall certify the same to the auditor of state who shall thereupon draw the proper warrants on any funds in the state treasury not otherwise appropriated. The applicant shall pay said costs and expenses if the judge shall so order on a finding that the complaint was filed without probable cause. [C., '73, § 1442; C., '97, § 2304; 40 Ex. G. A., H. F. 84, § 308.]

3576. Limitation on proceedings. The proceeding authorized in the five preceding sections shall not be had oftener than once in six months regarding the same person; nor regarding any patient within six months after his admission to the hospital. [C., '73, § 1443; C., '97, § 2305; 40 Ex. G. A., H. F. 84, § 309.]

3577. Habeas corpus. All persons confined as insane shall be entitled to the benefit of the writ of habeas corpus, and the question of insanity shall be decided at the hearing. If the judge shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person has been restored to reason. [R., '60, § 1441; C., '73, § 1444; C., '97, § 2306; 40 Ex. G. A., H. F. 84, § 310.]

3578. Cruelty or official misconduct. If any person having the care of an insane person, and restraining him, whether in a hospital or elsewhere, with or without authority, shall treat him with unnecessary severity, harshness, or cruelty, or in any way abuse him, or if any officer required by the provisions of this and the three preceding chapters to perform any act shall wilfully refuse or neglect to perform the same, he shall, unless otherwise provided, be fined not to exceed five hundred dollars, or be imprisoned in the county jail not to exceed three months, and pay the costs of prosecution, or be both fined and imprisoned at the discretion of the court. [C., '73, §§ 1415, 1416, 1440, 1445; C., '97, § 2307; 40 Ex. G. A., H. F. 84, § 311.]

3579. Failure to furnish writing material. If any member of the visiting committee, superintendent of the hospital, or other person in charge of an insane person confined in the hospital, shall knowingly and wilfully violate any provision of this and the three preceding chapters by failing and refusing to furnish material for writing, failing or refusing to allow a party to write letters, to mail letters written,

to receive and deliver letters written as provided herein to such person so confined, or in any other way, he shall be guilty of a misdemeanor. [C., '97, § 2307; 40 Ex. G. A., H. F. 84, § 312.]

3580. "Insane" defined. The term "insane" as used in this chapter includes every species of insanity or mental derangement. [R., '60, § 1468; C., '73, § 1434; C., '97, § 2298; 40 Ex. G. A., H. F. 84, § 313.]

CHAPTER 178

SUPPORT OF INSANE

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3581. Liability of county and state. The necessary and legal costs and expenses attending the arrest, care, investigation, commitment, and support of an insane person committed to a state hospital shall be paid:

- 1. By the county in which such person has a legal settlement, or
- 2. By the state when such person has no legal settlement in this state, or when such settlement is unknown.

The residence of any person found insane who is an inmate of any state institution shall be that existing at the time of admission thereto. [C., '73, § 1402; C., '97, § 2270; S., '13, § 2270; 40 Ex. G. A., H. F. 84, § 314.]

3582. Finding of legal settlement. The commission of insanity shall, when a person is found to be insane, or as soon thereafter as it obtains the proper information, determine and enter of record whether the legal settlement of said person is:

- 1. In the county of the residence of said commissioners;
 - 2. In some other county of the state;
 - 3. In some foreign state or country; or
 - 4. Unknown.
- [40 Ex. G. A., H. F. 84, § 315.]

3583. Certification of settlement. If such legal settlement is found to be in another county of this state, the commission shall, as soon as said determination is made, certify such finding to the superintendent of the hospital to which said patient is committed, and thereupon said superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of such patient, to the county so certified until said settlement shall be otherwise determined as hereinafter provided. [C., '73, § 1417; C., '97, § 2281; 40 Ex. G. A., H. F. 84, § 316.]

3584. Certification to debtor county. Said finding of legal settlement shall also be certi-

fied by the commission to the county auditor of the county of such legal settlement. Such auditor shall lay such notification before the board of supervisors of his county, and it shall be conclusively presumed that such person has a legal settlement in said notified county unless said county shall, within six months, in writing filed with the commission of insanity giving said notice, dispute such legal settlement. [C., '73, § 1402; C., '97, § 2270; S., '13, § 2270; 40 Ex. G. A., H. F. 84, § 317.]

3585. Nonresidents. If such legal settlement is found by the commission to be in some foreign state or country, or unknown, it shall, without entering an order of commitment to the state hospital, immediately notify the board of control of such finding and furnish the board of control with a copy of the evidence taken on the question of legal settlement, and hold said patient for investigation by said board of control. [C., '73, § 1402; C., '97, § 2270; S., '13, §§ 2270, 2727-a28a; 40 Ex. G. A., H. F. 84, § 318.]

3586. Determination by board. The board of control shall immediately investigate the legal settlement of said patient and proceed as follows:

- 1. If the board of control finds that the decision of the commission of insanity as to legal settlement is correct, the board of control shall cause said patient either to be transferred to a state hospital for the insane and there maintained at the expense of the state, or to be transferred to the place of foreign settlement.
- 2. If the board of control finds that the decision of the commission of insanity is not correct, the board of control shall order said patient transferred to a state hospital for the insane and there maintained at the expense of the county of legal settlement in this state. [S., '13, § 2727-a28a; 40 Ex. G. A., H. F. 84, § 319.]

3587. Removal of nonresidents. If at any time the board of control discovers that an insane patient in a state hospital was, at the time of commitment, a nonresident of this state, it may cause said patient to be conveyed to his place of residence if his condition permits of such transfer and other reasons do not render such transfer inadvisable. [C., '73, § 1419; C., '97, § 2283; S., '13, §§ 2283, 2727-a28a; 40 Ex. G. A., H. F. 84, § 320.]

3588. Transfers of insane persons—expenses. The transfer to state hospitals or to the places of their legal settlement of insane persons who have no legal settlement in this state or whose legal settlement is unknown, shall be made according to the directions of the board of control, and when practicable by employees of state hospitals, and the actual and necessary expenses of such transfers shall be paid on itemized vouchers sworn to by the claimants and approved by the board of control, from any funds in the state treasury not otherwise appropriated. [S., '13, §§ 2308-a, 2727-a28b; 40 Ex. G. A., H. F. 84, § 321.]

3589. Subsequent discovery of residence. If, after a patient has been received into a state hospital for the insane as a patient whose legal settlement is supposed to be outside this state or unknown, the board of control finds that the legal settlement of said patient was, at the time of commitment, in a county of this state, said board shall charge all legal costs and expenses pertaining to the commitment and support of said patient to the county of such legal settlement, and the same shall be collected as provided by law in other cases. [S., '13, § 2727-a28a; 40 Ex. G. A., H. F. 84, § 322.]

3590. Preliminary payment of costs. All legal costs and expenses attending the arrest, care, investigation, and commitment of a person to a state hospital for the insane under a finding that such person has a legal settlement in another county of this state, shall, in the first instance, be paid by the county of commitment. The county of such legal settlement shall reimburse the county so paying for all such payments, with interest. [S., '13, § 2308-a; 40 Ex. G. A., H. F. 84, § 323.]

3591. Recovery of costs from state. Costs and expenses attending the arrest, care, and investigation of a person who has been committed to a state hospital for the insane and who has no legal settlement in this state or whose legal settlement is unknown, including cost of commitment, if any, shall be paid out of any money in the state treasury not otherwise appropriated, on itemized vouchers executed by the auditor of the county which has paid them, and approved by the board of control. [S., '13, § 2308-a; 40 Ex. G. A., H. F. 84, § 324.]

3592. Action to determine legal settlement. When a dispute arises between different counties or between the board of control and a county as to the legal settlement of a person committed to a state hospital for the insane,

the attorney general, at the request of the board of control, shall, without the advancement of fees, cause an action to be brought in the district court of any county where such dispute exists, to determine such legal settlement. Said action may be brought at any time when it appears that said dispute cannot be amicably settled. All counties which may be the place of such legal settlement, so far as known, shall be made defendants and the allegation of such settlement may be in the alternative. Said action shall be tried as in equity. [C., '73, § 1418; C., '97, §§ 2270, 2282; S., '13, § 2270; 40 Ex. G. A., H. F. 84, § 325.]

3593. Judgment when settlement found within state. The court shall determine whether the legal settlement of said insane person, at the time of the commitment, was in one of the defendant counties. If the court so find, judgment shall be entered against the county of such settlement in favor of any other county for all legal costs and expenses arising out of said proceedings in insanity, and paid by said other county. If any such costs have not been paid, judgment shall be rendered against the county of settlement in favor of the parties, including the state, to whom said costs or expenses may be due. [C., '73, § 1418; C., '97, § 2282; S., '13, § 2308-a; 40 Ex. G. A., H. F. 84, § 326.]

3594. Order when nonresidence or unknown settlement appears. If the court finds that the legal settlement of said insane person, at the time of commitment, was in a foreign state or country, or was unknown, an order shall be entered that said insane person shall be maintained in the hospital for the insane at the expense of the state. In such case the state shall refund to any county, with interest, all legal costs and expenses arising out of said proceedings in insanity and paid by said county. Any decision by the court shall be final. [C., '73, § 1402; C., '97, § 2270; S., '13, § 2270; 40 Ex. G. A., H. F. 84, § 327.]

3595. Personal liability. Insane persons and persons legally liable for their support shall remain liable for the support of such insane. The county auditor, subject to the direction of the board of supervisors, shall enforce the obligation herein created as to all sums advanced by the county. [R., '60, § 1488; C., '73, § 1433; C., '97, § 2297; 40 Ex. G. A., H. F. 84, § 328.]

3596. Presumption. In actions to enforce the liability imposed by the preceding section, the certificate from the superintendent and the notice from the auditor of state stating the sums charged in such cases, shall be presumptively correct. [R., '60, § 1488; C., '73, § 1433; C., '97, § 2297; 40 Ex. G. A., H. F. 84, § 329.]

3597. Relief from liability. If the board of supervisors in the case of any insane patient who has been supported at the expense of the county shall deem it a hardship to compel the relatives of such patient to bear the burden of his support, or charge the estate of such

patient therewith, they may on application relieve such relatives or estate from any part or all of such burden as may seem to them reasonable and just. [C., '73, § 1433; C., '97, § 2297; 40 Ex. G. A., H. F. 84, § 330.]

3598. Expense in county or private hospitals. The estates of insane or idiotic persons who may be treated or confined in any county asylum or home, or in any private hospital or sanatorium, and the estates of persons legally bound for their support, shall be liable to the county for the reasonable cost of such support, or so much thereof as may be determined by the board of supervisors. [R., '60, § 1488; C., '73, § 1433; C., '97, § 2297; 38 G. A., ch. 309, § 1; 40 Ex. G. A., H. F. 84, § 331.]

3599. Nonresidents liable to state—pre-emption. The estates of all nonresident patients provided for and treated in state hospitals for the insane in this state, and all persons legally bound for the support of such patients, shall be liable to the state for the reasonable value of the care, maintenance, and treatment of such patients while in such hospitals. The certificate of the superintendent of the state hospital in which any nonresident is or has been a patient, showing the amounts drawn from the state treasury or due therefrom as provided by law on account of such nonresident patient, shall be presumptive evidence of the reasonable value of the care, maintenance, and treatment furnished such patient. [S., '13, § 2297-a; 40 Ex. G. A., H. F. 84, § 332.]

3600. Expenses certified to counties. Each superintendent of a state hospital where insane patients are cared for shall certify to the auditor of state on the first days of January, April, July, and October, the amount not previously certified by him due the state from the several counties having patients chargeable thereto, and the auditor of state shall thereupon charge the same to the county so owing. A duplicate certificate shall also be mailed to the auditor of each county having patients chargeable thereto. This section shall apply to all superintendents of all institutions having patients chargeable to counties. [R., '60, § 1487; C., '73, § 1428; C., '97, § 2292; S., '13, § 2292; 40 Ex. G. A., H. F. 84, § 333.]

3601. Duty of county auditor and treasurer. The county auditor, upon receipt of such certificate, shall thereupon enter the same to the credit of the state in his ledger of state accounts, and at once issue a notice to his county treasurer, authorizing him to transfer the amount from the insane or county fund to the general state revenue, which notice shall be filed by the treasurer as his authority for making such transfer, and shall include the amount so transferred in his next remittance of state taxes to the treasurer of state, designating the fund to which it belongs. [R., '60, § 1487; C., '73, § 1428; C., '97, § 2292; S., '13, § 2292; 40 Ex. G. A., H. F. 84, § 334.]

3602. Penalty. Should any county fail to pay these bills within sixty days from the date of certificate from the superintendent, the auditor of state shall charge the delinquent county the penalty of one per cent per month on and after sixty days from date of certificate until paid. [C., '97, § 2292; S., '13, § 2292; 40 Ex. G. A., H. F. 84, § 335.]

3603. Hospital support fund. The board of supervisors shall at the time of levying other taxes estimate the amount necessary to meet said expense the coming year, including cost of commitment and transportation of patients, and shall levy a tax therefor. Said fund shall not be diverted to any other purpose. Should any county fail to levy a tax sufficient to meet this expense, the deficiency shall be paid from the general county fund. [C., '97, § 2292; S., '13, § 2292; 40 Ex. G. A., H. F. 84, § 336.]

3604. County fund for insane. The board of supervisors shall, annually, levy a tax of one and one-half mills or less, as may be necessary, for the purpose of raising a fund for the support of such insane persons as are cared for and supported by the county in the insane ward of the county home, or elsewhere outside of any state hospital for the insane, which shall be known as the county fund for the insane, and shall be used for no other purpose than the support of such insane persons. [C., '97, § 2308; S., '13, § 2308; 40 Ex. G. A., H. F. 84, § 337.]

CHAPTER 179

JUVENILE COURT

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3611. Clerk.
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 3614. Powers and duties—office and supplies.
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3605. Jurisdiction. There is hereby established in each county a juvenile court, which, and the judges thereof, shall have and exercise the jurisdiction and powers provided by law. [S., '13, § 254-a13; 37 G. A., ch. 405, § 1; 40 Ex. G. A., H. F. 84, § 338.]

3606. How constituted. The juvenile court of each county shall be constituted as follows:

1. Of the judges of the district court.

2. In counties wherein there is a superior or municipal court, of the judges thereof, respectively, when designated as judges of the juvenile court by the judges of the district court. [S., '13, § 254-a13; 40 Ex. G. A., H. F. 84, § 339.]

3607. Designation of judge. The judges of the district court may designate one of their number to act as judge of the juvenile court in any county or counties, and may designate a superior or municipal court judge to act as judge of the juvenile court in cases arising in any city in which any such court is organized and in cases arising in any part of any county convenient thereto. In counties having a population of one hundred thousand or over, unless said district judges designate a superior or municipal court judge to act as juvenile judge, they shall after each election, designate one of their number to act as juvenile judge for the ensuing four years. [37 G. A., ch. 405, § 1; 40 Ex. G. A., H. F. 84, § 340.]

3608. Effect. The designation of any judge to hold the juvenile court shall not deprive him of other judicial functions, nor the other judges of the power to act as judges of the juvenile court during the absence, inability to act, or upon request, of the regularly designated juvenile judge. [40 Ex. G. A., H. F. 84, § 341.]

3609. Courts always open. Juvenile courts shall always be open for the transaction of business, but the hearing of any matter requiring notice shall be had only at such time and place as the judge may fix. [S., '13, § 254-a13; 40 Ex. G. A., H. F. 84, § 342.]

3610. Records of court. The juvenile court shall be a court of record, and the proceedings, orders, findings, and decisions thereof shall be entered in books kept for that purpose and

designated as the juvenile court records. [S., '13, § 254-a13; 40 Ex. G. A., H. F. 84, § 343.]

3611. Clerk. The clerk of the court whose judge acts as the juvenile court shall act as clerk of the juvenile court. [37 G. A., ch. 405, § 3; 40 Ex. G. A., H. F. 84, § 344.]

3612. Probation officers—salary. The judge designated as juvenile judge in each county, or in cases where there is more than one such judge in any county the judges so designated acting jointly, shall appoint probation officers, one of whom shall be a woman, as follows:

1. In and for any county having a population of less than thirty thousand, not more than four probation officers, who shall serve without pay.

2. In counties having a population of more than thirty thousand and less than fifty thousand, a chief probation officer at a salary of not more than fifteen hundred dollars per year; and the court may also appoint one deputy at a salary of not more than twelve hundred dollars per year.

3. In counties having a population of more than fifty thousand and less than one hundred twenty-five thousand, a chief probation officer at a salary of not more than two thousand dollars per year; and the court may appoint two deputies at a salary of not more than fifteen hundred dollars each per year.

4. In counties having a population in excess of one hundred twenty-five thousand, one chief probation officer at a salary of not to exceed three thousand dollars per year, and not to exceed five deputy probation officers at a salary, each, of not to exceed eighteen hundred dollars per year. [S., '13, § 254-a18; 37 G. A., ch. 405, § 2; 38 G. A., ch. 41, § 1; 39 G. A., ch. 156, § 1; 40 Ex. G. A., H. F. 84, § 345.]

3613. Physicians and nurses. In any county having a population of one hundred twenty-five thousand or more, the judge or judges of the juvenile court may appoint a competent physician at a salary of not more than fifty dollars per month, and a visiting nurse, who shall be a trained graduate, at a salary of not more than one hundred dollars per month, and prescribe their duties. [37 G. A., ch. 405, §§ 2, 4, 5; 40 Ex. G. A., H. F. 84, § 346.]

3614. Powers and duties—office and supplies. Probation officers, in the discharge of their duties as such, shall possess the powers of peace officers. They shall be furnished by the county with a proper office and all necessary blanks, books, and stationery. It shall be the duty of said probation officers to make such investigation as may be required by the court; to be present in court in order to represent the interests of the child when the case is heard; to furnish to the court such information and assistance as the judge may require, and to take such charge of any child before and after trial as may be directed by the court. [S., '13, § 254-a18; 37 G. A., ch. 405, § 2; 40 Ex. G. A., H. F. 84, § 347.]

3615. Duties of clerk. The clerk of court shall, if practicable, notify a convenient probation officer in advance when any child is to be brought before the said court. [S., '13, § 254-a18; 40 Ex. G. A., H. F. 84, § 348.]

3616. Salaries—expenses—how paid. The judges making the appointments shall fix the salaries of all appointees at not exceeding the amount authorized by law. All appointees shall serve during the pleasure of such judges, and in addition to salaries shall receive their necessary and actual expenses incurred while performing their duties. All salaries and expenses shall be paid by the county. [S., '13, § 254-a18; 37 G. A., ch. 405, §§ 2, 6; 38 G. A., ch. 41, § 1; 40 Ex. G. A., H. F. 84, § 349.]

CHAPTER 180

CARE OF NEGLECTED, DEPENDENT, AND DELINQUENT CHILDREN

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3617. Applicable to certain children. This chapter shall not apply to any child who is accused of an offense which is punishable by life imprisonment or death, but shall otherwise apply to all children who are not feeble minded and who are under eighteen years of age and who are not inmates of any state institution or of any institution incorporated under the laws of this state. [S., '13, § 254-a14; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 350.]

3618. "Dependent and neglected child" defined. The term "dependent child" or "neglected child" shall mean any child who, for any reason:

1. Is destitute, or homeless, or abandoned.
2. Is dependent upon the public for support.
3. Is without proper parental care or guardianship, or habitually begs or receives alms.
4. If under ten years of age, is engaged in giving any public entertainment in public places for pecuniary gain for himself or for another, or who accompanies, or is used in aid of, any person so doing.

5. Is found living in any house of ill fame, or with any vicious or disreputable person.

6. Is living in a home which is unfit for such child.

7. Is living under such other unfit surroundings as bring such child, in the opinion of the court, within the spirit of this chapter. [S., '13, § 254-a14; 40 Ex. G. A., H. F. 84, § 351.]

3619. "Delinquent child" defined. The term "delinquent child" means any child:

1. Who habitually violates any law of this state, or any town or city ordinance.
2. Who is incorrigible.
3. Who knowingly associates with thieves, or vicious or immoral persons.
4. Who is growing up in idleness or crime.
5. Who knowingly frequents a house of ill fame.
6. Who patronizes any policy shop or place where any gaming device is located.
7. Who habitually wanders about any railroad yards or tracks, gets upon any moving train, or enters any car or engine without law-

ful authority. [S., '13, § 254-a14; 40 Ex. G. A., H. F. 84, § 352.]

3620. "Child", "parent", and "institution" defined. The word "child" or "children" may mean one or more children, and shall include any person under eighteen years of age. The word "parent" or "parents" may mean one or both parents when consistent with the intent of this chapter. The word "institution" shall include any corporation which includes in its purposes the care or disposition of children coming within the meaning of this chapter. [S., '13, § 254-a14; 40 Ex. G. A., H. F. 84, § 353.]

3621. Petitions. Petitions, sworn to on information and belief, setting forth the facts which render a child, found in the county, dependent, neglected, or delinquent within the meaning of this chapter, may be filed, without payment of filing fee, with the clerk of the juvenile court, by any reputable resident of the county. [S. S., '15, § 254-a15; 40 Ex. G. A., H. F. 84, § 354.]

3622. Petition may embrace several children. Complaint with reference to more than one child may be embraced in one count of the petition, subject to being later divided on order of the juvenile court if such order appears advisable. [40 Ex. G. A., H. F. 84, § 355.]

3623. Time and place of hearing—notice. Upon the filing of the petition, the court or judge shall fix a time for the hearing and a place within the district convenient to the parties, and cause notice to issue as hereinafter provided. [S. S., '15, § 254-a16; 40 Ex. G. A., H. F. 84, § 356.]

3624. Notice. Said notice shall apprise all parties entitled to notice of the filing of said petition, and of the time and place of hearing thereon, and shall require the custodian of said child to appear with said child at said time and place. A copy of the petition shall be attached to said notice. [S. S., '15, § 254-a16; 40 Ex. G. A., H. F. 84, § 357.]

3625. Manner of service. The court or judge may, in all cases, specify the particular manner in which said notice shall be served. [40 Ex. G. A., H. F. 84, § 358.]

3626. Service of notice. Said notice shall be served on the custodian of said child or on the person with whom such child is living, and on all other persons entitled to notice, at least five days before the day of hearing. No further service shall be required than on the parent when the parent is the custodian or guardian of said child or children. If the said custodian is not the parent or guardian, then additional service shall be made in the following order:

1. On the parents if their residence in this state is known.

2. On the guardian if his residence in this state is known.

3. On some relative if his residence in this state is known. [S. S., '15, § 254-a16; 40 Ex. G. A., H. F. 84, § 359.]

3627. Refusal to produce child. If the person summoned as herein provided shall fail to appear or bring the child, without reasonable cause, and abide the order of the court, he may be proceeded against as in case of contempt of court in addition to any criminal proceedings authorized by law. [S. S., '15, § 254-a16; 40 Ex. G. A., H. F. 84, § 360.]

3628. Warrant of arrest. In case the notice can not be served, or the party served fails to obey the same, or when it shall be made to appear to the court that such notice will be ineffectual, a warrant may issue on the order of the court, either against the parent or guardian or custodian, or against the child himself. [S. S., '15, § 254-a16; 40 Ex. G. A., H. F. 84, § 361.]

3629. Hearing—continuance. On the day set for hearing, the court shall, if the required notice has been given, or at any time if the parties entitled to such notice are in court, proceed to try the cause in equity unless a continuance appears advisable in the interest of justice. [S. S., '15, § 254-a16; 40 Ex. G. A., H. F. 84, § 362.]

3630. Custody of child. When, in the opinion of the court, an emergency exists, temporary provision may be made for the custody of the child pending further hearing. [S. S., '15, § 254-a16; 40 Ex. G. A., H. F. 84, § 363.]

3631. Appointment to represent child. The court may, at any time after the filing of the petition, appoint an attorney or other suitable person to represent and appear for said child. [S. S., '15, § 254-a16; 40 Ex. G. A., H. F. 84, § 364.]

3632. Information charging crime. In any case after an investigation of the facts and circumstances, the court may, in its discretion, cause the child to be charged with either:

1. An indictable offense, in which case the court shall proceed to hold a preliminary examination, and shall exercise the powers of other magistrates; or

2. An offense not triable on indictment, in which case the court may order any peace officer to file forthwith an information against such child and proceed to try the case before a jury of twelve.

When no regular jury is in attendance at the district, superior, or municipal court, as the case may be, the judge shall cause to be issued by the clerk and served by any peace officer a summons for such number of persons qualified to act as jurors as in his judgment are necessary to secure an impartial jury, allowing to the state and the defendant, each, three peremptory challenges. [S. S., '15, § 254-a16; 40 Ex. G. A., H. F. 84, § 365.]

3633. Commitment of child. If a child is unable to furnish a required bail pending the final disposition of the case, he may be committed to the care of a probation or peace officer, or other person, who shall keep such child in some suitable place provided by the city or

county, outside the inclosure of any jail or police station. No child shall be confined in the same yard or inclosure with adult convicts. [S., '13, § 254-a24; S. S., '15, § 254-a16; 40 Ex. G. A., H. F. 84, § 366.]

3634. Misdemeanor cases transferred. Any child, taken before any justice of the peace or police court, charged with a public offense shall, together with the case, be at once transferred by said court to the juvenile court. [S., '13, § 254-a24; 40 Ex. G. A., H. F. 84, § 367.]

3635. Exclusion from courtroom. The judge of the juvenile court shall fix a time and place for the hearing of cases transferred thereto, which shall be disposed of in the same manner as cases originally brought before said court. During his examination into or trial of the case as a court of equity, the court may exclude from the courtroom any and all persons who, in his opinion, are not necessary for the hearing of the case. [S., '13, § 254-a19; 40 Ex. G. A., H. F. 84, § 368.]

3636. Conviction of crime—alternative procedure. When there is a conviction in the district court of any delinquent child of an indictable offense, the district court may enter judgment thereon, or, if the punishment be not imprisonment for life, or death, it may transfer the cause to the juvenile court. The juvenile court shall have power to proceed with such child under the alternative or mandatory commitments provided in this chapter; but if the results, in the opinion of the court, be not conducive to the public interest and the welfare of the child, it may at any time revoke such orders of commitment and enter such judgment of conviction as the district court might have entered. [S., '13, § 254-a17; 40 Ex. G. A., H. F. 84, § 369.]

3637. Alternative commitments. The juvenile court, in the case of any neglected, dependent, or delinquent child, may:

1. Continue the proceedings from time to time and commit said child to the care and custody of a probation officer or other discreet person.
2. Commit said child to some suitable family home or allow it to remain in its own home.
3. Commit said child to any institution in the state, incorporated and maintained for the purpose of caring for such children.
4. Cause the child to be placed in a public or state hospital for treatment or special care, or in a private hospital which will receive it for such purpose, when such course seems necessary for the welfare of the child. [S., '13, §§ 254-a20, 254-a23; 37 G. A., ch. 54, § 1; 38 G. A., ch. 246, § 1; 40 Ex. G. A., H. F. 84, § 370.]

3638. Guardianship and adoption. In case the court commits said child to the custody of some proper person or institution, such person or institution shall, by virtue of such custody, be the legal guardian of the person of such child and may be made a party to any proceeding for the legal adoption of such child, but any such adoption shall be approved by the

court. [S., '13, § 254-a21; 40 Ex. G. A., H. F. 84, § 371.]

3639. Conditions attending commitment. In any case contemplated by the second preceding section, the court may, from time to time, incorporate in its order such conditions and restrictions as it may deem advisable for the welfare of the child, and the jurisdiction of the court over said proceedings and said child shall continue until the child is legally adopted, or until the child is committed to a state institution. [S., '13, § 254-a23; 40 Ex. G. A., H. F. 84, § 372.]

3640. Religious belief. The court, in committing children, shall place them, as far as practicable, in the care and custody of some individual holding the same religious belief as the parents of said child, or with some institution which is controlled by persons of like religious faith with the parents of said child. [S., '13, §§ 254-a27, 3260-g; 40 Ex. G. A., H. F. 84, § 373.]

3641. Aid to widow in care of child. If the juvenile court finds of record that the mother of a neglected or dependent child is and has been a resident of the county for one year preceding the filing of the application, and is a widow and a proper guardian, but, by reason of indigency, is unable to properly care for such child, and that the welfare of said child will be promoted by remaining in its own home, it may, on ten days' written notice to the chairman of the board of supervisors, of said application, by proper order determine the amount of money, not exceeding two dollars and fifty cents per week, necessary to enable said mother to properly care for said child. The board of supervisors shall cause said amount to be paid from the county treasury as provided in said order. Such order may, at any time, be modified or vacated by the court. No payment shall be made after said child reaches the age of sixteen years, or after the mother has remarried, or after she has acquired a legal residence in another county, or after she has become a nonresident of the state. [S., '13, § 254-a20; 37 G. A., ch. 150, § 1; 38 G. A., ch. 107, § 1; 39 G. A., ch. 51, § 1; 39 G. A., ch. 252, § 1; 40 Ex. G. A., H. F. 84, § 374.]

3642. Duration of order. Orders entered under the preceding section shall, unless sooner terminated by the court, automatically terminate two years from the date thereof, but may be renewed under a new application. [40 G. A., ch. 57; 40 Ex. G. A., H. F. 84, § 374-a1.]

3643. Who considered widow. Any mother whose husband is an inmate of any institution under the care of the board of control, shall, for the purposes of the second preceding section, be considered a widow, but only while such husband is so confined. [S., '13, § 254-a20a; 40 Ex. G. A., H. F. 84, § 375.]

3644. Compelling support by parent. The court, in any proceeding hereunder relative to a neglected or dependent child, shall have juris-

diction, on reasonable notice to the parents of said child, to inquire into the ability of said parents to support said child and make all proper orders in reference thereto. The court may require such parent to enter into a bond, with or without surety, and in a reasonable sum, conditioned for the proper care, support, and supervision of such child. If it finds that the parent is able to support such child in any reasonable degree, it may require such parent to pay a reasonable amount of money into court at such times as it may provide, which sum shall be applied to the care of said child. All orders for the payment of money shall be enforced by execution and in such case the parent ordered to make payment shall not be entitled to hold any property as exempt from such execution. All other orders may be enforced by process of contempt until such orders are complied with. [S., '13, §§ 254-a25, 254-a31-254-a45, 254-a47; 40 Ex. G. A., H. F. 84, § 376.]

3645. Action on bond. In case of the breach of a bond given as required in the preceding section, the amount thereof shall be deemed liquidated damages, which, when collected, shall, under the orders of the court, be applied to the care of said child. The county attorney shall, on the order of the court, prosecute all actions on such bonds. [S., '13, §§ 254-a25, 254-a31-254-a45, 254-a47; 40 Ex. G. A., H. F. 84, § 377.]

3646. Mandatory commitments. If commitment of any child is not made under the foregoing provisions of this chapter, or if made thereunder and the results, in the opinion of the court, are not conducive to the welfare of the child, the court shall proceed as follows:

1. If the child is neglected or dependent and not delinquent, it shall be committed either to the soldiers' orphans' home or to the state juvenile home.

2. If the child is delinquent and under the age of ten years, it shall be committed to the state juvenile home.

3. If the child is over the age of ten years and, in the opinion of the court or judge is seriously delinquent or so disposed, it shall be committed to the state training school for boys or for girls, as the case may be; but married women, prostitutes, and girls who are pregnant shall not be committed to the training school.

4. If the child is over the age of ten years and, in the opinion of the court or judge, is not seriously delinquent nor so disposed, it shall be committed to the state juvenile home. [C., '73, §§ 1653-1659; C., '97, §§ 2708, 2709; S., '13, §§ 254-a20, 254-a23, 2708, 2709; 37 G. A., ch. 54, § 1; 38 G. A., ch. 12, § 1; 38 G. A., ch. 165, § 4; 38 G. A., ch. 246, § 1; 40 Ex. G. A., H. F. 84, § 378.]

3647. Interpretive clause. It is the intent of the preceding section to so classify commitments that the merely neglected and dependent child will not be associated with the delinquent, and that delinquent children will be so segregated that the least delinquent will not

suffer by association with those of greater delinquency. [40 Ex. G. A., H. F. 84, § 379.]

3648. Right to transfer. The board of control, at any time, for the purpose of effecting, as nearly as practicable, the declared intent of this chapter, may transfer an inmate of any of said three state institutions to any other of said institutions. It may also transfer any feeble-minded child from said institutions to the institution for feeble minded or to the hospital for epileptics and school for feeble minded. The expense of such transfers shall be charged to the support fund of the institution from which the transfers are made. [40 Ex. G. A., H. F. 84, § 380.]

3649. Term of commitment—warrant. Commitments shall be until the child attains the age of twenty-one years, unless otherwise discharged by law.

A warrant of commitment shall consist of a copy of the order of commitment, certified to by the clerk, and shall be in duplicate, one of which shall be delivered to the executive head of the receiving institution and shall constitute sufficient authority to hold in custody the party committed. [C., '73, §§ 1653-1658; C., '97, § 2708; S., '13, §§ 254-a23, 2708; 37 G. A., ch. 54, § 1; 38 G. A., ch. 246, § 1; 40 Ex. G. A., H. F. 84, § 381.]

3650. Court notified of application for discharge. When application, written or otherwise, is made to the board of control for the release or discharge of any delinquent child under twenty-one years of age who has been committed by a juvenile court to any state institution, such board shall at once, by letter, give written notice of such application to the judge of the juvenile court which made the commitment, and such child shall not be discharged or released in less than thirty days after such notice has been given. [40 Ex. G. A., H. F. 84, § 382.]

3651. Record of discharge. The board shall keep a full record of the discharge by it of all delinquent children which record shall among other matters show the reasons therefor and whether the discharge was on application or on the motion of the board. [40 Ex. G. A., H. F. 84, § 383.]

3652. Statement to superintendent. In case of a commitment to a state institution, the judge shall forward to the superintendent a statement of the nature of the complaint, and such other particulars as he may be able to ascertain, including the date of birth of the child, its habits and environments, the number of times it has been arrested and the cause therefor, the influence of the parent or custodian on such child, and the substance of the evidence introduced on the hearing. [C., '73, § 1657; C., '97, § 2708; S., '13, § 2708; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 384.]

3653. Detention home and school in certain counties. In counties having a population of more than forty thousand, the board of super-

visors shall provide and maintain, separate, apart, and outside the inclosure of any jail or police station, a suitable detention home and school for dependent, neglected, and delinquent children. [S., '13, § 254-a29; 38 G. A., ch. 369, § 1; 40 Ex. G. A., H. F. 84, § 385.]

3654. Tax. The board of supervisors may annually levy a tax of not to exceed one mill for the purpose of maintaining such home, and paying the salaries and expenses of all appointees authorized by this chapter. [S., '13, § 254-a30; 40 Ex. G. A., H. F. 84, § 386.]

3655. Approval of institutions. The board of control shall designate and approve the institutions to which such children may be legally committed and shall have supervision and right of visitation and inspection at all times over

all such institutions. [S., '13, §§ 254-a20, 254-a26; 40 Ex. G. A., H. F. 84, § 387.]

3656. Reports by court and institutions. The juvenile court, and all institutions receiving such children, shall, between the first and fifteenth day of January of each year, make report to the board of control. The report shall embrace the number of children of each sex brought before the court during the past year, the number for whom homes have been provided, the number sent to state institutions, and the number in charge of each institution. [S., '13, § 254-a26; 40 Ex. G. A., H. F. 84, § 388.]

3657. Statutes construed liberally. This chapter shall be liberally construed to the end that its purpose may be carried out. [S., '13, § 254-a28; 40 Ex. G. A., H. F. 84, § 389.]

CHAPTER 181

JUVENILE DELINQUENCY

3658. Contributing to delinquency.

3659. Penalty—bar.

3658. Contributing to delinquency. It shall be unlawful:

1. To encourage any child under eighteen years of age to commit any act of delinquency defined in the preceding chapter of this title.

2. To send, or cause to be sent, any such child to a house of prostitution or to any place where intoxicating liquors are unlawfully sold or unlawfully kept for sale, or to any policy shop, or to any gambling place, or to any public poolroom, or to induce any such child to go to any such places, knowing them to be such.

3. To knowingly encourage, contribute, or in any manner cause such child to violate any law of this state, or any ordinance of any city or town.

4. To knowingly permit, encourage, or cause such child to be guilty of any vicious or immoral conduct. [39 G. A., ch. 238, § 1; 40 Ex. G. A., H. F. 84, § 389-a1.]

3659. Penalty—bar. A violation of the preceding section shall be punishable by a fine of not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment. Said conviction shall not bar a prosecution of such convicted person for an indictable offense when the acts which caused or

3660. Suspension of sentence.

3661. Preliminary examination.

contributed to the delinquency of such child are indictable. [39 G. A., ch. 238, § 2; 40 Ex. G. A., H. F. 84, § 389-a2.]

3660. Suspension of sentence. Upon said conviction being had, the court may, for a period not exceeding two years, suspend sentence under such conditions as to good behavior as it may prescribe. Should said conditions be fulfilled, the court may at any time enter an order setting said conviction aside and wholly releasing the defendant therefrom. Should said condition be not fulfilled to the satisfaction of the court, an order of sentence may at any time be entered which shall be effective from the date thereof. [39 G. A., ch. 238, § 2; 40 Ex. G. A., H. F. 84, § 389-a3.]

3661. Preliminary examination. If, in proceedings in juvenile court, it appears probable that an indictable offense has been committed and that the commission thereof caused, or contributed to, the delinquency of such a child, said court may order the issuance of a warrant for the arrest of such suspected person, and on the appearance of such person said court may proceed to hold a preliminary examination, and in so doing shall exercise all the powers of a committing magistrate. [39 G. A., ch. 238, § 1; 40 Ex. G. A., H. F. 84, § 389-a4.]

CHAPTER 182

PRIVATE INSTITUTIONS FOR NEGLECTED, DEPENDENT, AND DELINQUENT CHILDREN

3662. Authority.
 3663. Jurisdiction to revoke.
 3664. Terms defined.
 3665. Who may surrender child.
 3666. Children over eighteen years old.
 3667. School facilities.
 3668. Revocation of commitment.
 3669. Supervision.
 3670. Institutions to report.
 3671. Commitments prohibited.
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 3673. Bond by foreign institution.
3674. Action on bond.
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 3677. Commitments in lieu of jail sentence.
 3678. Commitment subsequent to sentence.
 3679. Surrender of female.
 3680. Release on bond.
 3681. Custody and control—labor.
 3682. "Institution" defined.
 3683. Supervision.
 3684. Unincorporated institutions.

3662. Authority. Any institution incorporated under the laws of this state or maintained for the purpose of caring for, placing out for adoption, or otherwise improving the condition of unfortunate children, may:

1. Receive neglected, dependent, or delinquent children, who are under eighteen years of age, under commitment from the juvenile court, and control and dispose of them subject to the provisions of chapter 180.

2. Receive neglected, dependent, and delinquent children under twenty-one and over eighteen years of age, under commitment from the juvenile court, and control and dispose of them as in this chapter provided.

3. Receive, control, and dispose of all minor children voluntarily surrendered to such institutions. [S., '13, §§ 254-a22, 3260-b; 40 Ex. G. A., H. F. 84, § 390.]

3663. Jurisdiction to revoke. The district court of any county in which any such institution may be located shall have jurisdiction to revoke the powers herein granted upon a showing that any such institution has abused the trust imposed, or that the welfare of its wards demands that they be taken from the control of such institution. It shall be the duty of the state board of control to institute such proceedings whenever, in its judgment, they are advisable. [S., '13, § 3260-k; 40 Ex. G. A., H. F. 84, § 391.]

3664. Terms defined. The meaning of the terms "neglected", "dependent", and "delinquent" child shall be the same as provided in chapter 180. [40 Ex. G. A., H. F. 84, § 392.]

3665. Who may surrender child. Minor children may be surrendered to such institutions:

1. By the parents jointly.

2. By either parent, when the other is dead, or hopelessly insane, or a habitual drunkard, or has abandoned the family, or is in prison for crime, or is an inmate or keeper of a house of ill fame.

3. By the mother alone, if the child is illegitimate and in her care and custody. [S., '13, § 3260-c; 40 Ex. G. A., H. F. 84, § 393.]

3666. Children over eighteen years old. Any reputable citizen of the county may file a petition with the juvenile court as provided in chapter 180, against any neglected, dependent, or delinquent minor child who is over the age of eighteen years and therein ask that said child be committed to such an institution, or otherwise dealt with as may appear best for the welfare of said child, and in such case the procedure shall, so far as applicable, be as provided in said chapter, except that such child shall not be committed thereunder to any state institution. [40 Ex. G. A., H. F. 84, § 394.]

3667. School facilities. All children in such institutions, over seven years and under fourteen years of age, shall be kept in school during the school sessions of the district in which such child is kept, or in some parochial school for a like period. [S., '13, § 3260-d; 40 Ex. G. A., H. F. 84, § 395.]

3668. Revocation of commitment. The juvenile court of the county in which an institution is located may at any time revoke a commitment to such institution when it is made to appear that the trust imposed has been abused, or that the welfare of the child requires such revocation. [S., '13, § 3260-k; 40 Ex. G. A., H. F. 84, § 396.]

3669. Supervision. All institutions receiving children under this chapter shall be subject to the supervision and inspection of the board of control, which may at any time require such information of such institutions as it may deem necessary to effect such supervision and inspection. [S., '13, § 3260-j; 40 Ex. G. A., H. F. 84, § 397.]

3670. Institutions to report. Every such institution shall file with the board of control, during the month of January of each year, an

annual written or printed report, which shall show:

1. The number of children cared for during the preceding year.
2. The number of children received for the first time and the number returned from families.
3. The number placed in homes.
4. The number deceased.
5. The number returned to friends.
6. The number placed in state institutions.
7. The number and names and number of months of each of those attending school.
8. A statement showing the receipts and disbursements of such institution.
9. The amount expended for salaries and other expenses, specifying the same.
10. The amount expended for lands, buildings, and investments. [S., '13, § 3260-j; 40 Ex. G. A., H. F. 84, § 398.]

3671. Commitments prohibited. No child shall be committed to the care of any such institution which shall fail to file with the state board of control a satisfactory report for the calendar year last preceding, unless it be an institution organized within the current year. [S., '13, § 3260-j; 40 Ex. G. A., H. F. 84, § 399.]

3672. Foreign institutions. Institutions of the nature contemplated by this chapter, and organized under the laws of a foreign state, shall not place any child in any family home or other place in this state unless it first executes the bond hereinafter provided and satisfies the board of control that it will not bring into this state any child which has a contagious or incurable disease, or which is deformed, feeble-minded, or of vicious character and that it will promptly remove from the state any child brought into the state by its agents in case said child becomes a public charge within five years after being brought into the state. [S., '13, § 3260-l; 40 Ex. G. A., H. F. 84, § 400.]

3673. Bond by foreign institution. Such foreign institution shall execute and file with the said board a bond, to be approved by the said board, in the sum of one thousand dollars, conditioned to comply with the preceding section. [S., '13, § 3260-l; 40 Ex. G. A., H. F. 84, § 401.]

3674. Action on bond. In case of a breach of said bond a conclusive presumption shall prevail that the amount of said bond was intended to constitute liquidated damages. [40 Ex. G. A., H. F. 84, § 402.]

3675. Adoption of foreign resident. The third preceding section shall not be construed as prohibiting any resident of the state from receiving and adopting any child which is a resident of a foreign state. [S., '13, § 3260-l; 40 Ex. G. A., H. F. 84, § 403.]

3676. Monthly allowance. The institution receiving and caring for a child under eighteen years of age and under commitment from the

juvenile court, shall receive, from the county of the legal settlement of such child, a monthly allowance of not to exceed sixteen dollars. [S., '13, § 2713-3a; 40 Ex. G. A., H. F. 84, § 404.]

3677. Commitments in lieu of jail sentence. When any court may pronounce sentence committing any female to any jail, such female may be committed to any institution as herein provided, if such institution is willing to receive her, without expense to the state, but such commitment shall not exceed the maximum jail sentence. [S., '13, § 5442-a; 40 Ex. G. A., H. F. 84, § 405.]

3678. Commitment subsequent to sentence. If the court has already committed such female to a jail and thereafter it appears that any such institution is willing to receive her under a commitment, and under the conditions herein imposed, the court may make an additional order, releasing her from such jail and ordering her committed to such institution for the unexpired time of the original commitment. [S., '13, § 5442-a; 40 Ex. G. A., H. F. 84, § 406.]

3679. Surrender of female. Any such female may be surrendered at any time to the court, judge, or presiding magistrate making the original order, which court, judge, or magistrate may make a further order committing the accused to a proper jail for the unexpired term of the original commitment. [S., '13, § 5442-a; 40 Ex. G. A., H. F. 84, § 407.]

3680. Release on bond. If, after any female is so committed to such institution, a bond is given under which such female is entitled to a release from such commitment, such female shall be released by an order issued by the officer approving said bond. [S., '13, § 5442-b; 40 Ex. G. A., H. F. 84, § 408.]

3681. Custody and control—labor. Any such female committed to an institution as herein provided shall be in the legal custody and control of the immediate managing head, and such female, whether the commitment so provides or not, shall, while being held under such commitment, perform such reasonable, fit, and proper labor as such managing head may direct, which labor shall be the sole compensation to such institution for the keep of such female. [S., '13, § 5442-c; 40 Ex. G. A., H. F. 84, § 409.]

3682. "Institution" defined. The term "institution" as used in the five preceding sections shall embrace any institution having for its object, in whole or in part, the furnishing of relief, care, and assistance to the poor, destitute, needy, or unfortunate, or any other charitable or benevolent object. [S., '13, § 5442-c; 40 Ex. G. A., H. F. 84, § 410.]

3683. Supervision. Any institution having any such female in its custody shall be subject to supervision and inspection by the board of control to the same extent as the other institutions named in this chapter. [S., '13, § 5442-d; 40 Ex. G. A., H. F. 84, § 411.]

3684. Unincorporated institutions. All private unincorporated institutions devoted to the reception and care of neglected, dependent, and delinquent children shall be subject to the supervision and inspection of the board of

control which may at any time require such information of such institutions as it may deem necessary in order to render its supervision and inspection effective. [40 Ex. G. A., H. F. 84, § 411-a.1.]

CHAPTER 183

TRAINING SCHOOLS

3685. Official designation.
3686. Superintendent—powers and duties.
3687. Salary.
3688. Instruction and employment.
3689. Procedure to commit.
3690. Conviction for crime.
3691. Placing in families.

3685. Official designation. The state training school at Eldora shall be known as the "Iowa training school for boys". The state training school at Mitchellville shall be known as the "Iowa training school for girls". [S., '13, § 2701-a; 37 G. A., ch. 54, §§ 1, 2; 40 Ex. G. A., H. F. 84, § 412.]

3686. Superintendent—powers and duties. The superintendent shall have charge and custody of the inmates of the school. He shall discipline, govern, instruct, employ, and use his best endeavors to reform the pupils in his care, so that, while preserving their health, he may promote, as far as possible, moral, religious, and industrious habits, and regular, thorough, and progressive improvement in their studies, trade, and employment. [C., '73, §§ 1651, 1652; C., '97, § 2707; S., '13, § 2707; 40 Ex. G. A., H. F. 84, § 413.]

3687. Salary. The salary of the superintendent of the state training school for boys shall be twenty-five hundred dollars per year, and the salary of the superintendent of the state training school for girls shall be two thousand dollars per year. [S., '13, § 2727-3a; 37 G. A., ch. 54, §§ 1, 2; 38 G. A., ch. 390, §§ 1, 2; 40 Ex. G. A., H. F. 84, § 414.]

3688. Instruction and employment. The board of control shall cause the boys and girls in said schools to be instructed in piety and morality, in such instruction on the constitutions of the United States and of this state as is required in the common schools, and in such branches of useful knowledge as are adapted to their age and capacity, including the effect of alcoholic liquors, stimulants, and narcotics on the human system, and in some regular course of labor, either mechanical, agricultural, or manufactural, as is best suited to their age, strength, disposition, capacity, reformation, and well being. [C., '73, § 1648; C., '97, § 2706; 40 Ex. G. A., H. F. 84, § 415.]

3689. Procedure to commit. The procedure for the commitment of children to the state training school, except as otherwise provided, shall be the same as provided in chapter 180. [C., '73, §§ 1653-1659; C., '97, §§ 2708, 2709;

3692. Articles of agreement.
3693. Resuming custody of child.
3694. Unlawful interference.
3695. County attorney to appear for child.
3696. Discharge or parole.
3697. Binding out or discharge.

S., '13, §§ 2708, 2709; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 416.]

3690. Conviction for crime. When a boy or girl over ten and under eighteen years of age, of sound mind, is found guilty in the district court of any crime except murder, the court may order the child sent to the state training school for boys, or for girls, as the case may be. [C., '73, §§ 1653, 1654; C., '97, § 2708; S., '13, § 2708; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 417.]

3691. Placing in families. All children committed to and received in the training schools may, with the written approval of the board of control, be placed by the superintendent with any persons or in families of good standing and character where they will be properly cared for and educated. [C., '73, § 1649; C., '97, § 2704; S., '13, § 2704; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 418.]

3692. Articles of agreement. Such children shall be so placed under articles of agreement, approved by the board of control and signed by the person or persons taking them and by the superintendent. Said articles shall provide for the custody, care, education, maintenance, and earnings of said children for a time to be fixed in said articles, which shall not extend beyond the time when the persons bound shall attain the age of twenty-one years. [C., '73, § 1649; C., '97, § 2704; S., '13, § 2704; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 419.]

3693. Resuming custody of child. In case a child so placed be not given the care, education, treatment, and maintenance required by such agreement, the board of control may cause the child to be taken from the person with whom placed and returned to the institution, or may replace, release, or finally discharge him as may seem best. [C., '73, § 1649; C., '97, § 2704; S., '13, § 2704; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 420.]

3694. Unlawful interference. It shall be unlawful for any parent or other person not a party to such placing of a child to interfere in

any manner or assume or exercise any control over such child or his earnings. Said earnings shall be used, held, or otherwise applied for the exclusive benefit of such child. [S., '13, § 2704; 40 Ex. G. A., H. F. 84, § 421.]

3695. County attorney to appear for child. In case legal proceedings are necessary to enforce any right conferred on any child by the four preceding sections, the county attorney of the county in which such proceedings should be instituted shall, on request of the superintendent, approved by the board of control, institute and carry on, in the name of the superintendent, the proceedings in behalf of the superintendent. [S., '13, § 2704; 40 Ex. G. A., H. F. 84, § 422.]

3696. Discharge or parole. The board of control may at any time after one year's service order the discharge or parole of any inmate

as a reward for good conduct, and may, in exceptional cases, discharge or parole inmates without regard to the length of their service or conduct, when satisfied that the reasons therefor are urgent and sufficient. If paroled upon satisfactory evidence of reformation, the order may remain in effect or terminate under such rules as the board may prescribe. [C., '73, §§ 1660, 1661; C., '97, § 2711; S., '13, § 2711; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 423.]

3697. Binding out or discharge. The binding out or the discharge of an inmate as reformed, or having arrived at the age of twenty-one years, shall be a complete release from all penalties incurred by the conviction for the offense upon which the child was committed to the school. [C., '73, § 1661; C., '97, § 2711; S., '13, § 2711; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 424.]

CHAPTER 184

IOWA JUVENILE HOME

- 3698. Objects.
- 3699. Procedure for commitment.
- 3700. Voluntary applications.
- 3701. Transfers.

3698. Objects. The Iowa juvenile home shall be maintained for the care, custody, and education of children therein, who shall be wards of the state. Such education shall embrace instruction in the common school branches, in such other higher branches as may be practical, and in such manual training, as shall best fit and develop such children and render them selfsustaining. Instruction may also be given in elementary military tactics. [38 G. A., ch. 165, §§ 1, 3, 8; 40 Ex. G. A., H. F. 84, § 426-a1.]

3699. Procedure for commitment. The procedure for the commitment of such children to said home shall be the same as provided in chapter 180. [38 G. A., ch. 165, § 4; 40 Ex. G. A., H. F. 84, § 426-a2.]

3700. Voluntary applications. Children of the class which might be admitted to said home by the juvenile court may be admitted to said home on voluntary application signed by the legal custodian of such children, and approved in writing by the board of supervisors of the county where such child has a legal residence. Such application shall be subject to the approval of the board of control and shall be in such form as it may prescribe. [38 G. A., ch. 165, §§ 5, 6; 40 Ex. G. A., H. F. 84, § 426-a3.]

3701. Transfers. Transfers to and from the juvenile home may be made as provided in the chapter relating to the soldiers' orphans' home. [40 Ex. G. A., H. F. 84, § 426-a4.]

3702. Adoption or placing under contract. Children in the juvenile home may be adopted,

- 3702. Adoption or placing under contract.
- 3703. Counties liable for support.
- 3704. Maximum appropriation.
- 3705. Minimum appropriation.

or placed with other persons under contract, and repossessed by the board for other disposition, in the same manner and with the same effect as provided in the chapter relating to the soldiers' orphans' home. The provisions of said chapter which prohibit interference with said children while under adoption or contract shall also apply to children committed to or received in the juvenile home. [38 G. A., ch. 165, §§ 7-10; 40 Ex. G. A., H. F. 84, § 426-a5.]

3703. Counties liable for support. Each county shall be liable for sums paid by the home in support of all children committed or received from said county to the extent of one-half of the per capita cost per month for each child, and when the average number of children is less than two hundred ninety-two in any month, each county shall be liable for its just proportion for each child of the amount credited to the home for that month. The sum for which each county is so liable shall be charged to the county, and collected as a part of the taxes due the state, and paid by the county at the same time state taxes are paid. [38 G. A., ch. 165, § 12; 40 G. A., ch. 55, § 5; 40 Ex. G. A., H. F. 84, § 426-a6.]

3704. Maximum appropriation. For the support of the home there is appropriated out of any money in the state treasury not otherwise appropriated, or so much thereof as may be necessary, twenty-four dollars monthly for each child actually supported, and, in addition, the expense of his transmission to the home. The superintendent on the first day of each

month shall certify to the board of control the average number of inmates supported by the state in the home for the preceding month, and the expense of transmitting children to the home during said month. Upon receipt of such certificates said board shall certify to the auditor and treasurer of state the total amount payable by the state for the support of the home for the preceding month, and the cost of transmitting children to the home for said month, and the auditor and treasurer of state shall credit the home with said amount. The amount so credited shall be drawn from the state treasury in the manner provided for the drawing of support funds for the other institutions under the management of the state

board of control. [38 G. A., ch. 165, § 11; 40 G. A., ch. 55, § 4; 40 Ex. G. A., H. F. 84, § 426-a7.]

3705. Minimum appropriation. If the average number of children shall be less than two hundred ninety-two in any month, the auditor and treasurer of state shall, upon presentation of the proper certificate by the board, credit the home with seven thousand dollars for that month, and the sum so credited shall be drawn from the state treasury in the same manner and for the same purposes as the regular monthly per capita allowance is drawn. [38 G. A., ch. 165, § 11; 40 G. A., ch. 55, § 4; 40 Ex. G. A., H. F. 84, § 426-a8.]

CHAPTER 185

IOWA SOLDIERS' ORPHANS' HOME

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- 3708. Admissions.
- 3709. Procedure.
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3706. Objects. The Iowa soldiers' orphans' home shall be maintained for the purpose of providing for children therein a common school education and such useful and regular employment and training as will enable them to be selfsustaining. The board of control and superintendent of the home shall assist all discharged children in securing suitable homes and proper employment. [C., '97, § 2689; 40 Ex. G. A., H. F. 84, § 110-a1.]

shall be in such form as it may prescribe. [C., '97, § 2685; S., '13, § 2685; 40 Ex. G. A., H. F. 84, § 110-a4.]

3707. Salary. The salary of the superintendent of said home shall be twenty-four hundred dollars per year. [S., '13, § 2727-3a; 38 G. A., ch. 390, §§ 1, 2; 40 Ex. G. A., H. F. 84, § 110-a2.]

3710. Transfers. The board of control may transfer to the home minor wards of the state from any institution under its charge; but no person shall be so transferred who is not mentally normal, or who is incorrigible, or has any vicious habits, or whose presence in the home would be inimical to the moral or physical welfare of normal children therein, and any such child in the home may be transferred to the proper state institution. [40 Ex. G. A., H. F. 84, § 110-a5.]

3708. Admissions. Admission to said home shall be granted to resident children of the state under eighteen years of age, as follows, giving preference in the order named:

1. Destitute children, and orphans unable to care for themselves, of soldiers, sailors, or marines.

2. Neglected or dependent children committed thereto by the juvenile court.

3. Other destitute children. [C., '97, § 2685; S., '13, § 2685; 40 Ex. G. A., H. F. 84, § 110-a3.]

3711. Profits and earnings. Any profits arising from labor at the home shall be placed at interest in some savings bank, and each child paid, when discharged, in proportion as his labor contributed to the fund. The earnings of a child who is placed with others under contract shall be used, held, or otherwise applied for the exclusive benefit of said child. [C., '97, § 2689; S., '13, § 2690-d; 40 Ex. G. A., H. F. 84, § 110-a6.]

3709. Procedure. The procedure for commitment to said home shall be the same as provided by chapter 180, but admission may be granted on voluntary applications signed by the legal custodian of the child and approved by a judge of a court of record, or by the board of supervisors, of the county of the child's residence. Such applications shall be subject to the approval of the board of control and

3712. Regulations. All children admitted or committed to the home shall be wards of the state and subject to the rules of the home. Subject to the approval of the board, any child received under voluntary application may be expelled by the superintendent for disobedience and refusal to submit to proper discipline. Children shall be discharged upon arriving at the age of eighteen years, or sooner if possessed of sufficient means to provide for themselves. [C., '73, § 1634; C., '97, §§ 2685, 2688;

S., '13, §§ 2685, 2688, 2690-b; 40 Ex. G. A., H. F., 84, § 110-a7.]

3713. Enumeration of soldiers' orphans. The assessor in each odd-numbered year shall take an enumeration of the children of deceased soldiers who were in the military service of the government, naming the company or organization to which the soldiers belonged, with the age and sex of the children. The auditors of the several counties shall furnish the assessors with the proper blanks for taking such lists. The lists so returned shall be revised from time to time, as may be necessary, by the board of supervisors, and a record made of such action. [C., '73, §§ 1635, 1636, 1637; C., '97, § 2686; 40 Ex. G. A., H. F. 84, § 110-a8.]

3714. Adoption. Any child in said home who is an orphan, or who has been abandoned by his parents, or whose parents or surviving parent consent in writing, may be adopted by any citizen of this state, upon the recommendation of the superintendent, and with the approval of the board. [C., '73, § 1634; C., '97, § 2690; S., '13, § 2690-a; 40 Ex. G. A., H. F. 84, § 110-a9.]

3715. Articles. The adoption shall be by written instrument, signed by the superintendent and by the person adopting, subject to the written approval of the board. Except as herein otherwise provided, such instrument shall be signed and recorded as provided by the general adoption statutes of the state, and the adoption shall create the rights and liabilities provided by said statutes. [C., '73, § 1634; C., '97, § 2690; S., '13, § 2690-a; 40 Ex. G. A., H. F. 84, § 110-a10.]

3716. Placing child under contract. Any child received in said home, unless adopted, may, under written contract approved by the board, be placed by the superintendent in the custody and care of any proper person or family. Such contract shall provide for the custody, care, education, maintenance, and earnings of the child for a fixed time which shall not extend beyond the age of majority. Such contract shall be signed by the superintendent and by the person taking the child. [S., '13, § 2690-b; 40 Ex. G. A., H. F. 84, § 110-a11.]

3717. Recovery of possession. In case of a violation of the terms of such articles of adoption, or contract, the board may cause the child to be taken from the person or persons with whom placed, and may make such other disposition of him as shall seem to be for his best interests. [S., '13, § 2690-c; 40 Ex. G. A., H. F. 84, § 110-a12.]

3718. Recovery of child—duty of county attorney. In case legal proceedings are necessary to recover the possession of such child, they may be instituted and carried on in the name of the superintendent, and the county attorney of the county in which the child is placed shall, if requested by the superintendent, act as his attorney in the proceedings. [S., '13, § 2690-c; 40 Ex. G. A., H. F. 84, § 110-a13.]

3719. Interference with child. It shall be unlawful for any parent or other person not a party to the placing of a child by adoption or for a term of years, to interfere in any manner with or to assume or exercise any control over such child or his earnings while such adoption or contract is in force. [S., '13, § 2690-d; 40 Ex. G. A., H. F. 84, § 110-a14.]

3720. Counties liable. Each county shall be liable for sums paid by the home in support of all its children, other than the children of soldiers, to the extent of a sum equal to one-half the amount appropriated by the state for the support of each child, and when the average number of children shall be less than five hundred in any month, each county shall be liable for its just proportion for each child of the amount credited to the home for that month. The sums for which each county is so liable shall be charged to the county and collected as a part of the taxes due the state, and paid by the county at the same time state taxes are paid. [C., '97, § 2692; S. S., '15, § 2692; 40 Ex. G. A., H. F. 84, § 110-a15.]

3721. Maximum appropriation. For the support of the home there is appropriated out of any money in the state treasury not otherwise appropriated the sum of twenty-four dollars per month, or so much thereof as may be necessary, for each child actually supported, and, in addition, the expense of his transmission to the home. The superintendent on the first day of each month shall certify to the board of control the average number of children supported by the state in the home for the preceding month, and the expense of transmitting children to the home during said month. Upon receipt of such certificate the said board shall certify to the auditor and treasurer of state the total amount payable by the state for the support of the home for the preceding month, and the expense of transmitting children to the home for said month, and the auditor and treasurer of state shall credit the home with said amount. The amount so credited shall be drawn from the state treasury in the manner provided for the drawing of support funds for the other institutions under the management of the state board of control. [C., '73, §§ 1630, 1631; C., '97, § 2691; S. S., '15, § 2691; 37 G. A., ch. 266, § 6; 38 G. A., ch. 37, § 6; 39 G. A., ch. 297, § 3; 40 G. A., ch. 55, § 1; 40 Ex. G. A., H. F. 84, § 110-a16.]

3722. Minimum appropriation. If the average number of children shall be less than five hundred in any month, the auditor and treasurer of state shall, upon the presentation of the proper certificate by the board, credit the home with the sum of twelve thousand dollars for that month, and the sum so credited shall be drawn from the state treasury in the same manner and for the same purposes as the regular monthly per capita allowance is drawn. [S. S., '15, § 2691; 37 G. A., ch. 266, § 6; 38 G. A., ch. 37, § 6; 39 G. A., ch. 297, § 3; 40 G. A., ch. 55, § 1; 40 Ex. G. A., H. F. 84, § 110-a17.]

CHAPTER 186

WOMEN'S REFORMATORY

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3723. Objects. The women's reformatory shall be maintained for the purpose of preparing the inmates to lead orderly and virtuous lives and to become selfsupporting and useful members of society, and to this end to instruct them in the common school and other branches of learning, in morality, physical culture, domestic science, mechanical arts, and such other branches of industry as may be practicable. [S. S., '15, §§ 2713-n1, 2713-n11; 37 G. A., ch. 427, § 1; 40 Ex. G. A., H. F. 84, § 427.]

3724. Superintendent—salary. The superintendent of the women's reformatory shall be a female and shall receive a salary of not to exceed two thousand dollars per year. [S. S., '15, § 2713-n2; 40 Ex. G. A., H. F. 84, § 428.]

3725. Service required. The superintendent may, with the approval of the board of control, require any inmate to perform any service suited to her strength and attainments and which may be needed for the benefit of the reformatory or for the welfare of such inmate. [S. S., '15, § 2713-n11; 40 Ex. G. A., H. F. 84, § 429.]

3726. Commitments generally. All females over eighteen years of age, and married females under eighteen years of age, who are convicted in the district court of offenses punishable by imprisonment in excess of thirty days, shall, if imprisonment be imposed, be committed to the women's reformatory [S., '13, § 5718-a27; 37 G. A., ch. 427, § 1; 40 Ex. G. A., H. F. 84, § 430.]

3727. Optional commitments for life. Any unmarried female over ten and under eighteen years of age convicted of an offense punishable by life imprisonment may be committed either to the Iowa training school for girls or to the women's reformatory. [S. S., '15, § 2713-n7; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 431.]

3728. Commitment on appeal. A female over eighteen years of age, convicted on appeal from a conviction of a nonindictable offense,

may, if imprisonment be imposed, be committed to the women's reformatory for an indeterminate period not exceeding ninety days. [S. S., '15, § 2713-n8; 40 Ex. G. A., H. F. 84, § 432.]

3729. Term of commitments. A female convicted of a felony shall not be detained in said reformatory under one commitment for a period longer than the maximum term of imprisonment provided by law for said felony. A female convicted of a crime less than felony shall not be detained therein longer than five years under one commitment. [S. S., '15, § 2713-n12; 40 Ex. G. A., H. F. 84, § 433.]

3730. Manner of committing females. Females committed to said reformatory shall be taken thereto by some woman, or by some peace officer accompanied by some woman, appointed by the court. [S. S., '15, § 2713-n9; 40 Ex. G. A., H. F. 84, § 434.]

3731. Costs of commitment. The costs and expenses allowed for taking females to the reformatory shall be the same as those allowed by law for taking girls to the training school, and shall be audited and paid in like manner by the counties from which they are sent. [S. S., '15, § 2713-n9; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 435.]

3732. Transfer of inmates—costs. The board of control may transfer inmates from the said reformatory to the training school for girls, and from such training school to such reformatory, whenever such course will be conducive to the welfare of the institution or of the other inmates therein, or of the inmates so transferred. The costs of such transfer shall be paid from the funds of the institution from which the transfer is made. [S. S., '15, § 2713-n10; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 436.]

3733. Effect of transfer. After a transfer to either institution is made, under the preceding section, the person transferred shall be subject to all the provisions of law and regulations of the institution to which she is transferred the same as though she had originally

been committed thereto. [S. S., '15, § 2713-n10; 37 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 84, § 437.]

3734. Paroles by board of control. The board of control, except as to inmates serving life terms, or under sentence of death, may parole any inmate of said reformatory at such time and under such conditions as it may determine, and may revoke such parole for a violation of the conditions thereof. [S. S., '15, § 2713-n13; 40 Ex. G. A., H. F. 84, § 438.]

3735. Recommendation for discharge or pardon. The board of control shall recommend to the governor the discharge or pardon of such prisoners committed to the women's reformatory as have, with the proper spirit, served not less than twelve months of their parole, and who have, by their conduct, given satisfactory evidence that they will continue to be law-abiding citizens. The board may, at any other time, and for reasons satisfactory to it, recommend to the governor the discharge or pardon of any inmate of said reformatory. [S. S., '15, § 2713-n13; 40 Ex. G. A., H. F. 84, § 438-a1.]

3736. Employment for discharged inmate. It shall be the duty of the superintendent, so far as is practicable, to obtain for each inmate before she is paroled or discharged a home and

suitable employment if they are not otherwise provided. [S. S., '15, § 2713-n14; 40 Ex. G. A., H. F. 84, § 439.]

3737. Clothing, transportation, and money. The superintendent may, with the consent of the board, furnish a discharged or paroled inmate with proper clothing, and a receptacle therefor, and transportation to her place of employment, or home, or other place not more distant than the place of commitment, and a sum of money not exceeding twenty-five dollars. [S. S., '15, § 2713-n14; 40 Ex. G. A., H. F. 84, § 440.]

3738. Escape. Any inmate of said reformatory who shall escape therefrom, or who violates the condition of her parole, may be arrested and returned to said reformatory, by an officer or employee thereof without any other authority than this chapter, and by any peace officer or other person on the request in writing of the superintendent or board of control. [S. S., '15, § 2713-n15; 40 Ex. G. A., H. F. 84, § 441.]

3739. Costs of returning inmate. The costs attending the return of escaped or paroled inmates shall be paid from the funds of the institution. [S. S., '15, § 2713-n15; 40 Ex. G. A., H. F. 84, § 442.]

CHAPTER 187

PENITENTIARY AND MEN'S REFORMATORY

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3740. Duty of wardens. The wardens of the penitentiary and of the men's reformatory shall live within the precincts of said institutions, respectively, and shall devote their entire time to the duties of their positions. [C., '51, § 3128; R., '60, § 5142; C., '73, § 4748; C., '97, § 5663; S., '13, § 5663; 40 Ex. G. A., H. F. 84, § 445.]

3741. Maximum salaries. Monthly salaries in the penitentiary and the men's reformatory shall not exceed the following sums:

1. Warden, two hundred fifty dollars.
2. Deputy warden, one hundred fifty dollars.
3. Assistant deputy warden, one hundred twenty-five dollars.
4. Clerk, one hundred fifty dollars.

5. Chaplain, one hundred twenty-five dollars.
6. Additional chaplain, twenty-five dollars.
7. Physician, one hundred twenty-five dollars.
8. Storekeeper, one hundred twenty-five dollars.
9. Record clerk, receiving officer, and captain of the night guards, each, one hundred ten dollars. [R., '60, §§ 5190, 5191, 5193; C., '73, §§ 4783, 4784; C., '97, § 5716; S. S., '15, § 5716; 38 G. A., ch. 207, § 1; 40 Ex. G. A., H. F. 84, § 446.]

3742. Salary of guards. Turnkeys and guards shall receive the following monthly salaries:

1. Of the first class, one hundred dollars.
2. Of the second class, ninety dollars.
3. Of the third class, eighty dollars. [R., '60, § 5192; C., '73, § 4783; C., '97, § 5716; S. S., '15, § 5716; 38 G. A., ch. 207, § 1; 40 Ex. G. A., H. F. 84, § 447.]

3743. Eight hour day. Eight hours shall constitute a day's work for the receiving clerk, record clerk, all captains, turnkeys, and guards, and all necessary time in excess thereof shall be paid for at not less than pro rata pay. [40 G. A., ch. 59, § 1; 40 Ex. G. A., H. F. 84, § 447-a1.]

3744. How salaries paid. All salaries shall be paid out of any money in the state treasury not otherwise appropriated. [R., '60, §§ 5190-5193; C., '73, §§ 4783, 4784; C., '97, § 5716; S. S., '15, § 5716; 38 G. A., ch. 207, § 1; 40 Ex. G. A., H. F. 84, § 448.]

3745. Household and domestic service. The wardens of the penitentiary and the men's reformatory shall be entitled to receive the labor of prisoners, not exceeding three at one time, for household and domestic service in their own families. [R., '60, § 5168; C., '73, § 4767; C., '97, § 5717; S. S., '15, § 5717; 40 Ex. G. A., H. F. 84, § 449.]

3746. Dwellings. Each deputy warden shall be furnished with a dwelling house by the board of control, or house rent, and also furnished with water, heat, ice, and lights, and domestic service in his family by not more than one prisoner at one time. [S. S., '15, § 5717; 40 Ex. G. A., H. F. 84, § 450.]

3747. Punishment and records thereof. Disobedience by the convicts of the disciplinary rules of the institution shall be punished by the infliction of such penalties as are provided by law and the rules which are prescribed for the government of said institution. The warden shall keep a register of all punishments inflicted on any convict, and the cause for which they were inflicted. [R., '60, § 5179; C., '73, § 4751; C., '97, § 5666; 40 Ex. G. A., H. F. 84, § 451.]

3748. According prohibited privileges. If any officer or other person employed in either of said institutions or its precincts, negligently suffer any convict confined therein to

be at large without its precincts, or out of the cell or apartment assigned to him, or to be conversed with, relieved, or comforted contrary to law or the rules of the institution, he shall be punished by a fine not exceeding five hundred dollars. [C., '51, § 3144; R., '60, § 5157; C., '73, § 4796; C., '97, § 5694; 40 Ex. G. A., H. F. 84, § 452.]

3749. Failure to perform duty. Any person required to perform any duty relative to either of said institutions who wilfully fails to perform the same, shall be punished by a fine not exceeding one thousand dollars, and shall forfeit his office. Should said failure result in the escape of any of the convicts, or in loss of any of the funds appropriated to the use and benefit of the said institution, exceeding twenty dollars, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than ten years. [R., '60, § 5196; C., '73, § 4805; C., '97, § 5701; 40 Ex. G. A., H. F. 84, § 453.]

3750. Federal prisoners. Convicts sentenced for any term at hard labor by any court of the United States may be received by the warden into the penitentiary or the men's reformatory and there kept in pursuance of their sentences. [C., '51, § 3119; R., '60, § 5138; C., '73, § 4771; C., '97, § 5676; 40 Ex. G. A., H. F. 84, § 454.]

3751. Transfers from penitentiary. The board of control may transfer first term and promising prisoners from the penitentiary to unoccupied rooms in the men's reformatory whenever the number of inmates in the penitentiary exceeds the number of cells therein. It may also transfer to the men's reformatory other prisoners when satisfied that such transfer will be to the best interest of the institutions and of the prisoners. [S., '13, § 5718-a10; 40 Ex. G. A., H. F. 84, § 455.]

3752. Permissive transfers from men's reformatory. The board of control may transfer prisoners from the men's reformatory to the penitentiary:

1. When the prisoner has been guilty of insubordination or of repeated violations of the rules of the reformatory.
2. When the prisoner is not a hopeful subject for reformatory treatment. [S., '13, § 5718-a7; 40 Ex. G. A., H. F. 84, § 456.]

3753. Mandatory transfers from men's reformatory. Said board shall transfer a prisoner from the men's reformatory to the penitentiary when, after his commitment to the reformatory, it is discovered that he is over thirty years of age, or that he has, prior to his last conviction, been convicted in any court of any felony; but such transfer shall not be made unless there are suitable accommodations at the penitentiary to care for such prisoner. [S., '13, § 5718-a8; 40 Ex. G. A., H. F. 84, § 457.]

3754. Department for insane. There shall be maintained in the men's reformatory a de-

partment in which all insane convicts shall be confined and treated. [S. S., '15, § 5709-a; 40 Ex. G. A., H. F. 84, § 458.]

3755. Transfer of insane. When the said board has cause to believe that a prisoner in the penitentiary is insane, it shall cause such prisoner to be examined by one of the superintendents of the hospitals for the insane and if such prisoner be found to be insane, said board shall cause him to be transferred to the department for insane at the men's reformatory, where he shall be confined until the expiration of his sentence, or until pronounced sane, in which latter event he shall be returned to the penitentiary, or held in the reformatory until the expiration of his sentence. [S. S., '15, §§ 5709-b, 5709-e; 40 Ex. G. A., H. F. 84, § 459.]

3756. Discharge of insane. When the board has reason to believe that a prisoner in the penitentiary or said reformatory, whose sentence has expired, is insane, it shall cause examination to be made of such prisoner by competent physicians who shall certify to the board whether such prisoner is sane or insane. The board may make further investigation and if satisfied that he is insane, it may cause him to be transferred to one of the hospitals for the insane, or may order him to be confined in the department for the insane at the reformatory. [C., '97, § 5710; 40 Ex. G. A., H. F. 84, § 460.]

3757. Employment of prisoners. Prisoners in the penitentiary or men's reformatory shall be employed only on state account in the maintenance of the institutions, in the erection, repair, or operation of buildings and works used in connection with said institutions, and in such industries as may be established and maintained in connection therewith by the board of control.

The employment of prisoners on work of any character which the state contracts to do for any person, firm, or corporation on state premises, where the work and prisoners employed thereon are both under the supervision, direction, and control of the board of control and the warden, shall not be construed as contracting or leasing the labor of prisoners to such person, firm, or corporation, but such contract shall not extend beyond July 1, 1927.

The board shall not permit such services to be rendered to a private party at a less wage than is paid free labor for like service or its equivalent, taking into consideration all the elements that enter into the value of prison labor, and the decision of the board of control in that respect shall be final, after approval by the appeal board provided for by chapter 22. [S., '13, § 5702-a; S. S., '15, § 5718-a11; 40 Ex. G. A., H. F. 84, § 461.]

3758. Erections or repairs at other institutions. The board may temporarily detail, under proper surveillance, trustworthy prisoners to perform services in the construction or repair of any work imposed on the board at any

institution under their control. [40 Ex. G. A., H. F. 84, § 461-a1.]

3759. Prices of labor. The board of control shall fix and determine the price which shall be paid to the said board by the various public bodies to which convict labor may be furnished. [40 Ex. G. A., H. F. 84, § 461-a2.]

3760. Price lists to public officials. The board of control shall, from time to time, prepare classified and itemized price lists of articles and things manufactured at the state institutions controlled by it, and furnish such lists to all boards of supervisors, boards of school directors, city and town councils and commissions, township trustees, and all other departments and officials of the state, county, cities, and towns empowered to make purchase of supplies for public purposes. [40 Ex. G. A., H. F. 84, § 461-a3.]

3761. Application for material. The township trustees of any township or the board of supervisors of any county may make application to the board of control for such road building material, and other appliances, as may be needed or required by them for the construction, improvement, or repairing of the township, county, or state roads in their respective districts. [40 Ex. G. A., H. F. 84, § 461-a4.]

3762. Purchase mandatory. No articles or supplies so listed, except in case of emergency, shall be purchased for public use by the aforesaid public officials, bodies, and departments from any private source unless the board of control is unable to promptly furnish such articles or supplies. [40 Ex. G. A., H. F. 84, § 461-a5.]

3763. Selling price. Such supplies, material, and articles manufactured by convict labor within the state shall be furnished by the board of control to the state, its institutions and political subdivisions, and the road districts of the state at a price not greater than that obtaining for similar products in the open market. [40 Ex. G. A., H. F. 84, § 461-a6.]

3764. Limitation on contract. After July 1, 1927, the board of control or the warden of the state penitentiary or the warden of the reformatory shall not, nor shall any other person employed by the state, make any contract by which the labor or time of any prisoner or inmate in such penitentiary or reformatory shall be contracted, let, farmed out, given, or sold to any person, firm, association, or corporation. [S., '13, §§ 2727-a51, 5718-a28a; 40 Ex. G. A., H. F. 84, § 461-a7.]

3765. Road work. The board of control shall certify to the board of supervisors of any county, upon request, the number of persons in the penitentiary and reformatory whom the warden may recommend to be used for road work. The state highway commission, boards of supervisors, and township trustees may use such persons in the building or repairing of

public roads, whenever, in their judgment, it is practicable to do so. [S., '13, §§ 5707, 5718-a28a; 40 Ex. G. A., H. F. 84, § 461-a8.]

3766. Supervision of work. The work herein provided for shall be under the direction and supervision of the board of supervisors, but all the persons taken from said penitentiary and reformatory shall be under jurisdiction of the state board of control. [S., '13, § 5718-a28c; 40 Ex. G. A., H. F. 84, § 461-a9.]

3767. Hard labor and solitary imprisonment. All commitments to either of said institutions must be at hard labor. Solitary imprisonment of prisoners shall not be employed except for the purpose of discipline. [C., '51, § 3118; R., '60, § 5137; C., '73, § 4770; C., '97, § 5675; 40 Ex. G. A., H. F. 84, § 462.]

3768. Enforcing obedience to orders. Any officer of said institutions and his assistants shall, in case a prisoner resists his lawful authority, or refuses to obey his lawful command, enforce immediate obedience by the use of such weapons or other aids as may be effectual, and if, in so doing, such convict is wounded or killed, such officer and his assistants shall be justified. [C., '51, § 3145; R., '60, § 5158; C., '73, § 4797; C., '97, § 5695; 40 Ex. G. A., H. F. 84, § 463.]

3769. Insurrection. Every officer and citizen of the state within reach shall, by every means within their power, suppress and aid in suppressing any insurrection among the convicts in said institutions, and prevent and aid in preventing the escape or rescue of any convict therefrom, or from any legal confinement, or from any person in whose custody a convict may be. If in the performance of this duty or in arresting or assisting to arrest a convict who has escaped or been rescued, such officer or person wound or kill the convict, or a person aiding or assisting him, the same shall be held justifiable. [C., '51, § 3146; R., '60, § 5159; C., '73, § 4798; C., '97, § 5696; 40 Ex. G. A., H. F. 84, § 464.]

3770. Escape of prisoner. If a convict escapes from the penitentiary or the men's reformatory, the warden shall take all proper measures for his apprehension; and for that purpose he may offer a reward, not exceeding fifty dollars, to be paid by the state, for the apprehension and delivery of such convict. [C., '51, § 3147; R., '60, § 5160; C., '73, § 4776; C., '97, § 5681; 40 Ex. G. A., H. F. 84, § 465.]

3771. Classification of prisoners. The wardens shall, so far as practicable, prevent prisoners under eighteen years of age from associating with other prisoners. [C., '97, § 5693; 40 Ex. G. A., H. F. 84, § 466.]

3772. Property of convict. The warden shall receive and care for any property any convict may have on his person upon entering, and, if convenient, place the same, if money, at interest for the owner's use, keeping an account

thereof, and on the discharge of the convict, return, and if money, repay the same with the interest so earned, to him or his legal representatives, unless in the meantime it has been previously disposed of according to law. [C., '51, § 3149; R., '60, § 5162; C., '73, § 4778; C., '97, § 5683; 40 Ex. G. A., H. F. 84, § 467.]

3773. Time to be served. No convict shall be discharged from the penitentiary or the men's reformatory until he has served the full term for which he was sentenced, less good time earned and not forfeited, unless he be pardoned or otherwise legally released. He shall be deemed to be serving his sentence from the day on which he is received into the institution, but not while in solitary confinement for violation of the rules of the institution. [C., '51, § 3148; R., '60, § 5161; C., '73, § 4777; C., '97, § 5682; 40 Ex. G. A., H. F. 84, § 470.]

3774. Reduction of sentence. Each prisoner who shall have no infraction of the rules of discipline of the penitentiary or the men's reformatory or laws of the state, recorded against him, and who performs in a faithful manner the duties assigned to him, shall be entitled to a reduction of sentence as follows, and if the sentence be for less than a year, then the pro rata part thereof:

1. On the first year, one month.
2. On the second year, two months.
3. On the third year, three months.
4. On the fourth year, four months.
5. On the fifth year, five months.
6. On each year subsequent to the fifth year, six months. [C., '97, § 5703; 40 Ex. G. A., H. F. 84, § 471.]

3775. Records of prisoners. The board of control shall cause to be kept at each of said institutions the following permanent records:

1. A record of each infraction, by a prisoner, of the published rules of discipline.
2. Such other records for the use of the board of parole as may be approved by the executive council. [C., '97, § 5703; S., '13, § 5718-a12; 40 Ex. G. A., H. F. 84, § 472.]

3776. Forfeiture of reduction. A prisoner who violates any of such rules shall forfeit the reduction of sentence earned by him, as follows:

1. For the first violation, two days.
2. For the second violation, four days.
3. For the third violation, eight days.
4. For the fourth violation, sixteen days and, in addition, whatever number of days more than one that he is in punishment.
5. For the fifth and each subsequent violation, or for an escape, or attempt to escape, the warden shall have the power, with the approval of the board of control, to deprive the prisoner of any portion or all of the good time that the convict may have earned, but not less than as provided for the fourth offense. [C., '97, § 5704; 40 Ex. G. A., H. F. 84, § 473.]

3777. Separate sentences. When a convict is committed under several convictions with separate sentences, they shall be construed as

one continuous sentence in the granting or forfeiting of good time. [C., '97, § 5705; 40 Ex. G. A., H. F. 84, § 474.]

3778. Special reduction. Any prisoner in either of said institutions who may be employed in any service outside the walls of the institution, or who may be listed as a trusty, may, with the approval of the board of control, be granted a special reduction of sentence, in addition to the reduction heretofore authorized, at the rate of ten days for each month so served. [S. S., '15, § 5718-a11b; 40 Ex. G. A., H. F. 84, § 475.]

3779. Discharge — transportation, clothing, and money. When a prisoner is discharged the warden shall furnish him, at the expense of the state, with a railroad ticket to the point in the state nearest his home or to any point of a like distance without the state, a suit of common clothing, and not more than twenty-five dollars, an account of which shall be kept by the warden. [C., '51, § 3150; R., '60, § 5163; C., '73, § 4779; C., '97, § 5684; 40 Ex. G. A., H. F. 84, § 476.]

3780. Visitors—admission fee. The wardens shall charge each adult visitor to the institution an admission fee of twenty-five cents, of which he shall render an account each month to the board of control. The board shall cause said fund to be expended for the benefit of the prisoners in the purchase of furnishings for a library, reading matter therein, and musical instruments and entertainments for the prisoners. This section shall not apply to state officers, and others exempt by law, nor to relatives of a prisoner. [C., '51, § 3151; R., '60, § 5164; C., '73, § 4780; C., '97, § 5685; S., '13, § 5685-a; 40 Ex. G. A., H. F. 84, § 477.]

3781. Who may visit. The following persons are authorized to visit said institutions at pleasure: The governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, members of the general assembly, judges of the supreme, district, superior, and municipal courts, county attorneys, and all regular officiating ministers of the gospel. No other person shall be granted admission except by permission of the warden. [C., '51, § 3152; R., '60, § 5165; C., '73, § 4781; C., '97, § 5686; 40 Ex. G. A., H. F. 84, § 478.]

CHAPTER 188

PAROLES

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3782. Qualifications — term — vacancy — chairman. The board of parole shall consist of three electors of the state. Not more than two members shall belong to the same political party. One member shall be a practicing attorney at law at the time of his appointment. Each member shall serve for six years from July first of the year of his appointment, except appointees to fill vacancies who shall serve for the balance of the unexpired term. The chairman of the board shall be the member whose term first expires. [S., '13, § 5718-a14; 39 G. A., ch. 209, § 55; 40 Ex. G. A., H. F. 84, § 481.]

3783. Appointment—vacancies. The governor shall, during each regular session of the general assembly and within sixty days after the convening thereof, appoint, with the approval of the senate, a successor to that member of the board whose term will expire on July

first following. Appointments may be made when the general assembly is not in session, to fill vacancies, but such appointments shall be subject to the approval of the senate when next in session. Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [S., '13, § 5718-a14; 40 Ex. G. A., H. F. 84, § 482.]

3784. Expenses. Each member of the board, the secretary, and all other employees shall, in addition to salary, be entitled to receive their necessary traveling expenses by the nearest traveled route while engaged in official business. [S., '13, § 5718-a16; 40 Ex. G. A., H. F. 84, § 483.]

3785. Trips to other states. No traveling expenses to other states shall be allowed unless

the trip is authorized by the board by a written resolution which shall state the purpose and declare the necessity for the trip prior to the actual making thereof, but emergency trips may be made on written order of the chairman which shall be reported to the board at its next meeting. [S., '13, § 5718-a16; 40 Ex. G. A., H. F. 84, § 484.]

3786. Power to parole after commitment. The board of parole shall, except as to prisoners serving life terms, or under sentence of death, or infected with venereal disease in communicable stage, have power to parole persons convicted of crime and committed to either the penitentiary or the men's reformatory. [S., '13, § 5718-a18; 40 Ex. G. A., H. F. 84, § 486.]

3787. Rules. Said board shall have power to establish and enforce the rules and conditions under which paroles may be granted. [S., '13, § 5718-a18; 40 Ex. G. A., H. F. 84, § 487.]

3788. Parole before commitment. Said board may, on the recommendation of the trial judge and prosecuting attorney, and when it appears that the good of society will not suffer thereby, parole, after sentence for less than life imprisonment and before commitment, prisoners who have not been previously convicted of a felony. [S., '13, § 5718-a18; 40 Ex. G. A., H. F. 84, § 488.]

3789. Employment for paroled prisoners. No person shall be released on parole until the board of parole shall have satisfactory evidence that arrangements have been made for his employment or maintenance for at least six months. Said board may render assistance to prisoners about to be paroled in procuring employment and the necessary expense incident thereto shall be paid as other expenses of the board are paid. [S., '13, §§ 5718-a18, 5718-a26; 40 Ex. G. A., H. F. 84, § 489.]

3790. Legal custody of paroled prisoners. All paroled prisoners shall remain, while on parole, in the legal custody of the warden and under the control of said board, and shall be subject, at any time, to be taken into custody and returned to the penitentiary or the men's reformatory from which they were paroled. [S., '13, § 5718-a18; 40 Ex. G. A., H. F. 84, § 490.]

3791. Order for recommitment—fees. The written order of said board, certified to by the secretary of said board, that a prisoner on parole shall be taken into custody and returned to the institution from which paroled, shall be served by any peace officer or other person to whom it may be delivered for service, and such officer or person shall receive the same fees for serving such order as sheriffs receive for like service. [S., '13, § 5718-a18; 40 Ex. G. A., H. F. 84, § 491.]

3792. Parole time not counted. The time when a prisoner is on parole or absent from the penitentiary or the men's reformatory

shall not be held to apply upon his sentence if he shall violate the term of his parole. [S., '13, § 5718-a18; 40 Ex. G. A., H. F. 84, § 492.]

3793. Investigations. Said board shall have power to make any investigation which it may deem necessary in order to determine the facts relative to matters coming before it, but shall not receive, unsolicited by them, any petition or communication or argument in regard to application for parole, pardon, or discharge unless provided for in their adopted rules. Every public officer to whom inquiry may be addressed by the board of parole concerning any prisoner shall give said board all information possessed by or accessible to him which may throw light upon the question of the fitness of a prisoner to receive the benefits of parole. [S., '13, §§ 5718-a19, 5718-a26; 40 Ex. G. A., H. F. 84, § 493.]

3794. Duty of clerk of district court. The clerk of the district court shall, as to each commitment to the penitentiary or the men's reformatory, furnish the board of parole with a copy of the indictment, the minutes of testimony attached thereto, the name and residence of the trial judge, of the prosecuting attorneys, and of the jurors and witnesses sworn at the trial. [S., '13, § 5718-a25; 40 Ex. G. A., H. F. 84, § 494.]

3795. Duty of trial judge and prosecutor. The trial judge and the prosecuting attorney shall, when requested by the board, furnish it with a full statement of the facts and circumstances attending the commission of the offense so far as known or believed by them. [S., '13, § 5718-a25; 40 Ex. G. A., H. F. 84, § 495.]

3796. Clothing, transportation, and money. When a prisoner is paroled, he shall be furnished, by the warden, with such clothing, transportation, and money as is provided for prisoners when discharged at the termination of their sentence, but no further allowance shall be made if final discharge is granted while on parole. [S., '13, § 5718-a22; 40 Ex. G. A., H. F. 84, § 496.]

3797. Parole relief funds. There is hereby established, from any unappropriated funds in the state treasury, a fund of one thousand dollars which shall be known as the men's parole relief fund; also a fund of two hundred fifty dollars which shall be known as the women's parole relief fund. The treasurer of state shall continue to maintain said funds in said amounts. [39 G. A., ch. 217, §§ 1, 2; 40 Ex. G. A., H. F. 84, § 497.]

3798. Disbursement and repayment. Said funds may be used for the relief of paroled prisoners who are in distress because of illness, loss of employment, or conditions creating personal need. In no instance shall the total amount advanced to a prisoner exceed twenty-five dollars. The prisoner, at the time of receiving an advancement, shall execute and deliver to the board granting the parole

his written obligation to repay the same during the period of the parole. When so paid, the amount shall be deposited with the treasurer of state and credited to the fund from which drawn. [39 G. A., ch. 217, § 3; 40 Ex. G. A., H. F. 84, § 498.]

3799. Vouchers. Said funds shall be drawn on vouchers executed by the chairman and secretary of the board granting the parole in favor of said needy person. Each voucher shall show that the advancement was ordered by said board. [39 G. A., ch. 217, §§ 1, 2; 40 Ex. G. A., H. F. 84, § 499.]

3800. Parole by court. The trial court before which a person has been convicted of any crime except treason, murder, rape, robbery, or arson may, by record entry, suspend the sentence and parole said person during good behavior:

1. If said person has not previously been convicted of a felony.
2. If said person is shown to be free from venereal disease.
3. If said person, if an adult and able to labor, has obtained apparently permanent employment for a reasonable time. [S., '13, § 5447-a; 37 G. A., ch. 206, § 1; 40 Ex. G. A., H. F. 84, § 500.]

3801. Custody of court parolee. When a parole is granted under the preceding section, the court shall order said person committed to the custody, care, and supervision:

1. Of any suitable resident citizen of this state; or
2. Of the board of parole if the sentence of commitment is to the penitentiary or the men's reformatory; or
3. Of the board of control if the sentence of commitment is to the women's reformatory. [S., '13, § 5447-a; 37 G. A., ch. 206, § 1; 39 G. A., ch. 8, § 1; 40 Ex. G. A., H. F. 84, § 500-a1.]

3802. Powers of board. The board to which the court commits a parolee shall have and exercise over said parolee all the powers possessed by said board over prisoners paroled by it. [40 Ex. G. A., H. F. 84, § 500-a2.]

3803. Expense. Any necessary expense contracted by the board of control in the care of a person committed to it under a parole by the court shall be paid from the appropriation for the expense of state agents under said board. Any such expense contracted by the board of parole shall be paid from the appropriation for the general expenditures of said board. [40 Ex. G. A., H. F. 84, § 500-a3.]

3804. Report by custodian. The person having the custody of such paroled person under order of court, shall, each thirty days, or oftener if required by the court, make written report to the judge as to the conduct of such paroled person. [S., '13, § 5447-a; 37 G. A., ch. 206, § 1; 39 G. A., ch. 8, § 1; 40 Ex. G. A., H. F. 84, § 501.]

3805. Revocation of parole. A suspension of a sentence by the court as herein provided

may be revoked at any time, without notice, by the court or judge, and the defendant committed in obedience to such judgment. [S., '13, § 5447-b; 40 Ex. G. A., H. F. 84, § 502.]

3806. Violation of court parole. If the suspended sentence be an order for commitment to the training school, the fact that the dependent first violated his or her parole after reaching the age of eighteen years, and before reaching the age of twenty-one years, shall not prevent the enforcement of such sentence. [40 Ex. G. A., H. F. 84, § 503.]

3807. Violation of board parole. Whoever, while on parole, shall violate any condition of his parole, or any rule or regulation of the board granting the parole, shall be deemed guilty of a felony, and shall be punished by imprisonment in the institution from which he had been paroled, for a term of not more than five years, his sentence under such conviction to take effect upon the completion of his previous sentence. [39 G. A., ch. 10, § 1; 40 Ex. G. A., H. F. 84, § 503-a1.]

3808. Criminal statistics. The clerk of the district court shall, on or before July fifteenth each year, report to the board of parole:

1. The number of convictions of all offenses in that court, in his county, for the year ending June thirtieth preceding, the character of each offense, the sentence imposed, occupation of the offender, and whether such offender can read or write.
2. Number of acquittals.
3. Number of dismissals by the court without trial, and the nature of the charges so dismissed.
4. The expenses of the county for criminal prosecutions during said year. [C., '51, § 148; R., '60, § 349; C., '73, § 203; C., '97, § 293; S., '13, § 293; 40 Ex. G. A., H. F. 84, § 504.]

3809. Itemization of statistics. The fourth item required by the preceding section shall be itemized as follows:

1. Jury fees in criminal cases.
2. Meals for jurors in criminal cases.
3. Bailiff's fee for service while attending criminal cases.
4. Expense of taking prisoners to prison.
5. Attorney fees under appointment to defend.
6. Grand jury fees.
7. Witness fees paid in criminal cases.
8. Reporters' fees for reporting and transcribing testimony in criminal cases at expense of county.
9. Grand jury witness fees paid.
10. Compensation to clerk of grand jury.
11. Compensation to bailiff of grand jury.
12. Fees and expenses paid sheriff and other officers by the county in connection with the grand jury.
13. Expense of jail, not including board of prisoners.
14. Board of prisoners.
15. Compensation and expense of county attorney and his assistants in criminal cases.

16. All jurors' fees, jurors' meals, witness fees, constable's fees, and justice fees paid by the county in all criminal cases before a justice of the peace, magistrate, or police court. [C., '51, § 148; R., '60, § 349; C., '73, § 203; C., '97, § 293; S., '13, § 293; 40 Ex. G. A., H. F. 84, § 505.]

3810. Auditor to report statistics to clerk. The county auditor shall report to the clerk of the district court, on or before July fifth of each year, the expenses of the county in criminal prosecutions during the year ending June thirtieth preceding, including but distinguishing the compensation of the county attorney. Such report shall include all the items of criminal expenses which appear in the records of his office and which are required

to be reported by the clerk of the district court to the board of parole. The clerk of the district court shall furnish to the auditor the blanks to be used in making such report. [C., '97, § 475; S., '13, § 475; 40 Ex. G. A., H. F. 84, § 506.]

3811. Biennial report. The board of parole shall, biennially, at the time provided by law, report to the governor a summary of paroles granted and releases recommended, the names of all prisoners who have violated their paroles, and such other information concerning its operation as may be deemed advisable, including an abstract for each year of the returns relative to criminal matters. [40 Ex. G. A., H. F. 84, § 506-a1.]

NOTE: For time of filing report, see § 246.

CHAPTER 189

PARDONS, COMMUTATIONS, REMISSION OF FINES AND FORFEITURES, AND RESTORATION TO CITIZENSHIP

- 3812. Reprieves and pardons.
- 3813. Pardon.
- 3814. Recommendation for pardon.
- 3815. Soldiers, sailors, and marines.
- 3816. Record.
- 3817. Conditions prerequisite to pardon.
- 3818. Publication.
- 3819. Investigation.
- 3820. Information relative to applications.

3812. Reprieves and pardons. Nothing in the preceding chapter shall be construed as impairing the power of the governor under the constitution, to grant a reprieve, pardon, or commutation of sentence in any case. [S., '13, § 5718-a21; 40 Ex. G. A., H. F. 84, § 507.]

3813. Pardon. A person whose sentence has been suspended may be pardoned by the governor at any time after such suspension on such conditions as he may think proper. [S., '13, § 5447-a; 37 G. A., ch. 206, § 1; 40 Ex. G. A., H. F. 84, § 508.]

3814. Recommendation for pardon. The board of parole shall recommend to the governor the discharge or pardon of such prisoners committed to the penitentiary or the men's reformatory as have acceptably served not less than twelve months of their parole and who have, by their conduct, given satisfactory evidence that they will continue to be law-abiding citizens. [S., '13, § 5718-a20; 40 Ex. G. A., H. F. 84, § 509.]

3815. Soldiers, sailors, and marines. Said board may also recommend to the governor the pardon of a paroled prisoner who, during parole, and during the war with the central powers of Europe, entered the army or navy of the United States or of any of the countries with which the United States was allied, or who, during said war, was employed upon or in public works, by or for the immediate benefit of the United States, and who has been honor-

- 3821. Governor may take testimony.
- 3822. Files in matters of pardon.
- 3823. Restoration to citizenship.
- 3824. Fines and forfeitures.
- 3825. Copies of pardons, reprieves, and other papers.
- 3826. Copies when accused in custody.
- 3827. Copies when accused not in custody.
- 3828. Duty of clerk.

ably discharged from such army or navy. [38 G. A., ch. 219, § 1; 40 Ex. G. A., H. F. 84, § 510.]

3816. Record. All recommendations of the board shall be entered in the proper records of the board. [S., '13, § 5718-a20; 40 Ex. G. A., H. F. 84, § 510-a1.]

3817. Conditions prerequisite to a pardon. After conviction for a felony, no pardon shall be granted by the governor until he shall have presented the matter to, and obtained the advice of, the board which has power to parole persons from the institution to which such person has been sentenced or committed, but he may commute a death sentence to imprisonment in the penitentiary for life, without making such reference or obtaining such advice. [C., '51, §§ 3278, 3281; R., '60, § 5116; C., '73, § 4712; C., '97, § 5626; S., '13, § 5626; 38 G. A., ch. 173, § 1; 39 G. A., ch. 73, § 1; 40 Ex. G. A., H. F. 84, § 511.]

3818. Publication. Before presenting an application for pardon to the proper board for its action, where the sentence is death or imprisonment for life, the governor shall cause a notice containing the reasons assigned for granting the pardon to be published in two newspapers of general circulation, one of which shall be published at the capital and the other in the county where the conviction was had, once each week for four successive weeks, the last publication to be at least twenty days prior to the time of presenting such applica-

tion to such board. [C., '73, § 4712; C., '97, § 5626; S., '13, § 5626; 38 G. A., ch. 173, § 1; 39 G. A., ch. 73, § 1; 40 Ex. G. A., H. F. 84, § 512.]

3819. Investigation. The proper board shall, under the direction of the governor, take charge of all correspondence in reference to the pardon of persons convicted of crimes and carefully investigate each application, and file its recommendation with the governor with its reasons for the same. [S., '13, § 5718-a23; 40 Ex. G. A., H. F. 84, § 513.]

3820. Information relative to applications. When an application is made to the governor for a pardon, reprieve, or commutation, or for the remission of a fine or forfeiture, he may require the judge of the court, or the county attorney or attorney general by whom the action was prosecuted, or the clerk of such court, to furnish him without delay a copy of the minutes of the evidence taken on the trial, and of any other facts having reference to the propriety of his exercise of his powers in the premises. [R., '60, § 5120; C., '73, § 4713; C., '97, § 5627; 40 Ex. G. A., H. F. 84, § 514.]

3821. Governor may take testimony. The governor may also take such testimony, bearing upon applications, as he may deem advisable. Any person who, in giving such testimony, swears falsely, and any person who shall knowingly and corruptly make any false statements in an affidavit intended to be used in connection with an application for pardon, or for remission of fine or forfeiture, shall be guilty of perjury, and be punished accordingly. [R., '60, § 5120; C., '73, § 4713; C., '97, § 5627; 40 Ex. G. A., H. F. 84, § 515.]

3822. Files in matters of pardon. All papers and documents relating to the pardon of any person shall, upon the granting of such pardon, become a part of the files of the governor's office. [S., '13, § 5718-a20; 40 Ex. G. A., H. F. 84, § 516.]

3823. Restoration to citizenship. The governor shall have the right to grant any convict, whom he shall think worthy thereof, a certificate of restoration to all his rights of citizenship. The warden or superintendent, upon request of the governor, shall, in case of application for such restoration, furnish him with a statement of the convict's deportment during his imprisonment, and may at all times

make such recommendations to the governor as he shall think proper respecting such restoration. [C., '97, § 5706; 40 Ex. G. A., H. F. 84, § 517.]

3824. Fines and forfeitures. The governor shall have power to remit fines and forfeitures upon such conditions as he may think proper. [C., '51, § 3280; R., '60, § 5116; C., '73, § 4712; C., '97, § 5626; S., '13, § 5626; 39 G. A., ch. '73, § 1; 40 Ex. G. A., H. F. 84, § 518.]

3825. Copies of pardons, reprieves, and other papers. Pardons, commutations of sentences, remissions of fines and forfeitures, and restorations of rights of citizenship shall, when issued, be in duplicate. Reprieves shall be in triplicate. [40 Ex. G. A., H. F. 84, § 519.]

3826. Copies when accused in custody. Pardons, reprieves, and commutations of sentences shall be forwarded to the officer having custody of the party in question. Said officer shall retain one copy and make record in the books of his office, and act in accordance therewith. On one copy, said officer shall make such written return as the governor may require, and forward said copy and return to the clerk of the court wherein the judgment is of record. In case of reprieves, the third copy shall, in all cases, be delivered to the person whose sentence is reprieved. [C., '51, § 3279; R., '60, § 5121; C., '73, § 4714; C., '97, § 5628; S., '13, § 5718-a20; 39 G. A., ch. 24, § 1; 40 Ex. G. A., H. F. 84, § 520.]

3827. Copies when accused not in custody. In case the party in question is not in custody, and in case of remissions of fines and forfeitures and restorations of rights of citizenship, one copy shall be delivered to said party and one copy to the clerk aforesaid. [C., '51, § 3279; R., '60, § 5121; C., '73, § 4714; C., '97, § 5628; S., '13, § 5718-a20; 40 Ex. G. A., H. F. 84, § 521.]

3828. Duty of clerk. Said clerk shall, upon receipt of any of said executive instruments, immediately file and preserve the same in his office and note such filing on the judgment docket of the case in question, except that remissions of fines and forfeitures shall be spread at length on the record books of the court, and indexed in the same manner as the original case. [C., '51, § 3279; R., '60, § 5121; C., '73, § 4714; C., '97, § 5628; 39 G. A., ch. 24, § 1; 40 Ex. G. A., H. F. 84, § 522.]

TITLE XII

EDUCATION

CHAPTER 190

SUPERINTENDENT OF PUBLIC INSTRUCTION

3829. Qualifications.
3830. Office.
3831. General powers.
3832. Duties.
3833. Teachers' employment bureau.

3834. Reports from school officers and others—
delinquency.
3835. Deputy—chief clerk—inspectors.
3836. Expenses.

3829. Qualifications. The superintendent of public instruction shall be a graduate of an accredited university or college, or of a four-year course above high school grade in an accredited normal school, and shall have had at least five years' experience as a teacher or school superintendent. [S., '13, § 2627-b; 37 G. A., ch. 318, § 1; 40 Ex. G. A., H. F. 86, § 1.]

3830. Office. The office of the superintendent of public instruction shall be in the capitol and be known as the department of public instruction. [C., '51, § 1078; C., '73, § 1578; C., '97, § 2621; S., '13, §§ 2627-c, 2627-d; 40 Ex. G. A., H. F. 86, § 2.]

3831. General powers. He shall have general supervision and control over the rural, graded, and high schools of the state, and over such other state and public schools as are not under the control of the state board of education or board of control of state institutions. [C., '51, § 1081; C., '73, § 1577; C., '97, § 2622; S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 3.]

3832. Duties. The superintendent of public instruction shall:

1. *Filing and preserving reports.* File and preserve all reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions by any citizen of the state.

2. *General record.* Keep a record of the business transacted by him.

3. *Inspection.* Ascertain, so far as practicable, by inspection or otherwise, the condition, needs, and progress of the schools under the supervision and control of his department.

4. *Recommendations.* Suggest, through public addresses, pamphlets, bulletins, and by meetings and conferences with school officers, teachers, parents, and the public generally, such changes and improvements relating to educational matters as he may think desir-

able, and publish and distribute such views and information as he may deem important.

5. *Promotion of interest in education.* Endeavor to promote among the people of the state an interest in education, including industrial and commercial education, agriculture, manual and vocational training, domestic science, and continuation work.

6. *Days for special observance.* Publish and distribute from time to time leaflets and circulars relative to such days and occasions as he may deem worthy of special observance in the public schools.

7. *Classification.* Classify and define the various schools under the supervision and control of his department, formulate suitable courses of study therefor, and publish and distribute such classifications and courses of study.

8. *Outline for teaching American citizenship.* Prepare and distribute to all elementary schools lists of books and texts and an outline of American citizenship for all grades from one to eight, inclusive.

9. *Distribution of outline of courses of study.* Distribute to all high schools, academies, and institutions ranking as secondary schools, lists of books and texts and an outline of a course of study in American history, civics of the state and nation, social problems, and economics, prepared under his direction.

10. *Manual on health training.* Prepare, or approve, and distribute a manual on practical health training for the aid of teachers.

11. *Officers' and teachers' reports—forms.* Prescribe the reports, both regular and special, which shall be made by public school officers, superintendents, teachers, and other persons and officers having custody and control of public school funds or property, and prepare suitable forms and furnish blanks for such reports.

12. *Report to auditor.* Report to the auditor of state on the first day of January of each year the number of persons of school age in each county.

13. *Report to governor.* Report biennially to the governor, at the time provided by law, the condition of the schools under his supervision, including the number and kinds of school districts, the number of schools of each kind, the number and value of schoolhouses, the enrollment and attendance in each county for the previous year, any measures proposed or plans matured for the improvement of the public schools, such financial and statistical information as may be of public importance, and such general information relating to educational affairs and conditions within the state or elsewhere as he may deem beneficial.

14. *Institutes.* Appoint at least one and not more than two county educational meetings or institutes to be held in each county each year and designate the time and place for holding them. The program therefor, and the instructors and lecturers therein, shall be subject to his approval.

15. *Examinations.* Prepare and supply questions for the examination of applicants for teachers' certificates and pupils completing the eighth grade in the rural schools, and fix the times of such examinations.

16. *Plans and specifications for buildings.* When deemed necessary, cause to be prepared and published a pamphlet containing suitable plans and specifications for public school buildings, including the most approved means and methods of heating, lighting, and ventilating the same, together with information and suggestions for the proper and economical construction thereof.

17. *Printing of school laws.* During the months of June and July in the year 1925, and every four years thereafter, if deemed necessary, cause to be printed in book form all school laws then in force, with such forms, rulings, and decisions, and such notes and suggestions as may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to the county superintendent of each county to supply therein school officers, directors, superintendents, and to others in such numbers as may be reasonably requested.

18. *Printing of changes in school laws.* Cause to be printed in pamphlet form after each session of the general assembly, any amendments or changes in the school laws with necessary notes and suggestions to be distributed as above prescribed.

19. *Appeals.* Examine and determine all appeals taken to him, according to law, prescribe rules of practice therefor not inconsistent with law, and render written opinions upon questions submitted by school officers pertaining to their duties. 1. [C., '51, § 1078; C., '73, § 1578; C., '97, § 2621; S., '13, § 2627-d; 40 Ex. G. A., H. F. 86, § 4.] 2. [C., '51, § 1078; C., '73, § 1578; C., '97, § 2621; S., '13, § 2627-d; 40 Ex. G. A., H. F. 86, § 4.] 3. [S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 4. [C., '51, § 1081; C., '73, § 1577;

C., '97, § 2622; S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 5. [S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 6. [S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 7. [S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 8. [38 G. A., ch. 406, § 2; 40 Ex. G. A., H. F. 86, § 4.] 9. [38 G. A., ch. 406, § 4; 40 Ex. G. A., H. F. 86, § 4.] 10. [40 G. A., ch. 68, § 3; 40 Ex. G. A., H. F. 86, § 4.] 11. [S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 12. [C., '73, § 1583; C., '97, § 2625; S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 13. [C., '51, § 1086; C., '73, § 1583; C., '97, § 2625; S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 14. [C., '73, § 1577; C., '97, § 2622; S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 15. [S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 16. [S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.] 17. [C., '51, §§ 1083, 1085; C., '73, § 1579; C., '97, § 2624; S., '13, §§ 2627-e, 2823-j; 40 Ex. G. A., H. F. 86, § 4.] 18. [C., '73, § 1579; C., '97, § 2624; S., '13, § 2627-e; 40 Ex. G. A., H. F. 86, § 4.] 19. [C., '73, § 1577; C., '97, § 2623; S., '13, § 2627-c; 40 Ex. G. A., H. F. 86, § 4.]

NOTE: For time of making biennial report, see § 246.

3833. Teachers' employment bureau. The superintendent of public instruction shall:

1. Adopt and publish regulations for carrying out the provisions of this section, and obtaining and furnishing information as to the experience, qualifications, and character of persons seeking employment as teachers.

2. Enroll any person having a certificate to teach in this state who shall be deemed by his department to be qualified and suitable for such employment, on written application made in compliance with such regulations.

3. Upon request furnish information to proper authorities of public schools as to teachers seeking employment, and furnish enrolled teachers with information relative to vacancies in public schools.

4. Employ such additional help as may be necessary to carry out the provisions of this section.

No person connected with the office of the superintendent of public instruction shall be held responsible for or be understood to vouch for the fitness or success of any teacher. [38 G. A., ch. 298, § 1; 40 Ex. G. A., H. F. 86, § 5.]

3834. Reports from school officers and others—delinquency. The superintendent of public instruction may require from time to time reports under oath from all officers and persons who have any authority over, or who have any duties in connection with, public school affairs, or who have, or who have lately had, the custody or control of any public school funds or property. He shall furnish the proper blanks for such reports, and any such officer or person who unreasonably neglects or refuses to make a report required by him shall be deemed guilty of a misdemeanor. [S., '13, § 2627-f; 40 Ex. G. A., H. F. 86, § 7.]

3835. Deputy—chief clerk—inspectors. He may appoint a deputy, whose appointment must

be approved by the governor. The qualifications of the deputy shall be the same as required for the superintendent. The deputy shall, in the absence or inability of the superintendent, perform the duties of the office. The superintendent of public instruction shall also appoint a chief clerk and such regular inspectors of the public schools of the state, including rural, graded, and high schools, as he may deem necessary, not exceeding three. [C., '73, §§ 766,

767, 770; C., '97, § 2621; S., '13, § 2627-g; 40 Ex. G. A., H. F. 86, § 8.]

3836. Expenses. The superintendent of public instruction, his deputy, and the regular inspectors in his department shall receive their actual necessary traveling expenses incurred in the performance of their official duties. [C., '51, § 1087; C., '73, §§ 1580, 3760; C., '97, § 2627; S., '13, § 2627-h; 39 G. A., ch. 209, § 50; 40 Ex. G. A., H. F. 86, § 9.]

CHAPTER 191

VOCATIONAL EDUCATION

3837. Federal act accepted.
3838. State board for vocational education.
3839. Executive officer—assistants.
3840. Duties of board.
3841. Federal aid—conditions.
3842. Definitions.
3843. Advisory committee—qualifications—tenure—meetings.

3844. State aid to equal federal aid.
3845. Local advisory committee.
3846. Powers of district boards.
3847. Salary and expenses.
3848. Custodian of funds—reports.
3849. Biennial report.

3837. Federal act accepted. The provisions of the act of congress entitled, "An act to provide for the promotion of vocational education; to provide for cooperation with the states in the promotion of such education in agriculture and in the trades and industries; to provide for cooperation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure", approved February 23, 1917, and the benefit of all funds appropriated under said act, are accepted. [37 G. A., ch. 300, §§ 1, 2; 40 Ex. G. A., H. F. 87, § 1.]

3838. State board for vocational education. The superintendent of public instruction, the president of the state board of education, and the labor commissioner shall constitute the state board for vocational education. [37 G. A., ch. 290, § 2; 40 Ex. G. A., H. F. 87, § 2.]

3839. Executive officer—assistants. The superintendent shall be chairman of the board and its executive officer, and shall, with its approval, appoint such assistants as may be necessary to carry out the provisions of this chapter. [37 G. A., ch. 290, §§ 2, 7; 40 Ex. G. A., H. F. 87, § 3.]

3840. Duties of board. The board shall:
1. Cooperate with the federal board for vocational education in the administration of said act of congress.

2. Provide for making studies and investigations relating to prevocational and vocational training in agricultural, industrial, and commercial subjects, and home economics.

3. Promote and aid in the establishment in local communities and public schools of departments and classes giving instruction in such subjects.

4. Cooperate with local communities in the maintenance of such schools, departments, and classes.

5. Establish standards for teachers of such subjects in approved schools, departments, and classes.

6. Cooperate in the maintenance of teachers' training schools, departments, and classes, supported and controlled by the public, for the training of teachers and supervisors of such subjects.

7. Establish standards for, and annually inspect as a basis of approval, all schools, departments, and classes, and all teachers' training schools, departments, and classes, applying for federal and state moneys under the provisions of this chapter. [37 G. A., ch. 290, §§ 3, 6; 37 G. A., ch. 300, § 3; 40 Ex. G. A., H. F. 87, § 4.]

3841. Federal aid—conditions. Approved schools, departments, and classes, and approved teachers' training schools, departments, and classes shall be entitled to federal and state moneys so long as they are approved by such board as to site, plant, equipment, number and qualification of teachers, employment of teachers, admission and number of pupils, courses of study, methods of instruction, and expenditure of money. [37 G. A., ch. 290, § 6; 40 Ex. G. A., H. F. 87, § 5.]

3842. Definitions. "Approved school, department, or class" shall mean a school, department, or class approved by said board as entitled under the provisions of this chapter to federal moneys for the salaries of teachers of vocational subjects. "Approved teachers' training school, department, or class" shall mean a school, department, or class approved by the board as entitled under the provisions of this chapter to federal moneys for the training of teachers of vocational subjects. [37 G. A., ch. 290, § 6; 40 Ex. G. A., H. F. 87, § 5.]

3843. Advisory committee—qualifications—tenure—meetings. The board shall appoint a

state advisory committee for vocational education, consisting of nine members. The term of each member shall be for three years. The terms of three members shall expire on the first day of July each year. The committee shall consist of three educators, one member experienced in agriculture, one an employer, one a representative of labor, one experienced in business and commerce, one experienced in social work, and one woman experienced in women's work. The committee shall meet in conference with the board at least twice a year, and at such other times as the board shall deem advisable. [37 G. A., ch. 290, § 4; 40 Ex. G. A., H. F. 87, § 6.]

3844. State aid to equal federal aid. For each dollar of federal money expended for the salaries of teachers in approved schools, departments, and classes, the local community must expend an amount equal to the amount of federal money which it receives for the same purpose for the same year. [37 G. A., ch. 290, § 5; 38 G. A., ch. 337, § 1; 40 G. A., ch. 60, § 1; 40 Ex. G. A., H. F. 87, § 7.]

3845. Local advisory committee. The board of directors of any school district having a population of more than five thousand persons, maintaining a school, department, or class receiving the benefit of federal moneys under the provisions of this chapter shall, as a condition of approval by such state board as herein provided, appoint a local advisory committee for vocational education, consisting of persons of experience in agriculture, industry, home economics, and business, to give advice and assistance to such board of directors in the establishment and maintenance of such schools, departments, and classes. The state board may require the board of directors of any school district that maintains an approved school, department, or class, to appoint such an advisory committee. Members of such ad-

visory committee shall serve without compensation. [37 G. A., ch. 290, § 9; 40 Ex. G. A., H. F. 87, § 8.]

3846. Powers of district boards. The board of directors of any school district is authorized to carry on prevocational and vocational instruction in subjects relating to agriculture, commerce, industry, and home economics, and to pay the expense of such instruction in the same way as the expenses for other subjects in the public schools are now paid. [37 G. A., ch. 290, § 8; 40 Ex. G. A., H. F. 87, § 9.]

3847. Salary and expenses. The board is authorized to make such expenditures for salaries of assistants, actual expenses of the board and the state advisory committee incurred in the discharge of their duties, and such other expenses as in the judgment of the board are necessary to the proper administration of this chapter. [37 G. A., ch. 290, §§ 4, 10; 37 G. A., ch. 300, § 4; 38 G. A., ch. 337, § 2; 39 G. A., ch. 296, § 2; 40 Ex. G. A., H. F. 87, § 10.]

3848. Custodian of funds—reports. The treasurer of state shall be custodian of the funds paid to the state from the appropriations made under said act of congress, and shall disburse the same on vouchers audited as provided by law. He shall report the receipts and disbursements of said funds to the general assembly at each biennial session. [37 G. A., ch. 290, § 1; 37 G. A., ch. 300, §§ 5, 6; 40 Ex. G. A., H. F. 87, § 11.]

3849. Biennial report. The superintendent of public instruction shall embrace in his biennial report a full report of all receipts and expenditures under this chapter, together with such observations relative to vocational education as may be deemed of value. [37 G. A., ch. 290, § 11; 37 G. A., ch. 300, § 6; 40 Ex. G. A., H. F. 87, § 12.]

CHAPTER 192

VOCATIONAL REHABILITATION

- 3850. Acceptance of federal act.
- 3851. Custodian of funds.
- 3852. State agency.
- 3853. Duties of state board.

3850. Acceptance of federal act. The state of Iowa does hereby, through its legislative authority, accept the provisions and benefits of the act of congress, entitled "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment", approved June 2, 1920 (Pub. No. 236, 66th Congress), and will observe and comply with all the requirements of such act. [39 G. A., ch. 14, § 1.]

3851. Custodian of funds. The treasurer of state is hereby designated and appointed cus-

- 3854. Plan of cooperation.
- 3855. Gifts and donations.
- 3856. Fund.
- 3857. Report of gifts.

todian of all moneys received by the state from appropriations made by the congress of the United States for the vocational rehabilitation of persons disabled in industry or otherwise, and is authorized to receive and provide for the proper custody of the same and to make disbursement therefrom upon the requisition of the state board for vocational education. [39 G. A., ch. 14, § 2.]

3852. State agency. The board heretofore designated or created as the state board for vocational education to cooperate with the fed-

eral board for vocational education in the administration of the provisions of the vocational education act, approved February 23, 1917, is hereby designated as the state board for the purpose of cooperating with the said federal board in carrying out the provisions and the purposes of said federal act providing for the vocational rehabilitation of persons disabled in industry or otherwise. [39 G. A., ch. 14, § 3.]

3853. Duties of state board. The state board for vocational education is hereby empowered and directed:

1. To cooperate with the federal board for vocational education in the administration of said act of congress.

2. To administer any legislation pursuant thereto enacted by this state, and direct the disbursement and administer the use of all funds provided by the federal government and this state for the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

3. To appoint such assistants as may be necessary to administer the provisions of this chapter and said act of congress in this state and fix the compensation of such persons.

4. To study and make investigations relating to the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment and to formulate plans for the vocational rehabilitation of such persons.

5. To make such surveys with the cooperation of the state commissioner of labor and the state industrial commissioner as will assist in the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

6. To maintain a record of all such persons together with all measures taken for their rehabilitation.

7. To utilize in the rehabilitation of persons disabled in industry or otherwise such existing educational facilities of the state as may be advisable and practicable, including public and private educational institutions, public or private establishments, plants, factories, and the services of individuals specially qualified for the instruction of physically handicapped persons.

8. To promote the establishment and assist in the development of training agencies for the vocational rehabilitation of persons disabled in industry or otherwise.

9. To supervise the training of such persons and confer with their relatives and others concerning their vocational rehabilitation.

10. To make every possible endeavor looking to the placement of vocationally rehabilitated persons in suitable remunerative occupations, including supervision for a reasonable time after return to civil employment.

11. To utilize the facilities of such agencies, both public and private, as may be practicable

in securing employment for such persons; and any such public agency is hereby authorized and directed to cooperate with the state board for vocational education for the purpose stated.

12. To cooperate with any agency of the federal government or of the state, or of any county or other municipal authority within the state, or any other agency, public or private, in carrying out the purposes of this chapter.

13. To make such rules and regulations as may be necessary for the administration of this chapter and said act of congress within this state.

14. To do all things necessary to secure the rehabilitation of those entitled to the benefits of this chapter.

15. To report on call or biennially to the governor the conditions of vocational rehabilitation within the state, such report to designate the educational institutions, establishments, plants, factories, etc., in which training is being given, and to contain a detailed statement of the expenditures of the state and federal funds in the rehabilitation of persons disabled in industry or otherwise. [39 G. A., ch. 14, § 4.]

3854. Plan of cooperation. It shall be the duty of the state board for vocational education and the state labor commissioner and the state industrial commissioner as administrator of the workmen's compensation law to formulate a plan of cooperation in accordance with the provisions of this chapter and said act of congress, such plan to become effective when approved by the governor of the state. [39 G. A., ch. 14, § 5.]

3855. Gifts and donations. The state board for vocational education is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be offered unconditionally or under such conditions related to the vocational rehabilitation of persons disabled in industry or otherwise as in the judgment of the said state board are proper and consistent with the provisions of this chapter. [39 G. A., ch. 14, § 6.]

3856. Fund. All the moneys received as gifts or donations shall be deposited in the state treasury and shall constitute a permanent fund to be called the special fund for the vocational rehabilitation of disabled persons, to be used by the said board in carrying out the provisions of this chapter or for purposes related thereto. [39 G. A., ch. 14, § 6.]

3857. Report of gifts. A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted at call or biennially to the governor of the state by said state board. [39 G. A., ch. 14, § 6.]

CHAPTER 193

BOARD OF EDUCATIONAL EXAMINERS

- 3858. Members.
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- 3861. Examinations.
- 3862. Mandatory subjects.
- 3863. Certificates and diplomas.
- 3864. Subjects required.
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- 3898. Printing.

3858. Members. The board of educational examiners shall consist of:

1. The superintendent of public instruction, who shall be president and executive officer of the board.
2. The president of the state university of Iowa.
3. The president of the Iowa state teachers college.
4. The president of the Iowa state college of agriculture and mechanic arts.
5. Three persons to be appointed by the governor, one of whom shall be a woman and one of whom shall be a representative of the privately endowed colleges of the state maintaining teachers' training courses.

Each appointee shall hold office for a term of four years and until his successor is appointed and qualifies, and be ineligible as his successor for reappointment. [C., '97, § 2628; 37 G. A., ch. 340, § 1; 39 G. A., ch. 248, § 1; 40 Ex. G. A., H. F. 88-A, § 1.]

3859. Secretary—assistants. The board shall employ a secretary, and prescribe his duties. He shall receive his actual necessary expenses while engaged in the performance of his duties at places other than the capitol. The board may employ such persons as are necessary to assist in examinations and in reading answer papers. [C., '97, § 2634; S. S., '15, § 2634-a; 39 G. A., ch. 209, § 51; 40 Ex. G. A., H. F. 88-A, § 2.]

3860. Meetings. The board shall meet for the transaction of business at such times and places as the president may direct, and shall annually hold at least two public examinations of teachers, to be conducted by a member or the secretary of the board, or by such

qualified person or persons as the board may select. [C., '97, § 2729; S., '13, § 2729; 40 Ex. G. A., H. F. 88-A, § 3.]

3861. Examinations. All examinations shall be conducted in accordance with rules adopted by the board, not inconsistent with the laws of the state, and a record shall be kept of all its proceedings. [C., '97, § 2629; S., '13, § 2629; 40 Ex. G. A., H. F. 88-A, § 4.]

3862. Mandatory subjects. All examinations shall cover the fundamental principles of a republican form of government and the constitution of the United States and of the state of Iowa. [40 Ex. G. A., H. F. 88-A, § 4-a.]

3863. Certificates and diplomas. The board may issue state certificates and state diplomas to such teachers as are found upon examination to possess a good moral character, thorough scholarship, and knowledge of didactics, with successful experience in teaching. [C., '97, § 2629; S., '13, § 2629; 38 G. A., ch. 280, § 1; 40 Ex. G. A., H. F. 88-A, § 5.]

3864. Subjects required. The examination for state certificates and diplomas shall cover orthography, reading, writing, arithmetic, geography, English grammar, bookkeeping, physiology, history of the United States, algebra, botany, natural philosophy, drawing, civil government, constitution and laws of the state, and didactics; those for diplomas, in addition to the foregoing, geometry, trigonometry, chemistry, zoology, geology, astronomy, political economy, rhetoric, English literature, and gen-

eral history. [C., '97, § 2629; S., '13, § 2629; 40 Ex. G. A., H. F. 88-A, § 6.]

3865. Special certificates. The board of educational examiners may issue a special certificate to any teacher of music, drawing, penmanship, or other special branches, or to any primary teacher, of sufficient experience, who shall pass such examination as the board may require in the branches, and methods pertaining thereto, for which the certificate is sought. Such certificates shall be designated by the name of the branch and shall not be valid for any other department or branch. The board shall keep a complete register of all persons to whom certificates or diplomas are issued. [C., '97, § 2630; S., '13, § 2630-b; 40 Ex. G. A., H. F. 88-A, § 7.]

3866. Graduates from accredited colleges in state. The state board of educational examiners may accept graduation from the regular and collegiate courses in the state university, state teachers college, state normal schools, and the state college of agriculture and mechanic arts, and from other institutions of higher learning in the state having regular and collegiate courses of equal rank, as evidence that a teacher possesses the scholarship and professional fitness requisite for a state certificate. [S., '13, § 2634-f; 40 Ex. G. A., H. F. 88-A, § 8.]

3867. Graduates from accredited colleges in other states. Graduates of colleges and schools located in other states than Iowa, having regular and collegiate courses of equal rank with the accredited colleges and schools of Iowa, may be given the same recognition as provided in the preceding section. [S., '13, § 2634-f1; 40 Ex. G. A., H. F. 88-A, § 9.]

3868. State certificate. In all cases where graduation shows compliance with the requirements of sections 3863 and 3864 hereof, and the board is satisfied that the applicant possesses good moral character and is professionally qualified, the board shall issue a state certificate to the applicant, valid for five years, to teach in any public school in the state. [S., '13, § 2634-g; 40 Ex. G. A., H. F. 88-A, § 10.]

3869. Validation of foreign certificate. The board may validate any certificate issued by state departments of education of other states when such certificate is issued upon evidence of good moral character, scholarship, and experience equivalent to that required for a like certificate under the laws of this state, which shall authorize the holder to teach in any public school in the state for five years after such validation. [C., '97, § 2630; S., '13, § 2630-c; 40 Ex. G. A., H. F. 88-A, § 11.]

3870. Renewals for life. Any certificate referred to in sections 3863, 3865, 3866, 3868, and 3869 shall be renewed for life by the board upon proof of at least five years' successful teaching, three of which shall have been during the time the said certificate, with renewals, has been in force, and the payment of a fee of five

dollars. [S., '13, § 2634-h; 40 Ex. G. A., H. F. 88-A, § 12.]

3871. Additional renewals for life. All certificates referred to in sections 3876, 3878, and 3879 shall be renewed for life by the state board of educational examiners upon compliance by the holder with the following conditions:

1. The applicant shall show by testimonials from county or city superintendents or from the principals having immediate supervision of his school work and from a member of the local school board that he has had at least five years' continuous successful teaching experience, at least three of which shall have been immediately prior to the time validation is sought and under the grade of certificate for which such validation is desired.

2. The standing of such applicant in the several branches shown upon his certificate shall average not less than eighty-five per cent, and in no branch shall the per cent be less than eighty per cent; provided that in case the standing is less than the per cent required, either average or special, the holder of the certificate may at any of the times provided in sections 3873 and 3874 take an examination in any branch or branches he may desire, and the per cent then received shall be entered upon his certificate.

3. The applicant shall furnish proof of professional study during the entire five-year period such as is made necessary in the case of term renewals of certificates.

Upon the issue of a life certificate as herein contemplated, the applicant shall pay a fee of five dollars to be turned into the state treasury. [S., '13, § 2634-h1; 40 Ex. G. A., H. F. 88-A, § 13.]

3872. Lapse of certificate. All life certificates provided for in this chapter shall lapse provided the holder shall not teach during a period of five successive years. [S., '13, § 2634-h2; 40 Ex. G. A., H. F. 88-A, § 14.]

3873. Examinations in counties. On the last Friday, and Wednesday and Thursday preceding, in the months of January, June, July, and October, the county superintendent shall meet and, with such assistance as may be necessary, examine all applicants for teachers' certificates. The questions used in such examinations shall be furnished by the superintendent of public instruction, who shall cause the same to be printed, and the examinations shall be conducted strictly under the rules prescribed by the board. [C., '51, § 1148; R., '60, §§ 2066, 2068, 2073; C., '73, §§ 1766, 1774; C., '97, § 2735; S. S., '15, § 2734-c; 40 Ex. G. A., H. F. 88-A, § 15.]

3874. Special examinations. On the last Friday of August and the Wednesday and Thursday preceding, the county superintendent of each county shall conduct a like examination, to which shall be admitted only such persons as file certificates of attendance during the summer immediately preceding at a sum-

mer school approved for the twelve weeks of normal training, showing the standing in each subject studied. [S. S., '15, § 2734-c; 40 Ex. G. A., H. F. 88-A, § 16.]

3875. Record kept. A record shall be kept by the county superintendent of all examinations taken within his county, with the name, age, and residence of each applicant and the date of examination. [R., '60, § 2067; C., '73, § 1768; C., '97, § 2736; S., '13, § 2734-f; 40 Ex. G. A., H. F. 88-A, § 17.]

3876. Subjects for first grade. The examination for the first grade certificate shall include competency in and ability to teach orthography, reading, writing, arithmetic, geography, grammar, history of the United States, didactics, elementary civics, elementary algebra, political economy, elementary economics, elementary physics, elements of vocal music, and physiology and hygiene, which in each division of the subject shall include special reference to the effects of alcohol, stimulants, and narcotics upon the human system. [C., '51, § 1148; R., '60, § 2066; C., '73, § 1766; S., '13, § 2734-d; 40 Ex. G. A., H. F. 88-A, § 18.]

3877. Optional subjects. Applicants who have graduated from a four-year course in an approved high school may submit, in lieu of the examination in any one or more of the subjects of elementary algebra, political economy, elementary economics, and elementary physics, a showing that the applicant has done work and earned satisfactory grades in the study of any one or more of the subjects of rural school management, rural sociology, and rural school methods, in any collegiate institution approved by the state board of educational examiners for such purpose; but the study and work done in each subject must be of college grade and cover a course of not less than five hours per week for twelve weeks. [40 G. A., ch. 66, § 1; 40 Ex. G. A., H. F. 88-A, § 19.]

3878. Special certificates. A special certificate may be issued for any subject, or any group of subjects, taught in the public schools of Iowa, upon examination in such special subject or group of subjects and per cents therein such as are required for the issue of a first grade county certificate. A special certificate shall be issued for a term of three years, and shall be renewable under the same conditions as apply to the renewal of first grade certificates. It shall state the names of the subjects for which it is issued, and shall not be valid for the teaching of any other subjects. [S., '13, § 2734-e; 40 Ex. G. A., H. F. 88-A, § 20.]

3879. First grade certificate—renewal. Applicants who have taught successfully for at least thirty-six weeks and whose examination entitles them to the first grade certificate, shall receive the same for a term of three years from the date thereof, and such certificates shall be renewable without examination provided the applicants shall show by testimonials from superintendents or principals who had immediate supervision of their professional study that

at least one line of professional inquiry has been successfully conducted during the life of the certificate, it being made the duty of the board to forward with each certificate subject to renewal, outlines setting forth various lines of professional study. It is provided further that each application for renewal shall be accompanied by such proof of successful experience and professional spirit as the board of educational examiners may require. [S., '13, § 2734-g; 40 Ex. G. A., H. F. 88-A, § 21.]

3880. Second grade certificate—renewal. Applicants whose examination entitles them to second grade certificates only, shall receive the same for not to exceed two years with the privilege of renewal of the same without further examination under the same conditions as govern the renewal of first grade certificates. The holder of a second grade certificate may, at any of the examinations provided for in sections 3873 and 3874, take an examination in any one or more of the additional branches required for the issue of a first grade certificate, or he may at any such time be re-examined in any branch or branches in which he desires to raise his grade, and in each case the new per cent shall be placed on his certificate, and when he has thus successfully passed in all the branches required for the issue of a first grade certificate, such certificate shall then be issued to him, provided he has had at least thirty-six weeks' successful experience in teaching; if not, then at the conclusion of such experience. In like manner third grade certificates may be changed into those of the second or first grade, and in all cases whether the certificate be of the first, second, or third grade, credit shall be given for all examinations taken under the auspices of the board, it being the intention of the law that an examination once taken shall be final unless the certificate holder desires to be re-examined in any one or more branches with a view of raising his per cent in such branches or his general average. [S., '13, § 2734-h; 40 Ex. G. A., H. F. 88-A, § 22.]

3881. Third grade certificate—renewal. Applicants whose examination entitles them to third grade certificates only, shall receive the same for one year, at the end of which time, upon proof of successful teaching and the payment of a fee of one dollar, one renewal shall be granted. [S., '13, § 2734-i; 40 Ex. G. A., H. F. 88-A, § 23.]

3882. Applicants without experience. Applicants who have had no experience in teaching, but whose examinations entitle them to the first grade, shall receive a second grade certificate for two years; provided that when they have taught successfully under such certificate for not less than thirty-six weeks they shall be entitled to receive a first grade certificate on the conditions herein provided for a renewal of a certificate. [S., '13, § 2734-j; 40 Ex. G. A., H. F. 88-A, § 24.]

3883. Fees. Each applicant for a certificate shall pay a fee of one dollar, one-half of which

shall be paid into the state treasury on or before the first day of the succeeding month, and one-half shall be paid into the county institute fund. [S., '13, § 2734-p; 38 G. A., ch. 156, § 1; 40 Ex. G. A., H. F. 88-a, § 25.]

3884. Normal training required. All applicants for teachers' certificates shall have had, before receiving a certificate to teach, at least twelve weeks of normal training and shall furnish a certificate from the institution where such training has been received, which certificate shall have printed thereon the subjects taken and the standing in each subject; but the examination in all subjects other than didactics may be taken at any regular examination prior to, or after, the term of normal training has been taken; the examination shall not be complete until the normal training has been certified as herein provided. [S., '13, § 2734-p; 38 G. A., ch. 156, § 1; 40 Ex. G. A., H. F. 88-A, § 26.]

3885. Exceptions. The preceding section shall not apply to the regular graduates of the state university, state teachers college, state college of agriculture and mechanic arts, any accredited college of the state, or any school of like character outside the state. [S., '13, § 2734-p; 38 G. A., ch. 156, § 1; 40 Ex. G. A., H. F. 88-A, § 27.]

3886. Didactic grades accepted. In the cases of graduates of four-year courses in approved or accredited high schools, the grades made in didactics in an approved normal training course in any of the institutions mentioned in the preceding section may be accepted by the state board of educational examiners and by the county superintendent in lieu of the examination in didactics. [38 G. A., ch. 156, § 1; 40 Ex. G. A., H. F. 88-A, § 28.]

3887. Experience as qualification. The provisions of the three preceding sections shall in no way bar any teacher who can furnish evidence of at least six months' successful teaching experience; provided such experience is not obtained on a provisional certificate. [S., '13, § 2734-p1; 38 G. A., ch. 408, § 1; 40 Ex. G. A., H. F. 88-A, § 29.]

3888. Registration of certificates and diplomas. All diplomas and certificates shall be valid in any county when registered therein, and no person shall teach in any public school whose certificate has not been registered with the county superintendent of the county in which the school is located. [S., '13, §§ 2734-q, 2734-t; 40 Ex. G. A., H. F. 88-A, § 30.]

3889. Third grade certificates not registered. In case a sufficient number of life diplomas, state certificates, first grade certificates, special certificates, and second grade certificates are held in any county to supply the schools thereof, it shall not be incumbent on the county superintendent to register third grade certificates. [S., '13, § 2734-r; 40 Ex. G. A., H. F. 88-A, § 31.]

3890. Provisional certificates. When a sufficient number of licensed teachers can not be secured to fill the schools of any county, the board of examiners may, upon the request of the county superintendent, appoint a special examination for such county to be conducted in all respects as a regular examination and the answer papers to be forwarded to the president of the board as required in regular examinations, and thereupon provisional certificates, valid for the remainder of the school year, may be issued by the board of educational examiners. [S., '13, §§ 2734-s, 2734-t; 38 G. A., ch. 408, § 3; 40 Ex. G. A., H. F. 88-A, § 32.]

3891. Certificates—where valid. All certificates issued as provided by law shall be valid in any county within the state, when registered in such county, but a provisional certificate shall be valid, upon registration, only in the county in which it is issued, and shall be issued for the same time and subject to the same extension as a third grade certificate, but no person shall be entitled to receive more than one provisional certificate, except upon the approval of the county superintendent. [R., '60, § 2070; C., '73, § 1771; C., '97, § 2737; S., '13, § 2734-t; 40 Ex. G. A., H. F. 88-A, § 33.]

3892. Revocation by board. Any diploma or certificate issued by the board may be revoked by it for any cause which would have authorized or required a refusal to grant the same, and the holder shall have ten days' notice by registered mail and be allowed to be present and make defense. [R., '60, § 2070; C., '73, § 1771; C., '97, § 2737; S., '13, §§ 2734-t, 2734-u; 40 Ex. G. A., H. F. 88-A, § 34.]

3893. Revocation by county superintendent. When in the judgment of the county superintendent there is probable cause for the revocation of a certificate or diploma held by any teacher employed in his county, or when complaint is filed, supported by affidavits, charging incompetency, immorality, intemperance, cruelty, or general neglect of the business of the school, the county superintendent shall within ten days transmit to such person a written statement of the charges preferred and set the time, not less than ten days thereafter, and place for the hearing of the same at which trial the teacher may be present and make defense. [S., '13, § 2734-u; 40 Ex. G. A., H. F. 88-A, § 35.]

3894. Trial—order. The trial and making and preservation of the record shall be, so far as applicable, in conformity with the provisions of the law relating to the trial of civil actions in the district court. If upon the trial it appears to the county superintendent that there is sufficient ground for the revocation of the diploma or certificate, he shall at once issue in triplicate an order revoking the diploma or certificate, and the same shall become effective, unless an appeal is taken, fifteen days thereafter. One copy of the order shall be filed and recorded in his office, one mailed to the superintendent of public instruction, and the other

sent by registered mail to the holder of the certificate. [S., '13, § 2734-u; 40 Ex. G. A., H. F. 88-A, § 36.]

3895. Appeal. The person aggrieved by such order shall have the right of appeal to the superintendent of public instruction within ten days from the date of such mailing, and in case of appeal the revocation shall not be effective until the same is affirmed, after full hearing, by the superintendent of public instruction. In the case of life state certificates the revocation shall not be effective until affirmed by the board of educational examiners after full hearing and review by said board. [S., '13, § 2734-u; 40 Ex. G. A., H. F. 88-A, § 37.]

3896. Expenditures. All expenditures authorized to be made by the board of educational examiners and by the county superintendents in connection with examinations and applications for certificates, shall be certified by the superintendent of public instruction to the state board of audit, and if found correct, it

shall approve the same and shall cause the auditor of state to draw warrants therefor upon the treasurer of state, but not to exceed the fees paid into the treasury by the board and county superintendents. [C., '97, § 2634; S., '13, § 2734-o; S. S., '15, § 2634-a; 39 G. A., ch. 209, § 51; 40 Ex. G. A., H. F. 88-A, § 38.]

3897. Accounts. The board shall keep an accurate and detailed account of all money received and expended, which, with a list of those receiving certificates or diplomas, shall be published by the superintendent of public instruction in his annual report. [C., '97, §§ 2630, 2631, 2633; S., '13, §§ 2630-b, 2631, 2734-p; 38 G. A., ch. 156, § 1; 40 Ex. G. A., H. F. 88-A, § 39.]

3898. Printing. The board of educational examiners shall have authority to obtain all the necessary printing for the performance of their duties, as required by law, in the same manner as the printing is provided for state officers. [S., '13, § 2634-a1; 40 Ex. G. A., H. F. 88-A, § 40.]

CHAPTER 194

NORMAL TRAINING OF TEACHERS

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3899. Training of teachers—normal courses. For the purpose of increasing the facilities for training teachers for the rural schools by requiring a review of such common branches as may be deemed essential by the superintendent of public instruction, and for instruction in elementary pedagogy and the art of teaching elementary agriculture and home economics, provision is hereby made for normal courses of study and training in such four-year high schools as the superintendent of public instruction may designate, provided that such high schools shall be selected and distributed with regard to their usefulness in supplying trained teachers for the rural schools of all portions of the state, and with regard to the number of teachers required for rural schools in each portion of the state.

It is further provided that where a township high school or a consolidated school organized in accordance with the provisions of chapter 209, can meet the requirements of the superintendent of public instruction, it shall be given preference over a city high school. [S., '13, § 2634-b1.]

3900. Conditions. No high schools shall be approved as entitled to state aid unless a class of ten or more shall have been organized, maintained, and instructed during the preceding

semester in accordance with the provisions of this chapter and the regulations of the superintendent of public instruction. [S., '13, § 2634-b3.]

3901. Private and denominational schools. Private and denominational schools are eligible to the provisions of this chapter, except as to receiving state aid. [S., '13, § 2634-b2.]

3902. State aid. Each high school approved under the provisions of this chapter shall receive state aid to the amount of seven hundred fifty dollars per annum, payable in two equal installments at the close of each semester as hereinafter provided. [S., '13, § 2634-b3.]

3903. Report required. The superintendent of each approved training school shall at the close of each semester file such report with the superintendent of public instruction as said officer may require. [S., '13, § 2634-b3.]

3904. Warrant. Upon receipt of a satisfactory report, the superintendent of public instruction shall issue a requisition upon the auditor of state for the amount due the school corporation of said high school for said semester, whereupon the auditor of state shall draw a warrant on the state treasury payable to said

school corporation for the amount of said requisition and forward the same to the secretary of said school corporation. [S., '13, § 2634-b3.]

3905. Admission and graduation. The superintendent of public instruction shall prescribe the conditions of admission to the normal training classes, the course of instruction, the rules and regulations under which such instruction shall be given, and the requirements for graduation, subject to the provisions of this chapter. [S., '13, § 2634-b5.]

3906. Examination for graduation. On the third Friday in January and the Wednesday and Thursday immediately preceding and on the third Friday in May and the Wednesday and Thursday immediately preceding, each year, in each high school, and private or denominational school, approved under this chapter, an examination for graduation from the normal course shall be conducted under such rules as the state board of examiners shall prescribe, but the county superintendent of the county in which an approved high school, and private or denominational school may be located shall be designated as the conductor of said examination. [S. S., '15, § 2634-b6; 37 G. A., ch. 346, § 1.]

3907. Additional examination. Candidates for a certificate of graduation from the normal course, failing in the examination in one or more subjects, may be permitted to enter the above examinations or the regular July teachers' examination under such regulations as the superintendent of public instruction shall prescribe. [S. S., '15, § 2634-b6.]

3908. Fees. Each applicant for a certificate of graduation from the normal course in

a county shall pay a fee of one dollar, which shall entitle him to one examination in each subject required; provided, however, that applicants rewriting the examination in one or more subjects at the July teachers' examination as herein provided shall pay an additional fee of one dollar. [S. S., '15, § 2634-b6.]

3909. Distribution of fees. One-half of the fees from the normal training examinations shall be paid into the state treasury on or before the first day of the succeeding month, and the remaining one-half shall be paid into the county institute fund of the county wherein the examination is held. [S. S., '15, § 2634-b6.]

3910. Certificate—license to teach—renewal. A certificate of graduation from the normal training course provided for in this chapter shall be issued by the superintendent of public instruction, and shall be a valid license to teach in any public school in the state for a term of two years, subject to registration as provided for other teachers' certificates. At the expiration of said certificate the superintendent of public instruction is authorized to renew it for a period of three years under the same conditions that apply to the renewal of first grade uniform county certificates. [S., '13, § 2634-b7.]

3911. Record of students. At the close of each school year, the principal or superintendent of each accredited school shall file with the board of examiners a sworn statement, showing the name, age, postoffice address, studies, and attendance of each of the students in his school taking the prescribed teachers' course. [S., '13, § 2634-e.]

CHAPTER 195

STATE BOARD OF EDUCATION

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3912. Membership. The state board of education shall consist of nine members, who shall be selected from the state at large solely with regard to their qualifications and fitness to discharge the duties of the office. Not more than five members shall be of the same political party. Not more than one alumnus of each of

the institutions of higher learning, the state university, the college of agriculture and mechanic arts, and the Iowa state teachers college, shall be members of said board at one time. [S., '13, §§ 2682-c, 2682-d; 40 Ex. G. A., H. F. 90, § 1.]

3913. Term of office. The term of each member of said board shall be for six years. The terms of three members of the board shall expire on the first day of July of each odd-numbered year. [S., '13, § 2682-d; 40 Ex. G. A., H. F. 90, § 2.]

3914. Appointment. During each regular session of the legislature, the governor shall appoint, with the approval of two-thirds of the members of the senate in executive session, three members of said board to succeed those whose terms expire on the first day of July next thereafter. [S., '13, § 2682-d; 40 Ex. G. A., H. F. 90, § 3.]

3915. Confirmation. No nominations shall be considered by the senate until the same have been referred to a committee of five, not more than three of whom shall belong to the same political party. Said committee shall be appointed by the president of the senate, without motion, and shall report to the senate in executive session. Such report shall be made at any time when called for by the senate. The consideration of nominations by the senate shall not be had on the same legislative day that nominations are so referred. [S., '13, § 2682-d; 40 Ex. G. A., H. F. 90, § 4.]

3916. Removals. The governor, with the approval of a majority of the senate during a session of the general assembly, may remove any member of the board for malfeasance in office, or for any cause which would render him ineligible for appointment or incapable or unfit to discharge the duties of his office, and his removal, when so made, shall be final. [S., '13, § 2682-d; 40 Ex. G. A., H. F. 90, § 5.]

3917. Suspension. When the general assembly is not in session, the governor may suspend any member so disqualified and shall appoint another to fill the vacancy thus created, subject to the approval of the senate when next in session. [S., '13, § 2682-d; 40 Ex. G. A., H. F. 90, § 6.]

3918. Vacancies. All vacancies on said board which may occur when the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days after the general assembly next convenes. Vacancies occurring during a session of the general assembly shall be filled before the end of said session in the same manner in which regular appointments are required to be made. [S., '13, § 2682-d; 40 Ex. G. A., H. F. 90, § 7.]

3919. Institutions governed. The state board of education shall govern the following institutions:

1. The state university of Iowa.
2. The college of agriculture and mechanic arts, including the agricultural experiment station.
3. The Iowa state teachers college.
4. The state school for the blind.
5. The state school for the deaf. [R., '60, §§ 2157, 2158; C., '73, §§ 1685, 1686; C., '97, §

2723; S., '13, § 2682-c; 37 G. A., ch. 160, § 1; 40 Ex. G. A., H. F. 90, § 8.]

3920. Meetings. The board shall meet four times a year. Special meetings may be called by the board, by the president of the board, or by the secretary of the board upon written request of any five members thereof. [S., '13, § 2682-e; 40 Ex. G. A., H. F. 90, § 9.]

3921. Powers and duties. The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until his successor is elected and qualified.

2. Elect a president of each of said institutions of higher learning; a superintendent of each of said other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation.

3. Make rules for admission to and for the government of said institutions, not inconsistent with law.

4. Manage and control the property, both real and personal, belonging to said institutions.

5. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes.

6. Accept and administer trusts deemed by it beneficial to and perform obligations of the institutions.

7. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the state college of agriculture and mechanic arts, nor the permanent funds of the university derived under acts of congress, be diminished.

8. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

9. With the approval of the executive council, publish, from time to time, and distribute, such circulars, pamphlets, bulletins, and reports as may be in its judgment for the best interests of the institutions under its control, the expense of which shall be paid out of any funds in the treasury not otherwise appropriated.

10. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it and the finance committee. 1. [S., '13, § 2682-f; 40 Ex. G. A., H. F. 90, § 10.] 2. [R., '60, §§ 1739, 2157, 2158, 2162; C., '73, §§ 1614, 1685, 1686, 1690; C., '97, §§ 2654, 2676, 2723; S., '13, § 2682-f; 40 Ex. G. A., H. F. 90, § 10.] 3. [C., '97, § 2676; S., '13, § 2682-f; 40 Ex. G. A., H. F. 90, § 10.] 4. [S., '13, § 2682-f; 40 Ex. G. A., H. F. 90, § 10.] 5. [S., '13, § 2682-f; 40 Ex. G. A., H. F. 90, § 10.] 6. [S., '13, § 2682-f; 40 Ex. G. A., H. F. 90, § 10.] 7. [C., '51, §§ 1017, 1018; R., '60, § 1938; C., '73, §§ 1599, 1617; C., '97, §§ 2638, 2666; S., '13, § 2682-f; 40 Ex. G. A., H. F. 90, § 10.] 8.

[40 Ex. G. A., H. F. 90, § 10.] 9. [S., '13, § 2682-j; 40 Ex. G. A., H. F. 90, § 10.] 10. [S., '13, § 2682-f; 40 Ex. G. A., H. F. 90, § 10.]

3922. Purchases—prohibitions. No sale or purchase of real estate shall be made save upon the order of the board, made at a regular meeting, or one called for that purpose, and then in such manner and under such terms as the board may prescribe and only with the approval of the executive council. No member of the board or finance committee nor any officer of any institution, shall be directly or indirectly interested in such purchase or sale. [40 Ex. G. A., H. F. 90, § 11.]

3923. Record. All acts of the board relating to the management, purchase, disposition, or use of lands and other property of said institutions shall be entered of record, which shall show the members present, and how each voted upon each proposition. [S., '13, § 2682-h; 40 Ex. G. A., H. F. 90, § 12.]

3924. Finance committee—organization—duties. The board shall appoint a finance committee of three from outside its membership and shall designate one of such committee as chairman and one as secretary. Not more than two of its members shall be of the same political party, and its members shall hold office for a term of three years, unless sooner removed by a vote of two-thirds of the members of the board. In addition to the duties imposed upon the finance committee by law, the committee and members thereof shall make such investigations and reports and perform such ministerial duties as the board by resolution may direct, and the committee may make such recommendations to the board as it may deem proper. [S., '13, § 2682-h; 40 Ex. G. A., H. F. 90, § 13.]

3925. Secretary of board and committee—duties. The secretary shall be secretary of the board and of the committee, and shall separately keep and carefully preserve complete files of documents and records of the proceedings of the board and the committee. [S., '13, § 2682-h; 40 Ex. G. A., H. F. 90, § 14.]

3926. Loans—conditions. The finance committee may loan funds belonging to said institutions, subject to the following regulations:

1. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, accompanied by abstract showing merchantable title in the borrower. The loan shall not exceed fifty per cent of the cash value of the land, exclusive of buildings.

2. Each such loan shall be for a term not exceeding ten years, at a rate of interest to be fixed by said board, payable annually, and the borrower shall have the privilege of paying one hundred dollars or any multiple thereof on any interest pay day.

3. Any portion of said funds not otherwise invested and any surplus income on funds not immediately required for other purposes may be

invested by the finance committee on order of the board in bonds of the United States, or this state, or some county thereof, yielding not less than five per cent per annum.

4. A register containing a complete abstract of each loan and investment, and showing its actual condition, shall be kept by the secretary of said committee, and be at all times open to inspection. 1. [C., '51, § 1018; R., '60, § 1938; C., '73, § 1599; C., '97, § 2638; S., '13, § 2682-s; 40 Ex. G. A., H. F. 90, § 15.] 2. [S., '13, § 2682-s; 40 Ex. G. A., H. F. 90, § 15.] 3. [R., '60, § 1938; C., '73, §§ 1599, 1617; C., '97, §§ 2638, 2666; 40 Ex. G. A., H. F. 90, § 15.] 4. [S., '13, § 2682-s; 40 Ex. G. A., H. F. 90, § 15.]

3927. Foreclosures and collections. The finance committee shall have charge of the foreclosure of all mortgages and of all collections from delinquent debtors to said institutions. All actions shall be in the name of the state board of education, for the use and benefit of the appropriate institution. [S. S., '15, § 2682-t; 40 Ex. G. A., H. F. 90, § 16.]

3928. Satisfaction of mortgages. When loans are paid, the finance committee shall release mortgages securing the same as follows:

1. By a satisfaction piece signed and acknowledged by the chairman or secretary of said committee, which shall be recorded in the office of the recorder of the county where said mortgage is of record; or

2. By entering a satisfaction thereof on the margin of the record of said mortgage, dated, and signed by the chairman or secretary of the committee. [S. S., '15, § 2682-t; 40 Ex. G. A., H. F. 90, § 17.]

3929. Bidding in property. In case of a sale upon execution, the premises may be bid off in the name of the board of education, for the benefit of the institution to which the loan belongs. [S. S., '15, § 2682-t; 40 Ex. G. A., H. F. 90, § 18.]

3930. Deeds in trust. Deeds for premises so acquired shall be held for the benefit of the appropriate institution and such lands shall be subject to lease or sale the same as other lands. [S. S., '15, § 2682-t; 40 Ex. G. A., H. F. 90, § 19.]

3931. Actions not barred. No lapse of time shall be a bar to any action to recover on any loan made on behalf of any institution. [C., '97, § 2637; 40 Ex. G. A., H. F. 90, § 20.]

3932. Business offices—visitation. A business office shall be maintained at each of the institutions of higher learning. The committee shall, once each month, attend each of the institutions for the purpose of transacting any business that may properly come before it, and the performance of its duties. [S., '13, § 2682-k; 40 Ex. G. A., H. F. 90, § 21.]

3933. Expenses—official residences. The members of the finance committee shall devote their entire time to the work of said institu-

tions. The members of the finance committee and other employees shall maintain their official residences at the places designated by the board, and shall be entitled to their necessary traveling expenses therefrom by the nearest traveled and practicable route incurred in visiting the different institutions and other places and returning therefrom when on official business, and such other expenses as are actually and necessarily incurred in the performance of their official duties. [S., '13, § 2682-m; 38 G. A., ch. 74, § 1; 40 Ex. G. A., H. F. 90, § 22.]

3934. Auditor's report. The auditor of state shall include in his report to the governor the amount paid for such services and expenses and to whom paid. [S., '13, § 2682-q; 40 Ex. G. A., H. F. 90, § 23.]

3935. Duties of treasurer. The treasurer of each of said institutions shall:

1. Receive all appropriations made by the general assembly for said institution, and all other funds from all other sources, belonging to said institution.

2. Pay out said funds only on order of the board of education, or of the finance committee, on bills duly audited in accordance with the rules prescribed by said board.

3. Retain all bills, so paid by him, with receipts for their payment as his vouchers.

4. Keep an accurate account of all revenue and expenditures of said institution, so that the receipts and disbursements of each of its several departments shall be apparent at all times.

5. Annually, and at such other times as the board may require, report to it said receipts and disbursements in detail. [R., '60, §§ 1739, 1937; C., '73, §§ 1593, 1614; C., '97, §§ 2637, 2654; 40 Ex. G. A., H. F. 90, § 24.]

3936. Reports of executive officers. The executive officer of each of said institutions shall, on or before the first day of August of each even-numbered year, make a report to the board, setting forth such observations and recommendations as in his judgment are for the benefit of the institution, and also his recommendations of a budget for the several colleges and departments of the institution, in detail, and estimates of the amount of funds required therefor for the ensuing biennium. [R., '60, §§ 1939, 2149, 2161; C., '73, §§ 1600, 1601, 1677, 1694; C., '97, §§ 2641, 2717, 2725; S., '13, §§ 2641, 2717; 40 Ex. G. A., H. F. 90, § 25.]

3937. Reports of secretarial officers. The secretarial officer shall, for the institution of which he acts as secretary, on or before August first of each year, report to the board in such detail and form as it may prescribe:

1. The funds available each fiscal year from all sources for the erection, equipment, improvement, and repair of buildings.

2. Interest on endowment and other funds, tuition, state appropriations, laboratory and janitor fees, donations, rents, and income from all sources affecting the annual income of the support funds of said institution.

3. How the funds so received were expended, giving under separate heads the cost of instruction, administration, maintenance and equipment of departments, and the general expense of the institution.

4. The number of professors, instructors, fellows, and tutors, and the number of students enrolled in each course during each year, stating separately the number of students attending short courses.

5. The amount of unexpended balances of departments remaining in the hands of the treasurer, and the amounts undrawn from the state treasury on June thirtieth of each year.

The report for the state college of agriculture and mechanic arts shall also show the receipts of the experiment station from all sources for each fiscal year, and how the same were expended. [S., '13, § 2682-b; 40 Ex. G. A., H. F. 90, § 26.]

3938. Report of board. The board shall, biennially, at the time provided by law, report to the governor and the legislature such facts, observations, and conclusions respecting each of such institutions as in the judgment of the board should be considered by the legislature. Such report shall contain an itemized account of the receipts and expenditures of the board and finance committee, and also the reports made to the board by the executive officers of the several institutions or a summary thereof, and shall submit budgets for biennial appropriations deemed necessary and proper to be made for the support of the several institutions and for the extraordinary and special expenditures for buildings, betterments, and other improvements. [R., '60, § 1939; C., '73, §§ 1600, 1601; C., '97, §§ 2641, 2680; S., '13, §§ 2641, 2680, 2682-u; 40 Ex. G. A., H. F. 90, § 27.]

NOTE: For time of making report, see § 246.

3939. Colonel of cadets. The commandant and instructor of military science and tactics at each of the institutions for higher learning is given the rank of colonel of cadets, and the governor shall issue such commission upon the request of the president of such institution. [S., '13, § 2644-c; 40 Ex. G. A., H. F. 90, § 28.]

3940. Appropriations — monthly installments. All appropriations made payable annually to each of the institutions under the control of the board of education shall be paid in twelve equal monthly installments on the last day of each month on order of said board. [S., '13, § 2682-y; 40 Ex. G. A., H. F. 90, § 29.]

3941. Appropriation. There is hereby appropriated from any funds in the state treasury not otherwise appropriated, sufficient thereof to pay the actual necessary expenses of the board and the finance committee, including the actual necessary expenses of their assistants. All claims under this section shall be filed with and allowed by the state board of audit in the same manner as may now or hereafter be required in the case of claims for similar expenses by state officers. [S., '13, § 2682-l; 39 G. A., ch. 209, § 54; 40 Ex. G. A., H. F. 90, § 30.]

3942. Contracts for training teachers. The board of directors of any school district in the state of Iowa may enter into contract with the state board of education for furnishing instruction to pupils of such school district, and for training teachers for the schools of the state in such particular lines of demonstration and instruction as are deemed necessary for the efficiency of the Iowa state teachers college, state university of Iowa, and college of agriculture and mechanic arts as training schools for teachers. [38 G. A., ch. 187, § 1; 40 Ex. G. A., H. F. 90, § 31.]

3943. Payment. The contract for such instruction shall authorize the payment for such service furnished the school district or for such service furnished the state, the amount to be agreed upon by the state board of education and the board of the school district thus cooperating. [38 G. A., ch. 187, § 2; 40 Ex. G. A., H. F. 90, § 32.]

3944. Contract—time limit. Such contracts shall be in writing and shall extend over a

period of not to exceed two years, and a copy thereof shall be filed in the office of the superintendent of schools of the county. [38 G. A., ch. 187, § 3; 40 Ex. G. A., H. F. 90, § 33.]

3945. Improvements — advertisement for bids. When the estimated cost of construction, repairs, or improvement of buildings or grounds under charge of the state board of education shall exceed ten thousand dollars, the said board shall advertise for bids for the contemplated improvement or construction and shall let the work to the lowest responsible bidder; provided, however, if in the judgment of the board bids received be not acceptable, the said board may reject all bids and proceed with the construction, repair, or improvement by such method as the board may determine. All plans and specifications for repairs or construction, together with bids thereon, shall be filed by the board and be open for public inspection. All bids submitted under the provisions of this section shall be accompanied by a deposit of money or a certified check in such amount as the board may prescribe. [40 G. A., ch. 62.]

CHAPTER 196

STATE UNIVERSITY

3946. Objects—departments.
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3948. Cabinet of natural history.
3949. Homeopathic materia medica and therapeutics.

3950. Iowa child welfare research station.
3951. Management.
3952. Bacteriological laboratory—investigations.
3953. Reports—tests.

3946. Objects—departments. The university shall never be under the control of any religious denomination. Its object shall be to provide the best and most efficient means of imparting to men and women, upon equal terms, a liberal education and thorough knowledge of the different branches of literature and the arts and sciences, with their varied applications. It shall include colleges of liberal arts, law, medicine, and such other colleges and departments, with such courses of instruction and elective studies as the state board of education may determine from time to time. If a teachers' training course is established by the board it shall include the subject of physical education. Instruction in the liberal arts college shall begin, so far as practicable, at the points where the same is completed in high schools. [C., '51, § 1020; R., '60, §§ 1927, 1930, 1933; C., '73, §§ 1585, 1586, 1589; C., '97, § 2640; 40 Ex. G. A., S. F. 91, § 1.]

3947. Degrees. No one shall be admitted to courses of instruction in the university who has not completed the elementary instruction in such branches as are taught in the common schools throughout the state. Graduates shall receive degrees or diplomas, or other evidences of distinction such as are usually conferred and granted by universities and are authorized by the state board of education. [R., '60, §

1933; C., '73, §§ 1585, 1589; C., '97, § 2640; 40 Ex. G. A., S. F. 91, § 2.]

3948. Cabinet of natural history. For the purpose of supplying a cabinet of natural history, all geological and mineralogical specimens which are collected by the state geologists, or by others appointed by the state to investigate its natural history and physical resources, shall belong to and be the property of the university, under the charge of the professors of those departments. [R., '60, §§ 1931, 1935; C., '73, §§ 1597, 1598; C., '97, § 2639; 40 Ex. G. A., S. F. 91, § 3.]

3949. Homeopathic materia medica and therapeutics. The state board of education is hereby authorized and directed to establish and maintain a department of homeopathic materia medica and therapeutics in the college of medicine of the state university of Iowa, with suitable and sufficient hours and rooms for said department. The use of the university homeopathic hospital shall be left to the discretion of the board. [S., '13, § 2640-a; 38 G. A., ch. 109, §§ 1-3.]

3950. Iowa child welfare research station. The state board of education is hereby authorized to establish and maintain at Iowa City as an integral part of the state university the Iowa child welfare research station, having as its objects the investigation of the best

scientific methods of conserving and developing the normal child, the dissemination of the information acquired by such investigation, and the training of students for work in such fields. [37 G. A., ch. 282, § 1.]

3951. Management. The management and control of such station shall be vested in a director appointed by the said board of education and an advisory board of seven members to be appointed by the president of the university from the faculty of the graduate college of said university. [37 G. A., ch. 282, § 2.]

3952. Bacteriological laboratory—investigations. The bacteriological laboratory shall be a permanent part of the medical college of the university. It shall make or cause to be made bacteriological and chemical examinations of water, and necessary investigations by both laboratory and field work to determine the source of epidemics of disease, and to suggest methods of overcoming and preventing the

recurrence of the same, whenever requested to do so by any state institution or by any citizen, school, or municipality when in the judgment of the local board of health the same is necessary in the interests of the public health and for the purpose of preventing epidemics of disease. [S., '13, § 2575-a8; S. S., '15, § 2575-a7; 40 Ex. G. A., S. F. 91, § 4.]

3953. Reports—tests. Such examination shall be made without charge, except for transportation and actual cost of examination, not to exceed two dollars for each. A copy of the report of each epidemiological examination and investigation shall be promptly sent to the state department of health.

In addition to its regular work, the laboratory shall perform all bacteriological, serological, and epidemiological examinations and investigations which may be required by the state department of health, and said department shall establish rules therefor. [S., '13, § 2575-a8; S. S., '15, §§ 2575-a7, 2575-a9; 40 Ex. G. A., S. F. 91, § 5.]

CHAPTER 197

PSYCHOPATHIC HOSPITAL

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GENERAL PROVISIONS

3954. Establishment. There shall be established a state psychopathic hospital, especially designed, kept, and administered for the care, observation, and treatment of those persons who are afflicted with abnormal mental conditions. [38 G. A., ch. 235, § 1.]

3955. Name—location. It shall be known as the state psychopathic hospital, and shall be

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located at Iowa City, and connected with the college of medicine of the state university. [38 G. A., ch. 235, § 2.]

3956. Control of hospital. The said state psychopathic hospital shall be under the control of the state board of education. [38 G. A., ch. 235, § 3.]

3957. Under control state board of education. The state board of education shall have full power to manage, control, and govern the

said hospital the same as other institutions already under its control. [38 G. A., ch. 235, § 4.]

3958. Medical director. The state board of education shall appoint a medical director of the said hospital, who shall serve as professor of psychiatry in the college of medicine of the state university. [38 G. A., ch. 235, § 5.]

3959. Cooperation of hospitals. The medical director of the said hospital shall seek to bring about systematic cooperation between the several state hospitals for the insane and the said state psychopathic hospital. [38 G. A., ch. 235, § 6.]

3960. Duties of director. He shall be the director and in sole charge of the clinical and pathological work of the said hospital. He shall, from time to time, visit the state hospitals for the insane, upon the request of the superintendents thereof, or upon the request of the board of control of state institutions, and may advise the medical officers of such state hospitals for the insane, or the said board of control, in subjects relating to the phenomena of insanity. [38 G. A., ch. 235, § 6.]

3961. Classes of patients. Patients admitted to the said state psychopathic hospital shall be divided into four classes:

1. Voluntary private patients.
2. Committed private patients.
3. Voluntary public patients.
4. Committed public patients. [38 G. A., ch. 235, § 7.]

3962. Maintenance. All voluntary private patients and committed private patients shall be kept and maintained without expense to the state, and the voluntary public patients and committed public patients shall be kept and maintained by the state. [38 G. A., ch. 235, § 7.]

3963. Voluntary private patients. Voluntary private patients may be admitted in accordance with the regulations to be established by the state board of education; and their care, nursing, observation, treatment, medicine, and maintenance shall be without expense to the state. However, the charge for such care, nursing, observation, treatment, medicine, and maintenance shall not exceed the cost of the same to the state. [38 G. A., ch. 235, § 8.]

3964. Application for admission. Persons suffering from mental diseases may be admitted as committed public patients as follows: Any physician authorized to practice his profession in the state of Iowa or any citizen of the state may file information with any district or superior court of the state or with any judge thereof, alleging that the person named therein is suffering from some abnormal mental condition that can probably be remedied by observation, treatment, and hospital care; and that he is, of himself or through those legally responsible for him, unable to provide the means for such observation and hospital care. [38 G. A., ch. 235, § 9.]

3965. Medical examiner. Said judge of the district or superior court may, upon his own motion or upon the information contained in such report filed as aforesaid, appoint some physician who shall personally examine said person with respect to his mental condition. [38 G. A., ch. 235, § 9.]

3966. Examination and report. Said physician shall make a written report to the said judge, giving such a history of the case as will be likely to aid in the observation, treatment, and hospital care of said person and describing the same, all in detail, and stating whether or not, in his opinion, the said person would probably be helped by observation, treatment, and hospital care in said state psychopathic hospital. Such report shall be made within such time as may be fixed by the court. [38 G. A., ch. 235, § 9.]

3967. Financial condition. It shall be the duty of the said judge to have a thorough investigation made by the county attorney of the county in which the said person resides, regarding his financial condition and the financial condition of those legally responsible for him. [38 G. A., ch. 235, § 9.]

3968. Notice—trial and order. Upon the filing of such report or reports, said judge of the district or superior court as aforesaid shall fix a day for the hearing upon the complaint and shall cause the person or those legally responsible for him to be served with a notice of the hearing; and he shall also notify the county attorney, who shall appear and conduct the proceedings, and upon such complaint evidence may be introduced. Upon such hearing the person against whom the complaint is made shall be entitled to a trial by jury. If the judge or jury finds that the said person is suffering from an abnormal mental condition which can probably be remedied by observation, medical or surgical treatment, and hospital care, and that he, or those legally responsible for him, are unable to pay the expenses thereof, said judge shall enter an order directing that the said person shall be sent to the state psychopathic hospital at the state university for observation, treatment, and hospital care as a committed public patient. [38 G. A., ch. 235, § 10.]

3969. Examination and treatment. When the patient arrives at said hospital it shall be the duty of the director, or of some physician acting for him, to examine the said patient and determine whether or not, in his judgment, he is a fit subject for such observation, treatment, and hospital care. If, upon said examination, he decides that such patient should be admitted to the said hospital, the medical director shall provide him with a proper bed in said hospital; and the physician or surgeon who shall have charge of said patient shall proceed with such observation, medical or surgical treatment, and hospital care as in his judgment are proper and necessary.

A proper and competent nurse shall also be assigned to look after and care for such patient during such observation, treatment, and care as aforesaid. [38 G. A., ch. 235, § 11; 39 G. A., ch. 245, § 1.]

3970. Voluntary public patients—commitment—treatment. If the said judge of the district or superior court, as aforesaid, finds from the physician's report which was filed under the provisions of section 3966, that the said person is suffering from an abnormal mental condition which can probably be remedied by observation, medical or surgical treatment, and hospital care, and the report of the county attorney shows that he, or those legally responsible for him, are unable to pay the expenses thereof, said judge shall enter an order directing that the said person shall be sent to the state psychopathic hospital at the state university for observation, treatment, and hospital care as a voluntary public patient; provided that the said person, or those legally responsible for him, request the said court or judge to commit said person without the hearing which is required under the provisions of section 3968.

When the said patient arrives at the said hospital, he shall receive the same treatment as is provided for committed public patients in the preceding section. [38 G. A., ch. 235, § 12.]

3971. Committed private patients—treatment. If the said judge of the district or superior court, as aforesaid, finds in the hearing as provided for under the provisions of the third preceding section that the said person is suffering from an abnormal mental condition which can probably be remedied by observation, medical or surgical treatment, and hospital care, and that he, or those legally responsible for him, are able to pay the expenses thereof, said judge shall enter an order directing that the said person shall be sent to the state psychopathic hospital at the state university for observation, treatment, and hospital care as a committed private patient.

When the said patient arrives at the said hospital, he shall receive the same treatment as is provided for committed public patients in the second preceding section. [38 G. A., ch. 235, § 13.]

3972. Transfer to general hospital—payment. If patients of the state psychopathic hospital are transferred by the medical director to the general hospital of the college of medicine of the state university, all necessary expenses for the care of said patients while in the wards or rooms of the general hospital shall be paid to the general hospital by the said state psychopathic hospital. [38 G. A., ch. 235, § 14.]

3973. Transfer from university hospital. Whenever patients who have been committed by law to the general hospital of the college of medicine of the state university, under the provisions of chapter 199, are found by the medical director of the state psychopathic hospital to be afflicted with abnormal mental conditions, such patient may be transferred by the

superintendent of the hospital of the college of medicine of the state university and the said medical director to the state psychopathic hospital, and all necessary expenses for the care of such patient while in the wards or rooms of said psychopathic hospital shall be paid to said psychopathic hospital by the said hospital of the college of medicine of the state university. [39 G. A., ch. 245, § 2.]

3974. Attendants. The court may, in his discretion, appoint some person to accompany said committed public patient or said voluntary public patient or said committed private patient from the place where he may be to the state psychopathic hospital of the state university at Iowa City, or to accompany such patient from the said hospital to such place as may be designated by the court. If the patient be a female, the person appointed to accompany her must be a woman. [38 G. A., ch. 235, § 15.]

3975. Compensation for attendant. Any person appointed by the court or judge to accompany said person to or from the hospital or to make an investigation and report on any question involved in the complaint, other than the physician making the examination, shall receive the sum of three dollars per day for the time actually spent in making such investigation (except in cases where the person appointed therefor receives a fixed salary or compensation) and his actual necessary expenses incurred in making such investigation or trip. [38 G. A., ch. 235, § 15.]

3976. Compensation for physician. The physician appointed to make the examination and report shall receive the sum of five dollars for each and every examination and report so made, and his actual necessary expenses incurred in making such investigation, in conformity with the requirements of this chapter. [38 G. A., ch. 235, § 15.]

3977. Vouchers. The person making claim to such compensation shall present to the court or judge an itemized sworn statement thereof, and when such claim for compensation has been approved by the court or judge, the same shall be filed in the office of the county auditor and shall be allowed by the board of supervisors and paid out of the funds of the county collected for the relief of the poor. [38 G. A., ch. 235, § 15.]

3978. Liability of committed private patients—payment. Every committed private patient, if he has an estate sufficient for that purpose, or if those legally responsible for his support are financially able, shall be liable to the county and state for all expenses paid by them in behalf of such patient. All bills for the care, nursing, observation, treatment, medicine, and maintenance of such patients shall be paid by the state board of audit in the same manner as those of committed and voluntary public patients as hereinafter provided, unless said patient or those legally responsible for him make such settlement with the medical

director of said state psychopathic hospital. [38 G. A., ch. 235, § 16.]

3979. Collection for treatment. If the bills for such patient are audited by the state board of audit and paid by the state, it shall be the duty of the medical director of the said state psychopathic hospital to file a certified copy of the claim which has been audited by the state board of audit and paid by the state, with the auditor of the proper county, who shall proceed to collect the same by action if necessary, in the name of the state psychopathic hospital, and when collected, pay the same into the state treasury. The said medical director shall also, at the same time, forward a duplicate of the account to the state auditor. [38 G. A., ch. 235, § 16.]

3980. Collection of preliminary expense. Unless said committed private patient or those legally responsible for him offer to make such settlement, it shall also be the duty of the county auditor of the proper county as aforesaid to proceed to collect, by action if necessary, in the name of the said county, the amount of all claims for per diem and expenses that have been approved by the said court or judge and paid by the county treasurer of said county as provided for under the provisions of section 3977, and when collected to pay the same into the county treasury. [38 G. A., ch. 235, § 16.]

3981. Commitment of private patient as public patient. If any patient be admitted to the state psychopathic hospital and thereafter an order of commitment of said patient as a public patient be made by the court or judge having jurisdiction thereof, the expense of keeping and maintaining said patient from the date of the filing of the information upon which said order is made shall be paid by the state. [39 G. A., ch. 245, § 5.]

3982. Private patients—disposition of funds collected. Until such time as the said state psychopathic hospital is actually treating and caring for one hundred patients, the medical director shall pay all moneys collected from voluntary private patients or from committed private patients into the state treasury. After said hospital is actually treating and caring for more than one hundred patients, all moneys collected from said patients shall be used for the support of the said hospital. [38 G. A., ch. 235, § 17.]

3983. Discharge—transfer. The medical director of the state psychopathic hospital may, at any time, discharge any patient as recovered, as improved, or as not likely to be benefited by further treatment, and upon said discharge said director shall notify the committing judge or court thereof; and the said court or judge shall appoint some person to accompany said discharged patient from the said state psychopathic hospital to such place as he may designate, or authorize the said medical director to appoint such attendant. [38 G. A., ch. 235, § 18; 39 G. A., ch. 245, § 4.]

3984. Appropriation. The state shall pay to the state psychopathic hospital, out of any money in the state treasury not otherwise appropriated, all expenses for the administration of said hospital, and for the care, treatment, and maintenance of committed and voluntary public patients therein, including their clothing and all other expenses of said hospital for said public patients. The bills for said expenses shall be rendered monthly in accordance with rules agreed upon by the state board of audit and the finance committee of the state board of education. [38 G. A., ch. 235, § 19.]

3985. Minimum appropriation. Until such time as the said hospital is actually treating and caring for one hundred patients, the sum of nine thousand dollars per month, or as much thereof as may be necessary, is hereby appropriated, out of any money in the state treasury not otherwise appropriated, for the support and maintenance of said hospital. [38 G. A., ch. 235, § 19.]

3986. Blanks—audit. The medical faculty of the hospital of the college of medicine of the state university shall prepare blanks containing such questions and requiring such information as may be necessary and proper to be obtained by the physician who examines the patient under order of court; and such blanks shall be printed by the state and a supply thereof shall be sent to the clerk of each district and superior court of the state. The state board of audit shall audit, allow, and pay the cost of the blanks as other bills for public printing are allowed and paid. [38 G. A., ch. 235, § 20.]

3987. Duplicate reports by physician. The physician making such examination shall make his report to the court in duplicate on said blanks, answering the questions contained therein and setting forth the information required thereby. [38 G. A., ch. 235, § 20.]

3988. Report and order to accompany patient. One of said duplicate reports shall be sent to the state psychopathic hospital with the patient, together with a certified copy of the order of the court. [38 G. A., ch. 235, § 20.]

3989. Death of patient—disposal of body. In the event that a committed public patient or a voluntary public patient or a committed private patient should die while at the state psychopathic hospital or at the general hospital of the college of medicine of the state university, the medical director of the said state psychopathic hospital is hereby authorized and directed to have the body prepared for shipment in accordance with the rules and regulations prescribed by the state board of health for shipping such bodies; and it shall be the duty of the state board of education to make arrangements for the embalming and such other preparation as may be necessary to comply with said rules and regulations, and for the purchase of suitable caskets. [39 G. A., ch. 245, § 6.]

3990. Appropriation. The state shall pay, to the state psychopathic hospital, out of any money in the state treasury not otherwise appropriated, the cost of the casket, the embalming, and all other expenses incurred in preparing the body for shipment, and, in addition thereto, the cost of transportation from Iowa City to the place where the said patient lived at the time when he was committed or taken to the said state psychopathic hospital; said expenses to be paid in accordance with the provisions of section 3984. [39 G. A., ch. 245, § 6.]

3991. Expense collected. In the event that the said person is a committed private patient, it shall be the duty of the county auditor of the proper county to proceed to collect all of such expenses, in accordance with the provisions of sections 3979 and 3980. [39 G. A., ch. 245, § 6.]

TRANSFER OF INCURABLES

3992. Application for commitment to insane hospital. If, upon the examination provided for in section 3969, or at any time thereafter, the medical director, or, in his absence, the assistant medical director, shall be of the opinion that such patient, or any patient in said state psychopathic hospital, is a fit subject for care, observation, and treatment in a state hospital for the insane, he shall file an application, substantially as provided in section 3544, with the commission of insanity hereinafter created. [39 G. A., ch. 245, § 1.]

3993. Special commission. The medical director, the assistant medical director, and one other member of the medical staff of the state psychopathic hospital shall constitute a commission of insanity; and said commission is hereby vested with all the rights, powers, duties, and obligations of the commission of insanity as now constituted by law, except as herein provided, with full power to receive and act upon all applications filed hereunder, as fully as the commission of insanity is empowered and authorized by law to do. The procedure of the commission hereby created shall be the same as now provided by law, except as herein modified. [39 G. A., ch. 245, § 1.]

NOTE: County commission of insanity, see chs. 176, 177.

3994. Secretary—records—certification. Said board shall elect one of its members secretary, who shall keep a record, in a book provided for that purpose, of all the proceedings of said board and certify a copy thereof forthwith to the clerk of the district court of the county of the legal residence of the person against whom said proceedings were had. Said clerk of the district court shall file and record said proceedings in the records of his office the same as if said proceedings had been before the commission of insanity of said county. [39 G. A., ch. 245, § 1.]

3995. Appeal—procedure—custody of patient. Any person found to be insane under the pro-

visions herein authorized may appeal from such finding to the district court of the county of the legal residence of such person. Said appeal and proceedings thereon shall be the same as if said finding appealed from had been made by the commission of insanity of said county; except that a copy of the notice of appeal served, or to be served, upon the clerk of said district court shall be served on a member of the commission of insanity hereby created, and if, at the time the copy of said notice of appeal is served on a member of said board, the patient is still in the actual custody of said board and not en route to a hospital for the insane, the said board hereby created shall cause said patient to be conducted, by its appointee or appointees, to the county of the legal residence of said patient in which said appeal was taken and delivered to the custody of the sheriff of said county, and thereafter the said patient shall be cared for and disposed of as if the proceedings appealed from had been had by the commission of insanity of said county. [39 G. A., ch. 245, § 1.]

NOTE: Appeals in ordinary proceedings in insanity, see §§ 3560, 3561.

3996. Jurisdiction of board after appeal. In the case of an appeal as herein provided, the jurisdiction of the commission hereby created shall immediately cease, except as herein otherwise specially provided. [39 G. A., ch. 245, § 1.]

3997. Accompanying patients from hospital—payment. Whenever the commission hereby created shall designate any person, or persons, to accompany any patient from said state psychopathic hospital to any state hospital for the insane, or to the county of the legal residence of the patient, the pay of such person, or persons, for performing such duty shall not exceed three dollars per day for the time thus necessarily employed, and the actual, reasonable, and necessary expenses incurred in accompanying said patient and in returning home therefrom. Said per diem and expenses shall be itemized, verified, presented, and allowed in connection with the bills for maintenance as herein provided. If the party accompanying said patient is a parent or other relative, or an officer or employee receiving other compensation, the said person shall receive no per diem, but only his actual, reasonable, and necessary traveling expenses. [39 G. A., ch. 245, § 3.]

3998. Special officers—female patients. All duties imposed by law upon the sheriff, or his deputy, relating to the attendance and commitment of insane patients may, by order of said commission hereby created, be performed by such person or persons as said commission may designate. If the patient be a female, she shall be accompanied to the state hospital for the insane, or to the county of her legal residence, as the case may be, by at least one woman. [39 G. A., ch. 245, § 1.]

CHAPTER 198

FEDERAL MATERNITY AND INFANCY ACT

3999. Sheppard-Towner act accepted.
 4000. Funds accepted.
 4001. State agency.

4002. Custodian of funds.
 4003. Reports.
 4004. Rights of parents.

3999. Sheppard-Towner act accepted. The state of Iowa, through its legislature, hereby accepts the provisions of the act of congress, enacted by the sixty-seventh congress, approved November 23, 1921, and entitled, "An act for the promotion of the welfare and hygiene of maternity and infancy, and for other purposes", otherwise known as Public, No. 97, sixty-seventh congress (S. 1039). [40 G. A., ch. 61, § 1.]

4000. Funds accepted. The benefits of all funds appropriated under the provisions of such act are hereby accepted as provided in such act. [40 G. A., ch. 61, § 2.]

4001. State agency. The state board of education is hereby designated as the state agency, provided in such act; and the said state board of education is charged with the duty and responsibility of cooperating with the children's bureau of the United States department of labor in the administration of such act; and is given all power necessary to such cooperation. The state university shall be in actual charge of the work done under this chapter. [40 G. A., ch. 61, § 3.]

4002. Custodian of funds. The state treasurer is hereby appointed as custodian of funds for the promotion of the welfare and hygiene of maternity and infancy as provided in such act; and he is charged with the duty and responsibility of receiving and providing for the

proper custody and disbursement on vouchers drawn by such state board of education, of moneys paid to the state from the appropriations made under the provisions of such act, and of such funds as are appropriated by the state to secure such appropriations from the federal government. [40 G. A., ch. 61, § 4.]

4003. Reports. The state treasurer, as custodian of funds for the promotion of the welfare and hygiene of maternity and infancy, shall make to the general assembly, at each biennial session thereof, a report of the receipts and disbursements of moneys received by him under the provisions of such act; and such state board of education shall make to the general assembly, at each biennial session thereof, a report of its administration of such act. [40 G. A., ch. 61, § 5.]

4004. Rights of parents. No official, agent, or representative of the division of maternity and infant hygiene shall by virtue of this chapter have any right to enter any home over the objection of the owner thereof, or to take charge of any child over the objection of the parents, or either of them, or of the person standing in loco parentis or having custody of such child. Nothing in this chapter shall be construed as limiting the power of a parent or guardian or person standing in loco parentis to determine what treatment or correction shall be provided for a child or the agency or agencies to be employed for such purpose. [40 G. A., ch. 61, § 7.]

CHAPTER 199

MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

- 4005. Complaint.
- 4006. Duty of public officers and others.
- 4007. "Patient" defined.
- 4008. Examination by physician.
- 4009. Report by physician.
- 4010. Investigation and report by county attorney.
- 4011. Notice of hearing—duty of county attorney.
- 4012. Hearing—order of commitment.
- 4013. Religious belief—denial of order.
- 4014. Order in case of emergency.
- 4015. Certified copy of order.
- 4016. Attendant—expenses—physician—compensation.
- 4017. Expenses—how paid.
- 4018. Duty of admitting physician at hospital.

- 4019. Report of physician or surgeon in charge of clinic.
- 4020. Reports.
- 4021. Treatment of other children.
- 4022. Hospital treatment.
- 4023. Treatment outside hospital—attendant.
- 4024. Treatment authorized.
- 4025. Treatment gratuitous.
- 4026. Record and report of expenses.
- 4027. Audit of accounts of hospital for basis of payment.
- 4028. Expenses—how paid.
- 4029. Faculty to prepare blanks—printing—distribution.
- 4030. Transfer of patients from state institutions.

4005. Complaint. Any adult resident of the state may file a complaint in the office of the clerk of any juvenile court, charging that any legal resident of Iowa residing in the county where the complaint is filed is suffering from some malady or deformity that can probably be improved or cured by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with his support are able to pay therefor. [S. S., '15, § 254-b; 38 G. A., ch. 78, § 1; 40 Ex. G. A., H. F. 92, § 1.]

4006. Duty of public officers and others. It shall be the duty of physicians, public health nurses, members of boards of supervisors and township trustees, overseers of the poor, sheriffs, policemen, and public school teachers, having knowledge of persons suffering from any such malady or deformity, to file or cause such complaint to be filed. [S. S., '15, § 254-b; 38 G. A., ch. 78, § 1; 40 Ex. G. A., H. F. 92, § 2.]

4007. "Patient" defined. The word "patient" as used in this chapter means the person against whom the complaint is filed. [40 Ex. G. A., H. F. 92, § 3.]

4008. Examination by physician. Upon the filing of such complaint, the clerk shall docket the same and shall appoint a competent physician and surgeon, living in the vicinity of the patient, who shall personally examine the patient with respect to his malady or deformity. [S. S., '15, § 254-b; 38 G. A., ch. 78, § 1; 40 Ex. G. A., H. F. 92, § 4.]

4009. Report by physician. Such physician shall make a report in duplicate on blanks furnished as hereinafter provided, answering the questions contained therein and setting forth

the information required thereby, giving such history of the case as will be likely to aid the medical or surgical treatment or hospital care of such patient, describing the deformity or malady in detail, and stating whether or not in his opinion the same can probably be improved or cured, which report shall be filed in the office of the clerk within such time as the clerk may fix. [S. S., '15, §§ 254-b, 254-j; 38 G. A., ch. 78, §§ 1, 9; 40 Ex. G. A., H. F. 92, § 5.]

4010. Investigation and report by county attorney. When such complaint is filed, the clerk shall furnish the county attorney a copy thereof, who shall make a thorough investigation of the facts as to the legal residence of the patient, and the ability of the patient or others chargeable with his support to pay the expenses of such treatment and care, and shall file a report of such investigation in the office of the clerk, at or before the time of hearing. [S. S., '15, § 254-b; 38 G. A., ch. 78, § 1; 40 Ex. G. A., H. F. 92, § 6.]

4011. Notice of hearing—duty of county attorney. When the physician's report has been filed, the clerk shall, with the consent of the court or judge, fix a time and place for hearing of the matter by the court, and the county attorney shall cause such patient and the parent or parents, guardian, or person having the legal custody of said patient, if under legal disability, to be served with such notice of the time and place of the hearing as the judge or clerk may prescribe. [S. S., '15, § 254-c; 38 G. A., ch. 78, § 1; 40 Ex. G. A., H. F. 92, § 7.]

4012. Hearing—order of commitment. The county attorney of the county where the hearing is held shall appear thereat. The complainant, the county attorney, and the patient,

or any person representing him, may introduce evidence and be heard. If the court finds that said patient is a legal resident of Iowa and is suffering from a malady or deformity which can probably be improved or cured by medical or surgical treatment or hospital care, and that neither the patient nor any person legally chargeable with his support is able to pay the expenses thereof, the court shall enter an order directing that said patient be sent to the hospital of the college of medicine of the state university for proper medical and surgical treatment and hospital care. [S. S., '15, § 254-c; 38 G. A., ch. 78, § 2; 40 Ex. G. A., H. F. 92, § 8.]

4013. Religious belief—denial of order. The court in its discretion may refuse to make such order in any case where the court finds the patient or his parent, parents, or guardian are members of a religious denomination whose tenets preclude dependence on the practice of medicine or surgery and desire in good faith to rely upon the practice of their religion for relief from disease or disorder. [40 Ex. G. A., H. F. 92, § 8.]

4014. Order in case of emergency. In cases of great emergency, when the court or judge is satisfied that delay would be seriously injurious to the patient, he may make such order with the consent of the patient, if adult, or of the parent or parents, guardian, or person having the legal custody of said patient, if a minor or incompetent, without examination, report, notice, or hearing. [S. S., '15, § 254-c; 38 G. A., ch. 78, § 2; 40 Ex. G. A., H. F. 92, § 9.]

4015. Certified copy of order. The clerk shall prepare a certified copy of said order, which, together with a copy of the physician's report, shall be delivered to the admitting physician of said hospital at or before the time of the reception of the patient into the hospital. [S. S., '15, § 254-j; 38 G. A., ch. 78, § 9; 40 Ex. G. A., H. F. 92, § 10.]

4016. Attendant—expenses—physician—compensation. The court or judge may appoint an attendant to accompany the patient to said hospital, who shall receive not exceeding three dollars per day for the time thus necessarily employed, and his actual, necessary traveling expenses; but if such appointee is a relative of the patient or a member of his immediate family, or receives a salary or other compensation from the public for his services, no such per diem shall be paid him. The physician appointed by the court to make the examination and report shall receive therefor five dollars for each examination and report so made, and his actual, necessary expenses incurred in making such examination. The actual, necessary expenses of transporting and caring for the patient shall be paid. [S. S., '15, § 254-h; 38 G. A., ch. 78, § 7; 40 Ex. G. A., H. F. 92, § 11.]

4017. Expenses—how paid. An itemized, verified statement of all charges provided for in the preceding section, when approved by the

judge under whose order the same were incurred, shall be filed with the superintendent of the hospital of the state university, and be charged on the regular bill for maintenance of the patient, and be audited and paid in the same manner as the bills for treatment and hospital care of the patient. [S. S., '15, § 254-h; 38 G. A., ch. 78, § 7; 40 Ex. G. A., H. F. 92, § 12.]

4018. Duty of admitting physician at hospital. The authorities in control of the medical college shall designate some physician to pass upon the admission of such patient, and it shall be his duty to receive such patient into the hospital and to provide for him, if available, a cot, bed, or room in said hospital, and to assign him to the appropriate clinic and for treatment by the proper physician, unless, in his judgment, the presence of the patient in the hospital would be dangerous to other patients, or there is no reasonable probability that he may be benefited by the proposed treatment or hospital care. If the admitting physician shall deny admission to the patient, he shall make a report in duplicate of his reasons therefor. [S. S., '15, § 254-d; 38 G. A., ch. 78, §§ 2, 3; 40 Ex. G. A., H. F. 92, § 13.]

4019. Report of physician or surgeon in charge of clinic. If the physician or surgeon in charge of said clinic, or to whom such patient has been assigned for treatment, declines to treat such patient, he shall make a report in duplicate of his examination of such patient, and state therein his reasons for declining such treatment. [S. S., '15, § 254-d; 40 Ex. G. A., H. F. 92, § 14.]

4020. Reports. One duplicate of each of the reports named in the two preceding sections shall be preserved in the records of said hospital, and the other transmitted to the clerk of the court where said order committing the patient to said hospital was entered, and by the clerk filed and preserved among the records in the cause. [S. S., '15, § 254-d; 40 Ex. G. A., H. F. 92, § 15.]

4021. Treatment of other children. The hospital authorities may in their discretion receive into the hospital for medical or surgical treatment or hospital care, patients under sixteen years of age not committed thereto under the provisions of this chapter; but the treatment or care of such patients shall not in any way interfere with the proper medical or surgical treatment or hospital care of committed patients. All of the provisions of this chapter except as to commitment of patients shall apply to such patients. The hospital authorities shall collect from the person or persons liable for the support of such patients, the cost of such care and treatment, determined as in this chapter provided, and shall deposit it to the credit of the hospital fund. [37 G. A., ch. 214, § 1; 39 G. A., ch. 90, § 1; 40 Ex. G. A., H. F. 92, § 16.]

4022. Hospital treatment. When any patient has been admitted to the hospital for treatment, the physician or surgeon in charge of the case

shall proceed with due care and diligence to perform such operation or bestow such treatment upon such patient as in his judgment shall be necessary and proper. Adequate nursing and hospital care shall be provided for said patient during such treatment. [S. S., '15, § 254-d; 38 G. A., ch. 78, § 3; 40 Ex. G. A., H. F. 92, § 17.]

4023. Treatment outside hospital—attendant. If, in the judgment of the physician or surgeon to whom the patient has been assigned for treatment, continuous residence of the patient in the hospital is unnecessary, such patient may, by the hospital authorities, be sent to his home or other appropriate place, and be required to return to the hospital when and for such length of time as may be for his benefit. The hospital authorities may, if necessary, appoint an attendant to accompany such patient and discharged patients, whose compensation shall be the same and whose expenses shall be audited and paid as provided for an attendant appointed by the court. [S. S., '15, §§ 254-h, 254-i; 38 G. A., ch. 78, §§ 7, 8; 40 Ex. G. A., H. F. 92, § 18.]

4024. Treatment authorized. No minor or incompetent person shall be treated for any malady or deformity except such as is reasonably well described in the order of court or the report of the examining physician, unless permission for such treatment is provided for in the order of court, or is granted by his parents or guardian; but the physician in charge may administer such treatment or perform such surgical operations as are usually required in cases of emergency. [S. S., '15, § 254-l; 40 Ex. G. A., H. F. 92, § 19.]

4025. Treatment gratuitous. No physician, surgeon, or nurse who shall treat or care for such patient shall charge or receive any compensation therefor except the salary or compensation fixed by the state board of education to be paid from the hospital funds. [S. S., '15, § 254-e; 38 G. A., ch. 78, § 4; 40 Ex. G. A., H. F. 92, § 20.]

4026. Record and report of expenses. The superintendent of said hospital shall keep a correct account of all medicine, care, and maintenance furnished to said patients, and shall make and file with the state board of audit an itemized, sworn statement of all expenses thereof incurred in said hospital. But he shall render separate bills showing the actual cost of all special appliances, instruments, and X-ray service used in connection with such treatment. [S. S., '15, § 254-f; 38 G. A., ch. 78, § 5; 40 Ex. G. A., H. F. 92, § 21.]

4027. Audit of accounts of hospital for basis of payment. To arrive at a proper basis for the payment of said bills for treatment, care, and maintenance, the state board of education shall cause to be made annually an audit of the accounts of the university hospital, and determine the average cost per day for the care and maintenance of each patient therein, exclusive of the salaries of the members of the faculty of said university college of medicine, and said bills shall be allowed at such average cost. All accounts shall be so adjusted and paid as to reimburse the funds of the hospital used for the purposes of this chapter. [40 Ex. G. A., H. F. 92, § 22.]

4028. Expenses—how paid. Warrants issued under the preceding section shall be promptly drawn on the treasurer of state and forwarded by the auditor to the treasurer of the state university, and the same shall be by him placed to the credit of the funds which are set aside for the support of said hospital. Said warrants shall be paid by the treasurer of state from the general funds of the state not otherwise appropriated. [S. S., '15, § 254-g; 38 G. A., ch. 78, § 6; 40 Ex. G. A., H. F. 92, § 23.]

4029. Faculty to prepare blanks—printing—distribution. The medical faculty of the state university hospital shall from time to time prepare blanks containing such questions and requiring such information as may, in its judgment, be necessary and proper to be obtained by the physician who examines such patient under order of court. Such blanks shall be printed by the state, and a sufficient supply thereof shall be furnished by the state board of printing to the clerk of each juvenile court in the state. The cost of printing said blanks shall be audited, allowed, and paid in the same manner as other bills for public printing. [S. S., '15, § 254-j; 38 G. A., ch. 78, § 9; 40 Ex. G. A., H. F. 92, § 24.]

4030. Transfer of patients from state institutions. The board of control of state institutions, and the board in control of the school for the blind, the school for the deaf, the soldiers' orphans' home, and the juvenile home, may, respectively, send any inmate of any of said institutions, or any person committed or applying for admission thereto, to the hospital of the medical college of the state university for treatment and care as provided in this chapter, without securing the order of court required in other cases. Said boards shall respectively pay the traveling expenses of any patient thus committed, and when necessary the traveling expenses of an attendant for such patient, out of funds appropriated for the use of the institution from which he is sent. [S. S., '15, § 254-k; 40 Ex. G. A., H. F. 92, § 25.]

CHAPTER 200

STATE COLLEGE OF AGRICULTURE AND MECHANIC ARTS

GENERAL PROVISIONS

4031. Grants accepted.
 4032. Courses of study.
 4033. Investigation of mineral resources.
 4034. Cooperative agricultural extension work.
 4035. State agency.

STATE APIARIST

4036. Appointment—tenure.
 4037. Duties.

GENERAL PROVISIONS

4031. **Grants accepted.** Legislative assent is given to the purposes of the various congressional grants to the state for the endowment and support of a college of agriculture and mechanic arts, and an agricultural experiment station as a department thereof, upon the terms, conditions, and restrictions contained in all acts of congress relating thereto, and the state assumes the duties, obligations, and responsibilities thereby imposed. All moneys appropriated by the state because of the obligations thus assumed, and all funds arising from said congressional grants, shall be invested or expended in accordance with the provision of such grant, for the use and support of said college located at Ames. [R., '60, § 1714; C., '73, § 1604; C., '97, § 2645.]

4032. **Courses of study.** There shall be adopted and taught at said college practical courses of study, embracing in their leading branches such as relate to agriculture and mechanic arts, mines and mining, and ceramics, and such other branches as are best calculated to educate thoroughly the agricultural and industrial classes in the several pursuits and professions of life, including military tactics. If a teachers' training course is established it shall include the subject of physical education. [R., '60, § 1728; C., '73, § 1621; C., '97, § 2648; S., '13, § 2674-d; 40 Ex. G. A., S. F. 93, § 1.]

4033. **Investigation of mineral resources.** The said college shall provide, as a part of its engineering experiment station work, for the investigation of clays, cement materials, fuels, and other mineral resources of the state with especial reference to their economic uses, and for the publication and dissemination of information useful to such industries, and for the testing of the products thereof. [S., '13, § 2674-e.]

4034. **Cooperative agricultural extension work.** The assent of the legislature of the

4038. Examinations.
 4039. Instructions.
 4040. Annual report.
 4041. Sale or disposition of diseased bees.

HOG CHOLERA SERUM LABORATORY

4042. Directors—assistants—salary.
 4043. Sale of serum.
 4044. Receipts—how deposited—expenses.

state of Iowa is hereby given to the provisions and requirements of an act of congress approved May 8, 1914, providing for cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of congress approved July 2, 1862, and amendments thereto. [S. S., '15, § 2682-y1.]

4035. **State agency.** The state board of education is hereby authorized and empowered to receive the grants of money appropriated under said act and to organize and conduct agricultural and home economics extension work, which shall be carried on in connection with the state college of agriculture and mechanic arts in accordance with the terms and conditions expressed in the act of congress aforesaid. [S. S., '15, § 2682-y1.]

STATE APIARIST

4036. **Appointment—tenure.** The state board of education is authorized and directed to appoint a state apiarist, who shall work in connection with and under the supervision of the director of agricultural extension and the professor of entomology of the state college of agriculture and mechanic arts, the term of said state apiarist to commence on the first day of July, 1917, and continue during the pleasure of said state board of education. [37 G. A., ch. 289, § 1.]

4037. **Duties.** It shall be the duty of the said apiarist to give lectures and demonstrations in the state on the production of honey, the care of the apiary, the marketing of honey, and upon other kindred subjects relative to the care of bees and the profitable production of honey. [37 G. A., ch. 289, § 2.]

4038. **Examinations.** Upon the written request of one or more beekeepers in any county of the state, said apiarist shall examine the bees in that locality suspected of being affected with foulbrood or any other contagious or infectious disease common to bees. [37 G. A., ch. 289, § 2.]

4039. Instructions. If upon examination the said apiarist finds said bees to be diseased, he shall furnish the owner or person in charge of said apiary with full written instructions as to the nature of the disease and the best methods of treating same, which information shall be furnished without cost to the owner. [37 G. A., ch. 289, § 2.]

4040. Annual report. Said apiarist shall also make an annual report to the governor, stating the number of apiaries visited, number of demonstrations held, number of lectures given, the number of examinations made upon request of the beekeepers, together with such other matters of general interest concerning the business of beekeeping as in his judgment shall be of value to the public. [37 G. A., ch. 289, § 2.]

NOTE: For time of filing report, see § 247.

4041. Sale or disposition of diseased bees. Anyone who knowingly sells, barter, or gives away, moves or allows to be moved, a diseased colony or colonies of bees, without the consent of the state apiarist, or exposes any infected honey or infected appliances to the bees, or who wilfully fails or neglects to give proper treatment to diseased colonies, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the county shall be fined not exceeding the sum of fifty dollars or imprisoned in the county jail not exceeding thirty days. [37 G. A., ch. 289, § 3.]

HOG CHOLERA SERUM LABORATORY

4042. Directors — assistants — salary. The state board of education is hereby authorized to maintain at Ames, in connection with the state college of agriculture and mechanic arts, a laboratory for the manufacture and distribution of hog cholera serum, toxines, vaccines, and biological products and for such other

work as the said state board of education may, from time to time, deem advisable in the veterinary division, and to provide the necessary equipment therefor. The president of said college shall appoint the director of said laboratory and such assistants as are deemed necessary to efficiently carry on said work; and he shall, with the approval of said board, fix the salaries of said assistants. [S. S., '15, § 2538-w; 39 G. A., ch. 274, § 1.]

4043. Sale of serum. The director of said laboratory may, when an emergency is declared to exist by the state board of education, furnish said serum to any person, together with specific instructions for the use of same, at the approximate cost of manufacture, and such cost shall be stated on the package. The director of the serum laboratory is authorized to purchase serum or other biological products which he deems reliable, and he may sell the same at approximate cost in the same manner as products of the laboratory are sold. [S. S., '15, § 2538-w1; 39 G. A., ch. 274, § 2.]

4044. Receipts — how deposited — expenses. The director shall deposit all funds with the treasurer of the college, which treasurer shall be responsible on his bond for the same. Upon receipt of said moneys, the said treasurer shall issue duplicate receipts therefor, one of which he shall deliver to the director and the other to the secretary of the state board of education. Said moneys shall be kept by said treasurer in a separate fund to be known as the serum fund; and he shall pay out from said fund, as other college funds are expended, but only for expenses directly connected with the maintenance and development of said laboratory and for grounds and buildings. Said grounds and buildings shall be used, when so authorized by the board of education, for any purpose in connection with the study, control, or treatment of animal diseases. [S. S., '15, § 2538-w2; 39 G. A., ch. 274, § 3.]

CHAPTER 201

STATE ENTOMOLOGIST

- 4045. Appointment.
- 4046. Assistants.
- 4047. Examinations—fees.
- 4048. Certificate required.
- 4049. Quarantine.
- 4050. Treatment prescribed.
- 4051. Destruction ordered.
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- 4054. Enforcement.
- 4055. Default by owner.
- 4056. Collection of expense.
- 4057. Nursery stock shipped into state.
- 4058. Certificate of inspection.
- 4059. Penalties.
- 4060. Compensation and expenses.
- 4061. Payment to state treasurer.
- 4062. Supplies.

4045. Appointment. The entomologist of the state experiment station is hereby constituted the state entomologist and charged with the execution of this chapter. [S., '13, § 2575-a47.]

4046. Assistants. He may appoint such qualified assistants as may be necessary, fix a reasonable compensation for their labor, and

pay the same; and their acts shall have the same validity as his own. [S., '13, § 2575-a47.]

4047. Examinations — fees. He shall, by himself or his assistants, between the first day of June and the fifteenth day of September, in each year, when requested by the owner or agent or where he has reasonable grounds to believe any dangerously injurious insect or

plant disease exists, carefully examine any nursery, fruit farm, or other place where trees or plants are grown for sale, and if found apparently free from any dangerously injurious insect or plant disease, he shall issue his certificate stating the facts, and shall collect therefor a fee of not less than five dollars, nor more than forty dollars, according to the amount of stock inspected. [S., '13, § 2575-a47; 40 G. A., ch. 65, § 1.]

4048. Certificate required. It shall be unlawful to sell, or offer for transportation, any nursery stock unless accompanied by a copy of this certificate. [S., '13, § 2575-a47.]

4049. Quarantine. The state entomologist shall have authority, when requested by the owner or agent, or when he has reasonable grounds to believe any dangerously injurious insect or plant disease exists, to enter upon any grounds, public or private, for the purpose of inspection, and, if he finds any nursery, orchard, garden, or other place infested by the scale, he may, by himself or his assistants, enter upon such premises and establish quarantine regulations. [S., '13, § 2575-a48.]

4050. Treatment prescribed. If in his judgment any dangerously injurious insect or plant disease may be eradicated by treatment, he may, in writing, order such treatment, and prescribe its kind and character. [S., '13, § 2575-a48.]

4051. Destruction ordered. In case any trees, shrubs, or plants are found so infested that it would be impracticable to treat them, he may order them burned. [S., '13, § 2575-a48.]

4052. Additional precautions. Whenever, in the judgment of the state entomologist it is found that any other dangerous crop pests or carriers exist, he shall take such additional measures as seem fit to protect the crop or industry concerned. [38 G. A., ch. 8, § 1.]

4053. Disease-breeding plants. After notification by the state entomologist, it shall be unlawful for any person, firm, or corporation to receive, ship, or accept for shipment, transport, sell, or offer for sale, give away, deliver, plant, or permit to exist on his or its premises any plant of the harmful barberry or any other plant that acts as an alternate host or carrier of a dangerous insect pest or plant disease. The term, harmful barberry, shall be interpreted to include any species of *Berberis* or *Mahonia* susceptible to infection by *Puccinia graminis*, commonly called black stem rust of grain, but not including Japanese barberry (*B. thunbergii*). [38 G. A., ch. 8, § 1.]

4054. Enforcement. It shall be the duty of the state entomologist and his assistants to enforce the provisions of this chapter, and he is hereby empowered to eradicate any such insect pest, plant disease, or carrier of insect or plant disease. [38 G. A., ch. 8, § 1.]

4055. Default by owner. If the owner shall refuse or neglect to eradicate such pest or

carrier, within ten days after receiving a written notice, the state entomologist shall eradicate or cause the same to be eradicated and ascertain the cost thereof. [S., '13, § 2575-a48; 38 G. A., ch. 8, § 1.]

4056. Collection of expense. He shall certify the amount of such cost to the owner or person in charge of the premises; and if the same is not paid to him within sixty days thereafter he shall certify the amount to the county auditor, who shall spread the same upon the tax books, to be collected as other special taxes, and turned over to the entomologist. [S., '13, § 2575-a48; 38 G. A., ch. 8, § 1.]

4057. Nursery stock shipped into state. Where nursery stock is shipped into this state, accompanied by a certificate as by law provided, it shall be held prima facie evidence of the facts therein stated, but the state entomologist, by himself or his assistants, when they have reason to believe any such stock is infested with any dangerously injurious insect or plant disease, shall be authorized to inspect the same and subject it to like treatment as provided in this chapter. [S., '13, § 2575-a49.]

4058. Certificate of inspection. It shall be unlawful for any person, firm, or corporation to bring into this state any trees, plants, vines, cuttings, or buds, commonly known as nursery stock, unless accompanied by a certificate of inspection, signed by the state entomologist, or by another inspector duly approved by him, showing that the stock has been carefully inspected and found apparently free from any dangerously injurious insect or plant disease. [S., '13, § 2575-a50.]

4059. Penalties. Any person violating or neglecting to carry out the provisions of this chapter or offering any hindrance to the carrying out of this chapter shall be adjudged guilty of a misdemeanor and upon conviction before a justice of the peace shall be fined not less than ten dollars, nor more than one hundred dollars, for each and every offense, together with all the costs of the prosecution, and shall stand committed until the same are paid. [S., '13, § 2575-a50.]

4060. Compensation and expenses. The state entomologist shall be allowed and paid for his services while engaged in this work, all his necessary traveling expenses and the sum of five dollars per day. [S., '13, § 2575-a51.]

4061. Payment to state treasurer. All funds coming into his hands shall be paid over to the state treasurer, with an itemized statement of the source whence received. [S., '13, § 2575-a51.]

4062. Supplies. The state entomologist, with the consent of the executive council, is authorized to purchase all supplies and equipment necessary to enable him to carry out the duties imposed upon him by law. [38 G. A., ch. 305, § 1.]

CHAPTER 202

IOWA STATE TEACHERS COLLEGE

4063. Official designation.
4064. Branches of study.

4063. Official designation. The normal school at Cedar Falls, for the special instruction and training of teachers for the common schools, shall be officially designated and known as the "Iowa State Teachers College". [C., '97, § 2675; S., '13, § 2675; 40 Ex. G. A., H. F. 94, § 1.]

4064. Branches of study. Physical education, including physiology and hygiene, shall be included in the branches of study regularly taught to and studied by all pupils in the college, and special reference shall be made to the effect of alcoholic drinks, stimulants, and narcotics upon the human system. [C., '97, § 2677; 40 Ex. G. A., H. F. 94, § 2.]

4065. Contract with school districts. The state board of education may contract in writ-

4065. Contract with school districts.

ing with the board of directors of the school district in which the college is situated and those contiguous thereto, for a period not exceeding two years at a time, to receive the pupils thereof into the state teachers college and furnish them with instruction; and payment thereof shall be made out of the general funds of such districts, but shall not exceed fifty cents per week for each pupil. A copy of such contract shall be filed with the county superintendent, and all reports required by law to be made to the board of directors of such townships or schools and the county superintendent by the teachers thereof shall be made by the president of the college. All sums received for tuition shall be placed to the credit of the general fund of the college. [C., '97, §§ 2678, 2679; 37 G. A., ch. 386, § 11; 40 Ex. G. A., H. F. 94, § 3.]

CHAPTER 203

SCHOOL FOR THE BLIND

4066. Admission.

4066. Admission. All blind persons and persons whose vision is so defective that they can not be properly instructed in the common schools, who are residents of the state and of suitable age and capacity, shall be entitled to an education in the school for the blind at the expense of the state. Nonresidents also may be admitted to the school for the blind if their presence would not be prejudicial to the inter-

4067. Expenses—residence of indigents.

ests of residents, upon such terms as may be fixed by the state board of education. [R., '60, §§ 2147, 2148; C., '73, §§ 1672, 1680; C., '97, § 2715; S., '13, § 2715; 40 G. A., ch. 241, § 1.]

4067. Expenses—residence of indigents. The provision of sections 4071 to 4075, inclusive, are hereby made applicable to the school for the blind. [C., '73, § 1678; C., '97, § 2716; 40 G. A., ch. 241, § 2.]

CHAPTER 204

SCHOOL FOR THE DEAF

4068. Superintendent.
4069. Labor of pupils.
4070. Admission.
4071. Clothing and transportation.

4068. Superintendent. The superintendent of the school for the deaf shall be a trained and experienced educator of the deaf. His salary may include residence in the institution and board from the funds or supplies thereof, but no such allowance shall be made except by

4072. Certification to state auditor.
4073. Certification to auditor—collection.
4074. Payment by county.
4075. Residence during vacation.

express contract in advance. [C., '97, § 2723; S., '13, § 2727-3a; 40 G. A., ch. 242, § 1.]

4069. Labor of pupils. The board may utilize the labor of any pupil of the institution on the farm, in the workshops, in erection of

buildings for the institution, or in domestic service, so far as practicable, without interference with their proper education. [C., '97, § 2723; 40 G. A., ch. 242, § 1.]

4070. Admission. Every resident of the state who is not less than five nor more than twenty-one years of age, who is deaf and dumb, or so deaf as to be unable to acquire an education in the common schools, and every such person who is over twenty-one and under thirty-five years of age who has the consent of the state board of education, shall be entitled to receive an education in the institution at the expense of the state, and nonresidents similarly situated may be entitled to an education therein upon such terms as may be fixed by the state board of education. The fee for nonresidents shall be not less than the average expense of resident pupils and shall be paid in advance. [R., '60, §§ 2156, 2160; C., '73, §§ 1688, 1689; C., '97, § 2724; S., '13, § 2724; 40 G. A., ch. 242, § 2.]

4071. Clothing and transportation. When pupils are not supplied with clothing, or transportation, it shall be furnished by the superintendent, who shall make out an account therefor against the parent or guardian, if the pupil be a minor, and against the pupil if he have no parent or guardian, or has attained the age of majority, which bill shall be certified by him to be correct, and shall be presumptive evidence thereof in all courts. [C., '73, § 1695; C., '97, § 2726; S., '13, § 2726.]

4072. Certification to state auditor. The superintendent shall, on the first days of April

and October of each year, certify to the auditor of state the amounts due from the several counties, and the auditor of state shall thereupon pass the same to the credit of the institution, and charge the amount to the proper county. [C., '73, § 1695; C., '97, § 2726; S., '13, § 2726.]

4073. Certification to auditor—collection. The superintendent shall, at the time of sending certificate to the auditor of state, send a duplicate copy to the auditor of the county of the pupil's residence, who shall, when ordered by the board of supervisors, proceed to collect the same by action if necessary, in the name of the county, and when so collected, shall pay the same into the county treasury. [C., '73, § 1695; C., '97, § 2726; S., '13, § 2726.]

4074. Payment by county. The county auditor shall, upon receipt of said certificate, pass the same to the credit of the state, and thereupon issue a notice to the county treasurer authorizing him to transfer the amount from the general county fund to the general state revenue, which shall be filed by the treasurer as his authority for making such transfer, and shall include the amount in his next remittance of state taxes to the treasurer of state, designating the fund to which it belongs. [C., '73, § 1695; C., '97, § 2726; S., '13, § 2726.]

4075. Residence during vacation. The residence of indigent or homeless children may, by order of the state board of education, be continued during vacation months. [S., '13, § 2727-a.]

CHAPTER 205

COUNTY HIGH SCHOOLS

- 4076. Establishment.
- 4077. Temporary governing board.
- 4078. Qualification.
- 4079. Permanent board—vacancies.
- 4080. Organization.
- 4081. Duties of secretary and treasurer.
- 4082. Site—improvements.
- 4083. Annual funds.
- 4084. Approval of expenditures—collections.
- 4085. Management.

4076. Establishment. Any county may establish a high school in the following manner: When the board of supervisors shall be presented with a petition signed by one-third of the electors of the county, as shown by the returns of the last preceding election, requesting the establishment of a county high school at a place in the county named therein, it shall submit the question, together with the amount of tax to be levied to erect the necessary buildings, at the next general election to be held in the county, or at a special one called for that purpose, first giving twenty days' notice thereof in one or more newspapers published in the county, if any be published therein, and by

- 4086. Annual reports.
- 4087. Compensation.
- 4088. Regulations.
- 4089. Admission and apportionment.
- 4090. Publication of apportionment.
- 4091. Right to admission.
- 4092. Excess of applications.
- 4093. Deficiency in applications.
- 4094. Tuition.
- 4095. Petitions to abolish—election.

posting such notice, written or printed, in each township of the county, at which election the vote shall be by ballot, for or against establishing the high school, and for or against the levying of the tax, the vote to be canvassed in the same manner as that for county officers. [C., '73, §§ 1697-1699; C., '97, § 2728; S., '13, § 2728.]

4077. Temporary governing board. Should a majority of all the votes cast upon the question be in favor of establishing such school, and the levying of such tax, the board of supervisors shall at once appoint six trustees, residents of the county, not more than two

from the same township, who, with the county superintendent of schools as president, shall constitute a board of trustees for said high school. [C., '73, §§ 1699, 1701; C., '97, § 2728; S., '13, § 2728.]

4078. Qualification. The trustees, within ten days after appointment, shall qualify by taking the oath of civil officers, and giving bond in such sum as the board of supervisors may require, with sureties to be approved by it, and shall hold office until their successors are elected and qualified, who shall be elected at the general election following. [C., '73, § 1699; C., '97, § 2729; S., '13, § 2729.]

4079. Permanent board—vacancies. The trustees then elected shall be divided into two classes of three each and hold their office two and four years respectively, their several terms to be decided by lot; and at each general election thereafter three trustees shall be elected for the term of four years, the trustees so elected to qualify in the same manner and at the same time as other county officers, and all vacancies occurring to be filled by appointment by the board of supervisors, the appointee to hold the office until the next general election, and a majority of said trustees shall constitute a quorum for the transaction of business. [C., '73, §§ 1700, 1711; C., '97, § 2729; S., '13, § 2729.]

4080. Organization. At the first meeting held in each year, the board shall appoint a secretary and a treasurer from their own number, who shall perform the usual duties devolving upon like officers. [C., '73, § 1701; C., '97, § 2729; S., '13, § 2729.]

4081. Duties of secretary and treasurer. The treasurer, in addition to his bond as trustee, shall give one as treasurer, in such sum and with such sureties as may be fixed by the board, and receive all moneys from all sources belonging to the funds of the school, and pay them out as directed by the board of trustees, upon orders drawn by the president and countersigned by the secretary; both of which officers shall keep an accurate account of all moneys received and paid out, and at the close of each year, and whenever required by the board, shall make a fully itemized and detailed report. [C., '73, § 1704; C., '97, § 2729; S., '13, § 2729.]

4082. Site—improvements. As soon as convenient after the organization of the board, it shall proceed to select the best site that can be obtained without expense to the county, at the place named in the petition upon which the vote was taken, for the erection of the necessary school buildings, the title to be taken in the name of the county, and shall procure plans and specifications for the erection of such buildings, and make all necessary contracts for the erection of the same, the cost of which, when completed, shall not exceed the amount of the tax so levied therefor. [C., '73, § 1705; C., '97, § 2730; S. S., '15, § 2730.]

4083. Annual funds. They shall also annually make and certify to the board of supervisors on or before the first Monday of Sep-

tember of each year, an estimate of the amount of funds needed for improvements, teachers' wages, and contingent expenses for the ensuing year, designating the amount for each, which, in the aggregate, shall not exceed in any one year one mill on the dollar upon the taxable property of the county. [C., '73, § 1702; C., '97, § 2730; S. S., '15, § 2730.]

4084. Approval of expenditures—collections. No expenditures for buildings or other improvements shall be made, or contract entered into therefor by said board, involving an outlay of to exceed five hundred dollars in any one year, without the same first being submitted to the electors of the county in which said school is to be located, for their approval; the tax to be levied and collected in the same manner as other county taxes, and paid over by the county treasurer in the same manner as school funds are paid to district treasurers. [C., '73, § 1703; C., '97, § 2730; S. S., '15, § 2730.]

4085. Management. Said board shall make no purchases, nor enter into any contracts in any year, in excess of the funds on hand and to be raised by the levy of that year. It shall employ, when suitable buildings have been furnished, a competent principal teacher to take charge of the school, and such assistant teachers as may be necessary, and fix the salaries to be paid them, and in the conduct of the school may employ advanced students to assist in the work. [C., '73, §§ 1705, 1706; C., '97, § 2731; S., '13, § 2731.]

4086. Annual reports. Annual reports shall be made by the secretary to the board of supervisors, which report shall give the number of students, with the sex of each, who have been in attendance during the year, the branches taught, the textbooks used, number of teachers employed, salary paid to each, amount expended for library, apparatus, buildings, and all other expenses, the amount of funds on hand, debts contracted, and such other information as may be deemed important, and this report shall be printed in at least one newspaper in the county, if any is published therein, and a copy forwarded to the superintendent of public instruction. [C., '73, § 1710; C., '97, § 2731; S., '13, § 2731.]

4087. Compensation. For their services the trustees shall each receive the sum of two dollars per day for the time actually employed in the discharge of official duties, claims for services to be presented, audited, and paid out of the county treasury, in the same manner as other accounts against the county. [C., '73, § 1712; C., '97, § 2731; S., '13, § 2731.]

4088. Regulation. The principal of any such high school, with the approval of the board of trustees, shall make such rules and regulations as are deemed proper in regard to the studies, conduct and government of the pupils, and such rules and regulations shall prohibit the use of tobacco in any form by any student of such school; and any pupil who

will not conform to and obey such rules may be suspended or expelled therefrom by the board of trustees. [C., '73, § 1709; C., '97, § 2732; S., '13, § 2732.]

4089. Admission and apportionment. Said board of trustees shall make all necessary rules and regulations in regard to the age and grade of attainments necessary to entitle pupils to admission into the school, and shall on or before the tenth day of July of each year make an apportionment between the different school corporations of the county, of the pupils that shall attend said school, and shall apportion to each of said school corporations its proportionate number, based upon the number of pupils that can be reasonably accommodated in said school, and the number of pupils of school age, actual residents of such school corporations, as shown by the county superintendent's report last filed with the county auditor of said county. [S., '13, § 2732.]

4090. Publication of apportionment. Said apportionment shall be published in the official papers of such county, to be paid for as other county printing. [S., '13, § 2732.]

4091. Right to admission. Pupils from the said school corporations to the number so designated in such apportionment shall be entitled to admission into said school, tuition free, and none others, and it shall be unlawful to accredit pupils so attending to any other school corporation than the one in which they are enumerated for school purposes. [S., '13, § 2732.]

4092. Excess of applications. Should there be more applicants for such admission from any school corporation than its proportionate number, so determined, then the board of directors of such school corporation shall designate which of said applicants shall be entitled to so attend. [S., '13, § 2732.]

4093. Deficiency in applications. If the school shall be capable of accommodating more pupils than those attending under such apportionment, others may be admitted by the board of trustees, preference at all times being given to pupils desiring such admission, who are residents of the county. [S., '13, § 2732.]

4094. Tuition. The board of trustees shall fix reasonable tuition for such pupils. If such pupils are residents of the county the school corporation from which they attend shall pay their tuition out of its general fund. The principal of such high school shall report to the said board of trustees under oath, at the close of each term, the names and number of pupils attending such school during said term, from what school corporation they attended, and the amount of tuition, if any, paid by each, the same to be included in the annual report of the secretary of the board of trustees to the board of supervisors, provided for in section 4086, the tuition so paid to be turned over to the treasurer of the board of trustees, to be used in paying the expense of said school under the direction of said board. [S., '13, § 2732.]

4095. Petitions to abolish—election. Whenever citizens of any county having a county high school desire to abolish the same or to dispose of any part of the buildings or property thereof, they may petition the board of supervisors at any regular session thereof in relation thereto, and chapter 278 shall apply to and govern the whole matter, including the manner of presenting and determining the sufficiency of such petitions and remonstrances thereto, so far as applicable. If an election is ordered the same shall be held at the time of the general election or at a special election called for that purpose and the proposition shall be submitted and the election conducted in the manner provided in title 4. If any proposition as herein provided be legally submitted and adopted, the board of supervisors is hereby empowered to carry the same into effect. [C., '97, § 2733; S., '13, § 2733-a.]

CHAPTER 206

COUNTY SUPERINTENDENT

GENERAL PROVISIONS

- 4096. Term of office.
- 4097. Qualifications.
- 4098. Election by convention.
- 4099. Representatives at convention.
- 4100. Calling convention.
- 4101. Convention—quorum.
- 4102. Committee to elect.
- 4103. Vacancies.
- 4104. Mileage.
- 4105. Certificate of election.
- 4106. Duties.
- 4107. Penalty.

GENERAL PROVISIONS

4096. Term of office. There shall be a county superintendent of schools of each county in the state, whose term of office shall be for three years, from the first secular day of September following his election and until his successor is elected and qualified. A regular term began in 1918. [R., '60, § 2063; C., '73, § 589; C., '97, § 1072; S., '13, §§ 1072, 2734-b1; 38 G. A., ch. 56, § 2; 40 Ex. G. A., S. F. 99, § 1.]

4097. Qualifications. Such superintendent may be of either sex, shall be a holder of a regular five year state certificate or life diploma, and have had at least five years' experience in teaching or superintending; but anyone now serving shall be deemed eligible to reelection. [C., '97, § 2734; S. S., '15, § 2734-b; 40 Ex. G. A., S. F. 99, § 2.]

4098. Election by convention. The county superintendent shall be elected by a convention held on the second Tuesday in May preceding the expiration of his regular term of office, composed of representatives of school districts organized in the county as follows: One for each school township, one for all the rural independent districts in each civil township, one for each city, town, or village independent district, and one for each consolidated district. Each representative shall be entitled to one vote. All representatives to such convention shall serve until a county superintendent is elected and qualified. [R., '60, § 2063; C., '73, § 589; C., '97, § 1072; S., '13, § 1072; 40 Ex. G. A., S. F. 99, § 3.]

4099. Representatives at convention. Each school corporation except rural independent districts shall be represented at the convention by the president of the school board, or, in his absence or inability to act, by some member of such board to be selected by the board. When such selection is made, the secretary of the

INSTITUTES, LECTURES, AND SUMMER SCHOOLS FOR TEACHERS

- 4108. Institutes required.
- 4109. Adjournment of schools.
- 4110. Certificate of attendance.
- 4111. Lectures.
- 4112. Plans approved by state superintendent.
- 4113. Institute fund.
- 4114. Use of institute fund.
- 4115. Disbursement of institute fund.
- 4116. Summer schools.
- 4117. Payment of instructors.
- 4118. Itemized account of funds.

board shall at once notify the county auditor thereof. Rural independent districts shall be represented by some person selected by the presidents of the boards of such districts at a meeting to be held at such time and place as the county auditor shall fix in the call for the convention, and the secretary of the meeting shall notify the county auditor of the person so selected. [S., '13, § 1072; 40 Ex. G. A., S. F. 99, § 4.]

4100. Calling convention. Such convention shall be called by the county auditor by mailing a written notice to the president and secretary of each school corporation and by the publication of such notice in the official newspapers published in the county at least ten days prior to the date of such convention. Such notice shall also fix the time and place of the meeting of the presidents of rural independent districts in the several townships for the election of representatives to the convention. [S., '13, § 1072; 40 Ex. G. A., S. F. 99, § 5.]

4101. Convention—quorum. At the time and place fixed, the county auditor shall call the convention to order, shall submit a list of school corporations entitled to participate in such convention and of the representatives, and shall be secretary of the convention. The convention shall be the judge of the qualifications of its own members and a majority of the legal representatives shall constitute a quorum. Said convention shall select a chairman, and when so organized shall elect a county superintendent of schools. [S., '13, § 1072; 40 Ex. G. A., S. F. 99, § 6.]

4102. Committee to elect. The convention may, by a majority vote, elect a committee of five members who shall investigate the various candidates for the office and report to said convention at a date to which the convention may adjourn; or the convention may, by a three-fourths vote, authorize said committee to

elect a county superintendent, and file its election with the county auditor, and thereupon said person shall be deemed duly elected. [S., '13, § 1072; 40 Ex. G. A., S. F. 99, § 7.]

4103. Vacancies. Vacancies in the office of county superintendent shall be filled at special conventions called and held in the same manner as regular conventions. [S., '13, § 2734-b1; 40 Ex. G. A., S. F. 99, § 8.]

4104. Mileage. Each representative shall be paid from the county treasury ten cents per mile one way for the distance necessarily traveled in attending the convention. [S., '13, § 1072; 40 Ex. G. A., S. F. 99, § 9.]

4105. Certificate of election. Whenever a county superintendent is elected and has qualified, the county auditor shall forward to the superintendent of public instruction a certificate thereof. [C., '73, § 1783; C., '97, § 2809; S., '13, § 2809; 40 Ex. G. A., S. F. 99, § 10.]

4106. Duties. The county superintendent shall:

1. *Means of communication.* Under the direction of the superintendent of public instruction, serve as a means of communication between the department of public instruction and the various officers and instructors in the county, and transmit or deliver to them all books, papers, circulars, and communications designed for them.

2. *Visiting schools.* Visit each public school in the county, at least once during each school year; and when requested so to do by a majority of the directors of any school corporation, visit the schools therein.

3. *Special visit and report upon schools.* At the request of the superintendent of public instruction, visit and report upon such school as may be designated.

4. *Enforcement of school laws.* See that all provisions of the school law, so far as it relates to the schools or school officers within his county, are observed and enforced, especially those relating to the fencing of schoolhouse grounds with barbed wire, the introduction and teaching of such divisions of physiology and hygiene as relate to the effects of alcohol, stimulants, and narcotics upon the human system, those relating to compulsory attendance of pupils, and those relating to the exclusive use of the English language as the medium of instruction in the schools, and to this end he may require the assistance of the county attorney, who shall at his request bring any action necessary to enforce the law or recover penalties incurred.

5. *Conduct examinations—assistants.* Conduct, in accordance with the regulations of the board of educational examiners, examinations for teachers' certificates, and as soon as the examination is completed, forward to the president of the board of educational examiners a list of all applicants examined, with the standing of each in didactics and oral reading, and his estimate of each applicant's personality and general fitness other than scholarship for the

work of teaching. He shall, at the same time, forward to the president of the board of educational examiners the answer papers written, with the exception of those in didactics. Such examinations shall be held at the county seat, in a suitable room provided by the board of supervisors, but the county superintendent may, in his discretion, cause examinations to be held at the same time in some other place in the county. The county superintendent may employ such assistants as may be necessary for this purpose and the bills for their services and expenses shall be verified and filed with the county auditor.

6. *Requirements of proof of good character.* Before admitting anyone to the examination, be satisfied that the person seeking a certificate is of good moral character, of which fact he may require proof, and is in all respects other than in scholarship possessed of the necessary qualifications as an instructor.

7. *Uncertificated teaching may be enjoined.* Order to be closed any public school or school-room taught by any teacher not certificated as required by law. If his order is not immediately obeyed, he may enforce the same against the teacher and the school board by the procurement of an injunction from any court of competent jurisdiction.

8. *Record of examinations.* Keep a record of all examinations taken within his county, with the name, age, and residence of each applicant and the date of examination.

9. *Report of applicants for teachers' certificates.* Report monthly to the county auditor the names of all applicants for teachers' certificates.

10. *Appointment of school directors.* When any school corporation is organized or reorganized according to law, and no director has been elected, or any director elected has not qualified, or has qualified and resigned, so that the matter of the completion of the organization or reorganization of such school corporation is prevented, and the objects of its organization are thereby defeated, appoint a director or board of directors of such corporation, who shall act as such until their successors have been elected and qualified, and designate which term or terms each director appointed shall fill. In consolidated districts such appointments shall be made by the county superintendent of the county in which the petition was filed.

11. *Report to superintendent of public instruction.* Annually, on the last Tuesday in August, report to the superintendent of public instruction, giving a full abstract of the several reports made to him by the secretaries and treasurers of school boards, stating the manner in and extent to which the requirements of the law regarding instruction in physiology and hygiene are observed, and such other matters as he may be directed by the state superintendent to include therein, or he may think important in showing the actual condition of the schools in his county. He shall file a duplicate of such report with the county board of education.

12. *Report of persons of school age.* Annually, on the last Tuesday in August, file with the county auditor a statement of the number of persons of school age in each school township and independent district in the county.

13. *Reports.* Report on or before August first each year, to the superintendent of the college for the blind, the name, age, residence, and postoffice address of every person resident of the county, without regard to age, so blind as to be unable to acquire an education in the common schools; to the superintendent of the school for the deaf with the same detail persons under age thirty-five, whose faculties with respect to speech and hearing are so deficient as to prevent them from obtaining an education in the common schools; and to the institution for the feeble minded all persons of school age who, because of mental defects, are entitled to admission therein.

14. *Transmission of fees.* On the first secular day of each month, transmit to the county treasurer and the state treasurer each one-half of all moneys received for examination fees; and to the county treasurer the state appropriation for institutes when received.

15. *Annual report of financial transactions.* Report to the board of supervisors on the first day of January annually a summary of his official financial transactions for the previous year.

16. *Administration of oaths.* Have power to administer the oath of office to any school officer. 1. [R., '60, § 2073; C., '73, § 1774; C., '97, § 2735; S. S., '15, § 2734-b; 40 Ex. G. A., S. F. 99, § 11.] 2. [C., '73, §§ 1770, 1774; C., '97, §§ 2734, 2735; S. S., '15, § 2734-b; 38 G. A., ch. 311, § 1; 40 Ex. G. A., S. F. 99, § 11.] 3. [C., '97, § 2735; S. S., '15, § 2734-b; 40 Ex. G. A., S. F. 99, § 11.] 4. [C., '97, § 2740; 38 G. A., ch. 340, § 1; 40 Ex. G. A., S. F. 99, § 11.] 5. [C., '51, § 1148; R., '60, §§ 2066, 2068; C., '73, § 1766; C., '97, § 2735; S., '13, § 2734-m; S. S., '15, § 2734-c; 40 Ex. G. A., S. F. 99, § 11.] 6. [R., '60, § 2067; C., '73, § 1767; C., '97, § 2737; S., '13, § 2734-l; 40 Ex. G. A., S. F. 99, § 11.] 7. [40 Ex. G. A., S. F. 99, § 11.] 8. [R., '60, § 2067; C., '73, § 1768; C., '97, § 2736; S., '13, § 2734-f; 40 Ex. G. A., S. F. 99, § 11.] 9. [C., '97, § 2738; S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 11.] 10. [38 G. A., ch. 201, § 1; 40 Ex. G. A., S. F. 99, § 11.] 11. [R., '60, § 2071; C., '73, §§ 1772, 1775; C., '97, § 2739; S., '13, § 2739; 40 Ex. G. A., S. F. 99, § 11.] 12. [R., '60, § 2071; C., '73, §§ 1772, 1775; C., '97, § 2739; S., '13, § 2739; 40 Ex. G. A., S. F. 99, § 11.] 13. [C., '73, § 1775; C., '97, § 2739; S., '13, § 2739; 40 Ex. G. A., S. F. 99, § 11.] 14. [C., '97, § 2738; S., '13, §§ 2734-p, 2738; 38 G. A., ch. 156, § 1; 40 Ex. G. A., S. F. 99, § 11.] 15. [S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 11.] 16. [40 Ex. G. A., S. F. 99, § 11.]

4107. *Penalty.* Should he fail to make any report required of him by law to the superintendent of public instruction or the county auditor, he shall forfeit to the school fund of his county the sum of fifty dollars, to be recovered in an action brought by the county

for the use of the school fund, and in addition shall be liable for all damages occasioned thereby. [R., '60, § 2072; C., '73, § 1773; C., '97, § 2741; 40 Ex. G. A., S. F. 99, § 12.]

INSTITUTES, LECTURES, AND SUMMER SCHOOLS FOR TEACHERS

4108. *Institutes required.* The county superintendent shall hold county teachers' institutes as directed by the superintendent of public instruction, and shall, with the concurrence of the superintendent of public instruction, procure such assistants as may be necessary to conduct the same, but no county superintendent shall act as institute instructor or lecturer outside of his own county except with the consent of the county board of education of the county in which he is elected, nor shall he receive his regular salary during the time he is so engaged. [C., '97, § 2738; S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 13.]

4109. *Adjournment of schools.* The school board of every school district, except in city independent school districts where twenty-five or more teachers are regularly employed, shall adjourn the school or schools of said district for not less than two days in each school year in order to allow teachers to attend county teachers' institutes held in the county, without loss of salary. [S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 14.]

4110. *Certificate of attendance.* The county superintendent shall issue a certificate of attendance to each teacher showing number of days of attendance at said institutes, and any teacher failing to attend said teachers' institutes two days shall forfeit his average daily salary for each day of nonattendance, except when excused by the county superintendent for physical disability to perform his duties in the schoolroom. [S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 15.]

4111. *Lectures.* In city independent districts, where twenty-five or more teachers are regularly employed, the county superintendent shall cooperate with the city superintendent in arranging for educational lectures relating to the professional work of the teacher and to such matters of public education as may best meet the needs of the teachers in such districts, at times approved by the city superintendent and city board of education, in so far as the condition of the county institute fund shall permit. [S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 16.]

4112. *Plans approved by state superintendent.* All arrangements concerning plans for professional teachers' meetings in said city districts shall be subject to final approval by the superintendent of public instruction. Teachers in said districts shall attend said lectures and the county superintendent shall issue to each a certificate showing number of lectures attended. [C., '97, § 2738; S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 17.]

4113. Institute fund. The institute fund of each county shall consist of:

1. Fifty dollars annually, which is hereby appropriated.

2. One-half of all examination fees collected in the county.

3. One hundred fifty dollars from the general county fund in any county having a population of thirty thousand or less, which amount shall be appropriated by the board of supervisors of such county at the January session of each year. Two hundred dollars from the general county fund in any county having a population of over thirty thousand, to be appropriated by the board of supervisors in like manner.

4. Such reasonable sum as may be appropriated by the board from the general fund of any city independent district. [C., '97, § 2738; S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 18.]

4114. Use of institute fund. No part of the county teachers' institute fund may be used for any other purpose than to pay the expenses of teachers' institutes. [C., '97, § 2738; S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 19.]

4115. Disbursement of institute fund. All disbursements of the institute fund shall be by warrants drawn by the county auditor upon the written order of the county superintendent, and said written order must be accompanied by an itemized bill for services rendered or expenses incurred in connection with the institute, which bill must be signed and sworn to by the party in whose favor the order is made and must be verified by the county superintendent. All said orders and bills shall be kept on file in the auditor's office until the final settlement of the county superintendent with the board of supervisors at the close of

his term of office. No warrant shall be drawn by the auditor in excess of the institute fund then in the county treasury. [C., '97, § 2738; S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 20.]

4116. Summer schools. County superintendents are hereby authorized to conduct from four to six weeks' summer school when it may be deemed advisable, for the purpose of giving teachers and prospective teachers academic instruction. A fee shall be collected from each attendant sufficient in the aggregate to meet all necessary expenses for the support of said summer school. The fee so collected shall be deposited with the county treasurer, and a list of the names of all attendants shall be filed with the county auditor. [S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 21.]

4117. Payment of instructors. Warrants for the purpose of paying instructors employed in summer schools shall be drawn by the county auditor upon written order of the county superintendent, and said written order must be accompanied by a verified itemized bill for services rendered or expenses incurred in connection with said summer school, but no warrant shall be issued in excess of the fees received from the summer school and deposited with the county treasurer. [S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 22.]

4118. Itemized account of funds. The county superintendent shall furnish to the county board of supervisors a certified itemized account of all receipts and disbursements for teachers' institutes and summer schools. They shall examine and audit the account, and publish a summary thereof with the proceedings of the regular June meeting of the board. [C., '97, § 2738; S., '13, § 2738; 40 Ex. G. A., S. F. 99, § 23.]

CHAPTER 207

COUNTY BOARD OF EDUCATION

4119. Membership—election.
4120. Oaths.

4119. Membership—election. The county board of education shall consist of the county superintendent ex officio, and six reputable citizens of the county, of either sex, of good educational qualifications, no two of whom shall be from the same school corporation. Each regular convention held for the election of county superintendent shall elect three members of said board, whose terms of office shall be for six years, and until their successors are elected and qualified. Vacancies in the board may be filled by the board until the next regular convention, when the same shall be filled by the convention. A majority of said board shall constitute a quorum. If the membership be reduced below a quorum, a special convention shall be called to fill the vacancies. [R., '60, § 2063; C., '73, § 589; C., '97, § 1072;

4121. Meetings—chairman—records.
4122. Duties.

S., '13, § 1072; 38 G. A., ch. 56, § 2; 40 Ex. G. A., S. F. 99, § 24.]

4120. Oaths. The members of said board shall take the oath of office required of county officers, and, except the county superintendent, shall serve without pay; but shall be allowed their actual, necessary expenses in performing their duties, not to exceed forty dollars each annually, to be audited by the board of supervisors and paid out of the general fund. [38 G. A., ch. 56, § 2; 40 Ex. G. A., S. F. 99, § 25.]

NOTE: Oath of office, see § 1054.

4121. Meetings—chairman—records. Meetings of the board shall be held on the second Monday of August and February in each year at the office of the county superintendent, and

at such other times as may be fixed by the county superintendent, or by written request of three members filed with him. The county superintendent shall in all cases be chairman of the county board of education and a full and complete record shall be kept of their proceedings in a book kept for that purpose in the office of the county superintendent. [C., '97, § 2833; 38 G. A., ch. 56, §§ 1, 2; 40 Ex. G. A., S. F. 99, § 26.]

4122. Duties. The board shall perform all duties imposed upon it by law, and shall act in an advisory capacity upon all matters referred to it by the county superintendent, and cooperate with him in formulating plans and regulations for the advancement and welfare of the schools under his supervision. [38 G. A., ch. 56, § 2; 40 Ex. G. A., S. F. 99, § 27.]

CHAPTER 208

SCHOOL DISTRICTS IN GENERAL

- 4123. Powers and jurisdiction.
- 4124. Names.
- 4125. Directors.
- 4126. Division of school township—alterations.
- 4127. Plat and record—filing.
- 4128. Boundaries.
- 4129. Order—when effective.
- 4130. New township—meeting—notice.
- 4131. Attaching territory to adjoining corporation.
- 4132. Restoration.
- 4133. Boundary lines changed—consolidation.
- 4134. Board in new district—settlement.
- 4135. Corporation limits changed.
- 4136. Board in new district—organization.
- 4137. Division of assets and distribution of liabilities.
- 4138. Arbitration.

- 4139. Taxes to effect equalization.
- 4140. Plats of school districts.
- 4141. Formation of independent district.
- 4142. Vote by ballot—separate ballot boxes.
- 4143. Subdistrict organized into independent district.
- 4144. New district organized—ex officio board.
- 4145. Offices abolished—officers of districts outside.
- 4146. Contracts of employment not affected.
- 4147. Election expenses.
- 4148. Organization.
- 4149. Taxes certified and levied.
- 4150. School township divided.
- 4151. Rural independent districts united.
- 4152. Subdivision of independent districts.
- 4153. Uniting independent districts.

4123. Powers and jurisdiction. Each school district now existing shall continue a body politic as a school corporation, unless hereafter changed as provided by law, and as such may sue and be sued, hold property, and exercise all the powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained. [C., '51, § 1108; R., '60, §§ 2022, 2026; C., '73, §§ 1713, 1716; C., '97, § 2743.]

4125. Directors. The affairs of each school corporation shall be conducted by a board of directors, the members of which in all independent school districts shall be chosen for a term of three years, and in all subdistricts of school townships for a term of one year. [C., '97, § 2745; 40 Ex. G. A., ch. 16; § 2.]

4124. Names. School corporations composed of subdistricts shall be called school townships, and shall be designated as the school township of (naming civil township), in the county of (naming county), state of Iowa.

4126. Division of school township—alterations. The board of any school township may, by a vote of a majority of all the members thereof, at the regular meeting in July, or at any special meeting called thereafter for that purpose, divide the school township into subdistricts such as justice, equity, and the interests of the people require, and may make such alterations of the boundaries of subdistricts heretofore formed as may be deemed necessary. [R., '60, § 2038; C., '73, §§ 1725, 1738, 1796; C., '97, § 2801; S., '13, § 2801.]

If there are two or more school corporations composed of subdistricts in any civil township, in addition to the foregoing they should be designated by number.

Other school corporations shall be designated as follows: The independent school district of (naming city, town, township, or village, and if there are two or more districts therein, including some appropriate name or number), in the county of (naming county), state of Iowa; or, the rural independent school district of (some appropriate name or number), township of (naming township), in the county of (naming county), state of Iowa; or, the consolidated school district of (some appropriate name or number), in the county of (naming county), state of Iowa. [C., '51, § 1108; R., '60, § 2026; C., '73, § 1716; C., '97, § 2744; S., '13, § 2744; 40 Ex. G. A., ch. 16, § 1.]

4127. Plat and record—filing. The board shall designate such subdistricts and all subsequent alterations in a distinct and legible manner upon a plat of the school township provided for that purpose, and shall cause a written description of the same to be recorded in the records of the school township, a copy of which shall be delivered by the secretary to the county treasurer and also to the county auditor, who shall record the same in his office. [C., '73, § 1796; C., '97, § 2801; S., '13, § 2801.]

NOTE: See § 4140.

4128. Boundaries. The boundaries of subdistricts shall conform to the lines of congress-

sional divisions of land. [C., '73, § 1796; C., '97, § 2801; S., '13, § 2801.]

4129. Order—when effective. The formation or alteration of subdistricts as contemplated in the three preceding sections shall not take effect until the first Monday in March thereafter, at which time a director shall be elected for any subdistrict newly formed. [C., '73, § 1796; C., '97, § 2801; S., '13, § 2801.]

4130. New township—meeting—notice. When a new civil township is formed, the same shall constitute a school township, which shall go into effect on the first Monday in March following the completed organization of the civil township. The notices of the first meeting shall be given by the county superintendent, and at such meeting a board of three directors shall be chosen. [R., '60, § 2022; C., '73, § 1713; C., '97, § 2790.]

4131. Attaching territory to adjoining corporation. In any case where, by reason of natural obstacles, any portion of the inhabitants of any school corporation in the opinion of the county superintendent can not with reasonable facility attend school in their own corporation, he shall, by a written order, in duplicate, attach the part thus affected to an adjoining school corporation, the board of the same consenting thereto, one copy of which order shall be at once transmitted to the secretary of each corporation affected thereby, who shall record the same and make the proper designation on the plat of the corporation. Township or county lines shall not be a bar to the operation of this section. [C., '73, § 1797; C., '97, § 2791.]

4132. Restoration. Where territory has been or may hereafter be set off to an adjoining school township in the same or another county, or attached for school purposes to an independent district so situated, it may be restored to the territory to which it geographically belongs upon the concurrence of the respective boards of directors, and shall be so restored by said boards upon the written application of two-thirds of the electors residing upon the territory so set off or attached, together with a concurrence of the county superintendent and the board of the school corporation which is to receive back the territory. [C., '73, § 1798; C., '97, § 2792.]

4133. Boundary lines changed—consolidation. The boundary lines of contiguous school corporations may be changed by the concurrent action of the respective boards of directors at their regular meetings in July, or at special meetings thereafter, called for that purpose. The corporation from which territory is detached shall, after the change, contain not less than four government sections of land, and its boundary lines must conform to the lines of congressional divisions of land. In the same manner, the boundary lines of contiguous school corporations may be so changed that one corporation shall be included in and consolidated with the other as a single

corporation. [C., '97, § 2793; S., '13, § 2793; 38 G. A., ch. 113, § 1.]

4134. Board in new district—settlement. When boundary lines are changed by concurrent action, school districts affected thereby shall not be required to elect new boards of directors, and the boards then in office may make final settlement of all assets and liabilities as provided in sections 4137 and 4138 and in case of a consolidation of districts under this section the officers and members of the board of directors of the independent district having the larger number of inhabitants, shall continue to be the officers and directors of the independent district as consolidated for the period for which such officers and directors were elected. [38 G. A., ch. 113, § 1.]

4135. Corporation limits changed. When the boundary line between a school township and an independent district is not also the line between civil townships, such boundary may be changed at any time by the concurrence of the boards of directors; but in no case shall a forty-acre tract of land, by the government survey, be divided; and such subdivisions shall be excluded or included as entire forties. The boundaries of the school township or the independent district may in the same manner be extended to the line between civil townships, even though by such change one of the districts shall be included within and consolidated with the other as a single district. [S., '13, § 2793-a; 40 Ex. G. A., ch. 16, § 3.]

4136. Board in new district—organization. Whenever any new school corporation has been established, such corporation shall elect a board of directors in accordance with the new boundaries and such new board shall organize as provided in chapter 213 except that such organization shall be effected at any time prior to the second day of July following the election of the directors. Upon the election and organization of the new boards, the old boards shall cease to exist except for the purpose specified in the two following sections. [C., '73, § 1715; C., '97, § 2802; S., '13, § 2802; S. S., '15, § 2794-a; 39 G. A., ch. 175, § 22; 40 Ex. G. A., ch. 16, § 4.]

4137. Division of assets and distribution of liabilities. Within twenty days after the organization of the new boards, they shall meet jointly with the several boards of directors whose districts have been affected by the organization of the new corporation or corporations and all of said boards acting jointly shall recommend to the several boards an equitable division of the assets of the several school corporations or parts thereof and an equitable distribution of the liabilities of such school corporations or parts thereof among the new school corporations. [C., '73, § 1715; C., '97, § 2802; S., '13, §§ 2802, 2820-g; 40 Ex. G. A., ch. 16, § 5.]

4138. Arbitration. If the boards can not agree on such division and distribution, the

matters on which they differ shall be decided by disinterested arbitrators, one selected by each board having an interest therein, and if the number thus selected is even, then one shall be added by the county superintendent. The decision of the arbitrators shall be made in writing and filed with the secretary of the new corporation, and any party to the proceedings may appeal therefrom to the district court by serving notice thereof on such secretary within twenty days after the decision is filed. Such appeal shall be tried in equity and a decree entered determining the entire matter, including the levy, collection, and distribution of any necessary taxes. [C., '73, § 1715; C., '97, § 2802; S., '13, §§ 2802, 2820-g; 40 Ex. G. A., ch. 16, § 6.]

4139. Taxes to effect equalization. If necessary to equalize such division and distribution, the new board or boards may provide for the levy of additional taxes upon the property of any corporation or part of corporation and for the distribution of the same so as to effect such equalization. [40 Ex. G. A., ch. 16, § 6-a1.]

4140. Plats of school districts. The board of directors of each school corporation shall file in the office of the county superintendent a plat showing the boundaries of the district, and, in school townships, indicating the boundaries of the subdistricts. Any change thereafter made in the boundaries of any school district or subdistrict shall be reported to the county superintendent by the secretary of the board of the district affected thereby, and all changes shall be indicated by the county superintendent on the plats. Said superintendent shall furnish each the county auditor and the treasurer with a copy of said plat and of any changes therein when made. [40 Ex. G. A., ch. 16, § 7.]

NOTE: See § 4127.

4141. Formation of independent district. Upon the written petition of any ten voters of a city, town, or village of over one hundred residents, to the board of the school corporation in which the portion of the city or town having the largest number of voters is situated, such board shall establish the boundaries of a proposed independent district, including therein all of the city, town, or village, and also such contiguous territory as is authorized by a written petition of a majority of the resident electors of the contiguous territory proposed to be included in said district, in subdivisions not smaller than the smallest tract as made by the government survey in the same or any adjoining school corporations, as may best subserve the convenience of the people for school purposes, and shall give the same notices of a meeting as required in other cases. [R., '60, §§ 2097, 2105; C., '73, §§ 1800, 1801; C., '97, § 2794; S., '13, §§ 2820-e, 2820-f; S. S., '15, § 2794; 40 Ex. G. A., ch. 16, § 8.]

4142. Vote by ballot—separate ballot boxes. At the meeting all voters upon the territory

included within the contemplated independent district shall be allowed to vote by ballot for or against such independent organization. When it is proposed to include territory outside the city, town, or village, the voters residing upon such outside territory shall vote separately upon the proposition for the formation of such new district. If a majority of the votes so cast is against including such outside territory, then the proposed independent district shall not be formed. When such territory is included in an independent district, adequate school facilities shall be provided for the increased attendance. [R., '60, §§ 2097, 2105; C., '73, §§ 1800, 1801; C., '97, § 2794; S. S., '15, § 2794; 40 Ex. G. A., ch. 16, § 9.]

NOTE: Separate vote, see § 4191.

4143. Subdistrict organized into independent district. A subdistrict containing a village with a population of seventy-five or more may, under the provisions of the two preceding sections, organize into an independent school district. [R., '60, § 2105; C., '73, §§ 1800, 1801; C., '97, § 2794; S. S., '15, § 2794; 40 Ex. G. A., ch. 16, § 10.]

4144. New district organized—ex officio board. If a majority of the votes cast at such election is favorable to the proposition, the organization and formation of said independent district shall thereby be effected, and the board of directors, treasurer, and other officers of the school corporation then holding office in the district affected having the largest number of voters, shall become the board of directors, treasurer, and other officers of said new district, and shall continue to hold their respective offices until the terms for which they were originally elected shall expire. [S., '13, § 2820-f; 40 Ex. G. A., ch. 16, § 11.]

NOTE: For similar provision, see § 4148.

4145. Offices abolished—officers of districts outside. The terms of office of all other directors, treasurers, and officers of boards in territory lying wholly within said new district shall terminate; but in districts lying partly without the new district, the directors, officers, and treasurers shall continue to have authority over the territory lying within their districts and without the new district. [S., '13, § 2820-f; 40 Ex. G. A., ch. 16, § 12.]

4146. Contracts of employment not affected. The terms of employment of superintendents, principals, and teachers for any current school year shall not be affected by the formation of the new district. [S., '13, § 2820-f; 40 Ex. G. A., ch. 16, § 13.]

4147. Election expenses. The expense of such election shall be borne by the independent district, in case such district shall be formed, otherwise by the separate districts in proportion to the assessed valuation thereof within the proposed independent district. [S., '13, § 2820-h; 40 Ex. G. A., ch. 16, § 14.]

4148. Organization. If the proposition to establish an independent district carries, then the same board shall give the usual notice for a meeting to choose a board of directors. Two directors shall be chosen to serve until the next annual meeting, two until the second, and one until the third annual meeting thereafter. The board shall organize by the election of officers in the usual manner. [R., '60, §§ 2099, 2100, 2106; C., '73, § 1802; C., '97, § 2795.]

NOTE: Whether this section was impliedly repealed by the enactment of § 4144, quare.

4149. Taxes certified and levied. The organization of such independent district shall be effected on or before the first day of August of the year in which it is attempted, and, when completed, all taxes certified for the school township or townships of which the independent district formed a part shall be void so far as the property within the limits of the independent district is concerned, and the board of such independent district shall fix the amount of all necessary taxes for school purposes, including schoolhouse taxes, at a meeting called for such purpose at any time before the third Monday of August, which shall be certified to the board of supervisors on or before the first Monday of September, and it shall levy said tax at the same time and in the same manner that other school taxes are required to be levied. [C., '73, § 1804; C., '97, § 2796.]

4150. School township divided. At any time before the first day of August, upon the written request of one-third of the legal voters in each subdistrict of any school township, the board shall call a meeting of the voters of the subdistricts, giving at least thirty days' notice thereof by posting three notices in each subdistrict in each school township, at which meeting the voters shall vote by ballot for or against rural independent district organization. If a majority of the votes cast in each subdistrict shall be favorable to such independent organization, then each subdistrict shall become a rural independent district, and the board of the school township shall then call a meeting in each rural independent district for the choice of three directors, to serve one, two, and three years, respectively, and the organization of the said rural independent district shall be completed. [C., '97, § 2797.]

4151. Rural independent districts united. A township which has been divided into rural independent districts may be erected into a school township by a vote of the electors, to be taken upon the written request of one-third of the legal voters residing in such civil township.

Upon presentation of such written request to the township trustees, they shall call a meeting of the electors at the usual place or places of holding the township election, upon giving at least ten days' notice thereof by posting three written notices in each rural independent district in the township, and by publication in a newspaper, if one be published in such township, at which meeting the said electors

shall vote by ballot for or against a school township organization.

If a majority of the votes cast at such election be in favor of such organization, each rural independent district shall become a subdistrict of the school township, and shall organize as such on the first Monday in March following by the election of a director, notice of which shall be given as in other cases by the secretary of each of the rural independent districts, and the directors so elected shall organize as a board of directors of the school township on the first day of July following, unless that date falls on Sunday, in which case on the day following. [C., '73, §§ 1815-1820; C., '97, § 2800; S., '13, § 2800.]

NOTE: For general provision as to organization of directors, see § 4220.

4152. Subdivision of independent districts. Independent districts may subdivide for the purpose of forming two or more independent districts, or have territory detached to be annexed with other territory in the formation of an independent district or districts, the board of directors of the original independent districts to establish the boundaries of the districts thus formed, such new districts to contain not less than four government sections of land each; but in case a stream or other obstacle shall debar a number of children of school privileges, an independent district may be thus organized containing less territory; or, if such new district shall include within its territory a town or village with not less than one hundred inhabitants, it may in like manner be made up of less territory; but in neither case shall the new district contain less than two government sections of land, nor be organized except on a majority vote of the electors of each proposed district, and the proceedings for such subdivision shall in all respects be like those provided in the section relating to organizing cities and towns into independent districts, so far as applicable. [C., '97, § 2798.]

4153. Uniting independent districts. Independent districts located contiguous to each other may unite and form one and the same independent district in the manner following: At the written request of any ten legal voters residing in each of said independent districts, or, if there be not ten, then a majority of such voters, their respective boards of directors shall require their secretaries to give at least ten days' notice of the time and place for a meeting of the electors residing in each of such districts, by posting written notices in at least five public places in each of said districts, at which meeting the electors shall vote by ballot for or against a consolidated organization of said independent districts, and, if a majority of the votes cast at the election in each district shall be in favor of uniting said districts, the secretaries shall give similar notice of a meeting of the electors as provided for by law for the organization of independent districts, including cities and towns. [C., '73, § 1811; C., '97, § 2799.]

CHAPTER 209

CONSOLIDATED SCHOOL DISTRICTS

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4154. Consolidated corporations. Consolidated school corporations containing an area of not less than sixteen government sections of contiguous territory in one or more counties may be organized as independent districts for the purpose of maintaining a consolidated school, in the manner hereinafter provided. [S. S., '15, § 2794-a; 37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 38 G. A., ch. 277, § 1; 39 G. A., ch. 175, § 2; 40 Ex. G. A., ch. 16, § 15.]

4155. Petition. A petition describing the boundaries of the territory and asking for the establishment of boundaries for a proposed school corporation, signed by one-third of the voters residing within the limits of the territory described, shall be filed with the county superintendent of the county in which the greater number of the qualified electors reside. [S. S., '15, § 2794-a; 37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 3; 40 Ex. G. A., ch. 16, § 16.]

4156. Affidavit—presumption. Such petition shall be accompanied by an affidavit showing the number of qualified electors living in the territory described in the petition and signed by a qualified elector residing in the territory, and if parts of the territory described in the petition are situated in different counties, the affidavit shall show separately as to each county, the number of qualified electors in the part of the county included in the territory described. The affidavit shall be taken as true unless objections to it are filed on or before the time fixed for filing objections as provided in the following section. [38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 4; 40 Ex. G. A., ch. 16, § 17.]

4157. Objections — time of filing — notice. Within ten days after the petition is filed, the county superintendent shall fix a final date for filing objections to the petition in the office of the county superintendent, and give notice for at least ten days, by one publication in a newspaper published within the territory described in the petition, or if none be published therein, in the next nearest town or city in any county in which any part of the territory described in the petition is situated. Objections shall be in writing in the form of an affidavit and may be made by any person residing or owning land within the territory described in the petition, or who would be injuriously affected by the formation of such new corporation, and shall be on file not later than twelve o'clock noon of the final day fixed for filing objections. [37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 5; 40 Ex. G. A., ch. 16, § 18.]

4158. Hearing — decision — publication of order. On the final date fixed for filing objections, interested parties may present evidence and arguments, and the county superintendent shall review the matter on its merits and within five days after the conclusion of any hearing, shall rule on the objections and shall enter an order fixing such boundaries for the proposed school corporation as will in his judgment be for the best interests of all parties concerned, having due regard for the welfare of adjoining districts; or dismiss the petition. The county superintendent shall at once publish this order in the same newspaper in which the original notice was published. [37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 6; 40 Ex. G. A., ch. 16, § 19.]

4159. Appeal. Within ten days after the publication of such order, any petitioner, or any person who filed objections, or any person residing upon or owning land included in or excluded from the district by any change in the boundary lines from those proposed in the petition, may appeal from the decision of the county superintendent to the county board of education by serving written notice on the county superintendent. [37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 7; 40 Ex. G. A., ch. 16, § 20.]

4160. Filing papers — time of hearing — notice. Within five days after the time for appeal has expired, the county superintendent shall file with the county board of education all the original papers together with his decision and fix a time and place for hearing such appeal, and give notice to each appellant by registered letter. If more than one person has signed the same notice of appeal, notice to the first three persons whose names appear thereon shall be deemed notice to all. The time fixed for such hearing shall not be less than five nor more than ten days after the time for appeal expires. [37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 7; 40 Ex. G. A., ch. 16, § 20.]

4161. Appeal when territory in one county. If the territory described in the petition for the proposed corporation lies wholly in one county, the county board of education in the said county shall hear the said objections at the time and place fixed by the county superintendent, and within five days after submission thereof shall determine and fix such boundaries for the proposed school corporation as in its judgment will be for the best interests of all concerned, without regard to existing district lines. If such boundaries are neither those petitioned for nor those fixed by the county superintendent, the hearing shall be adjourned, and notice of such adjourned hearing shall be given as for the hearing before the county superintendent, and upon the final hearing the board of education shall fix the boundaries, or dismiss the petition, which shall be final. [37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 8; 40 Ex. G. A., ch. 16, § 21.]

4162. Appeal when territory in different counties. If the territory described in the petition for the proposed corporation lies in more than one county, the county superintendent with whom the petition is filed shall fix the time and place and call a joint meeting of the members of all the county boards of education of the counties in which any territory of the proposed school corporation lies, to act as a single board for the hearing of the said objections, and a majority of all the members of the county boards of education of the different counties in which any part of the proposed corporation lies, shall constitute a quorum and it shall determine and fix boundaries for the proposed corporation, as provided in the pre-

ceding section, or dismiss the petition, which shall be final. [39 G. A., ch. 175, § 9; 40 Ex. G. A., ch. 16, § 22.]

4163. Interested parties as judges. No member of a county board of education who lives or owns land within the proposed district or within any existing district affected by the proposed change in boundaries, or who has filed objection to the establishment of the new school corporation, shall take any part in determining any matter concerning the establishment or dissolution of such school corporation, which may come before the county board or a joint meeting for a hearing. [39 G. A., ch. 175, §§ 10, 37; 40 Ex. G. A., ch. 16, § 23.]

4164. Special election called—time. When the boundaries of the territory to be included in a proposed school corporation have been determined as herein provided, the county superintendent with whom such petition is filed shall call a special election in such proposed school corporation within thirty days from the date of the final determination of such boundaries, by giving notice by one publication in the same newspaper as previous notices concerning it have been published, which publication shall be not less than ten nor more than fifteen days prior to the election. No notice for an election shall be published until the time for appeal has expired; and in the event of an appeal, not until the same has been disposed of. [S. S., '15, § 2794-a; 37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 11; 40 Ex. G. A., ch. 16, § 24.]

4165. Judges of election. The county superintendent shall appoint the judges of such election and such judges shall be qualified electors of the territory of the proposed school corporation as determined by the county superintendent or board of education, and they shall serve without pay. If any judge fails to appear at the proper time, his place shall be filled by the judge or judges present, or if no judge appears, any three qualified electors may organize the election board. [39 G. A., ch. 175, § 12; 40 Ex. G. A., ch. 16, § 25.]

4166. Separate vote in urban territory. When it is proposed to include in such district a school corporation containing a city, town, or village with a population of two hundred or more inhabitants, the voters residing upon the territory outside the limits of such school corporation shall vote separately upon the proposition to create such new corporation. [S. S., '15, § 2794-a; 37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 13; 40 Ex. G. A., ch. 16, § 26.]

4167. Separate vote in large territory. When it is proposed to include in such district a school corporation which contains an area of more than sixteen sections and which maintains a central school, the voters residing in the territory within the limits of said school corporation shall vote separately upon the prop-

osition to create such new corporation. [39 G. A., ch. 175, § 14; 40 Ex. G. A., ch. 16, § 27.]

4168. Separate ballot boxes. The judges of election shall provide separate ballot boxes in which shall be deposited the votes cast by the qualified electors from their respective territories. [S. S., '15, § 2794-a; 37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 15; 40 Ex. G. A., ch. 16, § 28.]

4169. Canvass and return. The judges of election shall count the ballots, make return to and deposit the ballots with the county superintendent, who shall enter the return of record in his office. If the majority of the votes cast by the qualified electors are in favor of the proposition, a new school corporation shall be organized, except that in cases where separate ballot boxes are required by law, a majority of the votes cast by the qualified electors from their respective territories shall be required. [S. S., '15, § 2794-a; 37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 6; 40 Ex. G. A., ch. 16, § 29.]

4170. Contest of election. An election to establish or dissolve a school corporation may be contested in the manner provided by law for contesting other elections, so far as practicable. [39 G. A., ch. 175, § 17; 40 Ex. G. A., ch. 16, § 30.]

4171. Election of directors. If the proposition to establish a new corporation carries, a special meeting of the electors shall be called by the county superintendent, by giving notice by one publication in the same newspaper in which the former notices were published, and he shall appoint judges, who shall serve without pay. At such election, two directors shall be elected to serve until the next annual meeting, two until the second, and one until the third annual meeting thereafter, and until such time as their successors are elected and qualified. The judges of election shall make return to the county superintendent, who shall enter the return of record in his office and notify the persons who are elected directors and shall set the date for the organization of the school board. [S. S., '15, § 2794-a; 37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 18; 40 Ex. G. A., ch. 16, § 31.]

4172. Payment of expenses. If the district is established, it shall pay all expenses incurred by the superintendent and the board of education in connection with the proceedings, including the election of the first board of directors. If it is not established all expenses shall be apportioned among the several districts in proportion to the assessed valuation of the property therein.

If the proposed district embraces territory in more than one county such expenses shall be certified to and, if necessary, apportioned among the several districts by the joint board of education. If in only one county the certi-

fication shall be made by the county superintendent.

The respective boards to which such expenses are certified shall audit and order the same to be paid from the general fund. [37 G. A., ch. 432, § 1; 39 G. A., ch. 175, § 19; 40 Ex. G. A., ch. 16, § 32.]

4173. Minimum territory. A consolidated school corporation, maintaining an approved central school, shall not be reduced to less than sixteen government sections, unless dissolved as provided by law. No remaining portion of any school corporation from which territory is taken to form a new district shall contain an area of less than four government sections which shall be so situated as to form a suitable corporation. [S. S., '15, § 2794-a; 37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 20; 40 Ex. G. A., ch. 16, § 33.]

4174. Organization of remaining territory. Where, after the formation of a consolidated corporation, one or more parts of the territory of a school township is left outstanding, each piece shall constitute a rural independent school corporation and be organized as such unless two or more contiguous subdistricts are left, in which event each of such remaining portions of territory shall constitute a school township. It shall be the duty of the county superintendent of the county in which the territory is situated to call an election, by giving proper notice, in each of such remaining pieces of territory, for the purpose of electing school officers in the manner provided by law for electing officers in rural independent districts or school townships, as the case may be, and fix the date for the first meeting and organization of the new school board in each district. [37 G. A., ch. 432, § 1; 38 G. A., ch. 149, § 1; 39 G. A., ch. 175, § 21; 40 Ex. G. A., ch. 16, § 34.]

4175. Taxes. After the organization of the board in newly organized school districts, all taxes previously certified to but not levied by the board of supervisors, shall be void so far as the property within the limits of the new school corporation is concerned. [S., '13, § 2820-g; S. S., '15, § 2794-a; 39 G. A., ch. 175, § 22; 40 Ex. G. A., ch. 16, § 35.]

4176. Schools pending appeal. During the pendency of an appeal or litigation concerning the organization or dissolution of any consolidated district, the respective boards of the old districts shall maintain the schools in their respective districts, if such appeal or litigation is commenced before the new board is elected and qualified. [40 Ex. G. A., ch. 16, § 36.]

4177. School buildings—tax levy—special fund. The board of each school corporation organized for the purpose of establishing a consolidated school, shall provide a suitable building for such school in that district, and may at the regular or a special meeting, call a special election to submit to the qualified elect-

ors of the district the question of voting a tax or authorizing the board to issue bonds, or both, for any or all of the following purposes:

1. To secure a site, build or equip a schoolhouse.
2. To build a superintendent's or teacher's house.
3. To repair or improve any school building or grounds, when the cost will exceed two thousand dollars.

All moneys received for such purposes shall be placed in the schoolhouse fund of said corporation and shall be used only for the purposes for which voted. [S. S., '15, § 2794-a; 39 G. A., ch. 175, § 23; 40 Ex. G. A., ch. 16, § 37.]

4178. Location of school building. In locating a school site, the board shall take into consideration the geographical position, number, and conveniences of the pupils, and may submit the question of location to the voters of the district at any regular meeting, or at a special meeting called for that purpose. [S. S., '15, § 2794-a; 39 G. A., ch. 175, § 24; 40 Ex. G. A., ch. 16, § 38.]

4179. Transportation. The board of every consolidated school corporation shall provide suitable transportation to and from school for every child of school age living within said corporation and more than a mile from such school, but the board shall not be required to cause the vehicle of transportation to leave any public highway to receive or discharge pupils, or to provide transportation for any pupil residing within the limits of any city, town, or village within which said school is situated. [S. S., '15, § 2794-a; 39 G. A., ch. 175, § 25; 40 Ex. G. A., ch. 16, § 39.]

4180. Transportation routes—suspension of service. The board shall designate the routes to be traveled by each conveyance in transporting children to and from school. The board shall have the right on account of inclemency of the weather to suspend the transportation on any route upon any day or days when in its judgment it would be a hardship on the children, or when the roads to be traveled are unfit or impassable. [S. S., '15, § 2794-a; 39 G. A., ch. 175, § 26; 40 Ex. G. A., ch. 16, § 40.]

4181. Transportation by parent—instruction in another school. The school board may require that children living an unreasonable distance from school shall be transported by the parent or guardian a distance of not more than two miles to connect with any vehicle of transportation to and from school or may contract with an adjoining school corporation for the instruction of any child living an unreasonable distance from school. It shall allow a reasonable compensation for the transportation of children to and from their homes to connect with such vehicle of transportation, or for transporting them to an adjoining district. In determining what an unreasonable distance would be, consideration shall be given to the number and age of the children, the

condition of the roads, and the number of miles to be traveled in going to and from school. [S. S., '15, § 2794-a; 39 G. A., ch. 175, § 27; 40 Ex. G. A., ch. 16, § 41.]

4182. Contracts for transportation—rules. The school board of any school corporation maintaining a consolidated school shall contract with as many suitable persons as it deems necessary for the transportation of children of school age to and from school. Such contract shall be in writing and shall state the route, the length of time contracted for, the compensation to be allowed per week of five school days, or per month of four school weeks, and may provide that two weeks' salary be retained by the board pending full compliance therewith by the party contracted with, and shall always provide that any party or parties to said contract, and every person in charge of a vehicle conveying children to and from school, shall be at all time subject to any rules said board shall adopt for the protection of the children, or to govern the conduct of the person in charge of said conveyance. [S. S., '15, § 2794-a; 39 G. A., ch. 175, § 28; 40 Ex. G. A., ch. 16, § 42.]

4183. Violation of rules. Any person driving, managing, or in charge of any vehicle used in transporting children to and from school, who shall be found guilty of violating any of the rules adopted by the board of said school for the guidance of such person shall be guilty of a misdemeanor, and for the first offense shall be fined not less than five dollars nor more than ten dollars, and for a subsequent offense shall be fined not less than twenty-five dollars nor more than fifty dollars and shall be dismissed from the service. [S. S., '15, § 2794-a; 39 G. A., ch. 175, § 29; 40 Ex. G. A., ch. 16, § 43.]

4184. State aid. All consolidated schools in districts with an area of sixteen or more government sections maintained with suitable grounds and the necessary departments and equipment for teaching agriculture, home economics, and manual training, or other industrial and vocational subjects, and employing teachers holding certificates showing their qualifications to teach said subjects, and which said subjects are taught as a part of the regular course in such schools, subject to the approval of the superintendent of public instruction, shall be paid from the state treasury, from moneys not otherwise appropriated, as follows:

1. Two room schools, two hundred fifty dollars for equipment and two hundred dollars additional annually.

2. Three room schools, three hundred fifty dollars for equipment and five hundred dollars additional annually.

3. Schools having four or more rooms, five hundred dollars for equipment and seven hundred fifty dollars additional annually. [S., '13, §§ 2794-b, 2794-c, 2794-d; S. S., '15, § 2794-g; 38 G. A., ch. 291, § 1; 40 Ex. G. A., ch. 16, § 44.]

4185. Limitation. No consolidated school shall receive state aid under the preceding sec-

tion and also additional aid for maintaining a normal training course in high schools as provided in chapter 194. But every consolidated school may maintain a normal training course, in which case it shall receive state aid therefor in the same amount and upon the same terms, conditions, and regulations as other schools which maintain such a course. [40 Ex. G. A., ch. 16, § 44-a.]

4186. Report — requisition — warrant. The secretary of each consolidated school corporation or the superintendent of such school, shall, at the close of each school year, report to the superintendent of public instruction as said officer may require, who, upon receipt of a satisfactory report, shall issue a requisition upon the auditor of state for the amount due such school corporation for said year. Thereupon the auditor of state shall draw a warrant on the state treasury, payable to such school corporation, for the amount of said requisition and forward the same to the secretary of such school corporation. [S., '13, § 2794-e; 40 Ex. G. A., ch. 16, § 45.]

4187. Annual appropriation. There is hereby appropriated annually for the biennium out of any money in the state treasury not otherwise appropriated the sum of one hundred fifty thousand dollars, or so much thereof as may be necessary, to furnish the state aid provided for consolidated schools. Should this appropriation be insufficient in any year to pay in full such state aid, the same shall be distributed among the several schools pro rata in proportion to the amount they would have received had said appropriation been sufficient to pay said aid in full. [S. S., '15, § 2794-g; 38 G. A., ch. 291, § 1; 40 Ex. G. A., ch. 16, § 46.]

4188. Dissolution of corporation. A school corporation organized for the purpose of maintaining a consolidated school may be dissolved in the following manner:

1. *Petition.* A petition describing the boundaries of the districts, of which none shall be less than four government sections of land, except where a district was composed of less than four government sections prior to its merger in the consolidated district the former boundaries of such district may be used, into which it is proposed to divide the school corporation, and signed by a majority of the qualified voters residing within the corporation, shall be filed with the county superintendent of the county in which the greater number of qualified electors reside.

2. *Petition and affidavit.* The petition and affidavit shall conform to the requirements of section 4156.

3. *Objections.* The proceedings required by section 4157 shall be followed, except that an objector shall be any person residing or own-

ing land within the corporation proposed to be dissolved, who would be injured by such dissolution and the formation of new school corporations.

4. *Hearing—order—publication.* On the final day fixed for filing objections, the interested parties may present evidence and arguments to the county superintendent, and the county superintendent shall review the matter on its merits and within five days after the conclusion of any hearing, shall rule on any objections and enter an order of approval or dismissal said petition, and shall at once publish this order in some newspaper in which the original notice was published. Where such district for which petition for dissolution has been filed has not issued bonds, or built a school building, the county superintendent shall at once approve such petition.

5. *Appeal.* Any person living or owning land within the school corporation may appeal, and such appeal shall be dealt with as provided by sections 4159 and 4160.

6. *Appeal—order.* The board or joint board of education shall proceed, so far as applicable, as provided in sections 4161 and 4162, and shall approve or enter an order dismissing the petition as in its judgment will be for the best interests of all concerned, which decision shall be final.

7. *Election.* If the petition for dissolution is approved, an election shall be called and held as provided in sections 4164 and 4165.

8. *Separate ballot boxes.* If such district includes a city, town, or village having a population of two hundred or more inhabitants, separate ballot boxes shall be provided for the voters therein and outside thereof, and a majority of the votes cast both within and without said city, town, or village shall be required to effect a dissolution of the district.

9. *Canvass and return of vote—expense.* The judges of election shall count the ballots, make return to and deposit the ballots with the county superintendent, who shall enter the return of record in his office. If the majority of the votes cast are in favor of the proposition, the school district shall be dissolved, and a new school corporation or corporations shall be organized in the same manner in which other new corporations are organized under section 4136, and expenses incurred by the county superintendent shall be paid as provided by section 4172. [S. S., '15, § 2794-a; 39 G. A., ch. 175, §§ 30-36, 38-40; 40 Ex. G. A., ch. 16, § 47.]

4189. Completion of organization. All consolidated school corporations in process of establishment or organization at the time this chapter takes effect, may complete their organization under the law in force immediately prior to the taking effect of this chapter. [40 Ex. G. A., ch. 16, § 48.]

CHAPTER 210

REGULATIONS APPLICABLE TO ALL DISTRICTS

4190. General applicability.
4191. Additions and extensions—separate vote.

4190. General applicability. The provisions of law relative to common schools shall apply alike to all districts, except when otherwise clearly stated, and the powers given to one form of corporation, or to a board in one kind of corporation, shall be exercised by the other in the same manner, as nearly as practicable. But school boards shall not incur original indebtedness by the issuance of bonds until authorized by the voters of the school corporation. [C., '97, § 2823.]

4191. Additions and extensions—separate vote. Whenever it is proposed to extend the limits of, or add territory to, an existing independent city, town, or consolidated district, the voters residing within the proposed extension or addition and outside the existing independent district, shall vote separately upon the proposition. The proposition must be approved by a majority of the voters voting thereon in each of such territories. [C., '97,

4192. Action to test legal incorporation—limitation.

4193. When corporation deemed organized.

§ 2794; S. S., '15, § 2794; 40 Ex. G. A., ch. 16, § 11-a1.]

NOTE: See §§ 4142, 4166, 4167.

4192. Action to test legal incorporation—limitation. No action shall be brought questioning the legality of the organization of any school district in this state after the exercise of the franchises and privileges of a district for the term of six months. [39 G. A., ch. 211, § 1.]

4193. When corporation deemed organized. Every school corporation shall, for the purpose of the preceding section, be deemed duly organized and to have commenced the exercise of its franchises and privileges when the president of the board of directors has been elected; and the record book of such corporation duly certified by the acting secretary thereof, showing such election and the time thereof, shall be prima facie evidence of such facts. [39 G. A., ch. 211, § 2.]

CHAPTER 211

SCHOOL ELECTIONS

4194. Annual election.
4195. Procedure where registration not required.
4196. Right to vote.
4197. Special meeting.
4198. Independent districts—number of directors—tenure.
4199. Directors in new districts.
4200. Treasurer.
4201. Nomination of candidates.
4202. Polls open.
4203. Ballots—voting machines.
4204. Election laws applicable—absent voters' law—tie vote.

4205. Division into precincts.
4206. Registration districts.
4207. Registrars' meeting.
4208. Notice of meeting.
4209. Judges—ballot box and poll book—return.
4210. Canvass of returns.
4211. Subdistrict meeting.
4212. Directors in school townships.
4213. Qualification of officers.
4214. Oath—duty to qualify.
4215. Surrendering office.
4216. Penalties.

4194. Annual election. A meeting of the voters of each school corporation shall be held annually on the second Monday in March for the transaction of the business thereof. [C., '51, § 1114; R., '60, § 2027; C., '73, § 1717; C., '97, § 2746; 40 Ex. G. A., S. F. 101, § 1.]

4195. Procedure where registration not required. In districts in which registration is not required, notice in writing of the place, day, and hours during which the meeting will be in session, specifying the number of directors to be elected, and the terms thereof, and such

propositions as will be submitted to and be determined by the voters, shall be posted by the secretary of the board in at least five public places in said corporation for not less than ten days next preceding the day of the meeting.

The president and secretary of the board, with one of the directors, shall act as judges of the election. If any judge of election is absent at the organization of the meeting, the voters present shall appoint one of their number to act in his stead.

The judges of election shall issue certificates to the directors elected and make a record of

the propositions adopted. [C., '51, § 1111; R., '60, §§ 2027, 2031; C., '73, §§ 1717, 1719; C., '97, § 2746; 40 Ex. G. A., S. F. 101, § 1.]

4196. Right to vote. To have the right to vote at a school meeting or election, a person must have the same qualifications as for voting at a general election and must have been for ten days prior to such school meeting or election an actual resident of the corporation and precinct or subdistrict in which he offers to vote. [C., '97, § 2747; 40 Ex. G. A., S. F. 101, § 2.]

4197. Special meeting. The board of directors may call a special meeting of the voters of any school corporation by giving notice in the same manner as for the annual meeting, which shall have the powers given to a regular meeting with reference to the sale of school property and the application to be made of the proceeds, and to vote a schoolhouse tax for the purchase of a site and the construction of a necessary schoolhouse, and for obtaining roads thereto. [C., '97, § 2750; S., '13, § 2750.]

4198. Independent districts — number of directors—tenure. At the annual meeting in all independent districts, members of the board shall be chosen by ballot or by voting machine for the terms of three years, to succeed those whose terms expire, and shall hold office for the terms for which elected and until their successors are elected and qualified. In any district including all or part of a city of the first class or a city under special charter, the board shall consist of seven members. In all other independent city or town districts, in consolidated districts, and in rural independent districts having a population of over five hundred, the board shall consist of five members. In all other rural independent districts the board shall consist of three members. [C., '73, § 1808; C., '97, § 2754; S., '13, § 2754; 40 G. A., ch. 67, § 4; 40 Ex. G. A., S. F. 101, § 5.]

4199. Directors in new districts. At the first election in newly organized districts the directors shall be elected as follows:

1. In districts having three directors, one director shall be elected for one year, one for two years, and one for three years.

2. In districts having five directors, one shall be elected for one year, two for two years, and two for three years.

3. In districts having seven directors, three shall be elected for one year, two for two years, and two for three years.

Where vacancies are to be filled at the annual meeting, the election shall be for the number of years required to fill the vacancy. [C., '73, § 1802; C., '97, § 2754; S., '13, § 2754; 40 G. A., ch. 67, § 4; 40 Ex. G. A., S. F. 101, § 5.]

4200. Treasurer. In districts composed in whole or in part of cities or towns, a treasurer shall be chosen in like manner, who shall serve without pay and whose term shall begin on the first secular day of July, and continue for two years, or until his successor is elected and

qualified. [C., '97, § 2754; S., '13, § 2754; 40 Ex. G. A., S. F. 101, § 6.]

4201. Nomination of candidates. The names of all persons nominated as candidates for office in each independent city or town and consolidated district shall be filed with the secretary of the school board not later than noon of the seventh day previous to the day on which the annual school election is held. Each candidate shall be nominated by a petition signed by not less than ten qualified electors of the district. [S., '13, § 2754; 40 Ex. G. A., S. F. 101, § 7.]

4202. Polls open. In districts where there is registration of voters, the polls shall be open from seven o'clock a. m. to seven p. m.; in all other districts they shall open at one o'clock p. m. In such other districts composed in whole or in part of cities or towns, the polls shall remain open not less than five hours; and in rural independent districts and school townships not less than two hours. [C., '73, § 1789; C., '97, §§ 2754, 2756; S., '13, §§ 2754, 2756; 40 Ex. G. A., S. F. 101, § 8.]

4203. Ballots—voting machines. In such districts, and in all independent town, city, and consolidated school districts, the secretary of the school board shall cause to be printed and delivered at the several polling places a sufficient number of ballots, printed on plain, substantial paper of uniform quality, with no party designation or mark thereon. Said ballots shall contain in alphabetical order the names of all candidates for each office, filed as provided by law, and a blank line for each such officer to be elected. There shall be at the left of each name and each blank line a square, and there shall also be a direction to the voter as to the number of candidates to be voted for at said school election.

Voting machines may be used for all school elections in all precincts where the same are in use at general elections, and the names of the candidates and propositions to be voted upon shall be arranged thereon as by law provided. The city and county, or either, as the case may be, shall, without charge, permit the use for school elections of the voting machines used at the general elections and the same shall be used according to the general law so far as applicable. [S., '13, § 2754; 40 Ex. G. A., S. F. 101, § 9.]

4204. Election laws applicable—absent voters' law—tie vote. So far as applicable, all laws relating to the conduct of general elections and voting thereat and the violation of such laws shall, except as otherwise in this chapter provided, apply to and govern all school elections in independent city, town, and consolidated districts.

In the application of the absent voters' law, the secretary of the board shall perform the duties therein imposed upon the county auditor or clerk of the city or town.

A tie vote for any elective school office shall be publicly determined by lot forthwith, under

the direction of the board canvassing the returns. [C., '97, § 2754; S., '13, § 2754; 40 Ex. G. A., S. F. 101, § 10.]

4205. Division into precincts. The precincts for all school elections in districts in whole or in part in cities and towns shall be the same as for the last general state election, but the board may consolidate two or more of such precincts into one unless there shall be filed with the secretary of the board at least twenty days before the election a petition signed by twenty-five or more electors of any precinct requesting that such precinct shall not be consolidated with any other precinct. To such petition shall be attached the affidavit of an elector of the precinct that all the signers thereof are electors of such precinct and that the signatures thereto are genuine.

If there is within the school corporation any territory not within the limits of the city or town, the board shall attach the same for school election purposes to such precinct or precincts as will afford the voters residing on such territory the most convenient place at which to vote, but the voters of such territory shall not be required to register. The board shall designate in each precinct a suitable and convenient voting place. [C., '97, § 2755; S., '13, § 2755; 37 G. A., ch. 225, § 1; 37 G. A., ch. 334, § 1; 40 Ex. G. A., S. F. 101, § 11.]

4206. Registration districts. For registration purposes, the board may consolidate precincts into registration districts as provided by the law applicable to registration for general elections, and shall designate suitable and convenient places for such registration. [C., '97, § 2755; S., '13, § 2755; 37 G. A., ch. 225, § 1; 37 G. A., ch. 334, § 1; 40 Ex. G. A., S. F. 101, § 11-a.]

4207. Registrars' meeting. The board of directors of school corporations, where registration is required at general elections, shall, not less than ten days prior to the school election, appoint two registrars in each of the registration districts of such school corporation for the registration of voters therein, who shall have the same qualifications as registrars appointed for general elections and shall qualify in the same manner and receive the same compensation to be paid by the school corporation. The person in custody of the registration books and records and poll books for the general election shall furnish the same to the board of directors which shall distribute them to the proper registrars and judges and they shall be used for registration at school elections the same as at general elections and shall within ten days after the school election be returned to the proper custodian. The registrars shall meet and remain in session on election day during the time the polls are open.

In all respects except as in this chapter provided, the general registration laws shall apply to registration for school elections in cities and towns wherein registration is required for general elections, except that administrative

and clerical duties imposed thereby on the mayor and city clerk shall be performed by the president and the secretary of the board respectively and except that voters residing in territory in such school corporation but not within the limits of the city or town or part thereof need not be registered but shall vote at the voting precinct nearest to their places of residence. [C., '97, § 2756; S., '13, §§ 2755, 2756; 37 G. A., ch. 225, § 1; 37 G. A., ch. 334, § 1; 40 Ex. G. A., S. F. 101, § 12.]

4208. Notice of meeting. The secretary of school corporations in which registration is required must give notice of the annual meeting by posting the same in a public place in each precinct, at least ten days before the meeting, and publication once each week for two consecutive weeks preceding the same in some newspaper published in the county and of general circulation therein. Such notice shall state the time, respective voting precincts, and the polling place in each, and shall specify what questions in addition to the election of director or directors shall be voted upon. [C., '97, § 2755; S., '13, § 2755; 37 G. A., ch. 225, § 1; 40 Ex. G. A., S. F. 101, § 13.]

4209. Judges—ballot box and poll book—return. The board in such districts shall appoint three voters of the precinct as judges of the election and one voter of the precinct as clerk thereof. Not more than one member of the board shall act as such judge at any one voting precinct. If any person so appointed fails to qualify, the judge or judges attending shall fill the place by the appointment of any voter present. Should all of the appointees fail to qualify, their places shall be filled by the voters from those in attendance. The judges and clerk of the election shall have the same qualifications and be sworn as in the case of a general election. The board shall provide the necessary ballot box or voting machine and poll book for each precinct, and the judges shall make and certify a return to the secretary of the corporation of the votes cast for officers and upon each question submitted. School elections may be contested as provided by law for the contesting of other elections. [C., '97, § 2756; S., '13, § 2756; 40 Ex. G. A., S. F. 101, § 14.]

4210. Canvass of returns. On the next Monday after the meeting the board shall canvass the returns made to the secretary, ascertain the result of the voting with regard to every matter voted upon, declare the same, cause a record to be made thereof, and at once issue a certificate to each person elected. [C., '97, § 2756; S., '13, § 2756; 40 Ex. G. A., S. F. 101, § 15.]

4211. Subdistrict meeting. The meeting of the voters of each subdistrict of a school township shall be held annually on the first Monday in March, and shall not organize earlier than nine o'clock a. m., nor adjourn before twelve o'clock m.

Notice in writing of the time and place of such meeting and the amount of schoolhouse tax to be voted shall be given by its director, or if there is none by the school township secretary, by posting in three public places in the subdistrict for five days next preceding the same.

The voters shall select a chairman and secretary of the meeting who shall act as judges of election, and shall also elect a director for the subdistrict by ballot.

The vote shall be canvassed by the judges of election, and the person receiving the highest vote shall be declared elected. [C., '51, § 1111; R., '60, §§ 2030, 2031; C., '73, §§ 1718, 1719, 1789; C., '97, § 2751.]

4212. Directors in school townships. The board of directors of a school township shall be composed of one director from each subdistrict. When there is an even number of subdistricts another member shall be elected at large by all the voters of the school township.

In all school townships not divided into subdistricts there shall be a board of three directors, elected at large on the second Monday of March, 1922, one of whom shall be elected for one year, one for two years, and one for three years. Thereafter on the second Monday of March in each year one director shall be elected in said township, who shall hold office for three years. [C., '51, § 1112; R., '60, §§ 2031, 2035, 2075; C., '73, §§ 1720, 1721; C., '97, § 2752; S., '13, § 2752; 39 G. A., ch. 47.]

4213. Qualification of officers. A school officer or member of the board shall, at the

time of election or appointment, be a qualified voter of the corporation or subdistrict. [C., '97, § 2748; 40 Ex. G. A., S. F. 321, § 1.]

4214. Oath—duty to qualify. Any member of the board or the county superintendent may administer the oath of qualification to any member-elect, the secretary, treasurer, or the president of the board. Each director elected shall qualify on or before the date for the organization of the board of the corporation in which he was elected, by taking the oath required of civil officers. [C., '51, §§ 1113, 1120; R., '60, §§ 2032, 2079; C., '73, §§ 1752, 1790; C., '97, § 2758; S., '13, § 2758; 40 G. A., ch. 67, § 4; 40 Ex. G. A., S. F. 101, § 16.]

4215. Surrendering office. Each school officer, upon the termination of his term of office, shall immediately surrender to his successor all books, papers, and moneys pertaining or belonging to the office, taking a receipt therefor. [R., '60, § 2080; C., '73, § 1791; C., '97, § 2770.]

4216. Penalties. Any school officer wilfully violating any law relative to common schools, or wilfully failing or refusing to perform any duty imposed by law, shall forfeit and pay into the treasury of the particular school corporation in which the violation occurs the sum of twenty-five dollars, action to recover which shall be brought in the name of the proper school corporation, and be applied to the use of the schools therein. [C., '51, § 1137; R., '60, §§ 2047, 2081; C., '73, §§ 1746, 1786; C., '97, § 2822.]

CHAPTER 212

POWERS OF ELECTORS

4217. Enumeration.

4218. Submission of proposition.

4217. Enumeration. The voters assembled at the annual meeting or election shall have power:

1. To direct a change of textbooks regularly adopted.

2. To direct the sale, lease, or other disposition of any schoolhouse or site or other property belonging to the corporation, and the application to be made of the proceeds thereof.

3. To determine upon additional branches that shall be taught.

4. To instruct the board that school buildings may or may not be used for meetings of public interest.

5. To direct the transfer of any surplus in the schoolhouse fund to the general fund.

6. To authorize the board to obtain, at the expense of the corporation, roads for proper access to its schoolhouses.

7. To vote a schoolhouse tax, not exceeding ten mills on the dollar in any one year, for the purchase of grounds, construction of schoolhouses, the payment of debts contracted

4219. Special subdistrict schoolhouse tax.

for the erection of schoolhouses, not including interest on bonds, procuring libraries for and opening roads to schoolhouses. [C., '51, § 1115; R., '60, §§ 2028, 2033; C., '73, §§ 1717, 1807; C., '97, § 2749; 37 G. A., ch. 386, § 2; 40 Ex. G. A., S. F. 101, § 3.]

4218. Submission of proposition. The board may, and upon the written request of five voters of any school township or rural independent or consolidated district, or of twenty-five voters of any city or town independent district having a population of five thousand or less, or of fifty voters of any other city independent district or of any district in which registration of any of the voters is required, shall provide in the notice for the annual meeting for submitting any proposition authorized by law to the voters. All propositions shall be voted upon by ballot, or by voting machine where required, in substantially the following form: "Shall a change of textbooks be directed?" (or other question as the case may be); and

the voter shall designate his vote by writing the word "yes" or "no" in an appropriate place on the ballot, or indicating it on the voting machine as the case may be. [R., '60, § 2028; C., '97, § 2749; 40 Ex. G. A., S. F. 101, § 4.]

4219. Special subdistrict schoolhouse tax. At the annual subdistrict meeting, or at a special meeting called for that purpose, the voters may vote to raise a greater amount of schoolhouse tax than that voted by the voters of the

school township, ten days' previous notice having been given, but the amount so voted, including the amount voted by the school township, shall not exceed in the aggregate the sum of fifteen mills on the dollar. The sum thus voted shall be certified forthwith by the secretary of said subdistrict meeting to the secretary of the school township, and shall be levied by the board of supervisors only on the property within the subdistrict. [R., '60, §§ 2033, 2034, 2037, 2088; C., '73, § 1778; C., '97, § 2753.]

CHAPTER 213

DIRECTORS—POWERS AND DUTIES

- 4220. Organization.
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- 4224. General rules.
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- 4226. School year.
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- 4242. Financial statement—publication.
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- 4244. Publication of claims.
- 4245. Employment of counsel.
- 4246. Industrial exposition.
- 4247. Water-closets.
- 4848. Shade trees.
- 4249. Bird day.

4220. Organization. The board of directors of each school corporation shall meet and organize at two o'clock p. m., or at seven-thirty o'clock p. m., if so ordered by the president of the board, on the third Monday in March each year at some suitable place to be designated by the secretary. Notice of the place and hour of such meeting shall be given by the secretary to each member and each member-elect of the board.

Such organization shall be effected by the election of a president from the members of the board, who shall be entitled to vote as a member. [C., '51, § 1119; R., '60, § 2036; C., '73, §§ 1721, 1722; C., '97, § 2757; S. S., '15, § 2757; 40 G. A., ch. 67, § 2; 40 Ex. G. A., S. F. 101, § 17.]

4221. Special meetings. Such special meetings may be held as may be determined by the board, or called by the president, or by the secretary upon the written request of a majority of the members of the board, upon notice specifying the time and place, delivered to each member in person, or by registered letter, but attendance shall be a waiver of notice. [C., '51, § 1121; R., '60, § 2036; C., '73, § 1722; C., '97, § 2757; S. S., '15, § 2757; 40 G. A., ch. 67, § 2; 40 Ex. G. A., S. F. 101, § 17.]

4222. Secretary and treasurer. On the same day the board shall elect a secretary, who shall not be a teacher or other employee of the board. It shall, except in districts where the treasurer is elected by the voters, elect a treasurer. Such officers shall be elected from outside the mem-

bership of the board by ballot entered of record. [C., '51, § 1119; R., '60, § 2035; C., '73, § 1721; C., '97, § 2757; S. S., '15, § 2757; 40 G. A., ch. 67, § 3; 40 Ex. G. A., S. F. 101, § 19.]

4223. Quorum—temporary officers—vacancies. A majority of the board of directors of any school corporation shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. The board shall appoint a temporary president or secretary, in the absence of the regular officers. Vacancies occurring among the officers or members shall be filled by the board by ballot, and the person receiving the highest number of votes shall be declared elected, and shall qualify as if originally elected or appointed, and hold office until the next annual meeting. Except as otherwise provided by law, when the board is reduced below a quorum, the secretary of the board, or if there be no secretary, the county superintendent, shall call a special election to fill the vacancies, giving notice in the same manner as for the annual meeting. [C., '51, § 1120; R., '60, §§ 2037, 2038, 2079; C., '73, §§ 1730, 1738; C., '97, §§ 2758, 2771, 2772; S., '13, §§ 2758, 2771, 2772; 40 G. A., ch. 67, § 4; 40 Ex. G. A., S. F. 101, § 20.]

4224. General rules. The board shall make rules for its own government and that of the directors, officers, teachers, and pupils, and for the care of the schoolhouse, grounds, and property of the school corporation, and aid in the enforcement of the same; and require the performance of duties by said persons imposed by

law and the rules. [R., '60, § 2037; C., '97, § 2772; S., '13, § 2772; 40 Ex. G. A., S. F. 101, § 21.]

4225. Use of tobacco. Such rules shall prohibit the use of tobacco and other narcotics in any form by any student of such schools and the board may suspend or expel any student for any violation of such rule. [S., '13, § 2772; 40 Ex. G. A., S. F. 101, § 21.]

4226. School year. The school year shall begin on the first of July and each school regularly established shall continue for at least thirty-two weeks of five school days each and may be maintained during the entire calendar year. [R., '60, §§ 2023, 2037; C., '73, §§ 1724, 1727; C., '97, § 2773; S., '13, § 2773; 38 G. A., ch. 24, § 1; 40 Ex. G. A., S. F. 101, § 34-a1.]

4227. Number of schools—wards—attendance—terms. The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law. [R., '60, §§ 2023, 2037; C., '73, §§ 1724, 1727; C., '97, § 2773; S., '13, § 2773; 40 Ex. G. A., S. F. 101, § 30.]

4228. Contracts—election of teachers. The board shall carry into effect any instruction from the annual meeting upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers granted and performing the duties required by law, but the board may authorize any subdirector to employ teachers for the school in his subdistrict. [C., '73, §§ 1723, 1757; C., '97, § 2778; S. S., '15, § 2778; 40 G. A., ch. 67, § 5; 40 Ex. G. A., S. F. 101, § 22.]

4229. Contracts with teachers. Contracts with teachers must be in writing, and shall state the length of time the school is to be taught, the compensation per week of five days, or month of four weeks, and that the same shall be invalid if the teacher is under contract with another board of directors in the state of Iowa to teach covering the same period of time, until such contract shall have been released, and such other matters as may be agreed upon, which may include employment for a term not exceeding the ensuing school year, except as otherwise authorized, and payment by the calendar or school month, signed by the president and teacher, and shall be filed with the secretary before the teacher enters upon performance of the contract. [R., '60, § 2055; C., '73, § 1757; C., '97, § 2778; S. S., '15, § 2778; 38 G. A., ch. 310, § 1; 40 Ex. G. A., S. F. 101, § 23.]

4230. Superintendent—term. The board of directors of any independent school district or school township where there is a township high school shall have power to employ a superintendent of schools for one year. After serving at least seven months, he may be employed for a term of not to exceed three years. He shall be the executive officer of the board and have such powers and duties as may be prescribed by rules adopted by the board or by law. Boards of directors may jointly exercise the powers conferred by this section. [R., '60, § 2037; C., '73, § 1726; C., '97, § 2776; S. S., '15, § 2778; 40 Ex. G. A., S. F. 101, § 24.]

4231. Nonemployment of teacher—when. No contract shall be entered into with any teacher to teach any school in the school corporation when the average attendance in said school the last preceding term therein was less than five pupils, unless a showing is made to the county superintendent that the number of children of school age in said school district has increased so that ten or more will be enrolled in such school and will attend therein. In such case, or when natural obstacles to transportation of pupils to another district, or other conditions make it clearly inadvisable that such schools be closed, the county superintendent may consent to maintaining a school in said district for the ensuing term. It shall be the duty of the members of the school board residing in said district to make said showing, or any resident of said district may do so upon his own motion. [38 G. A., ch. 143, § 1; 40 Ex. G. A., S. F. 101, § 31.]

4232. Pupils of closed school—tuition. If a school is closed for lack of pupils, the board of such school corporation shall provide for the instruction of the pupils of said school in another school as convenient as may be, and shall pay to the secretary of the school corporation in which such children attend the average cost of tuition and other expenses in such school. [38 G. A., ch. 143, § 2; 40 Ex. G. A., S. F. 101, § 32.]

4233. Transportation of children. In all districts where school has been closed as provided in the preceding section, transportation shall be provided as in consolidated districts for any child residing more than two miles from the nearest school, or the board may allow to the parent or guardian of such child a reasonable sum for transporting him to and from school, but in exceptional cases the county superintendent may require the transportation of children for a less distance. [38 G. A., ch. 143, § 2; 40 G. A., ch. 73, § 1; 40 Ex. G. A., S. F. 101, § 33.]

4234. Delegating authority to subdirector. The board of directors of a school township may authorize the director of each subdistrict, subject to its regulations, to make contracts for the purchase of fuel, the repairing or furnishing of schoolhouses, and all other matters necessary for the convenience and prosperity of the schools in his subdistrict. Such contracts shall be binding upon the school township only when approved by the president of the board, and must be reported to the board.

The powers specified in this section can not be exercised by individual directors of independent districts. [C., '51, § 1142; R., '60, § 2053; C., '73, § 1753; C., '97, § 2785; S., '13, § 2785.]

4235. School census. Each subdirector shall, between the first and fifteenth days of June in each year, prepare a list of the heads of families in his subdistrict, the number and sex of all children of school age, and by the twentieth day of said month report this list to the secretary of the school township, who shall make full record thereof. [C., '51, § 1142; R., '60, § 2052; C., '73, §§ 1754, 1755; C., '97, § 2785; S., '13, § 2785.]

4236. Visiting schools. The board shall provide for visiting the schools of the district by one or more of its members and aid the teachers in the government thereof, and in enforcing the rules and regulations of the board. [C., '51, § 1147; R., '60, § 2037; C., '73, § 1734; C., '97, § 2782.]

4237. Discharge of teacher. The board may, by a majority vote, discharge any teacher for incompetency, inattention to duty, partiality, or any good cause, after a full and fair investigation made at a meeting of the board held for that purpose, at which the teacher shall be permitted to be present and make defense, allowing him a reasonable time therefor. [C., '73, § 1734; C., '97, § 2782.]

4238. Insurance—general supplies—free textbooks. It may provide and pay out of the general fund to insure school property such sum as may be necessary, and may purchase dictionaries, library books, including books for the purpose of teaching vocal music, maps, charts, and apparatus for the use of the schools thereof to an amount not exceeding two hundred dollars in any one year for each school building under its charge; and may furnish schoolbooks to indigent children when they are likely to be deprived of the proper benefits of the school unless so aided; and shall, when directed by a vote of the district, purchase and loan books to scholars, and shall provide therefor by levy of general fund. [C., '73, § 1729; C., '97, § 2783; S., '13, § 2783; 37 G. A., ch. 386, § 7; 38 G. A., ch. 345, § 1.]

4239. Claims—settlements—reports—compensation of officers. The board shall audit and allow all just claims against the corporation, and no order shall be drawn upon the treasury until the claim therefor has been audited and allowed; it shall from time to time examine the accounts of the treasurer and make settlements with him; shall present at each regular meeting of the electors a full statement of the receipts had and expenditures made since the preceding meeting, with such other information as may be considered important; and shall fix the compensation to be paid the secretary. No member of the board or treasurer shall receive compensation for official services. [C., '51, §§ 1146, 1149; R.,

'60, §§ 2037, 2038; C., '73, §§ 1732, 1733, 1738, 1813; C., '97, § 2780; S., '13, § 2780.]

4240. Annual settlements. On the first secular day in July, the board of each school township and with it the members of the board who retired in the preceding March, and the board of each independent school corporation, shall meet, examine the books of and settle with the secretary and treasurer for the year ending on the thirtieth day of June preceding, and transact such other business as may properly come before it. Should the secretary or treasurer fail to make proper reports for such settlement, the board shall take action to secure the same. [S. S., '15, § 2757; 40 G. A., ch. 67, § 3; 40 Ex. G. A., S. F. 101, § 18.]

4241. Transfer of funds. If after the annual settlement it shall appear that there is a surplus in the general fund, the board may, in its discretion, transfer any or all of such surplus to the schoolhouse fund. [40 Ex. G. A., S. F. 101, § 18.]

4242. Financial statement—publication. In each consolidated district and in each independent city or town school district, the board shall, during the first week of July of each year, publish by one insertion in at least one newspaper, if there is a newspaper published in said district, a summarized statement verified by affidavit of the secretary of the board showing the receipts and disbursements of all funds for the preceding school year, the statement of disbursements to show the names of the persons, firms, or corporations, and the total amount paid to each during the school year. [C., '51, § 1146; R., '60, § 2037; C., '73, § 1732; C., '97, § 2781; 37 G. A., ch. 223, § 1; 39 G. A., ch. 232, § 1; 40 G. A., ch. 69, § 1.]

4243. Receipts, disbursements, and estimates. The boards specified in the preceding section shall, two weeks before each annual school election, make a like publication showing:

1. A summarized statement of the receipts and disbursements of all funds for the preceding school year, and

2. An estimate of the several amounts necessary to maintain the school in such district during the next succeeding school year. [C., '51, § 1146; R., '60, § 2037; C., '73, § 1732; C., '97, § 2781; 37 G. A., ch. 223, § 1; 39 G. A., ch. 232, § 2; 40 G. A., ch. 69, § 2.]

4244. Publication of claims. The president and secretary of the board of directors of all other school districts shall comply with the provisions of the preceding section, except that the publication may be by publication in a newspaper or by posting in not less than three conspicuous places in the district. [C., '51, § 1146; R., '60, § 2037; C., '73, § 1732; C., '97, § 2781; 37 G. A., ch. 223, § 1; 39 G. A., ch. 232, § 3.]

4245. Employment of counsel. In all cases where actions may be instituted by or against

any school officer to enforce any provision of law, the board may employ counsel, for which the school corporation shall be liable. [R., '60, § 2040; C., '73, § 1740; C., '97, § 2759.]

4246. Industrial exposition. The board of any school corporation, or the director of any subdistrict deeming it expedient, may, under the direction of the county superintendent, hold and maintain an industrial exposition in connection with the schools of such district, such exposition to consist in the exhibit of useful articles invented, made, or raised by the pupils, by sample or otherwise, in any of the departments of mechanics, manufacture, art, science, agriculture, and the kitchen, such exposition to be held in the schoolroom, on a school day, as often as once during a term, and not oftener than once a month, at which the pupils participating therein shall be required to explain, demonstrate, or present the kind and plan of the article exhibited, or give its method of culture; and work in these several departments shall be encouraged, and patrons of the school invited to be present at each exhibition. [C., '97, § 2786.]

4247. Water-closets. It shall give special attention to the matter of convenient water-closets or privies, and provide on every schoolhouse site, not within an independent city or town district, two separate buildings located at the farthest point from the main entrance to the schoolhouse, and as far from each other as may be, and keep them in wholesome con-

dition and good repair. In independent city or town districts, where it is inconvenient or undesirable to erect two separate outhouses, several closets may be included under one roof, and if outside the schoolhouse each shall be separated from the other by a brick wall, double partition, or other solid or continuous barrier, extending from the roof to the bottom of the vault below, and the approaches to the outside doors for the two sexes shall be separated by a substantial close fence not less than seven feet high and thirty feet in length. [C., '97, § 2784.]

4248. Shade trees. The board of each school corporation shall cause to be set out and properly protected twelve or more shade trees on each schoolhouse site where such trees are not growing. The county superintendent, in visiting the several schools of his county, shall call the attention of any board neglecting to comply with the requirements of this section to any failure to carry out its provisions. [C., '97, § 2787.]

4249. Bird day. The twenty-first day of March of each year is hereby set apart and designated as bird day. It shall be the duty of all public schools to observe said day by devoting a part thereof to a special study of birds, their habits, usefulness, and the best means of protection. Should such date fall on other than a school day, such day shall be observed on the next regular school day. [40 G. A., ch. 79.]

CHAPTER 214

COURSES OF STUDY

4250. Right to prescribe.
 4251. Definitions.
 4252. Common school studies.
 4253. Display of United States flag.
 4254. Medium of instruction.
 4255. American citizenship.
 4256. Constitution of United States and state.
 4257. American history and civics.
 4258. Bible.
 4259. Stimulants, narcotics, and poisons.

4250. Right to prescribe. The board shall prescribe courses of study for the schools of the corporation. [R., '60, § 2037; C., '97, § 2772; S., '13, § 2772; 40 Ex. G. A., S. F. 101, § 21.]

4251. Definitions. The expression "public school" means any school maintained in whole or in part by taxation; the expression "private school" means any other school. [40 Ex. G. A., S. F. 85, § 1.]

4252. Common school studies. Reading, writing, spelling, arithmetic, grammar, geography, physiology, United States history, and the principles of American government shall be taught in all such schools. [S., '13, § 2823-a; 40 Ex. G. A., S. F. 111, § 1.]

4260. Dental clinics.
 4261. Agriculture, domestic science, and manual training.
 4262. Music.
 4263. Physical education.
 4264. Length of course.
 4265. In teacher-training courses.
 4266. Kindergarten department.
 4267. Higher and graded schools.

4253. Display of United States flag. The board of directors of each public school corporation and the authorities in charge of each private school shall provide and maintain a suitable flagstaff on each school site under its control, and a suitable United States flag therefor, which shall be raised on all school days when weather conditions are suitable. [S., '13, §§ 2804-a, 2804-b; 40 G. A., ch. 70, § 1; 40 Ex. G. A., S. F. 85, § 2.]

NOTE: Display of flag on public buildings, see § 470.

4254. Medium of instruction. The medium of instruction in all secular subjects taught in all of the schools, public and private, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited; but noth-

ing herein shall prohibit the teaching and studying of foreign languages, as such, as a part of the regular school course in any such school. Any person violating any of the provisions of this section shall be fined not less than twenty-five dollars nor more than one hundred dollars. [38 G. A., ch. 198, §§ 1, 2; 40 Ex. G. A., S. F. 85, §§ 3, 4.]

4255. American citizenship. Each public and private school located within the state shall be required to teach the subject of American citizenship in all grades. [38 G. A., ch. 406, § 1; 40 Ex. G. A., S. F. 85, § 5.]

4256. Constitution of United States and state. In all public and private schools located within the state there shall be given regular courses of instruction in the constitution of the United States and in the constitution of the state of Iowa. Such instruction shall begin not later than the opening of the eighth grade, and shall continue in the high school course to an extent to be determined by the superintendent of public instruction. [39 G. A., ch. 91, §§ 1, 2; 40 Ex. G. A., S. F. 85, § 6.]

4257. American history and civics. Public and private high schools, academies, and other institutions ranking as secondary schools which maintain three-year or longer courses of instruction shall offer, and all students shall be required to take, a minimum of instruction in American history and civics of the state and nation to the extent of two semesters, and schools of this class which have four-year or longer courses shall offer in addition one semester in social problems and economics. [38 G. A., ch. 406, § 3; 40 Ex. G. A., S. F. 85, § 7.]

4258. Bible. The bible shall not be excluded from any public school or institution in the state, nor shall any child be required to read it contrary to the wishes of his parent or guardian. [R., '60, § 2119; C., '73, § 1764; C., '97, § 2805; 40 Ex. G. A., S. F. 85, § 8.]

4259. Stimulants, narcotics, and poisons. The board shall require all teachers to give and all scholars to receive instruction in physiology and hygiene, which study in every division of the subject shall include the effects upon the human system of alcoholic stimulants, narcotics, and poisonous substances. The instruction in this branch shall of its kind be as direct and specific as that given in other essential branches, and each scholar shall be required to complete the part of such study in his class or grade before being advanced to the next higher, and before being credited with having completed the study of the subject. [C., '97, § 2775.]

4260. Dental clinics. Boards of school directors in all school districts containing one thousand or more inhabitants are hereby authorized to establish and maintain in connection with the schools of such districts, a dental clinic for children attending such schools, and to offer courses of instruction on mouth hygiene. Said boards are hereby empowered to

employ such legally-qualified dentists and dental hygienists as may be necessary to accomplish the purpose of this section, and pay the expense of the same out of the general fund. [38 G. A., ch. 91, § 1.]

4261. Agriculture, domestic science, and manual training. The teaching of elementary agriculture, domestic science, and manual training shall be required in all public schools of the state, except in rural independent districts and school townships; and the state superintendent shall prescribe the extent of such instruction. [S. S., '15, § 2775-a; 40 Ex. G. A., S. F. 101, § 26.]

4262. Music. The elements of vocal music, including, when practical, the singing of simple music by note, shall be taught in all of the public schools, and all teachers teaching in schools where such instruction is not given by special teachers shall be required to satisfy the county superintendent of their ability to teach the elements of vocal music in a proper manner; provided, however, that no teacher shall be refused a certificate or have the grade of his or her certificate lowered on account of lack of ability to sing. [S., '13, § 2823-s.]

4263. Physical education. The teaching of physical education, including effective health supervision and health instruction, of both sexes, shall be required in every public elementary and secondary school of the state. Modified courses of instruction shall be provided for those pupils physically or mentally unable to take the courses provided for normal children. Said subject shall be taught in the manner prescribed by the state superintendent of public instruction. [40 G. A., ch. 68, § 1; 40 Ex. G. A., S. F. 101, § 26-a1.]

4264. Length of course. The course of physical education shall occupy periods each week totaling not less than fifty minutes, exclusive of recesses, throughout each school term. The conduct and attainment of the pupils in such course shall be marked as in other subjects and it shall form part of the requirements for promotion or graduation of every pupil in attendance, but no pupil shall be required to take such instruction whose parents or guardian shall file a written statement with the school principal or teacher that such course conflicts with his religious belief. [40 G. A., ch. 68, § 1; 40 Ex. G. A., S. F. 101, § 26-a2.]

4265. In teacher-training courses. Every high school, state college, university, or normal school giving teacher-training courses shall provide a course or courses in physical education. [40 G. A., ch. 68, § 2.]

4266. Kindergarten department. The board of any independent school district may establish in connection with the common schools, kindergarten departments for the instruction of children, to be paid for in the same manner as other grades and departments. Any kinder-

garten teacher shall hold a certificate certifying that the holder thereof has been examined upon kindergarten principles and methods, and is qualified to teach in kindergartens. [C., '97, § 2777; 40 Ex. G. A., S. F. 101, § 27.]

4267. Higher and graded schools. The board shall have power to maintain in each district one or more schools of a higher order,

for the better instruction of all in the district prepared to pursue such a course of study, and it may establish graded schools and determine what branches shall be taught therein, but the course of study shall be subject to the approval of the superintendent of public instruction. [R., '60, § 2037; C., '73, § 1726; C., '97, § 2776; 40 Ex. G. A., S. F. 101, § 28.]

CHAPTER 215

SCHOOL ATTENDANCE AND TUITION

- 4268. School age—nonresidents.
- 4269. Offsetting tax.
- 4270. Right to expel pupil.
- 4271. Majority vote—suspension.
- 4272. Readmission of pupil.
- 4273. Tuition.
- 4274. Attending school in another corporation—payment.
- 4275. High school outside home district.

- 4276. Requirements for admission.
- 4277. Tuition fees—payment.
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- 4279. Counties maintaining high school.
- 4280. Reimbursement of district—conditions.
- 4281. Determination by county superintendent—appeal.
- 4282. Trial—decision—transfer of funds.
- 4283. Tuition in charitable institutions.

4268. School age—nonresidents. Persons between five and twenty-one years of age shall be of school age. Nonresident children and those sojourning temporarily in any school corporation may attend school therein upon such terms as the board may determine. [C., '73, § 1795; C., '97, § 2804.]

ner prescribed by it. [R., '60, § 2054; C., '73, §§ 1735, 1756; C., '97, § 2782.]

4269. Offsetting tax. The parent or guardian whose child or ward attends school in any independent district of which he is not a resident shall be allowed to deduct the amount of school tax paid by him in said district from the amount of the tuition required to be paid. [C., '97, § 2804.]

4273. Tuition. Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years, and to resident honorably discharged soldiers, sailors, and marines, as many months after becoming twenty-one years of age as they have spent in the military or naval service of the United States before they became twenty-one. Every person, however, who shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by such person. [C., '73, §§ 1724, 1727; C., '97, § 2773; S., '13, § 2773; 38 G. A., ch. 160, § 1; 40 G. A., ch. 72, §§ 1, 2; 40 Ex. G. A., S. F. 101, § 34.]

4270. Right to expel pupil. The board may exclude from school any incorrigible child or any child who in its judgment is so abnormal that his attendance at school will be of no substantial benefit to him, or any child whose presence in school may be injurious to the health or morals of other pupils or to the welfare of such school. [C., '97, § 2782; 40 Ex. G. A., S. F. 101, § 21.]

4274. Attending school in another corporation—payment. A child residing in one corporation may attend school in another in the same or adjoining county if the two boards so agree. In case no such agreement is made, the county superintendent of the county in which the child resides and the board of such adjoining corporation may consent to such attendance, if the child resides nearer a schoolhouse in the adjoining corporation and one and one-half miles or more from any public school in the corporation of his residence. Before granting such consent the county superintendent shall give notice to the board where the child resides and hear objections, if any. In case such consent is given, the board of the district of the child's residence shall be notified thereof in writing, and shall pay to the other district the average tuition per week for the school or room thereof in which such child attends. If payment is refused or neglected, the board of the creditor corporation shall file an account thereof certified by its president with the auditor of the county of the child's residence, who shall, at the time of the making

4271. Majority vote—suspension. The board may, by a majority vote, expel any scholar from school for immorality, or for a violation of the regulations or rules established by the board, or when the presence of the scholar is detrimental to the best interests of the school; and it may confer upon any teacher, principal, or superintendent the power temporarily to dismiss a scholar, notice of such dismissal being at once given in writing to the president of the board. [C., '73, §§ 1735, 1756; C., '97, § 2782.]

4272. Readmission of pupil. When a scholar is dismissed by the teacher, principal, or superintendent, as above provided, he may be readmitted by such teacher, principal, or superintendent, but when expelled by the board he may be readmitted only by the board or in the man-

of the next semiannual apportionment, deduct the amount from the sum apportioned to the debtor district, and cause it to be paid to the corporation entitled thereto. [C., '51, § 1143; R., '60, § 2024; C., '73, § 1793; C., '97, § 2803; 37 G. A., ch. 386, § 8.]

4275. High school outside home district. Any person of school age who is a resident of a school corporation which does not offer a four-year high school course, and who has completed the course as approved by the department of public instruction for such corporation, shall be permitted to attend any public high school or county high school in the state approved in like manner that will receive him. [S. S., '15, § 2733-1a; 37 G. A., ch. 156, § 1; 40 Ex. G. A., S. F. 101, § 36.]

4276. Requirements for admission. Any person applying for admission to any high school under the provisions of the preceding section shall present to the officials thereof the affidavit of his parent or guardian, or if he have neither, his next friend, that such applicant is entitled to attend the public schools, and a resident of a school district of this state, specifying the district. He shall also present a certificate signed by the county superintendent showing proficiency in the common school branches, reading, orthography, arithmetic, physiology, grammar, civics of Iowa, geography, United States history, penmanship, and music.

No such certificate or affidavit shall be required for admission to the high school in any school corporation when he has finished the common school branches in the same corporation. [S. S., '15, § 2733-1a; 37 G. A., ch. 156, § 1; 38 G. A., ch. 160, § 2; 39 G. A., ch. 53, § 1; 40 Ex. G. A., S. F. 101, § 37.]

4277. Tuition fees—payment. The school corporation in which such student resides shall pay from the general fund to the secretary of the corporation in which he shall be permitted to enter a tuition fee of not to exceed twelve dollars per month during the time he so attends, not exceeding a total period of four school years. Such tuition shall not exceed the average cost of tuition in such high school. The secretary shall deliver to the treasurer such tuition fees with an itemized statement on or before February fifteenth and June fifteenth of each year. [S. S., '15, § 2733-1a; 37 G. A., ch. 156, § 1; 37 G. A., ch. 386, § 1; 38 G. A., ch. 72, § 1; 39 G. A., ch. 53, § 1; 40 Ex. G. A., S. F. 101, § 38.]

4278. Collection of tuition fees. If payment is not made, the board of the creditor corporation shall file with the auditor of the county of the pupil's residence a statement certified by its president specifying the amount due for tuition, and the time for which the same is claimed. The auditor shall transmit to the county treasurer an order directing him to transfer the amount of such account from the funds of the debtor corporation to the creditor corporation, and he shall pay the same accordingly. [S. S., '15, § 2733-1a; 37 G. A., ch. 156, § 1; 40 Ex. G. A., S. F. 101, § 39.]

4279. Counties maintaining high school. No school corporation situated in a county maintaining a county high school shall be required to pay the tuition of pupils at any high school other than such county high school, but this shall not apply to pupils who, while residing at home, attend some high school other than that of the school corporation in which they reside.

Such school corporations in such county shall pay a reasonable tuition per pupil per month, said tuition in no case to exceed the cost of instruction. [S. S., '15, § 2733-1a; 37 G. A., ch. 156, § 1; 39 G. A., ch. 94, § 1; 40 Ex. G. A., S. F. 101, § 40.]

4280. Reimbursement of district—conditions. In counties having a high school, where a child resides at home and attends a high school outside the district of his residence other than the county high school, and the school corporation where the child resides pays the tuition for such child, and at the end of the school year it is found that less pupils have attended the county high school from the district where such child resides than were entitled to attend under the county high school apportionment, then the school corporation where such child resides shall be entitled to be reimbursed from the county high school funds for the tuition so paid, not exceeding in the aggregate an amount equal to the taxes contributed by such district to said county high school funds for the tax year preceding, fair and equitable credit being given to the county high school fund for pupils actually attending said county high school during said school year from the district where said child resides. [S. S., '15, § 2733-1a; 37 G. A., ch. 156, § 1; 40 Ex. G. A., S. F., 101, § 41.]

4281. Determination by county superintendent—appeal. The county superintendent shall, on application for such purpose, determine in writing the amount due such corporation in the county high school fund, and furnish such corporation with a copy of such finding. Within twenty days thereafter such corporation may appeal to the district court from such finding by serving written notice on the county superintendent of the taking of such appeal. [S. S., '15, § 2733-1a; 37 G. A., ch. 156, § 1; 40 Ex. G. A., S. F. 101, § 42.]

4282. Trial—decision—transfer of funds. On the service of said notice, the county superintendent shall file a copy of his finding in the office of the clerk of the district court and the clerk shall docket the cause without fee. The matter shall be tried on appeal as in equity and without formal pleading. The decision of the district court shall be final, and upon the filing of a certified copy thereof with the county treasurer, he shall transfer from the county high school funds to the credit of the corporation the amount to which it is found by the court to be entitled. [S. S., '15, § 2733-1a; 37 G. A., ch. 156, § 1; 40 Ex. G. A., S. F. 101, § 43.]

4283. Tuition in charitable institutions. When any child is cared for in any charitable institution in this state which does not maintain a school providing secular instruction, and which institution is organized and operating under the laws of Iowa, and the domicile of the child is in another school district than that wherein the institution is situated, then such child shall be entitled to attend school in the district where such institution is located. In such case, the district which provides schooling for such child shall be entitled to receive tuition not exceeding the average cost

thereof in the department of the school in which schooling is given, and not exceeding eight dollars per month for tuition in schools below the high school grade, and not exceeding twelve dollars per month for tuition in high school grades. Such tuition shall be paid by the county of the domicile of such child. Any county so paying tuition shall be entitled to recover the amount paid therefor from the parent of such child. This section shall not apply to charitable institutions which are maintained at state expense. [40 Ex. G. A., S. F. 101, § 39-a1.]

CHAPTER 216

SOCIETIES AND FRATERNITIES

4284. Secret societies and fraternities.
4285. Enforcement.

4284. Secret societies and fraternities. It shall be unlawful for any pupil, registered as such, and attending any public high school, district, primary, or graded school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join, or become a member of, any fraternity or society wholly or partially formed from the membership of pupils attending any such schools, or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the directors of such schools. [S., '13, § 2782-a; 37 G. A., ch. 158, § 1.]

4285. Enforcement. The directors of all schools shall enforce the provisions of the preceding section, and shall have full power and authority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing of such schools and enforcing all the provisions of the preceding section. [S., '13, § 2782-b.]

4286. Suspension or dismissal. The directors of such schools shall have full power and

4286. Suspension or dismissal.
4287. "Rushing" prohibited.

authority, pursuant to the adoption of such rules and regulations made and adopted by them, to suspend or dismiss any pupil or pupils of such schools therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such directors, or a majority of them, such pupil or pupils are guilty of violating any of the provisions of section 4284, or are guilty of violating any rule, rules, or regulations adopted by such directors for the purpose of governing such schools or enforcing said section. [S., '13, § 2782-c.]

4287. "Rushing" prohibited. No person shall go upon school grounds or enter any school building for the purpose of "rushing" or soliciting, while there, any pupil of such school to join any fraternity, society, or organization outside of said school. Persons violating the provisions of this section shall be fined not less than two dollars nor more than ten dollars, and on failure to pay such fine shall be imprisoned in the county jail for not more than ten days. Fines collected shall be paid to the county treasurer, and be by him added to the school fund of the district in which the offense was committed. [S., '13, § 2782-d; 40 Ex. G. A., S. F. 101, § 35.]

CHAPTER 217

EVENING SCHOOLS

4288. Evening schools authorized.
4289. When establishment mandatory.

4288. Evening schools authorized. The board of any school corporation may establish and maintain public evening schools as a branch of the public schools when deemed advisable for the public convenience and welfare. [37 G. A., ch. 97, § 1; 40 Ex. G. A., H. F. 102, § 1.]

4289. When establishment mandatory. When ten or more persons over sixteen years of age residing in any school corporation shall, in

4290. Supervision—who admitted.

writing, express a desire for instruction in the common branches at an evening school, the school board shall establish and maintain an evening school for such instruction for not less than two hours each evening for at least two evenings each week during the period of not less than three months of each school year. [37 G. A., ch. 97, § 2; 40 Ex. G. A., H. F. 102, § 2.]

4290. **Supervision—who admitted.** If such evening school is a branch of a city or town school, the same shall be under the supervision of the superintendent of such city or town school; if not, the same shall be under the supervision of the county superintendent.

Such evening school shall be available to all persons over sixteen years of age who for any cause are unable to attend the public day schools of such school corporation. [37 G. A., ch. 97, §§ 1, 2; 40 Ex. G. A., H. F. 102, § 3.]

CHAPTER 218

PART-TIME SCHOOLS

4291. **Authorization.**
 4292. **Support.**
 4293. **Standards—time of instruction.**
 4294. **District reimbursed.**

4291. **Authorization.** The board of directors in any independent school district situated in whole or in part in any city having a population of twelve thousand or over, in which there shall reside or be employed, or both, fifteen or more children over fourteen years of age and under sixteen years of age, who are not in regular attendance in a full-time day school, shall establish and maintain part-time schools, departments, or classes for such children. In districts situated in whole or in part in cities having less than twelve thousand population, the board may establish and maintain such schools. When such part-time schools have been established, all persons having custody of such children shall cause them to attend the same. [38 G. A., ch. 94, § 1; 40 Ex. G. A., H. F. 102, § 4.]

4292. **Support.** The board of directors may raise and expend money for the support of such part-time schools, departments, or classes in the same manner in which it is authorized to raise and expend funds for other school purposes. [38 G. A., ch. 94, § 2.]

4293. **Standards—time of instruction.** Such part-time schools, departments, or classes, for the attendance of children over fourteen and under sixteen years of age, shall be organized in accordance with standards established by the state board for vocational education, and shall provide for not less than eight hours of instruction per week during the length of term for which public schools are established in the district. Such part-time schools, departments, or classes shall be held between the hours of eight o'clock a. m. and six o'clock p. m. [38 G. A., ch. 94, § 3.]

4294. **District reimbursed.** Whenever any such part-time school or class shall have been approved by the state board for vocational

4295. **Powers state vocational board.**
 4296. **Violations.**
 4297. **Enforcement.**

education, the board of directors shall be entitled to reimbursement on account of expenditure made for the salaries of teachers in such part-time schools, departments, or classes from any federal and state funds appropriated in aid of vocational education, as provided in the statutes governing such appropriations. [38 G. A., ch. 94, § 4.]

4295. **Powers state vocational board.** The state board for vocational education is hereby authorized to fix standards for the establishment of part-time schools, departments, or classes; to fix the requirements of teachers, and to approve courses of study for such part-time schools, departments, or classes. [38 G. A., ch. 94, § 5.]

4296. **Violations.** When such part-time school shall have been established, any parent or person in charge of such minor as defined in this chapter who shall violate the provisions of this chapter, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or any person unlawfully employing any such minor shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars, or be imprisoned in the county jail not to exceed thirty days. [38 G. A., ch. 94, § 6.]

4297. **Enforcement.** The enforcement of this chapter shall rest with the school board in the district in which such part-time school, department, or class shall have been established, and the state department of public instruction through its inspectors and the state board of vocational education through its supervisors of vocational education, in conjunction with the county superintendent of schools, are empowered to require enforcement of the same on the part of school boards. [38 G. A., ch. 94, § 7.]

CHAPTER 219

APPEAL FROM DECISIONS OF BOARDS OF DIRECTORS

- 4298. Appeal to county superintendent.
- 4299. Notice—transcript—hearing.
- 4300. Hearing—shorthand reporter—decision.

- 4301. Witnesses—fees—collection.
- 4302. Appeal to state superintendent.
- 4303. Money judgment.

4298. Appeal to county superintendent. Any person aggrieved by any decision or order of the board of directors of any school corporation in a matter of law or fact may, within thirty days after the rendition of such decision or the making of such order, appeal therefrom to the county superintendent of the proper county; the basis of the proceedings shall be an affidavit filed with the county superintendent by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner. [R., '60, §§ 2133-2135; C., '73, §§ 1829-1831; C., '97, § 2818.]

4299. Notice—transcript—hearing. The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary of the proper school corporation in writing of the taking of such appeal, who shall, within ten days after being thus notified, file in the office of the county superintendent a complete certified transcript of the record and proceedings relating to the decision appealed from. Thereupon, the county superintendent shall notify in writing all persons adversely interested of the time when and place where the matter of appeal will be heard by him. [R., '60, §§ 2136, 2137; C., '73, §§ 1832-1834; C., '97, § 2819; 40 G. A., ch. 243, § 1.]

4300. Hearing—shorthand reporter—decision. At the time fixed for the hearing, he shall hear testimony for either party, and may cause the same to be taken down and transcribed by a shorthand reporter, whose fees shall be fixed by the county superintendent and be taxed as a part of the costs in the case, and he shall make such decision as may be just and equitable, which shall be final unless appealed from as hereinafter provided. [C., '97, § 2819; 40 G. A., ch. 243, § 2.]

4301. Witnesses—fees—collection. The county superintendent in all matters triable before

him shall have power to issue subpoenas for witnesses, which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the general fund of the proper school corporation, upon the certificate of the superintendent to and warrant of the secretary upon the treasurer; but if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, he shall enter such findings in the record, and tax all costs to the party responsible therefor. A transcript thereof shall be filed in the office of the clerk of the district court and a judgment entered thereon by him, which shall be collected as other judgments. [C., '97, § 2821; 37 G. A., ch. 386, § 11.]

4302. Appeal to state superintendent. An appeal may be taken from the decision of the county superintendent to the superintendent of public instruction in the same manner as provided in this chapter for taking appeals from the board of a school corporation to the county superintendent, as nearly as applicable, except that thirty days' notice of the appeal shall be given by the appellant to the county superintendent, and also to the adverse party. The decision when made shall be final. [R., '60, § 2139; C., '73, § 1835; C., '97, § 2820.]

4303. Money judgment. Nothing in this chapter shall be so construed as to authorize either the county or state superintendent to render judgment for money; neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved. [R., '60, § 2140; C., '73, § 1836; C., '97, § 2820.]

CHAPTER 220

PRESIDENT, SECRETARY, AND TREASURER

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| 4304. President—duties. | 4313. Reports by secretary. |
| 4305. Bonds of secretary and treasurer. | 4314. Officers reported. |
| 4306. Oath. | 4315. Certifying tax. |
| 4307. Action on bond. | 4316. Duties of treasurer—payment of warrants. |
| 4308. Duties of secretary. | 4317. General and schoolhouse funds. |
| 4309. Monthly receipts, disbursements, and balances. | 4318. Partial payment—interest. |
| 4310. Warrants. | 4319. Deposit of funds. |
| 4311. Notice of special meetings. | 4320. Financial statement. |
| 4312. School census. | 4321. Annual report. |

4304. President—duties. The president of the board of directors shall preside at all of its meetings, sign all warrants and drafts, respectively, drawn upon the county treasurer for money apportioned and taxes collected and belonging to his school corporation, and all orders on the treasurer drawn as provided by law, sign all contracts made by the board, and appear in behalf of his corporation in all actions brought by or against it, unless individually a party, in which case this duty shall be performed by the secretary. [C., '51, §§ 1122, 1123, 1125; R., '60, §§ 2039, 2040; C., '73, §§ 1739, 1740; C., '97, § 2759.]

4305. Bonds of secretary and treasurer. The secretary and treasurer shall each give bond to the school corporation in such penalty as the board may require, and with sureties to be approved by it, which bond shall be filed with the president, conditioned for the faithful performance of his official duties, but in no case less than five hundred dollars. [C., '51, § 1144; R., '60, § 2037; C., '73, § 1731; C., '97, § 2760.]

4306. Oath. Each shall take the oath required of civil officers, which shall be indorsed upon the bond, and shall complete his qualification within ten days. [C., '97, § 2760.]

NOTE: Oath of office, see § 1054.

4307. Action on bond. In case of a breach of the bond, the president shall bring action thereon in the name of the school corporation. [C., '51, § 1144; R., '60, § 2037; C., '73, § 1731; C., '97, § 2760.]

4308. Duties of secretary. The secretary shall:

1. *Preservation of records.* File and preserve copies of all reports made to the county superintendent, and all papers transmitted to him pertaining to the business of the corporation.

2. *Minutes.* Keep a complete record of all the proceedings of the meetings of the board and the voters of the corporation in separate books.

3. *Account with treasurer.* Keep an accurate, separate account of each fund with the treasurer, charge him with all warrants and drafts drawn in his favor, and credit him with all orders drawn on each fund.

4. *Claims.* Keep an accurate account of all expenses incurred by the corporation, and present the same to the board for audit and payment.

5. *Poll book.* Record at the annual meeting, in a book provided for that purpose, the names of all persons voting thereat, the number of votes cast for each candidate, and for and against each proposition submitted. [C., '51, §§ 1126, 1128; R., '60, §§ 2041, 2042; C., '73, §§ 1741, 1743; C., '97, § 2761; S., '13, § 2761.]

4309. Monthly receipts, disbursements, and balances. The secretary of each independent town or city district shall file monthly, on or before the tenth day of each month, with the board of directors, a complete statement of all receipts and disbursements from the various funds during the preceding month, and also the balance remaining on hand in the various funds at the close of the period covered by said statement, which monthly statements shall be open to public inspection. [S., '13, § 2761.]

4310. Warrants. He shall countersign all warrants and drafts upon the county treasurer drawn or signed by the president; draw each order on the treasurer, specify the fund on which it is drawn and the use for which the money is appropriated; countersign and keep a register of the same, showing the number, date, to whom drawn, the fund upon which it is drawn, the purpose and the amount; and at each regular annual meeting furnish the board with a copy of the same. [C., '51, §§ 1122, 1123, 1126; R., '60, §§ 2039, 2041, 2061; C., '73, §§ 1739, 1741, 1782; C., '97, § 2762; S., '13, § 2762.]

4311. Notice of special meetings. The secretary of the board shall give the same notice of all special meetings of the voters as is required by law for regular meetings, and the notice shall state the objects of the meeting. [C., '51, § 1129; R., '60, § 2043; C., '73, § 1742;]

C., '97, § 2763; S., '13, §§ 2763-a, 2763-b, 2763-c; 40 Ex. G. A., H. F. 104, § 1.]

4312. School census. He shall, between the first day of June and the first day of July of each year, enter in a book made for that purpose, the name, sex, and age of every person between five and twenty-one residing in the corporation, together with the name of the parent or guardian. [C., '97, § 2764; S., '13, § 2764.]

4313. Reports by secretary. He shall notify the county superintendent when each school is to begin and its length of term, and, ten days after the regular July meeting in each year, file with the county superintendent a report which shall give:

1. The number of persons of school age in the corporation, distinguishing the sexes.
2. The number of schools and branches taught.
3. The number of scholars enrolled and the average attendance in each school.
4. The number of teachers employed and the average compensation paid per month, distinguishing the sexes.
5. The length of school in days.
6. The average cost of tuition per month for each scholar.
7. The textbooks used.
8. The number of volumes in library.
9. The value of apparatus belonging to the corporation.
10. The number of schoolhouses and their estimated value.
11. The name, age, and postoffice address of each person resident of the corporation, without regard to age, so blind as to be unable to acquire an education in the common schools, and of each person between the ages of five and thirty-five whose faculties with respect to speech and hearing are so deficient as to prevent him from obtaining an education in the common schools, and of each feeble-minded person of school age. [C., '51, § 1127; R., '60, § 2046; C., '73, §§ 1744, 1745; C., '97, § 2765; S., '13, § 2765; 40 Ex. G. A., H. F. 104, § 2.]

4314. Officers reported. He shall report to the county superintendent, auditor, and treasurer the name and postoffice address of the president, treasurer, and secretary of the board as soon as practicable after the qualification of each. [C., '73, § 1736; C., '97, § 2766.]

4315. Certifying tax. Within five days after the board has fixed the amount required for the general fund, he shall certify to the board of supervisors the amount so fixed, and at the same time shall certify the amount of schoolhouse tax voted at any regular or special meeting.

In case a schoolhouse tax is voted by a special meeting after the above certificate has been made and prior to the first day of September following, he shall forthwith certify the same to the board of supervisors.

He shall also certify to such board any provision made by the board of directors for the

payment of principal or interest of bonds lawfully issued. [R., '60, §§ 2037, 2044; C., '73, §§ 1777, 1823; C., '97, § 2767; 37 G. A., ch. 386, § 3.]

4316. Duties of treasurer—payment of warrants. The treasurer shall receive all moneys belonging to the corporation, pay the same out only upon the order of the president countersigned by the secretary, keeping an accurate account of all receipts and expenditures in a book provided for that purpose. He shall register all orders drawn and reported to him by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose and amount. [C., '51, §§ 1138-1140; R., '60, §§ 2048-2050; C., '73, §§ 1747-1750; C., '97, § 2768; S., '13, § 2768.]

4317. General and schoolhouse funds. The money collected by tax voted or the proceeds of the sale of bonds valid for the purpose of building schoolhouses shall be called the schoolhouse fund, and all other moneys received for any other purpose shall be called the general fund, and he shall keep a separate account with each fund, paying no order that fails to state the fund upon which it is drawn and the specific use to which it is to be applied. [C., '51, § 1139; R., '60, § 2049; C., '73, § 1748; C., '97, § 2768; 37 G. A., ch. 386, § 4.]

NOTE: Library fund, see § 4322.

4318. Partial payment—interest. Whenever an order can not be paid in full out of the fund upon which it is drawn, partial payment may be made. All school orders shall draw lawful interest after being presented to the treasurer and by him indorsed as not paid for want of funds. [C., '73, § 1748; C., '97, § 2768.]

4319. Deposit of funds. It is hereby made the duty of the treasurer of each school corporation to deposit all funds in his hands as such treasurer in some bank or banks in the state at interest at the rate of at least two per cent per annum on ninety per cent of the daily balances payable at the end of each month, all of which shall accrue to the benefit of the general fund of such school corporation; but before such deposit is made, such bank shall file a bond with sureties to be approved by the treasurer and the board of directors of such corporation in double the amount deposited, conditioned to hold the school corporation harmless from all loss by reason of such deposit or deposits; provided that in cases where an approved surety company's bond is furnished, said bond may be accepted in an amount equal to ten per cent more than the amount deposited. Said bond shall be filed with the president of the school board and action may be brought thereon either by the treasurer or the school corporation as the board may elect. [S., '13, § 2768.]

4320. Financial statement. He shall render a statement of the finances of the corporation whenever required by the board, and his books

shall always be open for inspection. [C., '51, § 1141; R., '60, § 2051; C., '73, § 1751; C., '97, § 2769; S., '13, § 2769.]

4321. Annual report. He shall make an annual report to the board at its regular July meeting, which shall show the amount of the

general fund and the schoolhouse fund held over, received, paid out, and on hand, the several funds to be separately stated, and he shall immediately file a copy of this report with the county superintendent. [C., '97, § 2769; S., '13, § 2769; 37 G. A., ch. 386, § 5.]

CHAPTER 221

COMMON SCHOOL LIBRARIES

4322. Library fund.
4323. Purchase of books—distribution.
4324. Lists of books.
4325. Record of books.

4322. Library fund. The treasurer of each school township and of each rural independent district in this state shall withhold annually, from the money received from the apportionment for the several school districts, not less than five nor more than fifteen cents as may be ordered by the board for each person of school age residing in such school corporation, as shown by the annual report of the secretary, for the purchase of books as hereinafter provided. [S., '13, § 2823-n; 40 Ex. G. A., S. F. 105, § 1.]

4323. Purchase of books—distribution. Between the third Monday of September and the first day of December in each year, the president and secretary of the board, with the assistance of the county superintendent, shall expend all money withheld by the treasurer as provided in the preceding section, in the purchase of books for the use of the school district. In school townships the secretary shall distribute the books thus selected to the librarians among the several subdistricts. [S., '13, § 2823-o; 40 Ex. G. A., S. F. 105, § 2.]

4324. Lists of books. The state board of educational examiners shall prepare at its discretion lists of books suitable for use in school district libraries, and furnish copies of such lists to each county superintendent, and to the president and secretary of each school corporation, as often as the same shall be published

4326. Librarian.
4327. Custody of library.
4328. Board to supervise.

or revised. [S., '13, § 2823-p; 40 Ex. G. A., S. F. 105, § 3.]

4325. Record of books. It shall be the duty of each secretary to keep in a record book, furnished by the board of directors, a complete record of the books purchased and distributed by him. [S., '13, § 2823-q.]

4326. Librarian. Unless the board of directors shall elect some other person, the secretary in independent districts and director in subdistricts in school townships shall act as librarian and shall receive and have the care and custody of the books, and shall loan them to teachers, pupils, and other residents of the district, in accordance with the rules and regulations prescribed by the state board of educational examiners and board of directors. Each librarian shall keep a complete record of the books in a record book furnished by the board of directors. [S., '13, § 2823-r.]

4327. Custody of library. During the periods that the school is in session the library shall be placed in the schoolhouse, and the teacher shall be responsible to the district for its proper care and protection. [S., '13, § 2823-r.]

4328. Board to supervise. The board of directors shall have supervision of all books, and shall make an equitable distribution thereof among the schools of the corporation. [S., '13, § 2823-r.]

CHAPTER 222

STANDARDIZATION AND STATE AID

4329. Standard schools—maintenance—requirements.
4330. Minimum requirements.
4331. County superintendent—reports.

4329. Standard schools—maintenance—requirements. Any school located in a district, other than a city independent or consolidated district, not maintaining a high school, which has complied with the provisions of this chapter, shall be known as a standard school. Every standard school, before it may be des-

4332. State aid.
4333. Minimum standard.
4334. Door plate.
4335. State aid—how obtained and expended.

ignated as such, shall have been maintained for eight school months during the previous year. It shall during the previous school year:

1. Have a suitable schoolhouse, grounds, and outbuildings in proper condition and repair.

2. Be equipped with needful apparatus, textbooks, supplies, and an adequate system of heating and ventilation.

3. Have done efficient work.

4. Have complied with such requirements as shall be specified by the superintendent of public instruction. [38 G. A., ch. 364, § 1; 40 G. A., ch. 244, § 1.]

4330. Minimum requirements. The superintendent of public instruction shall prescribe for standard schools the minimum requirements of teaching, general equipment, heating, ventilation, lighting, seating, water supply, library, care of grounds, fire protection, and such other requirements as he may deem necessary. [38 G. A., ch. 364, § 2; 40 G. A., ch. 244, § 2.]

NOTE: Experience in teaching not to be disregarded, see § 4337.

4331. County superintendent—reports. On or before June thirtieth of each year, and at such other times as the superintendent of public instruction may direct, the county superintendent of schools shall make reports and furnish such other data in regard to said schools as the department of public instruction may desire on blanks to be furnished by the superintendent of public instruction. [38 G. A., ch. 364, § 3.]

4332. State aid. State aid shall be given to rural districts maintaining one or more standard schools to the amount of six dollars for each pupil who has attended said schools in said district at least six months of the previous year. [38 G. A., ch. 364, § 4.]

4333. Minimum standard. No school shall be deemed a standard school unless the teacher is the holder of a first-class county certificate or its equivalent, has contracted for the entire school year, and unless such school shall

have maintained an average daily attendance of at least ten pupils, during the previous school year. [38 G. A., ch. 364, § 5; 40 G. A., ch. 244, § 3.]

NOTE: Experience of teacher not to be disregarded, see § 4337.

4334. Door plate. Each standard school shall be furnished by the superintendent of public instruction with a suitable door plate or mark of identification, and the expense of the same shall be paid from the fund created for the promotion of standard schools. [38 G. A., ch. 364, § 6.]

4335. State aid—how obtained and expended. Upon receiving from the county superintendent a satisfactory report showing that any rural school has fulfilled the requirements of a standard school, the superintendent of public instruction shall issue a requisition upon the auditor of state for the amount due any rural school district entitled to state aid for the school year just past; whereupon the auditor of state shall draw a warrant on the treasurer of state payable to the secretary of the school corporation entitled thereto and forward to the secretary of said school corporation, who shall cause the same to be deposited with the other funds of the district. The money shall be expended in the district or districts maintaining standard schools in amounts proportionate to the number of pupils upon which state aid was granted. The secretary shall issue a warrant in favor of the teacher to the amount of one-half the subsidy due each such school, and the school board shall, with the assistance of the county superintendent, expend the remainder in improvements and necessary apparatus. If more than one teacher is employed in a school the amount shall be apportioned between them according to the time of their employment. [38 G. A., ch. 364, § 7.]

CHAPTER 223

TEACHERS

- 4336. Qualifications—compensation prohibited.
- 4337. Experience in teaching recognized.
- 4338. State aid and tuition.
- 4339. Daily register.
- 4340. Reports.
- 4341. Minimum teachers' wage.

- 4342. Increase of salary—how obtained.
- 4343. Contracts for less than minimum wage.
- 4344. Violation.
- 4345. Pension system.
- 4346. Fund.
- 4347. Management.

4336. Qualifications—compensation prohibited. No person shall be employed as a teacher in a common school which is to receive its distributive share of the school fund without having a certificate of qualification given by the county superintendent of the county in which the school is situated, or a certificate or diploma issued by some other officer duly authorized by law.

No compensation shall be recovered by a teacher for services rendered while without

such certificate or diploma. [R., '60, § 2062; C., '73, § 1758; C., '97, § 2788.]

4337. Experience in teaching recognized. No regulations or orders by the state superintendent of public instruction or the board of educational examiners with reference to the qualifications of teachers, in regard to having taken certain high school or collegiate courses or teachers' training courses, shall be retroactive so as to apply to any teacher who has had

at least three years' successful experience in teaching; and no teacher once approved for teaching in any kind of school shall be prevented by such regulations or orders from continuing to teach in the same kind of school for which he has previously been approved; provided, however, that this section shall not be construed as limiting the duties or powers of any school board in the selection of teachers, or in the dismissal of teachers for inefficiency or for any legal cause. [40 Ex. G. A., ch. 77, § 1.]

4338. State aid and tuition. No school shall be deprived of its right to be approved for state aid or approved for tuition by reason of the employment of any teacher as authorized under the preceding section. [40 Ex. G. A., ch. 77, § 2.]

4339. Daily register. Each teacher shall keep a daily register which shall correctly exhibit the name or number of the school, the district and county in which it is located, the day of the week, month, year, and the name, age, and attendance of each scholar, and the branches taught; and when scholars reside in different districts separate registers shall be kept for each district, and a certified copy of the register shall, immediately at the close of the school, be filed by the teacher in the office of the secretary of the board. [R., '60, § 2062; C., '73, §§ 1759, 1760; C., '97, § 2789.]

4340. Reports. The teacher shall file with the county superintendent such reports and in such manner as he may require. [C., '97, § 2789.]

4341. Minimum teachers' wage. All teachers in the public schools of this state shall be paid for their services a minimum wage of not less than the amounts hereinafter set forth:

1. A teacher who has completed a four-year college course and received a degree from an approved college, and who is the holder of a state certificate or a state diploma, shall receive a minimum wage of one hundred dollars per month until a successful teaching experience of two years in the public schools shall have been established. Thereafter the minimum wage shall be one hundred and twenty dollars per month.

2. A teacher who has completed a two-year course in education in a state normal school, or other school whose diploma is recognized as an equivalent diploma by the state board of educational examiners, and who shall be the holder of a state certificate, or who shall be the holder of a state certificate issued upon examination, shall receive a minimum wage of eighty dollars per month, until a successful teaching experience of two years in the public schools shall have been established. Thereafter the minimum wage shall be one hundred dollars per month.

3. A teacher who has completed a normal course in a normal training high school, and who has had less than one year of successful teaching experience, shall receive a minimum wage of sixty-five dollars per month.

4. A teacher who has completed a normal course in a normal training high school, and who shall have had one year of successful teaching experience, and a teacher holding a first-grade uniform county certificate, shall receive a minimum wage of seventy-five dollars per month until a successful experience of two years in the public schools shall have been established. Thereafter the minimum wage shall be eighty dollars per month.

5. A teacher who is the holder of a second-grade uniform county certificate shall receive a minimum wage of sixty dollars per month until a successful experience of one year's duration in the public schools shall have been established. Thereafter the minimum wage shall be sixty-five dollars per month.

6. A teacher holding a third-grade uniform county certificate shall receive a minimum wage of fifty dollars per month. [S., '13, § 2778-a; 38 G. A., ch. 351, § 1.]

4342. Increase of salary—how obtained. The holder of any certificate, in order to become entitled to the increase in salary provided by the preceding section because of successful teaching experience, must file with the county superintendent his certificate, also proofs of one or two years of teaching experience, as the law requires.

If in the opinion of the county superintendent the proofs are satisfactory, he shall indorse such findings on the back of said certificate and return the same to the holder thereof, and any certificate properly indorsed by the county superintendent shall be evidence of qualifications for the increase of salary provided by the preceding section for such teaching experience. [38 G. A., ch. 351, § 2.]

4343. Contracts for less than minimum wage. It shall be unlawful for any school board or any school officer to contract for or pay a less wage to any teacher in the public schools of this state than the minimum amounts herein fixed. Nothing herein shall be construed as limiting the right to make a lawful contract for a higher wage than herein specified as a minimum. [S., '13, § 2778-c; 38 G. A., ch. 351, § 1.]

4344. Violation. Any school officer violating the provisions of the three preceding sections shall be fined a sum of not less than twenty-five dollars, nor more than one hundred dollars, in the discretion of the court, and shall be suspended from office. [S., '13, § 2778-d.]

4345. Pension system. Any independent school district having a population of seventy-five thousand or more may establish a pension and annuity retirement system for the public school teachers of such district. [37 G. A., ch. 387, § 1.]

4346. Fund. The fund for such retirement system shall be created by an annual tax not exceeding two-tenths of a mill on the dollar, by an assessment of the teachers not exceeding one per cent of their salaries in any one year, and by the interest on any permanent

fund which may be created by gift, bequest, or otherwise. [37 G. A., ch. 387, § 2.]

4347. **Management.** The board of directors of the independent school district shall consti-

tute the board of trustees and shall formulate the plan of the retirement; and shall make all necessary rules and regulations for the operation of said retirement system. [37 G. A., ch. 387, § 3.]

CHAPTER 224

INSTRUCTION OF DEAF

4348. Instructors authorized.
 4349. State aid—amount.
 4350. State board of education to supervise.

4348. **Instructors authorized.** Any school corporation within the state having residing therein deaf children of school age may provide one or more special instructors for such deaf children, the instruction given under such special instructors to be substantially equivalent to that given other children of corresponding age in the graded schools. [37 G. A., ch. 308, § 1.]

4349. **State aid—amount.** To any school corporation providing such instruction and complying with all of the provisions of this chapter there shall be granted and paid as hereinafter provided state aid in an amount to be computed at twenty dollars for each month that each child not more than twelve years of age is instructed under the provisions of this chapter.

No child more than twelve years of age shall be admitted to such instruction. [37 G. A., ch. 308, § 2; 39 G. A., ch. 63; 39 G. A., ch. 98; 40 G. A., ch. 71, § 1.]

4350. **State board of education to supervise.** When any school corporation shall elect to proceed under the provisions of this chap-

4351. State aid—payment.
 4352. Appropriation.

ter, it shall, through its proper officers, communicate that fact to the state board of education, and the state board of education shall have general supervision of all matters arising under this chapter, and no instructor shall be appointed hereunder and no courses or methods of instruction shall be installed hereunder without the approval of such state board of education. [37 G. A., ch. 308, § 3.]

4351. **State aid—payment.** The state aid herein provided for shall be paid annually at the end of the school year upon properly authenticated and verified claim in form as may be required by the state board of education, and when such claim is approved by the state board of education the auditor of state shall draw warrant accordingly. [37 G. A., ch. 308, § 4.]

4352. **Appropriation.** For the purpose of paying the state aid granted under this chapter there is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient therefor. [37 G. A., ch. 308, § 5.]

CHAPTER 225

INDEBTEDNESS OF SCHOOL DISTRICTS

4353. Indebtedness authorized.
 4354. Petition for election.
 4355. Election called.

4353. **Indebtedness authorized.** Any school corporation shall be allowed to become indebted for the purpose of building and furnishing a schoolhouse or schoolhouses and additions thereto, gymnasium, teachers' or superintendent's home or homes, and procuring a site or sites therefor, or for the purpose of purchasing land to add to a site already owned, to an amount not to exceed in the aggregate, including all other indebtedness, five per cent of the actual value of the taxable property within such school corporation, such value to be ascertained by the last county tax list previous to the incurring of such indebtedness, anything contained in section 6238 to the contrary notwithstanding. [S., '13, § 2820-d1; 38 G. A., ch. 314, § 1.]

4356. Notice—ballots.
 4357. Date of election.
 4358. Bonds.

4354. **Petition for election.** Before such indebtedness can be contracted in excess of one and one-quarter per cent of the actual value of the taxable property, a petition signed by a number equal to twenty-five per cent of those voting at the last annual school election shall be filed with the president of the board of directors, asking that an election be called, stating the amount of bonds proposed to be issued and the purpose for which the indebtedness is to be created, and that the necessary schoolhouse or schoolhouses can not be built and equipped, or that sufficient land can not be purchased to add to a site already owned, within the limit of one and one-quarter per cent of the valuation. [S., '13, § 2820-d2; 40 Ex. G. A., H. F. 108, § 1.]

4355. Election called. The president of the board of directors on receipt of such petition shall, within ten days, call a meeting of the board which shall call such election, fixing the time and place thereof, which may be at the time and place of holding the regular school election. [S., '13, § 2820-d3; 40 Ex. G. A., H. F. 108, § 2.]

4356. Notice—ballots. Notice of such election shall be given by publication once each week for four weeks in some newspaper published in the district, or, if there is none, in some newspaper published in the county and of general circulation in the district. The notice shall state the date of the election, the hours of opening and closing the polls and the exact location thereof, and the questions to be

submitted. At such election the ballot shall be prepared and used in substantially the form for submitting special questions at general elections. [S., '13, § 2820-d3; 40 Ex. G. A., H. F. 108, § 3.]

4357. Date of election. The election shall be held on a day not less than five nor more than twenty days after the last publication of notice. [40 Ex. G. A., H. F. 108, § 4.]

4358. Bonds. If a majority of the qualified voters voting at such election vote in favor of the issuance of such bonds, the board of directors shall issue the same and make provision for the payment thereof. [S., '13, § 2820-d4; 38 G. A., ch. 134, § 1; 40 Ex. G. A., H. F. 108, § 5.]

CHAPTER 226

SCHOOLHOUSES AND SCHOOLHOUSE SITES

4359. Location.
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 4361. Five-acre limitation.
 4362. Ten-acre limitation.
 4363. Tax.
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4359. Location. The board of each school corporation may fix the site for each schoolhouse, which shall be upon some public highway already established or procured by such board and not in any public park, and except in cities, towns, and villages, not less than thirty rods from the residence of any landowner who objects thereto.

In fixing such site, the board shall take into consideration the number of scholars residing in the various portions of the school corporation and the geographical location and convenience of any proposed site. [R., '60, § 2037; C., '73, §§ 1724, 1825, 1826; C., '97, §§ 2773, 2814; S., '13, §§ 2773, 2814; 37 G. A., ch. 26, § 1; 40 Ex. G. A., S. F. 109, § 1.]

4360. Two-acre limitation. Except as hereinafter provided, any school corporation may take and hold so much real estate as may be required for such site, for the location or construction thereon of schoolhouses, and the convenient use thereof, but not to exceed two acres exclusive of public highway. [C., '73, § 1825; C., '97, § 2814; S., '13, § 2814; 37 G. A., ch. 26, § 1; 40 Ex. G. A., S. F. 109, § 2.]

4361. Five-acre limitation. Any school corporation including a city, town, village, or city under special charter, may take and hold an area equal to two blocks exclusive of the

street or highway, for a schoolhouse site, and not exceeding five acres for school playground or other purposes for each such site. [C., '97, § 2814; S., '13, § 2814; 37 G. A., ch. 26, § 1; 38 G. A., ch. 125, § 1; 40 Ex. G. A., S. F. 109, § 3.]

4362. Ten-acre limitation. Consolidated districts may take and hold not to exceed ten acres for any one site, and any school corporation may acquire additional ground by donation. [S., '13, § 2814; 37 G. A., ch. 26, § 1; 40 Ex. G. A., S. F. 109, § 4.]

4363. Tax. The directors in any independent district whose territory is composed wholly or in part of territory occupied by any city or city under special charter may, at their regular meeting in July, or at a special meeting called for that purpose between the time designated for such regular meeting and the third Monday in August, certify an amount not exceeding four mills to the board of supervisors, who shall levy the amount so certified, and the tax so levied shall be placed in the schoolhouse fund and used only for the purchase of sites in and for said school district. [38 G. A., ch. 125, § 1; 39 G. A., ch. 67, § 1; 40 Ex. G. A., S. F. 109, § 5.]

4364. Condemnation. If the owner of real estate desired for any purpose for which any

school may be authorized to take and hold real estate refuses to convey the same, or is dead or unknown or cannot be found, or if in the judgment of the board of directors of the corporation they cannot agree with such owner as to the price to be paid therefor, such real estate shall be appraised by a board of referees, which shall be organized upon the application of either party in interest. [C., '73, § 1827; C., '97, § 2815; 37 G. A., ch. 26, § 2; 40 Ex. G. A., S. F. 109, § 6.]

4365. Board of referees. Such board shall consist of:

1. One freeholder appointed by the county superintendent.
2. One freeholder appointed by the owner of the real estate. If such owner can not be found the county auditor shall appoint a freeholder for him.
3. One freeholder selected by the two freeholders appointed under the two preceding paragraphs of this section.

All the members of the board shall be residents of the county and shall not be interested in the same or a like question. [C., '73, § 1827; C., '97, § 2815; 37 G. A., ch. 26, § 2; 40 G. A., ch. 74, § 1; 40 Ex. G. A., S. F. 109, § 6-a1.]

4366. Notice—service. The county superintendent shall give notice of the time and place of making the assessment of damages, to the persons in possession of the real estate and to the owner as shown by the transfer books in the office of the county auditor, or if the owner is so shown to be deceased, to the owners of the beneficial interest therein. Notice shall be given for the same length of time and in the same manner as for the commencement of actions in the district court. [C., '73, § 1827; C., '97, § 2815; 37 G. A., ch. 26, § 2; 40 Ex. G. A., S. F. 109, § 7.]

4367. Assessment—report. The referees shall inspect the grounds proposed to be taken, fix the damage sustained, as nearly as may be, on the basis of the value of the real estate appropriated, and the damage caused by the taking thereof, and report in writing to the county superintendent their doings and findings, which report shall be filed and preserved in his office. [C., '73, § 1827; C., '97, § 2815; 37 G. A., ch. 26, § 2; 40 Ex. G. A., S. F. 109, § 8.]

4368. Appeal—costs. Within ten days after receiving notice of the award made, either party may appeal from the assessment to the district court by giving notice thereof as in the case of taking private property for works of internal improvement. If no appeal is taken the assessment shall be final. Upon appeal the school corporation shall not be liable for costs unless the owner shall be allowed a greater sum than given by the referees, but all costs of making the referees' assessment shall be paid by the school corporation. [C., '73, § 1827; C., '97, § 2815; 37 G. A., ch. 26, § 2; 40 Ex. G. A., S. F. 109, § 9.]

NOTE: Appeal in eminent domain proceedings, see § 7899.

4369. Possession and deposit. The board may at any time after the award is made by the referees take possession of the property upon depositing with the county treasurer the amount of the award, and if this deposit is not made within sixty days after the final determination of the proceedings, they shall be void. [C., '73, § 1827; C., '97, § 2815; 37 G. A., ch. 26, § 2; 40 Ex. G. A., S. F. 109, § 10.]

4370. Erection or repair of schoolhouse. Before erecting a schoolhouse, the board of directors shall consult with the county superintendent as to the most approved plan for such building and secure his approval of the plan submitted. No schoolhouse shall be erected or repaired at a cost exceeding three hundred dollars, save under an express contract reduced to writing, and upon proposals therefor, invited by advertisement for four weeks in some newspaper published in the county in which the work is to be done, and the contract shall be let to the lowest responsible bidder, bonds with sureties for the faithful performance of the contract being required, but the board may reject any and all bids and advertise for new ones. [R., '60, § 2037; C., '73, § 1723; C., '97, § 2779; 40 Ex. G. A., S. F. 109, § 11.]

4371. Uses for other than school purposes. The board of directors of any school corporation may authorize the use of any schoolhouse and its grounds within such corporation and not within the limits of a city or town for the purpose of meetings of granges, lodges, agricultural societies, and similar rural secret orders and societies, and for election purposes; such use to be for such compensation and upon such terms and conditions as may be fixed by said board for the proper protection of the schoolhouse and the property belonging therein, including that of pupils. [37 G. A., ch. 229.]

NOTE: Schoolhouses as polling places, see § 742.

4372. Compensation. Any compensation for such use shall be paid into the general fund and be expended in the upkeep and repair of such school property, and in purchasing supplies therefor. [37 G. A., ch. 386, § 11.]

4373. Use forbidden. If at any time the voters of such corporation at any annual meeting forbid such use of any such schoolhouse or grounds, the board shall not thereafter permit such use until the said action of such voters shall have been rescinded by the voters at an annual meeting, or at a special meeting called for that purpose. [37 G. A., ch. 229.]

4374. Renting schoolroom. The board may, when necessary, rent a room and employ a teacher, where there are ten children for whose accommodation there is no schoolhouse. [C., '73, § 1725; C., '97, § 2774.]

4375. Instruction in other schools. When the board is released from its obligation to maintain a school, or when children live at an

unreasonable distance from their own school, the board may contract with boards of other school townships or independent districts for the instruction of children thus deprived of school advantages, in any school therein, and the cost thereof shall be paid from the general fund. [C., '97, § 2774; 37 G. A., ch. 386, § 6.]

4376. Transportation of children. When there will be a saving of expense, and children will also thereby secure increased advantages, the board may arrange with any person outside the board for the transportation of any child to and from school in the same or in another corporation, and such expenses shall be paid from the general fund. [C., '97, § 2774; 37 G. A., ch. 386, § 6.]

4377. Fence around schoolhouse sites. Each board of directors in school districts where the school grounds adjoin cultivated or improved lands shall build and maintain a lawful fence between said grounds and cultivated or improved lands, and the owner of lands adjoining any such site shall have the right to connect the fence on his land with the fence around the school grounds, but he shall not be liable to contribute to the maintenance of such fence. [S., '13, §§ 2745-a, 2745-b; 40 Ex. G. A., S. F. 109, § 12.]

4378. Barbed wire. No fence provided for in the preceding section shall be constructed of barbed wire, nor shall any barbed wire fence be placed within ten feet of any school grounds. Any person violating the provisions of this section shall be punished by a fine not exceeding twenty-five dollars. [C., '97, § 2817; 40 Ex. G. A., S. F. 109, § 13.]

4379. Reversion of schoolhouse site. Any real estate owned by a school corporation, situated wholly outside of a city or town, and not adjacent thereto, and heretofore used as a schoolhouse site, and which, for a period of two years continuously has not been used for any school purpose, shall revert to the then owner of the tract from which the same was taken, provided that said owner of the tract last aforesaid shall, within the time herein-after prescribed, pay the value thereof to such school corporation. [C., '73, § 1828; C., '97, § 2816; S., '13, § 2816; 38 G. A., ch. 342, § 1; 39 G. A., ch. 183, § 1.]

4380. Appraisers. In case the school corporation and said owner of the tract from which such school site was taken, do not agree

as to the value of such site, the county superintendent of the county in which the greater part of such school corporation is situated, shall, on the written application of either party, appoint three disinterested voters of the county to appraise said site. [C., '97, § 2816; S., '13, § 2816; 38 G. A., ch. 342, § 1; 39 G. A., ch. 183, § 1.]

4381. Notice. The county superintendent shall give notice to both parties of the time and place of making such appraisement, which notice shall be served in the same manner and for the same time as for the commencement of action in the district court. [39 G. A., ch. 183, § 1.]

4382. Appraisement. Such appraisers shall inspect the premises and, at the time and place designated in the notice, appraise said site in writing, which appraisement, after being duly verified, shall be filed with the county superintendent. [39 G. A., ch. 183, § 1.]

4383. Public sale. If the owner of the tract from which said site was taken fails to pay the amount of such appraisement to such school corporation within twenty days after the filing of same with the county superintendent, the school corporation may sell said site to any other person at the appraised value, or may sell the same at public sale to the highest bidder. [38 G. A., ch. 342, § 1; 39 G. A., ch. 183, § 1.]

4384. Sale of improvements. If there are improvements on said site, the improvements may, at the request of either party, be appraised and sold separately. [C., '97, § 2816; S., '13, § 2816; 38 G. A., ch. 342, § 1; 39 G. A., ch. 183, § 1.]

4385. Sale of unnecessary schoolhouse sites. Schoolhouses and school sites no longer necessary for school purposes, because of being located in consolidated school districts, may be sold immediately after the organization of such consolidated school districts, in the manner above provided.

During the use of such premises, no person owning a right of reversion shall have any interest in or control over the premises.

This and the six preceding sections shall not apply to cases where schools have been temporarily closed by law on account of small attendance. [C., '73, § 1828; C., '97, § 2816; S., '13, § 2816; 38 G. A., ch. 342, § 1; 39 G. A., ch. 183, § 2.]

CHAPTER 227

SCHOOL TAXES AND BONDS

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4386. School taxes. The board of each school corporation shall at its regular meeting in July, or at a special meeting called between the time for the regular meeting and the third Monday in August, estimate the amount required for the general fund. The amount so estimated shall not exceed the following sum for each person of school age:

1. In consolidated districts maintaining an approved high school course, one hundred dollars.

2. In school corporations having a school enumeration of ten thousand or more, seventy dollars.

3. In all other school corporations, eighty dollars; provided that corporations not maintaining an approved high school and which have tuition pupils attending high school in other districts may levy such an additional amount above the said eighty dollars as will be necessary to pay the cost of tuition for such pupils. [C., '51, § 1152; R., '60, §§ 2033, 2034, 2037, 2038, 2044, 2088; C., '73, §§ 1777, 1778; C., '97, § 2806; S., '13, § 2806; S. S., '15, § 2794-a; 37 G. A., ch. 32, § 1; 38 G. A., ch. 116, § 1; 39 G. A., ch. 93, §§ 1, 2; 39 G. A., ch. 175, § 22; 40 Ex. G. A., ch. 17, § 1.]

4387. Additional taxes. If the amount so estimated in any school corporation does not equal one thousand dollars for each school thereof, the corporation may estimate not to exceed one thousand dollars for each school in the corporation. [C., '73, §§ 1777, 1778; C., '97, § 2806; S., '13, § 2806; 37 G. A., ch. 386, § 9; 38 G. A., ch. 77, § 1; 39 G. A., ch. 93, § 2; 40 Ex. G. A., ch. 17, § 2.]

4388. Transportation fund—tax for free textbooks. In addition to the amounts authorized by the two preceding sections, school boards may include in their estimates not to exceed five dollars for each person of school age for transporting children to and from school, when authorized by law; also the additional sum authorized by section 4448. [C.,

'97, § 2806; S., '13, § 2806; 37 G. A., ch. 386, § 9; 38 G. A., ch. 77, § 1; 40 Ex. G. A., ch. 17, § 3.]

4389. Taxes estimated in mills. School corporations containing territory in adjoining counties may vote and estimate all taxes for school purposes in mills. [C., '97, § 2806; S., '13, § 2806; 40 Ex. G. A., ch. 17, § 4.]

4390. Apportionment of taxes. The boards of school townships shall apportion any tax voted by the annual meeting for schoolhouse fund among the several subdistricts in such a manner as justice and equity may require, taking as the basis of such apportionment the respective amounts previously levied upon said subdistricts for the use of said fund. [R., '60, § 2037; C., '73, § 1778; C., '97, § 2806; S., '13, § 2806; 40 Ex. G. A., ch. 17, § 5.]

4391. Contract for use of library. The board of directors of any school corporation in which there is no free public library may contract with any free public library for the free use of such library by the residents of such school district, and pay such library the amount agreed therefor as provided by law. During the existence of such contract, the board shall certify annually a tax sufficient to pay such library the consideration agreed upon, not exceeding one mill on the dollar of the taxable property of such district. During the existence of such contract, the school corporation shall be relieved from the requirement that the school treasurer withhold funds for library purposes. This section shall not apply in townships where a contract for other library facilities is in existence. [S., '13, § 2806; 40 Ex. G. A., ch. 17, § 6.]

4392. Taxes certified. The amount estimated as provided by the six preceding sections shall be certified to the board of supervisors on or before the first Monday of September in each year. [S. S., '15, § 2794-a; 39 G. A., ch. 175, § 22; 40 Ex. G. A., ch. 17, § 7.]

4393. Levy by board of supervisors. The board of supervisors shall at the time of levying taxes for county purposes levy the taxes necessary to raise the various funds authorized by law and certified to it by law, but if the amount certified for any such fund is in excess of the amount authorized by law, it shall levy only so much thereof as is authorized by law. [R., '60, § 2059; C., '73, §§ 1779, 1780; C., '97, § 2807; S. S., '15, § 1303.]

4394. Special levies. If a schoolhouse tax is voted at a special meeting and certified to said board after the regular levy is made, it shall at its next regular meeting levy such tax and cause the same to be forthwith entered upon the tax list to be collected as other school taxes. [C., '97, § 2807; S. S., '15, § 1303.]

4395. General school levy. The board shall also levy a tax for the support of the schools within the county of not less than one nor more than three mills on the dollar on the assessed value of all the taxable property within the county. [R., '60, § 2059; C., '73, § 1779; C., '97, § 2807; S. S., '15, § 1303.]

4396. Apportionment of school funds. The county auditor shall, on the first Monday in April and the first Monday in October of each year, apportion the school tax, together with the interest of the permanent school fund and rents on unsold school lands to which the county is entitled as shown in notice from the auditor of state, and all other money in the hands of the county treasurer belonging in common to the schools of the county and not included in any previous apportionment, among the several corporations therein, in proportion to the number of persons of school age, as shown by the report of the county superintendent filed with him for the year immediately preceding.

He shall immediately notify the county treasurer of such apportionment and of the amount due thereby to each corporation.

The county treasurer shall thereupon give notice to the president of each corporation, and shall pay out such apportionment moneys in the same manner that he is authorized to pay other school moneys to the treasurers of the several school districts. [R., '60, §§ 1966, 2060, 2061; C., '73, §§ 1781, 1782, 1841; C., '97, § 2808; S., '13, § 2808.]

4397. County auditor to report. On the first day of January of each year the county auditor shall report to the auditor of state in such form as he may prescribe, giving the amount of permanent school funds held by the county, and the amount of interest due prior to January first, still remaining unpaid. [C., '73, § 1783; C., '97, § 2809; S., '13, § 2809; 40 Ex. G. A., ch. 17, § 8.]

4398. Monthly payment of taxes. Before the fifteenth day of each month in each year, the county treasurer shall give notice to the president of the board of each school corporation in the county of the amount collected for

each fund to the first day of such month, and the president of each board shall draw his draft therefor, countersigned by the secretary, upon the county treasurer, who shall pay such taxes to the treasurers of the several school boards only on such draft. [C., '73, §§ 1784, 1785; C., '97, § 2810; 39 G. A., ch. 46, § 1.]

4399. Schoolhouse tax. He shall also keep the amount of tax levied for schoolhouse purposes separate in each subdistrict where such levy has been made directly upon the property of the subdistrict, and shall pay over the same monthly to the treasurer of the school township for the benefit of such subdistrict. [C., '73, § 1784; C., '97, § 2810.]

4400. Payment of judgment. When a judgment shall be obtained against a school corporation, its board shall order the payment thereof out of the proper fund by an order on the treasurer, not in excess, however, of the funds available for that purpose. [R., '60, § 2095; C., '73, § 1787; C., '97, § 2811.]

4401. Judgment tax. If the proper fund is not sufficient, then, unless its board has provided by the issuance of bonds for raising the amount necessary to pay such judgment, the voters thereof shall at their annual meeting vote a sufficient tax for the purpose. [R., '60, § 2095; C., '73, § 1787; C., '97, § 2811.]

4402. Judgment levy. In case of failure or neglect to vote such tax, the school board shall certify the amount required to the board of supervisors, who shall levy a tax on the property of the corporation for the same. [C., '97, § 2811.]

4403. Bond tax. The board of each school corporation shall, when estimating and certifying the amount of money required for general purposes, estimate and certify to the board of supervisors of the proper county the amount required to pay interest due or that may become due for the year beginning January first thereafter, upon lawful bonded indebtedness, and in addition thereto such amount as the board may deem necessary to apply on the principal.

The amount estimated and certified to apply on principal and interest for any one year shall not exceed seven mills on the dollar of the actual valuation of the taxable property of the school corporation. [C., '73, § 1823; C., '97, § 2813; S., '13, § 2813; 39 G. A., ch. 65.]

4404. Levy. The board of supervisors of the county to which the certificate is addressed within the contemplation of the preceding section shall levy the necessary tax to raise the amount estimated, or so much thereof as may be lawful and within the limitation of the preceding section, which levy shall be made as other taxes for school purposes. [S., '13, § 2813-a.]

4405. Funding or refunding bonds. For the purpose of providing for the payment of

any indebtedness of any school corporation represented by judgments or bonds, the board of directors of such school corporation, at any time or times, may provide by resolution for the issuance of bonds of such school corporation, to be known as funding or refunding bonds. The proceeds derived from the negotiation of such funding or refunding bonds shall be applied in payment of such indebtedness; or said funding bonds or refunding bonds may be issued in exchange for the evidences of such indebtedness, par for par. [S., '13, § 2812-c; 37 G. A., ch. 262, § 1.]

4406. School bonds. The board of directors of any school corporation when authorized by the voters at the annual meeting, or at a special meeting called for that purpose, may issue the negotiable, interest-bearing school bonds of said corporation for borrowing money for any or all of the following purposes:

1. To acquire sites for school purposes.
2. To erect, complete, or improve buildings authorized for school purposes.
3. To acquire equipment for schools, sites, and buildings. [S., '13, § 2812-d; 40 G. A., ch. 76; 40 Ex. G. A., ch. 17, § 9.]

4407. Form—duration—rate of interest—where registered. All of said bonds shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the action of the board providing therefor; shall run not more than twenty years, and may be sooner paid if so nominated in the bond; be in denomination of not more than one thousand dollars or less than one

hundred dollars each; bear a rate of interest not exceeding five per cent per annum, payable semiannually; be signed by the president and countersigned by the secretary of the board of directors; and shall not be disposed of for less than par value, nor issued for other purposes than this chapter provides.

All of said bonds shall be registered in the office of the county auditor.

The expenses of engraving and printing of bonds may be paid out of the general fund. [S. S., '15, § 2812-e; 37 G. A., ch. 386, § 11; 39 G. A., ch. 6, § 1; 40 G. A., ch. 77, §§ 1, 2.]

4408. Redemption. Whenever the amount in the hands of the treasurer, belonging to the funds set aside to pay bonds, is sufficient to redeem one or more of the bonds which by their terms are subject to redemption, he shall give the owner of said bonds thirty days' written notice of the readiness of the district to pay and the amount it desires to pay. If not presented for payment or redemption within thirty days after the date of such notice, the interest on such bonds shall cease and the amount due thereon shall be set aside for its payment whenever it is presented. [S., '13, § 2812-f.]

4409. Record of bond buyers. All redemptions shall be made in the order of their numbers. The treasurer shall keep a record of the parties to whom the bonds are sold, together with their postoffice addresses, and notice mailed to the address as shown by such record shall be sufficient. [S., '13, § 2812-f.]

CHAPTER 228

COMPULSORY EDUCATION

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- 4431. When deaf and blind children excused.
- 4432. Agent of state board of education.

4410. Attendance requirement. Any person having control of any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, shall cause said child to attend some public or private school for at least twenty-four consecutive school weeks in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date, which date shall not be later than the first Monday in December.

The board may, by resolution, require attendance for the entire time when the schools are in session in any school year.

In lieu of such attendance such child may attend upon equivalent instruction by a competent teacher elsewhere than at school. [S., '13, § 2823-a; 40 Ex. G. A., S. F. 111, § 1.]

4411. Exceptions. The preceding section shall not apply to any child:

1. Who is over the age of fourteen and is regularly employed.
2. Whose educational qualifications are equal to those of pupils who have completed the eighth grade.
3. Who is excused for sufficient reason by any court of record or judge.

4. While attending religious services or receiving religious instructions. [S., '13, § 2823-a; 40 Ex. G. A., S. F. 111, § 2.]

4412. Reports from private schools. Within ten days from receipt of notice from the secretary of the school corporation within which any private school is conducted, the principal of such school shall, once during each school year, and at any time when requested in individual cases, furnish to such secretary a certificate and report in duplicate of the names, ages, and number of days' attendance of each pupil of such school over seven and under sixteen years of age, the course of study pursued by each such child, the texts used, and the names of the teachers, during the preceding year and from the time of the last preceding report to the time at which a report is required. The secretary shall retain one of the reports and file the other in the office of the county superintendent. [S., '13, § 2823-b; 40 Ex. G. A., S. F. 111, § 3.]

4413. Reports as to private instruction. Any person having the control of any child over seven and under sixteen years of age, who shall place such child under private instruction, not in a regularly conducted school, upon receiving notice from the secretary of the school corporation, shall furnish a certificate stating the name and age of such child, the period of time during which such child has been under said private instruction, the details of such instruction, and the name of the instructor. [S., '13, § 2823-b; 40 Ex. G. A., S. F. 111, § 4.]

4414. Proof of abnormality. Any person having the control of any child over seven and under sixteen years of age, who is physically or mentally unable to attend school, shall furnish proofs by affidavit as to the physical or mental condition of such child. [S., '13, § 2823-b; 40 Ex. G. A., S. F. 111, § 5.]

4415. Violations. Any person who shall violate any of the provisions of the five preceding sections shall be fined not less than five dollars nor more than twenty dollars for each offense. [S., '13, § 2823-a; 40 Ex. G. A., S. F. 111, § 6.]

4416. Custody of records. All such certificates, reports, and proofs shall be filed and preserved in the office of the secretary of the school corporation as a part of the records of his office, and he shall furnish certified copies thereof to any person requesting the same. [S., '13, §§ 2823-b, 2823-c; 40 Ex. G. A., S. F. 111, § 7.]

4417. Truant defined. Any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, who fails to attend school regularly as provided in this chapter, without reasonable excuse for his absence, shall be deemed to be a truant. [S., '13, § 2823-e; 40 Ex. G. A., S. F. 111, § 8.]

4418. Truant schools—rules for punishment. The board of directors may provide for the confinement, maintenance, and instruction of truant children and may for that purpose establish truant schools or set apart separate rooms in any public school building; and it shall prescribe reasonable rules for the punishment of truants. [S., '13, §§ 2823-d, 2823-h; 40 Ex. G. A., S. F. 111, § 9.]

4419. Truancy officers—appointment—compensation. The board of each school corporation may, and in school corporations having a population of twenty thousand shall, appoint a truancy officer who may be the school nurse.

In districts having therein a city or town, the board may appoint a member of the police force or marshal as such officer, and other districts may appoint a constable or other suitable person.

Such officers shall be paid a reasonable compensation by the board, but where a police officer of a city under twenty thousand or a town is employed, he shall be paid not to exceed five dollars per month for his services. [S., '13, § 2823-e; 37 G. A., ch. 386, § 11; 40 Ex. G. A., S. F. 111, § 10.]

4420. Duties of truancy officer. The truancy officer shall take into custody without warrant any apparently truant child and place him in the charge of the teacher in charge of the public school designated by the board of directors of the school corporation in which said child resides, or of any private school designated by the person having legal control of the child; but if it is other than a public school, the instruction and maintenance of the child therein shall be without expense to the school corporation.

The truancy officer shall promptly institute criminal proceedings against any person violating any of the provisions of the truancy law. [S., '13, §§ 2823-e, 2823-f; 40 Ex. G. A., S. F. 111, § 11.]

4421. Neglect by truancy officer. Any truancy officer or any director neglecting his duty to enforce the truancy law after written notice so to do served upon him by any citizen of the county or by the county superintendent shall be liable to a fine not exceeding twenty-five dollars and be removed from such office. The county attorney shall prosecute such persons upon request of the county superintendent. [S., '13, § 2823-f; 40 Ex. G. A., S. F. 111, § 12.]

4422. Incurrigibles. If the child is placed in a school other than a public school and does not properly conduct himself, the board may cause his removal to a public or to a truant school. If a truant placed in a public school fails to attend or properly conduct himself, he may be placed in a truant school, or the person in charge of the school may file information in the juvenile court, which may commit said child to a suitable state institution. [S., '13, §§ 2823-d, 2823-e; 40 Ex. G. A., S. F. 111, § 13.]

4423. Discharge from truant school. Any child placed in a truant school may be dis-

charged therefrom at the discretion of the board under such rules as it may prescribe. [S., '13, § 2823-g; 40 Ex. G. A., S. F. 111, § 14.]

4424. Reports by school officers and employees. All school officers and employees shall promptly report to the secretary of the school corporation any violations of the truancy law of which they have knowledge, and he shall inform the president of the board of directors who shall, if necessary, call a meeting of the board to take such action thereon as the facts justify. [S., '13, § 2823-g; 40 Ex. G. A., S. F. 111, § 15.]

4425. Census by school officer. All school officers empowered to take the school census shall ascertain the number of children over seven and under sixteen years of age, in their respective districts, the number of such children who do not attend school, and so far as possible the cause of the failure to attend. S., '13, § 2823-i; 40 Ex. G. A., S. F. 111, § 16.]

4426. Blind and deaf children—assessor to record. The assessor shall, at the time of making assessments, record on suitable blanks furnished for that purpose by the secretary of state to the county auditor, the names, ages, sex, and postoffice addresses of all deaf or blind persons within the assessment district.

The county auditor shall forward to the secretary of the state board of education such returns of the assessor within thirty days after the same are filed in his office. [S., '13, §§ 1354-a-1354-c; 40 Ex. G. A., S. F. 111, § 17.]

4427. Education — state school. Children over seven and under nineteen years of age who are so deaf or blind as to be unable to obtain an education in the common schools shall be sent to the proper state school therefor, unless exempted, and any person having such a child under his control or custody shall see that such child attends such school during the scholastic year. [S., '13, § 2718-c; 38 G. A., ch. 120, §§ 1, 7; 40 G. A., ch. 78; 40 Ex. G. A., S. F. 111, § 18.]

4428. Proceeding against parent. Upon the failure of any person having the custody and control of such child to require its attendance as provided in the preceding section, the state board of education may make application to the district court of the county in which such

person resides for an order requiring such person to compel the attendance of such child at the proper state institution. [S., '13, §§ 2718-d, 2718-e; 38 G. A., ch. 120, §§ 2, 7; 40 G. A., ch. 78; 40 Ex. G. A., S. F. 111, § 19.]

4429. Order. If, upon hearing, the court determines that the person required to appear has the custody and control of a child who should be required to attend a state school under the second preceding section, the court shall make an order requiring such person to keep such child in attendance at such school. [40 G. A., ch. 78; 40 Ex. G. A., S. F. 111, § 19-a1.]

4430. Contempt. A failure to comply with the order of the court shall subject the person against whom the order is made to punishment the same as in ordinary contempt cases. [40 G. A., ch. 78; 40 Ex. G. A., S. F. 111, § 19-a2.]

4431. When deaf and blind children excused. Attendance at the state institution may be excused when the superintendent thereof is satisfied:

1. That the child is in such bodily or mental condition as to prevent or render futile attendance at the school.

2. That the child is so diseased or possesses such habits as to render his presence a menace to the health or morals of other pupils.

3. That the child is efficiently taught for the scholastic year in a private or other school devoted to such instruction or by a private tutor, in the branches taught in public schools. [S., '13, § 2718-f; 37 G. A., ch. 160, § 1; 38 G. A., ch. 120, §§ 3, 7; 40 Ex. G. A., S. F. 111, § 20.]

4432. Agent of state board of education. The state board of education may employ an agent to aid in the enforcement of law relative to the education of deaf and blind children. The agent shall seek out children who should be in attendance at the state schools but who are not, and require such attendance. He shall institute proceedings against persons who violate the provisions of said law. The agent shall be allowed compensation at a rate fixed by the board of education, and his necessary traveling and hotel expenses while away from home in the performance of his duty. [38 G. A., ch. 120, §§ 4, 7; 40 Ex. G. A., S. F. 111, § 21.]

CHAPTER 229

PUBLIC RECREATION AND PLAYGROUNDS

- 4433. Establishment—maintenance—supervision.
- 4434. Tax levy—petition—submission.
- 4435. Levy—collection—limitation.
- 4436. Duties of school treasurer.

- 4437. Annual levy.
- 4438. Discontinuance of levy.
- 4439. Appropriation by city.

4433. Establishment—maintenance—supervision. Boards of school directors in school districts containing or contained in cities of the first or second class, cities under special charter, or cities under the commission plan

of government, are hereby authorized to establish and maintain for children in the public school buildings and on the public school grounds under the custody and management of such boards, public recreation places and

playgrounds and necessary accommodations for same, without charge to the residents of said school district; also to cooperate with the commissioners or boards having the custody and management in such cities of public parks and public buildings and grounds of whatever sort, and, by making arrangements satisfactory to such boards controlling public parks and grounds, to provide for the supervision, instruction, and oversight necessary to carry on public educational and recreational activities, as described in this section in buildings and upon grounds in the custody and under the management of such commissioners or boards having charge of public parks and public buildings on grounds of whatever sort, in such cities of the first or second class, cities under special charter, or cities under commission plan of government. [S., '13, § 2823-u.]

4434. Tax levy—petition—submission. The board of directors of any school district containing, or contained in, any city of the first or second class, city under special charter, or city under the commission plan of government, may, and upon petition to that effect signed by legally qualified voters aggregating not less than twenty-five per cent of the number voting at the last preceding school election, shall, submit to the electors of such school district the question of levying a tax as provided in the following section; and if a majority of the votes cast upon such proposition be in favor thereof, then the board of school directors shall proceed to organize the work as authorized in this chapter, and levy a tax therefor at the time and in the manner provided in the following section. If at the time of filing said petition it shall be more than three months till the next regular school election, then the board of school directors shall submit said question at a special election within sixty days. [S., '13, § 2823-u1.]

4435. Levy—collection—limitation. Boards of school directors in such districts shall fix and certify to the board of supervisors on or before the first Monday of September the amount of money required for the next fiscal year for the support of the aforementioned activities, in the same manner as the amount of necessary taxes for other school purposes is certified, and said board of supervisors shall levy and collect a tax upon all the property subject to taxation in said school district at the same time and in the same manner as other taxes are levied and collected by law, which shall be equal to the amount of money so required for such purposes by the said board of school directors; provided that the tax so levied upon each dollar of the assessed valuation of all property, real and personal, in said district, subject to taxation, shall not in any one year exceed two mills for the purpose of the activ-

ities hereinbefore mentioned. The said tax shall not be used or appropriated directly or indirectly for any other purpose than provided in this chapter. [S., '13, § 2823-u2.]

4436. Duties of school treasurer. All moneys received by or raised in such city for the aforementioned purpose shall be paid over to the treasurer of the school district, to be disbursed by him on orders of such board of school directors in such district in the same manner as other funds of said district are disbursed by him, but the tax provided in the preceding section shall not be levied or collected nor shall the board have authority to certify the amount of taxes necessary for this purpose until after the question of the levy of such tax shall have been authorized by a majority vote at a regular or special election. [S., '13, § 2823-u3.]

4437. Annual levy. After the question of the levy of such special tax has been submitted to and approved by the voters, the authority shall remain, and such tax shall be levied and collected annually until such time as the voters of the school district of such city shall by majority vote order the discontinuance of the levy and collection of such tax. [S., '13, § 2823-u4.]

4438. Discontinuance of levy. The board of school directors in any district governed by the preceding sections of this chapter may, and on petition to that effect signed by legally qualified voters aggregating not less than twenty-five per cent of the number voting at the last preceding school election, shall, submit to the electors of such school district the question of discontinuing the levying of such tax as may have been previously authorized under the said provisions, and if a majority of the votes cast upon such proposition be in favor thereof, then the levying of such tax shall be discontinued and shall not be resumed unless again authorized under the provisions of section 4434. [S., '13, § 2823-u5.]

4439. Appropriation by city. The board of school directors in any district governed by the preceding sections of this chapter is also empowered to receive and expend for the purpose thereof any sums of money appropriated and turned over to them by the city council or commissioners of such city for such purposes; and the city council, or commissioners of such city, shall have authority to appropriate and turn over to the board of school directors of the school district containing or contained in such city any reasonable sums of money which the said council or commissioners may desire to appropriate out of the general funds of such city and turn over to the said board of school directors for the purposes herein set forth. [S., '13, § 2823-u6.]

CHAPTER 230

SCHOOL GARDENS OR FARMS

4440. Authorization.
 4441. State aid for agriculture.
 4442. State aid for nature study.

4440. Authorization. The school board in cities, including cities under special charters and commission form, having a population of twenty thousand or more, is hereby empowered to purchase or lease for educational purposes a tract of land outside of the boundaries of such city, for a school garden or school farm in like manner and under the same restrictions as in the case of school property in the said city and to erect suitable buildings thereon, and to furnish the same, and to appoint managers in a suitable manner; the said tract of land to be maintained for the purpose of providing a summer home for pupils of the city who may desire to continue their study all the year round, and for supplying to them an opportunity to perform productive work in such vocational lines as agronomy, olericulture, viticulture, apiculture, pomology, agriculture, and the auxiliary arts, carpentry, masonry, and any other wholesome and voluntary employment, and to diversify such work with open air exercises and recreations of both physical and intellectual character; also for furnishing the pupils of the elementary schools and of the high school opportunities for visitation and observational study at all seasons in connection with their school work; it being the intent and purpose of this statute to develop in the state the educational principle and work commonly comprised in the name "park life", as exemplified experimentally and discussed educationally and sociologically in this state.

Where such school garden or school farm is maintained, the said school board shall seek to correlate its functions with the regular work of the schools in the most practical and efficient manner. [S. S., '15, § 2823-u7.]

4441. State aid for agriculture. Whenever a school board, acting under and in accordance with the provisions of the preceding section, shall provide agricultural training, work, and recreation of a practical character upon suitable grounds easily accessible to the school children of that district for at least three consecutive years or not less than six or more than ten weeks' duration during each year, and with a bona fide enrollment of at least fifty pupils during each year of said period, and shall make an exhibit showing a successful experience in carrying out such enterprise or activities over a period of at least two years, the school district providing such training shall be paid annually, commencing with the third

4443. Use of school apparatus.
 4444. Itemized claims—warrant—payment.
 4445. Appropriation.

year, out of the state school fund, not otherwise appropriated, a sum equal to two dollars per capita per week for each pupil who pursues such wholesome and voluntary activities during at least two-thirds of the period during which such opportunity is provided. [38 G. A., ch. 354, § 1.]

4442. State aid for nature study. Whenever a school board, acting under and in accordance with the provisions of section 4440, shall provide the necessary grounds, equipment, and instruction for the training of teachers and young people in nature study and experimentation in forestry, gardening, fish culture, and the fostering of fruit life and animal life, correlating the same with regular school work of the district, the school district providing such training shall be paid annually out of the state school fund, not otherwise appropriated, an amount equal to one-half the sum annually appropriated by said school board and actually expended by it in carrying out the purpose contemplated by said section. [38 G. A., ch. 354, § 2.]

4443. Use of school apparatus. The school board of any district carrying out any of the provisions of said section may, at its option, in carrying out any such enterprise, use its apparatus, school furnishings, or other necessary equipment. [38 G. A., ch. 354, § 3.]

4444. Itemized claims—warrant—payment. The secretary of any school board acting under the provisions of said section shall, if such district is entitled to state funds under the provisions of this chapter, prepare a voucher for the amount due his school district from the state, which voucher shall be fully itemized, verified by the secretary of said school board, and have attached thereto the certificate of the superintendent of said school board certifying to what such school district has actually done during the preceding year in carrying out the purpose of the said section; and when such voucher so prepared is presented to the auditor of state, he is hereby authorized and directed to thereupon draw a state warrant, payable to said school district, for the amount called for in said voucher upon the school funds of the state; and the treasurer of state is hereby authorized and directed, when presented with such warrant properly indorsed, to pay the amount of such warrant to the school district named as payee therein out of said state school

fund not otherwise appropriated. [38 G. A., ch. 354, § 4.]

4445. Appropriation. There is hereby appropriated out of any money in the state school

fund, not otherwise appropriated, the sum of two thousand dollars for the purpose of carrying out the provisions of this chapter. [38 G. A., ch. 354, § 5.]

CHAPTER 231

TEXTBOOKS

DISTRICT UNIFORMITY

- 4446. Adoption—purchase and sale.
- 4447. Custodian—bond.
- 4448. Payment—additional tax.
- 4449. Purchase—exchange.
- 4450. Suit on bond.
- 4451. Bids—advertisement.
- 4452. Awarding contract.
- 4453. Change—election.
- 4454. Samples and lists.
- 4455. Bond.

COUNTY UNIFORMITY

- 4456. Petition—election.
- 4457. Election and canvass.

DISTRICT UNIFORMITY

4446. Adoption—purchase and sale. The board of directors of each and every school corporation is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, and said money so received shall be returned to the general fund. [C., '97, § 2824; 37 G. A., ch. 386, § 11.]

4447. Custodian—bond. The books and supplies so purchased shall be under the charge of the board, who may select one or more persons within the county to keep said books and supplies for sale, and, to insure the safety of the books and moneys, the board shall require of each person so appointed a bond in such sum as may seem to the board to be desirable. [C., '97, § 2824.]

4448. Payment—additional tax. All the books and other supplies purchased under the provisions of this chapter shall be paid for out of the general fund, and the board of directors shall annually certify to the board of supervisors the additional amount necessary to levy for the general fund of said district to pay for such books and supplies. Such additional amount shall not exceed in any one year the sum of one dollar and fifty cents for each pupil residing in the school corporation, and the amount so levied shall be paid out on warrants drawn for the payment of books and supplies only, but the district shall contract no debt for that purpose. [C., '97, § 2825; 37 G. A., ch. 386, § 10.]

- 4458. Selection of books.
- 4459. Use mandatory.
- 4460. Purchase and sale.
- 4461. Custody and accounting.
- 4462. Reports required.
- 4463. City schools.

FREE TEXTBOOKS

- 4464. Petition—election.
- 4465. Loaning books.
- 4466. General regulations.
- 4467. Discontinuance of loaning.
- 4468. Officers as agents.

4449. Purchase—exchange. In the purchasing of textbooks it shall be the duty of the board of directors or the county board of education to take into consideration the books then in use in the respective districts, and they may buy such additional number of said books as may from time to time become necessary to supply their schools, and they may arrange on equitable terms for exchange of books in use for new books adopted. [C., '97, § 2826.]

4450. Suit on bond. If at any time the publishers of such books as shall have been adopted by any board of directors or county board of education shall neglect or refuse to furnish such books when ordered by said board in accordance with the provisions of this chapter, at the very lowest price, either contract or wholesale, that such books are furnished any other district or state board, then said board of directors or county board of education may and it is hereby made their duty to bring suit upon the bond given them by the contracting publisher. [C., '97, § 2827.]

4451. Bids—advertisement. Before purchasing textbooks under the provisions of this chapter, it shall be the duty of the board of directors, or county board of education, to advertise, by publishing a notice once each week for three consecutive weeks in one or more newspapers published in the county; said notice shall state the time up to which all bids will be received, the classes and grades for which textbooks and other necessary supplies are to be bought, and the approximate quantity needed. [C., '97, § 2828; S., '13, § 2828.]

4452. Awarding contract. Said board shall award the contract for said textbooks and supplies to any responsible bidder or bidders offer-

ing suitable textbooks and supplies at the lowest prices, taking into consideration the quality of material used, illustrations, binding, and all other things that go to make up a desirable textbook; and may, to the end that they may be fully advised, consult with the county superintendent, or, in case of city independent districts, with the city superintendent or other competent person, with reference to the selection of textbooks. The board may reject any and all bids, or any part thereof, and readvertise therefor as above provided. [C., '97, § 2828; S., '13, § 2828.]

4453. Change—election. It shall be unlawful for any board of directors or county board of education, except as provided in the third preceding section, to displace or change any textbook that has been regularly adopted or re-adopted under the provisions of this chapter, before the expiration of five years from the date of such adoption or re-adoption, unless authorized to do so by a majority of the electors present and voting at their regular annual meeting in March, due notice of said proposition to change or displace said textbooks having been included in the notice for the said regular meeting. [C., '73, § 1728; C., '97, § 2829.]

4454. Samples and lists. Any person or firm desiring to furnish books or supplies under this chapter in any county shall, at or before the time of filing his bid hereunder, deposit in the office of the county superintendent samples of all textbooks included in his bid, accompanied with lists giving the lowest wholesale and contract prices for the same. Said samples and lists shall remain in the county superintendent's office, and shall be delivered by him to his successor in office, and shall be kept by him in such safe and convenient manner as to be open at all times to the inspection of such school officers, school patrons, and school teachers as may desire to examine the same and compare them with others, for the purpose of use in the public schools. [C., '97, § 2830.]

4455. Bond. The board of directors and county board of education mentioned shall require any person or persons with whom they contract for furnishing any books or supplies to enter into a good and sufficient bond, in such sum and with such conditions and sureties as may be required by such board of directors or county board of education, for the faithful performance of any such contract. Bonds of surety companies duly authorized under the laws of Iowa shall be accepted. [C., '97 § 2830.]

COUNTY UNIFORMITY

4456. Petition—election. When petitions shall have been signed by one-third the school directors in any county, other than those in cities and towns, and filed in the office of the county superintendent of such county at least thirty days before the annual school elections, asking for a uniform series of textbooks in the

county, then such county superintendent shall immediately notify the other members of the county board of education in writing, and within fifteen days after the filing of the petitions said board of education shall meet and provide for submitting to the electors at the next annual meeting the question of county uniformity of school textbooks. [C., '97, § 2831; S., '13, § 2831; 38 G. A., ch. 56, § 1.]

4457. Election and canvass. The boards of school officers, who are hereby made the judges of the school meetings, shall certify to the board of supervisors the full returns of the votes cast at said meetings the next day after the holding of said meetings, who shall, at their next regular meeting, proceed to canvass said votes and declare the result. [C., '97, § 2832; S., '13, § 2832.]

4458. Selection of books. Should a majority of the electors voting at such elections favor a uniform series of textbooks for use in said county, then the county board of education shall meet and select the school textbooks for the entire county, and contract for the same under such rules and regulations as the said board of education may adopt. [C., '97, § 2832; S., '13, § 2832.]

4459. Use mandatory. When a list of textbooks has been so selected they shall be used by all the public schools of said county, except as hereinafter provided, and the board of education may arrange for such depositories as it may deem best. [C., '97, § 2832; S., '13, § 2832.]

4460. Purchase and sale. The board of education may pay for said schoolbooks out of the county funds, and sell them to the school districts at the same price as provided for in section 4446, and the money received from said sales shall be returned to the county funds by said board of education monthly. [C., '97, § 2832; S., '13, § 2832.]

4461. Custody and accounting. Unless otherwise ordered by the board of education, the county superintendent shall have charge of such textbooks and of the distribution thereof among the depositories selected by the board; he shall render to the board at each meeting thereof itemized accounts of his doings, and shall be liable on his official bond therefor. [S., '13, § 2832.]

4462. Reports required. A list of textbooks so selected, with their contract prices, shall be reported to the state superintendent with the regular annual report of the county superintendent. [C., '97, § 2833.]

4463. City schools. The provisions of the last seven preceding sections shall not apply to schools located within cities or towns, nor shall the electors of said cities or towns vote upon the question of county uniformity; but nothing herein shall be so construed as to pre-

vent such schools in said cities and towns from adopting and buying the books adopted by the county board of education at the prices fixed by them, if by a vote of the electors they shall so decide. [C., '97, § 2835.]

FREE TEXTBOOKS

4464. Petition—election. Whenever a petition signed by ten per cent of the qualified voters, to be determined by the school board of any school corporation, shall be filed with the secretary thirty days or more before the annual meeting of the electors, asking that the question of providing free textbooks for the use of pupils in the public schools thereof be submitted to the voters at the next annual meeting, he shall cause notice of such proposition to be given in the call for such meeting. [C., '97, § 2836; 37 G. A., ch. 56, § 1.]

4465. Loaning books. If, at such meeting, a majority of the legal voters present and voting by ballot thereon shall authorize the board of directors of said school corporation to loan textbooks to the pupils free of charge, then the board shall procure such books as shall be needed, in the manner provided by law for the purchase of textbooks, and loan them to the pupils. [C., '97, § 2837.]

4466. General regulations. The board shall hold pupils responsible for any damage to, loss of, or failure to return any such books, and shall adopt such rules and regulations as may be reasonable and necessary for the keeping and preservation thereof. Any pupil shall be allowed to purchase any textbook used in the school at cost. No pupil already supplied with textbooks shall be supplied with others without charge until needed. [C., '97, § 2837.]

4467. Discontinuance of loaning. The electors may, at any election called as provided in section 4464, direct the board to discontinue the loaning of textbooks to pupils. [C., '97, § 2837.]

4468. Officers as agents. It shall be unlawful for any school director, teacher, or member of the county board of education to act as agent for any school textbooks or school supplies during such term of office or employment, and any school director, officer, teacher, or member of the county board of education who shall act as agent or dealer in school textbooks or school supplies, during the term of such office or employment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than ten dollars nor more than one hundred dollars, and pay the costs of prosecution. [C., '97, § 2834.]

CHAPTER 232

SCHOOL FUNDS

- 4469. Permanent fund.
- 4470. Lands and escheats.
- 4471. Temporary fund.
- 4472. Division and appraisalment.
- 4473. Notice—sale.
- 4474. Sale without appraisalment.
- 4475. Sale on credit—taxation—waste.
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- 4477. Cash or collateral security.
- 4478. Uniform interest date.
- 4479. School fund accounts—audit of losses.
- 4480. Bonds to cover losses.
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4469. Permanent fund. The permanent school fund, the interest of which only can be appropriated for school purposes, shall consist of:

1. Five per cent of the net proceeds of the public lands of the state, which shall be paid to the state treasurer and be apportioned by the state auditor among the several counties, taking into consideration the amount of the permanent school fund already in possession of and constantly loaned in said county.
2. The proceeds of the sale of the five hun-

dred thousand acres of land granted the state under the eighth section of an act of congress passed September 4, 1841, entitled: "An act to appropriate the proceeds of all sales of public lands, and to grant preemption rights".

3. The proceeds of all intestate estates escheated to the state.

4. The proceeds of the sales of the sixteenth section in each township, or lands selected in lieu thereof. [R., '60, §§ 1962, 1964; C., '73, §§ 1837, 1839; C., '97, § 2838.]

4470. Lands and escheats. The proceeds of all lands sold, and all sums due from escheats, shall be payable to the treasurer of the county in which the lands or escheated estates are situated or found. [R., '60, § 1965; C., '73, § 1840; C., '97, § 2838.]

4471. Temporary fund. The temporary school fund, which shall be received and appropriated annually in the same manner as the interest of the permanent fund, shall consist of:

1. All forfeitures which are authorized to be made for the benefit of the school fund.

2. The proceeds of all fines collected for violation of the penal laws, and for the non-performance of military duty.

3. The proceeds of the sale of lost goods and estrays.

These several funds shall be payable to the county treasurer of the several counties in which they arise, accounted for to the board of supervisors, and apportioned by it among the several school townships and independent districts of the county as provided by law. [R., '60, §§ 1963, 1966; C., '73, §§ 1838, 1841; C., '97, § 2839.]

4472. Division and appraisalment. The board of supervisors may, at such time as it may fix, and as preliminary to a sale, authorize the trustees of any township, where the sixteenth section or land selected in lieu thereof has not been sold, to lay out the same into such tracts as in their judgment will be for the best interests of the school fund, conforming, as far as the interests of said fund will permit, to the legal subdivisions of the United States surveys, and appraise each tract at what they believe to be its true value, and certify to said board the divisions and appraisalments made by them. Said division and appraisalment shall be approved or disapproved by said board at its first meeting after such report, and in case it disapproves the same it may at once order another division and appraisalment. If the board of supervisors approves, the county auditor shall make and keep a record of such division, appraisalment, and approval; but no school lands of any kind shall be sold for less than the appraised value per acre, except as hereinafter provided; nor shall any member of the board of supervisors, county auditor, township trustee, or any person who was engaged in the division and appraisalment of said land, be directly or indirectly interested in the purchase thereof; and any sale made, where such parties or any of them are so interested, shall be void. [R., '60, §§ 1970, 1971; C., '73, §§ 1845-1847; C., '97, § 2840.]

4473. Notice—sale. When the board of supervisors shall offer for sale the sixteenth section or lands selected in lieu thereof, or any portion of the same, or any part of the five hundred thousand acre grant, the county auditor shall give at least forty days' notice, by written or printed notices posted in five public places in the county, two of which shall be in

the township in which the land to be sold is situated, and also publish a notice of said sale once each week for four weeks preceding the same in a newspaper published in the county, describing the land to be sold and the time and place of such sale. At such time and place, or at such other time and place as the sale may be adjourned to, he shall offer to the highest bidder, subject to the provisions of this chapter, and sell, either for cash or one-third cash and the balance on a credit not exceeding ten years, with interest on the same at the rate of not less than six per cent per annum, to be paid at the office of the county treasurer of said county on the first day of January in each year, delinquent interest to bear the same rate as the principal. [R., '60, § 1971; C., '73, § 1846; C., '97, § 2841; S., '13, § 2841.]

4474. Sale without appraisalment. When the board of supervisors of any county has once offered for sale any school lands in compliance with the requirements of this chapter, and they remain unsold, and it is unable to obtain therefor the appraised value thereof, and in the opinion of said board it is for the best interests of the school fund that the same be sold for a less price, it may instruct the auditor to transmit to the secretary of state a certified copy of its proceedings in relation to the order of sale thereof and subsequent proceedings in relation thereto, including the action of the township trustees, and the price per acre at which the land had been appraised, which transcript the secretary of state shall submit to the executive council; and if it approves of a sale at a less sum it shall certify such approval to the auditor of the county from which said transcript came, which certificate shall be transcribed in the minute book of the board of supervisors, and thereupon said land may again be offered and sold to the highest bidder, after notice given as in case of sales in the first instance, without being again appraised. [C., '73, § 1849; C., '97, § 2842.]

4475. Sale on credit—taxation—waste. When lands are sold upon a partial credit, the contract therefor shall be at once reduced to writing, signed by the proper parties, recorded in the county where the land is situated, and immediately thereafter filed in the office of the county auditor. Any purchaser or his assigns may at any time pay the full amount for lands with accrued interest, and receive from the county auditor a certificate of purchase, which shall be at once transmitted to the state land office and will entitle the holder to a patent for the lands, to be issued by the governor. All school lands sold in pursuance of law shall be subject to taxation from and after the execution and delivery of a contract of purchase. All sales made, where the full price is not paid, shall be subject to the law relative to the prevention or punishment of waste, and in all such cases the township trustees in each township are charged with the duty of preventing the commission of waste upon any

school lands lying in their township, and, if attempted, they shall apply by petition for an injunction to stay the same, and if granted the writ shall issue without bond, and the court issuing it may make such order in the premises as shall be equitable and best calculated to prevent threatened injury, and may adjudge damages for any injury done, the costs to abide the event of the action, and the damages adjudged shall be paid to the county treasurer and become a part of the permanent school fund. [R., '60, §§ 1972, 1973, 1976-1978; C., '73, §§ 1851, 1852, 1856-1858; C., '97, § 2843.]

4476. Sale of lands bid in. When lands have been sold and bid in by the state in behalf of the school fund upon a judgment in favor of such fund, the land may be sold in like manner as other school lands, and when lands have been conveyed to the counties in which they are situated for the use of the school fund, instead of to the state, such conveyance shall be valid and binding, and upon proper certificates of sales patents shall issue in like manner as in cases where the conveyances were properly made to the state. [C., '73, § 1850; C., '97, § 2844.]

4477. Cash or collateral security. When, in the judgment of the board of supervisors, any school lands are of such a character that a sale upon partial credit would be unsafe or incompatible with the interest of the school fund, and especially in the case of timbered lands, the board of supervisors may in its discretion exact the whole of the purchase money in advance; or if it sells such land upon a partial credit, as hereinbefore prescribed, it shall require good collateral security for the payment of the part upon which credit is given. [R., '60, § 1974; C., '73, § 1853; C., '97, § 2845.]

4478. Uniform interest date. In all cases where money is due to the school fund, either for loans or deferred payments of the purchase price of land sold, the interest shall be made payable on the first day of January each year, and if the debtor fails to pay the interest within six months thereafter, the entire amount of both principal and interest shall become due, and the county auditor shall make a report thereof to the county attorney, who shall immediately commence action for the collection of the amount reported to him as due, and this section is hereby declared to be a part of any contract made by virtue of this chapter, whether expressed therein or not. [R., '60, §§ 1975, 1979; C., '73, §§ 1854, 1855; C., '97, § 2846; 40 G. A., ch. 245, § 1.]

4479. School fund accounts—audit of losses. The state auditor shall keep the school fund accounts in books provided for that purpose, separate and distinct from the revenue books; he shall audit all losses to the permanent school or university fund which shall have been occasioned by the defalcation, mismanagement, or fraud of the agents or officers

controlling and managing the same, and for this purpose shall prescribe such regulations for those officers as may be necessary to ascertain such losses. [R., '60, § 1969; C., '73, § 1842; C., '97, § 2847.]

4480. Bonds to cover losses. When any sum not less than one thousand dollars shall be so audited and so become a debt of the state to the fund, as provided by the constitution, the auditor of state shall issue the bond or bonds of the state in favor of the fund, bearing six per cent interest, payable semiannually on the first day of January and July after issuance, and the amount to pay the interest as it becomes due is appropriated out of any funds in the state treasury. [C., '73, § 1843; C., '97, § 2847.]

4481. Notice of apportionment—deficiency. Immediately after making the apportionment of the interest of the permanent school fund, the auditor of state shall notify the auditor of each county of the sum to which his county is entitled, and, if a county has less thereof than it is entitled to under the apportionment, he shall authorize the treasurer of any such county to transfer enough of the state revenue to said fund to cover such deficiency, which notice shall be filed by the treasurer, and be a sufficient voucher for the amount so transferred. [R., '60, § 1969; C., '73, § 1844; C., '97, § 2847.]

4482. Apportionment—excess. If a county has an excess of such interest above the amount apportioned to it, the notice shall direct the treasurer to transfer the excess to the state revenue and charge it to the interest fund, which notice shall be by him filed, and be a sufficient voucher therefor, and such excess shall be paid into the state treasury. [R., '60, § 1969; C., '73, § 1844; C., '97, § 2847.]

4483. Management. The board of supervisors shall hold and manage the securities given to the school fund in its county, and all judgments and lands belonging to said fund. It may have any part of the school lands surveyed when necessary, and employ the county surveyor therefor, who shall be paid out of the county treasury upon proof made of the request and performance of the service. [R., '60, § 1980; C., '73, §§ 1859, 1860; C., '97, § 2848.]

4484. Actions. All actions for and in behalf of said fund may be brought in the name of the county for the use of the school fund, by the county attorney or such other attorney as the board may select. [C., '73, § 1860; C., '97, § 2848.]

4485. Liability of county. Each county shall be liable for all losses upon loans of the school fund, principal or interest, made in such county, unless the loss was not occasioned by reason of any default of its officers or by taking insufficient or imperfect securities, or from a failure to bid at an execution sale the full

amount of the judgment and costs. [C., '73, § 1860; C., '97, § 2848.]

4486. Exemption of county. All claims for exemption from liability on account of losses shall be examined into and adjusted by the state auditor, upon proof submitted to him in writing in behalf of the county within three months after the county auditor shall be advised by the state auditor of his readiness to receive the proof. In the absence of evidence, or if that submitted is insufficient, the loss may be charged against the county and be conclusive, but if found sufficient, the state auditor shall present the facts in his report to the next general assembly. [C., '73, § 1860; C., '97, § 2848.]

4487. Loans—officers may not borrow. The permanent school fund shall be loaned out by the county auditor, as it comes into the hands of the county treasurer, in sums of five thousand dollars or less to one person or company, in case it is found impracticable to keep the whole amount of funds loaned in sums of five hundred dollars or less to one person or company. In the event it can be kept loaned out in sums of five hundred dollars or less to one person or company, then no loan shall exceed five hundred dollars, nor shall a loan of said fund be made to or be carried by the county auditor, the treasurer, or a member of the board of supervisors. [R., '60, § 1981; C., '73, § 1861; C., '97, § 2849; S., '13, § 2849.]

4488. Terms — appraisalment — fee. Each loan shall be made for at least one and not more than five years, evidenced by promissory notes bearing not less than five per cent per annum, payable annually, and delinquent interest to draw the same rate, to be secured by a mortgage on unincumbered real estate situated in the county in which the loan is made, and appraised, as hereinafter provided, for at least double the sum borrowed; the appraisalment to be made by three persons under oath, selected by the county auditor, who shall not in making the valuation take into consideration the buildings upon the lands; for such service each shall be allowed fifty cents, to be paid by the borrower, who shall also pay for recording the mortgage. [R., '60, §§ 1981-1983; C., '73, §§ 1861-1863; C., '97, § 2849; S., '13, § 2849.]

4489. Application for loan. All applications to borrow from the permanent school fund shall be made to the auditor of the county in which the land is situated which it is proposed to mortgage as security, who shall cause the proper appraisalment to be made, and, if satisfactory, shall examine any abstract of title which the proposed borrower may submit, or he may cause an abstract to be prepared at such proposed borrower's expense. If the title is found to be perfect, and the lands unincumbered, he shall certify this fact and submit the application and all the papers connected therewith to the board of supervisors at its next meeting, regular or called, at which meeting the loan shall be approved or disapproved.

[R., '60, § 1984; C., '73, § 1864; C., '97, § 2850; S. S., '15, § 2850.]

4490. Duty of auditor. If the application is accepted, the auditor shall complete the contract by taking a note payable to the county, and a mortgage upon the lands securing the same, and certify the same to the treasurer, who shall pay over to the borrower the amount named in the note, less a fee of two dollars to be paid to the auditor for his services. The board may reject the application for any good cause. [R., '60, § 1984; C., '73, §§ 1864, 1875; C., '97, § 2850; S. S., '15, § 2850.]

4491. Redemption of prior lien—assignments. If it shall happen that a loan is made upon real estate which is in fact incumbered other than for taxes, the board of supervisors may, when necessary for the safety of the loan, appropriate out of any school fund on hand, if such incumbrance does not exceed one-half of the real value of the lands, so much as may be needed to take up and purchase the same, and may also at any meeting, by resolution, assign without recourse, upon payment of the amount due, any school fund note and mortgage to one holding a subsequent lien upon the mortgaged real estate. [C., '73, §§ 1868, 1869; C., '97, § 2850; S. S., '15, § 2850.]

4492. Loans reported—examination. Each loan made, when fully completed, shall be by the auditor reported to the board of supervisors, and a minute of such report shall be entered upon its records, and from time to time, and at least once a year, all loans, with the security given, shall be carefully examined and report made to the board, which examination shall be conducted by a member thereof, or some competent person selected by it. [R., '60, § 1985; C., '73, §§ 1866, 1870; C., '97, § 2851.]

4493. Additional security. When a report shows that the security in a given case has for any cause depreciated so that it is no longer sufficient, or it appears that there was a prior incumbrance thereon which materially affects the value of the security, the board shall order the debtor to furnish additional security, and fix a reasonable time within which the same shall be given, and if the party so ordered fails to comply therewith for thirty days after service upon him of a copy of the order, the entire debt shall become due, and an action may be brought to enforce the collection thereof, and these provisions shall enter into and form a part of all contracts of loans, whether incorporated therein in words or not. [R., '60, § 1985; C., '73, § 1866; C., '97, § 2851.]

4494. Renewal. When a loan has been made and the borrower desires to renew the same for one or more years, it may be done in the same manner as the loan was made in the first instance, but no new abstract, except a continuation of the same down to the time, nor examination of title prior to the original loan, nor new mortgage, need be given, unless the mortgage is to be given upon other lands. The time of

payment, without further security, may be extended in writing, to be recorded as the original security was, and before maturity of the claim, when the board of supervisors for cause shall so order; but such extension of time shall not operate to release any security held. [R., '60, § 1993; C., '73, §§ 1871, 1879; C., '97, § 2852.]

4495. Statute of limitation. Lapse of time shall in no case be a bar to any action to recover any part of the school fund, nor shall it prevent the introduction of evidence in such an action, any provision in this code to the contrary notwithstanding. [C., '73, §§ 1880, 2542; C., '97, § 2852.]

4496. Payments. All payments to the school fund upon contracts, or loans of any other nature, shall be made to the treasurer of the county upon a certificate from the auditor showing the amount due. [R., '60, § 1986; C., '73, § 1867; C., '97, § 2853.]

4497. Release of mortgage. The auditor shall, when the debt is paid, release any mortgage or issue a certificate of purchase, as the case may be, and report the same to the board of supervisors at its next meeting, which report shall be carried into the records of the board. [R., '60, § 1986; C., '73, § 1867; C., '97, § 2853.]

4498. School fund account—settlement. The auditor shall also keep in his office, in books to be provided for that purpose, an account to be known as the school fund account, in which a memorandum of all notes, mortgages, bonds, money, and assets of every kind and description which may come into his hands and those of the treasurer shall be entered, and separate accounts of principal and interest be kept; and the county treasurer shall keep a like account and record of all school funds coming into his hands. Settlements of such account shall be made with the board of supervisors at its January and June sessions, which settlements shall be recorded with the proceedings of the board. [R., '60, §§ 1990, 1991; C., '73, §§ 1876, 1877; C., '97, § 2853.]

4499. Notice of default. When outstanding contracts for the sale of school lands or notes for money of the school fund loaned, or interest thereon, are due, the auditor shall by mail at once notify the debtor to make payment thereof within three months. [C., '73, §§ 1872, 1873; C., '97, § 2854.]

4500. Suit—attorney fee. If such debtor shall neglect to comply with such notice, the auditor shall report the same to the county attorney, who shall bring an action to recover the same, and an injunction may issue for cause, without bond when so prayed, and there shall be allowed in the judgment, entered and taxed as a part of the costs in the case, a reasonable sum as compensation to plaintiff's attorney, not exceeding the amount as provided by law for attorneys' fees. [C., '73, § 1873; C., '97, § 2854.]

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4501. Bid at execution sale. Upon a sale of lands under an execution founded upon a school fund claim or right, the auditor shall bid such sum as the interests of the fund require, and, if struck off to the state, it shall be thereafter treated in all respects the same as other lands belonging to said fund. [C., '73, § 1874; C., '97, § 2854.]

4502. Sheriff's deed to state. When lands have been bid in by the county for the state under foreclosure of school fund mortgages and the time for redemption has expired, a sheriff's deed shall be issued to the state for the use and benefit of the permanent school fund. The county auditor shall thereupon notify the auditor of state, who shall give the county credit for the amount of principal in the original notes remaining unpaid. [C., '73, § 1881; C., '97, § 2855; S., '13, § 2855; 40 G. A., ch. 245, § 2.]

4503. Resale by state. All lands acquired by the state under foreclosure proceedings shall be resold within two years from date of foreclosure. Such lands shall be appraised, advertised, and sold in the manner provided for the appraisement, advertisement, and sale of the sixteenth section or lands selected in lieu thereof. [S., '13, § 2855; 40 G. A., ch. 245, § 2.]

4504. Proceeds on resale. When a resale is made, the county auditor shall notify the auditor of state, who shall thereupon charge the county with the full amount of the resale, except that when the lands are sold for more than the unpaid portion of the principal, the excess shall be applied to reimburse the county for the costs of foreclosure and the interest paid by the county to the state by reason of default of payment of same by the makers of the notes, previous to the time when the right of redemption has expired, not to exceed three years. [C., '73, §§ 1881, 1882; C., '97, § 2855; S., '13, § 2855; 40 G. A., ch. 245, § 3.]

4505. Excess—loss borne by county. Any excess over the amount of the unpaid portion of the principal, costs of foreclosure, and interest on the principal as above provided, shall inure to the state and be credited to the permanent school fund account. If the lands shall be sold for a less amount than the unpaid portion of the principal, the loss shall be sustained by the county, and the board of supervisors shall at once order the amount of such loss transferred from the general fund of the county to the permanent school fund account. [C., '73, § 1881; C., '97, § 2855; S., '13, § 2855; 40 G. A., ch. 245, § 4.]

4506. Report as to sales—interest. County auditors shall, on or before the first day of January of each year, report to the auditor of state the amount of all sales and resales made during the year previous, of the sixteenth section, five-hundred-thousand-acre grant, escheat estates, and lands taken under foreclosure of school fund mortgages, and the auditor of state shall charge the same to the counties with

interest from the date of such sale or resale to January first, at the rate of four and one-half per cent per annum. [C., '73, § 1881; C., '97, § 2855; S., '13, § 2855; 40 G. A., ch. 245, § 5.]

4507. Interest charged to counties. The auditor of state shall also, on the first day of January, charge to each county having permanent school funds under its control, interest thereon at the rate of four and one-half per cent per annum for the preceding year, or such part thereof as such funds shall have been in the control of the county, which shall be taken as the whole amount of interest due from such county. All interest collected above the four and one-half per cent charged by the state shall be transferred to the general county fund. [C., '73, § 1882; C., '97, § 2855; S., '13, § 2855; 40 G. A., ch. 245, § 6.]

4508. Uncollected interest. If any county fails or refuses to collect the amount of interest due the state, the deficiency shall be paid to the state from the general county fund. Any county delinquent in the payment of interest due the state shall be charged one per cent per month on the amount delinquent until paid. [C., '73, § 1882; C., '97, § 2855; S., '13, § 2855; 40 G. A., ch. 245, § 7.]

4509. Report as to rents. County auditors shall, upon the first day of January of each year, report to the auditor of state the amount of rents collected during the preceding year

on unsold school lands and lands taken under foreclosure of school fund mortgages then in the hands of the county treasurer, and the auditor of state shall include the amount so reported in his semiannual apportionment of interest. [C., '73, § 1884; C., '97, § 2855; S., '13, § 2855; 40 G. A., ch. 245, § 8.]

4510. Transfer of unloaned funds. When there are funds belonging to the permanent school fund in any county, amounting to one thousand dollars, that can not be loaned, the county auditor may certify the fact to the auditor of state, who shall order a transfer thereof to some other county or counties, where in his opinion it can be loaned. Upon such transfer being made, he shall give the county making the transfer credit for the amount, and shall charge the county or counties to which the transfer is made with the amount transferred, and shall afterwards charge interest on the actual amount in possession of each county. [C., '73, § 1883; C., '97, § 2856.]

4511. Penalty against county auditor. Any county auditor failing or neglecting to perform any of the duties which are required of him by the provisions of this chapter, shall be liable to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered in an action brought in the district court by the board of supervisors, the judgment to be entered against the party and his bondsmen, and the proceeds to go to the school fund. [R., '60, § 1992; C., '73, § 1878; C., '97, § 2857.]

CHAPTER 238

STATE LIBRARY AND HISTORICAL DEPARTMENT

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4512. State library. The state library shall consist of a law section, an economics and sociology section, a medical section, and a general section. [40 Ex. G. A., H. F. 114, § 1.]

4513. Historical, memorial, and art department. The historical, memorial, and art department shall consist of the historical and art collections, materials gathered for historical research, the museum, and the public archives. [40 Ex. G. A., H. F. 114, § 2.]

4514. Board of trustees. The state library and the historical, memorial, and art department shall be under the control of a board of trustees consisting of the governor, who shall be president of the board, the judges of the

supreme court, the secretary of state, and the superintendent of public instruction. [C., '51, §§ 445, 447, 452; R., '60, §§ 690, 692, 703; C., '73, §§ 1885, 1886, 1890; C., '97, § 2858; S., '13, § 2881-a; 38 G. A., ch. 367, § 1; 40 Ex. G. A., H. F. 114, § 3.]

4515. Powers of board. The board may make and enforce rules not in conflict with law for keeping the records and for the management and care of the property of the state library and the historical, memorial, and art department. It shall designate some officer, assistant, or employee to act as its secretary. [C., '51, § 452; R., '60, §§ 703, 707; C., '73, §§ 1886, 1890; C., '97, § 2858; S., '13, § 2881-a; 40 Ex. G. A., H. F. 114, § 4.]

4516. Historical building. The board shall have control of the historical building and may assign space therein to be occupied by the historical, memorial, and art department and each of the several sections of the state library, except the law and economics and sociology sections. [S., '13, § 2881-d; 40 Ex. G. A., H. F. 114, § 5; 40 Ex. G. A., H. F. 335, § 1.]

4517. Librarian and curator. The board shall appoint a state librarian and a curator, whose regular terms of office shall be for six years, and may remove either of them by a two-thirds vote, and fill all vacancies by a majority vote of the board. [C., '51, § 445; R., '60, § 690; C., '73, § 1890; C., '97, §§ 2858, 2860, 2875; S., '13, § 2881-b; 40 Ex. G. A., H. F. 114, § 6.]

4518. Duties of state librarian. The state librarian shall:

1. *Charge of library.* Have general charge of the state library, which shall always be available for free use by the public under proper rules.

2. *When library open.* Give his personal attention to the library, and keep the library open every day except Sundays and legal holidays, during such hours as the board may direct.

3. *Catalogue—publication.* Label and catalogue the books of said library, and prepare and publish such catalogues as the board may direct.

4. *Law librarian.* Appoint an expert law librarian who shall have charge of the law library, including the legislative reference bureau thereof.

5. *Medical librarian.* Appoint an expert librarian trained in medicine and surgery and in the terms in which medical and surgical literature is most commonly written and published.

6. *Economics and sociology.* Appoint an expert trained in economics and sociology who shall have charge of the section on economics and sociology.

7. *Report to governor.* Report to the governor biennially, giving the history of said library for the preceding two years.

8. *Report to board.* Report to the board semiannually, or oftener if required, all matters pertaining to the condition of the library.

9. *Other duties.* Perform such other duties as may be imposed upon him by law or prescribed by the rules of the board. [C., '51, §§ 449, 453; R., '60, §§ 689, 693, 699, 700, 704; C., '73, §§ 1889, 1891, 1892, 1893, 1894, 1897; C., '97, §§ 2861, 2862, 2863, 2866; S., '13, § 2881-b; 38 G. A., ch. 367, §§ 1, 3, 4; 39 G. A., ch. 209, § 59; 40 Ex. G. A., H. F. 114, § 7.]

NOTE: For time of making biennial report, see § 246.

4519. Medical section—discrimination. The medical section shall be separately catalogued and shelved in suitable rooms in connection with the general section. No preference shall be given to any school of medicine, but all shall be treated alike; and books, periodicals,

and pamphlets shall be secured for any and every legally recognized school without discrimination. [38 G. A., ch. 367, §§ 1, 4; 40 Ex. G. A., H. F. 114, § 8.]

4520. Law section. The law section shall be maintained in the capitol or elsewhere in rooms convenient to the supreme court. [40 Ex. G. A., H. F. 114, § 9.]

4521. Taking out books. Members of the general assembly and of congress, judges of the supreme, federal, district, superior, and municipal courts, state officers, and attorneys in attendance upon the supreme court, shall be permitted, under proper restrictions, penalties, and forfeitures, and upon executing a receipt therefor, to take from the state library any books to be used in connection with their official business at the seat of government, save those which the trustees may determine ought not to be removed. [C., '51, § 451; R., '60, §§ 695, 696; C., '73, §§ 1887, 1888; C., '97, § 2859; 40 Ex. G. A., H. F. 114, § 11.]

4522. Loaning of books. The state librarian with the approval of the board may loan from the general section to the Iowa library commission for reloaning to the libraries of the state, such books and pamphlets as in his judgment may be so loaned without impairing the usefulness of the general section. [40 Ex. G. A., H. F. 114, § 12.]

4523. Liability for lost books. Any person injuring, defacing, destroying, or losing a book shall pay to the librarian twice the value thereof; if it be one of a series, he shall be liable to pay the value of such series, and the librarian shall collect the same by suit if necessary, unless, within a reasonable time to be fixed by him, such person shall replace the book so injured or lost. [R., '60, § 702; C., '73, § 1896; C., '97, § 2865; 40 Ex. G. A., H. F. 114, § 13.]

4524. Fines. All fines, penalties, and forfeitures imposed by the rules of the board for any violation of the same may be recovered in an action in the name of the state and applied to the use of the library, under the direction of the board. [C., '73, § 1895; C., '97, § 2864; 40 Ex. G. A., H. F. 114, § 14.]

4525. Duties of curator. The curator shall:

1. *Custody of historical building.* Under the direction of the board, be custodian of the historical building and collections therein, and shall keep the rooms assigned to the department and the collections open for inspection by the public during such hours of each day as the board may direct, but the curator shall cause the same to be kept open on Sunday afternoons during the sessions of the general assembly.

2. *Custody, display, and publication of material.* Under the direction of the board, collect, preserve, organize, arrange, and classify works of art, books, maps, charts, public documents, manuscripts, newspapers, and other ob-

jects and materials illustrative of the natural and political history of the territory and state and of the central west, and of the traditions and history of the Indian tribes and prior occupants of the region, and publish such matter and display such material as may be of value and interest to the public.

3. *Collection of memorials and mementoes.* With the approval of the board, collect memorials and mementoes of the pioneers of Iowa and the soldiers of all our wars, including portraits, specimens of arms, clothing, army letters, commissions of officers, and other military papers and documents.

4. *Ethnology and archaeology.* Receive and arrange in cases, objects illustrative of the ethnology and prehistoric archaeology of this and surrounding states.

5. *Inventory of property.* As soon as practicable, prepare a classified index and inventory of all the property belonging to the department or in its custody, and determine through the aid of experts the money value thereof, so far as practicable, and when done a summary of the same shall be included in his biennial report, and thereafter such reports shall set forth all additions thereto with their money value, if any, and give a list of items lost or dropped from the collections. His report shall also contain a separate statement of materials obtained by gift and by purchase during each biennium.

6. *Subscription for newspapers.* Subscribe for and preserve files of at least two newspapers of each county in the state containing the official publications, and cause the same to be bound at the end of each four-year period.

7. *Custodian of works of art.* Except as otherwise specifically provided, be custodian of and care for and preserve the monuments, memorials, and works of art on the grounds and in the buildings at the seat of government, and report from time to time to the proper officer or board the condition and his recommendations in respect thereto.

8. *Report to governor.* Report to the governor biennially all collections made and the progress and condition of the department under his charge, and such other matters as he may deem of value in maintaining and building up the department.

9. *Report to board.* Report to the board semiannually or oftener as required, all matters pertaining to the condition of the department.

10. *Other duties.* Perform such other duties as may be imposed upon him by law or prescribed by the rules of the board. [C., '97, §§ 2875, 2876, 2877, 2878; S., '13, § 2881-b; 40 Ex. G. A., H. F. 114, § 15.]

NOTE: For time of making biennial report, see § 246.

4526. *Gifts.* The curator is hereby authorized and empowered, as trustee for the state, to accept gifts of property, real, personal, or mixed, for the benefit or endowment of the historical, memorial, and art department, or for the commemoration of the lives of worthy citizens, or for the purpose of perpetuating

records of historic events, or for scientific purposes. Any gift accepted shall be immediately reported to the board of trustees; but any gift imposing unusual monetary obligations on the department shall be approved by the board before acceptance. [37 G. A., ch. 333, § 1; 40 Ex. G. A., H. F. 114, § 16.]

4527. *Investments.* The curator and the board of trustees shall have authority and power to invest, in accordance with the provisions of the trust, any such gifts or endowments, and establish and enforce rules for the purpose of governing and maintaining such endowments or memorials as may be created or established under and pursuant to the preceding section. [37 G. A., ch. 333, § 2; 40 Ex. G. A., H. F. 114, § 17.]

4528. *Archives.* The curator shall be the trustee and custodian of the archives of Iowa and of such county and municipal archives as are voluntarily deposited. The term "archives" shall mean those manuscripts and materials originating under or passing through the hands of public officials in the regular course and performance of their duties, over ten years old, and not in current use; but the executive council shall have power and authority to order the transfer of such archives or any part thereof at any time prior to the expiration of the ten years, or cause them to be retained in the respective offices beyond such limit if in its judgment the public interests or convenience shall require it. [S. S., '15, § 2881-p; 40 Ex. G. A., H. F. 114, § 18.]

4529. *Records delivered.* The several state, executive, and administrative departments, officers or offices, councils, boards, bureaus, and commissioners, are hereby authorized and directed to transfer and deliver to the historical, memorial, and art department such of the public archives as are designated in the preceding section, except such as in the judgment of the executive council should be retained longer in the respective offices, and the curator is authorized to receive the same. [S. S., '15, §§ 2881-q, 2881-r; 40 Ex. G. A., H. F. 114, § 19.]

4530. *Removal of original.* After any public archives have been received into the division of public archives by the curator, they shall not be removed from his custody without his consent, except in obedience to a subpoena of a court of record or a written order of the officer from whose office they were received. [S. S., '15, § 2881-t; 40 Ex. G. A., H. F. 114, § 20.]

4531. *Certified copies—fees.* Upon request of any person, the curator shall make a certified copy of any document contained in said archives, and when such copy is properly authenticated by him it shall have the same legal effect as though certified by the officer from whose office it was obtained or by the secretary of state. Said curator shall charge and collect

for such copies the fees allowed by law to the official in whose office the document originates for such certified copies, and all such fees shall be turned into the state treasury. [S. S., '15, § 2881-t; 40 Ex. G. A., H. F. 114, § 21.]

4532. Bonds. Bonds of the state librarian, the law librarian, and the curator shall be approved by the board. [C., '51, § 446; R., '60, § 691; C., '73, § 1890; C., '97, § 2860; S., '13, § 2881-h; 40 Ex. G. A., H. F. 114, § 22.]

NOTE: Also approvable by governor, see § 1073.

CHAPTER 234

LIBRARY COMMISSION AND TRAVELING LIBRARIES

4533. State commission—term—chairman.
4534. Duties.
4535. Traveling libraries.
4536. Secretary—assistants—salaries.
4537. Duties.

4538. Expenses.
4539. Biennial report.
4540. Reports from libraries.
4541. Compensation and expenses.

4533. State commission—term—chairman. The governor shall appoint four persons, at least two of whom shall be women, who, with the state librarian and superintendent of public instruction and president of the state university, shall constitute a state library commission. The first members appointed by the governor shall be appointed for terms of two, three, four, and five years from the first day of July, 1900, and all subsequent appointments shall be for terms of five years, except appointments to fill vacancies. The commission shall annually elect a chairman. [S., '13, § 2888-a.]

of the commission, and under such conditions as it shall determine. It may also employ such other assistants as shall be requisite in the performance of the work of the commission as set forth in this chapter, and the number of assistants and their salaries and the salary of the secretary shall be fixed by the committee on retrenchment and reform. [S., '13, § 2888-e.]

4534. Duties. The commission shall give advice and counsel to all free and other public libraries, and to all communities which may propose to establish them, as to the best means of establishing and maintaining such libraries, the selection of books, cataloguing, and other details of library management. It may print such lists and circulars of information as it shall deem necessary and as approved by the executive council. It may also conduct a summer school of library instruction, a clearing house for periodicals for free gift to local libraries, and perform such other public service as may seem to it for the best interests of the state. [S., '13, § 2888-c.]

4537. Duties. It shall be the duty of said secretary to keep a record of the proceedings of the commission, to keep accurate accounts of its financial transactions, and to act under the direction of the commission in supervising the work of the traveling libraries, in organizing new libraries and improving those already established, and in general to perform such other duties as may be assigned him by the commission. [S., '13, § 2888-e.]

4538. Expenses. In addition to their salaries the necessary traveling expenses shall be allowed the secretary and assistants while absent from the office in the service of the commission, the same to be verified and certified and paid in the same manner as other expenses incurred by the commission. [S., '13, § 2888-e.]

4535. Traveling libraries. The state library board shall transfer to the Iowa library commission all associate and traveling libraries belonging to the state, and the said library commission is authorized to accept the same; and it shall be the duty of said commission to operate the said associate and traveling libraries, also to properly equip and circulate the books thus acquired or subsequently purchased to be loaned within the state to libraries, schools, colleges, universities, library associations, farmers' institutes, granges, study clubs, charitable and penal institutions, and individuals, free of cost except for transportation, under such conditions and rules as shall protect the interests of the state and best increase the efficiency of the service it is expected to render the public. [S., '13, § 2888-d.]

4539. Biennial report. The secretary of the commission shall, biennially, make a full report to the governor on library conditions and progress in Iowa, with sketches of the free public libraries and illustrations of such library buildings as said commission may deem expedient, these reports to be distributed under the direction of the commission; and such other printing and binding provided by this chapter shall be done by the state when allowed by the executive council. [S., '13, § 2888-f.]

NOTE: For time of making report, see § 246.

4540. Reports from libraries. The commission shall each year obtain from all free public libraries reports showing condition, growth, development, and manner of conducting said libraries, and shall obtain reports from other libraries in the state at their discretion, and shall furnish annually to the superintendent of printing such information for publication in

4536. Secretary—assistants—salaries. Said commission shall employ a secretary not of its own number, who shall serve at the will

the Iowa official register as may be deemed of public interest. [S., '13, § 2888-g.]

4541. Compensation and expenses. No member of the commission shall ever receive any compensation for services as a member, but the traveling expenses of members in attending meetings of the commission, or in visiting

or establishing libraries, and other incidental and necessary expenses connected with the work of the commission, shall be paid, including the necessary expense in the maintenance and extension of the traveling library system. [S. S., '15, § 2888-h; 39 G. A., ch. 235; 40 Ex. G. A., ch. 4, § 103.]

CHAPTER 235

STATE HISTORICAL SOCIETY

- 4542. Objects and purposes.
- 4543. Board of curators—meetings.
- 4544. Members.
- 4545. Officers—compensation.

- 4546. President.
- 4547. Executive board.
- 4548. Reports and documents furnished.

4542. Objects and purposes. The state historical society shall be maintained in connection with and under the auspices of the state university, for carrying out the work of collecting and preserving materials relating to the history of Iowa and illustrative of the progress and development of the state; for maintaining a library and collections, and conducting historical studies and researches; for issuing publications, and for providing public lectures of historical character, and otherwise disseminating a knowledge of the history of Iowa among the people of the state. [R., '60, § 1959; C., '73, § 1900; C., '97, § 2882; S., '13, § 2882-a; 40 Ex. G. A., ch. 4, § 120.]

the society outside of their own number, who shall hold office for one year, unless sooner removed by a majority vote of the board. Said officers shall hold the same position in the society as upon the board of curators, and their respective duties shall be determined by said board. No officer of the society or board shall receive any compensation from the state appropriation thereto. [C., '73, § 1904; C., '97, § 2885.]

4543. Board of curators—meetings. The board of curators of the society shall consist of eighteen persons, nine of whom shall be appointed by the governor, and nine elected by members of the society. Their term of office shall be two years, and they shall receive no compensation. The governor shall make his appointments on or before the last Wednesday in June in each even-numbered year, and the terms of the persons appointed shall commence on that day; and, at the annual meeting of the society in each odd-numbered year, the others shall be elected by ballot from the members of the society, for the term next ensuing, which annual meeting shall be held at Iowa City on the Monday preceding the last Wednesday in June. [C., '73, §§ 1901, 1903; C., '97, § 2883.]

4546. President. It shall also appoint from its members a president, who shall be the executive head of the board, and hold office for one year and until his successor is elected. [C., '73, § 1905; C., '97, § 2886.]

4544. Members. Members may be admitted to the society at any time under such rules as may be adopted by the board of curators. [C., '73, § 1902; C., '97, § 2884.]

4547. Executive board. The curators, a majority of whom shall reside in the vicinity of the university, and five of whom shall constitute a quorum, shall be the executive board of the society, and have full power to manage its affairs. It shall keep a full and complete account of all of its doings, and of the receipt and expenditure of all funds collected or granted for the purposes of the society, and shall biennially report the same to the governor on or before the fifteenth day of September. [R., '60, § 1960; C., '73, § 1906; C., '97, § 2887.]

NOTE: For time of filing report, see § 246.

4545. Officers—compensation. The board shall appoint annually, or oftener if need be, a corresponding secretary, recording secretary, treasurer, and librarian from the members of

4548. Reports and documents furnished. Five copies of the reports of the supreme court and twenty copies of all other books and documents published by the state or upon its order shall be delivered to the society for the purpose of effecting exchanges with similar societies in other states and countries, and for preservation in its library, or other purposes of the society. [R., '60, § 1961; C., '73, § 1907; C., '97, § 2888; 40 Ex. G. A., ch. 3, § 24.]

CHAPTER 236

GEOLOGICAL SURVEY

4549. Board.
 4550. State geologist and assistants.
 4551. Survey.
 4552. Investigations—cabinet.
 4553. Authority to enter lands.
 4554. Detailed reports.

4555. Annual report.
 4556. Cooperation.
 4557. Publication of reports.
 4558. Distribution and sale of reports.
 4559. Expenses—appropriation.

4549. Board. The geological survey of the state shall be under the direction of the geological board, consisting of the governor, the auditor of state, and the presidents of the agricultural college, the state university, and the Iowa academy of science. [C., '97, § 2497; 40 Ex. G. A., H. F. 116, § 1.]

4550. State geologist and assistants. Such board shall appoint and fix the salaries of a state geologist, and such expert assistants and other employees, recommended by him, as may be necessary. [R., '60, §§ 180, 181; C., '97, § 2498; 40 Ex. G. A., H. F. 116, § 2.]

4551. Survey. The state geologist shall be director of the survey and shall make a complete survey of the natural resources of the state in all their economic and scientific aspects, including the determination of the order, arrangement, dip, and comparative magnitude of the various formations; the discovery and examination of all useful deposits, including their richness in mineral contents and their fossils; and the investigation of the position, formation, and arrangement of the different ores, coals, clays, building stones, glass sands, marls, peats, mineral oils, natural gases, mineral and artesian waters, and such other minerals or other materials as may be useful, with particular regard to the value thereof for commercial purposes and their accessibility. [R., '60, § 182; C., '97, § 2499; 40 Ex. G. A., H. F. 116, § 3.]

4552. Investigations—cabinet. The state geologist shall investigate the characters of the various soils and their capacities for agricultural purposes; the growth of timber, the animal and plant life of the state, the streams and water power, and other scientific and natural history matters that may be of practical importance and interest. A complete cabinet collection may, at the option of the board, be made to illustrate the natural products of the state, and the board may also furnish suites of materials, rocks, and fossils for colleges and public museums within the state, if it can be done without impairing the general state collection. [R., '60, §§ 182, 185, 187; C., '97, § 2499; 40 Ex. G. A., H. F. 116, § 4.]

4553. Authority to enter lands. For the purpose of carrying on the aforesaid investi-

gations the state geologist and his assistants and employees shall have authority to enter and cross all lands within the state; provided that in so doing no damage is done to private property. [40 Ex. G. A., H. F. 116, § 5.]

4554. Detailed reports. The state geologist and his assistants shall make detailed maps and reports of counties and districts as fast as the work is completed, which reports shall embrace such geological, mineralogical, topographical, and scientific details as are necessary to make complete records thereof, which may include the necessary illustrations, maps, charts, and diagrams. [R., '60, § 184; C., '97, § 2500; S., '13, § 2500; 40 Ex. G. A., H. F. 116, § 6.]

4555. Annual report. The state geologist shall, annually, at the time provided by law, make to the governor a full report, approved by the board, of the work in the preceding year, which report shall be accompanied by such other reports and papers as may be considered desirable for publication. [R., '60, § 184; C., '97, §§ 2498, 2500; S., '13, § 2500; 40 Ex. G. A., H. F. 116, § 6.]

NOTE: For time of filing report, see § 247.

4556. Cooperation. The state geologist shall cooperate with the United States geological survey, with other federal and state organizations, and with adjoining state surveys in the making of topographic maps and the study of geologic problems of the state when, in the opinion of the geological board, such cooperation will result in profit to the state. [S., '13, § 2500; 40 Ex. G. A., H. F. 116, § 7.]

4557. Publication of reports. The board may direct the preparation and publication of special reports and bulletins of educational and scientific value or containing information of immediate use to the people. [C., '97, § 2501; S., '13, § 2501; 40 Ex. G. A., H. F. 116, § 8.]

4558. Distribution and sale of reports. All publications of the geological survey shall be distributed by the state as are other published reports of state officers when no special provision is made. When such distribution has been made the board shall retain a sufficient

number of copies to supply probable future demands and any copies in excess of such number shall be sold to persons making application therefor at the cost price of publication, the money thus accruing to be turned into the treasury of the state. [C., '97, § 2501; S., '13, § 2501; 40 Ex. G. A., H. F. 116, § 9.]

4559. Expenses—appropriation. The members of the board shall serve without compensation, but such board and its assistants shall

be allowed their actual and necessary expenses incurred in the performance of their duties. The actual and necessary field expenses of the state geologist and his assistants shall be audited and paid as provided by law. The entire expenses provided for under this chapter, not including office expenses, shall not exceed the sum of eight thousand dollars per annum. [C., '97, § 2502; S., '13, § 2502; 40 Ex. G. A., H. F. 116, § 10.]

TITLE XIII

HIGHWAYS

CHAPTER 237

ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS

GENERAL PROVISIONS

- 4560. Jurisdiction.
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- 4562. Petition.
- 4563. Bond.
- 4564. Commissioner.
- 4565. Substituting other road.
- 4566. Property exempt.
- 4567. Report.
- 4568. Survey made—commissioner sworn.
- 4569. Mileposts and stakes.
- 4570. Bearing trees—monuments.
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- 4574. Day fixed.
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- 4577. Auditor may establish, alter, or vacate.
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- 4579. New notice given.
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- 4587. Unconditional order.
- 4588. Record.
- 4589. Plat and field notes.
- 4590. Opening and working.

GENERAL PROVISIONS

4560. Jurisdiction. The board of supervisors has the general supervision of the roads in the county, with power to establish, vacate, and change them as herein provided, and to see that the laws in relation to them are carried into effect. [C., '51, § 514; R., '60, § 819; C., '73, § 920; C., '97, § 1482.]

4561. Width. Roads hereafter established, unless otherwise fixed by the board, shall be at least sixty-six feet wide, and in no case less than forty; within these limits they may be increased or diminished in width, altered in direction, or vacated, by pursuing the course prescribed in this chapter. [C., '51, §§ 515,

- 4591. Fences—crops.
- 4592. Minors—insane persons.
- 4593. Establishment through state lands.
- 4594. County line roads.
- 4595. General control—concurrent action.
- 4596. Consent highways.
- 4597. Appeals from award of damages—notice.
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- 4602. Lost field notes—resurvey.
- 4603. Plat and field notes filed—notice given.
- 4604. Proceedings—record.
- 4605. Road plat book.
- 4606. Laying out public highways—fees.

CHANGES IN ROADS, STREAMS, OR DRY RUNS

- 4607. Changes for safety, economy, and utility.
- 4608. Costs.
- 4609. Report and survey.
- 4610. Appraisers.
- 4611. Notice.
- 4612. Service of notice.
- 4613. Qualification and assessment.
- 4614. Hearing—adjournment.
- 4615. Hearing on objections.
- 4616. Hearing on claims for damages.
- 4617. Appeals.
- 4618. Damages on appeal—rescission of order.
- 4619. Record of change.
- 4620. Tender of damages.
- 4621. Abandonment of highway—notice to owner affected.

516; R., '60, §§ 820, 821; C., '73, § 921; C., '97, § 1483; S., '13, § 1483; 37 G. A., ch. 30, § 1.]

4562. Petition. Any person desiring the establishment, vacation, or alteration of a road shall file in the auditor's office of the proper county a petition, in substance as follows:

To the board of supervisors of county:

The undersigned asks that a road commencing at and running thence and terminating at be established, vacated, or altered (as the case may be).

[C., '73, § 922; C., '97, § 1484.]

4563. Bond. Before filing such petition, the auditor shall require the petitioner to give a

bond, with sureties to be approved by him, conditioned that all expenses growing out of the application will be paid by the obligors, in case the contemplated road is not finally established, altered, or vacated, as asked in the petition. [C., '51, § 521; R., '60, § 826; C., '73, § 923; C., '97, § 1485.]

4564. Commissioner. When the foregoing requirements have been complied with, the auditor shall appoint some suitable and disinterested elector of the county as commissioner, to examine into the expediency of the proposed establishment, alteration, or vacation, and report accordingly. [C., '51, § 523; R., '60, § 828; C., '73, § 924; C., '97, § 1486.]

4565. Substituting other road. The commissioner shall not be confined to the precise matter of the petition, but may inquire and determine whether that or any road in the vicinity, answering the same purpose and in substance the same, be required. [C., '51, § 525; R., '60, § 830; C., '73, § 925; C., '97, § 1487; 40 Ex. G. A., ch. 8, § 1.]

4566. Property exempt. No road shall be established through any cemetery. No road shall, without the owner's consent, be established through any orchard, or ornamental grounds contiguous to any dwelling house, or so as to cause the removal of any dwelling house or other substantial, permanent, and valuable building. [C., '51, § 525; R., '60, § 830; C., '73, § 925; C., '97, § 1487; S. S., '15, § 1527-r4; 40 Ex. G. A., ch. 8, § 2.]

4567. Report. In forming his judgment, he must take into account the public and private convenience, and the expense of the proposed road, and, if he thinks the public convenience requires it, shall proceed at once to lay the same out, if the circumstances are such as to enable him to do so without having the same surveyed; but if, in his judgment, such road should not be established, or the alteration or vacation made, he shall proceed no further, and in either case shall, within thirty days after the day of his appointment, file his report in the auditor's office. [C., '51, §§ 526-528, 535, 536; R., '60, §§ 831-833, 840, 841; C., '73, §§ 926-928, 934; C., '97, § 1488.]

4568. Survey made—commissioner sworn. If the precise location of the road can not otherwise be given, he must cause the line thereof to be surveyed and plainly marked out, and, if he is a person other than the county engineer, must be sworn to faithfully and impartially discharge his duty, and, after thus qualifying, he shall have authority to swear any assistants employed to faithfully and impartially perform their duties in aiding him in laying out or altering the road. [C., '51, §§ 529, 530; R., '60, §§ 834, 835; C., '73, §§ 929, 930; C., '97, § 1489.]

4569. Mileposts and stakes. Mileposts must be set up at the end of every mile, and the distance marked thereon, and stakes must be

set at each change of direction, on which shall be marked the bearings of the new course. Stakes must also be set at the crossing of fences and streams, and at intervals in the prairie not exceeding a quarter of a mile each; in the timber the course must be indicated by trees suitably blazed. [C., '51, § 531; R., '60, § 836; C., '73, § 931; C., '97, § 1490.]

4570. Bearing trees—monuments. Bearing trees must, when convenient, be established at each angle and milepost, and the position of the road relative to the corners of sections, the junction of streams, or any other natural or artificial monument or conspicuous object, must, as far as convenient, be stated in the field notes and shown on the plat. [C., '51, § 532; R., '60, § 837; C., '73, § 932; C., '97, § 1491.]

4571. Plat and field notes. A correct plat of the road or alteration, together with a copy of the field notes of the surveyor, if one has been employed, must be filed as a part of the commissioner's report. [C., '51, § 533; R., '60, § 838; C., '73, § 933; C., '97, § 1492.]

4572. Bridges. If the commissioner's report is in favor of the establishment, alteration, or vacation of the road, it shall show the number of bridges required, and the probable cost thereof. [C., '97, § 1493.]

4573. Hearing—objections—claims for damages. The auditor shall appoint a day, not less than sixty nor more than ninety days from such time, when the petition and report will be acted upon, on or before which day all objections to the establishment, alteration, or vacation of the road, and all claims for damages by reason of its establishment or alteration, must be filed in the auditor's office. [C., '51, §§ 535, 536; R., '60, §§ 840, 841; C., '73, § 934; C., '97, § 1493.]

4574. Day fixed. The time for the commissioner to commence the examination shall be fixed by the auditor, and if he fails to so commence, or so report as prescribed in the second preceding section, the auditor may fix another day, or extend the time for making such report, or may appoint another commissioner. [C., '51, § 524; R., '60, § 829; C., '73, § 935; C., '97, § 1494.]

4575. Notice served. Within twenty days after the day is fixed by the auditor as above provided, a notice shall be served on each owner of land lying in the proposed road, or abutting thereon, as shown by the transfer books in the auditor's office, who resides in the county, in the manner provided for the service of original notices. If the owner of the land as thus shown does not reside in the county, similar notice shall be served upon any person who is in the actual occupancy of such land. In any case, notice shall be published, once each week, for four weeks in some newspaper printed in the county. [C., '51, § 519; R., '60, § 824; C., '73, § 936; C., '97, § 1495; S., '13, § 1495.]

4576. Form of notice. The notice may be in the following form:

To all whom it may concern: The commissioner appointed to locate, vacate, or alter (as the case may be) a road commencing at in county, running thence (describe in general terms all the points as in the commissioner's report, giving the names of the owners of the land through which the proposed road passes as they appear upon the transfer books of the auditor's office) and terminating at, has reported in favor of the establishment, vacation, or alteration thereof, and all objections thereto, or claims for damages, must be filed in the auditor's office on or before noon of the day of, A. D., or such road will be established, vacated, or altered without reference thereto.

.....
County Auditor.
[C., '73, § 936; C., '97, § 1495; S., '13, § 1495.]

4577. Auditor may establish, alter, or vacate. If no objections or claims for damages are filed on or before noon of the day fixed therefor, and the auditor is satisfied the provisions of the last two preceding sections have been complied with, he shall proceed to establish, alter, or vacate such road as recommended by the commissioner, upon the payment of costs. [C., '73, § 937; C., '97, § 1496.]

4578. Failure to pay costs. If such costs are not paid within ten days, the auditor shall report his action in the premises to the board of supervisors at its next session, who may affirm the action of the auditor, or establish such road at the expense of the county. [C., '73, § 937; C., '97, § 1496.]

4579. New notice given. If the auditor is satisfied that the notice has not been given, he shall appoint another day, and cause such notice to be served or published as required in the first instance, and thereafter proceed as provided above. [C., '73, § 938; C., '97, § 1497.]

4580. Objections or claims. If objections to the establishment of the road or claims for damages are filed, the further hearing of the application shall stand continued to the next session of the board of supervisors held after the commissioners appointed to assess the damages have reported. All claims for damages and objections to the establishment, alteration, or vacation of the road must be in writing, and the statements in the application for damages shall be considered denied in all subsequent proceedings. [C., '51, § 537; R., '60, § 842; C., '73, §§ 939, 941; C., '97, § 1498.]

4581. Appraisers appointed — vacancies — qualification. Upon the expiration of the time for filing claims for damages, if any are filed, the auditor shall appoint three disinterested electors of the county as appraisers, to assess the amount of damages any claimants may sustain by reason of the establishment or alteration of such road, and shall give them notice of their appointment, and fix a day and hour

at which they shall meet at his office, or that of some justice of the peace, to qualify; and if they do not all appear at the time and place named, or within one hour thereafter, the auditor or justice, as the case may be, shall fill any vacancies by the appointment of others, and swear such appraisers to faithfully and impartially assess the damages claimed. [C., '51, §§ 538-541; R., '60, §§ 843-846; C., '73, §§ 940, 942, 943; C., '97, § 1499.]

4582. Report. Such appraisers shall proceed at once to perform their duties, and, after assessing the damages sustained by the claimants, respectively, shall report the amount sustained by each, in writing, to the auditor, within thirty days from the date of their appointment. [C., '51, § 542; R., '60, § 847; C., '73, § 940; C., '97, § 1499.]

4583. Postponement — new appointment. Should the report not be filed in time, or should any good cause for delay exist, the auditor may postpone the time for final action on the subject, and may, if necessary, appoint other appraisers. [C., '51, § 543; R., '60, § 848; C., '73, § 944; C., '97, § 1500.]

4584. Costs. Should no damages be awarded the applicants therefor, all the costs growing out of their claims shall be paid by them. [C., '51, § 545; R., '60, § 850; C., '73, § 945; C., '97, § 1500.]

4585. Final action. When the time for final action arrives, the board may hear testimony, receive petitions for and remonstrances against the establishment, vacation, or alteration, as the case may be, of such road, and may establish, vacate, or alter, or refuse to do so, as in their judgment, founded on the testimony, the public good may require. [C., '51, § 546; R., '60, § 851; C., '73, § 946; C., '97, § 1501.]

4586. Damages — conditional order. Said board may increase or diminish the damages allowed by the appraisers, and may make such establishment, vacation, or alteration conditioned upon the payment, in whole or in part, of the damages awarded, or expenses in relation thereto. [C., '51, § 546; R., '60, § 851; C., '73, § 946; C., '97, § 1501.]

4587. Unconditional order. In the latter case, a day shall be fixed for the performance of the condition, which must be before the next session of the board, and, if the same is not performed by that day, it shall at such session make some final and unconditional order in the premises. [C., '51, § 547; R., '60, § 852; C., '73, § 947; C., '97, § 1502.]

4588. Record. Any order made or action taken in the establishment, alteration, or vacation of a road shall be entered in the road record, distinguishing between those made or taken by the auditor and those by the board of supervisors. [C., '73, § 948; C., '97, § 1503.]

4589. Plat and field notes. After a road has been finally established or altered, the plat

and field notes must be recorded by the auditor. [C., '51, § 550; R., '60, § 855; C., '73, § 949; C., '97, § 1504; 40 Ex. G. A., ch. 8, § 3.]

4590. Opening and working. Township roads shall be opened and worked by the township trustees. County and primary roads shall be opened and worked by the board of supervisors. [C., '51, § 550; R., '60, § 855; C., '73, § 949; C., '97, §§ 427, 1504; 40 Ex. G. A., ch. 8, § 4.]

4591. Fences—crops. A reasonable time must be allowed to enable the owners of land to erect the necessary fences adjoining the new road; and when crops have been planted or sowed before the road is finally established, the opening thereof shall be delayed until the crop is harvested. [C., '51, §§ 551, 552; R., '60, §§ 856, 857; C., '73, § 950; C., '97, § 1505.]

4592. Minors—insane persons. The rights and interests of minors and insane persons in relation to the establishment, vacation, and alteration of roads, and all matters connected therewith, are under the control of their guardians. [C., '51, § 555; R., '60, § 860; C., '73, § 951; C., '97, § 1506.]

4593. Establishment through state lands. The state board of education or board of control of the institutions belonging to the state may vacate, alter, change, or establish public highways through the lands belonging to the state, and for the use of such institutions, as the said board of education or board of control may deem for the best interests of the state and the public, subject, however, to the approval of the board of supervisors of the county, or the city council of the city, wherein such lands are situated. [C., '73, § 954; C., '97, § 1509; S., '13, § 1509.]

4594. County line roads. The establishment, vacation, or alteration of a road, either along or across a county line, may be effected by the concurrent action of the respective boards of supervisors in the manner above prescribed. The commissioners in such cases must act in concert, and the road shall not be established, vacated, or altered in either county until it is so ordered in both. [C., '51, § 556; R., '60, § 861; C., '73, § 955; C., '97, § 1510.]

4595. General control—concurrent action. All roads, whether established by the board of control of state institutions or by the state board of education under the statute or by the county authorities, are subject to the provisions of this chapter, and those established by the joint action of boards of supervisors of two or more counties can be altered or discontinued only by the joint action of the boards of the counties in which situated. Subject to these provisions, they shall be in all other respects treated, managed, and controlled as provided in this title. The term "road" as used in this code means any public highway, unless otherwise specified. [R., '60, § 879; C., '73, § 956; C., '97, § 1511.]

4596. Consent highways. Roads may be established without the appointment of a commissioner, if the written consent of all the owners of the land to be used for that purpose be first filed in the auditor's office; and the board, if satisfied that the proposed road is of sufficient public importance to be opened and worked by the public, shall make an order establishing the same. If a survey is necessary, the board, before ordering the same, may require the parties asking such establishment to pay or secure the payment of the expenses thereof. [C., '51, §§ 553, 554; R., '60, §§ 858, 859; C., '73, §§ 957, 958; C., '97, § 1512.]

4597. Appeals from award of damages—notice. Any applicant for damages caused by the establishment or alteration of any road may appeal from the final decision of the board to the district court of the county in which the land lies, notice of which appeal must be served on the county auditor within twenty days after the decision is made. If the road has been established or altered on condition that the petitioners therefor pay the damages, such notice shall be served on the four persons first named in the petition, if there be that many residing in the county, in the manner in which an original notice may be served. [R., '60, § 873; C., '73, § 959; C., '97, § 1513.]

4598. Appeal by petitioner. An appeal may be taken by the petitioner as to amount of damages, if the establishment or alteration has been made conditional upon paying the damages, by serving notice thereof on the county auditor and applicant for damages, in the manner in which original notices are served, and within twenty days after the decision of the board, and filing a bond in the office of such auditor, with sureties to be approved by him, conditioned for the payment of all costs occasioned by such appeal, if the appellant fails to recover a more favorable judgment in the district court than was allowed him by such board. [R., '60, § 874; C., '73, § 960; C., '97, § 1514.]

4599. Transcript on appeal. When an appeal has been taken the auditor shall within ten days thereafter make out and file in the office of the clerk of said court a transcript of the papers on file in his office, and proceedings of the board of supervisors in relation to such damages. The claimant for damages shall be plaintiff and the petitioners defendants, unless the damages have been ordered paid out of the county treasury, in which case the county shall be defendant. [R., '60, § 873; C., '73, § 961; C., '97, § 1515.]

4600. Trial on appeal. The amount of damages the claimant is entitled to shall be ascertained by the court in the same manner as in actions by ordinary proceedings, and the amount ascertained shall be entered of record, but no judgment rendered therefor. The amount thus ascertained shall be certified by the clerk to the board of supervisors, who

shall thereafter proceed as if such amount had been by it allowed the claimant as damages. [C., '73, § 962; C., '97, § 1516.]

4601. Costs. If the appeal be taken by the petitioners, they shall pay the costs, unless the claimant recovers a less amount than was allowed him by the board. In all other cases the taxing of the costs shall rest in the discretion of the court. [R., '60, § 873; C., '73, § 963; C., '97, § 1517.]

4602. Lost field notes—resurvey. When, by reason of the loss or destruction of the field notes of the original survey, or of defective surveys or record, or of numerous alterations since the original survey, the location of any road can not be accurately determined, the board of the proper county may cause it to be resurveyed, platted, and recorded, as hereinafter provided. [R., '60, § 913; C., '73, § 964; C., '97, § 1518.]

4603. Plat and field notes filed—notice given. A copy of the field notes, together with the plat of any road surveyed under the provisions of the preceding section, shall be filed in the office of the county auditor, and thereupon he shall give notice in some newspaper published within the county, that at some term of the board therein named, not less than twenty days from the publication, it will, unless good cause be shown against so doing, approve of such survey and plat, and order them to be recorded as in cases of the original establishment of a public road. [R., '60, § 914; C., '73, § 965; C., '97, § 1519.]

4604. Proceedings—record. In case objection shall be made by any person claiming to be injured by the survey so made, the board shall have power to hear and determine the matter, and may, if thought advisable, order a change to be made in the survey. If, upon the final determination, the board shall find said survey is correct, it shall approve the same, and cause the field notes and plat thereof to be recorded as in case of the establishment or alteration of roads, and thereafter such records shall be received by all courts as conclusive proof of its establishment according to such survey and plat. [R., '60, § 915; C., '73, § 966; C., '97, § 1520.]

4605. Road plat book. If the same has not been heretofore done, the county auditor shall cause every road in his county, the legal existence of which is shown by the records and files in his office, to be platted in a book to be obtained and kept for that purpose and known as the "road plat book". Each township shall be platted separately, on a scale of not less than four inches to the mile, and such auditor shall have all changes in or additions to the roads legally established immediately entered upon said plat book, with appropriate references to the files in which the papers relating to the same may be found. The auditor shall, from time to time, notify the clerk of each township of all changes made

in the roads thereof, and on receipt of such notice he shall immediately make corresponding changes on the highway plat book in his office, and shall, in case such plat book is lost or is found to be substantially inaccurate, procure a new one, or cause corrections to be made, at a reasonable expense, to be paid out of the general township fund. [R., '60, § 889; C., '73, §§ 967, 968; C., '97, § 1521.]

4606. Laying out public highways—fees. The following fees shall be paid persons engaged in laying out and changing roads:

1. Commissioners, such sum as shall be fixed by the board of supervisors, not to exceed three dollars for each day, together with ten cents per mile for the distance traveled in going to and returning from the location of the road under consideration.

2. Surveyor, for each day, four dollars.

3. Chain carriers, markers, and other assistants, for each day, one dollar and fifty cents.

If the road extends into more than one county, such expenses when so adjudged shall be paid by the several counties in proportion to the length of time occupied on the road in each county. [C., '51, § 534; R., '60, §§ 839, 872, 877; C., '73, § 3824; C., '97, § 1527; 39 G. A., ch. 272.]

CHANGES IN ROADS, STREAMS, OR DRY RUNS

4607. Changes for safety, economy, and utility. Boards of supervisors on their own motion may change the course of any part of any road or stream, watercourse, or dry run, within any county in order to avoid the construction and maintenance of bridges, or to avoid grades, or railroad crossings, or to straighten any road, or to cut off dangerous corners, turns, or intersections on the highway, or to widen any road above statutory width, or for the purpose of preventing the encroachment of a stream, watercourse, or dry run, upon a public highway. [C., '97, § 427; S. S., '15, § 1527-r1; 40 Ex. G. A., ch. 8, § 5.]

4608. Costs. The cost entailed by a change in a highway as provided in the preceding section shall be paid:

1. From the primary road fund in case the change is on a primary road.

2. From the county road fund or from the county bridge fund, or from both of said funds, in case the change is on a county or township road. [C., '97, § 427; S. S., '15, §§ 1527-r1, 1527-r3; 40 Ex. G. A., ch. 8, § 6.]

4609. Report and survey. Unless the action of the board is based on the recommendations of the engineer, accompanied by a report on the proposed change, and a plat and survey of the proposed change, the board shall order an engineer to make such report and survey and return the same on or before a day fixed. In making the survey, the engineer shall have the right to enter upon any premises affected by the proposed change. [S. S., '15, § 1527-r1; 40 Ex. G. A., ch. 8, § 7.]

4610. Appraisers. If the board is unable, by agreement with the owner, to acquire the necessary right of way to effect such change, three freeholders shall be selected to appraise the damages consequent on the taking of the right of way. The board of supervisors shall select one of said appraisers. The owner or owners of the land sought to be taken shall select one of said appraisers. The two appraisers so selected shall choose the third appraiser. In case the owners do not exercise their said right or in case they are unable to agree as to an appraiser, or in case their appointee fails to appear and qualify, the said board of supervisors shall appoint two appraisers and said two appointees shall choose the third appraiser.

If the two appraisers selected shall fail within ten days to select a third, or the third appraiser so selected shall fail to serve, then the board of supervisors shall select the third appraiser. [S. S., '15, §§ 1527-r1, 1527-r2; 40 G. A., ch. 81; 40 Ex. G. A., ch. 8, § 8.]

4611. Notice. The county auditor shall cause [the following] notice to be served on the individual owner of each tract or parcel of land to be taken for such right of way, as shown by the transfer books in the office of such county auditor, and upon each person owning or holding a mortgage, or lease, upon such land as shown by the county records, and upon the actual occupant of such land if other than the owner thereof:

To whom it may concern: Notice is given that the board of supervisors of county, Iowa, propose to condemn for road purposes the following described real estate in said county: (Here describe the right of way, and the tract or tracts from which such right of way will be taken). The damages caused by said condemnation will be assessed by three appraisers. Notice is hereby given that the owner or owners of said real estate may, on or before the day of, appoint one of said appraisers and that in case such right be not exercised, or if exercised and the said appointee fails to appear and qualify, the said three appraisers will be otherwise appointed as provided by law. All parties interested are further notified that said three appraisers will, when duly appointed, proceed to appraise said damages, will report said appraisal to the said board of supervisors and that said latter board will pass thereon as provided by law, and that at all such times and places you may be present if you be so minded. You are further notified that at said hearing before the said supervisors you may file objections to the use of said land for road purposes and that all such objections not so made will be deemed waived.

.....
County Auditor.

[S. S., '15, §§ 1527-r2, 1527-r3, 1527-r6; 40 G. A., ch. 81; 40 Ex. G. A., ch. 8, § 9.]

NOTE: The bracketed words do not appear in the enrolled bill.

4612. Service of notice. Owners, occupants, and mortgagees of record who are residents of the county shall be personally served in the manner in which and for the time original notices in the district court are required to be served.

Owners and mortgagees of record who do not reside in the county and owners and mortgagees of record who do reside in the county when the officer returns that they can not be found in the county, shall be served by publishing the notice in one of the official newspapers of the county, once each week for two weeks, and also by mailing by registered mail a copy of such notice to such owner and mortgagee of record addressed to his last known address, and the county auditor shall furnish to the board of supervisors his affidavit that such notice has been sent, which affidavit shall be conclusive evidence of the mailing of such notice.

Personal service outside the county but within the state shall take the place of service by publication.

No service need be had on one who has exercised his right to select an appraiser. [S. S., '15, §§ 1527-r2, 1527-r3; 40 G. A., ch. 81; 40 Ex. G. A., ch. 8, § 10.]

4613. Qualification and assessment. Upon the appointment of three appraisers, the county auditor shall cause them to appear before him and to take oath that they will faithfully and impartially assess the damages claimed. Said appraisers shall forthwith proceed to the assessment of said damages and make written report thereof to the board of supervisors. [S. S., '15, § 1527-r2; 40 G. A., ch. 81; 40 Ex. G. A., ch. 8, § 11.]

4614. Hearing—adjournment. The board shall proceed to a hearing on the objections or assessment of damages of any owner, mortgagee of record, and the actual occupant of such land if any of whom it has acquired jurisdiction, or if there be owners, mortgagee of record, and the actual occupant of such land if any over whom jurisdiction has not been acquired, the board may adjourn such hearing until a date when jurisdiction will be complete as to all owners. [S. S., '15, § 1527-r3; 40 Ex. G. A., ch. 8, § 12.]

4615. Hearing on objections. The board shall, at the final hearing, first pass on the objections to the proposed change. If objections be sustained the proceedings shall be dismissed unless the board finds that the objections may be avoided by a change of plans, and to this end an adjournment may be ordered, if necessary, in order to secure service on additional parties. [S. S., '15, § 1527-r3; 40 Ex. G. A., ch. 8, § 13.]

4616. Hearing on claims for damages. When objections to the proposed change are overruled, the board shall proceed to determine the damages to be awarded to each claimant. If the damages finally awarded are, in the opinion of the board, excessive, the proceed-

ings shall be dismissed; if not excessive, the board may, by proper order, establish such proposed change. [S. S., '15, § 1527-r3; 40 Ex. G. A., ch. 8, § 14.]

4617. Appeals. Claimants for damages may appeal to the district court from the award of damages in the manner and time for taking appeals from the orders establishing highways generally. [C., '97, § 428; S. S., '15, § 1527-r3; 40 Ex. G. A., ch. 8, § 15.]

4618. Damages on appeal—rescission of order. If the damages as finally determined on appeal be, in the opinion of the board, excessive, the board may rescind its order establishing such change. [S. S., '15, § 1527-r3; 40 Ex. G. A., ch. 8, § 16.]

4619. Record of change. The board shall cause a full and detailed record to be made in the road book of all plats and surveys and all other proceedings pertaining to changes hereinbefore authorized. [40 Ex. G. A., ch. 8, § 17.]

4620. Tender of damages. No appeal from an award of damages shall delay the prosecu-

tion of the work when the amount of the award is tendered in writing to the claimant and such tender is kept good. An order to the auditor to issue warrants to claimants for damages shall constitute a valid tender, if funds are available to promptly meet such warrants. Acceptance of the amount of such tender bars an appeal. Should possession of the condemned premises be taken pending appeal and the final award be not paid, the county shall be liable for all damages caused during such possession. [S. S., '15, § 1527-r3; 40 Ex. G. A., ch. 8, § 18.]

4621. Abandonment of highway—notice to owner affected. The foregoing provision with reference to changes in the highway shall not be construed as compelling the board to abandon any part of a highway already established, but if it be proposed to abandon any part of a highway already established, notice shall be served, as herein provided, upon the said record owners as aforesaid through which or abutting upon which said highway so proposed to be abandoned, extends. [S. S., '15, § 1527-r7.]

CHAPTER 238

STATE HIGHWAY COMMISSION

4622. Members—qualifications—term—location.
4623. Appointment.
4624. Vacancies.
4625. Compensation.
4626. Duties.

4627. Guide and warning signs.
4628. Duty to furnish—costs.
4629. Time limit—exception.
4630. Counsel.

4622. Members—qualifications—term—location. The state highway commission shall be composed of the dean of engineering of the state college of agriculture and mechanic arts, and two appointive members who shall belong to different political parties, and serve for four years from July first of the year of appointment. The offices of said commission shall be located in the city of Ames. [S. S., '15, § 1527-s; 40 Ex. G. A., S. F. 119, § 1.]

4623. Appointment. The governor shall, within sixty days after the convening of the general assembly in 1925 and 1927, and each four years thereafter, appoint, with the approval of two-thirds of the members of the senate in executive session, a successor to the appointive member whose term will expire on July first following. [S. S., '15, § 1527-s; 40 Ex. G. A., S. F. 119, § 3.]

4624. Vacancies. Vacancies occurring while the general assembly is in session shall be filled for the unexpired portion of the term as full term appointments are filled. Vacancies occurring while the general assembly is not in session shall be filled by the governor, but such appointments shall terminate at the end of thirty days after the convening of the next general assembly. Vacancies shall be filled from the same political party from which the

vacancy occurs. [S. S., '15, § 1527-s; 40 Ex. G. A., S. F. 119, § 4.]

4625. Compensation. Each appointive member shall receive ten dollars per day for each day actually employed in the work of the commission, provided said compensation, for each commissioner, shall not exceed two thousand dollars per annum. Each member shall receive all actual necessary expenses incurred in the performance of his duties. [S. S., '15, § 1527-s1; 38 G. A., ch. 361, § 1; 40 Ex. G. A., S. F. 119, § 5.]

4626. Duties. Said commission shall:

1. Devise and adopt standard plans of highway construction and maintenance, and furnish the same to the counties.

2. Furnish information and instruction to, answer inquiries of, and advise with, highway officers on matters of highway construction and maintenance and the reasonable cost thereof.

3. Appoint all assistants necessary to carry on the work of the commission, define their duties, fix their compensation, and provide for necessary bonds and the amounts thereof. The term of employment of all such assistants may be terminated by the commission, at any time and for any cause.

4. Investigate highway conditions in any county, and report all violations of duty to the attorney general.

5. Make surveys, plans, and estimates of cost, for the elimination of danger at railroad crossings on highways, and to confer with local, and railroad officials, and with the Iowa railroad commission with reference to such elimination.

6. Assist the board of supervisors and the attorney general in the defense of suits wherein infringement of patents, relative to highway construction, is alleged.

7. Make surveys for the improvement of highways upon or adjacent to state property when requested by the board in control of said lands.

8. Record all important operations of said commission and, at the time provided by law, report the same to the governor.

9. Incur no expense to the state by sending out road lecturers. [S. S., '15, §§ 1527-s1, 1527-s2; 40 Ex. G. A., S. F. 119, § 6.]

NOTE: For time of filing report, see § 252.

4627. Guide and warning signs. Said commission shall establish a system of uniform guide and warning signs to provide for convenience and safety of travel upon the primary

road system; also adopt rules and regulations for the location, erection, and maintenance of the same, said signs to be erected by the board of supervisors under said rules and regulations. [40 Ex. G. A., S. F. 119, § 6.]

4628. Duty to furnish—costs. Such signs shall be furnished by the highway commission to the several counties making application therefor at actual cost and paid for from the county's allotment of the primary road fund. [40 Ex. G. A., S. F. 119, § 6.]

4629. Time limit—exception. Upon the failure of the board of supervisors of any county to complete the marking by August 1, 1925, the commission shall proceed to erect such guide and warning signs. Where primary roads are now well marked, such uniform marking shall be deferred until the present markings need renewing. [40 Ex. G. A., S. F. 119, § 6.]

4630. Counsel. The attorney general shall act as attorney for said commission on all matters pertaining to their duties, and take such action as may be deemed advisable by him in order to correct violations of the laws relative to highway matters. [S. S., '15, §§ 1527-s, 1527-s2; 40 Ex. G. A., S. F. 119, § 7.]

CHAPTER 239

STATE ROADS

4631. State road districts.
4632. Supervisor.

4631. State road districts. Highways on lands of the state and highways on which such lands abut shall constitute a separate road district for each state institution, or state park, in connection with which such lands are used, and shall be under the jurisdiction of the board in control thereof. [C., '97, § 1532; S., '13, § 1532; 40 G. A., ch. 246, § 1.]

4632. Supervisor. The chief engineer of the state highway commission shall be ex officio general supervisor of said several road districts, and be under the direction of the board in control thereof, and shall have general charge of the maintenance and improvement of said roads, and perform such other duties and make such reports in reference thereto as may be required by said board. Said board may appoint a local supervisor for each district. [S., '13, § 1532; 40 G. A., ch. 246, § 2.]

4633. Maintenance and improvement. The roads within any such district, except county bridges, shall be maintained, repaired, and improved under the direction of the board

4633. Maintenance and improvement.
4634. Improvement by city or county.

which is in control of said lands, provided said board shall not pave or hard surface such roads unless authorized so to do by the executive council. The costs shall be paid only after certificate of detailed amount due shall have been filed by the said board with the state board of audit, and duly audited as provided by law. This section shall not be construed as preventing the paving or hard surfacing of any such roads under any other proceeding authorized by law. [S., '13, § 1532; 37 G. A., ch. 421, § 1; 40 G. A., ch. 246, § 3.]

4634. Improvement by city or county. When a city, town, special charter city, or county shall drain, oil, pave, or hard surface a road which extends through or abuts upon lands owned by the state, the state, through the executive council, shall pay such portion of the cost of making said improvement through or along such lands as would be legally assessable against said lands were said lands privately owned, which amount shall be determined by said council, or board. [S., '13, § 170-k; 38 G. A., ch. 400, § 1; 39 G. A., ch. 207, § 1; 40 G. A., ch. 246, § 4.]

CHAPTER 240

COUNTY ROAD, BRIDGE, AND CULVERT SYSTEM

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4635. Highway levies. The board of supervisors shall, annually, at the September session of the board, levy the following taxes:

1. *County road.* A county road tax of not more than one mill on all the taxable property in the county.

One-half of the county road fund arising from the property within a municipality shall be paid over by the county treasurer to the treasurer of the municipality in the same manner as other municipal taxes and shall be expended by and under the direction of the council or commission, only on the roads and streets within such municipality, which are continuations of such roads as are main arteries of travel leading to such municipalities.

2. *County road building.* A county road building tax of not less than one mill nor more than two mills on all the taxable property in the county.

The proceeds of such levies, except such amount thereof as is paid to the municipalities, shall be kept as a county road fund and shall be used, except as otherwise provided, solely for the purchase of road tools, machinery and equipment for the drainage of roads, for filling over culverts and bridge approaches, for the elimination of dangerous railroad crossings in both county and township roads, and for work on the county system.

3. *County drainage.* A county drainage tax, if the board deems the same necessary, of not

to exceed one mill on all property in the county except on property within cities of the first class and special charter cities. The proceeds of said levy shall be kept as a county drainage fund and shall be used, first, for the drainage of highways and for paying drainage assessments levied on account of benefits to roads of the county road system, and, second, any balance shall be placed to the credit of the county road fund.

4. *County bridge.* A county bridge and culvert tax of not to exceed five mills on all the property of the county, except on property within cities controlling their own bridge levy.

In counties having a bonded indebtedness of ten thousand dollars, the board may levy not to exceed seven mills.

Said bridge fund shall be used to pay for all bridges and culverts constructed and maintained by the county and for culvert material furnished to the township trustees by the county. 1. [C., '51, § 454; R., '60, § 710; C., '73, § 796; C., '97, §§ 1303, 1530; S., '13, § 1530; S. S., '15, §§ 1303, 1527-s8; 37 G. A., ch. 6, § 1; 38 G. A., ch. 237, § 54; 40 Ex. G. A., ch. 25, § 1.] 2. [C., '97, § 1530; S., '13, § 1530; 40 Ex. G. A., ch. 25, § 1.] 3. [R., '60, § 710; C., '73, § 796; C., '97, § 1303; S. S., '15, § 1303; 38 G. A., ch. 355, § 1; 40 Ex. G. A., ch. 25, § 1.]

4636. County road system. The county road system:

1. Shall not embrace any part of a primary road.

2. Shall not embrace any highway within cities and towns except as herein provided.

3. May embrace highways which are located along the corporate limits of cities and towns and which are partly within and partly without such limits.

4. May embrace a street or highway which is within the limits of a town when such highway is a direct continuation of the county road system outside said town, provided the board of supervisors and the council can agree in writing as to the manner in which said street or highway is being improved, and provided such contract is approved by the state highway commission.

Such writing shall contain a provision that the town shall use the funds returned to them under paragraph one of the preceding section in constructing and maintaining said county road.

Nothing in this paragraph shall take from such town the general municipal control and police regulation which it now has over such street or the right to further improve such street by paving the same.

5. Shall, subject to the foregoing, embrace the highways which are now designated as county roads by the plans and records now on file in the county auditor's office of each county and in the office of the state highway commission and as the same may hereafter exist by legal modifications or additions. [S. S., '15, § 1527-s3; 40 Ex. G. A., ch. 25, § 2.]

4637. Modifications. The board of supervisors may make application to the state highway commission for a change or modification of the established county road system when such change is for the purpose of eliminating dangerous crossings or curves, or when such change would materially decrease the cost of improving or maintaining the road, and in such case the commission may authorize such change as may seem advisable. [S. S., '15, § 1527-s5; 40 Ex. G. A., ch. 25, § 3.]

4638. Additions. Whenever all the roads in the county road system have been improved according to the plans herein provided, the board of supervisors may add such roads from the township road system as have been improved by the township in accordance with the general plans and specifications furnished by the engineer and in accordance with the requirements of this chapter, and if the township roads so improved be not sufficient to use all county funds available for that purpose, the board of supervisors may select such additional county roads, but no increase shall be made in the mileage of the county road system until that system is completed, except that the board of supervisors may at any time add such roads from the township road system as will materially shorten the direct lines of travel between market towns. In all cases of additions the same proceedings shall be followed, in all regards, as provided for the original selection and improvement of county roads. [S. S., '15, § 1527-s9; 40 Ex. G. A., ch. 25, § 4.]

4639. Roads to state parks. The board of supervisors may add to the county road system from the township road system such roads as will render more accessible any body of water which may be improved, under state authority, as a public park. [37 G. A., ch. 236, § 8; 40 Ex. G. A., ch. 25, § 5.]

4640. Exclusive procedure. The procedure herein provided for the modification of, and additions to, the county road system, shall exclude all other procedure, and the decision of the board of supervisors and the state highway commission shall be final. [S., '13, § 1527-s19; 40 Ex. G. A., ch. 25, § 6.]

4641. Engineer — term — compensation — duties. The board of supervisors may, at its discretion, employ one or more county engineers, and shall fix their term of employment, which shall not exceed one year, and their compensation, which shall be paid from the county fund. Said engineers shall, in the performance of their duties, work under the directions of said board and shall give bonds for the faithful performance of their duties in a sum not less than one thousand dollars nor more than five thousand dollars. The tenure of office of any engineer may be terminated at any time by the board. Such tenure may be terminated by the highway commission for incompetency. [S. S., '15, § 1527-s3; 40 G. A., ch. 82, § 1; 40 Ex. G. A., ch. 25, § 7.]

4642. Engineers — itemized account. All county engineers and their assistants shall, for all work done or expenses made, file an itemized and verified account, before the board of supervisors, stating the time actually employed each day, the place where such work was done, the character of the work done, and also file with such account vouchers for any expense. [S. S., '15, § 1527-s21b; 40 Ex. G. A., ch. 25, § 8.]

4643. Division of roads—survey. The engineer shall, in writing, divide all county roads into sections, designating each section by some appropriate number, name, or letter and clearly designating the starting point and terminus of each such section. Such designation shall be recorded at length in a county road book. The board may cause all sections to be fully surveyed and a report made thereon before proceeding with the improvement contemplated herein, or, in order to enable the board to proceed with the most necessary and urgent work, said board may designate the order in which the different sections shall be surveyed and planned, and may order the engineer to survey and report on certain named sections before completing the survey and report on all sections. [S., '13, § 1527-s7; 40 Ex. G. A., ch. 25, § 9.]

4644. Details of survey. The engineer's survey and report shall be on the basis of the permanent improvement of said roads, both as to bridge, culvert, tile, and road work. Said survey and report shall consist of an accurate

plan and profile of said roads, showing cuts and fills and outline of grades, with careful attention to surface, lateral, and subdrainage, and shall show the location of all lines of tile and size thereof and of all bridges and culverts, their length, height, and width, and foundation soundings, and an estimate of the watershed relating to each bridge and culvert. Proper bench marks shall be established on each permanent bridge and culvert which shall be recorded on both profile and plan of road. The engineer shall designate on said plans and profiles all existing permanent bridges, culverts, and grades. [S., '13, § 1527-s7; 40 Ex. G. A., ch. 25, § 10.]

4645. Surveys and reports. The survey and report of each section, as soon as completed and approved by the board of supervisors, shall be submitted to the state highway commission, and the board of supervisors may designate to the said commission what sections, in their estimation, should be first passed upon by said state highway commission. The said commission shall pass on such reports and plans, and in so doing, shall take into consideration the thoroughness, feasibility, and practicability of such plans, and may approve or modify the same. [S. S., '15, §§ 1527-s8, 1527-s21a; 40 Ex. G. A., ch. 25, § 11.]

4646. Return of record and plans. After such survey and plan for each section is passed upon by the state highway commission, they shall be returned to the county auditor with full and explicit directions as to modifications, if any. The auditor shall record the same at length in a county road book, and the work shall be done in accordance therewith. [S. S., '15, § 1527-s8; 40 Ex. G. A., ch. 25, § 12.]

4647. Contracts exceeding one thousand dollars. All culvert and bridge construction, grading, drainage and repair work, or materials therefor, of which the engineer's estimated cost shall exceed one thousand dollars shall be advertised and let at a public letting. The board may reject all bids, in which event it may readvertise, or may let the work privately at a cost not exceeding the lowest bid received, or build by day labor, subject to the approval of the state highway commission. [S. S., '15, § 1527-s11; 40 Ex. G. A., ch. 25, § 13.]

4648. Contracts not exceeding one thousand dollars. All culverts and bridge construction, tile and tiling, and repair work or materials therefor, of which the engineer's estimated cost shall be one thousand dollars or less, may be advertised and let at a public letting, or may be let privately at a cost not to exceed the engineer's estimate, or may be built by day labor. [S. S., '15, § 1527-s11; 40 Ex. G. A., ch. 25, § 14.]

4649. Record of bids. All bids received shall be publicly opened, at the time and place specified in the advertisement, and shall be recorded in detail, in a book kept for that purpose, by the county auditor; said book shall at

all times be open to the inspection of the public. [S. S., '15, § 1527-s11; 40 Ex. G. A., ch. 25, § 15.]

4650. "Repair work" defined. Repair work shall be known as work not designated by the highway engineer, all road construction work costing not in excess of sixty dollars per mile, work of a temporary character, or of immediate necessity, and work necessary to maintain finished roads completed under this chapter. [S. S., '15, § 1527-s10; 40 Ex. G. A., ch. 25, § 16.]

4651. Bonds-conditions. The board of supervisors shall require all contractors to give a bond for the faithful performance of the contract, in a sum not less than seventy-five per cent of the contract price. The surety on any bond given to guarantee the faithful performance and execution of any work shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

1. To any extension of time to the contractor in which to perform the contract when each particular extension does not exceed sixty days.

2. To any change in the plans, specifications, or contract when such change does not involve an increase of more than twenty per cent of the total contract price. If a change involves an increase in the total contract price in excess of twenty per cent the surety shall be released only as to such excess. [S., '13, § 1527-s18; 40 Ex. G. A., ch. 25, § 17.]

4652. Action on bond—limitation. No provision in a contract shall be valid which seeks to limit the time to less than five years in which an action may be brought upon the bond covering concrete work nor to less than one year upon the bond covering other work. [S., '13, § 1527-s18; 40 Ex. G. A., ch. 25, § 18.]

4653. Itemized and certified bills. All bills for road work, tile and tiling, culvert, and bridge construction, or for repairs designated by the engineer, shall be filed in itemized form and certified to by the engineer before being allowed or warrants drawn therefor. Before any claim shall be allowed by the board of supervisors on the county road or bridge funds, in payment for any work or construction, except for dragging, maintenance, or repairs not designated by the engineer, it must secure on the bill the certificate of the engineer employed by it, that such improvement has been made in accordance with the plans and specifications as herein provided.

If said engineer makes said certificate when said work has not been done in accordance with the plans and specifications, and said work be not promptly made good without additional cost, the full cost of making said work good may be recovered upon said engineer's bond.

A violation of this section by any member of the board shall render him liable on his bond for the amount of said claim. [S. S., '15, § 1527-s10; 40 Ex. G. A., ch. 25, § 19.]

4654. Partial payments. Partial payments may be allowed by the board on contract work on the basis of the engineer's certified estimates and the percentages specified in the standard specifications of the state highway commission. [S. S., '15, § 1527-s10; 40 Ex. G. A., ch. 25, § 20.]

4655. Advance payment of pay rolls. The board of supervisors may authorize the county auditor to draw warrants for the amount of pay rolls for labor furnished under the day labor system, when said pay rolls are certified to by the engineer in charge of the work. Said bills shall be passed on by the board at the first meeting following said payment. [S. S., '15, § 1527-s11; 40 Ex. G. A., ch. 25, § 21.]

4656. Witness corners. Whenever it may become necessary in grading the highways to make a cut which will disturb or destroy, or a fill which will cover up, a government or other established corner, it shall be the duty of the engineer to establish permanent witness corners, and make a record of the same, which shall show the distance and direction the witness corner is from the corner disturbed or covered up. When said construction work is completed the engineer shall permanently re-establish said corner. A failure to perform said duties shall subject the engineer to a fine of not less than ten dollars nor more than fifty dollars to be collected on his bond. [S., '13, § 1527-s7; 38 G. A., ch. 405, § 1; 40 Ex. G. A., ch. 25, § 22.]

4657. Gravel beds. The board of supervisors of any county may, within the limits of such county and without the limits of any city or town, purchase or condemn any lands for the purpose of obtaining gravel or other suitable material with which to improve the highways of such county, including a sufficient roadway to such land by the most reasonable route, and to pay for the same out of the primary or county road funds, or the board may purchase such material outside the limits of their county. [S., '13, § 2024-i; 39 G. A., ch. 79, §§ 1, 2; 40 Ex. G. A., ch. 25, § 23.]

4658. Procedure. The procedure for the condemnation of land in the establishment of highways shall be followed in the condemnation of land in order to obtain gravel beds and a road thereto. [40 Ex. G. A., ch. 25, § 23-a1.]

4659. Use of gravel beds. The township trustees of any township in the county, in order to improve their township roads, shall have the right to take material from any lands so acquired by the board of supervisors and the supervisors may permit private parties or municipal corporations to take materials from such acquired lands in order to improve any street or highway in the county, but it shall be a misdemeanor for any person to use or for the board of supervisors to dispose of any such material for any purpose other than for the improvement of such streets or highways. [S., '13, §§ 2024-i1, 2024-i2; 40 Ex. G. A., ch. 25, § 24.]

4660. Repair and dragging. The county board of supervisors and the engineer are charged with the duty of causing the county road system to be so repaired and dragged as to keep same in proper condition, and shall adopt such methods as are necessary to maintain continuously, in the best condition practicable, the entire mileage of said system. [S., '13, § 1527-s15; 40 Ex. G. A., ch. 25, § 25.]

4661. Intercounty highways. Boards of supervisors of adjoining counties in this state shall, subject to the approval of the state highway commission:

1. Make proper connections between roads which cross county lines and which afford continuous lines of travel.

2. Adopt plans and specifications for road, bridge, and culvert construction, reconstruction, and repairs upon highways along and across county boundary lines, and make an equitable division between said counties of the cost and work attending the execution of such plans and specifications. [38 G. A., ch. 320, § 1; 40 Ex. G. A., ch. 25, § 26.]

4662. Enforcement of duty. In case such boards fail to perform such duty, the state highway commission may, on its own motion, or in case said boards are unable to agree and one of said boards appeals to said commission, said commission shall notify the auditors of the interested counties that it will, on a day not less than ten days hence, at a named time and place within any of said counties, hold a hearing to determine all matters relating to such duty. At said hearing the commission shall fully investigate all questions pertaining to said matters, and shall, as soon as practicable, certify its decision to the different boards, which decision shall be final, and said boards shall forthwith comply with said order in the same manner as though such work was located wholly within the county. [38 G. A., ch. 320, § 1; 40 Ex. G. A., ch. 25, § 27.]

4663. Interstate highways. The state highway commission and the board of supervisors of any county bordering on a state line are authorized jointly to confer and agree with the highway authorities of such border state, on proper connections for interstate roads, and on proper plans for the construction, improvement, maintenance, and apportionment of work and cost of roads, bridges, and culverts on or across the state line. [S., '13, § 1570-a; S. S., '15, § 1527-s3; 40 Ex. G. A., ch. 25, § 28.]

4664. County bridge and culvert system. The county bridge and culvert system shall embrace all highways throughout the county, except highways entirely within cities which control their own bridge funds. [S. S., '15, § 1527-s3; 40 Ex. G. A., ch. 25, § 29.]

4665. Duty to construct. The county bridge and culvert system shall be constructed and maintained as follows:

1. Culverts which are thirty-six inches, or less, in diameter, and located within a city or town, by the council thereof.

2. Temporary culverts thirty-six inches, or less, in diameter, located on the township road system, by the township, except that the county shall furnish the material therefor, and deliver the same at a railroad station to be designated by the supervisors.

3. All bridges and all other culverts within said system, by the county. [R., '60, § 1097; C., '73, § 527; C., '97, § 757; S. S., '15, § 1527-s8; 40 Ex. G. A., ch. 25, § 30.]

4666. Bridges and culverts on city boundary line. Bridges and culverts on highways, or on parts thereof, which are located along the corporate limits of cities which control their own bridge funds and which are partly within and partly without such limits and which highways have been made a part of the county road system, shall be constructed under plans and specifications, jointly agreed on by the city council and board of supervisors, and approved by the highway commission. The city and county shall share equally in the cost. All matters in dispute between such city and county relative to such bridges and culverts shall be referred to the highway commission and its decision shall be final and binding on both the city and county. [S. S., '15, § 1527-s3; 40 Ex. G. A., ch. 25, § 31.]

4667. Width of bridges and culverts. All culverts shall have a clear width of roadway of at least twenty feet. Bridges shall have a clear width of roadway of at least sixteen feet. [C., '51, § 517; R., '60, § 822; C., '73, § 1001; C., '97, § 1572; S., '13, § 1527-s7; 40 Ex. G. A., ch. 25, § 32.]

4668. Definitions. The term "culvert" shall include all waterway structures having a total clear span of twelve feet or less, except that such term shall not include tile crossing the road, or intakes thereto, where such tile are a part of a tile line or system designed to aid subsurface drainage.

The term "bridge" shall include all waterway structures having a clear span in excess of twelve feet. [40 Ex. G. A., ch. 25, § 33.]

4669. Intracounty bridge. The board of supervisors may, without authorization from the voters, appropriate, for the substructure, superstructure, and approaches of any one bridge within the county, a sum not exceeding fifty thousand dollars. The provision requiring authorization from the voters shall not apply to bridges on the primary road system built entirely out of the primary road fund, where there are sufficient funds on hand to complete the construction of said bridge, and costing not to exceed seventy thousand dollars. [C., '73, § 303; C., '97, § 424; 38 G. A., ch. 336, § 1; 39 G. A., ch. 107, § 1; 40 Ex. G. A., ch. 25, § 34.]

4670. Intercounty and state bridge. The board of supervisors of any county may, without authorization from the voters, appropriate, for the substructure, superstructure, and approaches of any one bridge on a road between

such county and another county of this state or on a road between such county and another state, a sum not exceeding twenty-five thousand dollars. Provided, however, that when such road is a primary road and such bridge is being constructed entirely with primary road funds such appropriation from each county may be a sum not exceeding thirty-five thousand dollars. [C., '73, § 303; C., '97, § 424; 38 G. A., ch. 336, § 1; 39 G. A., ch. 107, § 1; 40 Ex. G. A., ch. 25, § 35.]

4671. Bridge specifications. Standard specifications for all bridges and culverts, railroad overhead crossings, or subways, shall be furnished without cost to the counties and railroad companies by the state highway commission, and work shall be done in accordance therewith. [S. S., '15, § 1527-s11; 40 Ex. G. A., ch. 25, § 36.]

4672. Approval of contract. Any proposed contract which shall exceed the sum of two thousand dollars for any one bridge or culvert, or repairs thereon, shall be first approved by the state highway commission before the same shall be effective as a contract. [S. S., '15, § 1527-s11; 40 Ex. G. A., ch. 25, § 37.]

4673. Record of plans. Before beginning the construction of any permanent bridge or culvert by day labor or by contract, the plans, specifications, estimate of drainage area, estimates of cost, and specific designation of the location of the bridge or culvert shall be filed in the county auditor's office by the engineer. [S. S., '15, § 1527-s11; 40 Ex. G. A., ch. 25, § 38.]

4674. Record of final cost. On completion of any bridge or culvert, a detailed statement of cost, and of any additions or alterations to the plans shall be filed by the engineer and recorded by the auditor in connection with the records of bids, all of which shall be retained in the county auditor's office as permanent records, and when said work is completed and approved, a duplicate statement of the costs thereof shall be filed with the state highway commission by the county auditor. [S. S., '15, § 1527-s11; 40 Ex. G. A., ch. 25, § 39.]

4675. Trustees to fill and grade. Upon the completion by the board of supervisors of any bridge or culvert situated upon the township road system, it shall be the duty of the township trustees to properly fill over all such culverts and uniformly grade the approaches to all such bridges, and make payment therefor from the township road fund. Should the trustees fail for a period of two weeks after notification to perform such work, the board of supervisors shall proceed to perform the same and the engineer shall report the actual cost of so doing, and such amount, not exceeding one hundred fifty dollars, for any such bridge or culvert, shall be certified by the board of supervisors to the county treasurer who shall transfer said amount to the county road fund from the first collection of road funds belong-

ing to said township. The township trustees shall, at township expense, do all necessary filling of temporary culverts installed by them on the township road system. [S. S., '15, § 1527-s8; 40 Ex. G. A., ch. 25, § 40.]

4676. Bridges over ditches. Bridges erected over drainage ditches shall when necessary be so constructed as to allow the superstructure to be removed for cleaning said ditches with as little damage to the removable and permanent parts of said bridge as possible. [S. S., '15, § 1527-s11; 40 Ex. G. A., ch. 25, § 41.]

4677. Bridges on county line roads. Bridges on county line roads may, under joint agreement between the boards of the adjoining counties, be located, constructed, and maintained wholly within one county in order to secure a proper site or in order to avoid unnecessary expense. The resulting work and expense shall be carried on and shared in such proportion as said boards may determine. [C., '97, § 426; 40 Ex. G. A., ch. 25, § 42.]

4678. Bridges over state boundary line streams. Ten per cent of the legal voters, as shown by the returns of the last general election, of any county bordering upon a stream of water which forms the boundary line of this state, may petition the board of supervisors to submit to the voters the question whether such county shall be authorized to construct and maintain a foot and wagon bridge extending from such county across such boundary line river. Said petition shall state the amount to be expended for said purpose. [S., '13, §§ 424-a, 424-b; 40 Ex. G. A., ch. 25, § 43.]

4679. Submission of question. The board shall submit such question at the first general election occurring not less than sixty days after the filing of said petition. [S., '13, § 424-b; 40 Ex. G. A., ch. 25, § 44.]

4680. Notice. Notice of the submission of such question shall be published for four consecutive weeks in at least three newspapers published and of general circulation in the county, except in counties having less than three newspapers, said notices shall be published in all of the newspapers, the last of which publications shall be at least three days and not more than ten days before the holding of such election. [S., '13, § 424-b; 40 Ex. G. A., ch. 25, § 45.]

4681. Construction and maintenance. If a majority of the voters vote in favor of such authorization, the board shall have authority to construct and maintain said bridge, and may agree with the adjoining state, or with any other municipal division thereof, as to what part of said bridge said county will construct and maintain, or as to what percentage of the cost of construction and maintenance said county shall pay, and such county shall be under no greater liability than as evidenced by such agreement. [S., '13, §§ 424-b, 424-c; 40 Ex. G. A., ch. 25, § 46.]

4682. Levy—bond. In order to build and maintain such bridge, the board may, from year to year and on all the property in the county, levy an annual tax of not to exceed one mill. The board may, in the manner provided for funding outstanding county indebtedness, issue the bonds of the county in the amount of the authorized expenditure. The maturity of such bonds may be distributed through a period of twenty years. In case bonds are so issued, the board shall maintain sufficient levies to meet the principal and interest as in other cases of bonds issued for outstanding county indebtedness. [S., '13, § 424-b; 40 Ex. G. A., ch. 25, § 47.]

4683. Use by public utilities. Street and interurban railways, telephone, telegraph, and electric transmission lines, may be permitted to use such bridge on such terms and conditions as the governing bodies jointly erecting and maintaining such bridge may jointly determine. No discrimination shall be made in the use of said bridge as between such railways, or between other utilities, provided that any such railway desiring to use existing tracks thereon shall have the right to do so and shall bear its reasonable share of the cost of the construction and maintenance of such tracks. Joint use of telephone, telegraph, and electric transmission lines may not be required. No grant to any public utility to use such bridge shall in any way interfere with the use thereof by the public. [S., '13, § 424-e; 40 Ex. G. A., ch. 25, § 48.]

4684. Maintenance. Where there is a contract for joint maintenance of the entire structure, the county's liability for such maintenance shall only extend to that part or portion which is within the boundary line of this state. [S., '13, § 424-d; 40 Ex. G. A., ch. 25, § 49.]

4685. Interest in contracts. No member of the highway commission, their deputies, or assistants, or any other person in the employ of the commission, no county supervisor, township trustee, county engineer, road superintendent, or any person in their employ or one holding an appointment under them, shall be, directly or indirectly, interested in any contract for the construction or building of any bridge or bridges, culvert or culverts, or any improvement of any road or part thereof. [S., '13, § 1527-s15; 40 Ex. G. A., ch. 25, § 50.]

4686. Donations. Boards of supervisors and township trustees may receive donations of money, labor, or materials for improvements on any of the roads, or parts thereof, which are under their jurisdiction. Such donations, when made for the improvement of any specified road, or specified part thereof, must be used for that purpose and the work shall be done under the same supervision and in the same manner as other county or township work is done. [37 G. A., ch. 338, §§ 1-4; 40 Ex. G. A., S. F. 127, § 1.]

CHAPTER 241

PRIMARY AND SECONDARY ROAD SYSTEMS

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4687. Intent of chapter. It is the intent of this chapter to divide the highways of the state and of each county into a primary and secondary system, to provide for the substantial and durable improvement of such primary roads of each county, to pay for said improvements on such primary roads from federal aid funds, motor vehicle registration fees, and from the proceeds of assessments on benefited real property, to permit each county to anticipate such funds if it chooses so to do, to divert other existing highway funds to the construction, reconstruction, improvement, and maintenance of the secondary system of roads, to

secure the benefit of all present and future acts of the government of the United States which proffer financial aid to the state in the construction and maintenance of highways, and to coordinate the system herein created with the requirements of said federal government relative to such improvements. [38 G. A., ch. 237, § 1.]

4688. Contracts authorized. The state highway commission is empowered, on behalf of the state, to enter into any arrangement or contract with, and required by, the duly constituted federal authorities, in order to secure the

full cooperation of the government of the United States, and the benefit of all present and future federal allotments in aid of highway construction, reconstruction, improvement, or maintenance. The good faith of the state is hereby pledged to cause to be made available each year, sufficient funds to equal the total of any sums now or hereafter apportioned to the state for road purposes by the United States government for such year and to maintain the roads constructed with said funds. The board of supervisors of each county is empowered to enter into any arrangement or contract with, and required by, the state highway commission, in order to fully carry into effect the provisions of this chapter. [38 G. A., ch. 237, § 2.]

4689. Road systems defined. The highways of the state are, for the purpose of this chapter, divided into two systems, to wit: the primary road system and the secondary road system.

The primary road system shall embrace those main market roads (not including roads within cities), which connect all county seat towns and cities and main market centers, and which have already been designated under section 2 of chapter 249 of the laws of the thirty-seventh general assembly, accepting the provisions of the act of congress approved July 11, 1916, known as the federal aid road act; provided that the said designation of the roads shall, for more efficient service or more economical construction of the system, and with the consent of the federal authorities, be subject to revision by the state highway commission. Any portion of said primary system so eliminated by any change shall revert to and become a part of the system from which originally taken. The state highway commission may, for the purpose of affording access to cities, towns, villages, state parks, and recreation centers within a county, add such road or roads to the primary system of said county as the board of supervisors may specifically designate and request.

The secondary road system shall embrace all roads not embraced in the primary system and not embraced within the limits of cities or towns. Roads embraced in the secondary road system shall continue to be classed as at present, county roads or township roads as the case may be. [38 G. A., ch. 237, § 3; 40 G. A., ch. 83.]

4690. Primary road fund—apportionment—use—right of way. There is hereby created a fund which shall be known as the primary road fund, which shall embrace all federal aid road funds, and all funds derived from year to year by the state under acts regulatory of motor vehicles, except such portion of said motor vehicle fund as may be necessary to maintain the federal aid engineering fund, and as may, by law, be retained in the state treasury as a maintenance fund for the state highway commission, or as a fund to cover administration of the motor vehicle department.

Said primary road fund shall be apportioned to the respective counties in the ratio that the area of the county bears to the total area of the

state, and shall be used in the establishment, construction, and maintenance of the primary road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimination or improvement of railroad crossings, the purchase of additional right of way, and the damages incident thereto, connected with the establishment, construction, and maintenance of the primary road system.

Where additional right of way for primary road system has been taken in any county and paid for out of other funds since this chapter has been in effect, the board of supervisors of such county is authorized to transfer from the primary road fund to such other fund the amount expended for such right of way.

The portion of said fund apportioned to each county as above provided is hereby pledged to the completion of said primary system and is dedicated by the state to the county to be used for the payment of costs in establishment, improvement, or maintenance thereof and for the redemption of any bonds issued therefor as in this chapter provided.

For the purpose of administration, apportionment to any county may be made up partly from federal aid road allotments.

Nothing herein contained shall be construed as precluding the board of supervisors from paying for the construction and maintenance of bridges and culverts on the primary road system from the county bridge fund. [38 G. A., ch. 237, § 4; 39 G. A., ch. 20, § 1; 39 G. A., ch. 188, § 2; 40 G. A., ch. 84, § 1.]

NOTE: For disposition of motor vehicle fees, see §§ 4741, 4999.

4691. Reimbursement to cities and towns. Where any town or city, including special charter, commission plan and manager plan cities, having a population of less than twenty-five hundred has heretofore, and since the enactment of this chapter procured at its own expense right of way for a primary road, the board of supervisors is authorized to reimburse said city or town from the primary road fund for the cost of such right of way. [40 Ex. G. A., ch. 8, § 6-a1.]

4692. Accounts—primary road fund. The state highway commission shall open an account with each county in the state in relation to the primary road fund, and shall first credit each county with any unused portion of the allotment of the federal-county-cooperative road fund, as shown by the official supplementary bulletin of the state highway commission of June, 1917, and designated as "volume five, number six", and shall each year credit each county with its allotted portion of the primary road fund, and charge it with the amount of all duly and finally approved vouchers for claims properly chargeable to said county. Said account shall also show the amount of each separate authorization of bonds or road certificates hereunder, and the amount, number, date, maturity, and interest rate of each series of bonds or certificates actually issued by the county under this chapter. The said commission shall, at all proper times, keep each county

fully informed as to the state of its account. [38 G. A., ch. 237, § 5.]

4693. Accounts by state auditor and treasurer. The account of the primary road fund kept by the state auditor and the state treasurer shall show the amount of the primary road fund with all credits thereto and disbursements therefrom, and shall deal with said fund as a single fund. [39 G. A., ch. 188, § 4.]

4694. Options authorized—election in re hard surfacing. Each county, acting through its board of supervisors, shall have three options in the expenditure of its allotments from the primary road fund:

1. It may elect to acquire additional right of way where necessary and complete the grading and construction of bridges and culverts and drainage in any part or all of the primary roads within the county before laying any hard surfacing.

2. It may hard surface in any one year, such portion of the roads in the primary system in its county as may be met by its allotted portion of the primary road fund for said year, plus any balance remaining to its credit from previous allotments, plus the special assessments on abutting and adjacent real estate as hereinafter provided; or it may proceed in any one year with draining and grading on one or more divisions of the primary system and with hard surfacing on other divisions of said system.

3. It may proceed with said hard surfacing in a more rapid manner when authorized to do so by the voters of the county as hereinafter set forth, provided no hard surfacing shall be constructed on any division of the primary roads until the drainage and grading of said division shall have been fully completed.

It is hereby made the duty of the board of supervisors to proceed in the improvement of primary roads under this chapter as fast as the primary road fund is available, until the improvement of the primary system is completed; provided that any county, after draining and grading its primary system, or any division thereof, shall have the right to surface same with gravel or oil or both if by resolution of the board of supervisors it elects so to do. Such graveling or oiling shall not be considered hard surfacing within the meaning of this chapter. Said surfacing shall be done in accordance with the plans and specifications of the highway commission applicable to such improvement and the cost of such improvement when so done may be paid from the primary road fund. Vouchers therefor must be approved by the board of supervisors and forwarded to the highway commission for final audit, approval, and payment, as provided in section 4702.

The board of supervisors shall not proceed with hard surfacing of roads until such work shall be authorized by a majority vote of the electors of such county at a general election, or a special election called for that purpose; and the board of supervisors of any county may,

on its own motion, and shall, if petitioned by the voters in any county equal to ten per cent of the number voting at the last general election, to be determined by the number of electors voting for governor thereat, submit to said voters the question whether hard surfacing shall be done on the primary road system, or any portion thereof, in said county. Said petition shall be in writing, giving the name and residence of each signer thereto, and each sheet thereof shall be verified by a resident of the county. The board of supervisors shall be governed by the result of such election, and, if a majority of said voters voting thereon shall vote therefor, the board shall proceed forthwith with the work. Such election, however, shall not interfere with or affect work under construction, or under contract, or federal aid projects already approved at the time of the holding of said election.

Notice of such election shall be given as provided in section 4720, and the notice shall give the time said election shall be held and the form of the proposition submitted, and such proposition shall be contained in the ballot. Special elections shall be held in the same manner as general elections.

The question of hard surfacing shall not be submitted to a vote in any county oftener than once in twenty-four months.

The question as to hard surfacing of roads and as to issue of bonds under this chapter may be submitted at the same election. And at the election as to the question of whether or not bonds may be issued, there may be submitted at the same election and upon the same ballot as a separate proposition the question of whether or not hard surfacing may be done. If upon such submission the proposition of hard surfacing is defeated, such vote shall thereby nullify the vote as to the issuance of bonds. [38 G. A., ch. 237, § 6; 39 G. A., ch. 20, § 2; 40 G. A., ch. 84, § 2.]

4695. Authorization canceled. Any authorization, voted by the electors, and not acted upon by the letting of contracts for hard surfacing within four years after said authorization, or if contracts have been let thereunder and four years have elapsed since the letting of the last contract, may be canceled in the following manner:

A proposition for such cancellation must be submitted by the board of supervisors upon petition of ten per cent of the voters as provided upon the submission of the original proposition for authorization, and all the proceedings as to notice and holding such election shall be the same as upon such original submission so far as practicable. [40 Ex. G. A., ch. 25, § 50-a1.]

4696. Division of primary roads. For the purpose of creating a basis for a systematic program of improvement, the board of supervisors of each county, in conjunction with the county engineer, shall, as soon as may be reasonably possible after the taking effect of this chapter, divide into divisions the roads of the primary road system within their county,

with a view to the most advantageous program of improvement, having in view the development of the primary roads in the county in such order as will best and most fairly meet the convenience of the public, viewing the county as a whole. Different portions of primary roads which diverge from a common point may be so divided into divisions that the several divisions immediately adjacent to the common point will constitute an appropriate district. Said divisions shall be suitably designated on a map filed with the state highway commission, and shall be recorded by the county auditor in the proceedings of the board, and shall be final, except that the board may, under changed or better understood conditions, modify such record in order to attain more advantageous results in cost. No division established by the board of supervisors shall embrace roads or streets within a city. [38 G. A., ch. 237, § 7.]

4697. Improvement program — assessment districts. When the board of supervisors of any county shall decide to begin the improvement of any division of said primary road system, it shall, on or before the first day of August of any year, by a resolution filed with the state highway commission, specify the division or divisions of the primary road system in said county which they desire to improve hereunder. Said resolution shall indicate the program of improvement for the ensuing year or years, and shall specify the funds available or the method proposed to finance the cost of such improvements. If the resolution filed with the state highway commission embraces the hard surfacing of any division of primary roads, the same shall be accompanied by a proposed assessment district for each division in the form of an engineer's plat. Each district shall be clearly designated by some appropriate and distinctive name and number, such, for instance, as "Correctionville road, district number one". Portions of primary roads which diverge from a common point may be included within one district. No district established by the board of supervisors shall embrace real estate within a city, but no proceedings for an improvement which embraces a road or street of a town shall be affected by the fact that subsequent to the establishment of the district, and before the completion of the improvement, such town becomes a city by change in population.

All real estate lying upon and immediately adjacent to each side of the highway, and constituting two continuous zones each three hundred twenty rods in width, measured from the center of the highway, shall be included within each district. The board of supervisors may increase the width of either of said zones by extending the outer boundary thereof for a distance of not to exceed one hundred sixty rods. If either of the zones first mentioned be increased in width, the outer boundary of such increase may follow governmental or other well defined lines; and if any part of a governmental forty-acre tract, or less, is within four hundred eighty rods of the center of the

road, then and in such case the entire forty acres or less may be included within the district. Should the center of the highway be less than four hundred eighty rods from an interstate boundary line, or river which acts as such interstate boundary, then the zone adjacent to such line or river may extend to such line or river. Should travel to or from such highway to real estate within either of said zones be wholly barred by a natural or artificial barrier, the board of supervisors may wholly exclude such real estate, or any portion thereof, from such assessment district, or may otherwise meet the difficulty by making a nominal assessment on said real estate. [38 G. A., ch. 237, § 8.]

4698. Approval of improvement project—record of lands. The said commission shall examine said project, and before approval shall have power to so modify the same as to comply with this chapter. Upon the approval of said resolution by the state highway commission, the said district or districts, as proposed by the board, shall be deemed finally established. Upon the final establishment of said district or districts as above provided, the board of supervisors shall cause to be entered and published in the minutes of its proceedings a description of all real estate embraced within each district. Such description may be by any legal description, but the failure to strictly comply with said direction as to such entry and publication shall not affect the validity of the proceeding. [38, G. A., ch. 237, § 9.]

4699. Surveys—plans—approval. When the resolution has been finally approved, the commission shall make, or cause to be made, proper surveys, and shall prepare the plans, specifications, and estimates for such improvement, or shall cause the same to be prepared by the county engineer, under its supervision, which plans, specifications, and estimates shall be finally approved by the board and the commission, and filed with the county auditor, and the work shall be done in accordance therewith, except in so far as the same may be modified by the commission to meet unforeseen or better understood conditions, and no such modification shall be deemed an invalidating matter. Such plans and specifications may provide, as a part of said hard surfaced roadway (and to be computed as a part of the cost thereof) for such shoulders of gravel or other material as may be necessary to protect the roads thereof and to facilitate travel thereover. [38 G. A., ch. 237, § 10.]

4700. Bids — contracts—limitations thereon—bonds. As soon as the approved plans and specifications are received by the board of supervisors, they shall proceed to advertise for bids for the construction of said improvement.

Each bid shall be accompanied by a sworn statement by the bidder, or by a partner or officer thereof, which shall show the name and address of each director, officer, or partner of such bidder. No contract shall be let to any state or county official, elective or appointive,

nor to any relative of such state official, nor to any partnership or corporation in which such state official or relative thereof is financially interested.

No contract shall be let to any partnership or corporation in which a county officer of the contracting county, or relative of such county officer, is financially interested. The letting of a contract in violation of the foregoing provisions shall not invalidate the contract, nor any bonds issued thereunder, but upon discovering such violation, the board of supervisors or the state highway commission may terminate the contract, and such violation in case of such termination shall be a complete defense to any action by the contractor to recover any consideration due or earned under the contract at the time of such termination.

In the award of contracts, due consideration shall be given not only to the prices bid, but to the mechanical and other equipment, and financial responsibility of the bidder and his ability and experience in the performance of like or similar contracts. The board may reject any or all bids and may readvertise for bids, or, with the written consent of the state highway commission, may let by private contract, or with such consent may proceed to the construction (except in case of paving) by day labor at a cost not to exceed the lowest bid received. In any event, all contracts entered into under the provisions of this chapter shall be approved by the state highway commission before they shall become effective.

The form and conditions of all contracts, the form and conditions of all bonds taken or required for the full performance or maintenance of all work, shall be prescribed by the state highway commission. All contracts for performing paving work or furnishing material therefor shall be in writing and shall be secured by a bond for the faithful performance thereof, which bond shall be so drawn as to fully secure the proper county from defective workmanship or material for five years after the completion of contract. [38 G. A., ch. 237, § 11.]

4701. Supervision—duty of highway commission—bonds. The state highway commission is expressly charged with the duty of controlling the supervision, inspection, and direction of the work of construction on behalf of the state and its counties, and of supervising the expenditure of all funds paid on account of such work by the counties of the state, and it shall do and perform all other matters and things necessary to the faithful completion of the improvements herein authorized.

All engineers or inspectors having responsible charge of any improvement shall give bonds for the faithful performance of their duties and for like accounting of all property intrusted to their custody. All bonds given by such engineers or inspectors in the employ of the state highway commission shall be deemed to embrace any and all improvements of which they may be in charge. [38 G. A., ch. 237, § 12.]

4702. Claims and form thereof—method of payment. Claims for draining and grading, graveling or oiling, shall be paid wholly from the county's allotment of the primary road fund. Claims for hard surfacing, in case the county is proceeding without bond issue, shall be paid to the extent of eighty-seven and one-half per cent of the total cost of such hard surfacing from the county's said allotment, and the balance shall be paid with special assessment or road certificates, or with the proceeds thereof. Claims for hard surfacing, in case the county is improving with the proceeds of a bond issue, shall be paid, first, from the county's said allotment then available, or from any balance of said allotment remaining after the retirement of bonds and from the proceeds of special assessments; and, second, out of such bond fund of the county.

All claims shall be itemized upon voucher forms prepared by the state highway commission, sworn to by the claimants, certified to by the engineers in charge, filed with and audited by the board of supervisors, and then forwarded to the state highway commission for final audit and approval. Upon the final approval of vouchers which are payable from the county's allotment of the primary road fund, such vouchers shall be forwarded to the auditor of state, who shall draw warrant therefor, and said warrant shall be paid by the treasurer of state from the primary road fund.

Duly approved voucher claims, payable at the office of the county treasurer, shall be forwarded by the state highway commission to the county auditor, who shall issue warrant therefor, and the county treasurer shall pay the same with special assessment or road certificates, or from the proceeds thereof, or from the bond fund, as the case may be. Partial payments may be made on work during the progress thereof, but no such partial payment shall be deemed final acceptance of the work nor a waiver of any defect therein. [38 G. A., ch. 237, § 13; 40 G. A., ch. 85, § 1.]

4703. Primary road contingent fund. The state treasurer is hereby directed to set aside from the primary road fund the sum of one hundred fifty thousand dollars to be known as the primary road contingent fund. [39 G. A., ch. 220, § 1.]

4704. Claims payable from contingent fund. When claims for labor, freight, or other items which must be paid promptly and which are payable from the primary road fund or from the state highway commission maintenance fund, are presented to the said commission for payment, the said commission may direct that warrants in payment of said claims be drawn on said primary road contingent fund. Such warrants, when so drawn and signed by the auditor of the state highway commission, shall be honored by the state treasurer for payment from the said contingent fund. [39 G. A., ch. 220, § 2.]

4705. Procedure in making payment—reimbursement. The claims in payment of which

warrants are drawn on the primary road contingent fund, shall be audited in the usual manner prescribed by law and shall have noted thereon that warrants in payment thereof have been drawn on the said contingent fund. After the final audit of such claims the state auditor shall draw warrants therefor in the regular manner and forward the same to the state highway commission for record. When such warrants have been recorded in the office of the said commission they shall be forwarded to the state treasurer who shall cancel the same, charge them to the proper fund and credit the primary road contingent fund with the amount thereof. [39 G. A., ch. 220, § 3.]

4706. Bond by auditor of highway commission. The auditor of the state highway commission shall give bond to the state in the sum of ten thousand dollars conditioned for the faithful performance of his duties relative to said fund. Said bond after approval by the state highway commission shall be deposited in the office of the secretary of state. [39 G. A., ch. 220, § 4.]

4707. Board of apportionment—report—notice and hearing—fees of appraisers. A board of apportionment of three resident freeholders of the county shall be appointed by the board of supervisors to apportion all special benefits to real estate within each district, but the same board of apportionment may act for more than one district. No person shall serve on such board if he lives or owns real estate within the district for which he is to act.

Whenever the total expense of such improvement within said district has been approximately determined, said board of apportionment shall, with all reasonable dispatch, personally inspect and classify in some uniform manner, and under some intelligent description, and in a graduated scale of benefits, all real estate within said districts. Said classification, when finally established, shall remain as a basis for all future assessments to cover deficiencies, if any, unless the board of supervisors, for good cause, shall authorize a revision thereof.

Said board of apportionment shall, among other relevant and material matters, if any, give due consideration to the fair market value per acre of each of the different tracts of real estate, to their relative location and productivity, and to their relative proximity and accessibility to the said improvement.

They shall, in writing, and to the different described tracts of real estate within said district, make an approximately equitable apportionment of twelve and one-half per cent of the total expense of said improvement.

In making said apportionment, real estate owned by the state or any county shall be treated as other real estate, but no other publicly-owned real estate shall be included, and in apportioning benefits to real estate owned by the county or state no consideration shall be given to the buildings thereon.

Said apportionment report shall specify each tract of real estate by some intelligent description, the amount apportioned thereto, and the

ownership thereof, as the same appears on the transfer books in the auditor's office, and shall be filed with the county auditor. Said apportionment shall carry the presumption, in the absence of a contrary showing, that the same is fair, just, equitable, and in proportion to benefits and not in excess thereof.

Upon receipt of said apportionment, the county auditor shall fix a day for hearing before the board of supervisors, and cause notice to be served by publication as hereinafter provided upon each person whose name appears in said apportionment report, or in any recommendation accompanying the same, as owner, and also upon the person or persons in actual occupancy of any such real estate, which notice shall state the amount of special assessments apportioned to each tract, the day set for hearing before the board of supervisors, that at said hearing any apportionment may be increased without further notice, that (if such be the case) the board of apportionment has recommended that specified additional tracts of real estate should be included within said district, and that specified sums should be apportioned thereto to defray the cost of said improvement, and that all objections to said report, or any part thereof, by reason of any irregularity in prior proceedings, or by reason of any irregularity, illegality, or inequality in making such apportionment, must be specifically made in writing and filed with the county auditor on or before noon of the day set for such hearing, and that a failure to so make and file such objections will be deemed a conclusive waiver of all such objections.

The county auditor shall cause such notice to be served by having the same published in at least one of the official newspapers of the county once each week for two consecutive weeks, the last of which publications shall be not less than five days prior to the day set for said hearing. Proof of such service shall be made by affidavit of the publisher and be filed with the county auditor.

Omission to serve any party with notice herein provided shall work no loss of jurisdiction on the part of the board over such proceeding, and such omission shall only affect the persons upon whom service has not been had, and if, before or after the board has entered its final order in apportionment proceedings, it be discovered that service of said notice has not been had on any necessary person as herein provided, the board shall fix a time for hearing as to such omitted parties and shall cause such service to be then made upon them, either by publication as in this section provided or by personal service in the time and manner required for service of original notices in the district court, and after such hearing shall proceed as to such person as though such service had been originally complete.

The appearance of any interested party, either in writing or personally, or by authorized agent, either before the board of supervisors or before the state highway commission at any stage of a pending proceeding for the hard surfacing of the highways of a district, shall

be deemed a full appearance. Only interested parties shall have the right to appear before the board of supervisors in proceedings provided for in this chapter, and all persons so appearing shall be required to state for whom they appear, and the clerk of the board shall make definite entry accordingly in the minutes of the board.

The state highway commission shall prescribe standard forms for apportionment reports and notice of hearings thereon.

Each member of the board of apportionment shall be paid in full for all services, at the rate of six dollars per day of actual service, and ten cents per mile for each mile necessarily traveled in the performance of his duties, and bills therefor, duly sworn to and itemized, shall be returned to the board of supervisors with the report of the apportioners. [38 G. A., ch. 237, § 14; 40 G. A., ch. 85, § 2; 40 G. A., ch. 86.]

4708. Refund. In all cases where assessments of twenty-five per cent for hard surfacing have heretofore been levied against adjoining property under the provisions of this chapter and amendments thereto, and such assessments have either been paid or certificates issued to cover deferred installments, all of the same over and above twelve and one-half per cent shall be refunded to such parties out of the motor vehicle portion of the primary fund allotment to the counties in which such levies were made or out of the funds arising from the sale of primary road bonds or other bonds voted by such counties. The board of supervisors may determine whether such refund shall be made in one sum or in annual installments not exceeding ten, and in no case shall interest be allowed on the amounts so refunded.

In case of sale of such adjoining lands prior to making such refund and such assessments have not been paid in full, the same shall be paid to the parties interested in proportion to the amount paid or assumed by them respectively or as may be agreed between such parties at the time such refund is made. [40 G. A., ch. 85, § 6.]

4709. Report in re omitted lands. Should the board of apportionment be satisfied from its investigation, that certain tracts of real estate have been omitted from said district, and that such omitted tracts ought to bear an equitable portion of the expense of such improvement, and are, as to any part thereof, within four hundred eighty rods of said improvement, and not embraced within any other primary road district, they shall proceed in the following manner, to wit:

First, they shall make and return their apportionment report to the board of supervisors, on the presumption that no real estate will be ultimately assessed, except the real estate which is embraced within the district as then constituted and established.

Second, they shall accompany their apportionment report with a definite list of the heretofore mentioned tracts of real estate, which

ought, in their judgment, to be within said district, but which have been omitted therefrom, and shall definitely state the amount which, in their judgment, each such omitted and described tract ought to equitably bear toward the cost of the improvement. The board of supervisors on the final hearing of said apportionment report, shall pass on said recommendation, and may wholly reject or wholly approve the same, or may reject in part and approve in part, or may approve wholly or in part, with modification. If the recommendation be approved and adopted in any part, the board shall enter an order changing the boundaries of the district accordingly, and notify the state highway commission of said change, and shall adjust the final apportionment in accordance therewith. [38 G. A., ch. 237, § 15.]

4710. Hearing on report—levy of assessments—payment. The final hearing on said apportionment report may be adjourned from time to time without loss of jurisdiction on the part of the board. On such final hearing the board shall hear and determine all objections filed, and may increase, diminish, annul, or affirm the apportionment made in said report, or any part thereof, as may appear to the board to be just and equitable.

On the final determination, the board shall levy such apportionment and all installments thereof upon the real estate within said district, as finally established, and said assessment and all installments thereof shall be then due and payable, and bear interest at six per cent per annum commencing twenty days from the date of said levy; provided that if any owner, other than the state or county, of any of said tracts of land shall, within twenty days from the date of said assessment agree, in writing filed in the office of the county auditor, that in consideration of his having the right to pay his assessment in installments, he will not make any objection of illegality or irregularity as to said assessment upon his said real estate, and will pay the same with six per cent interest thereon, then and in that case, said assessment shall be payable as follows: In ten equal installments, the first of which shall mature and be payable on the date of such agreement, and the other installments, with interest on the whole amount unpaid, annually thereafter, at the same time and in the same manner as the March semiannual payment of ordinary taxes.

Where no such agreement is executed, then the whole of such special assessment so levied shall mature at one time and be due and payable with interest, and shall be collected at the next succeeding March semiannual payment of ordinary taxes.

All such taxes shall become delinquent on the first day of March next after their maturity, shall bear the same interest, the same penalties, and be attended with the same rights and remedies for collection, as ordinary taxes.

An owner of land who has availed himself of said ten-year option may at any time discharge his assessment by paying the balance then due on all unpaid installments, with inter-

est on the entire amount for thirty days in advance.

Assessments against lands owned by the state or county shall be due and payable from the date of levy by the board of supervisors, or in the case of any appeal, from the date of final confirmation of the levy by the court.

In case of assessment on lands owned by the county, the same shall be paid from the county general fund. In case of assessments on lands owned by the state, the same shall be represented by a voucher, duly audited as heretofore provided, and the state auditor shall draw warrant therefor and make the same payable out of any funds in the state treasury not otherwise appropriated. [38 G. A., ch. 237, § 16; 39 G. A., ch. 50.]

4711. Reassessments to meet deficit. In case an assessment as originally made should later be found to be insufficient to pay one-eighth of the total cost of the improvement, an additional assessment may be made in the same relative ratio as the original assessment to meet the deficiency. In case an assessment appears to be invalid or, in the judgment of the board, seriously defective, the board of supervisors may proceed to the making of a new assessment as though no assessment had ever been made. [38 G. A., ch. 237, § 17; 40 G. A., ch. 85, § 3.]

4712. Limitations on assessments—deficits. Special benefit assessments shall be levied for an amount which, in the aggregate, shall equal twelve and one-half per cent of the total cost of hard surfacing, and sums expended for drainage, grading, bridging, and culverting shall not be computed as part of said cost, except that the cost of such draining and grading as is purely incidental to the construction of said hard surfacing may be included in the cost thereof.

No real estate, under any circumstances, though embraced within more than one road assessment district, shall be specially assessed for the original cost of hard surfacing in an amount exceeding, in the aggregate, two per cent of the fair market value thereof. Any deficiency in the said twelve and one-half per cent of the total cost, occurring by reason of said two per cent limitation, shall be paid from the county's allotment of the primary road fund. [38 G. A., ch. 237, § 18; 40 G. A., ch. 85, § 4.]

4713. Appeals—power of court—duty of clerk. Any owner of land may appeal to the district court from the order of the board of supervisors in levying the assessment against his real estate, by filing with the county auditor within fifteen days from the date of such levy, a bond conditioned to pay all costs in case the appeal is not sustained, and a written notice of appeal wherein he shall, with particularity, point out the specific objection which he desires to lodge against such levy. The appearance term shall be the trial term, and said appeal shall have precedence over all other business of the term except criminal matters.

The appeal shall be heard as in equity, and the court may raise or lower the assessment in question and make an equitable assessment in the judgment of the court. The clerk of the district court shall, upon the entry of the final order of the court, certify such final order to the county auditor, and the board of supervisors shall at once so adjust the assessments as to comply with such final order. [38 G. A., ch. 237, § 19.]

4714. Appeal—procedure. When an appeal is taken, the county auditor shall at once make a transcript of the notice of appeal and appeal bond, and transmit the same to the clerk of the district court. The appellant shall, on or before the first day of the first term of the court, after taking said appeal, docket said appeal and file a petition setting forth the order or decision of the board of supervisors appealed from and his specific objections thereto. A failure to comply with either of these requirements shall be deemed a conclusive waiver of the appeal, and in such case, the court shall dismiss the same. Appellee need not file answer, but may do so. [38 G. A., ch. 237, § 20.]

4715. Certifying assessments and levy—lien. When the board of supervisors has entered its final order as to the amounts of all special assessments on a given improvement, the county auditor shall at once certify a list of such assessments and a list of the real estate upon which each assessment has been levied, with the specific designation of the district embracing such real estate, to the county treasurer, who shall enter each assessment upon the tax books and continue such entry until such assessment is paid.

Each special assessment and all installments thereof shall be a lien upon the real estate upon which it is levied from the date of such certification by the county auditor, to the same extent and in the same manner as taxes levied for state and county purposes. Changes in the amount of any special assessment by reason of any ruling of the district court on appeals, shall be likewise certified and the county treasurer shall make the proper corrections on his books. [38 G. A., ch. 237, § 21.]

4716. Account for each district. Each assessment district shall be considered a unit and all funds received by the county treasurer for and on behalf of the hard surfacing of such unit shall be carried as a distinct and separate account and under the same specific name as that used by the board in establishing such unit. [38 G. A., ch. 237, § 22.]

4717. Road certificates—requirements—payment—termination of interest. In order to render immediately available that amount of the cost of an improvement which has been specially assessed, the board may issue road certificates in the name of the county in an aggregate amount not exceeding the then unpaid amount of the special assessment levied

in said district. Each issue of certificates shall be under, and in accordance with, a duly adopted resolution of the board which shall be entered at large in the minutes of the proceedings of the board, and which shall recite: (1), the name or designation of the road district on account of which the certificates are issued; (2), that a stated amount (naming the amount) has been specially assessed against the lands within said district; (3), that a stated amount of said aggregate special assessment has not yet been paid (naming said unpaid amount); (4), that it is necessary to render said unpaid amount immediately available; (5), the number of road certificates authorized and the specific amount of each certificate; (6), the specific numbering or designation of each certificate; (7), the rate of interest which each certificate shall bear from date, to wit, not to exceed six per cent per annum; (8), the fact that said certificates are payable solely from the proceeds of the special assessments which have been levied on the lands within said district; (9), that each certificate shall be payable on or before the first day of January of the first year following the maturity of the last installment of said special assessments, and that interest thereon shall be paid annually; (10), the authorization to the chairman of the board, and to the county auditor respectively, to sign and countersign each of said certificates.

Upon the signing of each of said certificates by the chairman of the board, said certificates shall be delivered to the county auditor, who shall countersign the same, charge the county treasurer with the amount thereof, and deliver the same to such latter officer, who shall be responsible therefor on his bond. The treasurer may apply said certificates in payment of any warrants duly authorized and issued for hard surfacing the roads within said district, or he may sell the same for the best attainable price and for not less than par, plus accrued interest, and apply the proceeds in payment of such authorized warrants. Said certificates shall be retired in the order of the consecutive numbering thereof.

The county treasurer shall, on or in connection with the road account for said district, clearly enter the name and postoffice address of all persons to whom any of said certificates are issued, with a particular designation of the certificates delivered to each person. Any subsequent holder may present his certificates to the county treasurer and cause his name and postoffice address to be entered in lieu of that of such former holder. Whenever the fund for such particular district has money sufficient to pay the first retirable certificate or certificates, the county treasurer shall, by mail, as shown by his records, promptly notify the holder of such certificate of such fact, and from and after the mailing of such letter all interest on such certificate shall cease. [38 G. A., ch. 237, § 23.]

4718. Anticipating allotments to meet excess warrants. In the event that the warrants drawn on any county's account shall be in ex-

cess thereof, the said county shall issue certificates as provided in the next section, in an amount equal to the amount which it is proposed to anticipate said account, and in no case exceeding said county's allotment for the current and next succeeding year. Such certificates shall be deposited with the state treasurer. When the allotment of which such certificates are anticipatory becomes available to said county, the state highway commission shall charge said county's account with the amount of the interest on said certificates and shall apportion said amount among the counties in the same way as other primary road funds. At the same time the commission shall notify the state treasurer of the amount of funds becoming available to said county. The treasurer shall thereupon forward an equal amount of said certificates to the county treasurer who shall cancel the same. The good faith of the state is hereby pledged as a guarantee to all counties as against any loss by reason of such anticipations. [39 G. A., ch. 188, § 3.]

4719. Anticipation of annual allotments—procedure. The board of supervisors of any county which is proceeding with the drainage, grading, and hard surfacing of its roads without the aid of a bond issue, may, by the issuance of road certificates, anticipate the annual allotment of the primary road fund for said county, for the current and succeeding year.

Such certificates shall be authorized by a duly adopted resolution which shall specify, (1) the allotment or allotments which are to be anticipated, (2) the amount of certificates authorized, which amount for any such anticipated year shall not exceed a sum equal to ninety per cent of the county's allotment for the year preceding that in which the authorization is made, (3) the denominations of each certificate, (4) the rate of interest which each certificate shall bear, which shall not exceed six per cent per annum, payable annually, and (5) the authorization of the chairman of the board of supervisors and of the county auditor, respectively, to sign and countersign such certificates.

Each certificate shall recite the allotment of which it is anticipatory, and shall be payable on or before the last day of the year for which such allotment has been anticipated, and shall recite that it is payable solely from the future proceeds of the county's allotment of the primary road fund.

The record of such certificate by the county auditor, the receipt, record, handling, and disbursement of the same by the county treasurer, and the latter's responsibility therefor, shall be the same as provided herein for road certificates issued for special assessments on benefited property.

Such anticipated allotments shall stand pledged for the payment of such certificates and shall be used for no other purpose. As soon as said anticipated allotment is available to the county, the state highway commission shall notify the county treasurer of such fact, and the county treasurer shall at once forward

to the said commission the canceled vouchers which were paid from the proceeds of the certificates issued in anticipation of such allotment, and thereupon the said commission shall forward to the state auditor, in favor of the county treasurer, a voucher for the amount of said canceled claims with interest thereon sufficient to balance the interest on an equal amount of certificates to the first day of the next succeeding month. The auditor of state shall issue his warrant for said amount and the treasurer of state shall pay the same out of the primary road fund. The county treasurer immediately upon receipt of said funds, shall notify the holders of said certificates that said certificates will be met on presentation, and from and after the mailing of said notice, interest on said certificates shall cease. Said funds so received shall be used solely for the purpose of retiring said certificates. If, for any reason, the amount realized from an anticipated allotment be insufficient to meet the legally issued certificates, the deficiency shall be met from the county's first accruing allotment thereafter. [38 G. A., ch. 237, § 24.]

4720. Election in re bonds—notice—form of proposition—canvass—procedure to test legality. If any county desires to hasten the drainage and grading or the hard surfacing of the primary roads of its county at a more rapid rate than would be accomplished by merely employing each year its allotted portion of the primary road fund for said year, it may proceed as follows: The board may submit, or, upon petition of a number of the qualified voters of the county equal to twenty per cent of the total vote cast in said county at the last preceding general election, presented to the board in writing so to do, must submit to the voters of the county at a general election, or at a special election called by the board for such purpose, the question of issuing bonds for the purpose of raising funds to meet the cost of such work, and to provide for the retirement of such bonds and interest thereon.

Notice of such election shall be given by publication once each week for two successive weeks in all the official newspapers of the county, stating the time when such election will be held, and substantially the proposition that will be submitted; the last publication to be at least five days prior to the day such election is to be held.

Special elections shall be conducted in the same manner as general elections are conducted. Said question shall be set forth on the ballots substantially as follows: "Shall the board of supervisors be authorized to issue bonds from year to year, in the aggregate amount not exceeding dollars, for the purpose of providing the funds for hard surfacing the primary roads of the county, and to levy a tax on all the property in the county from year to year not exceeding mills in any one year, for the payment of the principal and interest of said bonds, provided, however, that the annual allotments to the county of the primary road fund shall be used to retire said bonds as they mature, and only such portion

of said tax shall be levied from year to year as may be necessary (1) to pay the interest annually, and (2) to meet any deficiency, if any, between the amount of the principal of the bonds and the said allotments from the primary road fund, together with assessments on benefited property provided by law." Immediately to the right of said proposition shall appear two squares of appropriate size, one above the other. Immediately after the first square shall appear the word "yes". Immediately after the other square shall appear the word "no". The voter shall indicate his vote by a cross in the appropriate square.

The returns of said elections shall be canvassed by the board, and its findings shall be entered at large in the minutes of its proceedings. No proceedings to test or review the legality or correctness of said election shall be maintainable unless instituted within thirty days after the findings of the board have been entered upon the record. The fact of each authorization of bonds by a county shall be at once certified by the county auditor to the state highway commission, with such data relative thereto as the commission may demand. [38 G. A., ch. 237, § 25.]

4721. Bonds—form—denomination—interest—payment. If a majority of the votes be in favor of such issue of bonds and tax levy, the board shall from time to time, as necessary to meet the construction cost and expenses incidental thereto, not provided for by funds immediately available from the primary road fund, or from proceeds of special benefit assessments heretofore provided for, issue serial bonds in denominations of five hundred dollars or one thousand dollars each, and at a rate of interest, payable annually, not exceeding five per cent per annum. Bonds and annual interest thereon shall mature on the first day of May. Each bond shall provide that the same shall be payable at the option of the county, on any interest payment date on or after five years from the date of the bond. No bonds shall be sold for less than par value, plus accrued interest. No bonds shall be issued with maturity date postponed more than fifteen years. [38 G. A., ch. 237, § 26.]

4722. Bond levy. If a majority of the voters be in favor of such bond issue and tax levy, the board of supervisors shall, each year thereafter during the life of the bonds, levy on all the property of the county such part of such authorized tax as will clearly meet (1) the matured or maturing interest for the ensuing year on all such outstanding bonds, and (2) any amount of maturing principal of bonds, provided, however, that only so much of said tax shall be levied in any year for principal of said bonds, if any, as can not be met (a) by the county's allotment of the primary road fund available for such ensuing year, and (b) by the proceeds of special assessments on benefited property. [38 G. A., ch. 237, § 27.]

4723. Bonds—issuance—sale—retirement—terminating interest—exemption from taxa-

tion. All bonds issued under the provisions of this chapter shall be issued in serial form. Each issue shall be authorized by a duly adopted resolution of the board, which resolution shall be entered at large in the minutes of the board. Such resolution shall clearly specify the number of bonds authorized, the amount of each bond, the number or designation of each bond, the rate of interest which each bond shall bear from date, which interest shall not exceed five per cent per annum, payable annually, the date of maturity of each bond, and the authorization to the chairman of the board to sign, and to the county auditor to countersign, the same. When signed and countersigned, the county auditor shall charge the county treasurer with the amount of same and deliver the same to the county treasurer, who shall be responsible therefor on his bond.

The county treasurer shall, when so directed by the board, apply any part or all of said bonds in payment of any warrants duly authorized and issued for the particular purpose for which such bonds are issued, provided the same are applied, for at least par of such bonds plus all accrued interest, or the county treasurer shall, when so directed by the board, advertise and sell any part or all of said bonds for the best attainable price, and for not less than par, plus all accrued interest, and apply the proceeds wholly for a like purpose. Said advertisement shall be inserted once a week for at least two weeks in one official county paper in the county, and for a like period in at least one newspaper of general circulation throughout the state, and may include one or more periodicals devoted to the interest of investors.

Bonds of each series shall be retired in the order of the issuance of each series. The county treasurer shall, in disposing of said bonds, keep an accurate record of the name and postoffice address of all persons to whom any of said bonds are issued, with a particular designation and description of the bonds delivered to each person. Any subsequent holder of any of such bonds may present the same to the county treasurer and cause his name and postoffice address to be entered in lieu of such former holder. Whenever the fund from which such bonds are payable is sufficient to pay the legally retirable series of any issue of bonds, the county treasurer shall, by mail, as shown by his records, promptly notify the record holder thereof of such fact, and from and after the expiration of twenty days from the mailing of such notice, all interest on such bonds shall cease. If bonds are presented and paid prior to the expiration of such time, interest shall be computed only to the time of such presentation and payment. Bonds, and road certificates (whether issued in anticipation of special assessments or in anticipation of annual allotments of the primary road fund), shall not be taxed. [38 G. A., ch. 237, § 28.]

4724. Nature of bonds — refunding. The bonds authorized by the preceding section are general obligations of the county. Should the funds on hand not be sufficient to retire said

bonds on the date of maturity thereof, the board of supervisors shall refund the same through the issuance of county funding bonds, as provided in sections 5275 to 5277, inclusive, 5287, and 5288. [39 G. A., ch. 215, § 1.]

4725. Authorization and issuance of bonds. The county auditor shall certify to the state highway commission a correct copy of each resolution which authorizes the issuance of bonds or road certificates which are anticipatory either of special assessments or annual allotments, and from time to time a like certificate as to the actual issuance of bonds or road certificates, under such resolution, together with such data relative thereto as the commission may demand. [38 G. A., ch. 237, § 29.]

4726. Retirement of immature bonds. Whenever available funds created under this chapter are not needed for pending or contemplated improvements, the board of supervisors may, with the consent of any holder of immatured bonds, retire the same by purchase at a price not exceeding par and accrued interest. [38 G. A., ch. 237, § 30.]

4727. Validation of tentative contracts—election. If any county desires to proceed with the hard surfacing of the primary roads of said county at a more rapid rate than would be accomplished by merely employing its allotted portion of the primary road fund as it becomes available from year to year, it may in lieu of the procedure provided in section 4720 proceed as follows: The board of supervisors may enter into one or more tentative contracts for the hard surfacing of any designated number of divisions of one or more of such roads of its county. Such tentative contract or contracts shall be entered into in the same manner and under the same formality and procedure heretofore prescribed for the execution of contracts. Such tentative contracts shall not be effective as contracts until validated by the voters of the county as herein provided, and shall so recite.

Upon the execution of such tentative contract or contracts, the board of supervisors may submit to the voters of the county, at a general election or at a special election called by the board for such purpose, the question of validating said contract or contracts and of issuing bonds and of levying a tax to meet the cost of such work. Special elections shall be conducted in the same manner as general elections are conducted.

Notice of such election shall be given by publication once each week for two successive weeks in all the official newspapers of the county, stating the time when such election will be held, and substantially the proposition that will be submitted; the last publication to be at least five days prior to the day such election is to be held.

If any such contract is to be submitted for validation, the said questions shall be set forth on the ballots substantially as follows: "Shall the following contract be validated, to wit: the contract entered into by the board of super-

visors on the day of and approved by the state highway commission on the day of between county and (specifying the name of the contractor) for the hard surfacing of road with material, and shall the board of supervisors be authorized to issue bonds of this county in an amount not exceeding dollars for the purpose of providing the funds with which to pay for such hard surfacing, and shall the board of supervisors be authorized to levy a tax from year to year on all the property in the county in an amount not exceeding mills in any one year for the payment of the principal and interest of said bonds, provided, however, that the annual allotments to the county of the primary road fund shall be used to retire the bonds as they mature, and only such portion of said tax shall be levied, if any, as is necessary to pay the interest annually and to meet any deficiency between the maturing principal of such bonds and the allotments aforesaid?"

Immediately to the right of said proposition shall appear two squares, one above the other. Immediately after the first square shall appear the word "yes". Immediately after the other square shall appear the word "no". The voter shall indicate his vote by a cross in the appropriate square. If more than one contract is to be submitted at said election, for validation and for authorization to issue bonds and to make tax levy, the proposition pertaining to each contract shall be separately stated on the same ballot and each proposition shall be complete in itself, but the voting thereon shall be collectively and not separately. [38 G. A., ch. 237, § 31.]

4728. Procedure to test legality. The returns of such election shall be canvassed by the board of supervisors, and its findings shall be entered at large in the minutes of the proceedings. If more than one contract has been submitted, and if a majority of the votes be against the validation of such tentative contracts then all the said contracts submitted at said election shall be of no further force and effect. If the majority of the votes be in favor of such tentative contract or contracts, then the same shall be deemed a contract in fact. Actions to test the legality of such election or of any proceedings relating thereto, shall be instituted within thirty days after the findings of the board as to such election have been entered of record, and not afterwards. [38 G. A., ch. 237, § 32.]

4729. Bonds in re validated contracts. If said contract or contracts be validated, the board of supervisors shall from time to time, and as necessary to meet the construction cost and expense incidental thereto, issue serial bonds in such denominations and amounts as will, in its judgment, afford the most advantageous sale, and at a rate of interest, payable annually, not exceeding five per cent per annum, provided that said bonds shall only be issued

for such part of such costs and expenses which can not be met by the funds immediately available from the primary road fund and from the proceeds of special assessments herein provided for. No bonds shall be sold for less than par value plus all accrued interest thereon. No bonds shall be issued with maturity date postponed more than fifteen years. [38 G. A., ch. 237, § 33.]

4730. Bond levy in re validated contracts. If said contract or contracts be validated, the board of supervisors shall each year thereafter, and during the life of the bonds, levy such tax within the limits authorized at said election, on all the property in the county as will fully meet, first, all matured or maturing interest for the ensuing year on all outstanding bonds, and second, any amount of matured or maturing principal of bonds for the ensuing year, if any, which can not be paid from the county's estimated allotment of the primary road fund for such year and from proceeds of special assessments, and any balance remaining in said fund as proceeds of said levy when all bonds and interest thereon shall have been paid, shall be transferred to the county road cash fund of such county. [38 G. A., ch. 237, § 34.]

4731. Condemnation and improvement within cities and towns. The board of supervisors is hereby given plenary jurisdiction subject to the approval of the council to purchase or condemn right of way therefor and grade, drain, gravel, or hard surface any road or street which is a continuation of the primary road system of the county and which is:

1. Within any town, or
2. Within any city, including cities acting under special charter, having a population of less than twenty-five hundred, or
3. Within that part of any city, including cities acting under special charter, where the houses or business houses average not less than two hundred feet apart.

The primary road fund shall not be charged with the cost of hard surfacing within the cities and towns specified above in excess of the cost of hard surfacing which is eighteen feet in width.

After the completion of such improvement the same shall be maintained by the city or town and such city or town shall rest under the same obligation of care as to such improvements as is now provided by law for roads and streets generally.

Any such city or town through its council and each county of the state through its board of supervisors are hereby authorized to enter into written agreements subject to the approval of the state highway commission to determine the location of such improvements within such cities or towns. In case of disagreement the matter shall be referred to the state highway commission, whose decision shall be final. The board of supervisors shall not drain, grade, gravel, or hard surface any highway within the limits of cities other than those specified herein. [38 G. A., ch. 237, § 35; 40 Ex. G. A., ch. 8, § 19.]

4732. Right of way. In the improvement of extensions of the primary road system within cities or towns hereunder, the board of supervisors shall have power to purchase or condemn the necessary right of way therefor, and such condemnation proceedings shall be under the same laws as now apply to the condemnation of right of way for roads outside of cities and towns on primary roads. [40 G. A., ch. 87, § 2.]

4733. Initiating improvement in city or town. Any town, through its council, may, by resolution, make application to the board of supervisors of its county for the grading, draining, graveling, or hard surfacing of any road or street in said town or along its limits, which is a continuation of the primary road system of the county, by filing the resolution making application therefor with the county auditor. The board of supervisors shall examine said application and shall within thirty days after the filing thereof with the county auditor take action thereon. The board may approve said application in whole or in part or may wholly reject the same, whereupon the resolution, together with a record of the board's action thereon, shall be forwarded to the state highway commission for final review. The state highway commission shall examine said resolution and the action of the board thereon, and shall within thirty days make final determination thereof. It may approve the application in whole or in part or may wholly reject the same. The town council and the board of supervisors shall be immediately notified of the action taken. The provisions of section 4694 relative to voting on the question of hard surfacing the primary roads shall not apply to improvements made hereunder. Provided that in counties which have not authorized the hard surfacing of the primary roads, and in which the said primary roads have not all been built to finished grade and drained, the state highway commission shall give preference to such grading and draining projects, and not to exceed twenty per cent of the annual allotment of the primary road funds may be spent on projects within towns hereunder. [40 G. A., ch. 88, § 1.]

4734. Improvements of county line road—procedure. Boards of supervisors of adjoining counties may jointly agree on a district for the hard surfacing of roads in the following cases:

1. When a primary road substantially parallels a county boundary line and is not more than one mile from such boundary line.

2. When a primary road approaches a county boundary line at such an angle that the hard surfacing hereunder of such road will reasonably necessitate a district with a substantial part thereof in different counties.

3. When a primary road constitutes a common boundary line between different counties.

In case of common boundary line roads, said boards may also jointly agree as to which county, through its board of supervisors, shall

construct said improvement. Such agreements shall be subject to the approval of the state highway commission. If such agreements are entered into and so approved, the county in which the paralleling or angling road is situated shall construct the said improvement as herein provided. If such agreements are entered into relative to a common boundary line road, said improvement shall be constructed by the county agreed on. Should said boards be unable to agree on the district for the improvement of a paralleling or angling road, or should the boards be unable to agree on the district for the improvement of a common boundary line road and also as to which board shall construct the improvement, either board may apply to the state highway commission for a decision in the matter. The said commission shall, by proper order, fix the limits of the district. It shall also determine which county shall construct the hard surfacing on the common boundary line road. Said order shall be final. Such order shall be certified to each board, and the board of the county to which construction has been assigned shall enter such order at large in the minutes of its proceedings, and proceed with the construction of such hard surfacing in the same manner as though the district and the real estate therein were wholly within their county, except that the board of apportionment shall file its report with the board of supervisors of all counties in which any of such real estate is located.

The county auditor of the county constructing the hard surfacing shall fix a time for a hearing on said report, and shall cause notice thereof to be given as in cases where the district and the real estate therein are wholly within one county, except that said notice shall be published in one of the official newspapers of each of the counties in which any of the real estate is situated.

All subsequent proceedings including objections, final confirmation, and appeals shall proceed in the same manner as though the real estate therein were wholly within the constructing county, except that the county auditor of the county constructing the improvement shall, after the final apportionment has been determined and levied, certify a list of the real estate lying in the nonconstructing county or counties and the amount levied thereon, to the county auditor and treasurer of such nonconstructing county. Such assessment and levy, when so certified, shall have the same force and effect as though the same had been duly and legally made by the board of supervisors of such nonconstructing county, and the board of supervisors, auditor, and treasurer of such nonconstructing county shall henceforth proceed with the collection of said levy on such real estate in their county as though such levy had arisen out of an improvement proceeding wholly within their county, and when the amount of such levy has been collected, either by cash payments by the property owner, or by the sale of certificates, said county treasurer shall hold the same as a reim-

bursement to said county on its allotments from the primary road fund.

As soon as the final apportionment and levy have been made, the board of supervisors of the constructing county shall, through its county auditor, certify to the state highway commission the total amount of the levies on the real estate in the nonconstructing county, and the state highway commission shall credit the constructing county and charge the non-constructing county with the amount of such certificate.

If the improvement is for hard surfacing a county boundary line road, that portion of the total cost thereof not specially assessable, to wit, eighty-seven and one-half per cent, shall be taken equally from each county's apportionment of the primary road fund. If the improvement is for hard surfacing a paralleling or angling road, said eighty-seven and one-half per cent of the total cost shall be taken wholly from the apportionment of the county wherein the paralleling or angling road is located. Any differences, not herein specifically provided for, arising between different counties, relative to the improvement of common boundary line roads, shall be referred to the state highway commission, and its decision shall be final. [38 G. A., ch. 237, § 36; 40 G. A., ch. 85, § 5.]

4735. Improvements of city boundary line road—procedure. Whenever any public highway that is a part of the primary road system is located along the corporate line of any city of the first class, cities under special charter, cities under the city manager plan, and cities of the second class, it may be improved by hard surfacing by the board of supervisors as part of the primary system under this chapter. In such case, one-half the cost of such hard surfacing along said corporate line shall be paid by such city, and the board of supervisors of the county and the city council of such city are hereby authorized to agree in writing for the payment by the city of one-half the cost of such improvement, and in case they can not agree upon the amount to be paid by the city, and date when payment is to be made, the matter shall be referred to the state highway commission, whose decision shall be final. Said city may pay said amount from its general fund, or it may proceed under the provisions of chapter 308 relating to the establishment of districts for the improvement or repair, by paving or graveling, of such streets within the corporation as in the judgment of the council constitute main traveled highways into and out of cities, for the assessment and collection of such cost, or it may pay in the first instance from such general fund and reimburse said fund thereafter from proceeds realized from such assessment proceeding. The city in such case, for prompt realization of funds, shall have the right to issue road certificates in anticipation of taxes and assessments to be realized from such assessment proceeding. [38 G. A., ch. 237, § 37; 39 G. A., ch. 145, § 1.]

4736. Maintenance of primary roads—procedure in case of default. Primary roads outside of towns shall be maintained by the board of supervisors under the patrol system provided by chapter 243, and when so maintained under the said patrol system to the satisfaction of the state highway commission, the county's allotment of the primary road fund may be drawn on for such maintenance.

Primary roads, after the hard surfacing of the same, shall be maintained under said patrol system wholly out of the county's allotment of the primary road fund. If any county fails to maintain any of its hard surfaced roads to the satisfaction of the state highway commission, said commission shall have power to assume charge of such maintenance and pay therefor out of said county's allotment of the primary road fund. The amount of maintenance vouchers, when the work has been done by the said commission, shall be charged to the county's allotment account, and warrants for the amount of such vouchers shall be issued by the auditor of state on presentation of such vouchers, and paid by the treasurer of state as in other cases.

In case any town fails to maintain, to the satisfaction of the state highway commission, any hard surfacing constructed hereunder in said town, the said commission shall have power to assume charge of such maintenance and pay for the same from the primary fund belonging to said county, and, in such case, the cost thereof shall be certified by said commission to the county treasurer, who shall reimburse the primary fund of the county by deducting the amount from the next succeeding apportionment of tax funds belonging to the general fund of said town. [38 G. A., ch. 237, § 38; 39 G. A., ch. 56, § 2.]

4737. Maintenance of system—payment of obligations—secondary roads. After the primary road system, as now constituted, or as it may hereafter be constituted in any county, by authorized modification, is fully improved by grading, draining, and graveling or other surfacing approved by the highway commission, the state highway commission shall each year appropriate from said county's allotment of the primary road fund a sufficient amount:

1. To pay the cost of maintaining the primary road system of said county during said year.

2. To pay the interest and maturing principal of certificates, if any, issued by said county in anticipation of said county's allotments of the primary road fund.

3. To pay the interest and maturing principal of primary road bonds, if any, issued in anticipation of said county's allotment of the primary road fund.

All funds remaining in said county's allotment of the primary road fund, after the above amounts have been set aside, are hereby made available for the grading, draining, or graveling of secondary roads in said county which connect with or form laterals or feeders to the primary roads of said county.

The procedure by the county board in the initiation of secondary road projects as herein specified, the approval of said projects by the state highway commission, the letting and approval of contracts for the construction work, and the payment of claims therefor, shall be the same as provided in this chapter for projects on the primary road system. The surveys and plans for such secondary road projects shall be made by the county engineer, and shall be approved by the state highway commission before the contracts are let. The county engineer shall supervise the construction work. The state highway commission may make general inspection of such construction work, and may refuse to approve claims for any such work which is found to not conform to the plans and specifications.

Nothing herein contained shall be so construed as to preclude the county board from using any or all of such excess primary road funds in any year on the primary road system.

In the resolution providing for the submission to the voters of the question of a bond issue for development of the primary system as provided in section 4720, the board may also outline or indicate any lateral roads, part of the secondary system, which it ultimately contemplates improving after the primary system has been finished, but such action shall not be deemed a material matter in any way affecting the validity of such bond issue for such primary roads, nor shall such action interfere in any way with the earlier improvement of such lateral roads under statutes relating to the improvement of roads in the secondary system. [38 G. A., ch. 237, § 39; 40 G. A., ch. 89, §§ 1-4.]

4738. Machinery and material for counties—equipment authorized. The state highway commission, with the consent of the board of supervisors of any county, is authorized to purchase for and on behalf of any such county, road material or road machinery, after receiving competitive bids, and to pay for the same out of such county's allotment of the primary fund, and is directed to purchase, rent, or lease any machinery or other articles necessary for the use and most economical operation of field engineering work, the testing of materials, the preparation of plans, and for allied purposes, in order to enable the commission to carry out the provisions of this chapter, and to pay for the same out of the state highway commission maintenance fund. [38 G. A., ch. 237, § 40; 40 Ex. G. A., ch. 4, § 106.]

4739. Federal donations. Should the government of the United States provide for free distribution among the states of machinery or other equipment, suitable for use in road improvement, the state highway commission is empowered to receive and receipt for such machinery and equipment, and to take such action as will secure to the state the benefit of any such tenders by the federal authorities. Said commission is further authorized, in the event of such distribution to the states by the federal authorities, to make such apportionment of said machinery or other equipment among the coun-

ties of the state as in its judgment will best facilitate work in progress or contemplated by any county or counties, but the title and right of possession of such property so received from the federal government shall at all times rest in the state highway commission for the use and benefit of the state. [38 G. A., ch. 237, § 40; 40 Ex. G. A., ch. 4, § 107.]

4740. Penalty for violations. Any member of the board of supervisors, or other county officer, who authorizes or issues, or permits to be issued, any certificate or bond in violation of the requirements herein specified, or who diverts any authorized certificate or bond, or the proceeds derived therefrom, or any part thereof, to any other purpose than the purpose herein specified, shall be deemed guilty of embezzlement and punished accordingly. [38 G. A., ch. 237, § 41.]

4741. Federal aid engineering fund. The federal aid engineering fund, created by chapter 249, laws of the thirty-seventh general assembly shall be continued, and the treasurer of state is hereby directed annually to transfer to such fund from the funds derived from year to year under the act regulatory of motor vehicles, an amount equal to the estimated cost of plans and specifications for the current year, as certified by the state highway commission. Said fund shall be used for engineering work in connection with federal aid road projects and paid out only on properly itemized vouchers approved by the state highway commission and audited by the state board of audit. [38 G. A., ch. 237, § 42.]

NOTE: For other provisions as to disposition of motor vehicle fees, see §§ 4690, 4999.

4742. Limitation on indebtedness. The amount of bonds issued under this chapter by any county shall not, when added to all other indebtedness of the county, exceed in the aggregate three per cent on the actual value of the taxable property within such county to be ascertained by the last state and county tax list previous to the incurring of such indebtedness, any other statute to the contrary notwithstanding. [38 G. A., ch. 237, § 43.]

4743. Donations. The board of supervisors is empowered to accept on behalf of the county donations of property in aid of highway construction, and from and after such acceptance the title to such property shall vest in the county for the sole purpose for which donated, and the obligation on the part of the officials charged with the possession and disbursement thereof to properly account therefor shall be the same as attends any other property of the county. [38 G. A., ch. 237, § 44.]

4744. State highway maintenance fund. There is hereby created a fund for the maintenance of the state highway commission consisting of two and one-half per cent of all moneys paid into the state treasury under the act regulatory of licenses on motor vehicles. Said fund shall be used for no other purpose

than as a maintenance fund for said state highway commission, and shall be drawn out only on warrants drawn by the auditor of state on itemized vouchers approved by the state highway commission. The expenditures of said commission shall be audited by the executive council, and a full and complete report of all said expenditures shall be published in the annual report under the act creating the state highway commission. At the end of each biennial period, the unexpended funds remaining in the highway maintenance fund for said biennial period shall be placed to the credit of the primary road fund. [38 G. A., ch. 237, § 45.]

4745. Secondary road system defined. The secondary road system shall embrace the following classes of roads: (1) County roads which now exist of record, or which may hereafter exist of record by additions from the township roads, exclusive of all roads of the primary road system, and (2) township roads, which shall embrace all other roads not included within cities and towns. The county road cash fund, under the jurisdiction of the board of supervisors, and the township road funds, under the jurisdiction of the township trustees, are hereby wholly dedicated and pledged after July 1, 1920, to the county and township roads respectively as provided by law. [38 G. A., ch. 237, § 46.]

4746. Assessment districts—survey and report—notice—hearing. In order to provide for the graveling, oiling, or other suitable surfacing of roads of the secondary system, the board of supervisors shall have power, on petition therefor, to establish road assessment districts, but such districts need not necessarily follow the zone limits provided herein for the improvement of primary roads. Said petition shall intelligently describe the lands within said proposed district, and the road or roads therein which the petitioners desire improved, and the general nature of the improvement proposed on each of said roads. Improvements may be proposed in the alternative. Said petitions shall be signed by twenty per cent of the owners of the lands within the proposed district who are residents of the county.

Said petition shall be filed with the county auditor, whereupon the board of supervisors shall cause the county engineer to personally examine all the roads within such proposed district and to determine the relation of such roads to the lands within such proposed district, and the relation of such roads to any of the roads of the primary road system, and the necessity, if any, for further grading or draining of such roads.

The engineer shall embody his finding in a report to said board. He may recommend the establishment of the district as requested, or with such modifications as, in his judgment, are advisable, including a recommendation as to an increase or decrease of the size of the district as proposed by the petitioners. The en-

gineer's report shall include a plat showing, in accordance with his recommendations, the highways to be improved and benefited.

Upon the filing of said report by the engineer, the board of supervisors shall fix a time for hearing thereon, and shall cause the county auditor to serve notice by publication, as hereinafter provided, of the pendency of said petition on all owners of said land lying within said proposed district, as recommended by the engineer.

Said notice shall contain the time and place of hearing on said petition, an intelligent description of all of the lands lying within said district, and the ownership thereof, as shown by the transfer books in the auditor's office, and shall be published for two consecutive weeks in some newspaper published in the English language within the proposed district, if there be such newspaper, and if there be no such newspaper within such district, then the said notice shall be so published in some such newspaper in the county as near as practicable to said district. Proof of such publication shall be made by the publisher by affidavit duly filed with the county auditor.

Hearings on said petition may be adjourned from time to time without loss of jurisdiction on the part of the board. On the final hearing, the board shall proceed to a determination of said matter. It may reject the proposal or it may approve the same and establish the district as petitioned for. It may modify the petition either by excluding lands therefrom or by adding lands thereto, or otherwise modify the same, or the board may withhold final order in such matter until such roads, or any designated part thereof, are drained or graded to their satisfaction. No lack of definiteness, either in the petition or in the engineer's report, shall be deemed a jurisdictional defect, and the final order of the board of supervisors establishing the district shall be final. In establishing a district, the board of supervisors shall determine and enter of record the general nature of the improvement to be constructed on the different roads within the district, or may determine such improvements in the alternative and may determine on one class of improvement for some roads and a different class for other roads. [38 G. A., ch. 237, § 47.]

4747. Highway commission furnished copy of plat. Upon the establishment of a district on said secondary road system, the board of supervisors shall file with the state highway commission a copy of the order establishing the district and a copy of the engineer's plat. [38 G. A., ch. 237, § 48.]

4748. Plans—bids. Upon the establishment of a district in such secondary road system, the county engineer shall prepare the plans for the improvements contemplated by the order of the board establishing the district, which plans shall be accompanied by the standard specifications of the state highway commission for the class of improvements contemplated. Upon the filing of said plans and

specifications, and upon receiving the agreement of the township or townships to pay their portion of the improvement of township roads, if any, the board shall, in accordance with their order relative to the class or classes of improvements, proceed to advertise for bids, and shall proceed as provided in section 4700 provided that contracts involving less than five thousand dollars need not be approved by the state highway commission. [38 G. A., ch. 237, § 49.]

4749. Inspection of work. It shall be the specific duty of the board of supervisors to see that all contracts on said secondary roads are faithfully executed. The county engineer shall maintain competent inspection of the work during the progress thereof, and in the certification of bills and the issuance of warrants the engineer and the county auditor shall rest under the same responsibility as now attends such acts relative to road work, and tile, tiling, culvert, and bridge construction. [38 G. A., ch. 237, § 50.]

4750. Payment for county road improvements. The total cost of improving a county road in said secondary system within said district, by oiling, graveling, or other suitable surfacing, shall be apportioned and paid in the proportion of seventy-five per cent from the county road fund and twenty-five per cent from assessments on benefited lands, or may, by agreement between the board of supervisors and all of the trustees of the township in which the road is located when the petition requests such method of payment, be paid as provided in the next succeeding section. [38 G. A., ch. 237, § 51; 40 Ex. G. A., ch. 25, § 50-a2.]

4751. Payment for township secondary roads—maintenance. The total cost of so improving a township road within said district shall be apportioned and paid in the proportion of twenty-five per cent from the county road fund, fifty per cent from the township road funds of the township or townships embracing said township road (according to their relative mileage), and twenty-five per cent from the special assessments on benefited lands.

A county road, after it is so improved, shall be maintained by the board of supervisors from the county road fund. A township road, after it is so improved, shall be maintained by the township trustees from township funds, unless the improvement is of so substantial and permanent a nature as that the board of supervisors shall by resolution add such road to the county road system, to be maintained as such. [38 G. A., ch. 237, § 51; 40 Ex. G. A., ch. 25, § 50-a3.]

4752. Advancing costs and reimbursement of funds. The total cost of such improvements on said secondary roads shall in the first instance be paid from the county road fund, or jointly from such fund and from the proceeds of all special assessments and road certificates issued against special assessments on lands

within the district, or by direct application of such certificates to such cost.

In case of the improvement of a county road, the said county road fund shall be reimbursed for amounts advanced in excess of its legal contribution, from the proceeds of all assessments on benefited property, and from the proceeds of all road certificates which represent such special assessments.

In case of the improvement of a township road, said fund shall be reimbursed to the extent of twenty-five per cent of the total cost of the improvements from said special assessments and road certificates, and fifty per cent from the township road fund, or the township drag fund, or from the township drainage fund, or from any or all of said funds. The trustees are authorized to transfer to the county from any or all of such township funds the amount sufficient to effect such reimbursement.

Should the trustees neglect to make such transfers, the county treasurer, on order from the board, shall withhold from such township sufficient of its tax funds as will effect such reimbursement, and transfer such amount to the county road fund, or the board of supervisors may levy such direct tax against the property within said delinquent township as will effect such reimbursement.

If the district as finally established, embraces and contemplates the improvement of a township road, the board of supervisors shall proceed no farther as to such township road until the township which embraces such road shall agree in writing, signed by a majority of its trustees, to pay its portion, as herein required, of the total cost of said improvement. Said written agreement shall be deemed the financial obligation of the township and not of the trustees individually. If such township road is on a township line, such agreement shall be executed by both townships, and one-half of that portion of the cost payable from township funds shall be borne by each township. [38 G. A., ch. 237, § 52.]

4753. Special assessments. Special assessments shall be levied upon the lands within districts embracing secondary roads, in the aggregate amounts hereinbefore provided, and such amount shall be apportioned and levied within said district in the manner heretofore provided in case of improvements within primary road districts, it being the intent of this section that the appointment of apportioners, the apportioning of benefits, the notice thereof and hearing thereon, and all procedure in connection therewith which leads to and culminates in the final collection and payment of such benefits, including the issuance of road certificates, shall be governed by the provisions of this chapter applicable thereto, except that no additional lands shall be included within the district after same is established by the board of supervisors. [38 G. A., ch. 237, § 53.]

4754. Streets as extension of secondary roads. Whenever in any city or town having a population of thirty-five hundred or less there is a road or street which is a continuation or

an extension of a secondary road adjacent to lands used for agricultural or horticultural purposes as described in section 6210, which the board of supervisors is desirous of improving by hard surfacing or graveling under the law governing the improvement of secondary roads, the council of such city or town and the county board of supervisors are hereby authorized to include by resolution within such secondary road project such portion of such road in said city or town as may be located as provided herein, and to assess such lands within the zone of benefit assessments upon the same basis and in the same manner as provided by law relating to the levy of benefit assessments

upon the secondary road system outside the limits of cities and towns. [40 G. A., ch. 90.]

NOTE: Above section made applicable to certain special charter cities by § 6754.

4755. State treasurer to credit primary fund with interest. The state treasurer shall, quarterly, credit to the primary road fund, all sums accruing after January 1, 1920, to the state as interest on deposits of funds derived by the state from acts regulatory of motor vehicles, except interest on such part, if any, of said fund as may be retained in the state treasury as a maintenance fund for the administration of the motor vehicle department. [38 G. A., ch. 237, § 58.]

CHAPTER 242

IMPROVEMENT OF COUNTY AND PRIMARY ROADS

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4756. Bonds and taxes. In addition to other methods provided by law for the improvement of roads, any county having a population of more than seventy thousand may issue bonds for the purpose of raising funds to pay the cost of draining, grading, bridging, paving and/or graveling, and completing the construction of the primary and county roads and may levy taxes for the payment of such portions of said bonds and the interest thereon as are not paid by the primary road fund or the county road, drainage, and bridge and culvert funds, when authorized by a vote of the people, by proceeding as hereinafter provided. [40 Ex. G. A., ch. 25, § 51.]

said proposed program of improvement and the county auditor shall cause to be published in two newspapers of general circulation in the county once each week for two weeks, a notice of such hearing and a description of the roads proposed to be improved, the general nature of the proposed improvements, and an estimate of the cost of each road proposed to be improved. At such hearing any citizen may appear and object and be heard. After the hearing the board may dismiss the proceedings or shall adopt a program for road improvements substantially as proposed. [40 Ex. G. A., ch. 25, § 55.]

4757. Proposed plan. The board of supervisors may by resolution or upon petition of at least ten per cent of the legal voters, residents of the county, as shown by the poll books of the last preceding election, shall propose a program of highway improvement, specifying the portions of primary and/or county roads proposed to be improved, the general nature of the improvements, the time within which it is proposed to complete said improvements, and the estimated cost of each of the roads included in said program. [40 Ex. G. A., ch. 25, § 52.]

4760. Submission of plan. The board may, or upon petition of a number of qualified electors of the county equal to ten per cent of the total number of votes cast for governor in said county at the last preceding general election, must submit a program to the voters of the county at a general election or at a special election called for that purpose, the questions of issuing bonds from year to year to be designated as primary road bonds or county road bonds, as the case may be, and of raising funds with which to pay said bonds and the interest thereon as the same may become due. [40 Ex. G. A., ch. 25, § 56.]

4758. Approval of plan. The proposed program of improvement on primary roads shall be subject to the same approval by the highway commission as is required in other improvements on the primary roads. [40 Ex. G. A., ch. 25, § 53.]

4761. Form of submission. The form of the ballot shall be substantially as follows:

4759. Notice of hearing. The board of supervisors shall fix a time for hearing upon

"1. Shall the board of supervisors be authorized to issue from year to year, serial bonds to be known as primary road bonds, in the aggregate amount not exceeding dollars, to provide funds in the following amounts and for the following purposes:

a.dollars (\$.) for draining, grading, bridging, hard surfacing and completing the construction of primary roads described as follows: (Here set forth the location of the primary roads to be graded, drained, bridged, and hard surfaced, the length and estimated cost of each portion thereof.)

b.dollars (\$.) for draining, grading, bridging and completing construction without surfacing primary roads described as follows: (Here set forth the location of the primary roads to be drained, graded and construction work completed without surfacing, the length and estimated cost of each portion thereof.)

c.dollars (\$.) for surfacing with gravel primary roads described as follows: (Here set forth the location of the primary roads to be surfaced with gravel, and the length and estimated cost of each portion thereof.)

2. And shall the county's allotment of the primary road fund, except such portion as is required for the maintenance of the primary road system, miscellaneous expenditures, and the payment of outstanding indebtedness (if any) against the primary road fund, be appropriated and used for the payment of said primary road bonds and interest thereon.

3. Shall the board of supervisors be authorized to issue from year to year, serial bonds to be known as county road bonds, in the aggregate amount not exceeding.....dollars, to provide funds for the following purposes:

a.dollars (\$.) for draining, grading, bridging, and completing construction without surfacing, the county roads described as follows: (Here set forth the location of the county roads to be drained, graded and construction completed without surfacing, the length and estimated cost of each portion thereof.)

b.dollars (\$.) for surfacing with gravel county roads described as follows: (Here set forth the location of the county roads to be surfaced with gravel, the length and estimated cost of each portion thereof.)

4. And shall all the county road, drainage, and bridge funds coming into the county treasury from taxes and all other sources, except such as are required for the maintenance of such roads, the construction of bridges and miscellaneous expenditures, be appropriated and used for the payment of said county road bonds and interest thereon.

5. And shall the board of supervisors of the county be authorized to levy and collect taxes on all the taxable property of the county from year to year, in amounts sufficient to pay any part of the principal and the interest on said bonds of both classes, as the same mature, which funds so appropriated are insufficient to pay.

YES NO

[40 Ex. G. A., ch. 25, § 57.]

4762. Combining or separating proposition. The propositions for the improvement of pri-

mary roads and of county roads may be submitted by the board as a single proposition or separately. [40 Ex. G. A., ch. 25, § 58.]

4763. Bonds-maturity-interest. All bonds issued hereunder for grading, draining, bridging, or paving, shall mature in not more than fifteen years from date of issue. All bonds issued hereunder for graveling shall mature in not more than seven years from date of issue. Each bond shall show on its face the date of its maturity and shall be payable on said date. The interest rate shall not exceed five per cent per annum payable semiannually. No bond shall be sold for less than par, plus accrued interest. [40 Ex. G. A., ch. 25, § 59.]

4764. Apportionment of primary allotment. If at said election, the said proposition as to primary roads or as to the primary and county roads carries, the state highway commission shall on or before September first each year during the life of said primary road bonds, set aside from said county's allotment of the primary road fund:

1. A sufficient amount to maintain the primary road system of said county during the ensuing year.

2. A sufficient amount to pay the maturing principal and interest of primary road bonds and/or certificates (if any) heretofore issued under other provisions of law.

3. A sufficient amount to meet any unavoidable miscellaneous necessary expenditures on the primary road system not properly chargeable to maintenance.

The amount remaining in said county's allotment of the primary road fund after said funds have been set aside for each year during the life of said bonds, is, in so far as necessary, hereby appropriated, dedicated, and pledged to the payment of the principal and interest of primary road bonds issued hereunder, and shall be used for no other purpose. [40 Ex. G. A., ch. 25, § 60.]

4765. Limitation on bonds. The maximum aggregate amount of bonds to be issued serially which any county shall be authorized to issue for improving the roads in the county road system shall not be, including interest, more than one-half of the sum which might be realized by the levies allowed by law in that county for the county road, county road building, county drainage, county bridge and culvert funds during the period of years over which said bonds extend. Such maximum amount shall be determined from the millage allowed by law computed upon the assessed valuation of the real and personal property (exclusive of moneys and credits) in the county for the year last preceding the issuance of such bonds. The total sum of bonds issued for the purpose of improving primary roads by grading, draining, completing construction and graveling, shall not exceed sixty-five per cent of the estimated receipts from the primary road fund for the period for which such bonds are issued. Such estimate

shall be based upon the receipts in such fund in the county for the year last preceding the issuance of such bonds. [40 Ex. G. A., ch. 25, § 60-a1.]

4766. Refunding to meet deficiency. If the funds so set apart for the payment of said bonds and interest are at the time of the maturity thereof insufficient to pay the same, refunding bonds may be issued for the payment of such deficiency. Such refunding bonds shall be issued on the same terms and conditions and be payable in the same manner as the original bonds. [40 Ex. G. A., ch. 25, § 60-a2.]

4767. Budget required. If at said election the said proposition as to county roads or as to both county and primary roads, carries, the board of supervisors shall make a budget of the county road, the county road drainage and the county bridge and culvert funds separately and shall set aside funds for each of said purposes sufficient for the maintenance and drainage of the county roads and the building of necessary county bridges and culverts. [40 Ex. G. A., ch. 25, § 61.]

4768. Funds provided. The board of supervisors shall levy and collect from year to year a sufficient amount of taxes which, together with said appropriated funds, shall be sufficient to pay the bonds herein authorized to be issued, and the interest thereon as the same mature, for primary or county roads or both, as the case may be, and none of said funds so to be appropriated or taxes to be levied and collected shall be used for any other purpose than the payment of said bonds and interest until the same are fully paid. [40 Ex. G. A., ch. 25, § 62.]

4769. Limitation on tax. No amount of additional taxes herein authorized for the payment of primary or county road bonds and/or interest thereon, shall be levied unless and until all the funds and maximum tax levies herein pledged respectively for such purposes

have been exhausted. [40 Ex. G. A., ch. 25, § 63.]

4770. Limitation on expenditures. The aggregate cost of improving each kind of road described in the questions submitted, shall not be more than ten per cent in excess of the estimated cost thereof. [40 Ex. G. A., ch. 25, § 64.]

4771. Statutes applicable. All the provisions of law with reference to voting primary road bonds and the issuance and sale thereof shall apply to bonds issued hereunder, and all provisions of the primary and county road laws, respectively, shall apply to highway improvements made hereunder, all except as herein otherwise provided. [40 Ex. G. A., ch. 25, § 65.]

4772. Maintenance funds—use. The funds herein authorized to be set aside for maintaining the primary and county roads, respectively, shall be sufficient, in so far as existing sources of revenue will permit, to maintain said roads continuously in a good state of repair. Consideration shall be given to the maintenance of completed roads, to the end that investment therein shall be protected and preserved. The funds so set aside for maintenance shall be used only for such purpose, and any taxpayer of the county may enforce the provisions of this section by appropriate action at law or in equity in any court of competent jurisdiction. [40 Ex. G. A., ch. 25, § 66.]

4773. Optional procedure. Any county having a population of seventy thousand or less may adopt the additional method herein provided for the improvement of the roads of such county, but in any such county separate ballot boxes must be provided for the voters residing in cities and towns, and for the voters residing outside of cities and towns. The proposition submitted shall not be deemed to be carried in any such county unless a majority vote cast is in favor thereof both in the incorporated and unincorporated territory. [40 Ex. G. A., ch. 25, § 66-a1.]

CHAPTER 243

ROAD PATROL

4774. Road patrolmen.
4775. Tenure and salary.
4776. Bonds.

4777. Tools.
4778. Duties.
4779. Additional authority—badge—oath.

4774. Road patrolmen. The board of supervisors shall cause all highways under their jurisdiction to be patrolled, throughout each road-working season, and at such other times as they may direct, and to this end shall appoint such number of patrolmen as may be necessary to perform such duty. [37 G. A., ch. 316, §§ 1-3; 40 Ex. G. A., H. F. 122, § 1.]

may determine, shall be subject to the orders of the board, and shall hold their positions at the pleasure of the board. [37 G. A., ch. 316, § 1; 40 Ex. G. A., H. F. 122, § 2.]

4775. Tenure and salary. Such patrolmen shall receive such compensation as the board

4776. Bonds. Said patrolmen shall give bond for the faithful performance of their duties, and in such sum as the board may order. Said bonds shall be approved by the board. [37 G. A., ch. 316, § 5; 40 Ex. G. A., H. F. 122, § 3.]

4777. Tools. The said board shall supply said patrolmen with all necessary tools and equipment, and the patrolmen shall be responsible upon their bond for the care of the same. [37 G. A., ch. 316, § 5; 40 Ex. G. A., H. F. 122, § 4.]

4778. Duties. Each road patrolman shall:

1. Devote his entire time to his duties.
2. Personally inspect, at least once each week, and oftener if notified of defect in roads or bridges, all roads assigned to him.
3. Seasonably drag, or cause to be dragged, after each rain, and at such other times as may be necessary, all roads assigned to him.
4. Keep all sluices, culverts, and bridges and the openings thereof and all side ditches of the road free from obstructions.
5. Provide such side ditches with ample outlets.
6. Remove loose stones and other impediments from the traveled part of the highway.
7. Fill depressions and keep the road free from ruts, water pockets, and mud holes.

8. Repair the approaches to bridges and culverts and keep such approaches smooth and free from obstruction.

9. Perform such other duties as the board may direct. [37 G. A., ch. 316, §§ 2-4; 40 Ex. G. A., H. F. 122, § 5.]

4779. Additional authority — badge — oath. The road patrolmen appointed by the board of supervisors of any county may in addition to their other duties, enforce the provisions of the law relating to travel on the primary roads of the county outside of cities and towns. Each such patrolman shall while on duty wear an official badge, such that he may be clearly distinguished as an officer of the law by all persons using the public highways, said badge to be furnished by the board of supervisors of the county. Each such patrolman shall take the same oath as any peace officer and shall have the authority of a peace officer. [37 G. A., ch. 316, § 1; 40 Ex. G. A., H. F. 277, § 126-a1.]

NOTE: Law of road, see §§ 5019 to 5079, inc.

CHAPTER 244

TOWNSHIP ROAD SYSTEM

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4780. System defined. The township road system shall embrace all highways of the township which are outside the limits of cities and towns and which are not a state road or a part of the primary road system or of the county road system. [S. S., '15, § 1527-s3; 40 Ex. G. A., S. F. 123, § 1.]

4781. Duty of trustees. The township trustees are charged with the duty to repair and improve the roads of said system in their township, and to equitably and judiciously expend the funds of the township, including road poll taxes, for the specific purposes for which authorized.

They shall not incur debts for said purposes unless funds have been provided for the payment thereof by an authorized levy.

They may let by contract, to the lowest responsible bidder, any part of the township work for the current year. [C., '97, § 1533; S., '13, § 1533; 40 Ex. G. A., S. F. 123, § 2.]

4782. Streets in villages. All public streets of villages are a part of the road; and all road superintendents or persons having charge of the same, shall work the same as provided by law. [C., '73, § 952; C., '97, § 1507; 40 Ex. G. A., S. F. 123, § 3.]

4783. Township line roads. The system of work on township roads which separate adjoining townships, or townships and cities, or towns in the same or different counties, shall be apportioned and carried on under such mutual arrangement as the different governing boards may enter into. [40 Ex. G. A., S. F. 123, § 4.]

4784. Weeds. The trustees shall cause all weeds growing on the township roads to be cut as provided by law. [C., '97, § 1533; S., '13, § 1533; 38 G. A., ch. 194, § 1; 40 Ex. G. A., S. F. 123, § 5.]

4785. Dragging roads—selection. At every February meeting, or as soon thereafter as

possible, the township trustees shall select from the township road system the roads to be dragged for the year. Such selection shall include all school bus routes leading to consolidated schools, all mail routes, and all main traveled roads. [S., '13, § 1570-b1; S. S., '15, § 1527-s13; 40 Ex. G. A., S. F. 123, § 6.]

4786. Payment for dragging. The township trustees shall not allow any bills for dragging, maintenance, or repair work, nor shall warrants in payment therefor be drawn by the township clerk, until verified itemized bills therefor have been certified to by the township road superintendent. A violation of this section shall render the township clerk liable on his bond for the amount of said warrant. [S. S., '15, § 1527-s13; 40 Ex. G. A., S. F. 123, § 7.]

4787. Superintendent of roads—compensation. The trustees shall, at their February meeting, employ a superintendent or superintendents, not exceeding four in number, for the township road system. The term of office, and compensation of each superintendent, shall be at the discretion of the trustees. The compensation of the superintendent shall be paid out of the township road fund. [C., '97, § 1533; S., '13, § 1533; S. S., '15, § 1527-s13; 40 Ex. G. A., S. F. 123, § 8.]

4788. Duties of superintendents. Each superintendent shall:

1. Have general supervision of all maintenance and repair work on the township road system, including the placing of temporary culverts, and collect the road poll tax.

2. Maintain the approaches to all bridges on said roads in such manner as to present smooth and uniform surfaces, and when notified that such culverts and bridges are unsafe, it shall be his duty to put up barriers on the roads approaching such bridges and culverts.

3. Keep the openings to all culverts and ditches free from weeds, brush, and other obstructing materials.

4. Have charge of all druggable roads, and see that they are properly dragged at such times as may be necessary to maintain them in a smooth condition.

5. Contract on behalf of the township, for the necessary dragging of said roads at such reasonable prices as the trustees may authorize.

6. Furnish to the trustees, at least once each year, and oftener if demanded by the trustees, a written report of all work done under or by him.

7. Pay to the township clerk all moneys received by him. [C., '51, § 577; R., '60, § 907; C., '73, § 994; C., '97, § 1561; S., '13, § 1561; S. S., '15, § 1527-s13; 40 Ex. G. A., S. F. 123, § 9.]

4789. Poll tax list. The township assessor shall, on or before the fifteenth day of April each year, furnish the township clerk a written list of all able bodied male citizens who are between the ages of twenty-one and forty-five years, and who are residents of the township outside the limits of cities and towns. Said

clerk shall deliver said list or a copy thereof to each superintendent of roads. [R., '60, § 892; C., '73, § 973; C., '97, § 1540; S., '13, § 1540-a; 40 Ex. G. A., S. F. 123, § 9-a1.]

4790. Day's work defined. Eight hours' service for a man, or for a man and team, shall be required for a day's work, but except on extraordinary occasions no person shall be required to go more than three miles from his place of residence to work. [C., '51, § 593; R., '60, § 886; C., '73, § 984; C., '97, § 1535; 40 Ex. G. A., S. F. 123, § 10.]

4791. Shade trees—timber—drainage. The road superintendent shall not cut down or injure any tree growing by the wayside which does not obstruct the road, or tile drains, or which stands in front of any town lot, farmyard, orchard or feed lot, or any ground reserved for any public use, or destroy or injure the ingress or egress to any property, or turn the natural drainage of the surface water to the injury of adjoining owners; but it shall be his duty to use strict diligence in draining the surface water from the public road in its natural channel, and to this end he may enter upon the adjoining lands for the purpose of removing obstructions from such natural channel that impede the flow of such water. [C., '51, § 587; R., '60, § 901; C., '73, § 989; C., '97, § 1556; 40 Ex. G. A., S. F. 123, § 11.]

4792. Obstructing unsafe bridge—removal. The road superintendent shall, on receiving written notice of the unsafe condition of any bridge within his township, erected or maintained by the county, obstruct the passage thereon, and notify at least one member of the board of supervisors, of its condition. If he fails to obstruct and notify he shall be liable for all damages growing out of the unsafe condition thereof, occurring after the time he is so notified and while he neglects to obstruct such passage. Any person who shall remove such obstruction shall be liable for all damages resulting therefrom. [C., '51, § 582; R., '60, § 902; C., '73, § 990; C., '97, § 1557; 40 Ex. G. A., S. F. 123, § 12.]

4793. Township work—survey. Before beginning any work upon the township road system, other than repair work, the trustees shall make application to the board of supervisors, who shall furnish them with an engineer, to be paid out of the county fund, who shall survey and lay off such roads according to the plans and specifications as provided for the county road system, and the work shall be done in accordance therewith. [S. S., '15, § 1527-s14; 40 Ex. G. A., S. F. 123, § 13.]

4794. Contract with supervisors. The trustees may contract with the board of supervisors for the construction of any work on the township road system, and the county shall not make any charge for the use of the county's road equipment except the actual cost of operating the same. [S. S., '15, § 1527-s14; 40 Ex. G. A., S. F. 123, § 13.]

4795. Highway levies. The township trustees shall, at their April meeting, make the following levies:

1. A township road levy of not to exceed six mills.

2. A road drag levy of not less than one nor more than two mills.

3. A road drainage levy, if necessary, of not to exceed five mills. [C., '51, §§ 567-569; R., '60, § 891; C., '73, § 969; C., '97, § 1528; S., '13, §§ 1528, 1570-b2; 38 G. A., ch. 237, § 55; 38 G. A., ch. 242, § 1; 40 Ex. G. A., S. F. 123, § 14.]

4796. Wages. They shall also at their April meeting determine the amount that shall be allowed for a day's labor by a man, and by a man and team, on the road. [40 Ex. G. A., S. F., 123, § 14.]

4797. Township road fund. The township road fund shall be used:

1. For the building and repair of township roads.

2. For the installation and repair of culverts.

3. For filling culverts, and grading approaches to bridges, constructed by the county on township roads.

4. For the purchase of tools, road drags, and machinery.

5. For the elimination of dangers at railroad crossings on township roads in cooperation with the board of supervisors and railway company.

6. For any other purpose authorized by law. [R., '60, § 891; C., '73, § 969; C., '97, § 1528; S., '13, § 1528; S. S., '15, § 1527-s8; 40 Ex. G. A., S. F. 123, § 15.]

4798. Drag fund. The drag fund shall be used only for the purpose of dragging the township roads. [S., '13, § 1570-b2; S. S., '15, § 1527-s13; 40 Ex. G. A., S. F. 123, § 16.]

4799. Replenishing drag fund. Should the drag fund become exhausted the trustees may replenish the same from the township road fund in such amount as will best maintain the township road system. [37 G. A., ch. 398, § 1; 40 Ex. G. A., S. F. 123, § 17.]

4800. Drainage fund. The township road drainage fund shall be used for the payment of drainage assessments against the township on account of benefits to highways. Any surplus of said tax may be employed in draining the township highways, but if such drainage is in cooperation with those owning land in the township and the expense exceeds fifty dollars in any one place, the trustees shall, before paying for any part of said drainage, have, on file, a report of a competent civil engineer approving of said drainage and specifying the amount which the township should justly pay on said drainage improvement, and the trustees shall pay no greater sum. [S., '13, § 1528; 40 Ex. G. A., S. F. 123, § 18.]

4801. Transfer of funds. In townships where the road drainage fund is insufficient to pay

drainage assessments due, any moneys remaining in the township road fund at the time of the November meeting of the trustees may be transferred to the road drainage fund, and in townships where the road drainage fund has an excess over the amount required for road drainage, the township may transfer such money to the township road fund, but in townships where no drainage fund is needed no levy shall be made therefor. [40 Ex. G. A., S. F. 123, § 18.]

4802. Levies certified—when collected. All said levies shall be immediately certified by the township clerk to the county auditor who shall enter them on the tax books and the county treasurer shall collect the entire tax at the first semiannual payment of taxes. [R., '60, § 892; C., '73, § 973; C., '97, §§ 1533, 1540; S., '13, §§ 1533, 1540-a; 40 Ex. G. A., S. F. 123, § 19.]

4803. Taxes paid to clerk. The county treasurer shall, on the last Monday in April and October in each year, pay to the township clerk all the road, drag, and drainage taxes belonging to his township which are at such times in his hands, taking the duplicate receipts of such clerk therefor, one of which receipts shall be forthwith delivered by the treasurer to the trustees. [R., '60, § 910; C., '73, § 976; C., '97, §§ 1540, 1543; S., '13, §§ 1533, 1540-a; 40 Ex. G. A., S. F. 123, § 20.]

4804. Duty of clerk. The township clerk shall have charge of, and properly preserve and keep in repair, tools, implements, and machinery belonging to the township, and may determine at what time the superintendent may have the use of the same or any part thereof, and he shall be responsible for the safe keeping of the same when not in the custody of some one of the superintendents. [C., '73, § 970; C., '97, § 1529; 40 Ex. G. A., S. F. 123, § 21.]

4805. Report by clerk. Not later than the first day of January, or at any time upon the demand of the township trustees, the township clerk shall report the work accomplished on the township road system in his township, including number of culverts installed, location thereof, and the number and size of culverts on hand and not installed. [S. S., '15, § 1527-s16; 40 Ex. G. A., S. F. 123, § 22.]

4806. Trustees' annual report. The clerk of each township shall file with the board of supervisors on or before the first Monday in each year a full, itemized, and verified account, showing each item of money received and disbursed during the preceding year for road purposes. The trustees shall certify to the correctness of said report. Said report shall remain on file with the county auditor, and, omitting certifications and verifications of township officers, a synopsis thereof showing the names of all persons to whom money has been paid and the amount paid to each shall be published in connection with the proceedings of the January session of the board of supervisors. Standard blanks for said reports shall be prepared by the state highway com-

mission. [S., '13, § 1566-a; 40 Ex. G. A., S. F. 123, § 23.]

4807. Report by superintendent. The superintendent of the township shall report to the township clerk on the first Monday of April, August, and November of each year, which report shall be sworn to and embrace the following items:

1. The names of all persons in his district required to perform labor on the public road, and the amount of money paid or work performed by each.

2. The names of all persons against whom actions have been brought, and the amount collected of each.

3. The amount of all moneys coming into his hands by virtue of his office, and from what sources.

4. The number of days he has been employed in the discharge of his duty.

5. The condition of the roads in his district, and such other items and suggestions as he may wish to make. [C., '51, § 580; R., '60, § 897; C., '73, § 987; C., '97, § 1554; S., '13, § 1554; 37 G. A., ch. 335, § 4; 40 Ex. G. A., S. F. 123, § 24.]

4808. Annual settlements. The trustees shall, at the November meeting, settle with the township clerk, road superintendent, and with all parties with whom contracts have been made for work in repairing or dragging the roads. [C., '73, § 969; C., '97, § 1528; S., '13, § 1528; 40 Ex. G. A., S. F. 123, § 25.]

4809. Compensation of trustees. The trustees shall receive the same compensation per day for time necessarily spent in looking after the roads as they do for other township business. [C., '97, § 1538; S., '13, § 1538; 40 Ex. G. A., S. F. 123, § 26.]

4810. Compensation of clerk. The township clerk shall receive, from the township road fund, such compensation for the discharge of his duties pertaining to township roads, as the trustees shall fix. [C., '73, § 970; C., '97, § 1529; 40 Ex. G. A., S. F. 123, § 27.]

4811. Qualifications and bonds. The township clerk and road superintendents shall qualify by taking the oath required of civil

officers of the county and by giving bond for the faithful performance of their duties in such sum as the township trustees may order. No trustee shall be surety on any such bond. [R., '60, §§ 881, 884; C., '73, §§ 970, 978, 979; C., '97, §§ 1529, 1534, 1545; S., '13, §§ 1527-s13, 1545; 40 Ex. G. A., S. F. 123, § 28.]

4812. Transfer of township work. Whenever fifteen per cent of the resident freeholders of any township shall petition the board of trustees of any township to submit to the voters of such township, the question of whether or not the work of grading, improving, and draining the township roads shall be transferred to the board of supervisors of the county, such board of trustees shall submit such question at the next general election.

If the majority of the votes cast be in favor of such change, the trustees shall make the necessary levy for such work and shall on or before May first following certify same to the board of supervisors and shall also report to said board the balance of any moneys remaining in any funds set apart for such purposes.

The board of supervisors shall on or before the first day of June proceed with the work on such roads of the township system as the trustees shall describe and such work shall be of the same standard as that done on any of the county roads.

The cost of all such work shall not exceed the amount provided by the tax levy and the balance remaining in such road funds. The township clerk shall pay for any such work out of such grading and drainage funds on the order of the board of supervisors. The township shall not be required to pay more than the actual cost of such work.

The dragging and repair of township roads shall continue under the control of the township trustees.

Should any township own any road machinery which may be of use to the county, the board of supervisors is authorized to buy such machinery and to pay for same out of any road funds not otherwise appropriated.

The township trustees may make an additional levy not to exceed two mills for the purposes of this section. [39 G. A., ch. 227.]

CHAPTER 245

ROAD POLL TAX

4813. Poll tax—persons subject—amount—use.
4814. Collection—certification—lien on real estate.

4815. Receipt for poll tax.
4816. Action to recover poll tax.

4813. Poll tax—persons subject—amount—use. All able bodied male residents, including the male officers and employees of any state institution, if any, but not including any committed inmate of such institution, between the ages of twenty-one and forty-five who are residents of the township outside the corporate limits of cities and towns shall between

the first day of April and the first day of September of each year pay to the road superintendent a sum not to exceed five dollars, said sum to be fixed by the township trustees at the April meeting. Provided that the township trustees of each township may at the regular April meeting provide whether or not each person may at his option perform two days'

labor in lieu of payment of money as provided in this chapter. All money received by the road superintendent under provisions of this chapter shall be immediately paid to the township clerk for the benefit of the general township road fund. The tax and money so collected shall be expended upon the township road system under the supervision of the road superintendent. [R., '60, § 885; C., '73, § 983; C., '97, § 1550; S., '13, § 1550; 37 G. A., ch. 335, § 1; 39 G. A., ch. 172, § 2; 40 G. A., ch. 246, § 6; 40 Ex. G. A., ch. 21, § 1.]

NOTE: Officers and soldiers of national guard exempt, see § 461.

Members of fire companies exempt, see § 1656.

4814. Collection — certification — lien on real estate. All of said tax remaining unpaid on the first day of September in each year shall be certified to the county auditor at any time after September first and before the first day of December following, and shall be entered by him upon the tax list of said county

and be treated and collected as ordinary county taxes and shall be a lien upon all the real property of the delinquent. [39 G. A., ch. 172, § 3.]

4815. Receipt for poll tax. The road superintendent shall give a receipt for all money received by him which shall be evidence of payment of said tax to the amount specified in the receipt. [C., '51, § 588; R., '60, §§ 886, 896; C., '73, § 984; C., '97, § 1551; S., '13, § 1551; 39 G. A., ch. 172, § 4.]

4816. Action to recover poll tax. In case of failure of any person to pay poll tax as required by this chapter the road superintendent may recover the same by action in his name as road superintendent and no property or wages belonging to such person shall be exempt from execution therefor. Such action shall be brought before any justice of the peace in the county where such person resides. [R., '60, § 887; C., '73, § 985; C., '97, § 1552; 39 G. A., ch. 172, § 5.]

CHAPTER 246

WEEDS

4817. Duty to enforce.
4818. Noxious weeds.
4819. Duty to destroy.
4820. Extent of duty.
4821. Order for destruction.
4822. Notice of order.
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4824. Assessments of costs.
4825. Notice of assessment.
4826. Duty to make complaint.
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4828. Duty of county attorney.
4829. Penalty.

4817. Duty to enforce. The provisions of this chapter shall be enforced:

1. By the board of supervisors as to all county and primary roads.

2. By the councils and commissioners of all cities and towns, irrespective of their local form of government, as to all roads, streets, and other lands within said cities and towns.

3. By the township trustees as to all township roads and as to all other lands, including railroad lands, within the township not embraced in paragraphs one and two hereof. [S., '13, §§ 1565-c, 1565-d, 1565-f; 38 G. A., ch. 194, § 2; 40 Ex. G. A., ch. 25, § 1.]

4818. Noxious weeds. The following weeds are hereby declared to be noxious weeds, namely: quack grass (*agropyron repens*), Canada thistle (*cirsium arvense*), cocklebur (*xanthium canadense*), wild mustard (*brassica arvensis*), sour or curled dock (*rumex crispus*), smooth dock (*rumex altissimus*), buckhorn or ribbed plantain (*plantago lanceolata*), wild parsnip (*pastinaca sativa*), horse nettle (*solanum carolinense*), velvetweed or buttonweed (*abutilon theophrasti*), burdock (*arctium lappa*), shoofly (*hibiscus trionum*), wild carrot (*daucus carota*), sow thistle (*souchus arvensis*), and Russian thistle (*Salsola Kali*, L. Var. *Tagrus*). [S., '13, § 1565-b; 40 Ex. G. A., ch. 25, § 2.]

4819. Duty to destroy. Each owner and each person in the possession or control of any lands, including railroad lands, shall:

1. Cut, burn, or otherwise destroy, all noxious weeds thereon, as defined in this chapter, at such times in each year and in such manner as shall prevent said weeds from blooming or coming to maturity, and keep said lands free from such growth of other weeds as shall render the streets or highways adjoining said lands unsafe for public travel, or shall interfere in any manner with the proper construction or repair of said streets or highways.

2. Cause all weeds on the streets or highways adjoining said lands to be cut or destroyed in the manner and at the time prescribed by the board of supervisors. Nothing herein shall prevent the landowner from harvesting, in proper season, the grass grown on the road along his land. [S. S., '15, § 1565-a; 38 G. A., ch. 228, § 1; 40 Ex. G. A., ch. 25, § 3.]

4820. Extent of duty. The duty of one who owns, controls, or occupies land to destroy weeds within a public highway shall only extend to the line in the highway to which the abutting land would extend in case no highway existed. [40 Ex. G. A., ch. 25, § 4.]

4821. Order for destruction. The board of supervisors of each county shall, at their

April meeting of each year, by resolution make an order fixing the time for destruction of noxious weeds and may fix different times for the destruction of different varieties of weeds. [S., '13, §§ 1565-c, 1565-d; 40 Ex. G. A., S. F. 125, § 5.]

4822. Notice of order. Notice of aforesaid order shall be given by one publication in the official newspapers of the county and shall be directed to all property owners. Said notice shall state:

1. Time for destruction.
2. Manner of destruction if other than cutting above the surface of the ground.
3. That unless said order is complied with the trustees (or council or commissioners as the case may be) will cause said weeds to be destroyed and the cost thereof to be taxed to the owner of the property. [S., '13, §§ 1565-c, 1565-d; 39 G. A., ch. 280, § 2; 40 Ex. G. A., S. F. 125, § 6.]

4823. Destruction. The trustees, council, commissioners, or board of supervisors, as the case may be, shall forthwith, in case of a substantial failure to comply with said order, cause said weeds to be destroyed. The expense of such destruction, including costs of serving said notice and the costs, if any, of any special meetings, may be advanced from the township road fund, or from the town or city general fund, or from the county road fund, as the case may be. [S., '13, §§ 1565-c, 1565-d; 40 Ex. G. A., S. F. 125, § 7.]

4824. Assessments of costs. The trustees, council, commissioners, or board of supervisors shall assess all of said costs against the said land and the owner thereof by a special tax which shall be certified to the county treasurer by the clerk of the governing body, placed upon the tax books and collected, together with interest and penalty after due, in the same manner as other unpaid taxes. When collected, said funds shall be paid into the fund upon which said warrants were drawn. [S., '13, §§ 1565-c, 1565-d; 40 Ex. G. A., S. F. 125, § 8.]

4825. Notice of assessment. Before making said assessment, thirty days' notice shall be given such owner of the time and place of meeting of the trustees, council, commissioners, or board of supervisors, which notice shall also contain a statement of the work done and the expense thereof with costs, and shall be given

by posting a copy thereof on the premises affected and by mailing a copy thereof by registered mail to the last known address of the person owning or controlling the same. At such time and place such owner may appear with the same rights given by law before boards of review upon increase in assessments. [S., '13, § 1565-c; 39 G. A., ch. 280, §§ 1, 2; 40 Ex. G. A., S. F. 125, § 9.]

4826. Duty to make complaint. It shall be the duty of all officers directly responsible for the care of public highways to make complaint to the proper township trustees or town councils or commissioners or board of supervisors, as the case may be, whenever it shall appear that the provisions of section 4819 hereof may not be complied with in time to prevent the blooming and maturity of noxious weeds or the unlawful growth of weeds, whether in the streets or highways for which they are responsible or upon lands adjacent to the same. [S., '13, §§ 1565-c, 1565-e; 40 Ex. G. A., S. F. 125, § 10.]

4827. Report—to whom made. It shall be the duty of the township clerk, between the fifteenth and thirtieth days of October of each year, to make report to the board of supervisors of the county in which his township is situated as to the presence and location of noxious weeds that have been reported or found within the township and the steps taken to bring about the destruction thereof, a copy of which report shall be forwarded to the board of supervisors to be kept on file and a copy of the same to be forwarded by them to the secretary of agriculture not later than the first day of December following. [S., '13, § 1565-h; 40 Ex. G. A., S. F. 125, § 10-a1.]

4828. Duty of county attorney. It shall be the duty of the county attorney, upon complaint of any citizen that any officer charged with the enforcement of the provisions of this chapter has neglected or failed to perform his duty, to enforce the performance of such duty. [40 Ex. G. A., S. F. 125, § 10-a2.]

4829. Penalty. Any officer referred to in this chapter who neglects or fails to perform the duties incumbent upon him under the provisions of this chapter shall be punished by a fine not exceeding one hundred dollars. [S., '13, § 1565-i; 40 Ex. G. A., S. F. 125, § 11.]

CHAPTER 247

HEDGES ALONG HIGHWAYS

4830. Hedges and windbreaks—trimming.
4831. Destruction by supervisors—tax.

4832. Sale of wood—costs—balance.
4833. Exceptions.

4830. Hedges and windbreaks—trimming. The owners of osage orange and hedges of shrubbery other than trees along the public highway shall keep the same trimmed by cutting back within five feet of the ground at

least once in every two years, and burn or remove the trimmings from off the road. With the exception of osage orange hedge fences, no trees or shrubbery, except as hereinafter provided, shall be permitted on the line or

within the limits of the highway, unless the same shall be used as a windbreak for residences, orchards or feed lot, and no windbreak shall exceed forty rods in length, such forty rods to be determined by the owner within one day when requested by the board of supervisors; and in case he neglect or refuse to designate the forty rods of windbreak he desires, the board of supervisors shall select such forty rods of hedge. [C., '73, § 999; C., '97, § 1570; S., '13, § 1570; 37 G. A., ch. 417, § 1; 39 G. A., ch. 277.]

4831. Destruction by supervisors—tax. The board of supervisors shall have the authority to enforce the provisions of this chapter and destroy or cut back the hedges or trees, as specified above, upon the failure of any owner of the hedge or fence so to do. The board of supervisors shall cause notice in writing to be served upon any owner of any hedge or trees described above, to destroy or trim the same, and upon complaint of any resident of the county the board of supervisors must serve such notice and destroy said trees or trim said hedge; and if the owner of the hedge or trees shall fail to destroy or cut back and trim them as herein required, within sixty days after receiving notice so to do, the board of supervisors shall cause the destruction or trimming of such hedge or trees to be done, as herein provided, and the cost thereof shall be certified by the said board to the county auditor and the same

shall be assessed as taxes against the land upon which the said hedge or trees were destroyed or trimmed, which tax shall be collected by the county treasurer in the manner other taxes are collected. [C., '73, § 999; C., '97, § 1570; S., '13, § 1570; 37 G. A., ch. 417, § 2.]

4832. Sale of wood—costs—balance. In case the wood left from the cutting or trimming of said hedge or trees shall, in the judgment of the board of supervisors, more than pay for the cost of advertising and selling the same, the same shall be sold at public auction after giving ten days' notice thereof in the local newspaper nearest the hedge or trees destroyed, and the proceeds of the sale above the cost of trimming, cutting or destroying, selling and advertising for sale, shall be turned over to the owner of the hedge or trees. [37 G. A., ch. 417, § 3.]

4833. Exceptions. This chapter shall not apply to evergreen trees, walnut trees, oak or maple trees, or other hardwood trees which in the judgment of the board of supervisors should be let stand, nor shall it apply to trees along the highway which are a part of a grove or forest that extends more than five rods from the road line; nor to any single tree or group of trees (not exceeding ten in number) which by reason of their age or beauty the board of supervisors in its judgment believes should not be cut down. [37 G. A., ch. 417, § 4.]

CHAPTER 248

OBSTRUCTIONS IN HIGHWAYS

- 4834. Removal.
- 4835. Fences and electric transmission poles.
- 4836. Notice.
- 4837. Refusal to remove.
- 4838. New lines.
- 4839. Cost of removal—liability.
- 4840. Duty of road officers.

4834. Removal. The board of supervisors and township trustees shall cause all obstructions in highways under their jurisdiction, to be removed. [C., '51, § 594; R., '60, § 905; C., '73, § 993; C., '97, § 1560; S., '13, §§ 1527-s17, 1560; 40 Ex. G. A., H. F. 126, § 1.]

4835. Fences and electric transmission poles. Poles used for telephone, telegraph, or other transmission purposes, shall not be removed until notice, in writing, of not less than thirty days, has been given to the owner or company operating such lines, and in case of fences, notice in writing of not less than sixty days has been given to the owner, occupant, or agent of the land inclosed by said fence. [C., '51, § 594; R., '60, § 905; C., '73, § 993; C., '97, § 1560; S., '13, §§ 1527-s17, 1560; 40 Ex. G. A., H. F. 126, § 2.]

4836. Notice. Said notice shall, with reasonable certainty, specify the line to which such fences or poles shall be removed, and shall

- 4841. Nuisance.
- 4842. Injunction to restrain obstructions.
- 4843. Duty of county attorney—other counsel.
- 4844. Billboards and signs.
- 4845. Enforcement.
- 4846. Billboards and signs prohibited.
- 4847. Right and duty to remove.

be served in the same manner that original notices are required to be served. [S., '13, § 1527-s17; 40 Ex. G. A., H. F. 126, § 3.]

4837. Refusal to remove. All such fences and poles shall, within the time named, be removed to such line on the highway as the county engineer may designate. If there be no county engineer, the board of supervisors shall designate said line.

If not so removed the public authorities may forthwith remove them. [S., '13, § 1527-s17; 40 Ex. G. A., H. F. 126, § 4.]

4838. New lines. New lines, or parts of lines hereafter constructed, shall be located by the county engineer upon written application filed with the county auditor and shall thereafter be removable according to the provisions of this chapter. If there be no county engineer, the board of supervisors shall designate said location. [S., '13, § 1527-s17; 37 G. A., ch. 410, § 1; 40 Ex. G. A., H. F. 126, § 5.]

4839. Cost of removal—liability. Any removal made in compliance with the foregoing sections shall be at the expense of the owners of said fences or poles. All removals shall be without liability on the part of any officer ordering or effecting such removal. [S., '13, § 1527-s17; 40 Ex. G. A., H. F. 126, § 6.]

4840. Duty of road officers. It shall be the duty of all officers responsible for the care of public highways, outside cities and towns, to remove from the traveled portion of the highways within their several jurisdictions, all open ditches, water breaks, and like obstructions, and to employ labor for this purpose in the same manner as for the repair of highways. [S., '13, §§ 1560-b, 1560-e; 40 Ex. G. A., H. F. 126, § 7.]

4841. Nuisance. Any person, partnership or corporation who makes, or causes to be made, any obstruction mentioned in the preceding section, in such traveled way, and any officer responsible for the care of such highway who knowingly fails to remove said obstructions, shall be deemed to have created a public nuisance and be punished accordingly. [S., '13, §§ 1560-a, 1560-c; 40 Ex. G. A., H. F. 126, § 8.]

4842. Injunction to restrain obstructions. Boards of supervisors and township trustees may, as to roads under their respective jurisdictions, maintain suits in equity aided by injunction to restrain obstruction in such highways, and, in such actions, may cause the legal boundary lines of such highway to be adjudicated provided all interested parties are impleaded, including the county, in case the action be brought by the trustees. [40 Ex. G. A., H. F. 126, § 9.]

4843. Duty of county attorney—other counsel. The county attorney shall, when the interests of the county and township are not an-

tagonistic, appear for the trustees and prosecute such actions brought by them, but the trustees may employ counsel in all such actions and may levy a tax sufficient to defray any expense incurred and accrued under the preceding section. [40 Ex. G. A., H. F. 126, § 10.]

4844. Billboards and signs. Billboards and advertising signs, whether on public or private property, which so obstruct the view of any portion of a public highway or of a railway track as to render dangerous the use of a public highway are public nuisances and may be abated, and the person or persons responsible for the erection and maintenance may be punished, as provided in the chapter on nuisances. [40 G. A., ch. 91, §§ 1, 2; 40 Ex. G. A., H. F. 126, § 11.]

4845. Enforcement. Boards of supervisors and county attorneys within their respective counties, and boards of trustees within their respective townships, shall enforce the last preceding section by appropriate civil or criminal proceeding or by both such proceedings. [40 Ex. G. A., H. F. 126, § 12.]

4846. Billboards and signs prohibited. Billboards and advertising signs shall not hereafter be placed or erected within the boundary lines of the public highways. [40 Ex. G. A., H. F. 126, § 13.]

4847. Right and duty to remove. All billboards and advertising signs now placed or erected within the boundary lines of public highways shall, without liability in damages, be removable:

1. By the state highway commission or board of supervisors in case of primary roads.
2. By the board of supervisors in case of county roads.
3. By the township trustees in case of township roads. [40 Ex. G. A., H. F. 126, § 14.]

CHAPTER 249

REGISTRATION OF HIGHWAY ROUTES

- 4848. Application for registration.
- 4849. Form—fee.
- 4850. Certificate.
- 4851. Infringement prohibited.

4848. Application for registration. Any association organized to promote the improvement of any continuous highway not less than twenty-five miles in length may, by making application to the state highway commission, register in the office of said commission the name, detailed route, color combination, and design used in marking said route. The highway commission shall have power to determine priority of right in the use of said name, color combination, and designs. [S., '13, § 1527-s22.]

4849. Form—fee. The application shall be in the form prescribed by the commission upon

- 4852. Injury or defacement of signs.
- 4853. Cancellation—reassignment.
- 4854. Fees covered into state treasury.
- 4855. Violation constitutes misdemeanor.

blanks furnished by it, and shall be properly acknowledged by the president and secretary of the association before a notary. Said application shall be accompanied by a registration fee of five dollars, which fee shall be returned to the association if the application be not granted. [S., '13, § 1527-s23.]

4850. Certificate. If the state highway commission shall, after investigation, adjudge the application meritorious and the route to be worthy of the protection of this chapter, it shall issue to the association a certificate which shall designate in detail the name, the start-

ing and the terminal points, the color combination, and designs used in marking the route; all of which facts shall be recorded as a part of the permanent records of the commission in a book kept for that purpose. [S., '13, § 1527-s24.]

4851. Infringement prohibited. It shall be unlawful for any person or association of persons to use for similar purposes the name, or any recorded color combination, and designs herein referred to. [S., '13, § 1527-s25.]

4852. Injury or defacement of signs. Any person who shall injure or deface any sign-board, design, or other markings designating routes, shall be subject, in so far as applicable, to the provisions of the statutes relating to malicious mischief and wilful trespass. [S., '13, § 1527-s26.]

4853. Cancellation — reassignment. When any such highway association ceases to exist or when the interest in the route, name, and markings has ceased, the state highway commission may, after proper investigation, cancel the records and registration herein referred to and reassign the name, color combination, designs or other markings to any association making application for their use. [S., '13, § 1527-s27.]

4854. Fees covered into state treasury. All fees received by the state highway commission under this chapter shall be turned into the state treasury. [S., '13, § 1527-s28.]

4855. Violation constitutes misdemeanor. Any person or officer of any association violating any of the provisions of this chapter shall be guilty of a misdemeanor. [S., '13, § 1527-s29.]

CHAPTER 250

USE OF HIGHWAYS

4856. Sidewalks on highways.
4857. Penalty for injury to.
4858. Water and gas mains and cattleways.
4859. Term of grant.

4856. Sidewalks on highways. Any owner of land adjoining a public road outside the limits of a city or town may construct a sidewalk on and along said road, which shall not exceed four feet in width, and be located along the side thereof, of any material suitable for a footwalk, but it shall not be so constructed as to interfere with the proper use and enjoyment of any lands or premises along which it is laid. The person building such walk shall keep the same in repair. [C., '97, § 1522.]

4857. Penalty for injury to. Any person who shall destroy, injure, drive, or ride upon a sidewalk so constructed, except at road crossings, shall be guilty of a misdemeanor, and shall be fined not less than five dollars for each offense, and shall be liable to the party who has built or maintained said sidewalk for all damages caused thereby. [C., '97, § 1523.]

4858. Water and gas mains and cattleways. Boards of supervisors, on written application designating the particular highway and part thereof, the use of which is desired, may grant permission:

1. To lay gas and water mains in highways outside cities and towns.
2. To construct and maintain cattleways, over or under such highways, provided they do not obstruct watering at any running stream, nor that the grade of the road over the cattleway shall not exceed one foot in ten feet. [C., '97, § 1524; S., '13, § 1527-e; S. S., '15, § 1527-b; 40 Ex. G. A., H. F., 128, § 1.]

4859. Term of grant. Such grants shall be on such reasonable conditions as the board may exact, and on such as the general assembly

4860. Conditions—damages.
4861. Failure to maintain.
4862. Penalty.

may hereafter prescribe. Grants for gas or water mains shall not exceed twenty years. [C., '97, § 1524; S., '13, § 1527-e; 40 Ex. G. A., H. F. 128, § 2.]

4860. Conditions — damages. Such mains, pipes, and cattleways shall be so erected and maintained as not to interfere with public travel or with the future improvement of the highway. The owner of such mains, pipes, and cattleways shall be responsible for all damages arising from the laying, maintenance, or erection of the same or from the same not being kept in a proper state of repair.

The location of such mains or pipes shall be changed, on reasonable notice, when such change shall be necessary in the improvement or maintenance of the highway. [C., '97, § 1524; S., '13, § 1527-e; S. S., '15, § 1527-b; 40 Ex. G. A., H. F. 128, § 3.]

4861. Failure to maintain. Failure of the grantee to comply with the terms of the grant shall be ground for forfeiture of the grant. [40 Ex. G. A., H. F. 128, § 4.]

4862. Penalty. Failure to comply with any of the conditions of said grant, whether made such by statute or by agreement, or the laying of any such mains, or the constructing of any such cattleways, without having secured the grant of permission as provided by law shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars. It shall be the duty of the board of supervisors and the county attorney to enforce the provisions of this section and the laws relating thereto. [S., '13, § 1527-d; 40 Ex. G. A., H. F. 128, § 5.]

CHAPTER 251

MOTOR VEHICLES AND LAW OF ROAD

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GENERAL PROVISIONS

4863. Definitions. In all laws of this state regulating motor vehicles, except where otherwise expressly provided:

1. The term "motor vehicle" shall include all vehicles propelled by any power other than muscular power, except traction engines, road rollers, fire wagons and engines, police patrols, city and town ambulances, city and government vehicles, clearly marked as such, and such vehicles as are run only upon tracks or rails.

2. "Local authorities" shall include all councils and commissions of incorporated cities or towns, boards of supervisors and township trustees.

3. "Motorcycle" shall include all motor vehicles designed to travel on not more than three wheels in contact with the ground, and of not exceeding ten horsepower, and of not exceeding the weight of five hundred pounds unladen.

4. A "trailer" shall be deemed to be any vehicle, which is at any time drawn upon the public highway by a motor vehicle excepting any implements of husbandry temporarily drawn, propelled, or moved upon such highway.

5. "Highway" shall include any public highway, county road, state highway or state road, public street, avenue, alley, park, parkway, driveway, square or place, bridge, viaduct, trestle, or any other territory or structure, whether public or private, designed, intended or used by or for the general public for the passage of vehicles, in any county, or incorporated city or town within the state of Iowa.

6. "Chauffeur" shall mean any person who operates an automobile in the transportation of persons or freight and who receives any compensation for such service in wages, commission or otherwise, paid directly or indirectly, or who as owner or employee operates an automobile carrying passengers or freight for hire, including drivers of hearses, ambulances, passenger cars, trucks, light delivery, and similar conveyances; provided, however, that this definition shall not include manufacturers' agents, proprietors of garages and dealers, salesmen, mechanics, or demonstrators of automobiles in the ordinary course of their business, nor to employees operating motor trucks for parties engaged in agricultural enterprises, nor to any individual owner actually driving and operating his own motor vehicle in the business of transferring and drageage of baggage, trucking, and cartage for hire.

7. "Nonresidents" shall mean residents of states other than the state of Iowa and of countries other than the United States whose sojourn in this state, or whose occupation or their regular place of abode or business in this state, if any, covers a total period of less than three months in the calendar year.

8. "Owner" shall include any person having the lawful ownership, use or control, or the right to the use or control, of a motor vehicle, under a lease or otherwise, for a period of ten or more successive days.

9. "Where a vehicle is kept" shall refer to the county of residence of the owner or to the county where the vehicle is mainly kept if it

be different from that of the residence of the owner.

10. "License fee" shall have the same meaning as "registration fee" and when a motor vehicle is "licensed" it is also "registered" and vice versa.

11. A "dealer" shall include dealers and manufacturers.

12. "Manufacturer" or "dealer" shall signify a person regularly in the business of having in his possession motor vehicles for sale or trade and for use and operation pursuant thereto, and shall be considered owners of motor vehicles manufactured or dealt in by them for the purposes of this chapter, prior to sale and delivery thereof, and of all motor vehicles in their possession and operated or driven by them or by their agents or employees; but the determination of the department shall be final and conclusive upon the question whether or not an applicant for registration shall be a manufacturer or dealer within the meaning and intent of this chapter.

13. "Used car dealer" shall include a person regularly engaged in the business of having in his possession, second-hand motor vehicles for sale or trade and operation pursuant thereto, and shall be considered owners of motor vehicles dealt in by them, for the purpose of this chapter, prior to sale and delivery thereof, and all motor vehicles in their possession and operated or driven by them, or by their agents and employees, but the determination of the department shall be final and conclusive upon the question as to whether or not an applicant for registration shall be a "used car dealer" within the meaning of this chapter.

14. "Garage" shall mean every place of business where motor vehicles are received for housing, storage, or repair, for compensation.

15. "Intersecting highway" shall mean any highway which joins another at any angle, whether or not it crosses the other.

16. "Person" shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals. Where the term "person" is used in connection with the registration of a motor vehicle, it shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals which owns or controls such motor vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesman, or otherwise.

17. "Department" shall mean the secretary of state.

18. "Specially constructed" motor vehicle shall mean a motor vehicle which shall not have been originally constructed under a distinctive name, make, model, or type of a generally recognized manufacturer of motor vehicles; but in case of dispute the determination of the department as to the character of construction of any such motor vehicle shall be conclusive.

19. "Reconstructed motor vehicle" shall mean a motor vehicle which shall have been assembled or constructed largely by means of essential parts, new or used, derived from other motor vehicles or makes of motor vehicles of

various names, models or types, or which, if originally otherwise constructed, shall have been materially altered by the removal of essential parts, or by addition or substitution of essential parts, new or used, derived from motor vehicles or makes of motor vehicles.

20. "Essential parts" shall include, not only integral parts but also body parts such as fenders, hood, cowl, and other parts, the removal, alteration, or substitution of which will tend to conceal the identity or substantially alter the appearance of the motor vehicle; but in case of dispute the determination of the department as to the character of such assembly, reconstruction, or alteration shall be conclusive.

21. "Imported motor vehicle" shall mean any motor vehicle which shall be brought into this state from another country or state otherwise than in the ordinary course of business by or through a manufacturer, dealer, or used car dealer and which has not been registered in this state. [S., '13, § 1571-m1; 38 G. A., ch. 275, § 2; 38 G. A., ch. 370, § 1; 39 G. A., ch. 159, §§ 1, 19; 40 G. A., ch. 97, § 1; 40 Ex. G. A., H. F. 277, § 1.]

4864. When license required. A motor vehicle shall not, in the following cases, be operated by its own power upon any public highway of this state unless, at the time of such operation, it is registered and licensed, as hereinafter provided, to wit:

1. When such vehicle is kept in this state and the owner is a resident of this state.

2. When such vehicle is kept and used in this state a majority of the time, by a non-resident.

3. When such vehicle is used in this state and not properly licensed under the laws of another state or country. [38 G. A., ch. 275, § 3; 40 Ex. G. A., H. F. 277, § 2.]

4865. Nonresident owners. The provisions herein relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a nonresident of this state, other than a foreign corporation, manufacturer or dealer doing business in this state, provided that the owner shall have complied with the provisions of the law of the foreign country, state, territory, or federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon and shall conspicuously display his registration numbers as required thereby. [S., '13, § 1571-m16; 38 G. A., ch. 275, § 24; 40 Ex. G. A., H. F. 277, § 3.]

4866. Scope of exemption. The provisions of the last preceding section shall be operative as to a motor vehicle owned by a nonresident of this state to the extent that under the laws of the foreign country, state, territory, or federal district of his residence like exemptions and privileges are granted to motor vehicles duly registered under the laws, and owned by the residents of this state. [S., '13, § 1571-m16; 38 G. A., ch. 275, § 24; 40 Ex. G. A., H. F. 277, § 4.]

4867. General exemptions. All motor vehicles owned by the government and used in the transaction of official business by the representatives of foreign powers or by officers, boards, or departments of the government of the United States, and by the state of Iowa, counties, municipalities and other subdivisions of government, and such self-propelling vehicles as are used neither for the conveyance of persons for hire, pleasure or business nor for the transportation of freight, and small trailers, under one thousand pounds capacity, equipped with rubber tires, used with pleasure motor vehicles and used for carrying personal baggage or effects, are hereby exempted from the payment of the fees in this chapter prescribed, but shall not be exempt from the penalties herein provided. The department shall furnish, on application, free of charge, distinguishing plates for motor vehicles thus exempted and keep a separate record thereof. [38 G. A., ch. 275, § 14; 39 G. A., ch. 159, § 7; 40 Ex. G. A., H. F. 277, § 4-a1.]

NOTE: For additional provision as to trailers, see § 4920.
For additional provision as to exemptions, see § 4922.

4868. Expiration of certificate. All certificates of registration issued under provisions of this chapter shall expire on the last day of the calendar year for which they were issued. [S., '13, § 1571-m16; 38 G. A., ch. 275, § 8; 40 Ex. G. A., H. F. 277, § 5.]

INDIVIDUAL REGISTRATION

4869. Application for registration. Every owner of a motor vehicle which shall be operated or driven upon the public highways shall, except as herein otherwise expressly provided, file in the office of the county treasurer of the county in which such owner resides, a verified application for registration or reregistration on a blank to be furnished by the department for that purpose. Said application shall contain such information as the department may require for the efficient administration of this chapter. [S. S., '15, § 1571-m2; 38 G. A., ch. 275, § 4; 40 Ex. G. A., H. F. 277, § 6.]

4870. Failure to register. The county treasurer shall withhold the registration of any motor vehicle the owner of which shall have failed to register the same under the provisions of this chapter, for any previous period or periods for which it appears that registration should have been made, until the fee for such previous period or periods shall be paid. [38 G. A., ch. 275, § 8; 40 Ex. G. A., H. F. 277, § 7.]

4871. Registration by treasurer. Upon receipt of the application and license fee for a motor vehicle or trailer, as provided in this chapter, the county treasurer shall file such application in his office and register such motor vehicle or trailer with the name, postoffice address and business address of the owner, together with the facts stated in such application, in a book or index to be kept for the purpose, under the distinctive number assigned to such motor vehicle or trailer. [S., '13, § 1571-m4;

38 G. A., ch. 275, § 5; 40 Ex. G. A., H. F. 277, § 8.]

4872. Public inspection. Said book or index shall be open to public inspection during reasonable business hours. [S., '13, § 1571-m4; 38 G. A., ch. 275, § 5; 40 Ex. G. A., H. F. 277, § 8-a1.]

4873. Triplicate receipts. Upon receipt of a license fee for a motor vehicle or trailer, the county treasurer shall issue triplicate receipts therefor, one of which he shall forward to the department on the day the license is issued, one of which he shall deliver to the licensee, and one of which he shall retain in the records of his office. [38 G. A., ch. 275, § 17; 40 Ex. G. A., H. F. 277, § 9.]

4874. Number—certificate—container—plates. The treasurer, when the application and license fee is received, shall forthwith assign to such motor vehicle or trailer a distinctive number, and shall deliver or forward to the owner a certificate of registration.

He shall deliver or forward to the motor vehicle owner a container for the certificate and duplicate number plates corresponding to the number assigned to such vehicle.

He shall deliver or forward to the owner of the trailer a single number plate corresponding to the number assigned to the trailer. Certificates, containers, and plates shall be furnished free. [S. S., '15, § 1571-m5; 38 G. A., ch. 275, §§ 5, 8; 39 G. A., ch. 159, § 3; 40 Ex. G. A., H. F. 277, § 10.]

4875. Renewals. Registration shall be renewed annually to take effect on the first day of January of each year. [S., '13, § 1571-m6; 40 Ex. G. A., H. F. 277, § 11.]

4876. Renewal not permitted. Any motor vehicle once licensed in the state and by removal no longer subject to license in this state, shall upon being returned to this state and subject to license be again originally licensed. [38 G. A., ch. 275, § 3; 40 Ex. G. A., H. F. 277, § 12.]

4877. Display of plates. Every motor vehicle required to be licensed shall have conspicuously displayed the number plates furnished, one on the front end and one on the rear end of such vehicle, each securely fastened, so as to prevent the same from swinging and each so placed that the same shall not become habitually obscured. [S., '13, § 1571-m11; 38 G. A., ch. 275, § 22; 40 Ex. G. A., H. F. 277, § 13.]

4878. Wrongful use of plates. The number plates of a junked or dismembered vehicle shall not thereafter be used, and no number plate shall be detached from the vehicle for which it is issued and to which it belongs for the purpose of using the same upon any other vehicle. [S. S., '15, § 1571-m12a; 38 G. A., ch. 275, § 22; 40 Ex. G. A., H. F. 277, § 14.]

4879. Display of certificate. The certificate of registration issued by the county treasurer

shall also be displayed in the container furnished by the department.

Such certificate container shall be attached to the vehicle in the front of the driver's compartment so that same may be seen by anyone passing on the right of the vehicle. [S., '13, § 1571-m11; 38 G. A., ch. 275, § 22; 39 G. A., ch. 159, § 14; 40 Ex. G. A., H. F. 277, § 15.]

4880. "License-applied-for" cards. Upon the sale of a motor vehicle by a manufacturer or dealer, the vendee shall at once make application by mail or otherwise, for registration thereof, after which he may operate the same upon the public highway without its individual number plate thereon for a period of not more than fifteen days, provided that during such period the motor vehicle shall have attached thereto, in accordance with the provisions hereof, both on the front and rear of such vehicle, pasteboard cards bearing the words, "license applied for", and the registration number of the dealer from whom the car was purchased together with the date of purchase plainly stamped or stenciled thereon. [S., '13, § 1571-m10; 38 G. A., ch. 275, § 21; 40 Ex. G. A., H. F. 277, § 16.]

4881. Card issued conditionally. No manufacturer or dealer shall permit the use of such card until an application for a license has been made, as herein provided, by the person to whom it is issued. [S., '13, § 1571-m10; 38 G. A., ch. 275, § 21; 40 Ex. G. A., H. F. 277, § 17.]

4882. "Car-in-transit" cards. A motor vehicle that is being brought into this state from another state either for use or for sale herein, or a motor vehicle manufactured or assembled within the state, or a motor vehicle brought into the state by a manufacturer or dealer and sold to another manufacturer or dealer, may be driven upon the public highway for a period of not to exceed ten days provided it shall carry, both on the front and rear a pasteboard card bearing the words, "car in transit", and the date of purchase. [S., '13, § 1571-m10; 38 G. A., ch. 275, § 21; 39 G. A., ch. 159, § 13; 40 Ex. G. A., H. F. 277, § 18.]

4883. Operation by nonresidents. Nothing in the three preceding sections shall be construed so as to interfere with the use of motor vehicles upon the highways of this state that are owned by persons living in another state, regulation of which is provided for elsewhere in this chapter. [38 G. A., ch. 275, § 21; 40 Ex. G. A., H. F. 277, § 19.]

4884. Cards—form and style. The letters and figures upon such cards shall not be less than one inch in height except that the letters in the words "license applied for", or "car in transit", shall not be less than two inches in height. [38 G. A., ch. 275, § 21; 40 Ex. G. A., H. F. 277, § 20.]

4885. Cards furnished. The department shall, upon the application of any manufac-

turer or dealer furnish "license applied for" and "car in transit" cards free of charge. No cards shall be used except those furnished by the department. [38 G. A., ch. 275, § 21; 40 Ex. G. A., H. F. 277, § 21.]

4886. Loss of plates or certificates. In the event of the loss, mutilation, or destruction of any number plate, the owner of the registered motor vehicle, or manufacturer, or dealer, as the case may be, may obtain from the department a duplicate thereof upon filing in the office of the department an affidavit showing such facts and the payment of a fee of fifty cents for each plate. Duplicate certificates of registration may be issued by the county treasurer in like cases, without the payment of any fee therefor. [S. S., '15, § 1571-m5; 38 G. A., ch. 275, § 5; 40 Ex. G. A., H. F. 277, § 22.]

4887. Surrender of plates. When a motor vehicle is permanently dismantled and can no longer be used on the public highway or when same is sold outside the state, the owner thereof shall detach the license plates and certificate of registration and surrender them to the county treasurer who shall cancel the registration of record and report such cancellation forthwith to the department upon blanks provided for that purpose. Such license plates shall be destroyed by the county treasurer who shall so advise the department. [38 G. A., ch. 275, § 9; 39 G. A., ch. 159, § 5; 40 Ex. G. A., H. F. 277, § 23.]

MULTIPLE REGISTRATION

4888. Dealers and manufacturers—fee. Every person manufacturing or dealing in motor vehicles, including used motor vehicles, may instead of registering each motor vehicle, make an application for a general distinctive number for the motor vehicles owned or controlled by such manufacturer, dealer, or used car dealer. On the payment of a registration fee of twenty-five dollars, such application shall be registered in the office of the department. [S. S., '15, § 1571-m14; 38 G. A., ch. 275, § 23; 39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 24.]

4889. Different places of business. If a manufacturer, dealer, or used car dealer has an established place of business in more than one city or town, he shall secure a separate and distinct certificate of registration and number plates for each such place of business. [S. S., '15, § 1571-m14; 38 G. A., ch. 275, § 23; 39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 25.]

4890. Certificate and plates. The department shall thereupon assign and issue to such manufacturer, dealer, or used car dealer a general distinctive number, and without expense to the applicant, issue and promptly deliver to him a certificate of registration and two number plates with a number corresponding to the number of such certificate. [S. S., '15, § 1571-m14; 38 G. A., ch. 275, § 23; 39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 26.]

4891. Display of plates. Such number plates shall be displayed by each motor vehicle of such manufacturer, dealer, or used car dealer when the same is operated or driven on the public highways. [S. S., '15, § 1571-m14; 38 G. A., ch. 275, § 23; 39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 27.]

4892. Duplicate plates. Such manufacturer, dealer, or used car dealer may obtain as many duplicates of such number plates as may be desired upon the payment to the department of three dollars for each duplicate set. [S. S., '15, § 1571-m14; 38 G. A., ch. 275, § 23; 39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 27-a1.]

4893. Scope of registration. The foregoing provision relative to the right of a manufacturer, dealer, or used car dealer to have a general registration of all motor vehicles owned or controlled by him shall not apply to a motor vehicle operated by him for private use or hire, but said vehicle shall be individually registered as provided in this chapter. [S. S., '15, § 1571-m14; 38 G. A., ch. 275, § 23; 39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 28.]

4894. Use of plates. Motor vehicles owned by a manufacturer, dealer, or used car dealer, when such motor vehicles are equipped with "D" or "U.D." plates, as herein provided, may be operated only in the conduct of the business of such manufacturer, dealer, or used car dealer. [S. S., '15, § 1571-m14; 39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 29.]

NOTE: "D" and "U.D." plates, see § 4978.

4895. Limitation on use. No "D" or "U.D." plates shall be used upon motor vehicles for any purpose other than the transaction of business incident to the automotive industry of such licensed manufacturer, dealer, or used car dealer, nor shall said "D" or "U.D." plates be used upon so called service cars or service trucks of such licensed manufacturer, dealer, or used car dealer, nor upon the sales cars of a manufacturer or wholesale dealer in accessories. [39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 30.]

4896. Display of used car dealer's plates. In case of the use of "U.D." plates by used car dealers, such plates shall be displayed in the same manner as prescribed herein for dealers' plates, except that the "U.D." plate shall be of such length and so attached that that portion of the number plate of the last registration, showing the initials of the state where registered, and the year, shall be visible.

"U.D." plates shall not be used upon a motor vehicle upon which the current year's license fee in this state has been paid. Any violation of this section shall constitute a misdemeanor, and upon conviction, shall be punished accordingly. [39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 31.]

4897. Plates carry same number. Where any manufacturer, dealer, and used car dealer

are one and the same person, firm, or corporation, and apply for both "D" and "U.D." number plates, there shall be assigned to such person, firm, or corporation the same number for both his "D" and "U.D." number plates. [39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 32.]

USED MOTOR VEHICLES

4898. Purchase or sale—relative duties. It shall be unlawful for any person or agent except as provided in the next succeeding section, to buy any second-hand or used automobile, or motor vehicle, without requiring and receiving from the vendor thereof, a certificate of registration and transfer from the officer whose duty it is to register or license motor vehicles in the state in which said motor vehicle is registered or licensed, showing the factory number, license number, description, and ownership of said motor vehicle or to sell or offer for sale any second-hand or used motor vehicle without furnishing to the vendee of said motor vehicle, a certificate of registration and transfer from the officer whose duty it is to register or license motor vehicles in the state in which said motor vehicle is registered or licensed, showing the factory number, description, license number, and ownership of said motor vehicle. [38 G. A., ch. 275, § 20; 39 G. A., ch. 159, § 12; 40 Ex. G. A., H. F. 277, § 33.]

4899. Sale in bulk. It shall be unlawful for any dealer or used car dealer in this state to sell and transfer his stock of used motor vehicles in bulk unless he complies with the following requirements:

1. The vendor shall:
 a. File with the county treasurer and the department, duplicate inventories of all used motor vehicles proposed to be transferred, giving the factory number, last license number, if any, and description of each such used motor vehicle and the name and address of proposed vendee.

b. File with the county treasurer and department duplicate bills of sale setting forth the fact that such sale has been completed.

2. The vendee shall, if he has not already secured a used car dealer's license, immediately secure such license from the department.

3. The vendor and vendee shall join in the transfer of each used motor vehicle in said stock and shall file with the county treasurer a transfer and shall pay a transfer fee of one dollar for each such used motor vehicle.

Upon the completion of such requirements the department shall certify to the county treasurer that such used motor vehicles are, from and after a date to be set by the department, the property of the vendee. [40 Ex. G. A., H. F. 277, § 33-a1.]

4900. Right to operate. Licensed used car dealers having on hand January first of any year for sale or trade, used motor vehicles upon which license in Iowa for the previous year has been paid, as hereinafter provided, may operate such motor vehicles as provided

by section 4888 hereof. [39 G. A., ch. 159, § 12; 40 Ex. G. A., H. F. 277, § 34.]

4901. Dealer to list vehicles. Used car dealers licensed under the provision of this chapter must, on or before January fifth of each year, furnish the county treasurer with a list of all used motor vehicles held by them for sale or trade, and upon which the license fee for the current year is not paid, giving license number, initials of state issuing license plates, the year, together with the factory number, description, and previous ownership at the time such motor vehicle was transferred to the used car dealer. [39 G. A., ch. 159, § 12; 40 Ex. G. A., H. F. 277, § 35.]

4902. Listing of foreign cars. All motor vehicles owned or controlled by licensed manufacturer, dealer, or used car dealer and acquired from other states must be listed with the county treasurer as provided in the last preceding section; such listing to be made within forty-eight hours after said motor vehicle comes within the border of the state. [39 G. A., ch. 159, § 12; 40 Ex. G. A., H. F. 277, § 36.]

4903. Penalty. Any person found guilty, personally or by agent, of violating any of the provisions of the last two preceding sections, shall be guilty of a misdemeanor and punished accordingly. [39 G. A., ch. 159, § 12; 40 Ex. G. A., H. F. 277, § 37.]

LICENSE FEES

4904. Annual fee required. An annual license fee shall be paid for each motor vehicle or trailer operated upon the public highways of this state unless said vehicle is specifically exempted under the provisions of this chapter.

Said license fee shall be paid to the county treasurer at the same time the application is made for the registration or reregistration of said motor vehicle or trailer. [S. S., '15, § 1571-m7; 38 G. A., ch. 275, § 10; 40 Ex. G. A., H. F. 277, § 38.]

4905. Fractional part of year. Where there is no delinquency, and the registration is made during April, May or June, the fee shall be three-fourths of the annual license fee herein required; where made during July, August or September the fee shall be one-half such annual fee; where made during October or November the fee shall be one-fourth of such annual license fee.

No fee shall be required for the month of December for a new car in good faith delivered during that month. [S. S., '15, § 1571-m7; 39 G. A., ch. 16, § 1; 40 Ex. G. A., H. F. 277, § 39.]

4906. Sworn statement. Such reduction in the license fee shall not be allowed until the applicant first file with the county treasurer an affidavit stating the date on which the motor vehicle first came into his possession or control in connection with his purchase or prospective purchase thereof, and the name and address of the party from whom purchased.

[39 G. A., ch. 16, § 1; 40 Ex. G. A., H. F. 277, § 40.]

4907. Perjury. Any person who shall wilfully make a false statement in such affidavit shall be deemed guilty of perjury and punished accordingly. [39 G. A., ch. 16, § 1; 40 Ex. G. A., H. F. 277, § 41.]

4908. Motor vehicle fee. The annual fee for all motor vehicles except motor trucks, motorcycles, and motor bicycles, shall be equal to one per cent of the value as fixed by the executive council, plus forty cents for each one hundred pounds or fraction thereof of weight of vehicle, as fixed by the executive council. [38 G. A., ch. 275, § 10; 40 Ex. G. A., H. F. 277, § 42.]

4909. Minimum motor vehicle fee. No motor vehicle, regardless of age, shall be licensed for a full year for less than ten dollars. [38 G. A., ch. 275, § 10; 39 G. A., ch. 72, § 1; 40 Ex. G. A., H. F. 277, § 43.]

4910. Automatic reduction. After said motor vehicle has been registered five times, that part of the license fee which is based on the value of said vehicle shall be one-half the rate as fixed when new, except as provided in the preceding section. [S. S., '15, § 1571-m7; 38 G. A., ch. 275, § 10; 40 Ex. G. A., H. F. 277, § 44.]

4911. Proof of fivefold registration. The sworn statement of the registrant as to the number of times such motor vehicle has been registered shall be conclusive evidence of that fact. [38 G. A., ch. 275, § 10; 40 Ex. G. A., H. F. 277, § 45.]

4912. Motorcycle fee. For all motorcycles the annual fee shall be five dollars. When said motorcycle has been registered five times, the annual license fee shall be one-half the rate when new. [38 G. A., ch. 275, § 10; 40 Ex. G. A., H. F. 277, § 46.]

4913. Trucks with pneumatic tires. For motor trucks equipped with all pneumatic tires, the annual license fee shall be:

For 1 ton or less capacity	\$ 15.00	per annum
“ 1½ ton capacity	22.50	“ “
“ 2 “ “	30.00	“ “
“ 2½ “ “	45.00	“ “
“ 3 “ “	65.00	“ “
“ 3½ “ “	90.00	“ “
“ 4 “ “	105.00	“ “
“ 4½ “ “	120.00	“ “
“ 5 “ “	135.00	“ “
“ 6 “ “	165.00	“ “

[38 G. A., ch. 275, § 10; 40 Ex. G. A., H. F. 277, § 47.]

4914. Trucks with solid rubber tires. For motor trucks equipped with two or more solid rubber tires, the annual license fee shall be:

For 1 ton or less capacity	\$ 15.00	per annum
“ 1½ ton capacity	22.50	“ “
“ 2 “ “	30.00	“ “
“ 2½ “ “	55.00	“ “
“ 3 “ “	75.00	“ “
“ 3½ “ “	100.00	“ “
“ 4 “ “	115.00	“ “
“ 4½ “ “	130.00	“ “
“ 5 “ “	145.00	“ “
“ 6 “ “	175.00	“ “

[38 G. A., ch. 275, § 10; 40 Ex. G. A., H. F. 277, § 48.]

4915. Special rate. For all trucks having a load capacity above two tons and operated exclusively within the limits of cities and towns, the annual license fee shall be two-thirds the rates fixed in the last two preceding sections. [38 G. A., ch. 275, § 10; 40 Ex. G. A., H. F. 277, § 49.]

4916. Trucks exceeding six ton capacity. The license fee for trucks for each ton of load capacity above six tons shall be fifty dollars in addition to the six ton rate. [38 G. A., ch. 275, § 10; 40 Ex. G. A., H. F. 277, § 50.]

4917. Trucks exceeding six tons. No license shall be issued for any motor truck of the classes heretofore named, having a greater load capacity than six tons, without a specific permit from the municipal authorities for operation entirely within the limits of municipalities, and without a specific permit from the state highway department and board of supervisors for operation without the limits of municipalities.

Said permit may define and limit the streets and highways over which said heavy trucks may be licensed to operate. [38 G. A., ch. 275, § 10; 40 Ex.-G. A., H. F. 277, § 51.]

4918. Trucks with iron, steel, or hard tires. For motor trucks equipped with iron, steel, or hard tires, the annual license fee shall be:

For 1 ton or less capacity	..\$40.00
For 1½ ton capacity 50.00

No license shall be issued for motor trucks so equipped and having a loading capacity in excess of one and one-half tons. [38 G. A., ch. 275, § 10; 40 Ex. G. A., H. F. 277, § 52.]

4919. Trucks prohibited. Motor trucks having a loading capacity in excess of one and one-half tons and equipped with iron, steel, or hard tires shall not be operated upon the public highways. [40 Ex. G. A., H. F. 277, § 53.]

4920. Trailers. Trailers weighing less than one thousand pounds, or with a loading capacity of less than one thousand pounds, shall not be subject to a license fee.

All other trailers shall be subject to a license fee to be fixed in accordance with the following schedule:

When equipped with pneumatic tires:	
Trailers with capacity of ½ ton, but not exceeding 1 ton capacity	\$10.00
Trailers with capacity of 1 ton, but not exceeding 2 ton capacity	\$15.00

Trailers with capacity of 2 tons, but not exceeding 3 ton capacity	\$20.00
Trailers with capacity of 3 tons, but not exceeding 4 ton capacity	\$25.00
Trailers with capacity of 4 tons, but not exceeding 5 ton capacity	\$40.00
Trailers with capacity of 5 tons, but not exceeding 6 ton capacity	\$50.00
Trailers with capacity of 6 tons, but not exceeding 7 ton capacity	\$60.00

When equipped with two or more solid rubber tires:

Trailers with ½ ton, but not exceeding 1 ton capacity	\$15.00
Trailers with capacity of 1 ton, but not exceeding 2 ton capacity	\$20.00
Trailers with capacity of 2 tons, but not exceeding 3 ton capacity	\$25.00
Trailers with capacity of 3 tons, but not exceeding 4 ton capacity	\$35.00
Trailers with capacity of 4 tons, but not exceeding 5 ton capacity	\$50.00
Trailers with capacity of 5 tons, but not exceeding 6 ton capacity	60.00
Trailers with capacity of 6 tons, but not exceeding 7 tons capacity	70.00

When equipped with iron, steel or hard tires:

Trailers with capacity of 1 ton, but, not exceeding 2 ton capacity	\$15.00
Trailers with capacity of 2 tons, but not exceeding 3 ton capacity	30.00

[38 G. A., ch. 275, § 10; 39 G. A., ch. 253, § 1; 40 Ex. G. A., H. F. 277, § 54.]

NOTE: For additional provision as to trailers, see § 4867.

4921. Designation of weight and loading capacity. All motor trucks, trailers, and motor vehicles used for other than the conveyance of passengers and the personal effects of said passengers shall have attached thereto a conspicuous metal plate giving the actual weight of the vehicle equipped and weight of loading capacity as specified by the manufacturer or maker and no license shall be issued until the vehicle is so equipped. 38 G. A., ch. 275, § 10; 39 G. A., ch. 159, § 6; 40 Ex. G. A., H. F. 277, § 55.]

4922. Exemption. No license fee shall be collected on motor vehicles owned by a foreign government, or by the government of the United States, or by the state of Iowa, or by the counties, municipalities, and subdivisions thereof. [38 G. A., ch. 275, § 14; 39 G. A., ch. 159, § 7; 40 Ex. G. A., H. F. 277, § 56.]

NOTE: Exemption, see § 4867.

4923. Effect of exemption. The exemption of a motor vehicle from a license fee shall not exempt the operator of such vehicle from the performance of any other duty imposed on him by this chapter. [38 G. A., ch. 275, § 14; 39 G. A., ch. 159, § 7; 40 Ex. G. A., H. F. 277, § 57.]

4924. Refund. If during the first half of the year for which a motor vehicle was registered and the required registration fee paid therefor, such car is destroyed by fire or acci-

dent, or stolen and not recovered by the owner before the expiration of the registration period for which such fee was paid, or sold and continuously used beyond the boundaries of the state, said owner shall upon the first day of January following such theft or destruction by accident or sale be paid a refund to the amount of one-half the motor vehicle license fee paid for such year. [40 G. A., ch. 94, § 1; 40 Ex. G. A., H. F. 277, § 58.]

4925. Payment authorized. The department is hereby authorized to make such payments according to the above provisions, when sufficient proof of such destruction by accident, theft, or sale for continuous use beyond the boundaries of the state, is properly certified, approved by the county treasurer, and filed with the motor vehicle department.

The decision of the department shall be final. [40 G. A., ch. 94, § 1; 40 Ex. G. A., H. F. 277, § 59.]

4926. Reimbursement fund. The county treasurer shall remit to the department one-half of one per cent of all fees and penalties collected each year, to be used as a fund to cover refunds of motor vehicle fees as provided in the two last preceding sections. [39 G. A., ch. 159, § 8; 40 Ex. G. A., H. F. 277, § 60.]

4927. Fees in lieu of taxes. The registration fees imposed by this chapter upon motor vehicles, other than those of manufacturers and dealers and used car dealers, shall be in lieu of all taxes, general or local, to which motor vehicles may be subject. [S., '13, § 1571-m8; 38 G. A., ch. 275, § 19; 39 G. A., ch. 159, § 11; 40 Ex. G. A., H. F. 277, § 61.]

4928. Lien of fee. All registration or other fees provided for in this chapter shall be and continue a lien against the motor vehicle for which said fees are payable until such time as they are paid as provided by law, with any accrued penalties. [S., '13, § 1571-m21; S. S., '15, § 1571-m7; 38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 62.]

4929. When lien attaches. The lien of the original registration fee shall attach, at the time the same is first payable, as provided by law, and the lien of all renewals of registration shall attach on January first of each year thereafter. [38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 63.]

PENALTIES, COSTS, AND COLLECTIONS

4930. Methods of collection. The collection of all fees and penalties may be enforced against any motor vehicle or they may be collected by suit against the owner who shall remain personally liable therefor until such time as the transfer thereof shall be reported to the county treasurer or until such time as said vehicle ceases to be in use and all fees and penalties to such date shall be paid. [S., '13, § 1571-m21; 38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 64.]

4931. Monthly penalty. On January first of each year, a penalty of one dollar shall be added to all fees not paid by that date, and one dollar shall be added to such fees on the first of each month thereafter that the same remains unpaid, until paid. [S. S., '15, § 1571-m7; 38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 65.]

4932. When fees delinquent. Such delinquencies shall begin and penalty accrue the first of the month following the purchase of a new vehicle, and the first of the month following the date cars are brought into the state, except as herein otherwise provided. [39 G. A., ch. 159, § 8; 40 Ex. G. A., H. F. 277, § 66.]

4933. Publication of delinquents. In the first week of May of each year the county treasurer shall cause to be published in each of the official newspapers in his county, a list of all motor vehicles owned within his county upon which the license fee has not been paid for that year, except such motor vehicles held by used car dealers and listed by them with the county treasurer, as herein elsewhere provided. Such list shall show the factory number, make and model of the vehicle together with the name and postoffice address of the owner thereof as shown by the records of his office and the amount of the license fee and penalty due upon the vehicle.

Immediately after the publication of the list as herein provided, it shall be the duty of the county treasurer to collect the license and penalty. [S., '13, § 1571-m15; 38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 67.]

4934. Cost of publication. The cost of publication provided for in the preceding section shall be paid as other bills for the maintenance of the department, but shall first be certified by the county treasurer of the county in which the publication was made, and approved by the department. [38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 68.]

4935. Delinquent chargeable. The county treasurer shall collect from each delinquent two dollars on each vehicle on which the fee is delinquent to cover cost of publication. [38 G. A., ch. 275, § 16; 40 G. A., ch. 95, § 1; 40 Ex. G. A., H. F. 277, § 69.]

4936. Sheriff furnished list. The county treasurer shall deliver to the sheriff of the county, fifteen days from the date of publication of the delinquent motor list, a certified list of the motor vehicles on which the fees are delinquent, as shown by the record of his office, which list shall show name and address of owner, make of car, license number, factory and engine number, amount of fees and penalty due. [38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 70.]

4937. Collection by sheriff. The sheriff shall forthwith proceed to the collection of the unpaid fees and penalties, as certified to him by county treasurer, by taking possession of the motor vehicle described in said certified list and proceed to advertise and sell same for

the purpose of collecting fees, penalties, and costs. Said certified list shall for all purposes be a sufficient warrant therefor. [S. S., '15, § 1571-m7; 38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 71.]

4938. Notice. The sheriff shall give ten days' notice of the time, place, and hour of said sale by posting written notice thereof, in three places in the county. One of said places shall be at a main entrance door of the courthouse, one at some other public place in the county, and one at or as near as practicable to the place where said vehicle was seized. [38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 72.]

4939. Warrant to foreign county. Should a motor vehicle on which the fee is delinquent be removed from the county in which it was originally registered, either by transfer or removal by owner to another county, without having notified the county treasurer or department of such removal, the sheriff may forward the warrant to the sheriff of the county where such motor vehicle is at that time and said latter sheriff shall proceed to collect the same as though the vehicle had been originally registered in his county, and make return to the county treasurer of the county from which he received the warrant. [38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 73.]

4940. Sheriff's fees and mileage. The sheriff shall be entitled to receive as costs the sum of two dollars for serving the writ or warrant of seizure and ten cents for each mile actually traveled by him in collecting the fee and penalties, and one dollar per day for care of the motor vehicle while in his possession, which shall be collected from the owner of such delinquent motor vehicle; such costs and mileage, and costs of care while in his possession, shall be retained by him in full for his services. [38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 74.]

4941. Remittance—issuance of plates. When the fee and penalties have been collected the same shall forthwith be returned to the county treasurer, together with a report showing the name and address of the owner and description of car upon which such fee was collected. Thereupon the county treasurer shall issue to the owner number plates and a receipt showing payment of fees and penalties. [38 G. A., ch. 275, § 16; 40 Ex. G. A., H. F. 277, § 75.]

4942. Balance of proceeds. The sheriff, after deducting from the total receipts of the sale all fees, penalties, and costs, shall pay any balance to the owner of the vehicle. [40 Ex. G. A., H. F. 277, § 76.]

CHAUFFEUR'S LICENSE

4943. License required. It shall be unlawful for any person known as a chauffeur, and employed for hire therefor, to operate or drive a motor vehicle upon the public highways unless licensed by the department as herein pro-

vided. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 77.]

4944. Duty of parent and employer. It shall be unlawful for any person to cause or knowingly to permit his or her child, ward, or employee to operate a motor vehicle upon the public highway as a chauffeur without first having obtained such license as hereinafter specified. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 78.]

4945. Application. Any person desiring a chauffeur's license shall file with the department an application under oath stating his name, residence, business address, if any, age, color, single or married, whether he has ever been convicted of a violation of the motor vehicle laws of this state or any other state, or has been convicted within one year of intoxication, and such other information as the department may require. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 79.]

4946. Registration. Upon the receipt of an application, the department shall register the applicant in a book or on index cards which shall be kept in the same manner as the books or index cards for the registration of motor vehicles. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 80.]

4947. Age limit—fee—tenure. Such license shall not be issued until the department is satisfied that the applicant is over eighteen years of age and is a fit and proper person to receive such license. The fee for chauffeur's license shall be two dollars payable annually and shall expire on the last day of the year for which it is issued. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 81.]

4948. License to minor. The application to the department of a minor to operate a motor vehicle, as chauffeur, shall not be granted by the department unless the parent or parents having custody of such applicant or the guardian of such applicant shall have joined in said application by signing the same. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 82.]

4949. Assignment—issuance of license. To each person shall be assigned a distinguishing number and the department shall issue to the licensee a certificate containing the distinguishing number assigned to the licensee, his name, age, place of residence, business address, if any, and a brief description of the licensee for purpose of identification, and such other information as the department shall deem necessary. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 83.]

4950. Indorsement required. Each person licensed as a chauffeur, shall indorse his usual signature on the license certificate and his license shall not be valid until the certificate is so indorsed. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 84.]

4951. Badges. The department shall also furnish, without extra charge therefor to each chauffeur licensed a suitable metal badge with the number assigned to him stamped thereon, such badge to have stamped thereon the words "Registered Chauffeur No. . . , Iowa", and year of issue. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 85.]

4952. Wearing of badge. This badge shall thereafter be worn by such chauffeur, affixed to his clothing in a conspicuous place, at all times when he is operating a motor vehicle upon the public highway. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 86.]

4953. Production of license. The license certificate shall be carried at all times when the licensee is operating a motor vehicle upon the public highway and shall be produced for inspection upon request by any peace officer. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 87.]

4954. Loss of certificate or badge. In case of the loss of such badge or certificate a duplicate will be issued by the department on the filing of an affidavit showing the fact of loss, and on payment of a fee of one dollar to the department in the case of a badge, and fifty cents in case of a certificate. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 88.]

4955. Fictitious names—wrongful use. No person shall use a fictitious name in applying for such chauffeur's license, nor shall any chauffeur voluntarily permit any other person to possess or use his license certificate or badge; nor shall any person, while operating a motor vehicle, use or possess any license certificate or badge belonging to another person. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 89.]

4956. Void license. Any certificate or license issued to any chauffeur to operate motor vehicles upon an application or statement which is untrue as to any material fact, shall be void from the date of issue. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 90.]

4957. Revocation of license. The official head of the department may, after due hearing, upon not less than five days' notice to be sent by registered letter to the address given by the person seeking a chauffeur's license, which shall constitute a sufficient service of notice, suspend or revoke the chauffeur's license issued to any person under this chapter, for any cause which he may deem sufficient, or he may, when a chauffeur has been convicted a third time of a violation of any of the provisions of this chapter, revoke or suspend the license of the chauffeur so convicted and no new license shall be issued to such person for at least one year after the date of revocation of such license nor thereafter except in the discretion of the said officer. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F., 277, § 91.]

4958. Surrender of license and badge. Any chauffeur whose license shall be revoked by the department, or shall be found to be void, shall forthwith return his license certificate and badge to the department. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 92.]

4959. Renewals. Applications for the annual renewal of license by chauffeurs shall be accompanied by the annual fee. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 93.]

4960. Negligence of licensee. Any negligence of a minor, so licensed, in operating a motor vehicle upon the public highway, as chauffeur, shall be imputed to the person who shall employ said chauffeur; which person shall be jointly and severally liable with such minor for any damage caused by such negligence. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 94.]

TRANSFER OF OWNERSHIP

4961. Notice. Upon the transfer of ownership of any registered motor vehicle, the owner shall immediately give notice to the county treasurer, upon the form on the reverse side of the certificate of registration, stating the date of such transfer, the name and postoffice address, with street number if in a city, of the person to whom transferred, the license number, and such other information as the department may require. [S., '13, § 1571-m9; 38 G. A., ch. 275, § 18; 40 Ex. G. A., H. F. 277, § 95.]

4962. Duty of purchaser. The purchaser of the motor vehicle shall join in the notice of transfer to the county treasurer and shall at the same time make application for the transfer of the motor vehicle and for a new certificate of registration. [S., '13, § 1571-m9; 38 G. A., ch. 275, § 18; 40 Ex. G. A., H. F. 277, § 96.]

4963. Registration and fee. Upon filing the application for transfer, the applicant shall pay a fee of one dollar for the transfer, thereupon the county treasurer, if satisfied of the genuineness and regularity of such transfer, shall register said motor vehicle in the name of the transferee and issue a new certificate of registration as provided in this chapter. [S., '13, § 1571-m9; 38 G. A., ch. 275, § 18; 40 Ex. G. A., H. F. 277, § 97.]

4964. When title passes. Until said transferee has received said certificate of registration and has written his name upon the face thereof for the purpose of this chapter, delivery and title to said motor vehicle shall be deemed not to have been made and passed. [38 G. A., ch. 275, § 18; 39 G. A., ch. 159, § 10; 40 Ex. G. A., H. F. 277, § 98.]

4965. Department notified—record. The county treasurer shall forthwith notify the department of the transfer and upon receipt of the notification, the department shall file such statement and note upon the registration book

or index, said change of ownership. [38 G. A., ch. 275, § 18; 40 Ex. G. A., H. F. 277, § 99.]

4966. Scope of statute. The provisions provided for herein for the transfer of motor vehicles shall apply to the sale and transfer of all motor vehicles to manufacturers or dealers or used car dealers. [38 G. A., ch. 275, § 18; 39 G. A., ch. 159, § 10; 40 Ex. G. A., H. F. 277, § 100.]

4967. Penalty. If a transfer of ownership of a motor vehicle is not completed as herein provided within ten days of the actual change of possession, a penalty of five dollars shall accrue against said vehicle, and no certificate of registration therefor shall thereafter issue until said penalty is paid. [40 Ex. G. A., H. F. 277, § 101.]

VALUE AND WEIGHT OF VEHICLES

4968. Schedule of prices and weights. Every manufacturer of a motor vehicle sold or offered for sale within this state, either by the manufacturer, distributor, dealer, or any other person, shall, on or before the first day of September, annually, file in the office of the department a sworn statement showing the various models manufactured by him, and the retail list price and weight of each model as of September first of that year. [38 G. A., ch. 275, § 13; 39 G. A., ch. 168, § 1; 40 Ex. G. A., H. F. 277, § 102.]

4969. Additional schedules. When the retail list price of the car is reduced below the price on file, the manufacturer shall immediately notify the department, which shall issue at once to county treasurers a supplementary list of classifications and on all subsequent registrations this list shall be the basis of fixing the registration fee. [40 G. A., ch. 93; 40 Ex. G. A., H. F. 277, § 103.]

4970. Registration dependent on schedule. No motor vehicle shall be registered in this state unless the manufacturer thereof has furnished to the department the sworn statement herein provided, giving the list price and weight of the model of the motor vehicle that is offered for registration, except as provided in the following section. [38 G. A., ch. 275, § 13; 40 Ex. G. A., H. F. 277, § 104.]

4971. Exceptional cases. The department shall have the power to fix the license fee on all makes and models of cars which are not now being furnished or upon which the statement from the factory can not be obtained.

The county treasurer shall have authority to fix the value and weight of any reconstructed car on which the list price and weight are not available, but the department shall have authority to review the action of the county treasurer, establish the correct value and weight and revoke the findings of the county treasurer, if found incorrect. [38 G. A., ch. 275, § 13; 40 G. A., ch. 93; 40 Ex. G. A., H. F. 277, § 105.]

4972. Department to prepare statement. The department shall prepare, annually, a state-

ment showing all the different makes and models of motor vehicles previously registered in the department, and all the different makes and models of motor vehicles, statements of which have been filed in the office by the manufacturers as heretofore provided, together with the retail list price and weight of the same.

The statement prepared by the department shall also include the load capacities of the various makes and models of motor trucks and trailers and the proper license fee to be paid for the registration. [38 G. A., ch. 275, § 15; 40 Ex. G. A., H. F. 277, § 106.]

4973. Executive council to fix values and weight. The executive council shall, on or before the first day of September of each year, and at such other times as it may deem necessary, fix the value and weight of each of the different makes and models of motor vehicles so reported to it by the department, or which are sold or offered for sale within the state. [38 G. A., ch. 275, §§ 10, 15; 40 Ex. G. A., H. F. 277, § 107.]

4974. Method of fixing value and weight. The value shall be fixed at the next even one hundred dollars above the retail list price f. o. b. the factory, and the weight shall be fixed at the next even one hundred pounds above the manufacturers' shipping weight or the actual weight of the vehicle fully equipped. [38 G. A., ch. 275, § 10; 40 G. A., ch. 93, § 1; 40 Ex. G. A., H. F. 277, § 108.]

PLATES AND CONTAINERS

4975. Contracts for plates. The executive council shall purchase all number plates, containers, and other supplies required by this chapter after receiving competitive bids under open specifications. The bidders shall be required to furnish samples of such supplies and in awarding the contract the council may consider the quality and suitability of the samples submitted as well as the price quoted. A record of all bids submitted shall be kept and the samples submitted shall be preserved until the next subsequent letting. [S. S., '15, § 1571-m5; 38 G. A., ch. 275, § 6; 40 Ex. G. A., H. F. 277, § 109.]

4976. Bond. The successful bidder shall be required to execute to the state a good and sufficient bond in such amount as the executive council shall require, conditioned upon the plates furnished being in accordance with the samples and specifications, and providing for liquidated damages for failure to deliver plates at the time specified in the contract. [S. S., '15, § 1571-m5; 38 G. A., ch. 275, § 6; 40 Ex. G. A., H. F. 277, § 110.]

4977. Manufacture by state. In lieu of purchasing under competitive bids the council shall have authority to arrange with the board of control to furnish such supplies as may be made at the state institutions. [38 G. A., ch. 275, § 6; 40 Ex. G. A., H. F. 277, § 111.]

4978. Specifications. Such number plates shall be of metal, at least six inches wide, and not less than fifteen inches in length, on which there shall be the initials "Ia" and numerals indicating the year for which it is issued; and shall be of a distinctively different color each year, and there shall be at all times a marked contrast between the colors of the number plates and that of the numerals or letters thereon; said colors to be designated by the department.

The distinctive number assigned to the vehicle shall be set forth in numerals four inches long, each stroke of which shall be at least five-eighths of an inch in width.

In the case of a motor vehicle registered by a manufacturer or dealer, there shall be on such plate, in addition to the foregoing, the letter "D" and, in case of a motor vehicle registered by a used car dealer, the letters "U.D.", each stroke of each such letter to be at least four inches long and five-eighths of an inch in width.

The number plates for use on a motor bicycle or a motorcycle shall be one-half the size above stated. [S., '13, §§ 1571-m12, 1571-m13; 38 G. A., ch. 275, § 7; 39 G. A., ch. 159, § 4; 40 Ex. G. A., H. F. 277, § 112.]

4979. Delivery of plates. On or before the first day of December of each year, the department shall deliver or cause to be delivered to the county treasurer of each county, approximately as many duplicate number plates and certificate containers as there are motor vehicles registered in such county during the preceding year, the plates so delivered to each county treasurer to be in numerical sequence. [38 G. A., ch. 275, § 7; 40 Ex. G. A., H. F. 277, § 113.]

4980. Additional deliveries. Thereafter, during the year, the department, upon requisition of the county treasurer, shall deliver additional number plates and certificate containers. [38 G. A., ch. 275, § 7; 40 Ex. G. A., H. F. 277, § 114.]

4981. Account of plates. The department shall keep an accurate record of all number plates issued to each county, and shall also keep a record showing the assignment thereof by the county treasurer to motor vehicles. [38 G. A., ch. 275, § 7; 40 Ex. G. A., H. F. 277, § 115.]

4982. Plates for exempt vehicles. The department shall furnish, on application, free of charge, distinguishing plates for motor vehicles exempted from a license fee and shall keep a separate record thereof. [38 G. A., ch. 275, § 14; 39 G. A., ch. 159, § 7; 40 Ex. G. A., H. F. 277, § 116.]

NOTE: Exemption, see §§ 4867, 4922.

4983. Title to plates. All number plates issued shall be and remain the property of the state. [38 G. A., ch. 275, § 7; 40 Ex. G. A., H. F. 277, § 117.]

4984. Certificate containers. The executive council shall approve devices for holding and displaying the certificate of registration, and may require such devices so to receive and hold such certificate that when the certificate is removed from the holder the certificate will be destroyed or mutilated so it can not be used on other vehicles. [38 G. A., ch. 275, § 22; 40 Ex. G. A., H. F. 277, § 118.]

HEADLIGHT LENSES

4985. Examination and approval. It shall be the duty of the state highway commission to examine all headlight lenses or devices submitted to it by manufacturers and dealers. The fee for each such examination shall be twenty-five dollars, which shall be remitted to the treasurer of state and credited to the primary road fund. [39 G. A., ch. 159, § 16; 40 Ex. G. A., H. F. 277, § 119.]

4986. Approved list. Lenses or devices submitted to and approved by said highway commission shall be placed upon the approved list of the department when such lenses or devices in operation with an electric bulb or other lighting device of a capacity not in excess of that provided by this chapter, and when installed, casts a light which complies with the provisions of this chapter. [39 G. A., ch. 159, § 16; 40 Ex. G. A., H. F. 277, § 120.]

4987. Department to furnish list—use of lens. The department shall furnish county treasurers with a list of such lenses and devices as are upon the approved list of the department, and such lenses and devices used on any motor vehicle operated in this state equipped with a lighting device of a candle power not exceeding that specified on the approved list for the lens in question when installed in such way that the bulbs are focused as specified in the approved list, and the directly reflected beam of light does not rise or diverge contrary to the provisions of this chapter, shall be conclusively presumed to be lawful. [39 G. A., ch. 159, § 16; 40 Ex. G. A., H. F. 277, § 121.]

GARAGE RECORD

4988. Garage owner to keep. Every person operating a public garage shall keep for public inspection a record of the license number and engine or factory serial number of all motor vehicles taken in or held in charge by said garage for the purpose of selling, rental, livery, storage, or repair. [37 G. A., ch. 423, § 1; 38 G. A., ch. 275, § 36; 40 Ex. G. A., H. F. 277, § 122.]

4989. Time and form of record. Said record shall be filled out and signed personally by the owner or driver of the motor vehicle when such vehicle is taken to the garage and if signed by other than the owner, then the owner's name must be signed first, followed by the name of the driver, and shall contain the name and address of the owner of the motor vehicle,

the name and address of the person delivering or taking the motor vehicle to the garage, and the license number and the engine number thereof. The records shall be verified by the operator of the garage. [37 G. A., ch. 423, § 1; 38 G. A., ch. 275, § 36; 39 G. A., ch. 159, § 18; 40 Ex. G. A., H. F. 277, § 123.]

4990. Record not required. Such record need not be made when a motor vehicle is taken in or held in charge a second time, and the owner or driver is personally known to the proprietor of such garage, his agent, or employee. [37 G. A., ch. 423, § 1; 38 G. A., ch. 275, § 36; 40 Ex. G. A., H. F. 277, § 124.]

4991. Duty to hold vehicles. The proprietor of a garage and his employees upon discovering that the engine number of a motor vehicle has been altered or obliterated shall immediately notify some peace officer of the county in which the garage is located, and hold said vehicle for a period of twenty-four hours or until investigation shall have been made by such peace officer. [37 G. A., ch. 423, § 1; 38 G. A., ch. 275, § 36; 40 Ex. G. A., H. F. 277, § 125.]

POWERS OF LOCAL AUTHORITIES

4992. General prohibition—exceptions. Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regulation in any way in conflict with, contrary to or inconsistent with the provisions of this chapter, or of any section or other subdivision thereof, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, except that such authorities shall possess:

1. Such powers as are now or may hereafter be vested in local authorities to enact ordinances and regulations, applicable equally and generally to all vehicles and other users of the highways, and providing for traffic or crossing officers or devices, to bring about the orderly passage of vehicles and other users of the public highways on certain portions thereof, where the traffic is heavy and continuous.

2. Such powers as are now or may hereafter be vested in local authorities to license and to regulate the operation of vehicles offered to the public for hire, and to regulate the use of the highways for processions or assemblages. [S., '13, § 1571-m20; 38 G. A., ch. 275, § 28; 40 Ex. G. A., H. F. 277, § 126.]

4993. Ordinances. All ordinances, rules and regulations which may have been or which may be hereafter enacted in pursuance of the above enumerated powers, shall remain in full force and effect. [S., '13, § 1571-m20; 38 G. A., ch. 275, § 28; 40 Ex. G. A., H. F. 277, § 127.]

4994. Parks and cemeteries. Local authorities may by general rule, ordinance, or regulation exclude vehicles from any cemetery or ground used for the burial of the dead, or exclude vehicles used solely or principally for commercial purposes, from any park

or part of a park system where such general rule, ordinance, or regulation is applicable equally and generally to all other vehicles used for the same purpose, if, at the entrance, or at each entrance if there be more than one, to such cemetery or park from which vehicles are so excluded, there shall have been posted a sign plainly legible from the middle of the public highway on which such cemetery or park opens, plainly indicating such exclusion and prohibition. [S., '13, § 1571-m20; 38 G. A., ch. 275, § 28; 40 Ex. G. A., H. F. 277, § 128.]

4995. Freighters, one-way streets, trailers, and boulevards. Local authorities of any city or town may also:

1. Impose additional restrictions to those contained in this chapter applicable to vehicles exclusively used in the carrying of merchandise or articles of freight and of a capacity in excess of one ton in weight.

2. Designate certain streets whereon heavily laden vehicles may be excluded.

3. Declare certain streets to be "one-way streets".

4. Further restrict, or prohibit, the use of trailers.

5. Designate certain streets as boulevards or arterial highways and to provide that vehicles entering such street from intersecting streets shall come to a full stop before such entrance.

The city or town shall keep placed conspicuously at each point where a street or highway intersects such designated boulevard or arterial highway, a sign bearing the words "STOP, BOULEVARD" of sufficient size to be easily readable at a distance of one hundred feet by a person using such street or highway. [38 G. A., ch. 275, § 28; 40 Ex. G. A., H. F. 277, § 129.]

4996. Board of supervisors. The board of supervisors of any county may designate certain public highways whereon vehicles, machines, and loads of greater weight than the maximum prescribed in section 5065 may be excluded and make such other reasonable regulations in relation to the use thereof as may be necessary to prevent the destruction of a permanent improvement thereon. [38 G. A., ch. 275, § 28; 40 Ex. G. A., H. F. 277, § 129-a1.]

4997. Parking. Cities and towns shall have the power to designate by ordinance suitable areas within which automobiles may be parked or left standing without being parallel to the curb, and to prescribe rules governing the use of such areas for such purpose, and to designate by ordinance the conditions under which vehicles may be parked in public streets or alleys during the hours of darkness. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 130.]

4998. Discriminations. When the local authorities of other states shall, by the adoption of rules and regulations or otherwise, prohibit motor vehicles licensed under the laws of this

state from operating upon highways in any subdivision of such other state, the local authorities of this state may, by ordinance or otherwise, require the motor vehicles of the subdivisions of such other state while operating by their own power in this state to be licensed under the laws of this state. [38 G. A., ch. 275, § 28; 40 Ex. G. A., H. F. 277, § 131.]

FUNDS

4999. Disposition. The money collected pursuant to the provisions of this chapter shall be credited by the treasurer of state to the following funds:

1. Two and one-half per cent of the gross fees and penalties thereon, to a maintenance fund for the state highway commission.

2. Three and one-half per cent of the gross fees and penalties thereon, to a maintenance fund for the motor vehicle department.

3. The balance of said money, less the collection fee of fifty cents retained by the county treasurer on each registration, and less the one-half of one per cent received by the department as a reimbursement fund from which to pay refunds, to the primary road fund. [S. S., '15, § 1571-m32; 38 G. A., ch. 275, § 35; 39 G. A., ch. 155, § 2; 39 G. A., ch. 188, § 1; 40 Ex. G. A., H. F. 277, § 132.]

NOTE: § 4741 creates out of the motor vehicle fees an additional fund, known as the federal engineering fund.

5000. Expenditure of department fund. The maintenance fund for the motor vehicle department shall constitute a fund for the payment of salaries as provided by law for the department, the expense of plates, certificate containers, blanks, printing, and any other expense necessary to enable the department to carry out the provisions of this chapter. [38 G. A., ch. 275, §§ 35, 39; 40 Ex. G. A., H. F. 277, § 132-a1.]

5001. Apportionment of primary road fund. The primary road fund shall be apportioned among the several counties in the same ratio that the area of each county bears to the total area of the state. Said apportionment shall be made by the state highway commission. [38 G. A., ch. 275, § 35; 39 G. A., ch. 155, § 2; 39 G. A., ch. 188, § 1; 40 Ex. G. A., H. F. 277, § 133.]

5002. Unexpended balances. At the close of each calendar year, any unexpended balance remaining in the maintenance fund for the state highway commission, in the maintenance fund for the motor vehicle department, and in the reimbursement fund for the payment of refunds, which have accrued from the motor license fees paid in for that period, shall be credited to the primary road fund and apportioned to the several counties as provided in the last preceding section. [S. S., '15, § 1571-m32; 37 G. A., ch. 212, § 1; 38 G. A., ch. 275, § 35; 40 Ex. G. A., H. F. 277, § 134.]

5003. Cash balance. The treasurer of state shall maintain in the state treasury, of the money collected as in this chapter provided, a

cash balance of not to exceed five hundred thousand dollars. When such cash balance becomes less than one hundred thousand dollars he shall draw upon the treasurer of each county of the state in proportion to the amounts in their possession, respectively, a sum sufficient in the aggregate to restore said cash balance to a sum not exceeding said maximum. Such drafts shall be honored by the treasurer of each county upon presentation. [39 G. A., ch. 155, § 1; 40 Ex. G. A., H. F. 277, § 135.]

GENERAL ADMINISTRATIVE DUTIES

5004. Rules and regulations. The department shall have full authority to make such rules and issue such instructions as may be necessary to insure and obtain uniformity in the administration and full enforcement of the provisions of this chapter. [38 G. A., ch. 275, § 37; 40 Ex. G. A., H. F. 277, § 136.]

5005. Duty to obey. All local officials charged with the administration and enforcement of this chapter shall be governed in their official acts by the rules promulgated by the department. [38 G. A., ch. 275, § 37; 40 Ex. G. A., H. F. 277, § 137.]

5006. Blanks. The department shall not later than November fifteenth of each year prepare and furnish the treasurer of each county all blank books, blank forms, and all supplies required for the administration of this chapter, including applications for registration and transfer of vehicles, triplicate receipts, and original remittance sheets to be used in remitting fees to the department, in such form as the department may prescribe. [S., '13, § 1571-m2; 38 G. A., ch. 275, § 17; 39 G. A., ch. 159, § 9; 40 Ex. G. A., H. F. 277, § 138.]

5007. Time limit. Blanks or forms for listing used motor vehicles shall be placed in the hands of county treasurers not later than December fifteenth of any year. [39 G. A., ch. 159, § 12; 40 Ex. G. A., H. F. 277, § 139.]

5008. Certificates of registration. The certificate of registration shall be of a distinctively different color each year, and shall contain on its face the name of the owner of the motor vehicle, his postoffice address, date of issue, fee paid, license number, make of car, style of car, model, engine number, factory number, and signature of owner.

The reverse side of the certificate of registration shall contain notice of sale and transfer of the motor vehicle by the owner to the purchaser with a description of the car as set out in the certificate of registration which shall have blank spaces for the signature of both the owner and purchaser. [38 G. A., ch. 275, § 17; 40 Ex. G. A., H. F. 277, § 140.]

5009. Contents of filled-in blanks. All receipts for fees paid, certificates of registration, notices of transfer, and other blanks required for the administration of this chapter shall contain the license number, and manufacturer's number, factory number, name of owner, and

such other matters as the department may deem necessary for the efficient administration of this chapter. [S., '13, § 1571-m2; 38 G. A., ch. 275, § 17; 40 Ex. G. A., H. F. 277, § 141.]

5010. Index required. The department shall install and maintain a numerical and a county index, using for such numerical index the duplicate registration receipt and compiling therefrom the county or alphabetical index, both of which shall contain the following information; viz., name and address of owner, license number, make, factory number, model, style, engine number, date of purchase, registration certificate number, number of cylinders, rated load carrying capacity, weight, list price or value of car fixed by the executive council, fees paid and date of payment. [S., '13, § 1571-m2; 38 G. A., ch. 275, § 17; 39 G. A., ch. 159, § 9; 40 Ex. G. A., H. F. 277, § 142.]

5011. Duty and liability of treasurer. The county treasurer shall collect the license fee and penalties on each motor vehicle registered by him and shall be responsible on his bond for such amount. He shall remit such amount to the treasurer of state as herein provided. [38 G. A., ch. 275, § 16; 39 G. A., ch. 155, § 1; 40 Ex. G. A., H. F. 277, § 143.]

5012. Fee for county. Each county treasurer shall be allowed to retain, for the use and benefit of the county general fund, fifty cents for each motor vehicle license issued by him out of money collected in each year for the registration of such motor vehicles, the same to be deducted, and reported to the department, when the county treasurer transfers the money collected under the provisions of this chapter. [39 G. A., ch. 68, § 1; 40 Ex. G. A., H. F. 277, § 144.]

5013. Reports to department. The county treasurer shall on the fifteenth day of each month report under oath to the department, on forms furnished by it, giving a full and complete statement of all fees and penalties so received by him during the preceding calendar month. [38 G. A., ch. 275, § 16; 39 G. A., ch. 155, § 1; 40 Ex. G. A., H. F. 277, § 145.]

5014. Reports by department. The department, immediately upon receiving said report, shall also report to the treasurer of state the amount so collected by such county treasurer. [39 G. A., ch. 155, § 1; 40 Ex. G. A., H. F. 277, § 146.]

5015. Duty of treasurer of state. The treasurer of state shall keep proper books of account for the purposes specified herein and shall report to the department each remittance from the county treasurer, when said remittance is received. [39 G. A., ch. 155, § 1; 40 Ex. G. A., H. F. 277, § 147.]

5016. Audit by department. The department shall check and audit all fees and penalties collected, and shall effect a settlement with the county treasurer annually. [39 G. A., ch. 159, § 8; 40 Ex. G. A., H. F. 277, § 148.]

5017. Enforcement. It shall be the duty of the mayor of cities and towns, and all peace officers, to enforce the provisions of this chapter. [38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 149.]

5018. Publication of law. The department shall issue this chapter in pamphlet form, together with such rules, instructions, and explanatory matter as may seem advisable. Copies of such pamphlet shall be given as wide distribution as the department shall determine and a supply shall be furnished each county treasurer. [38 G. A., ch. 275, § 37; 40 Ex. G. A., H. F. 277, § 150.]

LAW OF THE ROAD

5019. Traveling on right-hand side. The operator of a motor vehicle, in cities and towns, shall at all times travel on the right-hand side of the center of the street. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 151.]

5020. Meeting and turning to right. Persons on horseback, or in vehicles, including motor vehicles, meeting each other on the public highway, shall give one-half of the traveled way thereof by turning to the right. [R., '60, § 908; C., '73, § 1000; C., '97, § 1569; S., '13, § 1569; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 152.]

5021. Turning to right when overtaken. The driver of any vehicle driven or propelled upon the public highway shall, when overtaken by a faster moving vehicle proceeding in the same direction, upon a signal, either by the sounding of a bell, horn, or other signaling device, given by the driver of the overtaking vehicle, cause his vehicle to be driven to the right of the center of the traveled way if he can do so with safety and remain to the right of the center of such traveled way until the overtaking vehicle shall have safely passed. [S., '13, § 1569; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 153.]

5022. Turning to left. The vehicle approaching from the rear shall turn to the left and shall not return to such road or path within less than thirty feet of the team or vehicle which has been passed. [S., '13, §§ 1569, 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 154.]

5023. Failure to recognize signal. Any driver of a vehicle that is overtaken by a faster moving vehicle who fails to heed the signal of the overtaking vehicle when it is given under such circumstances that he could, by the exercise of ordinary care and observation and precaution, hear such signal and who fails to yield that part of the traveled way as herein provided, shall be guilty of a misdemeanor. [38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 155.]

5024. Burden of proof. Upon proof that a signal was given as contemplated by the last

preceding section, the burden shall rest upon the accused to prove that he did not hear said signal. [38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 156.]

5025. Age limit of operator. No person under fifteen years of age shall operate or drive a motor vehicle by permission from the owner of the car unless such person be accompanied by a person of mature years. [S., '13, §§ 1571-m3, 1571-m18; 38 G. A., ch. 275, § 12; 40 Ex. G. A., H. F. 277, § 157.]

5026. Liability for damages. In all cases where damage is done by any car driven by any person under fifteen years of age and in all cases where damage is done by the car, driven by consent of the owner, by reason of negligence of the driver, the owner of the car shall be liable for such damage. [38 G. A., ch. 275, § 12; 40 Ex. G. A., H. F. 277, § 158.]

5027. Operating while intoxicated. Whoever while in an intoxicated condition operates a motor vehicle shall upon conviction be sentenced to the penitentiary for a period not exceeding one year, or be punished by a fine of not more than one thousand dollars or by both such fine and imprisonment. [S., '13, § 1571-m23; 38 G. A., ch. 275, § 30; 40 G. A., ch. 96, § 1; 40 Ex. G. A., H. F. 277, § 159.]

5028. Careful operation and speed. Every person operating a motor vehicle on the public highway of this state shall drive the same in a careful and prudent manner, and at a rate of speed that will not endanger the property of another, or the life or limb of any person. [C., '73, § 4071; C., '97, § 5039; S., '13, § 1571-m19; 38 G. A., ch. 275, § 27; 40 Ex. G. A., H. F. 277, § 160.]

5029. Maximum speed. No person shall in any event operate a motor vehicle upon the public highways at a greater rate of speed than as follows:

1. Thirty miles per hour if the weight of vehicle and load is less than three tons and the vehicle is equipped with pneumatic tires, and twenty-five miles per hour if such vehicle is equipped with solid rubber tires.

2. Twenty-five miles per hour if the weight of the vehicle and load is more than three tons and less than six tons and the vehicle is equipped with pneumatic tires, and twenty miles per hour if such vehicle is equipped with solid rubber tires.

3. Sixteen miles per hour if the weight of the vehicle and load is more than six tons and the vehicle is equipped with pneumatic tires, and twelve miles per hour if such vehicle is equipped with solid tires.

4. Ten miles per hour if the vehicle or any trailer is equipped with two or more metal tires. [S., '13, §§ 1571-m19, 1571-m20; 38 G. A., ch. 275, § 27; 40 Ex. G. A., H. F. 277, § 161.]

5030. Lesser speed in municipalities. Cities and towns may, by ordinance, establish a suburban district in which the maximum speed of

any vehicle shall not exceed twenty miles per hour, and a business district in which the maximum speed of any vehicle shall not exceed fifteen miles per hour, if such city or town shall have placed conspicuously on every main highway where the rate of speed changes, signs of sufficient size to be easily readable by a person using the highway, bearing the words: "City of", "Town of", "Slow down to miles" (the rate being inserted), and also an arrow pointing in the direction where the speed is to be reduced or changed, and also if such ordinance shall fix the punishment for violation thereof, not to exceed twenty-five dollars, or five days in jail, which punishment shall, during the existence of such ordinance, supersede that otherwise specified in this chapter. [S., '13, § 1571-m20; 38 G. A., ch. 275, § 27; 40 Ex. G. A., H. F. 277, § 162.]

5031. Control of vehicle. The person operating a motor vehicle or motorcycle shall have the same under control and shall reduce the speed to a reasonable and proper rate:

1. When approaching and passing a person walking in the traveled portion of the public highway.

2. When approaching and passing an animal which is being led, ridden, or driven upon a public highway.

3. When approaching and traversing a crossing or intersections of public highways, or a bridge, or a sharp turn, or a curve, or a steep descent, in a public highway. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 163.]

5032. Stopping—turning—changing course. The operator of a motor vehicle shall, before stopping, turning, or changing the course of such vehicle, first see that there is sufficient space to make such movement in safety and shall give a visible or audible signal to the crossing officer, if there be such, or to the drivers of vehicles following, of his intention to make such movement, by raising and extending the hand or by a proper signal or device indicating with it the direction in which he wishes to turn. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 164.]

5033. Turning to right or left into highway. The operator of a motor vehicle, in turning to the right from one street or highway into another, shall turn the corner as near the right hand as practicable, and, in turning to the left from one street or highway into another, shall pass to the right of and beyond the center before turning. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 165.]

5034. Crossing from side to side. The operator of a motor vehicle, in crossing from one side of the street, or highway, to the other side thereof, shall turn to the left, so as to head in the direction in which vehicles are moving. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 166.]

5035. Preference at intersecting points—alleys. Where two vehicles are approaching on any public street or highway so that their paths will intersect and there is danger of collision, the vehicle approaching the other from the right shall have the right of way provided, however, that such vehicles coming from alleys and private drives, where view is obstructed, shall stop immediately before entering a public street or highway. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 167.]

5036. Passing at street intersections. It shall be unlawful for the operator of any motor vehicle, in cities and towns, to overtake and pass another vehicle at street intersections in the business districts. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 168.]

5037. Duty to stop at street cars. The driver or operator of every vehicle shall bring the same to a full stop not less than five feet from the rear of any street car headed in the same direction which has stopped for the purpose of taking on and discharging passengers, and remain standing until such car has taken on or discharged its passengers.

This section shall not apply where safety zones are provided, and the highway is of sufficient width to admit of safe passage. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 169.]

5038. Unattended vehicles with engine running. The operator of a motor vehicle or person in charge thereof shall not leave unattended upon any street or highway a motor vehicle with the engine running. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 170.]

5039. Brakes. Every motor vehicle, while in use on the public highways of this state, shall be provided with adequate brakes. [S., '13, § 1571-m17; 38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 171.]

5040. Signaling device. Every motor vehicle shall be equipped with a suitable bell, horn, or other signaling device producing an abrupt sound sufficiently loud to serve as an adequate warning of danger. [S., '13, § 1571-m17; 38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 172.]

5041. Improper use of signaling device. No person operating any motor vehicle shall make or cause to be made any unnecessary noise with such bell, horn, or signaling device, or use the same except as a warning of danger. [38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 173.]

5042. Loud signaling at night. Loud signaling devices shall not be used during the period of from one hour after sunset to one hour before sunrise, unless absolutely necessary to avoid accidents. [38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 174.]

5043. Signals at danger points. An adequate signaling device shall in all cases be sounded on approaching curves, tops of hills, and the intersecting highways in the country where the operator's view is obscured. [38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 175.]

5044. Headlights. All motor vehicles in use on the public highways excepting motorcycles, motor bicycles, and such motor vehicles as are properly equipped with one light in the forward center of such motor vehicle, shall, during the period of from one-half hour after sunset to one-half hour before sunrise, display two or more white or tinted lights, other than red, on the forward part of said vehicle, so placed as to be seen from the front, and of sufficient illuminating power to be visible at a distance of five hundred feet in the direction in which displayed, and to reveal any persons, vehicle or substantial object seventy-five feet ahead of the lamps. [S., '13, § 1571-m17; 37 G. A., ch. 148, § 1; 38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 176.]

5045. Tail lights. Such motor vehicle when in use shall also display on the rear a lamp so constructed and placed as to show a red light from the rear and throw a white light directed upon the rear registration number and render the numerals thereon visible for at least fifty feet in the direction from which the vehicle is proceeding. [S., '13, § 1571-m17; 38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 177.]

5046. Lights on trailers. The provision as to the rear light shall also apply to vehicles which are trailed or towed by motor vehicles. [38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 178.]

5047. Lights for motorcycles. Motorcycles, motor bicycles and motor vehicles equipped with one light as heretofore provided, shall display on the forward part one white or tinted light, as aforesaid, and a red light to the rear, so constructed and placed as to throw a white light directly upon the registration number as prescribed in the case of any other motor vehicle. [S., '13, § 1571-m17; 37 G. A., ch. 148, § 1; 38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 179.]

5048. Failure of lights. The operator of any motor vehicle may proceed toward his destination in a cautious and careful manner in the event of a failure of one or more of his lights to operate, but he shall be deemed guilty of a violation of the foregoing provisions, unless he puts his lights in order at the first reasonable opportunity. [38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 180.]

5049. Elevation of lights. It shall be unlawful to use on a vehicle of any kind operated on the public highways of this state, including motorcycles, any lighting device of over four candle power, equipped with a reflector, unless the same shall be so designed or arranged

that the directly reflected and undiffused beam of such light when measured seventy-five feet or more ahead of the light shall not rise above forty-two inches from the level surface on which the vehicle stands under all conditions of load. [37 G. A., ch. 148, § 1; 38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 181.]

5050. Auxiliary lights. If, in addition to headlights, any such vehicle is equipped with any auxiliary light, projecting lights, or devices other than the rear lamp, such auxiliary light or lights shall be subject to all the restrictions of the foregoing sections regarding direction of the beam. [38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 182.]

5051. Spotlights. If a spotlight is used on a motor vehicle it shall be unlawful for any person to direct its rays toward the eyes of the driver or occupants of an approaching vehicle, or to direct its rays to the left of the center of the traveled way when meeting another vehicle. [37 G. A., ch. 148, § 1; 38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 183.]

5052. Maximum light permitted. No person shall operate a motor vehicle on any highway of this state equipped with an electric bulb or other lighting device of a greater capacity than thirty-two candle power, no matter how the same may be shaded, covered, or obscured. [38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 184.]

5053. Turning off lights to avoid arrest. It shall be unlawful for any person to turn off or extinguish any or all of the lights on his motor vehicle for the purpose of avoiding arrest or identification. [38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 185.]

5054. Stationary unlighted vehicle. No person shall, during any period of time for one-half hour after sunset to one-half hour before sunrise, permit a motor vehicle, under his control, to stand upon the paved portion of any hard surfaced highway outside of the corporate limits of any incorporated city or town with the rear light extinguished unless said highway is artificially lighted, at the place where the vehicle is located, to such an extent as to clearly indicate the presence of said vehicle. A violation of this section shall constitute a misdemeanor and be punishable by a fine of not to exceed twenty-five dollars. [40 Ex. G. A., H. F. 277, § 185-a1.]

5055. Exception. The last preceding section shall not apply when an accident extinguishes said light and renders vehicle incapable of use, and when the person in control of the vehicle erects, at the earliest opportunity after the accident, such proper light at or near the vehicle as will give warning of the presence of said vehicle. [40 Ex. G. A., H. F. 277, § 185-a2.]

5056. Manner of parking. It shall be unlawful to stop a motor vehicle on the street, in

cities and towns, unless the right side of said vehicle is next to and parallel with the curb and as near thereto as the condition of the street will permit. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 186.]

5057. Exceptions. The last preceding section shall not apply in cases of emergency, when the stop is made to avoid accident or to allow pedestrians or vehicles to cross in front of such motor vehicle, or when made in obedience to the signal of a police officer. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 187.]

5058. Street corners and hydrants. The operator of any motor vehicle, in cities and towns, shall not leave any such vehicle standing upon any street in the business district thereof within fifteen feet of the corner or within fifteen feet of any hydrant. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 188.]

5059. Theaters and auditoriums. No motor vehicle shall be left standing, in cities and towns, in front of or within fifteen feet of either side of the entrance of any theater, auditorium, hotel, or other building where large assemblages of people are being held, except in taking on or discharging passengers or freight, and then only for such length of time as is necessary for such purpose. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 189.]

5060. Red light near railway. It shall be unlawful for the operator of any motor vehicle to leave it standing, while showing a red light, parallel to, and within twenty-five feet of the tracks of any railroad in cities and towns. [38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 190.]

5061. Steam or smoke. The operator of a motor vehicle shall not permit the motor of same to operate in such a manner as to visibly emit an unduly great amount of steam, smoke, or products of combustion from exhaust pipes or openings. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 191.]

5062. Muffler required. It shall be unlawful for any operator of any motor vehicle, while on the public highway, to use any cut-out, fitting, or other apparatus or device which will allow the exhaust gases from the engine of the motor vehicle to escape into the atmosphere without first passing through a silencer, expansion chamber, or other contrivance suitable and sufficient for reducing as far as may be reasonably practicable, the noise which would otherwise be caused by the escape of the said gases. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 192.]

5063. Cutting out muffler. It shall be unlawful for any person to drive or to permit to be driven on the streets of any city or town, any motor vehicle at any time with the muffler

cut out or not in operation. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 25; 40 Ex. G. A., H. F. 277, § 193.]

5064. Police to direct movement. Motor vehicles, at theaters and public gatherings in cities or towns, or under unusual circumstances, shall stand or move as directed by the police. [S., '13, § 1571-m18; 38 G. A., ch. 275, § 26; 40 Ex. G. A., H. F. 277, § 194.]

5065. Maximum load. The total maximum load on any one wheel of a motor vehicle, including the weight of the vehicle and the load it carries, shall be four tons, provided the total maximum weight of the vehicle and load shall not in any event exceed fourteen tons for a vehicle equipped with pneumatic tires or twelve tons for a vehicle equipped with solid rubber tires. [38 G. A., ch. 275, § 27; 39 G. A., ch. 259, § 17; 40 Ex. G. A., H. F. 277, § 195.]

5066. Load limited to width of tire. The total load on any wheel of any motor vehicle shall be limited to eight hundred pounds per inch width of tire measured between flanges of the rims, and the enforcement of this provision is hereby made the duty of the state highway commission and all peace officers. Any violation of this provision is hereby made a misdemeanor and shall be punished accordingly. [38 G. A., ch. 275, § 27; 39 G. A., ch. 159, § 17; 40 Ex. G. A., H. F. 277, § 196.]

5067. Width of vehicle and load. The maximum width of any motor vehicle and its load shall be limited to eight feet, excepting loads of loose hay, straw, and similar farm products. [38 G. A., ch. 275, § 27; 40 Ex. G. A., H. F. 277, § 197.]

5068. Projection on wheels. No motor vehicle which has projections of metal or wood beyond the tread or traffic surface of the tire, excepting a vehicle equipped with caterpillar tread, shall operate over any highway improved with a gravel or paved surface. [38 G. A., ch. 275, § 27; 40 Ex. G. A., H. F., 277, § 198.]

5069. Exceptions. Tractors, traction engines, or similar motor vehicles, may be operated which have "V" shaped or diagonal cleats arranged in such a manner that two or more cleats are continuously in contact with the road surface and that the weight in continuous contact with the road surface measured in the direction of the movement of the vehicle does not exceed eight hundred pounds per inch width of tire. [38 G. A., ch. 275, § 27; 40 Ex. G. A., H. F., 277, § 199.]

5070. Mud lugs and ice spurs. No traction engine having mud lugs or ice spurs attached to its wheels shall be moved over any bridge, culvert, or street crossing. [S., '13, § 1571-1a.]

5071. Traction engine on highway. Any person who operates a traction engine upon

the public highway must, while so operating, observe the following requirements:

1. Reasonable care must be exercised to avoid accidents from fright on the part of any domestic animal.

2. Upon request, or signal by raising the hand, by the person in charge of a restive horse or other domestic animal, the engine must be brought to an immediate stop, and, if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such animal to pass, and, if traveling in the same direction, the operator must exercise reasonable care while such animal is passing.

3. The operator and all other persons employed by the owner of the engine must, in so passing, render necessary assistance to the party having such animal in charge. [C., '97, § 1571; S., '13, §§ 1571, 1571-m18; 40 Ex. G. A., H. F. 277, § 199-a1.]

5072. Duty in case of accident to person. The operator of a motor vehicle who knows that, in the operation of said vehicle, injury has been caused to a person because of the culpability of said operator or because of accident must, before leaving the place of said injury:

1. Give such aid to the injured party as the circumstances may reasonably require.

2. Give the registration number of his motor vehicle, and his name and address, including street number, if any, to the injured party.

3. Give such information, in case the injured party is too severely injured to receive it, to some reasonably mature person accompanying the injured party, and in the absence of such person, to some apparently disinterested bystander. [S., '13, § 1571-m23; 38 G. A., ch. 275, § 30; 40 Ex. G. A., H. F. 277, § 200.]

5073. Reporting accidents. The operator, immediately after complying with the last preceding section, shall report the accident, together with the said information, at the office of some peace officer as near as practicable to the place of injury or to the county attorney or sheriff of the county in which said injury took place. [S., '13, § 1571-m23; 39 G. A., ch. 154, § 1; 40 Ex. G. A., H. F. 277, § 201.]

5074. Penalty. An operator who fails to comply with any of the requirements of the two last preceding sections shall be punished by a fine of not more than five hundred dollars or by imprisonment in the penitentiary for a term not exceeding two years, or by both such fine and imprisonment; and if any person be convicted a second time for such violation he shall be punished by imprisonment in the penitentiary for a term of not less than one year and not more than five years, or by a fine not exceeding one thousand dollars. [S., '13, § 1571-m23; 38 G. A., ch. 275, § 30; 40 Ex. G. A., H. F. 277, § 202.]

5075. "Operator" defined. An operator within the meaning of the three last preceding sections shall embrace the person who is physically in control of the movements of the ve-

hicle, the parents and personal guardian of such person if present at the time of the infliction of the injury, and the owner of the vehicle, if so present. Compliance with said sections by one operator shall render compliance by other operators unnecessary. [40 Ex. G. A., H. F. 277, § 203.]

5076. Form of judgment. A judgment of conviction for operating a motor vehicle while intoxicated, or for failure, in case of accident, to furnish the required aid or information or to properly report an accident, shall state whether, in the opinion of the court, the certification of registration for the vehicle should be suspended for a named time or revoked. [S., '13, § 1571-m23; 38 G. A., ch. 275, § 30; 40 Ex. G. A., H. F. 277, § 204.]

5077. Duty of clerk. The clerk of the court of the county in which such conviction is had shall promptly furnish without cost, a certified copy of said judgment to the department, together with notice of all appeals and all subsequent final orders therein, when rendered. [S., '13, § 1571-m23; 38 G. A., ch. 275, §§ 30, 33; 40 Ex. G. A., H. F. 277, § 205.]

5078. Suspension or revocation. When said conviction becomes final the department shall, by proper orders, enforce the recommendations of the court, and in case of a revocation of the certificate may, for such time as it may deem proper, refuse to issue a certification to said accused. [S., '13, § 1571-m23; 38 G. A., ch. 275, § 30; 40 Ex. G. A., H. F. 277, § 206.]

5079. Duty in case of accident to property. The operator of a motor vehicle who knows that, in the operation of said vehicle, injury has been caused to property because of accident, must, before leaving the place of said injury, give the registration number of his motor vehicle and his name and address, including street number, if any, to the owner or person in charge of said injured property. If such owner or person be not then present, said operator shall put said information in writing and, if practicable, securely affix said writing to said injured property in some conspicuous place, or post the same in a like place as near as practicable to the place of injury. [40 Ex. G. A., H. F. 277, § 207.]

CRIMINAL PROSECUTIONS

5080. General prohibitions. No person shall:

1. Deface or alter any serial, engine, or assembling number of a motor vehicle.

2. Change, counterfeit, or forge a certificate of registration of a motor vehicle.

3. Wilfully deface or change any license plate of a motor vehicle.

4. Change the color or disguise the appearance of a motor vehicle with intent to prevent identification by the owner.

5. Display on any motor vehicle any other certificate or plates than the certificate of registration and plates licensing such vehicle.

6. Use or display any certificate of registration on a motor vehicle when he knows that the same is untrue as to any name, number, or data.

7. Possess a motor vehicle, the serial or engine number of which is defaced, altered, or tampered with. [S. S., '15, § 1571-m12a; 38 G. A., ch. 275, §§ 20, 22; 39 G. A., ch. 159, § 14; 40 G. A., ch. 95, § 2; 40 G. A., ch. 273, § 5; 40 Ex. G. A., H. F. 277, § 208.]

5081. Penalty. Any person found guilty of violating any of the provisions of the last preceding section shall be imprisoned in the penitentiary not more than five years or be fined not more than one thousand dollars or be imprisoned in the county jail not more than one year. [38 G. A., ch. 275, § 20; 39 G. A., ch. 159, § 12; 40 G. A., ch. 273, § 5; 40 Ex. G. A., H. F. 277, § 209.]

5082. Jurisdiction. Jurisdiction of any offense under the two last preceding sections shall be in any county in which any part of the act or acts constituting the offense charged was committed. [40 G. A., ch. 273, § 6; 40 Ex. G. A., H. F. 277, § 210.]

5083. Defense. Under a charge of possessing a motor vehicle, the serial or engine number of which is defaced, altered, or tampered with, it shall be a complete defense that the accused at the time of such possession had in his possession a certificate of registration and transfer from the officer whose duty it is to register or license motor vehicles in the state in which said motor vehicle is registered, showing good and sufficient reason why numbers are defaced, changed, or tampered with, the original serial or engine number, and the ownership of said motor vehicle. [38 G. A., ch. 275, § 20; 40 Ex. G. A., H. F. 277, § 211.]

5084. Prohibited plates—certificates—badges. No person shall display or cause or permit to be displayed, or have in his possession, any canceled, revoked, altered, or fictitious registration number plates, registration certificate, chauffeur's license certificate, or chauffeur's badge, as the same are respectively provided for in this chapter. [38 G. A., ch. 275, § 11; 40 Ex. G. A., H. F. 277, § 212.]

5085. Operation without registration or plates. Any person, manufacturer, dealer, or used car dealer operating a motor vehicle upon the public highways of the state which has not been registered according to law or has not displayed thereon two number plates issued by the automobile department showing the payment of a license fee for the current year, or which has not displayed thereon, "car in transit" cards or "license applied for" cards where the same may lawfully be driven with such cards attached, shall be guilty of a misdemeanor and punished accordingly. [39 G. A., ch. 159, § 15; 40 Ex. G. A., H. F. 277, § 213.]

5086. Operation while certificate revoked or suspended. Any person who operates any motor vehicle while a certificate of registration

of a motor vehicle issued to him is suspended or revoked, shall be guilty of a misdemeanor. [S., '13, § 1571-m24; 38 G. A., ch. 275, § 31; 40 Ex. G. A., H. F. 277, § 214.]

5087. Sale without lights. No person shall offer or expose for sale, sell, transfer, deliver, or have in his possession with intent to sell, any motor vehicle which is not equipped with head and rear lights as prescribed by law. [39 G. A., ch. 219, § 1; 40 Ex. G. A., H. F. 277, § 215.]

5088. False statements. Any person making a false statement in the verified application for registration shall be guilty of a misdemeanor. [S., '13, § 1571-m26; 38 G. A., ch. 275, § 32; 40 Ex. G. A., H. F. 277, § 216.]

5089. General penalty clause. A violation of any provision of this chapter shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding thirty days, or by both such fine and imprisonment, except in those instances where some other punishment is specifically pointed out. [S., '13, § 1569; S., '13, §§ 1571-m21, 1571-m22, 1571-m26, 1521-m27, 1571-m29, 1571-2a; S. S., '15, § 1571-m12a; 37 G. A., ch. 423, § 2; 38 G. A., ch. 275, §§ 9, 10, 22, 25, 26, 29, 36; 39 G. A., ch. 16, § 1; 39 G. A., ch. 219, § 2; 39 G. A., ch. 253, § 1; 40 Ex. G. A., H. F. 277, § 217.]

5090. Revocation of certificate. The department may, upon a second or subsequent conviction of a party under this chapter, revoke the certificate of registration of the offending party, and may refuse to issue a new certificate to such party for such period as it may deem proper. [38 G. A., ch. 275, §§ 10, 25; 39 G. A., ch. 159, § 15; 39 G. A., ch. 253, § 1; 40 Ex. G. A., H. F. 277, § 218.]

5091. Assaults and homicide. A conviction of the violation of any of the provisions of this chapter shall not be a bar to a prosecution for an assault or for a homicide committed by any person in operating motor vehicles. [S., '13, § 1571-m30; 38 G. A., ch. 275, § 34; 40 Ex. G. A., H. F. 277, § 219.]

5092. Disposal of stolen vehicle. Any person who shall receive, conceal, store, barter, sell, or dispose of any motor vehicle or any part thereof knowing or having reason to believe it has been stolen, shall be punished by imprisonment in the penitentiary not more than ten years or by fine of not more than one thousand dollars, or by both such fine and imprisonment. [40 G. A., ch. 273, § 5; 40 Ex. G. A., H. F. 277, § 220.]

5093. Presumptive evidence. Whoever shall conceal, barter, sell, or dispose of any motor vehicle which has been stolen, or shall disguise, alter, or change such motor vehicle or the factory or serial number thereof, or remove or change the license tag thereon, or do any act designed to prevent identification of such motor vehicle, shall be presumed to have knowledge that such motor vehicle had been stolen. [40 G. A., ch. 273, § 7; 40 Ex. G. A., H. F. 277, § 221.]

CHAPTER 252

MOTOR VEHICLE CARRIERS

- 5094. Definitions.
- 5095. Rules and regulations.
- 5096. Rates.
- 5097. Certificates of authority.
- 5098. Appeal.
- 5099. Assignability of certificate.

- 5100. Maximum load.
- 5101. Power of cities and towns—scope of act.
- 5102. Taxes.
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- 5104. Safety rules.
- 5105. Violations.

5094. Definitions.

1. The term "motor vehicle" when used in this chapter means any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or track.

2. The term "motor carrier" when used in this chapter means any person, firm, or corporation, lessee, trustee or receiver, operating any motor vehicles with or without trailers attached, upon any public highway for the transportation of passengers or property for compensation, between fixed termini or over a regular route even though there may be periodic or irregular departures from said termini or route, or for delivering oils, goods, or merchandise other than farm products except such motor carriers operating solely within the limits of a municipality.

The provisions of this section shall not be so construed as to apply to resident retail merchants who deliver goods and merchandise, other than oils, or oil products, in quantities of five gallons or less, in pursuance of bona fide sales to residents outside the limits of cities and towns and special charter cities, or to any vehicle used in collecting dairy products from the producer.

Nothing in this chapter shall be construed as affecting the operation of school busses, which are used in conveying school children to or from consolidated or other schools.

3. The term "highway" when used in this chapter means every public street, road, highway or thoroughfare of any kind in this state used by the public, whether actually dedicated to the public or accepted by the proper authorities or otherwise.

4. The terms "board" or "commission" when used in this chapter mean the board of railroad commissioners. [40 G. A., ch. 97, § 1; 40 Ex. G. A., ch. 2, § 1.]

5095. Rules and regulations. The board of railroad commissioners is hereby vested with the power to prescribe rules and regulations for the operation of motor vehicles as defined herein for the protection and safety of the public. [40 G. A., ch. 97, § 2.]

5096. Rates. All charges made by any motor carrier for any service rendered or to be

rendered in the transportation of passengers or property, or in connection therewith, shall be just, reasonable, and nondiscriminating, and every unjust, unreasonable, or discriminating charge for such service or any part thereof is prohibited and declared unlawful. [40 G. A., ch. 97, § 3.]

5097. Certificates of authority. It is hereby declared unlawful for any motor carrier to operate or furnish service within this state without first having obtained from the board of railroad commissioners a certificate authorizing such operation. Before such certificate shall be issued, the board of railroad commissioners shall after a public hearing make a finding that the service proposed to be rendered will promote the public convenience. If such finding be made, it shall be its duty to issue such certificate; but a certificate shall be granted when it appears to the satisfaction of the board of railroad commissioners that such person, firm, or corporation was actually operating in good faith, over the route for which such certificate shall be sought, on April 14, 1923. If such finding be not made, it shall refuse such certificate.

When the certificate is granted, it may attach to the exercise of the rights therein conferred such terms and conditions as in its judgment the public safety, convenience, and necessity may require. For just cause, the board may at any time modify, amend, or revoke any certificate issued.

The board shall adopt rules governing the procedure to be followed in the filing of applications and in the conduct of hearings upon such applications and in the granting of such certificates.

All applications shall be in writing and in addition to the other information required, shall contain the following:

1. The complete route over which the applicant desires to operate.

2. The proposed schedule or schedules setting forth in detail the service which the applicant proposes to render.

3. A complete and detailed description of the property proposed to be devoted to the public service.

Notice of the filing of the application and the date and place of the hearing thereupon

shall be published in some newspaper of general circulation in each of the counties in which the service is proposed to be rendered once each week for two consecutive weeks prior to said hearing. The hearing shall be held in one of the counties, in which the service is proposed to be rendered, to be selected by the applicant. [40 G. A., ch. 97, § 4.]

5098. Appeal. Appeal may be taken from an adverse decision of such board of railroad commissioners by the parties making such application, to the district court of any county in Iowa in which any portion of the route over which they are authorized to operate is located, within thirty days from the time such decision was rendered by giving at least ten days' notice to such board of railroad commissioners to be served on the chairman or secretary of such board in the same manner as original notices are now served and by filing a bond for costs in the sum of not less than one hundred dollars with the clerk of said court.

Upon such appeal being taken the secretary of such board shall make and certify a transcript of all papers, records, and proceedings in connection with such application and hearing and file the same with the clerk of said court on or before the first day of the next term thereof following the taking of such appeal.

The appeal shall be tried in equity and submitted upon the transcript of the evidence and the record made before the commission, and the district court shall either affirm, modify, or reverse the order of the commission.

An appeal may be taken from the judgment of the district court to the supreme court, as from other judgments. [40 G. A., ch. 97, § 5.]

5099. Assignability of certificate. No certificate of authorization issued under the provisions of this chapter shall be sold, transferred, leased, or assigned nor shall any contract or agreement with reference to or affecting any such certificate be made except with the written approval of the board. Nor shall any person, natural or artificial, be permitted to take over any such certificate unless he or it shall assume all the obligations imposed upon an original applicant. [40 G. A., ch. 97, § 6.]

5100. Maximum load. No motor carrier shall be permitted to operate a vehicle over the public highways of this state, equipped with solid rubber tires which, together with its maximum load, weighs more than fourteen thousand pounds or one equipped with pneumatic tires which, together with its maximum load, weighs over eighteen thousand pounds. [40 G. A., ch. 97, § 7; 40 Ex. G. A., ch. 2, § 2.]

5101. Power of cities and towns—scope of act. Cities and towns shall have power, by ordinance, to adopt general rules of operation and to designate the streets or routes over which motor carriers shall travel, provided, however, that the exercise of the power granted in this section shall be reasonable and fair.

Nothing in this chapter shall be construed as conferring on the board of railroad com-

missioners the right to regulate any motor vehicle used in the business of transporting live stock or other farm product from the place of production to market.

Nothing in this chapter shall be construed as repealing sections 5926 to 5937, inclusive, and 6769.

Motor vehicles operating, or proposing to operate, between cities and towns, the corporate limits of which are not to exceed one mile apart, shall be considered as coming within the purview of the acts described in this section. [40 G. A., ch. 97, § 8.]

NOTE: Above section made applicable to special charter cities by § 6755.

5102. Taxes. In addition to the regular license fees or taxes imposed on motor vehicles in this state, every motor carrier shall pay the following taxes for the maintenance and the upkeep of the public highways:

Motor vehicles having pneumatic tires, one-eighth cent per ton mile of travel over and along the public highways.

Motor vehicles having hard rubber or solid tires, one-fourth cent per ton mile of travel over and along the public highways.

In figuring the ton miles of passenger travel, the maximum seating capacity of each passenger-carrying motor vehicle unit (trailers to be included) at one hundred fifty pounds per passenger seat, plus the weight of the vehicle, multiplied by the number of miles operated, the sum thus obtained to be divided by two thousand, shall determine the ton miles of passenger travel each month. In no event, however, shall the number of miles operated be considered as less than the number required to be operated by the carrier to maintain its filed schedules.

In figuring the ton miles of freight travel, the maximum freight-carrying capacity of each freight-carrying truck or vehicle unit (trailers to be included) plus the weight of the vehicle, multiplied by the number of miles operated, the entire sum thus obtained to be divided by two thousand, shall determine the ton miles of freight travel per month.

The motor carrier shall keep a daily record upon a form prescribed by the commission of all schedules maintained, motor vehicle and trailer units used and motor vehicle and trailer units laid up for repairs, during the current month, and on or before the tenth day of the month following shall certify under oath to the commission upon such forms as may be prescribed by the commission, a summary of the daily record which shall show the grand total ton miles of travel, both passenger and freight, made by the motor carrier during the preceding month.

The daily record of each month's business shall thereupon be filed and preserved for a period of at least five years and thereafter until permission for their destruction shall have been obtained from the commission. Such daily record of each month's business shall be examined at least once each year by the commission or an authorized representative, and

compared with the sworn summaries on file with the commission.

Any wilful falsification of the sworn monthly summaries, in addition to other penalties imposed by the statute, shall result in immediate revocation of the motor carrier's certificate.

Errors in monthly summaries as compared to the daily records shall be adjusted to the figures of the daily records from time to time as discovered and certified to the county treasurers by the commission in the same manner as the regular monthly certification as hereinafter required.

Regularly each month, on or before the last day of the month, the commission shall certify to the various county treasurers in the counties through or in which any motor carrier is operating, the total amount of the special tax due from each motor carrier for operation over the public highways for the preceding month.

This tax shall be computed by multiplying the total number of ton miles operated by each motor carrier as shown by their sworn monthly summary to the commission by the rate or rates of taxation as in this chapter specified.

Thereupon the county treasurer shall enter the amount of the tax so certified upon the tax books of the county and serve a notice upon the motor carrier of the amount of tax due, which shall be payable not later than the fifteenth day of the month after the date of its certification from the commission.

All taxes in this manner assessed shall become a first lien upon the property of the motor carrier used in said business, until paid. In addition to the remedy upon the bond for collection of the tax, the property of the motor carrier may be advertised and sold for the nonpayment of any such taxes in the same manner and at the same time and under the same general rules and conditions as apply to all other property in the state. Upon failure of any motor carrier to pay any tax when due, the county treasurer shall notify the commission at once, and the commission may in its discretion revoke the carrier's certificate.

The money received by the county treasurer from this source shall be allocated to the various city and county road districts in the proportion that the number of miles of public highway used by the taxed motor carrier in any one district bears to the total number of miles used within the county. Such funds shall be used by each governmental agency receiving the same for the maintenance and repair of the highways and streets over which the carrier operates. [40 G. A., ch. 97, § 9.]

5103. Bonds. No certificate of authorization shall be issued by the commission to any motor carrier until and after such motor carrier shall have filed with the commission of this state a liability insurance bond, in a form to be approved by the commission, in some company authorized to do business in this state, in such a penal sum as the commission may deem necessary to adequately protect the interests of the public with due regard to the number of persons and amount of property in-

involved, which liability insurance shall bind the obligors thereunder to make compensation for injuries to persons and loss of or damage to property resulting from the operation of such motor carrier, and for which they would be legally liable.

Said commission shall also require a satisfactory bond in such penal sum and conditioned on the payment of all fees, taxes or charges which may be due the state or any governmental unit in the state under any permit of operation and for the faithful carrying out of any permit granted by said commission. No other or additional bonds than as herein described shall be required of any motor carrier by any city or town or other agency of the state. [40 G. A., ch. 97, § 10.]

5104. Safety rules. The commission in the exercise of the authority by this chapter vested in it to supervise and regulate all motor carriers shall promulgate such safety rules and regulations as it may deem necessary to govern and control the operation of motor carriers over and along the public highways of this state, and to enforce the same by such penalties and forfeitures as it may prescribe, including the revocation of the permit granted under the provisions of this chapter. Any such safety rules promulgated in addition to any others deemed necessary by the commission shall include the following:

1. Every motor carrier unit and all parts thereof shall be maintained in a safe and sanitary condition at all times, and shall be at all times subject to the inspection of the commission and its duly authorized representatives.

2. Every driver employed by a motor carrier shall be at least twenty-one years of age, of good moral character, shall be fully competent to operate the motor vehicle under his charge, and shall hold a regular chauffeur's license from the state motor vehicle department.

3. On passenger-carrying motor carrier units passengers will not be allowed to ride on the running boards, fenders, or any other part of the outside of the vehicle.

4. On freight-carrying motor carrier units no part of the load shall be allowed to project more than six inches beyond the running board of said motor vehicle, or measure more than eight feet wide over all.

5. No passenger-carrying motor carrier unit shall be driven over and along the public highways of this state at a greater rate of speed than twenty-five miles per hour.

6. No freight-carrying motor carrier unit shall be driven over and along the public highways of this state at a greater rate of speed than twenty miles per hour.

7. Accidents arising from or in connection with the operation of motor carriers shall be reported to the commission in such detail and in such manner as the commission may require.

8. The commission shall require and every motor carrier shall have attached to each unit or vehicle such distinctive markings or tags

as shall be adopted by the commission. [40 G. A., ch. 97, § 11.]

5105. Violations. Every owner, officer, agent, or employee of any motor carrier, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the commission, or who

procures, aids, or abets any corporation or person in his failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or regulation or any part or provision thereof, shall forfeit the certificate as provided herein and shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [40 G. A., ch. 97, § 13; 40 Ex. G. A., ch. 2, § 3.]

TITLE XIV

COUNTY AND TOWNSHIP GOVERNMENT

CHAPTER 253

BOARD OF SUPERVISORS

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5106. Number of members. The board of supervisors in each county shall consist of three persons, except where the number has been or may hereafter be increased in the manner provided by this chapter. They shall be qualified electors, and be elected by the qualified voters of their respective counties, and shall hold their office for three years. [R., '60, § 303; C., '73, §§ 294, 299; C., '97, § 410; S. S., '15, § 410; 40 Ex. G. A., S. F. 129, § 1.]

5107. Number increased by vote. When petitioned to do so by one-fourth of the qualified electors of said county, the board of supervisors shall submit to the qualified electors of the county, at any regular election, one of the following propositions as may be requested in said petition, or the board may, on its own motion, by resolution, submit either of said propositions:

1. Shall the proposition to increase the number of supervisors to five be adopted?
2. Shall the proposition to increase the number of supervisors to seven be adopted?

If the majority of the votes cast shall be for the proposition so submitted, then at the next general election the requisite additional supervisors shall be elected, and one-half of the additional supervisors shall hold office for three years and one-half for two years.

The length of term for which any person is a candidate and the time when the term begins shall be indicated on the ballot. [R., '60, § 303; C., '73, §§ 294, 299; C., '97, § 410; S. S., '15, § 410; 40 Ex. G. A., S. F. 129, § 2.]

5108. Number reduced by vote. In any county where the number of supervisors has

been increased to five or seven, the board of supervisors, on the petition of one-fourth of the qualified electors of the county, shall submit to the qualified voters of the county, at any regular election, one of the following propositions, as the same may be requested in such petition:

1. Shall the proposition to reduce the number of supervisors to five be adopted?
2. Shall the proposition to reduce the number of supervisors to three be adopted?

If a majority of the votes cast shall be for the decrease, then the number of supervisors shall be reduced to the number indicated by such vote. [C., '73, § 299; C., '97, § 410; S. S., '15, § 410; 40 Ex. G. A., S. F. 129, § 3.]

5109. When reduction takes effect. If the proposition to reduce the number of members of the board carries, the board shall consist of the same number of members as at the time the proposition to reduce was submitted, until the second secular day in January following the next general election, at which time the terms of all members of the board shall expire. [C., '73, § 299; C., '97, § 410; S. S., '15, § 410; 40 Ex. G. A., S. F. 129, § 4.]

5110. Election of new members. At the next general election following the one at which the proposition to reduce the number of members of the board was carried there shall be elected the number of members required by such proposition.

Where such proposition reduces the board to five members, two persons shall be elected as members of the board for two years, two for three years, and one for four years.

In counties where the proposition reduces the board to three members, one person shall be elected as member of the board for two years, one for three years, and one for four years.

The length of term for which any person is a candidate and the time when the term begins shall be indicated on the ballot. [S. S., '15, § 410; 40 Ex. G. A., S. F. 129, § 5.]

5111. Supervisor districts. The board of supervisors may, at its regular meeting in January in any even-numbered year, divide its county by townships into a number of supervisor districts corresponding to the number of supervisors in such county; or, at such regular meeting, it may abolish such supervisor districts, and provide for electing supervisors for the county at large. [C., '97, § 416; S., '13, § 416.]

5112. How formed. Such districts shall be as nearly equal in population as possible, and shall each embrace townships as nearly contiguous as practicable, each of which said districts shall be entitled to one member of such board, to be elected by the electors of said district. [C., '97, § 417.]

5113. One member for each district. In case such division or any subsequent division shall be found to leave any district or districts without a member of such board of supervisors, then, at the next ensuing general election, a supervisor shall be elected by and from such district having no member of such board; and if there be two such districts or more, then the new member or members of said board shall be elected by and from the district or districts having the greater population according to the last state census, and so on, until each of said districts shall have one member of such board. [C., '97, § 418.]

5114. Redistricting—term of office. Any county may be redistricted, as provided by the three preceding sections, once in every two years, and not oftener, and nothing herein contained shall be so construed as to have the effect of lengthening or diminishing the term of office of any member of such board. [C., '97, § 419.]

5115. Absence from county—vacancy. The absence of any supervisor from the county for six months in succession shall be treated as a resignation of his office, and the board shall, at its next meeting thereafter, by resolution regularly adopted and spread upon its records, declare his seat vacant. [C., '73, § 298; C., '97, § 414.]

5116. Organization. The board of supervisors, at its first meeting in each year, shall organize by choosing one of its members as chairman, who shall preside at all of its meetings during the year. [R., '60, § 308; C., '73, § 300; C., '97, § 415.]

5117. Quorum. A majority of the board of supervisors shall constitute a quorum to transact business, but should a division take place

on any question when only two members of the board are in attendance, the question shall be continued until there is a full board. [R., '60, § 308; C., '73, § 297; C., '97, § 413.]

5118. Meetings. The members of the board of supervisors shall meet at the county seat of their respective counties on the second secular day in January and on the first Monday in April and the second Monday in June, September, and November in each year, and shall hold such special meetings as are provided by law, but in the event a quorum of said board fails to appear on a day set for a regular or an adjourned meeting the auditor of said county shall adjourn said meeting from day to day until a quorum is present. [R., '60, § 307; C., '73, § 296; C., '97, § 412; S., '13, § 412; 38 G. A., ch. 26, § 1; 39 G. A., ch. 239.]

5119. Special sessions. Special sessions of the board of supervisors shall be held only when requested by the chairman or a majority of the board, which request shall be in writing addressed to the county auditor, shall fix the date of meeting and shall specify the objects thereof, which may include the doing of any act not required by law to be done at a regular meeting. [R., '60, § 309; C., '73, § 301; C., '97, § 420; 40 Ex. G. A., S. F. 129, § 6.]

5120. Notice. The auditor shall immediately give notice in writing or by telephone to each of the supervisors personally, or by leaving notice thereof at his residence, at least six days before the date set for such meeting, stating the time and place where the meeting will be held and the objects thereof as stated in the written request. No business shall be transacted at such session, except that stated in the request and notice. [R., '60, § 309; C., '73, § 301; C., '97, § 420; 40 Ex. G. A., S. F. 129, § 7.]

5121. Acts requiring majority. No tax shall be levied, no contract for the erection of any public buildings entered into, no settlement with the county officers made, no real estate purchased or sold, no new site designated for any county buildings, no change made in the boundaries of townships, and no money appropriated to aid in the construction of highways and bridges, without a majority of the whole board of supervisors voting therefor and consenting thereto. [R., '60, § 313; C., '73, § 305; C., '97, § 440.]

5122. Books to be kept. The board is authorized and required to keep the following books:

1. *Minute book.* A book to be known as the "minute book", in which shall be recorded all orders and decisions made by it except those relating to highways and drainage districts, and in which book, or in a separate book kept for that purpose, there shall be an alphabetical index of the proceedings of said board as shown by the minutes.

2. *Highway record.* A book to be known as the "highway record", in which shall be re-

corded all proceedings and adjudications relating to the establishment, change, or discontinuance of highways.

3. *Bridge book.* A book to be known as the "bridge book", where a record of bridges shall be kept in a numerical order in each congressional township, commencing in section one, and numbering each bridge; give location in fractional parts of sections; name the kind of material used for substructure and superstructure; give length and cost of bridge, and, when repaired, to keep a record of repairs and charge it to the bridge; and warrants drawn in payment for erection or repairs of bridges shall indicate the number of the bridge for which issued in payment.

4. *Warrant book.* A book to be known as the "warrant book", in which shall be entered, in the order of its issuance, the number, date, amount, name of drawee of each warrant drawn on the treasury, and the number of warrants, as directed in relation to the minute book.

5. *Claim register.* A book to be known as a "claim register", in which shall be entered a minute of all claims filed for allowance of money from the county treasury. [R., '60, § 318; C., '73, § 308; C., '97, § 442; 38 G. A., ch. 317, §§ 1, 2.]

5123. **Claims generally.** Claims filed shall be numbered consecutively in the order of filing, and shall be entered on the claim register alphabetically, so as to show the date of filing, the number of the claim and its general nature, the name of the claimant and the action of the board thereon, stating, if allowed, the fund upon which allowance is made. A record of the allowance of claims at each session of the board shall be entered on the minute book by reference to the numbers of the claims as entered on the claim register. [38 G. A., ch. 317, §§ 1, 2.]

5124. **Unliquidated claims.** All unliquidated claims against counties and all claims for fees or compensation, except salaries fixed by statute, shall, before being audited or paid, be so itemized as to clearly show the basis of any such claim and whether for property sold or furnished the county, or for services rendered it, or upon some other account, and shall be duly verified by the affidavit of the claimant, filed with the county auditor for presentation to the board of supervisors; and no action shall be brought against any county upon any such claim until the same has been so filed and payment thereof refused or neglected. [C., '73, §§ 2610, 3843; C., '97, §§ 1300, 3528; 40 Ex. G. A., S. F. 129, § 8.]

5125. **Compensation of supervisors.** The members of the board of supervisors shall each

receive five dollars per day for each day actually in session, and five dollars per day exclusive of mileage when not in session but employed on committee service, and ten cents for every mile traveled in going to and from the regular, special, and adjourned sessions thereof, and in going to and from the place of performing committee service.

When the board is in continuous session, mileage for only one trip in going to and from the session shall be allowed. [R., '60, § 317; C., '73, § 3791; C., '97, § 469; S., '13, § 469; 38 G. A., ch. 104, § 1; 40 Ex. G. A., S. F. 129, § 9.]

5126. **Maximum session pay.** Except as provided in the next section, members of such board shall not receive compensation for a greater number of days of session service each year than specified in the following schedule.

In counties having a population of:

1. Ten thousand or less, thirty days.
2. More than ten thousand and less than twenty-three thousand, forty-five days.
3. Twenty-three thousand and less than forty thousand, fifty-five days.
4. Forty thousand and less than sixty thousand, sixty-five days.
5. Sixty thousand and less than eighty thousand, seventy-five days.
6. Eighty thousand and less than ninety thousand, ninety days.
7. Ninety thousand and over, one hundred days. [R., '60, § 317; C., '73, § 3791; C., '97, § 469; S., '13, § 469; 40 Ex. G. A., S. F. 129, § 10.]

5127. **Drainage session pay.** The time spent by the board of supervisors as a ditch or drainage board and in considering drainage matters as a single board, or jointly with one or more other boards, shall not be counted in computing the number of days which any board has been in session, but the members of the board shall be entitled to compensation at the same rate for the time spent in ditch and drainage matters, except the drainage of highways, in addition to the compensation allowed as hereinbefore set forth, but in no case shall said board be allowed more than fifty days' additional time in any year for time spent in drainage matters.

If on the same day, the board considers matters involving two or more drainage districts, their per diem shall be equitably apportioned by them among such districts.

If on the same day the board acts both as a county board and also for the purpose of considering drainage matters, the board shall be paid for one day only, and from the general fund or drainage fund as the board may order. [S., '13, § 469; 40 Ex. G. A., S. F. 129, § 11.]

CHAPTER 254

POWERS AND DUTIES OF BOARD OF SUPERVISORS

5128. Body corporate.
 5129. Concurrent jurisdiction.
 5130. General powers.
 5131. Contracts and bids required.
 5132. Bids—plans and specifications.
 5133. Offices furnished.
 5134. Supplies.

5135. Insurance money.
 5136. Compromise authorized.
 5137. Conditions of compromise.
 5138. Disposition of funds.
 5139. Useless documents.
 5140. Neglect of duty.

5128. Body corporate. Each county, as a body corporate for civil and political purposes, may sue and be sued, must have a seal, may acquire and hold property, make all contracts necessary for the control, management, and improvement or disposition thereof, and do such other acts and exercise such other powers as are authorized by law. [C., '51, § 93; R., '60, § 221; C., '73, § 279; C., '97, § 394.]

5129. Concurrent jurisdiction. Counties bounded by a stream or other water have concurrent jurisdiction over the whole of the waters lying between them. [C., '51, § 95; R., '60, § 223; C., '73, § 280; C., '97, § 395.]

5130. General powers. The board of supervisors at any regular meeting shall have power:

1. To appoint one of its number chairman in the absence of the regular chairman, and a clerk, in the absence of the auditor and his deputy.

2. To make such rules not inconsistent with law, as it may deem necessary for its own government, the transaction of business, and the preservation of order.

3. To adjourn from time to time, as occasion may require.

4. To make such orders concerning the corporate property of the county as it may deem expedient, and not inconsistent with law.

5. To examine and settle all accounts of the receipts and expenditures of the county, and to examine, settle, and allow all claims against the county, unless otherwise provided by law.

6. To represent its county and have the care and management of the property and business thereof in all cases where no other provision is made.

7. To manage and control the school fund of its county, as provided by law.

8. To require any county officer to make a report to it, under oath, on any subject connected with the duties of his office and to give such bonds as shall be necessary for the faithful performance of his duties.

9. To remove from office by a majority vote any officer who shall refuse or neglect to make any report or give any bond mentioned

in the preceding subsection, within twenty days after being required so to do.

10. To fix the compensation for all services of county and township officers not otherwise provided by law, and to provide for the payment of the same.

11. To cause the county buildings to be insured in the name of the county, or otherwise, for its benefit, and in case there are no county buildings, to provide suitable rooms for county purposes.

12. To purchase, for the use of the county, any real estate necessary for county purposes; to change the site of, or designate a new site for any building required to be at the county seat, when such site shall not be beyond the limits of the city or town at which the county seat is located at the time of such change; and to change the site of and designate a new site for the erection of any building for the care and support of the poor.

13. When any real estate, buildings, or other property are no longer needed for the purposes for which the same were acquired by the county, to sell the same at a fair valuation.

14. To make appropriations not exceeding three hundred dollars in any one year for the growing, under the direction of the board, of experimental crops on lands owned by the county.

15. To build, equip, and keep in repair the necessary buildings for the use of the county and of the courts.

16. To permit any person to use any portion of the lands owned by the county for ornamental purposes, or for the erection of any monument or fountain under such restrictions as the board may from time to time enact, when such use will not interfere with the use for which such real estate was originally acquired by the county.

17. To lease or sell to school districts, real estate owned by the county and not needed for county purposes. 1-11. [R., '60, § 312; C., '73, § 303; C., '97, § 422; S. S., '15, § 422; 40 Ex. G. A., H. F. 130, § 1.] 12. [R., '60, § 312; C., '73, § 303; C., '97, § 422; S. S., '15, § 422; 37 G. A., ch. 33, § 1; 40 Ex. G. A., H. F. 130, § 1.] 13. [37 G. A., ch. 33, § 1; 39 G. A., ch. 32, § 1; 40 Ex. G. A., H. F. 130, § 1.] 14. [S. S., '15, § 422; 40 Ex. G. A., H. F. 130, § 1.]

15. [R., '60, § 312; C., '73, § 303; C., '97, § 422; S. S., '15, § 422; 37 G. A., ch. 33, § 1; 39 G. A., ch. 32, § 1; 40 Ex. G. A., H. F. 130, § 1.] 16. [S. S., '15, § 422; 40 Ex. G. A., H. F. 130, § 1.] 17. [39 G. A., ch. 32, § 1; 40 Ex. G. A., H. F. 130, § 1.]

5131. Contracts and bids required. No building shall be erected or repaired when the probable cost thereof will exceed two thousand dollars except under an express written contract and upon proposals therefor, invited by advertisement for four weeks in all the official newspapers of the county in which the work is to be done. [R., '60, § 312; C., '73, § 303; C., '97, § 422; S. S., '15, § 422; 40 Ex. G. A., H. F. 130, § 2.]

5132. Bids—plans and specifications. Contracts for buildings and repairs specified by the preceding section shall be let to the lowest responsible bidder at a time and place which shall be distinctly stated in the advertisement. The board may on the day fixed for letting such contract adjourn the hearing to some later date and place, of which all parties shall take notice. The board may reject any and all bids and advertise for new ones. The detailed plans and specifications for such improvements shall be on file and open to public inspection in the office of the auditor of the county in which the work is to be done before advertisement for bids. [S. S., '15, § 422; 40 Ex. G. A., H. F. 130, § 3.]

5133. Offices furnished. The board of supervisors shall furnish the clerk of the district court, sheriff, recorder, treasurer, auditor, county attorney, county superintendent, and county surveyor or engineer, with offices at the county seat, but in no case shall any such officer, except the county attorney, be permitted to occupy an office also occupied by a practicing attorney. [C., '73, § 3844; C., '97, § 468; 40 Ex. G. A., H. F. 130, § 4.]

5134. Supplies. The board of supervisors shall also furnish each of said officers with fuel, lights, blanks, books, and stationery necessary and proper to enable them to discharge the duties of their respective offices, but nothing herein shall be construed to require said board to furnish any county attorney with law books or library. [C., '73, § 3844; C., '97, § 468; 40 Ex. G. A., H. F. 130, § 5.]

5135. Insurance money. In any county in this state where any of the public buildings thereof have been or may hereafter be destroyed by fire, wind, or lightning, the board of supervisors of such county, for the purpose of reconstructing the same, may appropriate

and use, in addition to the amount now authorized by law, the amount received by way of insurance on such building or buildings so destroyed. [C., '97, § 425.]

5136. Compromise authorized. Where judgment has been or may hereafter be rendered against any county treasurer or other county officer and the sureties on his official bond, in favor of any county in this state, and remains unsatisfied, and the board of supervisors of such county are satisfied that the full amount thereof can not be collected, such board of supervisors shall have power to compromise the said judgment, and to enter full satisfaction thereof under the terms of said compromise. [C., '97, § 437.]

5137. Conditions of compromise. In all cases referred to in the preceding section, if the principal debtor and each of the sureties on his official bond shall execute a written consent to a compromise with any one or more of said sureties, and to a release of said surety or sureties, and in such writing shall agree that such compromise or release shall not release any of the sureties who shall not compromise and be released from the payment of the unpaid judgment, then in that case, upon the filing of such written consent with the auditor of such county, the board of supervisors of such county shall have full power, and are hereby authorized, to compromise with any one or more of such sureties, and to release such surety or sureties upon the terms which may be agreed upon in such compromise. [C., '97, § 438.]

5138. Disposition of funds. In case of any compromise as provided in the two preceding sections being made, the money received by the county thereon shall be paid to the various funds of the county, in proportion to the amount that each fund is in default, as such default existed at the time the judgment was rendered, as nearly as the same can be ascertained, so that each fund shall receive its pro rata share, as the same shall be determined by the board of supervisors. [C., '97, § 439.]

5139. Useless documents. The board of supervisors is authorized to order the county auditor to destroy all duplicate tax receipts, liquor requests, poll tax receipts, and hunting license applications which have been on file in the office of the county treasurer or auditor for more than five years. [38 G. A., ch. 387, § 1.]

5140. Neglect of duty. If any supervisor shall neglect or refuse to perform any of the duties which are or shall be required of him by law as a member of the board of supervisors, without just cause therefor, he shall, for each offense, forfeit one hundred dollars. [R., '60, § 311; C., '73, § 302; C., '97, § 421.]

CHAPTER 255

COUNTY AUDITOR

5141. Duties.
 5142. Issuance of warrants.
 5143. Issuance of warrants without audit.
 5144. Issuance of warrants prior to audit.
 5145. Audit by board.
 5146. Form of warrants.
 5147. Erroneous certificates—liability.
 5148. Duty as to school fund.

5149. Collection of moneys.
 5150. List of county officers—report.
 5151. Financial report.
 5152. Comparisons.
 5153. Additional matter.
 5154. Printing and distribution.
 5155. Fees to be collected.

5141. Duties. The county auditor shall:

1. Record all the proceedings of the board in proper books provided for that purpose.

2. Make full entries of all its resolutions and decisions on all questions concerning the raising of money, and for the payment of money from the county treasury.

3. Record the vote of each supervisor on any question submitted to the board, if required by any member present.

4. Sign all orders issued by the board for the payment of money, and record, in a book provided for the purpose, the reports of the county treasurer of the receipts and disbursements of the county.

5. Preserve and file all accounts acted upon by the board, with its action thereon, and perform such special duties as are or may be required of him by law.

6. Designate upon every account, on which any sum shall be allowed by the board, the amount so allowed, and the charges for which the same was allowed.

7. Deliver to any person who may demand it a certified copy of any record or account in his office, on payment of his legal fees therefor.

8. Have the general custody and control of the courthouse in each county, respectively, subject to the direction of the board of supervisors. [R., '60, §§ 319, 320; C., '73, §§ 320, 323; C., '97, §§ 470, 473.]

5142. Issuance of warrants. Except as otherwise provided, the auditor shall not sign or issue any county warrant, unless the board of supervisors by recorded vote or resolution shall have authorized the same, and every such warrant shall be numbered and the date, amount, and the number of the same, and the name of the person to whom issued, shall be entered in a book to be kept in his office for that purpose. [R., '60, § 321; C., '73, § 321; C., '97, § 471; 37 G. A., ch. 356, § 3.]

5143. Issuance of warrants without audit. The county auditor is hereby authorized to issue warrants as follows before bills for same

have been passed upon by the board of supervisors:

1. For jury fees and mileage on certificate of the clerk of the court upon which they were in attendance, which certificate shall be issued when the juror entitled thereto shall have been discharged or excused by the court.

2. For witness fees and mileage for attendance before the grand jury upon certificate of the county attorney and foreman of such jury.

3. For witness fees before the district court of trial jury therein in criminal cases, when such fees are payable by the county, upon certificate of the clerk of the court upon which they were in attendance.

4. The per diem of the shorthand reporter of the district court upon certificate of the judge holding said court.

5. For expense of the grand jury upon order of the judge of the district court. [R., '60, § 321; C., '73, § 321; C., '97, § 471; 37 G. A., ch. 356, § 4.]

5144. Issuance of warrants prior to audit. The board of supervisors may, by resolution, authorize the county auditor to issue warrants when said board is not in session for the following named purposes:

1. For such fixed charges as freight, express, postage, water, light, and telephone rents, upon filing duly verified bills for same with the county auditor.

2. For salaries and pay rolls where such compensation shall have been previously fixed by the board of supervisors, upon certificate of the officer or foreman under whom such compensation shall have been earned. [37 G. A., ch. 356, § 5.]

5145. Audit by board. All bills paid under the provisions of the three preceding sections shall be passed upon by the board of supervisors at the first meeting following such payment and shall be entered on the minutes as other claims allowed by the board. [37 G. A., ch. 356, § 6.]

5146. Form of warrants. Each warrant issued by the auditor shall be made payable to the person performing the service or fur-

nishing the supplies for which said warrant makes payment, and shall state the purpose for which said warrant was issued. [37 G. A., ch. 356, § 7.]

5147. Erroneous certificates—liability. Any officer making an erroneous certificate shall be liable on his official bond for any loss to the county thereby. [37 G. A., ch. 356, § 8.]

5148. Duty as to school fund. When the auditor of any county shall receive from the state auditor notice of the apportionment of school moneys to be distributed in the county, he shall file the same in his office, and transmit a certified copy thereof to the county treasurer, and he shall also lay a certified copy thereof before the board at its next regular meeting. [R., '60, § 322; C., '73, § 322; C., '97, § 472.]

5149. Collection of moneys. The county auditor is hereby authorized to collect and receive all money due his county, except when otherwise provided by law, and shall be responsible for all public funds received or collected by him. [C., '73, § 323; C., '97, § 473.]

5150. List of county officers—report. The county auditor shall report to the secretary of state the name, office, and term of office of every county officer elected or appointed, within ten days after their election and qualification, and the secretary of state shall record the same in a book to be kept for that purpose in his office. [R., '60, §§ 291, 292; C., '73, § 324; C., '97, § 474.]

5151. Financial report. The county auditor shall, during the month of January of each year, compile and prepare a financial report, which shall contain schedules showing:

1. The amount of the various classes of warrants drawn on the county fund, except for court expenses, during the preceding year, including therein, among other items, the total amount paid each county officer, also their deputies and extra help, also other employees of the county, and amounts paid for rent and various other expenses, including printing and stationery, furniture and fixtures, publishing proceedings of the board of supervisors, postage allowed each county official, complete election expenses, including printing of ballots, expenses of registration, and items of like nature.

2. The amount of warrants drawn on the county fund for various court expenses, which shall include among other items the salary paid the county attorney and the amounts received by him as commission on fines and from other sources, and the amount paid to assistant counsel.

3. The amount paid jurors, witnesses and bailiffs, respectively, in district court, amount paid for shorthand reporting, amount paid for printing and stationery, amount paid for attorney fees for defending criminals, amount paid for meals for jurors, and items of like nature.

4. The expenses of the grand jury, stating amounts paid grand jurors, bailiffs, witnesses, and items of like nature.

5. The expenses of the coroner's court, stating amount paid coroner, coroner's clerk, constable fees, witness fees, and items of like nature.

6. The expenses of justice courts, stating amounts paid various justices, constables, total amount paid witnesses, jurors, attorney fees, for printing, and items of like nature.

7. The amount drawn by each member of the board of supervisors from the several funds of the county for services during the preceding year.

8. A recapitulation of the total amount of warrants drawn on the county fund, with a comparison with the amount of warrants drawn on the county fund each year for the last five years.

9. The various classes of warrants drawn on the poor fund for the preceding year, with a comparison with the total amount of warrants drawn on such fund each year for the last five years.

10. The amount of warrants drawn on the fund for the support of the insane for the preceding year, including the amounts received by each commissioner as fees and expenses, fees of witnesses, sheriff's fees and expenses, the cost of transportation, and items of like nature.

11. The total cost of maintenance of insane at county asylum, with number confined therein, and total paid the various state hospitals for the insane, with the number of patients from the county confined in such hospitals.

12. The amount paid the various state institutions during the preceding year.

13. The amounts paid the sheriff for boarding prisoners during the preceding year, together with the amount paid the sheriff as jail expenses, with a comparison with the amounts paid for boarding prisoners, and for jail expenses each year during the last five years.

14. The amounts paid for the condemning of intoxicating liquors during the preceding year, also cost of convictions, both in justice courts and in the district court, for the violation of the laws relating to the sale of intoxicating liquors, together with the amount of fines collected for such violation and the amounts received as mulct tax, if any.

15. The amount of warrants drawn on the county road fund and each of the various other funds of the county. [S., '13, § 480-a; 40 G. A., ch. 247, § 1.]

5152. Comparisons. The comparisons with preceding years provided for in the preceding section shall be as follows:

1. The first year, comparison only with the preceding year.

2. The second year, with the two preceding years.

3. The third year, with the three preceding years.

4. The fourth year, with the four preceding years.

5. The fifth year, with the five preceding years.

6. Thereafter in the same order and manner for each five-year period. [S., '13, § 480-a; 40 G. A., ch. 247, § 2.]

5153. Additional matter. Said financial report shall also contain the following:

1. The report of the county auditor as required by law to be made to the superintendent of public instruction, relating to school funds and property.

2. The various reports as required by law to be made to the county board of supervisors of magistrates and other officers, including forfeited recognizances in their offices, fines, penalties, forfeitures imposed in their respective courts, and forfeited appearance bonds in criminal cases, all of which by law go into the county treasury for the benefit of the school fund.

3. The various reports made during the preceding year, by the county treasurer, auditor, recorder, sheriff, clerk of the district court, and the soldiers' relief commission, as required by law.

4. The reports of the various committees that may be appointed by the board of supervisors to examine the affairs and accounts of the various county officials and employees.

5. Such other and further matters and information as the board of supervisors may direct or the auditor may deem advisable. [S., '13, § 480-a; 40 G. A., ch. 247, § 3.]

5154. Printing and distribution. Said financial report shall be ordered printed by the board of supervisors in pamphlet form in such numbers as the board may direct, for distribution among the taxpayers of the county. The county auditor of each county shall, on or before April first of each year, furnish to the auditor of state the information contained in such financial report and any other information relative to the financial affairs of the county which he may require, upon blank forms provided by the auditor of state for this purpose. [S., '13, § 480-b.]

5155. Fees to be collected. The county auditor shall be entitled to charge and receive the following fees:

1. For transfers made in the transfer books, for each deed, or transfer of title certified by clerks of district courts, twenty-five cents.

2. For issuing certificate of redemption of land sold for taxes, twenty-five cents.

3. For each certificate issued by the treasurer for lands sold for nonpayment of taxes, fifteen cents. [C., '73, § 3797; C., '97, § 478; 37 G. A., ch. 215, § 1.]

CHAPTER 256

COUNTY TREASURER

5156. Duties.

5157. Official seal.

5158. Warrants—indorsement.

5159. Breach of duty.

5160. Warrants presented but not paid.

5161. Calls for outstanding warrants.

5162. Warrants partially paid.

5163. Warrant book.

5164. Cancellation of warrants.

5165. Funds—separate account.

5166. State funds.

5167. Payment to state treasurer.

5168. Penalty.

5169. Unclaimed money.

5156. Duties. The treasurer shall receive all money payable to the county, and disburse the same on warrants drawn and signed by the county auditor and sealed with the county seal, and not otherwise, and shall keep a true account of all receipts and disbursements, and hold the same at all times ready for the inspection of the board of supervisors. [C., '51, § 152; R., '60, § 360; C., '73, § 327; C., '97, § 482.]

5157. Official seal. The county treasurer shall be provided with an impression seal on the face of which shall appear the name of the county, the word "county", either in full or abbreviated; the word "treasurer", either in full or abbreviated; and the word, "Iowa", and the impression of said seal shall be placed upon each motor vehicle registration certificate signed by the county treasurer. [39 G. A., ch. 141.]

5158. Warrants—indorsement. The treasurer of every county, when he shall receive

any warrant, scrip, or other evidence of its indebtedness, shall indorse thereon the date of its receipt, from whom received, and what amount he paid thereon. [R., '60, § 2187; C., '73, § 557; C., '97, § 597.]

NOTE: Made applicable to cities and towns, see § 5643.

5159. Breach of duty. Any county treasurer, or any deputy or employee of such officer, who violates any of the provisions of the preceding section, shall be guilty of a misdemeanor, and fined not less than one hundred dollars, nor more than five hundred dollars, for each offense. [R., '60, § 2188; C., '73, § 558; C., '97, § 598.]

NOTE: Made applicable to cities and towns, see § 5643.

5160. Warrants presented but not paid. When a warrant drawn by the auditor on the treasurer is presented for payment, and not paid for want of money, the treasurer shall indorse thereon a note of that fact and the

date of presentation, and sign it, and thenceforth it shall draw interest at the rate of five per cent. He shall keep a record of the number and amount of the warrants presented and indorsed for nonpayment, which shall be paid in the order of such presentation. [C., '51, § 153; R., '60, § 361; C., '73, § 328; C., '97, § 483; S., '13, § 483.]

5161. Calls for outstanding warrants. He shall issue calls for outstanding warrants at any time he may have sufficient funds on hand for which such warrants were issued; shall give notice to what number of warrants the funds will extend, or the number which will be paid, by posting a written notice in the treasurer's office, and, at the expiration of thirty days from the date of such posting, interest on the warrants so named shall cease; and, when a warrant which draws interest is taken up, he shall indorse upon it the date and amount of interest allowed, and such warrant shall be canceled and not reissued. [C., '51, § 153; R., '60, § 361; C., '73, § 328; C., '97, § 484.]

5162. Warrants partially paid. When a person wishing to make a payment into the treasury presents a warrant of an amount greater than such payment, or presents for payment a warrant in excess of the funds in the treasury, the treasurer shall cancel the same and give the holder a certificate of the overplus, upon the presentation of which to the county auditor he shall file it, and issue a new warrant of that amount, and charge the treasurer therewith; and such certificate is transferable by delivery, and will entitle the holder to the new warrant, payable to his order, and containing reference to the original warrant. [C., '51, §§ 154, 490; R., '60, §§ 362, 755; C., '73, § 329; C., '97, § 485.]

5163. Warrant book. The treasurer shall keep a record of all warrants drawn on him by the auditor and presented, in a book so ruled as to show in separate columns, as to each warrant, the number, date, principal, name of drawee, when paid, to whom paid, and amount of interest paid. [C., '51, § 155; R., '60, § 363; C., '73, § 330; C., '97, § 486.]

5164. Cancellation of warrants. The warrants returned by the treasurer shall be compared with the warrant book, and the word "canceled" be written over the minute of the proper numbers in the warrant book, and the original warrant be preserved for at least two years, and he shall make weekly returns to the auditor of the number, date, drawee's name, when paid, to whom paid, original amount, and interest. [C., '51, §§ 159, 160; R., '60, §§ 365, 366; C., '73, §§ 332, 333; C., '97, § 488.]

5165. Funds—separate account. The treasurer shall, for each term of his office, keep a

separate account of the several taxes for state, county, school, highway, or other purposes, and of all other funds created by law, whether regular, temporary, or special, and no moneys in any such fund shall be paid out or used for any other purpose, except as specially authorized by law. The treasurer shall charge himself with the amount of the tax or other fund and credit himself with the amounts disbursed on each and with the amount of delinquent taxes, when authorized to do so. [C., '51, §§ 156, 161; R., '60, §§ 364, 367; C., '73, §§ 331, 334; C., '97, §§ 487, 489; 40 G. A., ch. 248.]

5166. State funds. The treasurer of each county shall, on or before the fifteenth day of each month, prepare sworn statements of the amount of money in his hands on the last day of the preceding month belonging to the state treasury, not including primary road funds or motor vehicle funds, and forward by mail one such statement to the auditor of state, and one such statement to the treasurer of state. [R., '60, § 799; C., '73, § 914; C., '97, § 1459; 39 G. A., ch. 155, § 3; 40 G. A., ch. 153, §§ 1, 4; 40 Ex. G. A., S. F. 9, § 2-a1.]

5167. Payment to state treasurer. The treasurer of each county shall also, at any time when directed by the treasurer of state as provided in section 142, forthwith pay into state treasury any or all of the said money due the state and remaining in his hands. The treasurer of state is hereby required to receive on all such payments the same kind of money and notes which the county treasurer is authorized and required by law to receive in payment of taxes. [R., '60, § 799; C., '73, § 914; C., '97, § 1459; 40 G. A., ch. 153, § 1; 40 Ex. G. A., S. F. 9, § 2-a2.]

5168. Penalty. In case the treasurer of any county shall fail to prepare and forward the aforesaid statement, or shall fail to promptly honor any draft by the treasurer of state as provided in section 142, he shall forfeit and pay for each and every failure a sum not less than one hundred dollars or more than five hundred dollars, to be recovered in an action on the treasurer's bond, brought in the name of the state auditor or the treasurer of state. [R., '60, § 799; C., '73, § 914; C., '97, § 1459; 40 G. A., ch. 153, § 3; 40 Ex. G. A., S. F. 9, § 2-a5.]

5169. Unclaimed money. In any county of this state where any special levy has been made to pay any claim, bond, or other indebtedness, and the same shall have remained in the treasury of the county, uncalled for, for a period of three years, the board of supervisors of such county may authorize such unclaimed fund to be transferred to the general county fund. [C., '97, § 456.]

CHAPTER 257

COUNTY RECORDER

5170. Auditor as temporary recorder.
 5171. General duties.
 5172. Error in recording—correction.
 5173. Military discharge.
 5174. Alphabetical index.

5175. Free copies.
 5176. Federal tax liens.
 5177. Fees.
 5178. Exact time of filing.

5170. Auditor as temporary recorder. In case of vacancy occurring in the office of recorder, by death or otherwise, the auditor shall discharge the duties pertaining to said office until such vacancy is filled by appointment by the board of supervisors. [C., '97, § 497.]

each discharge paper so recorded. [38 G. A., ch. 62, § 2.]

5171. General duties. The recorder shall keep his office at the county seat, and shall record at length, and as speedily as possible, all instruments in writing which may be delivered to him for record, in the manner directed by law. [C., '51, § 150; R., '60, § 358; C., '73, § 335; C., '97, § 494; S., '13, § 494.]

5175. Free copies. When a certified copy or copies of any public record in the state are required to perfect the claim of any soldier, sailor, or marine, in service or honorably discharged, or any dependent of such soldier, sailor, or marine, for a United States pension, or other claim upon the government of the United States, they shall, upon request, be furnished by the custodian of such records, without requiring any fee or compensation therefor. [38 G. A., ch. 28, § 1.]

5172. Error in recording—correction. If, in the recording of any such instrument heretofore recorded or hereafter to be filed for record, the recording fee for which has once been paid, the recorder shall commit an error in making the record thereof, it shall be his duty to re-record such instrument upon the presentation of the original by the owner thereof, without further compensation; and he shall also enter upon the margin of the new record a reference to the original record, and upon the margin of the original record a reference to the new record, giving the book and page thereof. When an error has been made in indexing any instrument, it shall be the duty of the recorder to reindex the same without further compensation. [S., '13, § 494.]

5176. Federal tax liens. The notice of a lien for any tax in favor of the government of the United States, or any release of such lien, may be filed and recorded in the office of the county recorder in any county within which the property subject to the lien is situated. Such county recorder shall file, record, and index any such notice of lien or any release of the same without fee. [40 G. A., ch. 101, § 1.]

5177. Fees. The recorder shall charge and collect the following fees:

1. For recording each instrument containing four hundred words or less, fifty cents.
2. For every additional hundred words or fraction thereof, ten cents. [C., '51, § 2534; R., '60, § 4143; C., '73, § 3792; C., '97, § 498; S., '13, § 498; 40 Ex. G. A., S. F. 133, § 1.]

5173. Military discharge. The county recorder of each county in this state shall maintain in his office a special book in which he shall, upon request, record the final discharge of any soldier, sailor, or marine of the United States. No recording fee shall be collected when the soldier, sailor, or marine requesting such record shall be an actual resident of said county or shall have been such at the time of his entrance into the service of the United States. In all other cases the legal fee shall be charged. [38 G. A., ch. 62, § 1.]

5178. Exact time of filing. In addition to the other requirements of the law the recorder shall enter in his fee book the exact time of filing each instrument, the number and character thereof, and the names of the grantors and grantees therein. In numbering said instruments, he shall start with number one, immediately after the date of his settlement with the board of supervisors each year, and continue to number them consecutively till his next settlement with said board. Where not otherwise already required by law the recorder shall also enter in the index book the exact time of the filing of each instrument. [C., '51, § 2534; R., '60, § 4143; C., '73, § 3792; C., '97, § 498; S., '13, § 498; 40 Ex. G. A., S. F. 133, § 2.]

5174. Alphabetical index. There shall be kept in connection with such record an alphabetical index referring to the name of the soldier, sailor, or marine, whose name appears in

CHAPTER 258

COUNTY ATTORNEY

5179. Qualifications.

5179. Qualifications. County attorneys shall be qualified electors of their respective counties, duly admitted to practice as attorneys and counselors in the courts of this state as provided by law. No person shall be qualified for such office while his license to practice remains revoked or suspended. [S., '13, § 308-b; 40 Ex. G. A., H. F. 134, § 1.]

5180. Duties. It shall be the duty of the county attorney:

1. To diligently enforce or cause to be enforced in his county, all of the laws of the state, actions for a violation of which may be commenced or prosecuted in the name of the state of Iowa, or by him as county attorney, except as otherwise specially provided.

2. To appear for the state and county in all cases and proceedings in the courts of his county to which the state or county is a party, except cases brought on change of venue from another county, and to appear in the supreme court in all cases in which the county is a party, and also in all cases transferred on change of venue to another county, in which his county or the state is a party.

3. To appear and prosecute all preliminary hearings before justices of the peace upon charges triable upon indictment.

4. To appear and prosecute misdemeanors before justices of the peace whenever he is not otherwise engaged in the performance of official duties.

5. To enforce all forfeited bonds and recognizances, and to prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, and forfeitures accruing to the state or his county, or to any school district or road district in his county; also to prosecute all suits in his county against public

5180. Duties.

service corporations, which are brought in the name of the state of Iowa.

6. To commence, prosecute, and defend all actions and proceedings in which any county officer, in his official capacity, or the county, is interested, or a party.

7. To give advice or his opinion in writing, without compensation, to the board of supervisors and other county officers and to school and township officers, when requested so to do by such board or officer, upon all matters in which the state, county, school, or township is interested, or relating to the duty of the board or officer in which the state, county, school, or township may have an interest; but he shall not appear before the board of supervisors upon any hearing in which the state or county is not interested.

8. To attend the grand jury whenever necessary for the purpose of examining witnesses before it, or of giving it legal advice, or to procure subpoenas or other process for witnesses, to prepare all informations and bills of indictment.

9. To give a receipt to all persons from whom he shall receive money in his official capacity, and file a duplicate thereof with the county auditor.

10. To make reports relating to the duties and the administration of his office to the governor or the attorney general whenever called upon by the governor or the attorney general so to do.

11. To perform other duties enjoined upon him by law. [C., '97, § 301; S. S., '15, § 301; 37 G. A., ch. 58, § 1; 38 G. A., ch. 232, § 2; 40 Ex. G. A., H. F. 134, § 2.]

NOTE: For appointment of substitute in absence of county attorney; also, for certain prohibitions attending the discharge of his duties, see § 13675 et seq.

CHAPTER 259

SHERIFF

5181. Duties in general.
 5182. Authority to summon aid.
 5183. Execution and return of writs.
 5184. Investigation on order of county attorney.
 5185. Not relieved from duties.
 5186. Disobedience punished.
 5187. Bailiffs—appointment—duties.
 5188. Execution of process of term.
 5189. Delivery to successor.

5181. Duties in general. It shall be the duty of the sheriff, by himself or deputy, to preserve the peace in his county, to ferret out crime, to apprehend and arrest all criminals, and in so far as it is within his power, to secure evidence of all crimes committed in his county, and present the same to the county attorney and the grand jury; to file informations against all persons who he knows, or has reason to believe, have violated the laws of the state, and to perform all other duties pertaining to the office of sheriff, or enjoined upon him by law. [C., '51, § 170; R., '60, § 383; C., '73, § 337; C., '97, § 499; S., '13, § 499.]

5182. Authority to summon aid. The sheriff, by himself or deputy, may call any person to his aid to keep the peace or prevent crime, or to arrest any person liable thereto, or to execute process of law; and when necessary, the sheriff may summon the power of the county. [C., '51, § 173; R., '60, § 386; C., '73, § 340; C., '97, § 502; S., '13, § 499-a.]

5183. Execution and return of writs. The sheriff shall, by himself or deputy, execute and return all writs and other legal process issued by legal authority to him directed. [S., '13, § 499-b.]

5184. Investigation on order of county attorney. The sheriff shall, whenever directed so to do in writing by the county attorney, make special investigation of any alleged infraction of the law within his county, and report with reference thereto within a reasonable time to such county attorney. When such investigation is made the sheriff shall file with the county auditor a detailed, sworn statement of his expenses, accompanied by the written order of the county attorney, and the board shall audit and allow only so much thereof as it shall find reasonable and necessary. [S., '13, § 499-c.]

5185. Not relieved from duties. Nothing in the four preceding sections shall be so construed as to relieve any peace officer from the

5190. Successor may execute process.
 5191. Fees.
 5192. Fees in addition to salary.
 5193. Condemnation funds.
 5194. Unadjudicated condemnation funds.
 5195. Duty and liability of treasurer.
 5196. Record of funds.
 5197. Liability of sheriff.

full and faithful discharge of all the duties now or hereafter enjoined upon him by law. [S., '13, § 499-d.]

5186. Disobedience punished. His disobedience of the command of any such process is a contempt of the court from which it issued, and may be punished by the same accordingly, and he is further liable to action by any person injured thereby. [C., '51, § 171; R., '60, § 384; C., '73, § 338; C., '97, § 500.]

5187. Bailiffs—appointment—duties. The sheriff shall attend upon the district court of his county, and while it remains in session he shall be allowed the assistance of such number of bailiffs as the judge may direct. They shall be appointed by the sheriff and shall be regarded as deputy sheriffs, for whose acts the sheriff shall be responsible. [C., '51, § 174; R., '60, § 387; C., '73, § 341; C., '97, § 503.]

5188. Execution of process. Sheriffs and their deputies may execute any process which may be in their hands at the expiration of their office, and, in case of a vacancy occurring in the office of sheriff from any cause, his deputies shall be under the same obligation to execute legal process then in his or their hands, and to return the same, as if the sheriff had continued in office, and he and they will remain liable therefor, under the provisions of law, as in other cases. [C., '51, § 177; R., '60, § 390; C., '73, § 344; C., '97, § 504.]

5189. Delivery to successor. When a sheriff goes out of office, he shall deliver to his successor all books and papers pertaining to the office, and property attached and levied upon, except as provided in the preceding section, and all prisoners in the jail, and take his receipts specifying the same, and such receipt shall be sufficient indemnity to the person taking it. [C., '51, § 178; R., '60, § 391; C., '73, § 345; C., '97, § 505.]

5190. Successor may execute process. If the sheriff die or go out of office before the return of any process then in his hands, his

successor, or other officer authorized to discharge the duties of the office, may proceed to execute and return the same in the same manner as the outgoing sheriff should have done; but nothing in this section shall be construed to exempt the outgoing sheriff and his deputies from the duty imposed on them to execute and return all process in their hands at the time the vacancy in the office of sheriff occurs. [R., '60, § 3264; C., '73, § 346; C., '97, § 506.]

5191. Fees. The sheriff shall charge and be entitled to collect the following fees:

1. For serving a notice and making return thereof, for the first person served, fifty cents, and each additional person, twenty-five cents.

2. For each warrant served two dollars, and the repayment of necessary expenses incurred, in executing such warrant, as sworn to by the sheriff; if service of the warrant can not be made, the repayment of all necessary expenses actually incurred by the sheriff while attempting in good faith to serve such warrant.

3. For serving and returning a subpoena, for each person served, twenty cents, and the necessary expenses incurred while serving subpoenas in criminal cases or insane process.

4. For summoning a grand or trial jury, all necessary and actual expenses incurred by him.

5. For summoning a jury to assess the damages to the owners of lands taken for works of internal improvement, and attending them, five dollars per day, and necessary expenses incurred. This subsection shall not be so construed as to allow a sheriff to make separate charges for different assessments, which can be made by the same jury and completed in one day of ten hours.

6. For serving an execution, attachment, or order for the delivery of personal property, injunction, or any order of court, and making return thereof, two dollars.

7. For making and executing a certificate or deed for lands sold on execution, or a bill of sale for personal property sold, one dollar.

8. For the time necessarily employed in making an inventory of personal property attached or levied upon, fifty cents per hour.

9. For a copy of any paper required by law, made by him, for each one hundred words or fraction thereof, ten cents.

10. Mileage in all cases required by law, going and returning, ten cents per mile, provided that this subsection shall not apply where provision is made for expenses, and in no case shall the law be construed to allow both mileage and expenses for the same services and for the same trip.

11. For boarding a prisoner, a compensation of twenty cents for each meal, and not to exceed three meals in twenty-four consecutive hours; and fifteen cents for each night's lodging. But the amount allowed a sheriff for lodging prisoners shall in no event exceed in the aggregate the sum of two hundred fifty dollars for any calendar year.

12. For waiting on and washing for prisoners, the sum of five cents per prisoner per day.

13. For attending sale of property, for each day, one dollar.

14. For conveying one or more persons to any state, county, or private institution by order of court, or commission, he shall be allowed his necessary expenses, for himself and such person or persons, and in addition thereto, forty cents per hour for the time necessarily employed in going to and from such institution, same to be charged and accounted for as fees. Should the sheriff need any assistance in taking any person to any such institution, the same shall be furnished at the expense of the county.

15. For serving any warrant for the seizure of intoxicating liquors, one dollar; for the removal and custody of such liquor, actual and reasonable expenses; for the destruction of such liquor under the order of the court, one dollar and his actual and reasonable expenses; for posting and leaving notices in such cases, one dollar and his actual expenses. [C., '51, § 2536; R., '60, §§ 1570, 4145; C., '73, §§ 3788, 3789, 3807; C., '97, § 511; S., '13, § 511; 37 G. A., ch. 49, § 1; 38 G. A., ch. 256, § 1; 40 G. A., ch. 102, §§ 2, 3; 40 Ex. G. A., S. F. 135, § 1.]

5192. Fees in addition to salary. The amounts allowed by law for mileage and for actual, necessary expenses paid by him, and for board, washing, and care of prisoners, may be retained by him in addition to his salary. [C., '51, § 2536; R., '60, § 4145; C., '73, §§ 3788, 3807; C., '97, § 511; S., '13, § 511; 37 G. A., ch. 49, § 1; 38 G. A., ch. 256, § 1; 40 Ex. G. A., S. F. 135, § 2.]

NOTE: Similar provision, see § 5248.

5193. Condemnation funds. On or before the first day of January in each year the sheriff of each county having any condemnation funds in his possession shall make a detailed report under oath of all funds in his possession received from condemnation proceedings of any kind that have been finally adjudicated, reciting therein the names of the parties to whom said funds belong, when received, and describing the property condemned, which report shall be filed with the county treasurer, and the sum so shown due from such sheriff paid over to the county treasurer, who shall make a detailed receipt therefor. [40 G. A., ch. 103, § 1.]

5194. Unadjudicated condemnation funds. Every sheriff having any condemnation funds in his possession in cases not finally adjudicated, shall make a further report of funds received by him in such cases, in detail as called for in the preceding section, and file the same with the county auditor for examination and checking by the board of supervisors, and where any sheriff's term is expiring he shall pay such condemnation funds in cases not finally adjudicated to his successor in office, taking his receipt therefor. [40 G. A., ch. 103, § 2.]

5195. Duty and liability of treasurer. The county treasurer receiving such funds shall enter the same in detail in a book kept for that

purpose, listing the names of the parties to whom such funds are due, description of property condemned, and amount of each item so due, and the same shall be paid out by him to the parties to whom the same is due, upon warrants ordered by the board of supervisors and issued by the county auditor, drawn upon said condemnation fund, and shall not be payable out of any other fund. Such county treasurer and his sureties shall be liable for such funds the same as for other funds received in his official capacity. [40 G. A., ch. 103, § 4.]

5196. Record of funds. Any sheriff receiving funds as provided in the second preceding section shall list the same in detail in a book

kept for that purpose, and pay the same to the parties entitled thereto, upon final adjudication of such cases, or if held, after final adjudication until the end of the calendar year to the county treasurer as provided in the third preceding section. [40 G. A., ch. 103, § 5.]

5197. Liability of sheriff. Nothing contained in the four preceding sections shall be construed as relieving such sheriffs or the sureties on their bonds from liability for such funds so received by them until such payment has been made to the county treasurer or successor in office as herein provided. [40 G. A., ch. 103, § 6.]

CHAPTER 260

CORONER

5198. Coroner as sheriff.
5199. Temporary sheriff or coroner.
5200. Inquest—jury.
5201. Person killed in mine.
5202. Warrant.
5203. Service and return.
5204. Filling vacancies—oath.
5205. Witnesses and jurors.
5206. Shorthand reporter.
5207. Compensation.
5208. Verdict.

5198. Coroner as sheriff. The coroner shall perform all the duties of sheriff, when that office is vacant; where it appears from the papers that the sheriff is a party to an action or proceeding in a court of record; where, in any action commenced or about to be commenced, an affidavit is filed with the clerk of the court, showing the absence of the sheriff and his deputy from the county, and that they are not expected to return in time to perform the service needed, or showing partiality, prejudice, consanguinity, or interest upon his part, in which case the clerk shall direct process to the coroner, indorsing thereon the reason therefor, which he shall execute in the same manner as if he were sheriff. [C., '51, §§ 183, 184; R., '60, §§ 393, 394; C., '73, §§ 349, 350; C., '97, § 513.]

5199. Temporary sheriff or coroner. When there is no sheriff, deputy sheriff, or coroner qualified to serve legal process, the court, or, if not in session, the clerk, may, by writing, under his hand and the seal of the court, certifying the above fact, appoint any suitable person specially in each case to execute such process, who shall be sworn, but need not give bond, and his return shall be entitled to the same credit as the sheriff's, when the appointment is attached thereto. [C., '51, § 185; R., '60, § 395; C., '73, § 351; C., '97, § 514.]

5200. Inquest—jury. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, and in such other cases as

5209. Verdict kept secret.
5210. Arrest.
5211. Warrant.
5212. Proceedings.
5213. Contents and effect of warrant.
5214. Reports.
5215. Disposition of body—expenses.
5216. Disposition of property.
5217. Acting coroner.
5218. Physician employed—fees.
5219. Compensation of witnesses and jurors.

are required by law. When he has notice of the dead body of a person, supposed to have died by unlawful means found or being in his county, he is required to issue his warrant to a constable of his county, requiring him to summon forthwith three electors of the county to appear before him at the time and place named in the warrant. [C., '51, § 186; R., '60, § 396; C., '73, § 352; C., '97, § 515.]

5201. Person killed in mine. When a person shall come to his death by accident or otherwise, in any manner connected with the working of, or in, any mine, or by any explosion therein, an inquest shall be held, and the coroner shall make careful inquiry into the cause thereof, and return a copy of the verdict in said proceeding, with the minutes of all testimony taken thereat, to the state inspector of mines; and no person shall be qualified to serve as a juror at said inquest who has a personal interest in, or is employed in or about, the mine in which or at which the deceased came to his death, or by any of its proprietors. [C., '97, § 516.]

5202. Warrant. The warrant may be, in substance, as follows:

State of Iowa, }
.....County. }

To any peace officer of said county:—In the name of the state of Iowa, you are hereby required to summon forthwith three electors of your county to appear before me at (name the place), at (name the day and hour, or say

forthwith), then and there to hold an inquest upon the dead body of, there lying, and find by what means he died. Witness my hand thisday of A. D.....
 A.....B.....
 Coroner of.....County.
 [C., '51, § 187; R., '60, § 397; C., '73, § 353; C., '97, § 517.]

5203. Service and return. The officer to whom it is delivered shall execute the warrant, and make return thereof at the time and place named. [C., '51, § 188; R., '60, § 398; C., '73, § 354; C., '97, § 518.]

5204. Filling vacancies—oath. If any juror fails to appear, the coroner shall cause the proper number to be summoned or returned from the bystanders immediately, and proceed to impanel them, and administer the following oath, in substance: "You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body lies here dead came to his death, according to your knowledge and the evidence given you." [C., '51, § 189; R., '60, § 399; C., '73, § 355; C., '97, § 519.]

5205. Witnesses and jurors. The coroner shall issue subpoenas for such witnesses as have knowledge touching the manner of the death of the person whose inquest is being held, returnable at such time and place as he may direct. They shall be sworn as in other cases, and their evidence reduced to writing under the direction of the coroner, subscribed by them, and returned to the district court, with the verdict and all other papers in the case. The coroner may enforce the attendance of witnesses and jurors, and punish them for contempt in disobeying his process, in like manner as a justice of the peace may do in criminal proceedings before him. In the absence of any officer authorized to serve subpoenas or other process, the coroner may depute some suitable person to serve the same or may himself perform such duties. [C., '51, §§ 190-192, 199; R., '60, §§ 400-402, 409; C., '73, §§ 356-358, 365; C., '97, § 520; S., '13, § 520; 38 G. A., ch. 122, § 4; 40 G. A., ch. 249, § 1.]

5206. Shorthand reporter. For the purpose of preserving the testimony of such witnesses, and all the acts and doings of the coroner and jury, the coroner may appoint a shorthand reporter who shall, before entering upon his duties as such reporter, take an oath to be administered by the coroner, that he will faithfully take down in shorthand the evidence as it is given by the witnesses at such inquest or investigation, and that he will correctly extend the same into longhand. [S., '13, § 520; 40 G. A., ch. 249, § 2.]

5207. Compensation. Such reporter shall receive compensation not to exceed fifty cents per hour for time actually employed in any inquest or investigation, and for extending the

notes, and when such shorthand report is extended into longhand by the said shorthand reporter and certified to by the coroner and reporter to the effect that it contains a full, true, and complete report of all proceedings, and filed, it shall be the official record of the said inquest or investigation. [S., '13, § 520; 40 G. A., ch. 249, § 3.]

5208. Verdict. The jurors, having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner their verdict in writing, under their hands, in substance as follows, stating the matters in the following form suggested, as far as found: State of Iowa, }
County. } ss.

An inquisition holden at....., incounty, on theday of....., A. D., 19...., before coroner of the said county, upon the body of (or person unknown), there lying dead, by the jurors whose names are hereto subscribed.

The said jurors upon their oaths do say (here state when, how, by what person, means, weapon, or accident he came to his death, and whether feloniously).

In testimony whereof, the said jurors have hereunto set their hands, the day and year aforesaid (which shall be attested by the coroner). [C., '51, § 193; R., '60, § 403; C., '73, § 359; C., '97, § 521; 40 G. A., ch. 249, § 4.]

5209. Verdict kept secret. If the jurors find that a crime has been committed on the deceased and name the person who they believe has committed it, the verdict shall not be made public until after the arrest of the person. [C., '51, § 194; R., '60, § 404; C., '73, § 360; C., '97, § 522; 40 G. A., ch. 249, § 5.]

5210. Arrest. If the person charged be present, the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace. [C., '51, § 195; R., '60, § 405; C., '73, § 361; C., '97, § 523.]

5211. Warrant. If the person charged be not present, and the coroner believes he can be taken, he may issue a warrant to the sheriff and constables of the county, requiring them to arrest the person and take him before a justice of the peace. [C., '51, § 196; R., '60, § 406; C., '73, § 362; C., '97, § 524.]

5212. Proceedings. The warrant of the coroner in the above case shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice, such justice shall cause an information to be filed against him, and the same proceedings shall be had as in other cases under information, and he shall be dealt with as a person held under an information in the usual form. [C., '51, § 197; R., '60, § 407; C., '73, § 363; C., '97, § 525.]

5213. Contents and effect of warrant. The warrant of the coroner shall recite substantially the transactions before him, and the verdict of the jury of inquest leading to the arrest, and such warrant shall be a sufficient foundation for the proceeding of the justice instead of an information. [C., '51, § 198; R., '60, § 408; C., '73, § 364; C., '97, § 526; 40 G. A., ch. 249, § 6.]

5214. Reports. The coroner shall report to the clerk of the district court all cases of death which may call for the exercise of his jurisdiction; with the cause or mode of death, in accordance with forms furnished by the state department of health. [C., '97, § 526; 40 G. A., ch. 249, § 6.]

5215. Disposition of body—expenses. The coroner, except as otherwise provided by law, shall cause the body of the deceased person which he is called to view to be delivered to his friends, if any there be, but if not, he shall cause him to be decently buried, and the expense to be paid from any property found with the body, or, if there be none, from the county treasury, by certifying an account of the expenses; which, being presented to the board of supervisors, shall be allowed by them, in a reasonable amount and paid as other claims on the county. [C., '51, § 200; R., '60, § 410; C., '73, § 366; C., '97, § 527; 40 G. A., ch. 249, § 7.]

5216. Disposition of property. Any property or money found with or upon the person of deceased, if there be no person authorized

to receive the same, shall forthwith be turned over by the coroner to the clerk of the district court, to be held until disposed of according to law. A failure to comply with this section shall be a misdemeanor. [C., '97, §§ 532, 533.]

5217. Acting coroner. When there is no coroner, or in case of his absence or inability to act, any justice of the peace or municipal judge of the same county is authorized to perform the duties of coroner in relation to dead bodies. [C., '51, § 201; R., '60, § 411; C., '73, § 367; C., '97, § 528; 40 G. A., ch. 249, § 8; 40 Ex. G. A., S. F. 279, § 1.]

5218. Physician employed—fees. In the inquisition by a coroner or by an acting coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, who, instead of witness fees, shall receive a reasonable compensation to be allowed by the board of supervisors. If the coroner is also a physician he may make such scientific examination. [C., '51, § 202; R., '60, § 412; C., '73, § 368; C., '97, § 529; 38 G. A., ch. 122, § 1; 40 Ex. G. A., S. F. 279, § 2.]

5219. Compensation of witnesses and jurors. Witnesses and jurors shall receive for each day's service or attendance, two dollars; and for each mile traveled from residence to the place of holding the inquest the sum of ten cents. [C., '51, § 190; R., '60, § 400; C., '73, § 356; C., '97, § 530; 38 G. A., ch. 122, § 2; 40 Ex. G. A., S. F. 279, § 3.]

CHAPTER 261

COMPENSATION OF COUNTY OFFICERS, DEPUTIES, AND CLERKS

5220. County auditor.

5221. Deputy auditor and clerks.

5222. County treasurer.

5223. Deputy treasurer and clerks.

5224. County recorder.

5225. Deputy recorder and clerks.

5226. Sheriff.

5227. Deputy sheriff.

5228. County attorney.

5229. Assistant county attorney.

5230. Clerk of district court.

5231. Deputy clerk.

5232. County superintendent.

5233. Expenses of county superintendent.

5234. Deputy county superintendent.

5235. Monthly installments.

5236. Dual county seats.

5237. Coroner—fees.

5220. County auditor. Each county auditor shall receive for his annual salary in counties having a population of:

1. Less than ten thousand, seventeen hundred dollars.

2. Ten thousand and less than fifteen thousand, eighteen hundred dollars.

3. Fifteen thousand and less than twenty thousand, nineteen hundred dollars.

4. Twenty thousand and less than twenty-five thousand, two thousand dollars.

5. Twenty-five thousand and less than thirty thousand, twenty-one hundred dollars.

6. Thirty thousand and less than thirty-five thousand, twenty-two hundred dollars.

7. Thirty-five thousand and less than forty thousand, twenty-four hundred dollars.

8. Forty thousand and less than fifty thousand, twenty-eight hundred dollars.

9. Fifty thousand and less than fifty-eight thousand, three thousand fifty dollars.

10. Fifty-eight thousand and less than sixty-five thousand, thirty-three hundred dollars.

11. Sixty-five thousand or over, thirty-four hundred dollars.

12. Over twenty-five thousand, having a special charter city with a population of five thousand or over, when the county auditor prepares and makes up the city tax books for such special charter city, three hundred dollars in addition to the compensation as fixed by the above schedule.

In counties having two places at which the district court is held, five hundred dollars

additional. [C., '73, § 3798; C., '97, § 479; S. S., '15, § 479; 38 G. A., ch. 293, § 1; 40 G. A., ch. 250, § 1.]

5221. Deputy auditor and clerks. Each deputy auditor shall receive as his annual salary in counties having a population of:

1. Less than fifty thousand, one-half the amount of the salary of the auditor, but if that amount is less than fifteen hundred dollars, the board of supervisors may allow an additional amount to make an aggregate not to exceed said sum.

2. Fifty thousand or over, one deputy to be designated by the auditor as chief deputy shall receive one-half the amount of the salary of the auditor, but if that amount is less than seventeen hundred and fifty dollars, the board of supervisors may allow an additional amount to make an aggregate not to exceed said sum, and each additional deputy shall receive one-half the amount of the salary of the auditor unless said amount exceeds fifteen hundred dollars, in which event the salary shall not exceed said last named sum.

3. In any county having within its limits a city with a population of forty-five thousand or over, the salaries of the chief deputy and one to be designated by the auditor as second deputy shall each be sixty-five per cent of the amount of the salary of the auditor, and each additional deputy shall receive one-half the amount of the salary of the auditor. If more than four deputies are required, or additional clerks, the board of supervisors shall fix the amount of their compensation. [R., '60, § 648; C., '73, § 771; C., '97, § 481; S. S., '15, § 481; 37 G. A., ch. 77, § 2; 38 G. A., ch. 278, § 2; 39 G. A., ch. 260, § 2; 40 G. A., ch. 250, § 2.]

5222. County treasurer. Each county treasurer shall receive for his annual salary in counties having a population of:

1. Less than ten thousand, seventeen hundred dollars.

2. Ten thousand and less than fifteen thousand, eighteen hundred dollars.

3. Fifteen thousand and less than twenty thousand, nineteen hundred dollars.

4. Twenty thousand and less than twenty-five thousand, two thousand dollars.

5. Twenty-five thousand and less than thirty thousand, twenty-one hundred dollars.

6. Thirty thousand and less than thirty-five thousand, twenty-two hundred dollars.

7. Thirty-five thousand and less than forty thousand, twenty-four hundred dollars.

8. Forty thousand and less than fifty thousand, twenty-eight hundred dollars.

9. Fifty thousand and less than fifty-eight thousand, three thousand fifty dollars.

10. Fifty-eight thousand and less than sixty-five thousand, thirty-three hundred dollars.

11. Sixty-five thousand and over, thirty-four hundred dollars.

12. Over twenty-five thousand having a special charter city where the taxes are collected by the county treasurer, three hundred dollars in addition to the compensation as fixed by the above schedule in this section.

13. Forty thousand or over, in which there is a city of the first class, of any form of government, the board of supervisors may allow additional compensation to the county treasurer not to exceed fifty dollars per annum for each five thousand population of such cities.

In counties where the district court is held at two different places the county treasurer shall receive five hundred dollars in addition to the compensation as fixed by the above schedule in this section. [C., '51, § 211; R., '60, § 422; C., '73, § 3793; C., '97, § 490; S. S., '15, §§ 490, 490-a; 38 G. A., ch. 293, § 2; 39 G. A., ch. 74, § 1; 40 G. A., ch. 250, § 3.]

5223. Deputy treasurer and clerks. Each deputy treasurer shall receive as his annual salary in counties having a population of:

1. Less than fifty thousand, one-half the amount of the salary of the treasurer, but if that amount is less than fifteen hundred dollars, the board of supervisors may allow an additional amount to make an aggregate not to exceed said sum.

2. Fifty thousand or over, one deputy to be designated by the treasurer as chief deputy shall receive one-half the amount of the salary of the treasurer, but if that amount is less than seventeen hundred fifty dollars, the board of supervisors may allow an additional amount to make an aggregate not to exceed said sum, and each additional deputy shall receive one-half the amount of the salary of the treasurer unless said amount exceeds fifteen hundred dollars, in which event the salary shall not exceed said last named sum.

3. Fifty-three thousand or over, in which there exists a city, not the county seat, having a population of six thousand or over, the treasurer may appoint a resident deputy collector of taxes for such city and vicinity under bond as provided for other deputies, and his compensation shall be the same as a deputy in a county with a population of less than fifty thousand. The treasurer in such case shall prepare the necessary books and records for such deputy each year.

4. In any county having within its limits a city with a population of forty-five thousand or over, the salaries of the chief deputy and one to be designated by the treasurer as second deputy shall each be sixty-five per cent of the amount of the salary of the treasurer, and each additional deputy shall receive one-half the amount of the salary of the treasurer. If more than four deputies are required, or additional clerks, the board of supervisors shall fix the amount of their compensation. [C., '51, § 417; R., '60, § 648; C., '73, §§ 771, 3793; C., '97, § 491; S. S., '15, § 491; 37 G. A., ch. 77, § 3; 37 G. A., ch. 331, § 1; 38 G. A., ch. 278, § 3; 39 G. A., ch. 132, § 1; 39 G. A., ch. 260, § 3; 40 G. A., ch. 250, § 4.]

5224. County recorder. Each county recorder shall receive for his annual salary in counties having a population of:

1. Less than fifteen thousand, sixteen hundred dollars.

2. Fifteen thousand and less than twenty thousand, seventeen hundred dollars.

3. Twenty thousand and less than twenty-five thousand, eighteen hundred dollars.

4. Twenty-five thousand and less than thirty thousand, nineteen hundred dollars.

5. Thirty thousand and less than thirty-five thousand, two thousand dollars.

6. Thirty-five thousand and less than forty thousand, twenty-one hundred dollars.

7. Forty thousand and less than fifty thousand, twenty-two hundred dollars.

8. Fifty thousand and less than fifty-eight thousand, twenty-three hundred dollars.

9. Fifty-eight thousand and less than seventy thousand, twenty-four hundred dollars.

10. Seventy thousand and less than ninety thousand, twenty-five hundred dollars.

11. Ninety thousand and over, thirty-one hundred dollars.

In any county where a recorder's office is kept in two different places, the recorder shall receive five hundred dollars in addition to the compensation as fixed by the above schedule. [C., '51, §§ 211, 213; R., '60, §§ 422, 424; C., '73, § 3792; C., '97, § 495; S. S., '15, § 495; 38 G. A., ch. 293, § 3; 40 G. A., ch. 250, § 5.]

5225. Deputy recorder and clerks. Each deputy recorder shall receive as his annual salary in counties having a population of:

1. Less than fifty thousand, one-half the amount of the salary of the recorder, but if that amount is less than fifteen hundred dollars, the board of supervisors may allow an additional amount to make an aggregate not to exceed said sum.

2. Fifty thousand or over, one deputy to be designated by the recorder as chief deputy shall receive one-half the amount of the salary of the recorder, but if that amount is less than seventeen hundred fifty dollars, the board of supervisors may allow an additional amount to make an aggregate not to exceed said sum, and each additional deputy shall receive one-half the amount of the salary of the recorder unless said amount exceeds fifteen hundred dollars, in which event the salary shall not exceed said last named sum.

3. In any county having within its limits a city with a population of forty-five thousand or over, the salaries of the chief deputy and one to be designated by the recorder as second deputy shall each be sixty-five per cent of the amount of the salary of the recorder and each additional deputy shall receive one-half the amount of the salary of the recorder. If more than four deputies are required, or additional clerks, the board of supervisors shall fix the amount of their compensation. [C., '51, § 417; R., '60, § 648; C., '73, § 771; C., '97, § 496; S., '13, § 496; 37 G. A., ch. 77, § 4; 38 G. A., ch. 278, § 4; 39 G. A., ch. 260, § 4; 40 G. A., ch. 250, § 6.]

5226. Sheriff. Each sheriff shall receive for his annual salary in counties having a population of:

1. Less than fifteen thousand, seventeen hundred dollars.

2. Fifteen thousand and less than twenty thousand, eighteen hundred dollars.

3. Twenty thousand and less than twenty-five thousand, nineteen hundred dollars.

4. Twenty-five thousand and less than thirty-five thousand, two thousand dollars.

5. Thirty-five thousand and less than forty thousand, twenty-one hundred dollars.

6. Forty thousand and less than fifty thousand, twenty-two hundred dollars.

7. Fifty thousand and less than fifty-eight thousand, twenty-four hundred dollars.

8. Fifty-eight thousand and less than sixty-five thousand, twenty-six hundred dollars.

9. Sixty-five thousand and over, twenty-eight hundred dollars.

10. In any county in which district court is held in two places, three hundred dollars per annum in addition to the foregoing schedule.

11. In any county where the sheriff is not furnished a residence by the county, an additional sum of three hundred dollars per annum. [C., '51, § 2536; R., '60, § 4145; C., '73, §§ 3788, 3789; C., '97, § 509; S. S., '15, §§ 510-a, 510-c; 38 G. A., ch. 293, § 4; 40 G. A., ch. 250, § 7.]

5227. Deputy sheriff. Each deputy sheriff shall receive as his annual salary in counties having a population of:

1. Less than fifty thousand, and in any county where district court is held in but one place, not to exceed fifteen hundred dollars, fixed by the board of supervisors.

2. Fifty thousand or over, sixty-five per cent of the amount of salary of the sheriff to be paid to the one designated by the sheriff as chief deputy, but in the event such amount exceeds eighteen hundred dollars, then to be reduced to said sum.

3. In any county where district court is held in two places, for the chief deputy and for any deputy other than the chief deputy in charge of the office where such court is held outside the county seat, sixty-five per cent of the amount of the salary of the sheriff. [C., '51, § 417; R., '60, § 648; C., '73, § 771; C., '97, § 510; S. S., '15, § 510-b; 38 G. A., ch. 278, § 5; 40 G. A., ch. 250, § 8.]

5228. County attorney. Each county attorney shall receive as his annual salary in counties having a population of:

1. Less than fifteen thousand, eleven hundred dollars.

2. Fifteen thousand and under twenty thousand, fourteen hundred dollars.

3. Twenty thousand and under twenty-five thousand, sixteen hundred dollars.

4. Twenty-five thousand and under thirty-five thousand, seventeen hundred dollars.

5. Thirty-five thousand and under forty-five thousand, two thousand dollars.

6. Forty-five thousand and under fifty-five thousand, twenty-two hundred dollars.

7. Fifty-five thousand and under sixty-five thousand, twenty-five hundred dollars.

8. Sixty-five thousand and over, three thousand dollars.

In addition to the salary above provided, he shall receive the fees as now allowed to attor-

neys for suits upon written instruments where judgment is obtained, for all fines collected where he appears for the state, but not otherwise, and school fund mortgages foreclosed, and attorney fees allowed in criminal cases.

In any county where district court is held in two places, he shall receive an additional sum of five hundred dollars.

The county attorney shall also receive his necessary and actual expenses incurred in attending upon his official duties at a place other than his residence and the county seat, which shall be audited and allowed by the board of supervisors of the county. [C., '51, § 169; R., '60, §§ 380, 381; C., '73, § 3775; C., '97, § 308; S. S., '15, § 308; 38 G. A., ch. 232, § 1; 40 G. A., ch. 250, § 9; 40 Ex. G. A., ch. 19, § 1.]

5229. Assistant county attorney. Assistant county attorneys shall receive as their annual salary in counties having a population of:

1. Less than thirty-six thousand, no compensation.
2. Thirty-six thousand and less than forty-five thousand, one thousand dollars.
3. Forty-five thousand and less than seventy thousand, fifteen hundred dollars.
4. Seventy thousand and over, two thousand dollars. [C., '97, § 303; S., '13, § 303-a; 37 G. A., ch. 21, § 1; 40 G. A., ch. 250, § 10.]

5230. Clerk of district court. Each clerk of the district court shall receive as his annual salary in counties having a population of:

1. Less than ten thousand, seventeen hundred dollars.
2. Ten thousand and less than fifteen thousand, eighteen hundred dollars.
3. Fifteen thousand and less than twenty thousand, nineteen hundred dollars.
4. Twenty thousand and less than twenty-five thousand, two thousand dollars.
5. Twenty-five thousand and less than thirty thousand, twenty-one hundred dollars.
6. Thirty thousand and less than thirty-five thousand, twenty-two hundred dollars.
7. Thirty-five thousand and less than forty thousand, twenty-four hundred dollars.
8. Forty thousand and less than fifty thousand, twenty-eight hundred dollars.
9. Fifty thousand and less than fifty-eight thousand, three thousand fifty dollars.
10. Fifty-eight thousand and less than sixty-five thousand, thirty-three hundred dollars.
11. Sixty-five thousand and over, thirty-four hundred dollars.
12. In any county where the district court is held in two places four hundred dollars additional. [C., '51, § 211; R., '60, § 422; C., '73, § 3784; C., '97, § 297; S., '13, § 297; 37 G. A., ch. 426, § 1; 38 G. A., ch. 293, § 5; 40 G. A., ch. 250, § 11.]

5231. Deputy clerk. Each deputy clerk shall receive as his annual salary in counties having a population of:

1. Less than fifty thousand, one-half the amount of the salary of the clerk, but if that amount is less than fifteen hundred dollars, the

board of supervisors may allow an additional amount to make an aggregate not to exceed said sum.

2. Fifty thousand or over, one deputy to be designated by the clerk as chief deputy shall receive one-half the amount of the salary of the clerk, but if that amount is less than seventeen hundred fifty dollars, the board of supervisors may allow an additional amount to make an aggregate not to exceed said sum, and each additional deputy shall receive one-half the amount of the salary of the clerk unless said amount exceeds fifteen hundred dollars, in which event the salary shall not exceed said last named sum.

3. In any county having within its limits a city with a population of forty-five thousand or over, the salaries of the chief deputy and one to be designated by the clerk as second deputy shall each be sixty-five per cent of the amount of the salary of the clerk, and each additional deputy shall receive one-half the amount of the salary of the clerk. If more than four deputies are required, or additional clerks, the board of supervisors shall fix the amount of the compensation.

In any county in which the district court is held in two places, the deputy having charge of the office where said court is held outside the county seat, shall receive one-half the amount of the salary of the clerk. [C., '51, § 417; R., '60, § 648; C., '73, § 771; C., '97, § 298; S. S., '15, §§ 298, 298-a; 37 G. A., ch. 77, § 1; 38 G. A., ch. 278, § 1; 39 G. A., ch. 260, § 1; 40 G. A., ch. 250, § 12.]

5232. County superintendent. Each county superintendent of schools shall receive an annual salary of not less than eighteen hundred dollars, and such additional compensation as may be allowed by the board of supervisors in each particular county, but in no case to exceed three thousand dollars. [R., '60, § 2074; C., '73, § 1776; C., '97, § 2742; S., '13, § 2742; 38 G. A., ch. 293, § 6; 39 G. A., ch. 112, § 1; 40 G. A., ch. 250, § 13; 40 Ex. G. A., S. F. 99, § 28.]

5233. Expenses of county superintendent. The county superintendent shall, on the first Monday of each month, file with the county auditor an itemized and verified statement of his actual and necessary expenses incurred during the previous month in the performance of his official duties within his county, and such expenses shall be allowed by the county board of supervisors and paid out of the county fund, as other expenses of the county, but the total amount so paid, exclusive of office stationery and postage, for any one year of the superintendent's term shall not exceed the sum of four hundred dollars. [C., '73, § 1776; C., '97, § 2742; S., '13, § 2742; S. S., '15, § 2734-b; 38 G. A., ch. 293, § 6; 38 G. A., ch. 301, § 1; 38 G. A., ch. 303, § 1; 39 G. A., ch. 112, § 2; 40 G. A., ch. 250, § 13; 40 Ex. G. A., S. F. 99, § 29.]

5234. Deputy county superintendent. Each deputy county superintendent shall receive such annual salary as shall be allowed by the county board of education, and which said

board shall fix each year in accordance with the provisions of the teachers' minimum wage law. [C., '51, § 417; R., '60, § 648; C., '73, § 771; S. S., '15, § 2734-b; 37 G. A., ch. 317, § 1; 38 G. A., ch. 303, § 1; 38 G. A., ch. 311, § 1; 40 G. A., ch. 250, § 14.]

5235. Monthly installments. The salaries fixed by the foregoing sections of this chapter shall be paid out of the general fund of the county in twelve equal installments, one on the first day of each calendar month. [C., '97, § 308; S. S., '15, § 308; 38 G. A., ch. 232, § 1; 40 G. A., ch. 250, § 15.]

5236. Dual county seats. In any county having two county seats and where the district court is held in two places, the first deputy county auditor, county treasurer, county clerk, and county recorder, or the deputy in charge of such office, shall receive sixty-five per cent of the amount of the salary of his principal. [40 G. A., ch. 250, § 15-a.]

5237. Coroner—fees. The coroner is entitled to charge and receive as his compensation

the following fees, which shall be paid out of the county treasury when they can not be obtained from the estate of the deceased:

1. For a view of each body upon which an inquest is held, ten dollars.

2. For a view of each body upon which no inquest is held, five dollars.

3. For issuing each subpoena, warrant, or order for a jury, twenty-five cents.

4. For docketing each case, one dollar.

5. For each mile traveled to and returning from an examination or inquest, ten cents.

6. For taking down in writing the evidence of witnesses, when no stenographer is employed as hereinbefore provided, ten cents per one hundred words.

7. For returning a copy of the verdict with minutes of the testimony to the state inspector of mines, as provided by law, three dollars.

8. For all other services, the same fees as are allowed sheriffs in similar cases, to be paid in like manner. [C., '51, § 2539; R., '60, § 4148; C., '73, § 3799; C., '97, § 531; 38 G. A., ch. 122, § 3; 40 G. A., ch. 250, § 16.]

CHAPTER 262

DEPUTY OFFICERS, ASSISTANTS, AND CLERKS

5238. Appointment.

5239. Certificate of appointment.

5240. Revocation of appointment.

5241. Qualifications.

5238. Appointment. Each county auditor, treasurer, recorder, sheriff, county attorney, clerk of the district court, and county superintendent of schools, may, with the approval of the board of supervisors, appoint one or more deputies or assistants, respectively, not holding a county office, for whose acts he shall be responsible. The number of deputies, assistants, and clerks for each office shall be determined by the board of supervisors, and such number together with the approval of each appointment shall be by resolution made of record in the proceedings of such board. [C., '51, §§ 411, 415; R., '60, §§ 642, 646, 2069; C., '73, §§ 766, 769, 1770; C., '97, §§ 298, 303, 481, 491, 496, 510, 2734; S., '13, § 303-a; S. S., '15, §§ 298, 481, 491, 510-b, 2734-b; 37 G. A., ch. 317, § 1; 37 G. A., ch. 331, § 1; 38 G. A., ch. 278, §§ 1-5; 38 G. A., ch. 311, § 1; 40 G. A., ch. 250, § 17.]

5239. Certificate of appointment. When any such appointment has been approved by the board of supervisors, the officer making such appointment shall issue in writing a certificate of such appointment, and file the same in the office of the auditor where it shall be kept. [C., '51, § 411; R., '60, § 642; C., '73, § 766; C., '97, §§ 298, 303, 481, 491, 496, 510; S., '13, §§ 303-a, 496; S. S., '15, §§ 298, 481, 491, 510-b; 38 G. A., ch. 278, §§ 1-5; 40 G. A., ch. 250, § 18.]

5240. Revocation of appointment. Any certificate of appointment may be revoked in writ-

5242. Powers and duties.

5243. Temporary assistance for county attorney.

5244. Temporary assistance for county auditor.

ing at any time by the officer making the appointment, which revocation shall be filed and kept in the office of the auditor. [C., '51, § 411; R., '60, § 642; C., '73, § 766; C., '97, §§ 298, 481, 491, 496, 510; S., '13, § 496; S. S., '15, §§ 298, 481, 491, 510-b; 38 G. A., ch. 278, §§ 1-4; 40 G. A., ch. 250, § 19.]

5241. Qualifications. Each deputy shall be required to give a bond in an amount to be fixed by the officer having the approval of the bond of his principal, with sureties to be approved by such officer. Such bond when approved shall be filed and kept in the office of the auditor. Each deputy shall take the same oath as his principal, which shall be indorsed on the certificate of appointment. [C., '51, §§ 411, 416; R., '60, §§ 642, 647; C., '73, §§ 766, 770; C., '97, §§ 298, 481, 491, 496, 510; S., '13, § 496; S. S., '15, §§ 298, 481, 491, 496, 510-b; 38 G. A., ch. 278, §§ 1-5; 40 G. A., ch. 250, § 20.]

5242. Powers and duties. Each deputy, assistant, and clerk shall perform such duties as may be assigned to him or her by the officer making the appointment, and during the absence or disability of his principal, the deputy or deputies shall perform the duties of such principal, except a deputy superintendent of schools shall not perform the duties of his or her principal in visiting schools or hearing appeals. [C., '51, § 412; R., '60, § 643; C., '73, § 767; C., '97, §§ 298, 481, 491, 496; S., '13, § 496; S. S., '15, §§ 298, 481, 491; 37 G. A., ch.

331, § 1; 38 G. A., ch. 278; §§ 1-4; 40 G. A., ch. 250, § 21.]

5243. Temporary assistance for county attorney. The county attorney may with the approval of a judge of the district court procure such assistants in the trial of a person charged with felony as he shall deem necessary and for such assistants upon presenting to the board of supervisors a certificate of the district judge before whom said cause was tried, certifying to the services rendered, shall be allowed a reasonable compensation therefor, to be fixed by the board of supervisors, but nothing in this chapter shall prevent the board of supervisors from employing an attorney to assist the

county attorney in any cause or proceeding in which the state or county is interested. [C., '97, § 303; S., '13, § 303-a; 40 G. A., ch. 250, § 26.]

5244. Temporary assistance for county auditor. In case no deputy shall be appointed, but on account of the pressure of business in his office the auditor is compelled temporarily to employ assistants, he shall file the bill for such services with the board of supervisors at their next regular meeting and it shall make a reasonable allowance therefor. [C., '97, § 481; S. S., '15, § 481; 38 G. A., ch. 278, § 2; 40 G. A., ch. 247, § 4.]

CHAPTER 263

COLLECTION AND ACCOUNTING OF FEES

5245. Fees belong to county.
5246. Record of fees.

5245. Fees belong to county. Except as in this chapter provided, all fees and charges of whatever kind collected for official service by any county auditor, treasurer, recorder, sheriff, clerk of the district court, and their respective deputies or clerks, shall belong to the county. [R., '60, § 431; C., '73, § 3785; C., '97, §§ 299, 508; S., '13, § 508; S. S., '15, §§ 479-a, 490-a; 40 G. A., ch. 250, § 22.]

5246. Record of fees. Each such officer shall keep a record to be known as the "fee book" of the office to which it relates and shall be kept in such office as a part of the permanent county records. It shall be ruled in appropriate columns for the date, kind of service, for whom rendered, and the amount of fee collected, and when the charge is for recording an instrument, the names of the parties thereto. All said items shall be entered upon said record at the time the service is rendered. [C., '51, § 212; R., '60, § 423; C., '73, § 3796; C., '97, §§ 480, 492; S., '13, § 498; 40 G. A., ch. 250, § 23.]

5247. Quarterly reports and payments.
5248. Exceptions.

5247. Quarterly reports and payments. Each of such officers shall make itemized and verified reports quarterly to the board of supervisors showing in detail the fees collected during the preceding quarter. Each such officer shall quarterly pay into the county treasury all fees collected during the preceding quarter, take duplicate receipts therefor and file one of such receipts in the office of the auditor. Each such officer shall also enter upon the fee book of his office the date and amount of each payment into the county treasury. [R., '60, § 431; C., '73, §§ 3785, 3796; C., '97, §§ 299, 480, 492, 495, 508; S., '13, §§ 508, 550-c; S. S., '15, § 495; 38 G. A., ch. 23, § 1; 40 G. A., ch. 250, § 24.]

5248. Exceptions. The foregoing provisions shall not apply to the service of the sheriff for dieting, lodging, and care of prisoners. [C., '97, § 508; S., '13, § 508; 40 G. A., ch. 250, § 25.]

NOTE: For similar provision, see § 5192.

CHAPTER 264

GENERAL DUTIES OF COUNTY OFFICERS

5249. Officers to furnish information.
5250. Agent or attorney.
5251. Acting as counsel.
5252. Purchase of property.
5253. Examination of accounts—expense.
5254. Violations.

5249. Officers to furnish information. It is the duty of each county officer, whenever called upon by the governor or either house of the general assembly, to communicate to the governor or such house any information that may be in his possession as such officer, and to fur-

5255. Purchase of warrants.
5256. Money for sectarian purposes.
5257. Violations.
5258. Expenditures confined to receipts.
5259. Exceptions.
5260. Unallowable claims.

nish any statistics at his command, when thus called upon. [C., '97, § 544.]

5250. Agent or attorney. No county officer shall appear as agent, attorney, or solicitor for another, in any matter pending before the board of supervisors. [C., '73, § 326; C., '97, § 545.]

5251. Acting as counsel. No sheriff, deputy sheriff, coroner, or constable shall appear in any court as attorney or counsel for any party, nor make any writing or process to commence any action or proceeding, or to be in any manner used in the same; and such writing or process made by any of them shall be rejected. [C., '51, § 175; R., '60, § 388; C., '73, 342; C., '97, § 546.]

5252. Purchase of property. No sheriff, deputy sheriff, coroner, or constable shall become the purchaser, either directly or indirectly, of any property by him exposed to sale under any process of law; and every such purchase shall be void. [C., '51, § 176; R., '60, § 389; C., '73, § 343; C., '97, § 547.]

5253. Examination of accounts — expense. If any officer required by law to report the fees collected by him to the board of supervisors shall neglect or refuse to make such report, it shall be the duty of the board to employ an expert accountant to examine the books, papers, and accounts of such officer, and to make said report, the expense of which shall be charged to such delinquent officer, and shall be collectible upon his official bond. [C., '97, § 548.]

5254. Violations. Failure on the part of any officer to perform any duty required of him by the preceding sections of this chapter shall render him liable to prosecution and punishment for a misdemeanor. [C., '97, § 550.]

5255. Purchase of warrants. No officer of any county, nor any deputy or employee of such officer, shall, directly or indirectly, be permitted to take, purchase, or receive in payment, exchange, or in any way whatever, any warrant, scrip, or other evidence of its indebtedness or any demand against it, for a less amount than that expressed on the face of the warrant, scrip, or other evidence of indebtedness or demand, with accrued interest thereon. [R., '60, § 2186; C., '73 § 556; C., '97, § 596.]

NOTE: Made applicable to cities and towns, see § 5643.

5256. Money for sectarian purposes. Public money shall not be appropriated, given, or loaned by the corporate authorities of any county or township, to or in favor of any institution, school, association, or object which is under ecclesiastical or sectarian management or control. [C., '73, § 552; C., '97, § 593.]

NOTE: Made applicable to cities and towns, see § 5643.

5257. Violations. Any officer of any county, or any deputy or employee of such officer, who violates any of the provisions of the two pre-

ceding sections, shall be guilty of a misdemeanor, and fined not less than one hundred dollars, nor more than five hundred dollars, for each offense. [R., '60, § 2188; C., '73, § 558; C., '97, § 598.]

NOTE: Made applicable to cities and towns, see § 5643.

5258. Expenditures confined to receipts. It shall be unlawful for any county, or for any officer thereof, to allow any claim, or to issue any warrant, or to enter into any contract, which will result, during said year, in an expenditure from any county fund in excess of an amount equal to the collectible revenues in said fund for said year, plus any unexpended balance in said fund for any previous years.

Any officer allowing a claim, issuing a warrant, or making a contract contrary to the provisions of this section, shall be held personally liable for the payment of the claim or warrant, or the performance of the contract. [40 G. A., ch. 104, § 1; 40 G. A., ch. 105, § 1.]

5259. Exceptions. The preceding section shall not apply:

1. To expenditures for bridges or buildings destroyed by fire or flood or other extraordinary casualty.

2. To expenses incurred in connection with the operation of the courts.

3. To expenditures for bridges which are made necessary in any year by the construction of a public drainage improvement.

4. To expenditures for the benefit of any person entitled to receive help from public funds.

5. To expenditures authorized by vote of the electors.

6. To expenditures contracted prior to July 4, 1923, for and on account of county activities authorized by law.

7. To expenditures contracted prior to July 4, 1923, of every kind and character for the funding and refunding of legal obligations or indebtedness of the county by bonding or otherwise as provided by law.

8. To expenditures from the county funds which are to be refunded from the primary road fund.

9. To expenditures from the county general fund legally payable from that fund and contracted prior to January 1, 1924. [40 G. A., ch. 104, § 2; 40 G. A., ch. 105, § 2.]

5260. Unallowable claims. No claim shall be allowed or warrant issued or paid for the expense incurred by any county officer in attending any convention of county officials. [40 G. A., ch. 106, §§ 1, 2; 40 Ex. G. A., H. F. 130, § 6.]

CHAPTER 265

SUBMISSION OF QUESTIONS TO VOTERS

- 5261. Expenditures—when vote necessary.
- 5262. Exceptions.
- 5263. Questions submitted to voters.
- 5264. Depreciated warrants—tax.
- 5265. Manner of submitting questions.
- 5266. Voting of tax—when required.
- 5267. Rate of tax.

- 5268. Bonds—maturity.
- 5269. Tax for successive years.
- 5270. Result published.
- 5271. Rescission by subsequent vote.
- 5272. Board must submit questions.
- 5273. Regularity presumed.
- 5274. Surplus of tax.

5261. Expenditures—when vote necessary. The board of supervisors shall not order the erection of a courthouse, jail, or county home when the probable cost will exceed ten thousand dollars, or any other building, except as otherwise provided, when the probable cost will exceed five thousand dollars, nor the purchase of real estate for county purposes exceeding ten thousand dollars in value, until a proposition therefor shall have been first submitted to the legal voters of the county, and voted for by a majority of all persons voting for and against such proposition at a general or special election, notice of the same being given as in other special elections. [R., '60, § 312; C., '73, § 303; C., '97, § 423; S. S., '15, § 423; 37 G. A., ch. 332, § 1; 38 G. A., ch. 71, § 1; 38 G. A., ch. 73, § 1; 40 Ex. G. A., H. F. 138, § 1.]

NOTE: Submission of question of county home, see § 5338.

5262. Exceptions. Where a courthouse has been destroyed by fire and not less than one hundred thousand dollars has been donated to the county for the purpose of erecting a courthouse, the board of supervisors may, without authorization from the voters, use the amount so donated for the construction of the courthouse and in addition thereto may appropriate from the general fund for such purpose a sum not exceeding one-half of the amount donated, provided there is in the general fund, unappropriated for other purposes, an amount sufficient to pay such appropriation. [40 G. A., ch. 107; 40 Ex. G. A., H. F. 138, § 1-a.]

5263. Questions submitted to voters. The board of supervisors may submit to the people of the county at any regular election, or at any special election called for that purpose, the question whether money may be borrowed to aid in the erection and equipment of any public buildings, or the procuring of a site or grounds for such public buildings, or for both such site and buildings, and either or both of said propositions and other local or police regulations may be submitted at the same general or special election. [C., '51, § 114; R., '60, § 250; C., '73, § 309; C., '97, § 443; 37 G. A., ch. 304, § 1; 40 Ex. G. A., H. F. 138, § 2.]

5264. Depreciated warrants — tax. When the warrants of a county are at a depreciated value, it may, in like manner, submit the question whether a tax of a higher rate than that provided by law shall be levied. [C., '51, § 114; R., '60, § 250; C., '73, § 309; C., '97, § 443; 40 Ex. G. A., H. F. 138, § 3.]

5265. Manner of submitting questions. The mode of submitting questions to the people shall be the following: The whole question, including the sum desired to be raised, or the amount of tax desired to be levied, or the rate per annum, and the whole regulation, including the time of its taking effect or having operation, if it be of a nature to be set forth, and the penalty for its violation if there be one, shall be embraced in a notice of the election and shall be published once each week for at least four weeks in some newspaper published in the county. Such notice shall name the time when such question will be voted upon, and the form in which the question shall be submitted, and a copy of the question to be submitted shall be posted at each polling place during the day of election. [C., '51, § 115; R., '60, § 251; C., '73, § 310; C., '97, § 446; S., '13, § 446; 40 Ex. G. A., H. F. 138, § 4.]

5266. Voting of tax—when required. When any question submitted involves the borrowing or the expenditure of money, the same must be accompanied by a provision to levy a tax for the payment thereof, in addition to other taxes, as directed in the following section, and no vote adopting the question proposed will be of effect unless it adopt the tax also. [C., '51, § 116; R., '60, § 252; C., '73, § 311; C., '97, § 447; 40 Ex. G. A., H. F. 138, § 5.]

5267. Rate of tax. The rate of such tax shall in no case be more than one per cent on the county valuation in any one year. When the object is to borrow money for the erection and equipment of public buildings, or for the procuring of sites or grounds therefor, or for both, the rate shall be such as to pay the debt in a period not exceeding ten years; but in counties having a population of twenty-five thousand or over, or in any county where one hundred thousand dollars or more has been or

is proposed to be expended, the rate of levy shall be such as to pay the debt in not exceeding twenty-five years. [C., '51, § 117; R., '60, § 253; C., '73, § 312; C., '97, § 448; S. S., '15, § 448; 37 G. A., ch. 304, § 2; 40 Ex. G. A., H. F. 138, § 6.]

5268. Bonds—maturity. In issuing bonds for such indebtedness, when voted, the board of supervisors may cause portions of said bonds to become due at different definite periods. But none of such bonds so issued shall be due and payable in less than five or more than twenty-five years from date. When the object is to construct, or to aid in constructing, any highway or bridge, the annual rate shall not be less than one mill on the dollar of the assessed valuation; and any of the above taxes becoming delinquent shall draw the same interest as ordinary taxes. [C., '51, § 117; R., '60, § 253; C., '73, § 312; C., '97, § 448; S. S., '15, § 448; 40 Ex. G. A., H. F. 138, § 7.]

5269. Tax for successive years. When it is apparent that the levy of one year will not pay the entire amount, the proposition and the vote must be to continue the levy at the same rate from year to year until the amount is paid. [C., '51, § 118; R., '60, § 254; C., '73, § 313; C., '97, § 449; 40 Ex. G. A., H. F. 138, § 8.]

5270. Result published. The board of supervisors, on finding from a canvass of the returns that a majority of the votes were cast in favor of the proposition, shall cause the result of the vote to be entered at large in the minute book, and the proposition shall take effect and be in force thereafter. Notice of such adoption shall be published for the same time and

in the same manner as above provided for publishing the notice of election. [C., '51, § 119; R., '60, § 255; C., '73, § 314; C., '97, § 450; 40 Ex. G. A., H. F. 138, § 9.]

5271. Rescission by subsequent vote. Propositions thus adopted may be rescinded in like manner and upon like notice, by a subsequent vote taken thereon, but neither contracts made under them, nor taxes voted for carrying them into effect, can be rescinded. [C., '51, § 120; R., '60, § 256; C., '73, § 315; C., '97, § 451; 40 Ex. G. A., H. F. 138, § 10.]

5272. Board must submit questions. The board shall submit the question of the adoption or rescission of such a measure when petitioned by one-fourth of the legal voters of the county, or by such different number as may be prescribed by law in any special case. [C., '51, § 121; R., '60, § 257; C., '73, § 316; C., '97, § 452; 40 Ex. G. A., H. F. 138, § 11.]

5273. Regularity presumed. The record of the adoption or rescission of any such measure shall be presumptive evidence that all the proceedings necessary to give the vote validity have been regularly conducted. [C., '51, § 122; R., '60, § 258; C., '73, § 317; C., '97, § 453; 40 Ex. G. A., H. F. 138, § 12.]

5274. Surplus of tax. In case the amount produced by the rate of tax proposed and levied exceeds the amount required for the specific object, it shall not for that reason be held invalid, but the excess shall go into the general county fund. [C., '51, § 123; R., '60, § 259; C., '73, § 318; C., '97, § 454; 40 Ex. G. A., H. F. 138, § 13.]

CHAPTER 266

COUNTY BONDS

- 5275. Funding and refunding bonds.
- 5276. Refunding bridge bonds.
- 5277. Rate of interest—form of bond.
- 5278. Provisions applicable.
- 5279. Bonds—negotiation of—duties of treasurer.
- 5280. Proceeds—how applied.
- 5281. Record of bonds sold and transferred.
- 5282. Treasurer to report bonds sold.
- 5283. Unconstitutional issue.
- 5284. Tax for bonded indebtedness.
- 5285. Levy to pay interest and principal.

- 5286. Bond fund—separate account.
- 5287. Redemption—notice—interest.
- 5288. Balance to particular fund.
- 5289. Balance to general fund.
- 5290. Registry with state auditor.
- 5291. State tax levied—payment.
- 5292. Additional tax to pay interest.
- 5293. Statutes applicable.
- 5294. County not to become stockholder.
- 5295. Actions on bonds—estoppel.
- 5296. Violations.

5275. Funding and refunding bonds. When the outstanding indebtedness of any county on the first day of January, April, June, or September in any year exceeds the sum of five thousand dollars, the board of supervisors, by a two-thirds vote of all its members, may fund or refund the same, and issue the bonds of the county therefor in sums not less than one hundred dollars nor more than one thousand dollars each, payable at a time stated, not more than twenty years from their date. [C., '73, § 289; C., '97, § 403; S., '13, § 403; 40 Ex. G. A., S. F. 139, § 1.]

5276. Refunding bridge bonds. Indebtedness incurred by any county in making and repairing bridges may be refunded whenever such outstanding indebtedness equals or exceeds the sum of five thousand dollars, and the tax to pay such bonds and interest shall be levied as hereinafter provided, except that no part of said tax shall be levied on property within any city which is authorized by law to levy its own bridge tax. [S., '13, § 403; 40 Ex. G. A., S. F. 139, § 2.]

5277. Rate of interest—form of bond. Said bonds shall bear interest not exceeding five per

cent per annum, payable semiannually, and be substantially in the following form, but subject to changes that will conform them to the resolution of said board, to wit:

No., Iowa,
The county of, in the state of Iowa, for value received, promises to pay to bearer.... dollars, lawful money of the United States of America, on, with interest on said sum from the date hereof until paid at the rate of per cent per annum, payable annually on the first days of and in each year, on presentation and surrender of the interest coupons hereto attached. Both principal and interest payable at

This bond is issued by the board of supervisors of said county pursuant to the provisions of sections 5275 to 5277, inclusive, of the code of Iowa, and in conformity to a resolution of said board duly passed.

And it is hereby certified and recited that all acts, conditions, and things required by the laws and constitution of the state of Iowa to be done precedent to and in the issue of this bond have been properly done, happened and been performed in regular and due form, as required by law, and that the total indebtedness of said county, including this bond, does not exceed the constitutional or statutory limitations.

In testimony whereof, said county, by its board of supervisors, has caused this bond to be signed by the chairman of the board and attested by the auditor, with the county seal attached, this day of

Chairman Board of Supervisors.

Attest:

.....
County Auditor, County, Iowa.
(Form of Coupon)

The treasurer of county, Iowa, will pay to bearer dollars, on, at, for annual interest on its bond, dated

No.
.....
County Auditor.

[C., '73, § 289; C., '97, § 403; S., '13, § 403; 40 Ex. G. A., ch. 108, § 12; 40 Ex. G. A., S. F. 139, § 3.]

5278. Provisions applicable. In making sale of such county bonds the county treasurer shall comply with and be governed by all the provisions of chapter 63. [40 Ex. G. A., S. F. 139, § 4.]

5279. Bonds—negotiation of—duties of treasurer. When bonds issued under this chapter shall be executed, numbered consecutively, and sealed, they shall be delivered to the county treasurer and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him and the proceeds thereof, and he shall sell the same, or exchange them, on the best available terms, for any legal indebtedness of the county outstanding on the first day of January, April, June, or September next preceding the resolution of the board au-

thorizing their issue, but in neither case for a less sum than the face value of the bonds and all interest accrued on them at the date of such sale or exchange. [C., '73, § 290; C., '97, § 404; S., '13, § 404; 40 Ex. G. A., S. F. 139, § 5.]

5280. Proceeds—how applied. If any portion of said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payment of liabilities existing against the county at and before the date above named. When they are exchanged for warrants and other legal evidences of county indebtedness, the treasurer shall at once proceed to cancel such evidences of indebtedness by indorsing on the face thereof the amount for which they were received, the word "canceled" and date of cancellation. [C., '73, § 290; C., '97, § 404; S., '13, § 404; 40 Ex. G. A., S. F. 139, § 6.]

5281. Record of bonds sold and transferred. He shall also keep a record of bonds sold or exchanged by him by number, date of sale, amount, date of maturity, and the name and postoffice address of purchasers, and, if exchanged, what evidences of indebtedness were received therefor, which record shall be open at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the treasurer of such purchase, giving at the same time the number of the bond transferred and his postoffice address, and every such transfer shall be noted on the records. [C., '73, § 290; C., '97, § 404; S., '13, § 404; 40 Ex. G. A., S. F. 139, § 7.]

5282. Treasurer to report bonds sold. The treasurer shall also report under oath to the board, at each regular session, a statement of all bonds sold or exchanged by him since the preceding report, and the date of such sale or exchange; and, when exchanged, a list or description of the county indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received on bond fund, and so entered by him on his books; but such bonds shall not be exchanged for any indebtedness of the county except by the approval of the board of supervisors of said county. [C., '73, § 290; C., '97, § 404; S., '13, § 404; 40 Ex. G. A., S. F. 139, § 8.]

5283. Unconstitutional issue. Any member of a board of supervisors who shall vote to order an issue of bonds under the provisions of this chapter in excess of the constitutional limit, shall be held personally liable for the excess of such issue. [C., '97, § 405; 40 Ex. G. A., S. F. 139, § 9.]

5284. Tax for bonded indebtedness. The board of supervisors shall not in any one year levy a tax of more than three mills on the dollar for the payment of bonded indebtedness or judgments rendered therefor, except as provided in this chapter, unless the vote authorizing the issuance of the bonds provided for a

higher rate. [C., '73, § 840; C., '97, § 1384; 40 Ex. G. A., S. F. 139, § 10.]

5285. Levy to pay interest and principal. The board of supervisors shall cause to be assessed and levied each year upon the taxable property in the county, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter, accruing before the next annual levy, and such proportion of the principal that, at the end of eight years, the sum raised from such levies shall equal at least fifteen per cent of the amount of bonds issued; at the end of ten years, at least thirty per cent of the amount; and at or before the date of maturity of the bonds, shall be equal to the whole amount of the principal and interest. [C., '73, § 291; C., '97, § 406; 40 Ex. G. A., S. F. 139, § 11.]

5286. Bond fund—separate account. The money arising from such levies shall be known as the bond fund, and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the treasurer shall open and keep in his books a separate account thereof, which shall at all times show the exact condition of said bond fund. [C., '73, § 291; C., '97, § 406; 40 Ex. G. A., S. F. 139, § 12.]

5287. Redemption—notice—interest. When the amount in the hands of the treasurer belonging to the bond fund, after setting aside the sum required to pay interest maturing before the next levy, is sufficient to redeem one or more bonds, which by their terms are subject to redemption, he shall notify the owner of such bond or bonds, in the manner hereinbefore prescribed, that he is prepared to pay the same, with all the interest accrued thereon. If not presented for payment or redemption within thirty days after the date of such notice, the interest on such bond or bonds shall cease, and the amount due thereon shall be set aside for its payment whenever presented. All redemptions shall be made in the order of their numbers. [C., '73, § 292; C., '97, § 407; S., '13, § 407; 40 Ex. G. A., S. F. 139, § 13.]

5288. Balance to particular fund. If after the payment of all bonds and interest as hereinbefore provided, there remains any money in said bond fund, the board of supervisors may by resolution transfer said funds to the particular fund or funds on account of which the indebtedness arose for which said bonds were issued. [S., '13, § 407; 40 Ex. G. A., S. F. 139, § 14.]

5289. Balance to general fund. The board of supervisors may, by resolution, transfer to the general fund any excess remaining from the proceeds of a county bond issue voted by the people, after the full completion of the purposes thereof. [40 G. A., ch. 109, § 1.]

5290. Registry with state auditor. If the board of supervisors of any county which has

issued bonds under the provisions of this chapter shall fail to make the levy necessary to pay such bonds or interest coupons at maturity, and the same shall have been presented to the county treasurer and the payment thereof refused, the owner may file the bond, together with all unpaid coupons, with the auditor of state, taking his receipt therefor, and the same shall be registered in the auditor's office. [C., '73, § 293; C., '97, § 408; 40 Ex. G. A., S. F. 139, § 15.]

5291. State tax levied—payment. The executive council shall at its next session as a board of equalization, and at each annual equalization thereafter, add to the state tax to be levied in said county a sufficient rate to realize the amount of principal or interest past due and to become due prior to the next levy upon any such registered bonds, and the same shall be levied and collected as a part of the state tax, and paid into the state treasury, and passed to the credit of such county as bond tax, and shall be paid by warrant, as the payments mature, to the holder of such registered obligations, as shown by the register in the office of the state auditor, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said county; but nothing in this chapter shall be construed to limit or postpone the right of any holder of any such bonds to resort to any other remedy which such holder might otherwise have. [C., '73, § 293; C., '97, § 408; 40 Ex. G. A., S. F. 139, § 16.]

5292. Additional tax to pay interest. In any county wherein county bonds are issued in pursuance of a vote of the people to obtain money for the erection of any public building and wherein the annual tax named in the proposition so submitted for the purpose of paying the annual interest accruing upon such bonds is insufficient to pay the same as it matures, the board of supervisors is authorized to levy for said purpose, a tax, not exceeding one mill on the dollar, until said bonds are paid; but this provision shall not prevent the levy of a greater tax than above mentioned, if any such proposition authorized such higher levy. [C., '97, § 409; 40 Ex. G. A., S. F. 139, § 17.]

5293. Statutes applicable. The provisions of this chapter shall not be so construed as to limit in any way the application of the provisions of sections 5258 and 5259. [40 Ex. G. A., S. F. 139, § 18.]

5294. County not to become stockholder. No county shall, in its corporate capacity, or by its supervisors or officers, directly or indirectly, subscribe for stock, or become interested as a partner, shareholder, or otherwise, in any banking institution, plank road, turnpike, railway, or work of internal improvement; nor shall it issue any bonds, bills of credit, scrip, or other evidence of indebtedness, for any such purposes; and all such

evidences of indebtedness for said purposes are hereby declared void, and no assignment of the same shall give them validity; but this section shall not be so construed as to prevent counties from lawfully erecting their necessary public buildings and bridges, laying off highways, streets, alleys, and public grounds, or other local works in which such counties may be interested. [R., '60, §§ 1345, 1346; C., '73, §§ 553, 554; C., '97, § 594; 40 Ex. G. A., S. F. 139, § 19.]

5295. Actions on bonds—estoppel. In all actions now pending, or hereafter brought, in any court in this state, on any bond or coupon issued, or purporting to be issued, by any county for the purposes prohibited in this chapter, a former recovery against such corporation on any one or more or any part of such bonds or coupons shall not bar or estop such corporation

from setting up any defense it has made, or could have made, to such bonds or coupons, in the action in which such former recovery was had, but the county may allege and prove any matter of defense in such action to the same extent, and with the same effect, as though no former action had been brought, or former recovery had. [C., '73, § 555; C., '97, § 595; 40 Ex. G. A., S. F. 139, § 20.]

5296. Violations. Any officer of any county, or any deputy or employee of such officer, who violates any of the provisions of the two preceding sections, shall be guilty of a misdemeanor, and fined not less than one hundred dollars, nor more than five hundred dollars, for each offense. [R., '60, § 2128; C., '73, § 558; C., '97, § 598; 40 Ex. G. A., S. F. 139, § 21.]

CHAPTER 267

SUPPORT OF THE POOR

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5297. "Poor person" defined. The words "poor" and "poor person" as used in this chapter shall be construed to mean those who have no property, exempt or otherwise, and are unable, because of physical or mental disabilities, to earn a living by labor; but this section shall not be construed to forbid aid to needy persons who have some means, when the board shall be of opinion that the same will be conducive to their welfare and the best interests of the public. [C., '97, § 2252.]

5298. Parents and children liable. The father, mother, and children of any poor person, who is unable to maintain himself or herself by labor, shall jointly or severally relieve or maintain such person in such manner as, upon application to the township trustees of the township where such person has a residence or may be, they may direct. [C., '51, § 787; R., '60, § 1355; C., '73, § 1330; C., '97, § 2216.]

5299. Putative father. The word "father" in this chapter includes the putative father of an illegitimate child, and the question of parentage may be tried in any proceeding to recover for or compel the support of such a child, and like proceedings may be prosecuted against the mother independently of or jointly with the alleged father. [C., '51, § 788; R., '60, § 1356; C., '73, § 1332; C., '97, § 2250.]

5300. Who deemed trustee. The word "trustees" in this chapter shall be construed to include and mean any person or officer of any county or city charged with the oversight of the poor. [C., '51, § 789; R., '60, § 1357; C., '73, § 1333; C., '97, § 2251.]

5301. Remote relatives. In the absence or inability of nearer relatives, the same liability shall extend to grandparents, if of ability without personal labor, and to the male grandchildren who are of ability by personal labor or

otherwise. [C., '51, § 787; R., '60, § 1355; C., '73, § 1331; C., '97, § 2217.]

5302. Enforcement of liability. Upon the failure of such relatives so to relieve or maintain a poor person who has made application for relief, the township trustees may apply to the district court of the county where such poor person resides or may be, for an order to compel the same. [C., '51, § 789; R., '60, § 1357; C., '73, § 1333; C., '97, § 2218.]

5303. Notice—hearing. At least ten days' notice in writing of the application shall be given to the parties sought to be charged, service thereof to be made as of an original notice, in which proceedings the county shall be plaintiff and the parties served defendants. No order shall be made affecting a person not served, but, as to such, notice may be given at any stage of the proceedings. The court may proceed in a summary manner to hear all the allegations and proofs of the parties, and order any one or more of the relatives who shall be able, to relieve or maintain him or her, charging them as far as practicable in the order above named, and for that purpose may bring in new parties when necessary. [C., '51, §§ 790-792; R., '60, §§ 1358-1360; C., '73, §§ 1334-1336; C., '97, § 2219; 40 Ex. G. A., H. F. 140, § 1.]

5304. Scope of order. The order may be for the entire or partial support of the applicant, may be for the payment of money or the taking of the applicant to a relative's house, or may assign him or her for a certain time to one and for another period to another, as may be just and right, taking into view the means of the several relatives liable, but no such assignment shall be made to one who is willing to pay the amount necessary for support. If the order be for relief in any other form than money, it shall state the extent and value thereof per week, and the time such relief shall continue; or the order may make the time of continuance indefinite, and it may be varied from time to time by a new order, as circumstances may require, upon application to the court by the trustees, the poor person, or the relative affected, ten days' notice thereof being given to the party or parties concerned. [C., '51, §§ 793-795; R., '60, §§ 1361-1363; C., '73, §§ 1337-1339; C., '97, § 2219; 40 Ex. G. A., H. F. 140, § 2.]

5305. Judgment—appeal. When money is ordered to be paid, it shall be paid to such person as the court may direct. If support be not rendered as ordered, the court upon such fact being shown by the affidavit of one or more of the proper trustees, may render judgment and order execution for the amount due, rating any support ordered in kind at the valuation previously made. An appeal may be taken from the judgment rendered to the supreme court. Support for later periods under the same order may be, as it becomes due, applied for and obtained in the same manner. [C., '51, §§ 796-798; R., '60, §§ 1364-1366; C., '73, §§

1340-1342; C., '97, § 2219; 40 Ex. G. A., H. F. 140, § 3.]

5306. Abandonment—order as to property. When father or mother abandons any child, husband his wife, or wife her husband, leaving them a public charge or likely to become such, the trustees of the township, upon application to them may make complaint to the district court or judge thereof in the county in which such abandoned person resides, or in which any property of such father, mother, husband, or wife is situated, for an order to seize such property, and, upon proof of the necessary facts, the court or judge shall issue an order, directed to the sheriff of the county, to take and hold possession of said property, subject to the further orders of the court, which order shall be executed by taking possession of chattel property wherever found, and shall entitle the officer serving the same to collect and hold the rents accruing upon real property. [C., '51, §§ 799, 800; R., '60, §§ 1367, 1368; C., '73, §§ 1343, 1344; C., '97, § 2220; 40 Ex. G. A., H. F. 140, § 4.]

5307. Preservation and release of lien. Statement of the issuance of the order and a description of any real estate sought to be affected thereby, shall be entered in the incumbrance book, and from the date thereof shall be superior in right to any conveyance or lien created by the owner thereafter, and return shall be made of said order to the proper court, where the order of seizure, upon investigation, may be discharged or continued; if continued, the entire matter shall be subject to the control of the court, and it shall from time to time make such orders as to the disposition of the personal property seized, and the application of it or the proceeds thereof, as it may deem proper, and of the disposition of the rents and profits of the real estate. Should the party against whom the order issued thereafter resume his or her support of the person abandoned, or give bond with sureties, to be approved by the clerk, conditioned that such person shall not become chargeable to the county, the order shall be by the clerk discharged and the property remaining restored. [C., '51, §§ 801-804; R., '60, §§ 1369-1372; C., '73, §§ 1345-1348; C., '97, § 2220; 40 Ex. G. A., H. F. 140, § 5.]

5308. Trial by jury. In all cases the party sought to be charged with the support of another may demand a jury trial upon the question of his obligation and ability to render such support, the alleged abandonment, and the liability of the person abandoned to become a public charge; such trial to be had upon demand, which may be made at the time of the hearing of the application for the order, or at such other time as may be directed by the court, upon notice to the defendant. [C., '51, § 805; R., '60, § 1373; C., '73, § 1349; C., '97, § 2221.]

5309. Recovery by county. Any county having expended any money for the relief or

support of a poor person, under the provisions of this chapter, may recover the same from any of his kindred mentioned herein, from such poor person should he become able, or from his estate; from relatives by action brought within two years from the payment of such expenses, from such poor person by action brought within two years after becoming able, and from such person's estate by filing the claim as provided by law. [C., '51, § 806; R., '60, § 1374; C., '73, § 1350; C., '97, § 2222.]

5310. Recovery by relative. A more distant relation, who may have been compelled to aid a poor person, may recover from any one or more of the nearer relatives, and one so compelled to aid may recover contribution from others in the same degree, and a recovery may be had against the poor person or his estate, if, after such aid or support has been given, the person aided or supported becomes able to repay the same; but proceedings to recover therefor must be brought within two years from the time a cause of action accrues. [C., '51, § 807; R., '60, § 1375; C., '73, § 1351; C., '97, § 2223.]

5311. Settlement—how acquired. A legal settlement in this state may be acquired as follows:

1. Any adult person residing in this state one year without being warned to depart as provided in this chapter acquires a settlement in the county of his residence.

2. A married woman has the settlement of her husband, if he has one in this state; if not, or if she lives apart from, or is abandoned by him, she may acquire a settlement as if she were unmarried. Any settlement which the wife had at the time of the marriage may at her election be resumed upon the death of her husband, or if she be divorced or abandoned by him, if both settlements were in this state.

3. Legitimate minor children take the settlement of the father, if there be one, if not, then that of the mother.

4. Illegitimate minor children take the settlement of their mother, or, if she has none, then that of their putative father.

5. A minor without a settlement in this state, by residing one year in any county of the state, acquires a settlement therein. [C., '51, § 808; R., '60, § 1376; C., '73, § 1352; C., '97, § 2224; 40 Ex. G. A., H. F. 140, § 6.]

5312. Settlement continues. A legal settlement once acquired continues until lost by acquiring a new one. [C., '51, § 809; R., '60, § 1377; C., '73, § 1353; C., '97, § 2224; 40 Ex. G. A., H. F. 140, § 7.]

5313. Foreign paupers. A person coming from another state, and not having become a citizen of nor having a settlement in the state, applying for relief, may be sent to the state whence he came, at the expense of the county, under an order of the district court or judge; otherwise he is to be temporarily relieved in

the county where he applies. [C., '51, § 811; R., '60, § 1379; C., '73, § 1354; C., '97, § 2225.]

5314. Importation prohibited. If any person knowingly bring within this state any pauper or poor person, with the intent of making him a charge on any of the townships or counties therein, he shall be fined not exceeding five hundred dollars, and be charged with his support. [C., '51, § 2736; R., '60, § 4379; C., '73, § 4045; C., '97, § 5009.]

5315. Notice to depart. Persons coming into the state, or going from one county to another, who are county charges or are likely to become such, may be prevented from acquiring a settlement by the authorities of the county, township, or city in which such persons are found warning them to depart therefrom. After such warning, such persons can not acquire a settlement except by the requisite residence of one year without further warning. [C., '51, § 812; R., '60, § 1380; C., '73, § 1355; C., '97, § 2226.]

5316. Service of notice. Such warning shall be in writing, and may be served upon the order of the trustees of the township, or of the board of supervisors, by any person; and such person shall make a return of his doings thereon to the board of supervisors, which, if not made by a sworn officer, must be verified by affidavit. [C., '51, § 813; R., '60, § 1381; C., '73, § 1356; C., '97, § 2227.]

5317. Contest between counties. When relief is granted to a poor person having a settlement in another county, the auditor shall at once by mail notify the auditor of the county of his settlement of such fact, and, within fifteen days after receipt of such notice, such auditor shall inform the auditor of the county granting relief if the claim of settlement is disputed. If it is not, the poor person, if able, may be removed to the county of his settlement, or, at the request of the auditor or board of supervisors of the county of his settlement, he may be maintained where he then is at the expense of such county, and without affecting his legal settlement. [C., '51, §§ 814, 816, 817; R., '60, §§ 1382, 1384, 1385; C., '73, §§ 1357, 1359, 1360; C., '97, § 2228; 40 Ex. G. A., H. F. 140, § 8.]

5318. Trial. If the alleged settlement is disputed, then, within thirty days after notice thereof as above provided, a copy of the notices sent and received shall be filed in the office of the clerk of the district court of the county against which claim is made, and a cause docketed without other pleadings, and tried as an ordinary action, in which the county affording the relief shall be plaintiff, and the other defendant, and the burden of proof shall be upon the county granting the relief or making the removal. [C., '51, §§ 816, 817; R., '60, §§ 1384, 1385; C., '73, §§ 1359, 1360; C., '97, § 2228; 40 Ex. G. A., H. F. 140, § 9.]

5319. County of settlement liable. The county where the settlement is shall be liable to the county rendering relief for all reasonable charges and expenses incurred in the relief and care of a poor person, and for the charges of removal and expenses of support incurred after notice is given. [C., '51, § 815; R., '60, § 1383; C., '73, § 1358; C., '97, § 2229.]

5320. Relief by trustees. The township trustees of each township, subject to general rules that may be adopted by the board of supervisors, shall provide for the relief of such poor persons in their respective townships as should not, in their judgment, be sent to the county home. [C., '73, § 1361; C., '97, § 2230; S., '13, § 2230; 40 Ex. G. A., H. F. 140, § 10.]

5321. Overseer of poor. Where a city is embraced, in whole or in part, within the limits of any township, the board of supervisors may appoint an overseer of the poor, who shall have within said city, or part thereof, all the powers and duties conferred by this chapter on the township trustees. [C., '73, § 1361; C., '97, § 2230; S., '13, § 2230; 40 Ex. G. A., H. F. 140, § 10.]

5322. Form of relief—condition. The relief may be either in the form of food, rent or clothing, fuel and lights, medical attendance, or in money, and shall not exceed two dollars per week for each person for whom relief is thus furnished, exclusive of medical attendance. They may require any able-bodied person to labor faithfully on the streets or highways at the prevailing local rate per hour in payment for and as a condition of granting relief; said labor shall be performed under the direction of the officers having charge of working streets and highways. [C., '73, § 1361; C., '97, § 2230; S., '13, § 2230; 37 G. A., ch. 253, § 1; 40 Ex. G. A., H. F. 140, § 11.]

5323. Medical services. When medical services are rendered by order of the trustees or overseers of the poor, no more shall be charged or paid therefor than is usually charged for like services in the neighborhood where such services are rendered. [C., '73, § 1361; C., '97, § 2230; S., '13, § 2230; 40 Ex. G. A., H. F. 140, § 12.]

5324. Interest prohibited. No supervisor, trustee, or employee of the county, shall be directly or indirectly interested in any supplies furnished the poor. [C., '97, § 2230; S., '13, § 2230; 40 Ex. G. A., H. F. 140, § 12.]

5325. Special privileges to soldiers and others. No person who has served in the army or navy of the United States, or their widows or families, requiring public relief shall be sent to the county home when they can and prefer to be relieved to the extent above provided, and other persons and families may, at the discretion of the board, also be so relieved. [C., '73, § 1362; C., '97, § 2231; S., '13, § 2231.]

5326. County expense. All moneys expended as contemplated in the six preceding sec-

tions shall be paid out of the county treasury, after the proper account rendered thereof shall have been approved by the boards of the respective counties, and in all cases the necessary appropriations therefor shall be made by the respective counties. But the board may limit the amount thus to be furnished. [C., '73, § 1363; C., '97, § 2232.]

5327. Township trustees—duty. The trustees in each township, in counties where there is no county home, have the oversight and care of all poor persons in their township, and shall see that they receive proper care until provided for by the board of supervisors. [C., '51, § 819; R., '60, § 1387; C., '73, § 1364; C., '97, § 2233; S., '13, § 2233.]

5328. Application for relief. The poor must make application for relief to the trustees of the township where they may be, and, if the trustees are satisfied that the applicant is in such a state of want as requires relief at the public expense, they may afford such relief, subject to the approval of the board of supervisors, as the necessities of the person require, and shall report the case forthwith to the board of supervisors, who may continue or deny relief, as they find cause. [C., '51, § 820; R., '60, § 1388; C., '73, § 1365; C., '97, § 2234; S., '13, § 2234; 40 Ex. G. A., H. F. 140, § 13.]

5329. Allowance by board. The board of supervisors may examine into all claims, including claims for medical attendance, allowed by the township trustees for the support of the poor, and if they find the amount allowed by said trustees to be unreasonable, exorbitant, or for any goods or services other than for the necessaries of life, they may reject or diminish the claim as in their judgment would be right and just. This section shall apply to all counties in the state, whether there are county homes established in the same or not. This and the preceding section shall apply to acts of overseers of poor in cities as well as to township trustees. [C., '51, § 820; R., '60, § 1388; C., '73, § 1365; C., '97, § 2234; S., '13, § 2234; 40 Ex. G. A., H. F. 140, § 14.]

5330. Payment of claims. All claims and bills for the care and support of the poor shall be certified to be correct by the proper trustees and presented to the board of supervisors, and, if they are satisfied that they are reasonable and proper, they shall be paid out of the county treasury. [C., '51, § 821; R., '60, § 1389; C., '73, § 1366; C., '97, § 2235.]

5331. Interest in contract. In no case shall a trustee, or either of the trustees, nor overseer of the poor, draw an order upon himself, or upon either of the board, for supplies for the poor, except such trustees or overseer has a contract to furnish such supplies. [C., '73, § 1366; C., '97, § 2235.]

5332. Annual allowance. If a poor person of mature years and sound mind is likely to become a charge, the board may pay him such

an annual allowance as will not exceed the cost of maintenance in the ordinary way. [C., '51, § 822; R., '60, § 1390; C., '73, § 1367; C., '97, § 2236.]

5333. Appeal to supervisors. If any poor person, on application to the trustees, be refused the required relief, he may apply to the board of supervisors, who, upon examination into the matter, may direct the trustees to afford relief, or it may direct specific relief. [C., '51, § 823; R., '60, § 1391; C., '73, § 1368; C., '97, § 2237.]

5334. Contracts for support. The board of supervisors may make contracts with the lowest responsible bidder for furnishing any or all supplies, medical or dental attendance or services required for the poor, for a term not exceeding one year, or it may enter into a contract with the lowest responsible bidder, through proposals opened and examined at a regular session of the board, for the support of any or all the poor of the county for one year at a time, and may make all requisite orders to that effect, and shall require all such contractors to give bonds in such sum as it believes sufficient to secure the faithful performance of the same. [C., '51, § 825; R., '60, § 1393; C., '73, § 1369; C., '97, § 2238; 38 G. A., ch. 225, § 1.]

5335. Supervision. When a contract is made for the support of any or all the poor, the

board shall, from time to time, appoint some person to examine and report upon the manner the poor are kept and treated, which shall be done without notice to the person contracting for their support, and if upon due notice and inquiry the board find that the poor are not reasonably and properly supported and cared for, it may, at a regular or special session, set aside the contract, making proper allowances for the time it has been in force. [C., '51, § 826; R., '60, § 1394; C., '73, § 1370; C., '97, § 2239.]

5336. Employment. Any such contractor may employ a poor person in any work for which he is physically able, subject to the control of the board of supervisors, who may place said contractor under the supervision of the township trustees. [C., '51, § 827; R., '60, § 1395; C., '73, § 1371; C., '97, § 2240.]

5337. Poor tax. The expense of supporting the poor shall be paid out of the county treasury in the same manner as other disbursements for county purposes; and in case the ordinary revenue of the county proves insufficient for the support of the poor, the board may levy a poor tax, not exceeding three mills on the dollar, to be entered on the tax list and collected as the ordinary county tax. [C., '51, § 844; R., '60, § 1412; C., '73, § 1381; C., '97, § 2247; S., '13, § 2247; 40 G. A., ch. 110.]

CHAPTER 268

COUNTY HOMES

- 5338. Establishment—submission to vote.
- 5339. Management.
- 5340. Annual published report.
- 5341. Steward.
- 5342. Admission—labor required.

- 5343. Order for admission.
- 5344. Discharge.
- 5345. Visitation and inspection.
- 5346. Education of children.
- 5347. Letting out.

5338. Establishment—submission to vote. The board of supervisors of each county may order the establishment of a county home in such county whenever it is deemed advisable, and may make the requisite contracts and carry such order into effect, provided the cost of said county home, if in excess of fifteen thousand dollars, shall be first estimated by said board and approved by vote of the people. [C., '51, § 828; R., '60, § 1396; C., '73, § 1372; C., '97, § 2241; S. S., '15, § 2241; 39 G. A., ch. 273.]

NOTE: Submission of question, see § 5261.

5339. Management. The board of supervisors, or any committee appointed by it for that purpose, may make all contracts and purchases requisite for the county farm and home and may prescribe rules or regulations for the management and government of the same, and for the sobriety, morality, and industry of its occupants. [C., '51, § 833; R., '60, § 1401; C., '73, § 1373; C., '97, § 2242; S., '13, § 2242; 40 G. A., ch. 251, § 1.]

5340. Annual published report. The board of supervisors shall, during the month of January of each year, publish in the official papers of the county as part of its proceedings, a financial statement of the receipts of the county home, or county farm, itemizing the same and stating the source thereof, which report shall also set forth the total expenditures thereof and the value of the property on hand on January first of the year for which the report is made and a comparison with the inventory of the previous year. [38 G. A., ch. 260, § 1; 40 G. A., ch. 251, § 2.]

5341. Steward. The board may appoint a steward of the county home, who shall be governed in all respects by the rules and regulations of the board and its committees, and may be removed by the board at pleasure, and who shall receive such compensation, perform such duties, and give such security for his faithful performance as the board may direct. [C., '51, § 834; R., '60, § 1402; C., '73, § 1374; C., '97, § 2243; S., '13, § 2243.]

5342. Admission—labor required. The steward shall receive into the county home any person producing an order as hereafter provided, and enter in a book to be kept for that purpose, the name, age, and date of his reception, and may require of persons so admitted such reasonable and moderate labor as may be suited to their ages and bodily strength, the proceeds of which, together with the receipts of the poor farm, shall be appropriated to the use of the county home in such manner as the board may determine. [C., '51, §§ 835, 836; R., '60, §§ 1403, 1404; C., '73, §§ 1375, 1376; C., '97, § 2244; S., '13, § 2244; 40 G. A., ch. 251, § 3.]

5343. Order for admission. No person shall be admitted to the county home except upon the written order of a township trustee or member of the board of supervisors, and relief shall be furnished in the county home only, when the person is able to be taken there, except as hereinbefore otherwise provided. [C., '51, § 837; R., '60, § 1405; C., '73, § 1377; C., '97, § 2244; S., '13, § 2244; 40 G. A., ch. 251, § 4.]

5344. Discharge. When any inmate of the county home becomes able to support himself, the board must order his discharge. [C., '51, § 840; R., '60, § 1408; C., '73, § 1379; C., '97, § 2245; S., '13, § 2245.]

5345. Visitation and inspection. The board shall cause the county home to be visited at

least once a month by one of its body, who shall carefully examine the condition of the inmates and the manner in which they are fed and clothed and otherwise provided for and treated, ascertain what labor they are required to perform, inspect the books and accounts of the steward, and look into all matters pertaining to the county home and its inmates, and report to the board. [C., '51, § 842; R., '60, § 1410; C., '73, § 1380; C., '97, § 2246; S., '13, § 2246.]

5346. Education of children. Poor children, when cared for at the county home, shall attend the district school for the district in which such home is situated, and a ratable proportion of the cost of the school, based upon the attendance of such poor children to the total number of days' attendance thereat, shall be paid by the county into the treasury of such school district, and charged as part of the expense of supporting the county home. [C., '51, § 844; R., '60, § 1412; C., '73, § 1381; C., '97, § 2249; S., '13, § 2249.]

5347. Letting out. The board is invested with authority to let out the support of the poor, with the use and occupancy of the county home and farm, for a period not exceeding three years. [C., '51, § 847; R., '60, § 1415; C., '73, § 1382; C., '97, § 2248; S., '13, § 2248.]

CHAPTER 269

COUNTY PUBLIC HOSPITALS

- 5348. Petition—requirements.
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5348. Petition—requirements. When it is proposed to establish in any county a county public hospital, a petition shall be presented to the board of supervisors, signed by two hundred or more resident freeholders of such county, at least one hundred fifty of whom shall not be residents of the city, town, or village where it is proposed to locate such hospital, requesting said board to submit to the electors the proposition to issue bonds for the purpose of procuring a site, and erecting, equipping, and maintaining such hospital, and specifying the amount of bonds proposed to be issued for such purpose, which shall not exceed one hundred thousand dollars. [S., '13, §§ 409-a, 409-f; 40 Ex. G. A., H. F. 142, § 1.]

of supervisors shall submit to the voters of the county at the next general election the question of issuing bonds and levying a tax for such hospital in the form and manner required for the submission of public measures in the title on elections. [S., '13, §§ 409-a, 409-b; 40 Ex. G. A., H. F. 142, § 2.]

NOTE: See ch. 265.

5350. Submission at special election. Should said petition so request, and the board of supervisors unanimously so order, said proposition may be submitted at a special election to be called by said board in the manner provided by law for submitting propositions at special elections. [S., '13, §§ 409-a, 409-b; 40 Ex. G. A., H. F. 142, § 3.]

5349. Submission at general election. Upon the presentation of such petition, the board

5351. Bonds. Should a majority of all the votes cast upon the proposition at a general

election be in favor of establishing such hospital, the board of supervisors shall proceed to issue bonds of the county not to exceed the amount specified in said proposition, in denominations of not less than one hundred dollars nor more than one thousand dollars, drawing interest at a rate not to exceed five per cent per annum, payable annually or semi-annually. Said bonds shall be due and payable in twenty years from date of issuance, but at the option of the county payable at any time after five years from such date, and shall be substantially in the form provided for county bonds, and shall show on their face that they are county public hospital bonds payable only from the county public hospital fund as provided for in section 5353. [S., '13, §§ 409-a, 409-b, 409-f; 40 G. A., ch. 108, § 13; 40 Ex. G. A., H. F. 142, § 4.]

5352. Vote required at special election. Said proposition when presented at a special election shall not be deemed carried unless the number of votes cast at such special election is not less than a majority of the total number of votes cast at the last preceding general election in said county for governor, and unless said proposition receives at said special election a majority of the votes cast. [S., '13, §§ 409-a, 409-b; 40 Ex. G. A., H. F. 142, § 4-a1.]

5353. Tax levy. If the hospital be established, the board of supervisors, at the time of levying ordinary taxes, shall levy a tax at the rate voted, not to exceed two mills in any one year, for the erection and equipment thereof, and also a tax not to exceed two mills for the maintenance of the hospital as certified by the board of hospital trustees. The proceeds of such taxes shall constitute the county public hospital fund. [S., '13, §§ 409-b, 409-j; 39 G. A., ch. 95, § 1; 40 Ex. G. A., H. F. 142, § 5.]

5354. Sale of bonds. The county treasurer shall dispose of the bonds in the same manner as other county bonds, and the same shall not be sold for less than par with accrued interest. [S., '13, § 409-f; 40 Ex. G. A., H. F. 142, § 6.]

5355. Trustees — appointment — terms of office. When it has been determined by the voters of a county to establish a county public hospital, the board shall appoint seven trustees chosen from among the resident citizens of the county with reference to their fitness for such office, three of whom may be women, and not more than four of such trustees shall be residents of the city, town, or village at which such hospital is located. Such trustees shall hold office until the following general election, at which time their successors shall be elected, two for a term of two years, two for four years, and three for six years, and they shall determine by lot their respective terms, and thereafter their successors shall be elected for regular terms of six years each, none of whom shall be physicians or licensed practitioners. [S., '13, § 409-c; 38 G. A., ch. 398, § 1; 40 Ex. G. A., H. F. 142, § 7.]

5356. Vacancies. Vacancies in the board of trustees shall be filled in the same manner as original appointments, such appointees to hold office until the following general election. [S., '13, § 409-e; 40 Ex. G. A., H. F. 142, § 8.]

5357. Organization — meetings — quorum. Said trustees shall, within ten days after their appointment or election, qualify by taking the usual oath of office, but no bond shall be required of them, and organize by the election of one of their number as chairman and one as secretary. Said board shall meet at least once each month. Four members of said board shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings. [S., '13, § 409-d; 40 Ex. G. A., H. F. 142, § 9.]

NOTE: Oath of office, see § 1054.

5358. County treasurer. The county treasurer shall receive and disburse all funds under the control of said board of trustees, the same to be paid out only upon warrants drawn by the county auditor by direction of the board of supervisors after the claim for which the same is drawn has been certified to be correct by the said board of trustees. [S., '13, § 409-d; 40 Ex. G. A., H. F. 142, § 10.]

5359. Powers and duties. Said board of hospital trustees shall:

1. Purchase, condemn, or lease a site for such public hospital, and provide and equip suitable hospital buildings.
2. Cause plans and specifications to be made and adopted for all hospital buildings and equipment, and advertise for bids, as required by law for other county buildings, before making any contract for the construction of any such building or the purchase of such equipment.
3. Have general supervision and care of such grounds and buildings.
4. Employ a superintendent, a matron, and necessary assistants and employees, and fix their compensation.
5. Have control and supervision over the physicians, nurses, attendants, and patients in the hospital.
6. Cause one of its members to visit and examine said hospital at least twice each month.
7. Provide a suitable room for detention and examination of persons brought before the commissioners of insanity of the county, if such hospital is located at the county seat.
8. Determine whether or not any applicant is indigent and entitled to free treatment therein, and to fix the price to be paid by other patients admitted to such hospital for their care and treatment therein.
9. Fix at its regular August meeting in each year, the amount necessary for the improvement and maintenance of the hospital during the ensuing year, and cause the president and the secretary to certify the same to the county auditor before September first of each year.

10. File with the board of supervisors during the first week in January of each year, a report covering their proceedings with reference to such hospital, and a statement of all receipts and expenditures during the preceding calendar year.

11. Accept property by gift, devise, bequest, or otherwise. [S., '13, §§ 409-d, 409-g, 409-h, 409-j, 409-l, 409-m, 409-p, 409-r; 38 G. A., ch. 398, § 2; 40 Ex. G. A., H. F. 142, § 11.]

NOTE: Advertisement for bids, see § 5131.

5360. Optional powers and duties. The board of hospital trustees may:

1. Adopt by-laws and rules for its own guidance and for the government of the hospital.

2. Establish and maintain in connection with said hospital a training school for nurses.

3. Establish as a department in connection with said hospital a suitable building for the isolation and detention of persons afflicted with contagious diseases subject to quarantine.

4. Determine whether or not, and if so upon what terms, it will extend the privileges of the hospital to nonresidents of the county.

5. Adopt some suitable name other than county public hospital for hospitals either operating now, in process of construction, or to be established hereafter.

6. Operate said hospital as a tuberculosis sanatorium or provide as a department of such hospital suitable accommodation and means for the care of persons afflicted with tuberculosis.

7. Formulate rules and regulations for the government of tuberculosis patients and for the protection of other patients, nurses, and attendants from infection. [S., '13, §§ 409-d, 409-k, 409-o, 409-q; 38 G. A., ch. 398, §§ 3, 5; 40 Ex. G. A., H. F. 142, § 12.]

5361. Pecuniary interest prohibited. No trustee shall have, directly or indirectly, any pecuniary interest in the purchase or sale of any commodities or supplies procured for or disposed of by said hospital. [S., '13, § 409-d; 40 Ex. G. A., H. F. 142, § 13.]

5362. Hospital benefits—terms. Any resident of the county who is sick or injured shall be entitled to the benefits of such hospital, but every such person, except such as may have been found to be indigent and entitled to free care and treatment, shall pay to the board of hospital trustees reasonable compensation for care and treatment according to the rules and regulations established by the board.

To be entitled to hospital benefits, patient must at all times observe the rules of conduct prescribed by the board of hospital trustees. [S., '13, § 409-k; 40 Ex. G. A., H. F. 142, § 14.]

5363. Accounts—collection. It shall be the duty of the trustees either by themselves or through the superintendent to make collections of all accounts for hospital services rendered for others than indigent patients. Such account shall be payable on presentation

to the person liable therefor of an itemized statement and if not paid or secured within sixty days after such presentation the said trustees shall proceed to enforce collections by such legal proceedings as they may deem necessary.

All legal services for such purpose shall be performed by the county attorney without additional compensation. [40 Ex. G. A., H. F. 142, § 14-a1.]

5364. Discrimination. In the management of such hospital, no discrimination shall be made against the practitioners of any recognized school of medicine; and each patient shall have the right to employ at his expense any physician of his choice; and any such physician, when so employed by the patient, shall have exclusive charge of the care and treatment of the patient; and attending nurses shall be subject to the direction of such physician. [S., '13, § 409-n; 40 Ex. G. A., H. F. 142, § 15.]

5365. Compensation—expenses. No trustee shall receive any compensation for his services performed under this chapter, but he shall be reimbursed for any cash expenditures actually made for personal expenses incurred in the performance of his duties. An itemized statement of such expenses, verified by the oath of each such trustee, shall be filed with the secretary, and the same shall only be allowed by an affirmative vote of all trustees present at the meeting of the board. [S., '13, § 409-d; 40 Ex. G. A., H. F. 142, § 16.]

5366. Municipal jurisdiction. When such hospital is located on land outside of, but adjacent to a city or town, the ordinances of such city or town relating to fire and police protection and control, sanitary regulations, and public utility service, shall be in force upon and over such hospital and grounds, and such city or town shall have jurisdiction to enforce such ordinances. [S., '13, § 409-i; 40 Ex. G. A., H. F. 142, § 17.]

5367. County wards in public or private hospitals—levy. The board of supervisors of any county in which no county hospital has been established may, in its discretion, establish one or more wards in any public or private hospital situated in the county for the use of the county under such regulations as may be agreed upon with the board having such hospital in charge. For such purpose the board of supervisors may levy a tax not to exceed one-half of one mill. [39 G. A., ch. 83, § 1; 40 Ex. G. A., H. F. 142, § 18.]

5368. Occupancy of county wards. All questions as to the character of patients who shall occupy said wards so established and all rules regulating the occupancy thereof shall be determined by the board of supervisors in the same manner and with the same force and effect as in the case of patients assigned to the county hospital in counties having such. [39 G. A., ch. 83, § 2; 40 Ex. G. A., H. F. 142, § 19.]

CHAPTER 270

INDIGENT TUBERCULAR PATIENTS

5369. Care and treatment.
 5370. Separate buildings.
 5371. Appropriation for construction.
 5372. Allowance for support.

5369. Care and treatment. The board of supervisors of each county shall provide suitable care and treatment for indigent persons suffering from tuberculosis, and where no other suitable provision has been made, they may contract for such care and treatment with the board of trustees of any hospital, not maintained for pecuniary profit. [S., '13, § 409-s; S. S., '15, § 409-t2; 38 G. A., ch. 398, § 4; 40 Ex. G. A., H. F. 142, § 20.]

5370. Separate buildings. Said board of supervisors may construct, or otherwise provide, and equip suitable buildings in connection with any hospital in the county for the segregation, care, and treatment of patients afflicted with tuberculosis.

No institution, hospital, or building for the care and treatment of persons afflicted with tuberculosis shall be established at any county home. [S. S., '15, § 409-t3; 38 G. A., ch. 341, § 1; 40 Ex. G. A., H. F. 142, § 21.]

5371. Appropriation for construction. The board may, in counties having a population of over fifteen thousand and under sixty-seven thousand, appropriate a sum not exceeding five thousand dollars, and in counties of less than fifteen thousand, a sum not to exceed two thousand dollars for acquiring, constructing, and equipping sites and buildings, without submitting the question to a vote. [S. S., '15, § 409-t4; 40 Ex. G. A., H. F. 142, § 22.]

5372. Allowance for support. The board of supervisors shall allow, from the poor fund of the county, for the care and support of each tuberculous patient cared for in any such institution, a sum not exceeding fifteen dollars per week. [S. S., '15, § 409-t4; 40 Ex. G. A., H. F. 142, § 23.]

5373. Inspection by board of control. Any such department shall be inspected and ap-

proved by the board of control, which board shall have the power to require alterations in buildings and equipment, and such changes in treatment as may be necessary in order to make the institution and treatment conform to modern and accepted methods for the treatment of tuberculosis. [S. S., '15, § 409-t3; 38 G. A., ch. 341, § 1; 40 Ex. G. A., H. F. 142, § 24.]

5374. Refractory tubercular patients. Any person suffering from tuberculosis, who shall persistently refuse to obey or comply with the rules of any institution for the care of tuberculous patients, may, by order of the district court of the county in which such institution is located, be committed to the state sanatorium, subject to the rules of admission at said institution, or to any county sanatorium or other institution where tuberculous patients are treated. [38 G. A., ch. 398, § 4; 40 Ex. G. A., H. F. 142, § 25.]

5375. Segregation and forcible detention. If any patient being treated for tuberculosis at the state sanatorium, or any county sanatorium or other institution where tuberculosis is cared for, shall refuse to comply with the laws of the state or rules for the government of the institutions named herein, and shall persistently, or carelessly, or maliciously violate such laws or rules so as to menace the welfare of said institution or to interfere with the administration, order, or peace of said institution, then upon complaint of the superintendent of any institution herein designated, such person may, by order of the district court, be segregated and forcibly detained in a ward or room, for such purpose, and for such period of time as may be deemed advisable by the court, to the end that such person may be properly treated, and the population of such institution may be protected and the decorum maintained. [S., '13, § 409-q; 38 G. A., ch. 398, §§ 3, 4; 40 Ex. G. A., H. F. 142, § 26.]

CHAPTER 271

DETENTION HOSPITAL FOR CONTAGIOUS DISEASES

5376. Establishment.
5377. Bonds—tax levy.

5376. Establishment. When the board of supervisors of any county shall be presented with a petition signed by three hundred resident freeholders of the county, of whom two hundred shall be residents of the city, town, or village where it is proposed to establish and equip a hospital for the detention of persons suffering from any infectious or contagious disease, the board, when authorized by the vote of the people at an election called and held as provided in the chapter relating to county public hospitals, shall order the erection and equipment of such hospital, at a cost of not more than the amount voted, which shall in no event exceed the sum of forty thousand dollars. [38 G. A., ch. 239, § 1; 40 Ex. G. A., H. F. 142, § 27.]

5377. Bonds—tax levy. The board of supervisors shall issue the bonds of the county cov-

5378. Management and control.

ering the cost of the erection and equipment of said hospital, which bonds shall be payable at the option of the county at any time within fifteen years, and shall draw interest at the rate of not more than five per cent per annum, payable annually. The board shall make such levy as will pay the said bonds and interest thereon as they become due. Such funds shall be used for no other purpose. [38 G. A., ch. 239, § 1; 40 G. A., ch. 108, § 13; 40 Ex. G. A., H. F. 142, § 28.]

5378. Management and control. The establishment, maintenance, and control of such hospital shall be in accordance with the provisions of the chapter relating to county public hospitals, so far as applicable. [40 Ex. G. A., H. F. 142, § 29.]

CHAPTER 272

COUNTY AID FOR THE BLIND

5379. Aid authorized.
5380. Examiner for the blind.
5381. Duties of examiner—fee.

5379. Aid authorized. Any person declared to be blind, under the provisions of this chapter, if male over twenty-one and if female over eighteen years of age, who is not a charge of any charitable institution, and has not an income of over three hundred dollars per annum, and who has resided in Iowa five years and in the county one year immediately before applying therefor, may receive as a benefit the sum of not more than three hundred dollars per annum as the board of supervisors may determine. [S. S., '15, §§ 2722-i, 2722-j, 2722-k; 38 G. A., ch. 200, §§ 1, 2; 40 G. A., ch. 252, § 1.]

5380. Examiner for the blind. The board of supervisors in each county shall appoint a regular practicing physician who shall examine applicants for said benefit. [S. S., '15, § 2722-l; 40 G. A., ch. 252, § 2.]

5381. Duties of examiner—fee. The examiner of the blind shall examine all applicants referred to him by the board of supervisors, and indorse on the application a certificate showing whether the applicant is blind

5382. Application for relief.
5383. Duty of auditor.
5384. Payment.

or not. The examiner shall keep a register in which he shall enter the name, age, and place of residence of the applicant, and the facts ascertained by the examination, and enter the same on the certificate. He shall be paid from the county treasury for his services the sum of two dollars for each applicant examined. [S. S., '15, § 2722-m; 40 G. A., ch. 252, § 3.]

5382. Application for relief. Any person claiming benefits under the provisions of this chapter may go before the auditor of the county of his residence and make affidavit to the facts which bring him within its provisions, which shall be deemed an application for the benefit. The affidavit shall be accompanied by the affidavits of two reputable citizens, residents of the county, that they have known said applicant to be a resident of the state for five years and of the county for one year immediately preceding the filing of the application. The auditor shall present the matter to the board of supervisors, which shall refer the application to the examiner of the blind. [S. S., '15, § 2722-n; 40 G. A., ch. 252, § 4.]

5383. Duty of auditor. The auditor shall register the name, address, and number of the applicant, and date of the examination of each applicant who has been determined to be entitled to said benefit, and each year on or before the fifteenth day of January, he shall certify to the board of supervisors the name and address of each such applicant. [S. S., '15, § 2722-o; 40 G. A., ch. 252, § 5.]

5384. Payment. It shall be the duty of the board of supervisors of each county in this state to cause warrants to be drawn upon the county general fund, or poor fund at the dis-

cretion of the board, properly indorsed, payable to each of said persons in said county each quarter in each year thereafter, during the life of said persons, while they are residents of said county and while said disability continues. Where the beneficiary under the provisions of this chapter is for any cause unable to judiciously expend said fund, the same may be paid to the overseer of the poor or some person appointed by the board of supervisors, who shall expend the same for the use and benefit of the beneficiary. [S. S., '15, §§ 2722-i, 2722-p; 40 G. A., ch. 252, § 6.]

CHAPTER 273

RELIEF FOR SOLDIERS, SAILORS, AND MARINES

- 5385. Tax.
- 5386. Control of fund—present commissioners.
- 5387. Relief commission.
- 5388. Appointment—vacancies.
- 5389. Qualification—organization.
- 5390. Meetings—report—levy.

- 5391. Names certified—relief changed—report.
- 5392. Disbursements.
- 5393. Burials—expenses.
- 5394. Headstone.
- 5395. Expenses and audit thereof.
- 5396. Markers for graves.

5385. Tax. A tax not exceeding one-half mill on the dollar may be levied by the board of supervisors upon all taxable property within the county, to be collected at the same time and in the same manner as other taxes, to create a fund for the relief of, and to pay the funeral expenses of honorably discharged, indigent United States soldiers, sailors, marines, and nurses who served in the military or naval forces of the United States in any war and their indigent wives, widows, and minor children, not over fourteen years of age if boys, nor sixteen if girls, having a legal residence in the county. [C., '97, § 430; S. S., '15, § 430; 40 Ex. G. A., H. F. 144, § 1.]

5386. Control of fund—present commissioners. Said fund shall be expended for the purposes aforesaid by the joint action and control of the board of supervisors and the relief commission hereinafter provided for. The term of office of members of said commission now serving shall expire on the first day of September next after the taking effect of this code at which time the board of supervisors shall appoint a new commission under section 5388. [S. S., '15, § 430; 40 Ex. G. A., H. F. 144, § 2.]

5387. Relief commission. Said fund shall be disbursed by the soldiers' relief commission, which shall consist of three persons, two of whom shall be honorably discharged soldiers, sailors, marines, or nurses of the United States who served in the military or naval forces of the United States in any war. [C., '97, § 431; 40 Ex. G. A., H. F. 144, § 3.]

5388. Appointment—vacancies. Members of said commission shall be appointed by said board at the regular meeting in September, and the first appointees shall hold their office for one, two, and three years, respectively, and

until their successors shall be appointed and qualify, and thereafter one shall be appointed each year for a term of three years. Any appointee may be removed at any time by said board for neglect of duty or maladministration. Vacancies shall be filled by appointment by the board. [C., '97, § 431; 40 Ex. G. A., H. F. 144, § 3.]

5389. Qualification—organization. They shall qualify by taking the usual oath of office, and give bond in the sum of five hundred dollars each, conditioned for the faithful discharge of their duties with sureties to be approved by the county auditor. The commission shall organize by the selection of one of their number as chairman, and one as secretary. [C., '97, § 431; 40 Ex. G. A., H. F. 144, § 4.]

NOTE: Oath, see § 1054.

5390. Meetings—report—levy. The commission shall meet annually at the county auditor's office on the second Monday in September, and at such other times as may be necessary. At the annual meeting it shall determine who are entitled to relief and the probable amount required to be expended therefor, which sum it shall certify to the board, together with a list of those found to be entitled to relief, and the sum to be paid in each case. The board at its regular September meeting shall levy a sufficient tax to raise such amount. [C., '97, § 432; S., '13, § 432; 40 Ex. G. A., H. F. 144, § 5.]

5391. Names certified—relief changed—report. Upon the filing of the list with the board of supervisors, the county auditor shall, within twenty days thereafter, transmit to the township clerks in the county the names of those, if any, to whom relief has been awarded, and the amount. The amount awarded to any per-

son may be increased, decreased, or discontinued by the commission at any regular meeting. New names may be added and certified thereat, and it shall, at the close of each year, make annual detailed reports to the board of its work, which shall be accompanied with the proper vouchers for all moneys disbursed by it. [C., '97, § 432; S., '13, § 432; 40 Ex. G. A., H. F. 144, § 6.]

5392. Disbursements. On the first Monday of each month after the fund is ready for distribution, the auditor shall issue his warrant to the commission for the sums thus awarded, and it shall proceed to disburse the same to the parties named in the list, or disbursements may be made in any other manner the commission may direct. Receipts shall be taken for all payments. [C., '97, § 432; S., '13, § 432; 40 Ex. G. A., H. F. 144, § 7.]

5393. Burial—expenses. The board shall designate some suitable person in each township to cause to be decently interred in a suitable cemetery and not in any cemetery or part thereof used exclusively for the burial of the pauper dead, the body of any honorably discharged soldier, sailor, marine, or nurse of the United States, who served in the military or naval forces of the United States during any war, or his wife, widow, or child, if any such person has died without leaving sufficient means to defray the funeral expenses. The commission shall pay such expenses in a sum not exceeding one hundred dollars in any case. [C., '97, § 433; S., '13, § 433; 40 G. A., ch. 111, § 1; 40 Ex. G. A., H. F. 144, § 8.]

5394. Headstone. The grave of each soldier, sailor, marine, or nurse shall be marked by a headstone, showing his name and the organization to which he belonged or in which he

served. The headstone shall be of such design and material as may be approved by the board of supervisors, and shall cost not more than fifteen dollars. If, however, a headstone of the above general description shall be provided by the national government or if a tombstone shall be furnished by private persons for such grave, the headstone herein provided for need not be provided at county expense. [C., '97, § 434; 40 Ex. G. A., H. F. 144, § 9.]

5395. Expenses and audit thereof. The expenses of such burial and headstone shall be paid by the county in which such person died. If such person is a resident of a different county at the time of death, the latter county shall reimburse the county wherein he died for the cost of such burial and headstone. In either case, the board of supervisors of such respective counties shall audit the account and pay the same from the funds provided for in this chapter in such manner as other claims are audited and paid. [C., '97, § 434; 40 Ex. G. A., H. F. 144, § 10.]

5396. Markers for graves. The soldiers' relief commission in any county shall, upon the petition of five reputable freeholders of any township or municipality in their county, procure for and furnish to said petitioners some suitable and appropriate metal marker, at a cost not exceeding one dollar each, for the grave of each honorably discharged soldier, sailor, marine, or nurse of the United States, who served in the military or naval forces of the United States during any war, who is buried within the limits of said township or municipality, to be placed at his grave to permanently mark and designate said grave for memorial purposes. The expenses thereof shall be paid from any funds raised as provided in this chapter. [S. S., '15, § 434-a; 40 Ex. G. A., H. F. 144, § 11.]

CHAPTER 274

OFFICIAL NEWSPAPERS

- 5397. Time of selection.
- 5398. Source of selection.
- 5399. Number.
- 5400. Application—contest.
- 5401. Contest—verified statements.
- 5402. Determination of contest—evidence.
- 5403. Tie lists.
- 5404. Fraudulent lists.

- 5405. New date fixed if all rejected.
- 5406. Appeal.
- 5407. Transcript.
- 5408. Trial of appeal.
- 5409. Publication pending contest.
- 5410. Division of compensation.
- 5411. What published.
- 5412. Cost.

5397. Time of selection. The board of supervisors shall, at the January session each year, select the newspapers in which the official proceedings shall be published for the ensuing year. [R., '60, § 314; C., '73, § 307; C., '97, § 441; S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 1.]

5398. Source of selection. Such selection shall be from newspapers published, and having the largest number of bona fide yearly subscribers, within the county. When counties

are divided into two divisions for district court purposes, each division shall be regarded as a county. [C., '73, § 307; C., '97, § 441; S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 2.]

5399. Number. The number of such newspapers to be selected shall be as follows:

1. In counties having a population of less than fifteen thousand, two such newspapers, or one, if there be but one published therein.
2. In all other counties, three such newspapers, not more than two of which shall be

published in the same city or town. [C., '73, § 307; C., '97, § 441; S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 3.]

5400. Application—contest. Any publisher who desires that his newspaper be so selected may make written application therefor to the board of supervisors at any time prior to the making of the selection. If more applications are filed than there are newspapers to be selected, a contest shall exist. [40 Ex. G. A., S. F. 145, § 4.]

5401. Contest—verified statements. In case of a contest, each applicant shall deposit with the county auditor, in a sealed envelope, a statement, verified by him, showing the names of his bona fide yearly subscribers living within the county and the place at which each such subscriber receives such newspaper, and the manner of its delivery. [C., '97, § 441; S. S., '15, § 441; 37 G. A., ch. 408, § 1; 40 Ex. G. A., S. F. 145, § 5.]

5402. Determination of contest—evidence. The county auditor shall, on the direction of the board while it is in session, open said envelopes. The board may receive other evidence of circulation. In counties in which two newspapers are to be selected, the two newspapers showing the largest number of bona fide yearly subscribers living within the county shall be selected as such official newspapers. In counties in which three newspapers are to be selected, the three showing the largest number of such subscribers shall be selected except when such three newspapers are all published in the same city or town, in which case the two newspapers in such city or town having the largest lists of such subscribers and the newspaper having the next largest list of such subscribers and published outside such city or town, shall be selected as such official newspapers. [C., '97, § 441; S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 6.]

5403. Tie lists. When newspapers are, by equality of circulation, equally entitled to such selection, the board shall, in the presence of the contestants, determine the question by lot. [40 Ex. G. A., S. F. 145, § 7.]

5404. Fraudulent lists. No newspaper shall be selected as an official newspaper when it is made to appear that the verified list deposited by the applicant contains the names of persons who are not bona fide subscribers within the county and that such names were knowingly and wilfully entered on such list by the applicant, or at his instance, with intent to deceive the board. [S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 8.]

5405. New date fixed if all rejected. If all certified statements are rejected under the provisions of the preceding section, the board shall fix a new date for the selection of official newspapers and nothing herein shall be construed to prevent the applicants so rejected from filing new certified statements. [S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 9.]

5406. Appeal. Any applicant may, within twenty days after the selection of official newspapers, appeal to the district court from the decision of the board of supervisors as to the selection of any or all newspapers so selected by filing in the office of the county auditor a bond for costs, in a sum and with sureties to be approved by said auditor, and by serving upon each applicant, whose selection he desires to contest, and the county auditor, a notice of appeal. [S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 10.]

5407. Transcript. The auditor shall forthwith file with the clerk of the district court a transcript of all the proceedings before the board, together with all papers filed in connection with said matter. [S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 11.]

5408. Trial of appeal. Said appeal shall be for trial de novo as an equitable action without formal pleadings at the first term following the filing of such transcript. [S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 12.]

5409. Publication pending contest. After the selection by the board of supervisors of official newspapers, no publisher shall receive pay for publishing official proceedings until the contest is finally determined, in so far as he is concerned. [C., '97, § 441; S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 13.]

5410. Division of compensation. If in any county the publishers of two or more newspapers, at least one of which by reason of its location and circulation is entitled to be selected as a county official newspaper, have entered into an agreement to publish the official proceedings or have united in a request to have their publication selected for such purposes, and such agreement or request has been filed with the board of supervisors prior to the naming of the official newspapers, the board of supervisors shall designate each of them a county official newspaper, but the combined compensation of the newspapers so requesting or agreeing, added to that of the other official newspaper or newspapers, if any, shall not exceed the combined compensation allowed by law to two official newspapers in counties having a population below fifteen thousand or to three official newspapers in counties having a population of fifteen thousand or more. [S. S., '15, § 441; 38 G. A., ch. 82, § 1; 40 Ex. G. A., S. F. 145, § 14.]

5411. What published. There shall be published in each of said official newspapers at the expense of the county during the ensuing year:

1. The proceedings of the board of supervisors, including their proceedings as a canvassing board of the various elections as provided by law.

2. The schedule of bills allowed by said board.

3. The reports of the county treasurer, including a schedule of the receipts and expenditures of the county.

4. A synopsis of the expenditures of township trustees for road purposes as provided by law. [R., '60, § 313; C., '73, § 304; C., '97, § 441; S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 15.]

5412. **Cost.** The cost of official publications provided for in the preceding section

shall not exceed thirty-three and one-third cents for each ten lines of brevier type or its equivalent for each insertion. No such official publication shall be printed in type smaller than six-point. [C., '73, § 307; C., '97, § 441; S. S., '15, § 441; 40 Ex. G. A., S. F. 145, § 16.]

CHAPTER 275

BOUNTIES ON WILD ANIMALS

5413. Certain animals.
5414. Optional bounties.
5415. Additional bounties.
5416. Filing claims—proofs.

5417. Showing required.
5418. Auditor to destroy proofs.
5419. False claim.

5413. **Certain animals.** The board of supervisors of each county shall allow and pay from the county treasury bounties for wild animals caught and killed within the county as follows:

For each adult wolf, ten dollars.
For each cub wolf, four dollars.
For each lynx, one dollar.
For each wildcat, one dollar.
For each pocket gopher, ten cents. [R., '60, § 2193; C., '73, § 1487; C., '97, § 2348; S., '13, §§ 2348, 2348-a; 38 G. A., ch. 249, § 1; 40 G. A., ch. 253, § 1.]

5414. **Optional bounties.** The board may by resolution adopted and entered of record authorize the payment of bounties as follows:

For each crow, ten cents.
For each groundhog, twenty-five cents.
For each rattlesnake, fifty cents. [S., '13, §§ 2348-d, 2348-g, 2348-j; 40 G. A., ch. 253, § 2.]

5415. **Additional bounties.** The board may determine what bounties, in addition to those named in the two preceding sections, if any, shall be offered and paid by the county on the scalps of such wild animals taken and killed within the county as it may deem it expedient to exterminate, but no such bounty shall exceed five dollars. [C., '73, § 303; C., '97, § 422; S. S., '15, § 422; 40 G. A., ch. 253, § 3.]

5416. **Filing claims—proofs.** All claims for bounties shall be verified by the claimant, and filed with the county auditor, with such other proof as may be required by the board. [R., '60, § 2195; C., '73, § 1487; C., '97, § 2348; S., '13, §§ 2348, 2348-b, 2348-e; 38 G. A., ch. 249, § 1; 40 G. A., ch. 253, § 4.]

5417. **Showing required.** The verified claim shall show that each animal for which bounty is claimed was caught and killed within the county within thirty days next prior to the filing of the claim, and the claimant shall exhibit before the county auditor:

1. The whole skin of each wolf, lynx, or wildcat.
2. Both front feet and claws of each gopher.
3. The head and feet of each crow.
4. The head or scalp of each groundhog.
5. Two inches of the tail, with rattles attached, of each rattlesnake. [R., '60, § 2194; C., '73, § 1488; C., '97, § 2348; S., '13, §§ 2348, 2348-a-2348-f, 2348-h, 2348-i, 2348-k; 38 G. A., ch. 249, § 1; 40 G. A., ch. 253, § 5.]

5418. **Auditor to destroy proofs.** The auditor shall:

1. Destroy or deface the skin of each wolf, lynx, and wildcat so as to prevent their use in obtaining another bounty, and may return to the owner any such defaced skins, and the rattles of any rattlesnake.

2. Destroy the heads, scalps, feet, claws, and other portions required to be exhibited of such animals. [R., '60, § 2194; C., '73, § 1488; C., '97, § 2348; S., '13, §§ 2348, 2348-f, 2348-l; 38 G. A., ch. 249, § 1; 40 G. A., ch. 253, § 6.]

5419. **False claim.** Any person who shall claim or attempt to procure any bounty provided for in this chapter upon any animal killed in another state or county, or upon any animal which has been domesticated, or who shall attempt to obtain any bounty by presenting any false claim or spurious exhibit, shall be fined not more than one hundred dollars nor less than fifty dollars for each offense. [C., '97, § 2348; S., '13, § 2348; 38 G. A., ch. 249, § 1; 40 G. A., ch. 253, § 7.]

CHAPTER 276

DOGS AND LICENSING THEREOF

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- 5449. Right to kill licensed dog.
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5420. Annual license. The owners of all dogs three months old or over, except dogs kept in kennels and not allowed to run at large, shall annually obtain license therefor, as herein provided. [C., '97, § 458; S., '13, § 458; 37 G. A., ch. 50, § 2; 39 G. A., ch. 140, §§ 1, 13; 40 Ex. G. A., H. F. 71, § 53.]

5421. "Owner" defined. The term "owner" shall, in addition to its ordinary meaning, include any person who keeps or harbors a dog. [C., '97, § 457; 39 G. A., ch. 140, § 2; 40 Ex. G. A., H. F. 71, § 54.]

5422. Application by owner. The owner of a dog for which a license is required shall, on or before the fifteenth day of January of each year, apply to the auditor of the county in which he resides for a license for each dog owned by him. [37 G. A., ch. 50, § 2; 39 G. A., ch. 140, § 1; 40 G. A., ch. 99, § 1; 40 Ex. G. A., H. F. 71, § 55.]

5423. Subsequent application. Such application for license may be made after January fifteenth and at any time for a dog which has come into the possession or ownership of the applicant, or which has reached the age of three months after said date. [40 Ex. G. A., H. F. 71, § 56.]

5424. Form of application. Such applications shall be in writing on blanks provided by the county auditor and shall state the breed, sex, age, color, markings, and name, if any, of the dog, and address of the owner and be signed by him. [39 G. A., ch. 140, §§ 1, 3; 40 G. A., ch. 99, § 2; 40 Ex. G. A., H. F. 71, § 57.]

5425. Fee. The annual license fee shall be one dollar for each male, and three dollars for each female dog. Should it appear that said fees will not produce sufficient funds to pay

the claims on the domestic animal fund, the board of supervisors shall have power, except as to dogs owned in cities and towns which exact a license fee on dogs, to increase the said fees to a sum not exceeding three dollars for each male, and not exceeding five dollars for each female dog. A spayed female dog shall be deemed a male. Said fee shall be sent with the application. [C., '97, § 458; S., '13, § 458; 37 G. A., ch. 50, § 2; 39 G. A., ch. 140, § 1; 40 Ex. G. A., H. F. 71, § 58.]

5426. Tag. The county auditor shall, upon receipt of said application, deliver or mail to the applicant a license which shall be in the form of a metal tag stamped as follows:

1. The year in which issued.
2. Name of county issuing it.
3. Serial number as shown by the record book in the office of the county auditor. [37 G. A., ch. 50, § 2; 39 G. A., ch. 140, §§ 1, 3; 40 Ex. G. A., H. F. 71, § 60.]

5427. Use of tag. Said tag shall be attached by the owner to a substantial collar and, during the term of the license, shall be at all times kept on the dog for which the license is issued. Upon the expiration of the license the owner shall remove said tag from the dog. [37 G. A., ch. 50, § 2; 39 G. A., ch. 140, § 1; 40 Ex. G. A., H. F. 71, § 61.]

5428. Duration of license. All licenses shall expire on January fifteenth of the year following the date of issuance. [39 G. A., ch. 140, § 1; 40 Ex. G. A., H. F. 71, § 62.]

5429. Transfer on change of ownership. When the permanent ownership of a dog is transferred, the license may be transferred by the auditor by notation on the license record, giving name and address of the new owner.

[39 G. A., ch. 140, § 4; 40 G. A., ch. 99, § 3; 40 Ex. G. A., H. F. 71, § 63.]

5430. Transfer on change of residence. When a dog license in one county is permanently transferred to another county, the owner shall surrender the original license tag to the auditor of the county to which the dog is removed. The auditor shall preserve the surrendered tag, and, without license fee, issue a new license tag. The auditor shall note on the license record the fact that the newly issued license tag is issued to effect a transfer of, and is in lieu of, such surrendered license tag. [39 G. A., ch. 140, § 4; 40 G. A., ch. 99, § 3; 40 Ex. G. A., H. F. 71, § 64.]

5431. Fee on transfer. The auditor, on making any transfer, shall collect a fee of twenty-five cents. [39 G. A., ch. 140, § 4; 40 G. A., ch. 99, § 3; 40 Ex. G. A., H. F. 71, § 65.]

5432. Tag not transferable. A license tag issued for one dog shall not be transferable to another dog. [39 G. A., ch. 140, § 4; 40 G. A., ch. 99, § 3; 40 Ex. G. A., H. F. 71, § 66.]

5433. Duplicate tag. Upon the filing of an affidavit that the license tag has been lost or destroyed, the owner may obtain another tag on the payment of twenty-five cents. The auditor shall enter in the license record the new number assigned. [40 Ex. G. A., H. F. 71, § 67.]

5434. Assessors to list dogs — fees. Each assessor shall, at the time of listing property for assessment, list and return to the county auditor the names of all persons who own or harbor dogs, and indicate on such list whether the dogs be male, female, or spayed, and the number thereof. For such service the assessor shall receive, from the domestic animal fund, and in addition to any and all other fees or compensation allowed to him by law, the sum of ten cents for each dog reported, which fee shall be paid in full when return is made. [C., '97, § 457; 39 G. A., ch. 140, § 6; 40 Ex. G. A., H. F. 71, § 68.]

5435. Delinquency. All license fees shall become delinquent on the first day of June of the year in which they are due and payable and a penalty of one dollar shall be added to each unpaid license on and after said date. [39 G. A., ch. 140, § 10; 40 G. A., ch. 99, § 4; 40 Ex. G. A., H. F. 71, § 69.]

5436. Duty of auditor. The county auditor shall, between the first and the twentieth day of May, cause to be published, once in each of the official papers of the county, a list of the names of all owners of unlicensed dogs as shown by a comparison of his license record and the assessors' returns, or as otherwise known by him. [39 G. A., ch. 140, § 10; 40 G. A., ch. 99, § 4; 40 Ex. G. A., H. F. 71, § 70.]

5437. Form of notice — exemption. Said publication shall notify each owner that he may appear before the auditor on or before

May thirty-first following, and, by affidavit show cause why the license fee, penalty, and costs should not be assessed against him as a tax, and no exemption from such taxation shall be granted by the auditor except on the affidavit of such owner, filed and preserved by the auditor. [40 Ex. G. A., H. F. 71, § 70.]

5438. Cost of publication. The cost of publishing the list of delinquent owners shall be paid in full from the domestic animal fund, upon the filing of proper proofs. [39 G. A., ch. 140, § 10; 40 G. A., ch. 99, § 4; 40 Ex. G. A., H. F. 71, § 71.]

5439. Penalties and costs. If the license is paid upon any dog after publication and before June first there shall be collected in addition to the license fee the costs of publication. If such license is collected on or after June first, in addition to the license fee the auditor or treasurer shall collect a penalty of one dollar and costs of publication. [39 G. A., ch. 140, § 10; 40 G. A., ch. 99, § 4; 40 Ex. G. A., H. F. 71, § 72.]

5440. Certification of list. Immediately following said May thirty-first, the auditor shall, except as to persons to whom he has granted exemption, certify to the county treasurer:

1. The name of the owner of each unlicensed dog.

2. The number of dogs so owned by said person and the sex thereof.

3. The amount of the unpaid license fee, plus a penalty of one dollar for each dog, and a pro rata part of the cost of publication. [39 G. A., ch. 140, § 10; 40 G. A., ch. 99, § 4; 40 Ex. G. A., H. F. 71, § 73.]

5441. Entry of tax. On receipt of said certificate, the treasurer shall at once enter, as a tax, against each person the amount therein indicated as owing by him, and said tax shall be attended with the same consequences, and be collected in the same manner, as ordinary taxes. [39 G. A., ch. 140, § 10; 40 G. A., ch. 99, § 4; 40 Ex. G. A., H. F. 71, § 74.]

5442. Penalties. The violation of any of the foregoing provisions of this chapter, or the removal of a license tag from a dog prior to the expiration of the license, by any person who is not the owner thereof or the agent of such owner, shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days. [37 G. A., ch. 50, § 2; 39 G. A., ch. 140, §§ 8, 9; 40 Ex. G. A., H. F. 71, § 75.]

5443. Duty to account. The auditor shall make prompt payment to the county treasurer of all funds received hereunder. The treasurer shall keep said funds, together with all tax collections as herein provided, as the domestic animal fund. [C., '97, § 459; S., '13, § 458-b; 39 G. A., ch. 140, § 5; 40 Ex. G. A., H. F. 71, § 76.]

5444. Record book. The county auditor shall keep a book to be known as the record of licenses which shall show:

1. The serial number and date of each application for a license.

2. The description of dog as specified in the application, together with the name of the owner of said dog.

3. The date when each license tag is issued and the serial number of such tag.

4. The amount of all fees, licenses, penalties, and costs paid to him.

5. Such other data as the law may require. [40 Ex. G. A., H. F. 71, § 77.]

5445. Forms. All forms for blanks and tags, including proper columns in the assessors' books in which to note the ownership of dogs, shall be prepared by the auditor. All such blanks and tags shall be furnished by the county. [S., '13, § 458-a; 39 G. A., ch. 140, §§ 1, 11; 40 G. A., ch. 99, § 1; 40 Ex. G. A., H. F. 71, § 78.]

5446. Taxation of dogs—municipal license. Dogs kept in kennels and not allowed to run at large shall be taxed as personal property. Dogs licensed as herein provided shall not be so taxed. Cities and towns may license dogs in addition to the license herein required. [39 G. A., ch. 140, §§ 1, 13; 40 Ex. G. A., H. F. 71, § 79.]

5447. Dog as property. All dogs under three months of age, and all dogs over said age and wearing a collar with a valid license tag attached thereto, shall be deemed property. Dogs not so provided with license tag shall not be deemed property. [39 G. A., ch. 140, § 12; 40 G. A., ch. 99, § 5; 40 Ex. G. A., H. F. 71, § 80.]

5448. Right and duty to kill unlicensed dog. It shall be lawful for any person, and the duty of all peace officers within their respective jurisdictions, to kill any dog for which a license is required, when such dog is not wearing a collar with license tag attached as herein provided. [37 G. A., ch. 50, § 3; 39 G. A., ch. 140, § 7; 40 Ex. G. A., H. F. 71, § 81.]

5449. Right to kill licensed dog. It shall be lawful for any person to kill a dog, licensed and wearing a collar with license tag attached, when such dog is caught in the act of worrying, chasing, maiming, or killing any domestic animal or fowl, or when such dog is attacking or attempting to bite a person. [C., '73, § 1485; C., '97, § 2340; S., '13, § 2340; 37 G. A., ch. 50, § 3; 39 G. A., ch. 140, § 7; 40 Ex. G. A., H. F. 71, § 82.]

5450. Liability for damages. The owner of any dog, whether licensed or unlicensed, shall be liable to the party injured for all damages done by said dog, except when the party damaged is doing an unlawful act, directly contributing to said injury. This section shall not apply to any damage done by a dog affected with hydrophobia unless the owner of such dog had reasonable grounds to know that such dog was afflicted with said malady, and by reasonable effort might have prevented the injury. [C., '73, § 1485; C., '97, § 2340; S., '13, § 2340; 40 Ex. G. A., H. F. 71, § 83.]

5451. Construction clause. A holding that one or more sections hereof are unconstitutional shall not be held to invalidate the remaining sections. [39 G. A., ch. 140, § 14; 40 Ex. G. A., H. F. 71, § 84.]

CHAPTER 277

DOMESTIC ANIMAL FUND

5452. Claims.

5453. Forms of claims.

5454. Allowance of claims.

5452. Claims. Any person damaged by the killing or injury of any domestic animal or fowl by wolves, or by dogs not owned by said person, may, within ten days from the time he or his agent has knowledge of such killing or injury, file with the county auditor of the county in which such killing or injury occurred a claim for such damage. [S., '13, § 458-c; 40 Ex. G. A., H. F. 71, § 85.]

5453. Forms of claims. Claims aforesaid shall state the amount of damages, a detailed statement of the facts attending the killing or injury and be verified by affidavit of at least two disinterested persons not related to claimant. [S., '13, § 458-c; 40 Ex. G. A., H. F. 71, § 86.]

5454. Allowance of claims. The board shall act on such claims within a reasonable time, and allow such part thereof as it may

5455. Warrants and payment.

5456. Certified list of warrants.

5457. Transfer of funds.

deem just. When a claim is allowed, the value of each animal or fowl killed or injured shall be entered of record. [S., '13, § 458-c; 40 Ex. G. A., H. F. 71, § 87.]

5455. Warrants and payment. Warrants for allowed claims shall be payable January first following their issuance and only from the domestic animal fund. [S., '13, § 458-c; 40 Ex. G. A., H. F. 71, § 88.]

5456. Certified list of warrants. The auditor shall, on January first of each year, certify to the treasurer an itemized list of all warrants issued during the preceding year on the domestic animal fund, except warrants issued to pay fees of assessors and to defray costs of publication. If said fund be sufficient, the treasurer shall pay said warrants on presentation. If said fund be not sufficient, said warrants shall be paid pro rata. [S., '13, §

458-d; 38 G. A., ch. 15, § 1; 40 Ex. G. A., H. F. 71, § 89.]

5457. Transfer of funds. When the balance in the said fund, after paying the warrants aforesaid, exceeds five hundred dollars, the board of supervisors may order the excess transferred to the general fund of the county. If within five years following such transfer,

the amount in the domestic animal fund proves insufficient in any one year to pay all duly allowed claims thereon, the board shall transfer from said general fund to the domestic animal fund an amount, not exceeding the amount originally transferred, sufficient to pay the unpaid part of said warrants. [S., '13, § 458-d; 40 Ex. G. A., H. F. 71, § 90.]

CHAPTER 278

RELOCATION OF COUNTY SEATS

5458. Time of application—limitation.
5459. Petition.
5460. Hearing.
5461. Notice.
5462. Remonstrances—filing.
5463. Objections—evidence.
5464. Rejection of petition or remonstrance.
5465. Canvass.

5466. Election.
5467. Submission of question.
5468. Notice.
5469. Conduct of election—form of proposition.
5470. Vote necessary.
5471. Removal in certain cases.
5472. Removal of records postponed.
5473. Proof of service.

5458. Time of application—limitation. Petitions for the relocation of a county seat shall be made to the board of supervisors at its regular June session and not oftener than once in five years. [R., '60, § 231; C., '73, §§ 281, 288; C., '97, § 396; 40 G. A., ch. 254, § 1.]

5459. Petition. Said petition may be in different parts and shall be filed with the county auditor at least sixty days before said June session, and shall:

1. Designate the city or town at which the petitioners desire to have the county seat relocated.

2. Be signed by none but legal voters of the county.

3. Contain the section, township, and range on which, or the town, precinct, or ward if in a city, in which the petitioner resides.

4. Give the age and time of residence in the county of such petitioner.

5. Be accompanied at the time of filing by affidavits of one or more residents of the county, stating:

a. That the signers of the petition were, at the time of signing, legal voters of said county.

b. The number of signers to the petition at the time the affidavit is made. [R., '60, §§ 232, 233; C., '73, § 282; C., '97, § 397; 40 G. A., ch. 254, § 2.]

5460. Hearing. Upon the filing of the petition, the county auditor shall fix a time for the hearing thereon before the board of supervisors, which time shall not be less than sixty nor more than ninety days after the first publication, or after the completed posting, of the notice hereinafter provided for. [40 G. A., ch. 254, § 3.]

5461. Notice. The county auditor shall forthwith cause a notice of the filing of such petition and of the time of hearing thereon, to be published once each week for three consecutive weeks in a newspaper published in the county; if there be no newspaper published

in the county, the auditor shall cause said notice to be posted in a public place in each township in the county, and also on the door of the courthouse. [R., '60, § 235; C., '73, § 284; C., '97, § 399; S., '13, § 399; 40 G. A., ch. 254, § 4.]

5462. Remonstrances—filing. Remonstrances against such relocation, signed by voters with like qualifications, and in all respects as required of petitioners, and verified in the same manner, may be filed with the auditor ten days prior to the date of hearing as stated in said notice. [R., '60, § 239; C., '73, § 283; C., '97, § 398; 40 G. A., ch. 254, § 5.]

5463. Objections—evidence. Objections to the legal sufficiency of either the petition or remonstrance, or any part thereof, may be filed at any time before the hearing commences. The reception of such objections during the hearing shall be at the discretion of the board. The board may disregard any objection which is not specific, or may require it to be made specific. The board may receive evidence with reference to any material fact. [40 G. A., ch. 254, § 6.]

5464. Rejection of petition or remonstrance. A petition which fails to distinctly state the city or town at which the petitioners desire to have the county seat relocated shall be rejected without further investigation; likewise a petition or remonstrance which is not accompanied by the required affidavits. [40 G. A., ch. 254, § 7.]

5465. Canvass. If the petition be found to be sufficient as provided in the preceding section, the board shall proceed to canvass the same, and also the remonstrance if it be found to be sufficient. In such canvass the board shall proceed as follows:

1. It shall strike from both the petition and the remonstrance all names which do not appear therein in the form required by this chapter.

2. It shall strike from both the petition and the remonstrance the names of all persons shown not to have been legal voters of the county at the time of signing.

3. It shall also strike from the petition and remonstrance all names not placed thereon within sixty days next preceding the filing of the petition or remonstrance.

4. It shall, after the foregoing has been determined, strike from the petition all names that appear on both petition and remonstrance. [C., '73, § 285; C., '97, § 400; S., '13, § 400; 40 G. A., ch. 254, § 8.]

5466. Election. If the petition shows, after all names have been stricken as hereinbefore required, that it has been signed by legal voters equal to at least one-half of all legal voters of the county as shown by the last state or federal census, and that such number of voters so signing exceeds the number of voters who have, after all names have been stricken as required, signed the remonstrance, then the board shall order the proposition submitted to a vote of the people. [R., '60, § 234; C., '73, § 285; C., '97, § 400; S., '13, § 400; 40 G. A., ch. 254, § 9.]

5467. Submission of question. The proposal to relocate a county seat shall be submitted at the general election held in the year in which the order is made, if there be sufficient time in which to give the notice herein-after required. If there be not sufficient time, and in those cases where no general election is held in the year in which the order is made, the board shall submit such proposition at a special election to be called by the board. [R., '60, § 234; C., '73, § 285; C., '97, § 400; S., '13, § 400; 37 G. A., ch. 62, § 1; 40 G. A., ch. 254, § 10.]

5468. Notice. The county auditor shall cause notice of such election to be posted in three public places in each township, at least fifty days before the day of election, and shall also cause said notice to be published in some newspaper published in the county and of general circulation therein, if there be one published in the county, once each week for four consecutive weeks, the last of which publications shall be at least twenty days

before said election. [R., '60, § 234; C., '73, § 285; S., '13, § 400; 40 G. A., ch. 254, § 11.]

5469. Conduct of election—form of proposition. The election shall be conducted as elections for county officers are conducted. The question shall be submitted in the following form: Shall the proposition to change the county seat to (naming the town or No city to which the change is proposed) Yes be adopted? [R., '60, §§ 236, 237; C., '73, § 286; C., '97, § 401; 40 G. A., ch. 254, § 12.]

5470. Vote necessary. The board shall make a record of the total vote cast for and against the proposition. If a majority of all the votes cast be in favor of the proposition, the board shall, except as declared in the next section, declare the county seat removed accordingly, and, shall, as soon as practicable, proceed to remove the county records to the new location. [R., '60, § 238; C., '73, § 287; C., '97, § 402; S., '13, § 402; 40 G. A., ch. 254, § 13.]

5471. Removal in certain cases. Where a county seat has been located continuously in one city or town for forty years or more, and the proposal is to relocate such county seat in another city or town, the corporate limits of which are more than a mile from the corporate limits of the present county seat, such proposition shall not be deemed carried, and the county records shall not be removed to the new county seat unless two-thirds of all the votes cast be in favor of such proposed removal. [S., '13, §§ 400, 402; 37 G. A., ch. 34, §§ 1, 2; 40 G. A., ch. 254, § 14.]

5472. Removal of records postponed. If the proposition to relocate be carried, the board of supervisors may permit the county records to remain at the old county seat, and the district court may continue to hold its sessions thereat until such time as a new courthouse is built and equipped at the new county seat. [40 G. A., ch. 254, § 15.]

5473. Proof of service. Proof of the giving of notices required by this chapter shall be made as provided in case of original notices. [40 G. A., ch. 254, § 16.]

CHAPTER 279

CHANGING NAMES OF VILLAGES

- 5474. Change authorized.
- 5475. Petition.
- 5476. Notice.
- 5477. Hearing.

5474. Change authorized. The board of supervisors may change the names of villages within their respective counties in the manner herein prescribed. [C., '97, § 460; 40 Ex. G. A., H. F. 148, § 1.]

- 5478. Order.
- 5479. When order effective.
- 5480. Notice of change—proof.
- 5481. Costs.

5475. Petition. There shall be filed in the office of the auditor of the county in which such village or the major portion thereof is situated, a petition for that purpose, which must be signed by at least two-thirds of the qualified

electors of said village, setting forth its name and location and giving the name by which they desire it to be known. [C., '97, § 461; 40 Ex. G. A., H. F. 148, § 2.]

5476. Notice. Notice of the filing and object of the petition and the time and place of hearing on the same shall be given by publication for at least four successive weeks in one of the official newspapers of the county, and the last publication shall be at least ten days prior to the regular meeting of the board at which the same is to be considered; or by posting a copy of the petition in at least three public places in the village, and on the front door of the courthouse, for at least four weeks before such meeting. [C., '97, § 462; 40 Ex. G. A., H. F. 148, § 3.]

5477. Hearing. At the first regular meeting of said board after publication of notice is completed, it shall consider any remonstrances against the proposed change, and shall hear and determine said petition, unless the same is for good cause continued until the next meeting. [C., '97, § 463; 40 Ex. G. A., H. F. 148, § 4.]

5478. Order. If on the hearing it shall appear that two-thirds of the qualified electors of said village have in good faith signed said petition for change of name, then the said

board shall order said name to be changed as prayed for. [C., '97, § 464; 40 Ex. G. A., H. F. 148, § 5.]

5479. When order effective. The order of the board shall thereupon be entered of record, giving the name of said village as set forth in said petition, the new name given, the time when the change shall take effect, which shall not be less than thirty days thereafter. [C., '97, § 465; 40 Ex. G. A., H. F. 148, § 6.]

5480. Notice of change—proof. Notice of said change shall be published in at least one newspaper of general circulation published in the county at least ten days prior to the date fixed for the change to take effect. Proof of such publication, by the affidavit of the publisher, shall be filed in the office of the auditor and entered of record, whereupon the change shall be complete. [C., '97, §§ 465, 466; 40 Ex. G. A., H. F. 148, § 7.]

5481. Costs. In cases arising under the provisions of this chapter, where there is no opposition to said petition, the petitioners shall pay all costs; in all other cases costs shall abide the result of the proceeding, and be taxed to either party, in the discretion of the board, or divided equitably between the parties. [C., '97, § 467; 40 Ex. G. A., H. F. 148, § 8.]

CHAPTER 280

LAND SURVEYS

5482. County surveyor—appointment and duties.
5483. Field notes of original survey.
5484. Corners.
5485. Rules to be followed.
5486. Record furnished—presumptive evidence.
5487. Record book.
5488. Record.
5489. Chainmen.

5482. County surveyor—appointment and duties. A county surveyor may be appointed by the board of supervisors and shall hold office during the pleasure of said board. Said surveyor shall make all surveys of land within his county which he may be called upon to make, and the field notes and plats made by him shall be transcribed into a well bound book, under his supervision, at the expense of the person requesting the survey, which book shall be kept in the county auditor's office, and his surveys shall be held as presumptively correct. [C., '51, §§ 203, 204; R., '60, §§ 413, 414; C., '73, §§ 369, 370; C., '97, § 534; S. S., '15, § 422; 40 Ex. G. A., S. F. 149, § 1.]

5483. Field notes of original survey. Previous to making any survey, he shall procure a copy of the field notes of the original survey of the same land, if there be any in his office or in that of the auditor, and his survey shall be made in accordance therewith. [C., '51, § 205; R., '60, § 415; C., '73, § 371; C., '97, § 535.]

5490. Witnesses—fees.
5491. Right to enter upon land.
5492. Damages—procedure.
5493. Tender.
5494. Costs.
5495. Federal surveys—defacement.
5496. Fees.

5484. Corners. He is required to establish the corners by taking bearing trees, and noting particularly their course and distance, but if there be no trees within reasonable distance, the corners are to be marked by stones or other permanent monuments placed firmly in the earth. [C., '51, § 206; R., '60, § 416; C., '73, § 372; C., '97, § 536.]

5485. Rules to be followed. In the resurvey and subdivision of land by county surveyors, their deputies or other persons, the rules prescribed by the acts of congress, and the instructions of the secretary of the interior, copies of which shall be furnished him by the county, shall be in all respects followed. [C., '73, § 373; C., '97, § 537.]

5486. Record furnished—presumptive evidence. The county surveyor shall, when requested, furnish the person for whom the survey is made with a copy of the field notes and plat of the survey, and such copy, certified by

him, and also a copy from the record, certified by the county auditor with the seal, shall be presumptive evidence of the survey and of the facts herein required to be set forth, and which are stated accordingly, between those persons who join in requesting it.

Such field notes and plat of survey shall not, however, be presumptive evidence in any action in court as opposed to the field notes and plat of survey made by any other competent surveyor at the instance of any party not joining in the request for the survey by the county surveyor. [C., '51, § 207; R., '60, § 417; C., '73, § 374; C., '97, § 538; 40 Ex. G. A., S. F. 149, § 2.]

5487. Record book. The board of supervisors is required to furnish a substantial, well bound book, in which the field notes and plats made by the county surveyor shall be recorded. [C., '51, § 208; R., '60, § 418; C., '73, § 375; C., '97, § 539.]

5488. Record. The plat and record shall show distinctly of what piece of land it is a survey, at whose personal request it was made, the names of the chainmen, and that they were approved and sworn by the surveyor, and the date of the survey; and the courses shall be taken according to the true meridian, and the variation of the magnetic from the true meridian stated. The surveyor shall determine the correct variation by an observation on the polestar, or some other approved method, at least once each year, and enter the same, with the date, and description of the method used, in his record. [C., '51, § 209; R., '60, § 419; C., '73, § 376; C., '97, § 540.]

5489. Chainmen. The necessary chainmen and other persons must be employed by the person requiring the survey done, unless otherwise agreed; but the chainmen must be disinterested persons, and approved by the surveyor, and sworn by him to measure justly and impartially, to the best of their knowledge and ability. [C., '51, § 210; R., '60, § 420; C., '73, § 377; C., '97, § 541.]

5490. Witnesses—fees. County surveyors, when engaged in the performance of official duties, may issue subpoenas for witnesses and administer oaths to them, and all fees for services of officers and attendance of witnesses shall be the same as in proceedings before justices of the peace. [C., '73, § 378; C., '97, § 542.]

5491. Right to enter upon land. Any person employed in the execution of any survey authorized by the congress of the United States may enter upon lands within this state

for the purpose of exploring, triangulating, leveling, surveying, and of doing any work which may be necessary to carry out the objects of then existing laws relative to surveys, and may establish permanent station marks, and erect the necessary signals and temporary observatories, doing no unnecessary injury thereby. [38 G. A., ch. 410, § 1.]

5492. Damages—procedure. If the parties interested can not agree upon the amount to be paid for damages caused thereby, either of them may petition the district court in the county in which the land is situated, which court shall appoint a time for a hearing as soon as may be, and order at least twenty days' notice to be given to all parties interested, and, with or without a view of the premises, as the court may determine, hear the parties and their witnesses and assess damages. [38 G. A., ch. 410, § 2.]

5493. Tender. The person so entering upon land may tender to the injured party damages therefor, and if, in case of petition or complaint to the court, the damages finally assessed do not exceed the amount tendered, the person entering shall recover costs; otherwise, the prevailing party shall recover costs. [38 G. A., ch. 410, § 3.]

5494. Costs. The costs to be allowed in all such cases shall be the same as allowed according to the rules of the court and provisions of law relating thereto. [38 G. A., ch. 410, § 4.]

5495. Federal surveys—defacement. If any person shall wilfully deface, injure or remove any signal, monument, building or other property of the United States coast and geodetic survey or the United States geological survey, constructed or used under or by virtue of the act of congress aforesaid, he shall forfeit a sum not exceeding fifty dollars for each offense, and shall be liable for damages sustained by the United States in consequence of such defacing, injury or removal, to be recovered in a civil action in any court of competent jurisdiction. [38 G. A., ch. 410, § 5.]

5496. Fees. The county surveyor is entitled to charge and receive the following fees:

1. For each day's service actually performed in traveling to and from the place where any survey is to be made, and for making the same, and return thereof, four dollars.

2. For making up the record of any survey, and the plat and field notes thereof, one dollar per page.

3. For certified copy of the plat or field notes, fifty cents. [C., '51, § 2546; R., '60, § 4155; C., '73, § 3800; C., '97, § 543.]

CHAPTER 281

JAILS

5497. How used.
 5498. Duty.
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 5500. Females.
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 5502. Sheriff's duty.
 5503. Calendar returned.
 5504. Removal.
 5505. Ex officio inspectors.
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 5507. Report.
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 5509. Officers examined.

5510. Refractory prisoners.
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5497. How used. The jails in the several counties in the state shall be in charge of the respective sheriffs and used as prisons:

1. For the detention of persons charged with an offense and committed for trial or examination.

2. For the detention of persons who may be committed to secure their attendance as witnesses on the trial of a criminal cause.

3. For the confinement of persons under sentence, upon conviction for any offense, and of all other persons committed for any cause authorized by law.

The provisions of this section extend to persons detained or committed by authority of the courts of the United States as well as of this state. [C., '51, § 3103; R., '60, § 5122; C., '73, § 4723; C., '97, § 5637.]

5498. Duty. The sheriff shall have charge and custody of the prisoners in the jail or other prisons of his county, and shall receive those lawfully committed, and keep them until discharged by law. [C., '51, § 172; R., '60, § 385; C., '73, § 339; C., '97, § 501; 40 G. A., ch. 255, § 1.]

5499. Minors separately confined. Any sheriff, city marshal, or chief of police, having in his care or custody any prisoner under the age of eighteen years, shall keep such prisoner separate and apart, and prevent communication by such prisoner with prisoners above that age, while such prisoners are not under the personal supervision of such officer, if suitable buildings or jails are provided for that purpose, unless such prisoner is likely to or does exercise an immoral influence over other minors with whom he may be imprisoned. Any officer having charge of prisoners who without just cause or excuse neglects or refuses to perform the duties imposed on him by this section may be suspended or removed from office therefor. [C., '97, § 5638; 40 G. A., ch. 255, § 2.]

5500. Females. All jails shall be equipped with a separate apartment for females, who shall be detained only in such apartment, and males and females shall not at the same time be allowed in the same apartment. [C., '97, § 5639; 40 G. A., ch. 255, § 3.]

5501. Keeper's duty. The keeper of each jail shall:

1. See that the jail is kept in a clean and healthful condition.

2. Furnish each prisoner with necessary bedding, clothing, towels, fuel, and medical aid.

3. Serve each prisoner three times each day with an ample quantity of wholesome food.

4. Furnish each prisoner sufficient clean, fresh water for drinking purposes and for personal use.

5. Keep an accurate account of the items furnished each prisoner. [C., '51, §§ 3104, 3108; R., '60, §§ 5123, 5127; C., '73, §§ 4724, 4727; C., '97, §§ 5640, 5643; 40 G. A., ch. 255, § 4.]

5502. Sheriff's duty. The sheriff must keep an accurate calendar of each prisoner committed to his care, which shall contain his name, place of abode, the day and hour of commitment and discharge, the cause and term of commitment, the authority that committed him, and a description of his person, a statement of his occupation, education, and general habits. When any prisoner is discharged, such calendar must show the day and hour when and the authority by which it took place, and if a person escapes, it must state particularly the time and manner thereof. [C., '51, § 3105; R., '60, § 5124; C., '73, § 4725; C., '97, § 5641; 40 G. A., ch. 255, § 5.]

5503. Calendar returned. At the opening of each term of the district court within his county, the sheriff must return a copy of such calendar to the judge thereof. If a sheriff

neglects or refuses so to do, he shall be punished by fine not exceeding one hundred dollars. [C., '51, § 3106; R., '60, § 5125; C., '73, § 4726; C., '97, § 5642; 40 G. A., ch. 255, § 6.]

5504. Removal. When a jail or any building contiguous or near thereto is on fire, and there is reason to apprehend that the prisoners therein may be injured thereby, the sheriff or keeper must remove such prisoners to some safe and convenient place, and there confine them so long as it may be necessary to avoid such danger. [C., '51, § 3109; R., '60, § 5128; C., '73, § 4728; C., '97, § 5644; 40 G. A., ch. 255, § 7.]

5505. Ex officio inspectors. The clerk of the district court and county attorney are inspectors of the jails, and have power from time to time to visit and inspect the same and inquire into all matters connected with the government, discipline, and police thereof. [C., '51, § 3110; R., '60, § 5129; C., '73, § 4729; C., '97, § 5645.]

5506. Visitation. Such inspectors shall visit and examine such prisons twice each year, and at the next term of the district court held in their county present to such court, on the first day of its sitting, a detailed report of the condition of such prisons at the time of such inspection. [C., '51, § 3111; R., '60, § 5130; C., '73, § 4730; C., '97, § 5646.]

5507. Report. Such report must state the number of persons confined, for what cause, the number usually confined in one room, the distinction, if any, observed in the treatment of prisoners, the evils found to exist in such prisons, and particularly whether any provision of this chapter has been violated or neglected, and in what respects. [C., '51, § 3112; R., '60, § 5131; C., '73, § 4731; C., '97, § 5647; 40 G. A., ch. 255, § 8.]

5508. Right to inspect. The keepers of prisons shall admit the inspectors or either of them into any part thereof, exhibit to them, upon demand, all the books, papers, documents, and accounts pertaining thereto, or to the prisoners confined therein, and render them every facility in their power to enable them to discharge their duties. [C., '51, § 3113; R., '60, § 5132; C., '73, § 4732; C., '97, § 5648.]

5509. Officers examined. For the purpose of obtaining the necessary information to make the reports above required, the inspectors have power to examine, upon oath to be administered by either of them, any of the officers of the prison, or prisoners therein. [C., '51, § 3114; R., '60, § 5133; C., '73, § 4733; C., '97, § 5649.]

5510. Refractory prisoners. If any person confined in a jail is refractory or disorderly, or wilfully destroys or injures any part thereof or of its contents, the sheriff may chain or secure such person, or cause him to be kept in solitary confinement, not more than ten days

for any one offense, during which time he may be fed with bread and water only, unless other food is necessary for the preservation of his health. [C., '51, § 3115; R., '60, § 5134; C., '73, § 4734; C., '97, § 5650; 40 G. A., ch. 255, § 9.]

5511. Expenses. All charges and expenses for the safekeeping and maintenance of prisoners shall be allowed by the board of supervisors, except those committed or detained by the authority of the courts of the United States, in which cases the United States must pay such expenses to the county. [C., '51, § 3116; R., '60, § 5135; C., '73, § 4735; C., '97, § 5651; 40 G. A., ch. 255, § 10.]

5512. Hard labor. Ablebodied male persons over the age of sixteen, confined in any jail under the judgment of any tribunal authorized to imprison for the violation of any law, ordinance, by-law or police regulation, may be required to labor during the whole or part of the time of his sentence, as hereinafter provided, and such tribunal, when passing final judgment of imprisonment, whether for nonpayment of fine or otherwise, shall have the power to and shall determine whether such imprisonment shall be at hard labor or not. [C., '51, § 3107; R., '60, § 5126; C., '73, § 4736; C., '97, § 5652; S., '13, § 5652.]

5513. Labor on public works. Such labor may be on the streets or public roads, on or about public buildings or grounds, or at such other places in the county where confined, and during such reasonable time of the day as the person having charge of the prisoners may direct, not exceeding eight hours each day. [C., '73, § 4737; C., '97, § 5653.]

5514. Supervision. If the sentence be for the violation of any of the statutes of the state, the sheriff of the county shall superintend the performance of the labor, and furnish the tools and materials, if necessary, to work with, at the expense of the county in which the convict is confined, and such county shall be entitled to his earnings. [C., '51, § 3107; R., '60, § 5126; C., '73, § 4738; C., '97, § 5654; 40 G. A., ch. 255, § 11.]

5515. Rules—labor not to be leased. Such labor shall be performed in accordance with such rules as may be made by resolution of the board of supervisors, not inconsistent with the provisions of this chapter, and such labor shall not be leased. [C., '97, § 5654; 40 G. A., ch. 255, § 12.]

5516. Violation of city ordinance. When the imprisonment is under the judgment of any court, police court, police magistrate, mayor, or other tribunal of a city or town, for the violation of any ordinance, by-law or other regulation thereof, the marshal shall superintend the labor, and furnish the tools and materials, if necessary, at the expense of the city or town requiring the labor, and such city or town shall be entitled to the earnings of its convicts. [C., '73, § 4739; C., '97, § 5655.]

5517. Control and punishment. The officer having charge of any prisoner may use such means as are necessary to prevent his escape, and if the prisoner attempts to escape or if, being convicted, he refuses to labor, the officer having him in charge may, to secure his person or cause him to labor, deal with him as with other disorderly or refractory prisoners. Such punishment shall be inflicted within the jail or jail inclosure, and the time of such solitary confinement shall not be considered as any part of the time for which the prisoner is sentenced. [C., '73, § 4740; C., '97, § 5656; 40 G. A., ch. 255, § 13.]

5518. Credit for labor. For every day's labor performed by any convict under the provisions hereof, there shall be credited on any judgment for fine and costs against him the sum of one dollar and fifty cents. [C., '73, § 4741; C., '97, § 5657; 40 Ex. G. A., S. F. 51.]

5519. Cruel treatment. If any officer or other person treat any prisoner in a cruel or

inhuman manner, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment. [C., '73, § 4742; C., '97, § 5658.]

5520. Protecting prisoners. The officer having a prisoner in charge shall protect him from insult and annoyance and communication with others while at labor, and in going to and returning from the same, and may use such means as are necessary and proper therefor. [C., '73, § 4743; C., '97, § 5659; 40 G. A., ch. 255, § 14.]

5521. Annoyance of prisoner. Any person persisting in insulting or annoying or communicating with any prisoner, after being commanded by such officer to desist, shall be punished by a fine not exceeding ten dollars, or by imprisonment not exceeding three days. [C., '73, § 4743; C., '97, § 5659; 40 G. A., ch. 255, § 15.]

CHAPTER 282

BENEFITED WATER DISTRICTS

5522. Establishment—limitation.

5523. Petitions—notice and hearing.

5524. Record.

5522. Establishment—limitation. In all counties having a population of more than one hundred twenty-five thousand in which there is located a permanent federal or state institution within a distance of ten miles from the corporate limits of the county seat, and where upon the main traveled thoroughfare leading from said county seat to said institution there is located a water main, the board of supervisors of such counties shall have the power to establish benefited water districts to embrace all or such portions of the territory abutting said thoroughfares and within six hundred feet on either side thereof, as in the judgment of said board will receive special benefit from water service, to change the boundaries of such districts from time to time as may become in the judgment of such board of supervisors just and equitable, and to assess so much of the cost of such water service, including hydrants, against all lots or tracts of land contained in the benefited district as shall equal and be in proportion to the special benefits conferred by said service and not in excess thereof.

In no case shall such assessment exceed twenty-five per cent of the actual value of said lots or tracts at the time of levy thereof, except where the water service has been petitioned for, and in such case the assessment may be levied against the lots or tracts of land of the district without such twenty-five per cent limitation. [40 G. A., ch. 112, § 1.]

5523. Petitions—notice and hearing. The board of supervisors of such counties may

5525. Tax.

5526. Water service fund.

establish benefited districts as provided in the preceding section on the petition of twenty-five resident property owners within the proposed benefited district, and shall establish such district upon the petition of seventy-five per cent of the resident property owners therein. Upon receipt by the board of supervisors in any such county of a petition as above provided, such board shall fix the time and place for hearing on said petition and cause ten days' notice of such hearing to be posted at three public places within the proposed benefited district. On the day fixed for such hearing the board shall, by resolution, determine the necessity for such water service, establish the boundaries of the benefited district, and designate the property to be assessed therein for such water service. [40 G. A., ch. 112, § 2.]

5524. Record. The action of the board upon the passage of such resolution of necessity shall be by yea and nay vote entered of record, which record shall also show whether such water service was upon the petition of twenty-five or seventy-five per cent of the resident property owners within the proposed benefited district. [40 G. A., ch. 112, § 3.]

5525. Tax. The board of supervisors of such counties shall have the power, after the establishment of any such benefited district and the furnishing to the residents thereof of water service for fire protection and other public purposes, by any person or corporation, municipal or private, to levy upon all taxable

property within such benefited district an annual tax for the purpose of paying the cost of such water service as hereinafter provided. [40 G. A., ch. 112, § 4.]

5526. Water service fund. Any person or corporation, municipal or private, furnishing water service for fire and other public purposes to the residents of such district, shall certify to the county auditor of such county before September first of each year a bill for such water service, duly verified, and the board of supervisors of such county shall at its

September session following levy a sufficient tax upon the property within said benefited district as will produce said sum for the ensuing year, which tax shall be collected in the same manner as other taxes are collected and paid over by the treasurer of said county to the person or corporation, municipal or private, furnishing the water service. Such taxes shall be known as water service fund and used only for the purposes authorized by this chapter, and for no other purpose whatever. [40 G. A., ch. 112, § 5.]

CHAPTER 283

TOWNSHIPS AND TOWNSHIP OFFICERS

DIVISION, BOUNDARIES, AND CHANGE OF NAMES

- 5527. Division authorized.
- 5528. School townships not disturbed.
- 5529. Boundaries coterminous with city.
- 5530. Record.
- 5531. Divisions where city included.
- 5532. Petition—remonstrance.
- 5533. Notice.
- 5534. Division—effect.
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- 5546. Clerk to keep record.
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DIVISION, BOUNDARIES, AND CHANGE OF NAMES

5527. Division authorized. The board of supervisors shall divide the county into townships, as convenience may require, defining the boundaries thereof, and may, from time to time, make such alterations in the number and boundaries of the townships as it may deem proper. [C., '51, § 219; R., '60, § 441; C., '73, § 379; C., '97, § 551; 40 Ex. G. A., S. F. 151, § 1.]

5528. School townships not disturbed. The board shall not change the lines of any civil township so as to divide any school township or district, unless a majority of the voters of said school township or district shall petition therefor, except in cases where such boundary lines are changed to conform to congressional township lines. [C., '51, § 219; R., '60, § 441;

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- 5552. Receipts and expenditures.

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- 5553. Clerk and trustees abolished.
- 5554. Clerk and council to act.
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- 5558. Cemeteries—condemnation.
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C., '73, §§ 379, 1799; C., '97, § 551; 40 Ex. G. A., S. F. 151, § 2.]

5529. Boundaries coterminous with city. Where the boundaries of any city have been changed, the board of supervisors of the county in which the same is situated shall have power to change the boundary lines of townships so as to make them conform to the boundaries of the city, and to make such other changes in township lines, and the number of townships, as it may deem necessary; but no action shall be taken affecting the boundaries or existing conditions of school districts. [C., '97, § 552; 40 Ex. G. A., S. F. 151, § 3.]

5530. Record. The description of the boundaries of each township, and all alterations in them, and of all new townships, shall be recorded in full in the records of the board of

supervisors, and of the township. [C., '51, § 220; R., '60, § 442; C., '73, § 381; C., '97, § 553; 40 Ex. G. A., S. F. 151, § 4.]

5531. Divisions where city included. When any township has within its limits a city or town with a population exceeding fifteen hundred, the electors of such township residing without the limits of such city or town may, at any regular session of the board of supervisors of the county, petition to have such township divided into two townships; the one to embrace the territory without, and the other the territory within such corporate limits. [C., '73, § 382; C., '97, § 554; 40 Ex. G. A., S. F. 151, § 5.]

5532. Petition — remonstrance. Such petition shall be accompanied by the affidavit of three electors, to the effect that all the signatures to such petition are genuine, and that the signers thereof are all legal voters of said township, residing outside said corporate limits. Remonstrances signed by such legal voters may also be presented at the hearing before the board of supervisors hereinafter provided for, and if the same persons petition and remonstrate, they shall be counted on the remonstrance only. [C., '73, § 382; C., '97, § 554; 40 Ex. G. A., S. F. 151, § 6.]

5533. Notice. Notice of the time when such petition will be heard shall be given by publication, once each week, for two consecutive weeks in a newspaper published in the township, the last of which publications shall be at least ten days prior to the time fixed for such hearing; or if no paper is published in such township, or such papers refuse to make such publication, the notice shall be given by posting in five public places in the township, two of which shall be without, and three within such corporate limits, at least ten days prior to such hearing. [C., '73, § 383; C., '97, § 555; S., '13, § 555; 40 Ex. G. A., S. F. 151, § 7.]

5534. Division—effect. If such petition is signed by a majority of the electors of the township residing without the corporate limits of such city or town, the board of supervisors shall divide such township into two townships, as prayed; but, except for election purposes, including the appointment of all judges and clerks of election rendered necessary by the change, such division shall not take effect until the second secular day of January following the next general election. [C., '73, § 384; C., '97, § 556; 40 Ex. G. A., S. F. 151, § 8.]

5535. Restoration to former township. When the citizens of any township so set off desire to dissolve their township organization and return again to the township from which they were taken, they may do so by the same proceedings as provided for the division thereof, except that said petition shall be signed by a majority of the electors of both townships. [C., '97, § 556; 40 Ex. G. A., S. F. 151, § 9.]

5536. New township—first election. When a new township is formed, in which township

officers are to be elected, the board of supervisors shall call the first township election, to be held at such place as it may designate, on the day of the next general election. If at any time a new township has been created in a year in which no general election is held, the board may call a special election for the election of the township officers of the new township, who shall continue in office until their successors are elected and qualified. [C., '51, § 231; R., '60, § 453; C., '73, § 385; C., '97, § 557; S., '13, § 1074-a; 40 Ex. G. A., S. F. 151, § 10.]

5537. Officers to be elected. At said election there shall be elected one trustee for a term of two years, one trustee for a term of three years, and one trustee for a term of four years, and other officers as provided by law. [S., '13, § 1074-a; 40 Ex. G. A., S. F. 151, § 10-a.]

5538. Order for election. The auditor shall issue an order for such first election, stating the time and place of the same, the officers to be elected, and any other business to be transacted; and no business not named in such order shall be transacted at such election. [C., '51, § 232; R., '60, § 454; C., '73, § 386; C., '97, § 558; 40 Ex. G. A., S. F. 151, § 11.]

5539. Service and return. Such order may be directed to any constable of the county, or to any citizen of the same township, by name, and shall be served by posting copies thereof, in three of the most public places in the township, fifteen days before the day of the election; the original order shall be returned to the presiding officer of the election, to be returned to the clerk when elected, with a return thereon of the manner of service, verified by oath, if served by any other than an officer. [C., '51, § 233; R., '60, § 455; C., '73, § 387; C., '97, § 559; 40 Ex. G. A., S. F. 151, § 12.]

5540. Changing name — petition — notice. Any township desirous of changing its name may petition the board of supervisors and, if it shall appear to said board that a majority of the actual resident voters of such township are in favor of such change, such board shall cause notices, attested by the auditor, to be posted in three of the most public places of such township, for at least thirty days previous to the next regular session of said board, which notice shall state the fact that a petition has been presented to said board by the citizens of said township, praying for a change of the name of the same and recite the name prayed for in said petition, and that, unless those interested in the change of such name shall appear at the next regular session of said board and show cause why said name shall not be changed, there will be an order made granting such change. [C., '73, § 412; C., '97, § 580; 40 Ex. G. A., S. F. 151, § 13.]

5541. Hearing—order. If, at the time fixed for the hearing of said petition, the board be satisfied that there is a majority in favor of such change of name, it shall make an order granting the same, which shall be attested by

the auditor, and recorded in the office of the recorder of the county. [C., '73, § 413; C., '97, § 581; 40 Ex. G. A., S. F. 151, § 14.]

5542. Petition dismissed. If it appears to said board that a majority of the citizens of such township are opposed to such change, such petition shall be dismissed. The cost of the proceeding in all cases shall be taxed against the petitioners. [C., '73, § 414; C., '97, § 582; 40 Ex. G. A., S. F. 151, § 15.]

TRUSTEES

5543. Trustees — duties — meetings. The board of township trustees in each township shall consist of three qualified electors of the township. The trustees shall act as overseers of the poor, fence viewers, the local board of health, and shall constitute the township board of equalization. The board of trustees shall meet on the first Monday in February, April, and November in each year. [C., '51, §§ 221, 224; R., '60, §§ 443, 446; C., '73, §§ 389, 393, 969; C., '97, §§ 574, 1074, 1528; S., '13, §§ 1074, 1528; 37 G. A., ch. 204, § 1; 40 Ex. G. A., S. F. 151, § 16.]

5544. County attorney as counsel. In counties having a population of less than twenty-five thousand, where the trustees institute, or are made parties to, litigation in connection with the performance of their duties, as provided in this chapter, the county attorney, as a part of his official duties, shall appear in behalf of the township trustees, except in cases in which the interests of the county and those of the trustees are adverse. [S., '13, § 564; 40 Ex. G. A., S. F. 151, § 17.]

5545. Employment of counsel. When litigation shall arise in any case not covered by the preceding section, involving the right or duty of township trustees with reference to any matter within their jurisdiction, and the trustees become or are made parties to such litigation, they shall have authority to employ attorneys in behalf of said township, and to levy the necessary tax to pay for their services, and to defray the expenses of such litigation. [C., '97, § 564; S., '13, § 564; 40 Ex. G. A., S. F. 151, § 18.]

CLERK

5546. Clerk to keep record. The township clerk shall keep a record of all the proceedings and orders of the trustees, and of all acts done by him, including the filing of certificates of official oaths having been taken before other officers, and perform such other acts as may be required of him by law. [C., '51, §§ 223, 226, 227; R., '60, §§ 445, 448, 449; C., '73, §§ 392, 395, 396; C., '97, § 576; S., '13, § 576; 40 Ex. G. A., S. F. 151, § 28.]

5547. Custody of funds. Each township clerk shall receive, collect, preserve, and disburse, under the orders of the township trustees, all funds belonging to his township, including the cemetery fund, and those which

are now or may hereafter be by law created or authorized. [S., '13, § 576; 40 Ex. G. A., S. F. 151, § 28.]

5548. Deposit of funds. He shall deposit all funds coming into his hands by virtue of his office, in a bank conveniently located, each deposit to be in the name of his township and at a rate of interest not less than two and one-half per cent per annum on ninety per cent of the daily balances, payable at the end of each month, which interest shall accrue to the benefit of the township road fund. [S., '13, § 576; 38 G. A., ch. 261, § 1; 40 Ex. G. A., S. F. 151, § 29.]

5549. Disbursement of funds. No checks shall be drawn upon said township bank account by the township clerk, except it be in payment of bills which have come before and have been properly authorized and audited by the township trustees. [38 G. A., ch. 261, § 1; 40 Ex. G. A., S. F. 151, § 29.]

5550. Bond. Before such deposit is made, such bank shall file with the clerk a bond with sureties to be approved by the clerk and the township trustees in double the amount which will probably be deposited, conditioned to indemnify the township against loss by reason of such deposit or deposits. The clerk or his successor in office shall have a right to bring action on said bond in case of a breach thereof. [40 Ex. G. A., S. F. 151, § 29-a1.]

5551. Notify auditor of elections. The clerk, immediately after the election of officers in his township, shall send a written notice thereof to the county auditor, stating the names of the persons elected, and to what offices, and the time of the election, and shall enter the time of the election of each officer in the township record. [C., '51, § 228; R., '60, § 450; C., '73, § 397; C., '97, § 577.]

5552. Receipts and expenditures. Each township clerk, on the morning of the day of the general election and before the hour for opening the polls, shall post, at the place where such election is to be held in his township, a statement in writing, showing all receipts of money and disbursements in his office for the preceding two years, which shall be certified as correct by the trustees of the township. [C., '97, § 578; S. S., '15, § 578.]

OFFICES ABOLISHED

5553. Clerk and trustees abolished. Where a town or a city, not acting under a special charter, constitutes one or more civil townships the boundary lines of which coincide throughout with the boundary lines of the town or city, the offices of township clerk and trustee are abolished. [C., '97, § 560; S., '13, § 560.]

5554. Clerk and council to act. The duties required by law of the township clerk in such cities shall be performed by the city clerk, and those required of the board of trustees shall

be performed by the city council. [C., '97, § 561.]

5555. Transfer of funds. The moneys and assets belonging to such civil township shall become the moneys and assets of the city or town in which said civil township is situated; and the township clerks shall turn such moneys and assets over to the city or town treasurer, to be disbursed by such city or town in the same manner and for the same purposes as required by law for the disposition of township funds, and such cities or towns shall assume all liabilities of a civil township to which the provisions of this section shall apply. [C., '97, § 562.]

5556. Payment of funds. County treasurers are hereby authorized to pay over to the city or town treasurers which come under the provisions of the three preceding sections all moneys collected for the road fund, or other funds which would otherwise be paid over to the township clerks of such townships. [C., '97, § 563.]

5557. Refusing to serve. Any person elected to a township office, and refusing to qualify and serve, shall forfeit the sum of five dollars, which may be recovered by action in the name of the county for the use of the school fund in the county, but no person shall be compelled to serve as a township officer two terms in succession. [C., '51, § 225; R., '60, § 447; C., '73, § 394; C., '97, § 575.]

CEMETERIES

5558. Cemeteries—condemnation. The township trustees are hereby empowered to condemn, or purchase and pay for out of the general fund, and enter upon and take, any lands within the territorial limits of such township for the use of cemeteries, in the same manner as is now provided for cities and towns. [C., '97, § 585; S., '13, § 585.]

5559. Gifts and donations. Civil townships are hereby authorized and empowered to receive by gift, devise, or bequest, money or property for the purpose of establishing and maintaining libraries, township halls, cemeteries, or for any other public purpose. All such gifts, devises, or bequests shall be effectual only when accepted by resolution of the board of trustees of such township. [S., '13, § 585.]

5560. Cemetery and park tax. They shall, at the regular meeting in April, levy a tax sufficient to pay for any lands so condemned or purchased, or for the necessary improvement and maintenance of cemeteries thus established, and for the necessary improvement and maintenance of public parks acquired by gift, devise, or bequest under the preceding section, or for the maintenance and improvement of cemeteries so established in adjoining townships, in case they deem such action advisable. [C., '97, § 586; S. S., '15, § 586; 38 G. A., ch. 218, § 1; 40 Ex. G. A., S. F. 151, § 19.]

5561. Power and control. They shall control any such cemeteries, or appoint trustees for the same, or sell the same to any private corporation for cemetery purposes. [C., '97, § 586; S. S., '15, § 586; 38 G. A., ch. 218, § 1; 40 Ex. G. A., S. F. 151, § 20.]

5562. Tax for nonowned cemetery. They may levy a tax not to exceed one mill to improve and maintain any cemetery not owned by the township, provided the same is devoted to general public use. [C., '97, § 586; S. S., '15, § 586; 38 G. A., ch. 218, § 1; 40 Ex. G. A., S. F. 151, § 20.]

5563. Scope of levy. The levy authorized in sections 5560 and 5562 may be extended to property within the limits of any city or town so far as same is situated within the township, unless such city or town is already maintaining a cemetery, or has levied a tax in support thereof. The said tax may be so expended for the support and maintenance of any such cemetery after the same has been abandoned and is no longer used for the purpose of interring the dead. [S. S., '15, § 586; 40 Ex. G. A., S. F. 151, § 21.]

5564. Cemetery funds—use. Cemetery tax funds of a township may be used for the maintenance and support of cemeteries in adjoining counties and townships and in cities and towns, if such cemeteries are utilized for burial purposes by the people of the township. [39 G. A., ch. 89; 40 G. A., ch. 113, § 1; 40 Ex. G. A., S. F. 151, § 22.]

5565. Joint boards. A city or town council and the trustees of a township may join in the common purpose of improving, maintaining, and supporting a township cemetery. In such case the two official bodies shall constitute a joint cemetery board and shall have equal voting power. [40 G. A., ch. 113, § 2; 40 Ex. G. A., S. F. 151, § 22-a1.]

5566. Regulations. The trustees, board of directors, or other officers having the custody and control of any cemetery in this state, shall have power, subject to the by-laws and regulations of such cemetery, to inclose, improve, and adorn the ground of such cemetery; to construct avenues in the same; to erect proper buildings for the use of said cemetery; to prescribe rules for the improving or adorning the lots therein, or for the erection of monuments or other memorials of the dead upon such lots; and to prohibit any use, division, improvement or adornment of a lot which they may deem improper. [C., '97, § 587; S. S., '15, § 587; 40 Ex. G. A., S. F. 151, § 23.]

5567. Watchmen appointed. Such trustees, directors, or other officers may appoint as many day and night watchmen of their grounds as they may think expedient, and such watchmen, and also all their sextons, superintendents, gardeners, and agents, stationed upon or near said grounds are hereby authorized to take and subscribe, before any mayor of a city

or justice of the peace of the township where such cemetery is situated, an oath of office, similar to that required by law of constables. [C., '97, § 589; 40 Ex. G. A., S. F. 151, § 24.]

5568. Ex officio police officers. Upon the taking of such oath, such watchmen, sextons, superintendents, gardeners, and agents shall have and exercise all powers of police officers within and adjacent to the cemetery grounds and each shall have power to arrest any and all persons engaged in violating the laws of this state, and to bring such person so offending before any justice of the peace within such township, to be dealt with according to law. [C., '97, § 589; 40 Ex. G. A., S. F. 151, § 25.]

5569. Cemeteries — plat — record. Where there is located in any township one or more cemeteries, the owner of the same, or any party owning an interest therein, may cause the same to be surveyed, platted, and laid out into subdivisions and lots, numbering the same by progressive numbers, giving the length and breadth, also the location with reference to known or permanent monuments to be made. The plat shall accurately describe all the subdivisions of the tract of land used, or designed to be used as a cemetery, and shall be recorded in the office of the county recorder, and filed with and recorded by the township clerk, and preserved by him among the records of his office. [C., '97, § 583; 40 Ex. G. A., S. F. 151, § 26.]

5570. Conveyance of lots. All conveyances of subdivisions or lots of a cemetery thus platted shall be by deed from the proper owner, which deed shall be recorded with the township clerk in a book kept by him for that purpose, for the recording of which the said clerk shall be entitled to a fee of fifty cents for each instrument recorded, to be paid by the party desiring the record made. [C., '97, § 584; 40 Ex. G. A., S. F. 151, § 27.]

COMPENSATION

5571. Compensation of trustees. Township trustees shall receive:

1. For each day's service of eight hours necessarily engaged in official business, to be paid out of the county treasury, three dollars each. In townships embraced entirely within the limits of special charter cities, the compensation of township trustees shall be four dollars per day.

2. For each day engaged in assessing damages done by trespassing animals, one dollar each, to be paid as other costs are in such cases.

3. When acting as fence viewers, or viewing or locating any ditch or drain, or in any other case where provision is made for their payment otherwise, they shall not be paid out of such treasury, but in all such cases their fees shall be paid in the first instance by the party requiring their services, and they shall append to the report of their proceedings a statement thereof, and therein shall direct who shall pay said fees, and in what sums respectively; and the party having so advanced any such fees may have his action therefor against the party so directed to pay the same, unless, within ten days after demand by the party entitled thereto, he shall be reimbursed therefor. [C., '51, § 2548; R., '60, § 4156; C., '73, § 3808; C., '97, § 590; S., '13, § 590; 37 G. A., ch. 76, § 1.]

5572. Compensation of clerk. The township clerk shall receive:

1. For each day of eight hours necessarily engaged in official business, where no other compensation or mode of payment is provided, to be paid from the county treasury, three dollars.

2. For all money coming into his hands by virtue of his office, except from his predecessor in office, unless otherwise provided by law, two per cent.

3. For filing each application for a drain or ditch, fifty cents.

4. For making out and certifying the papers in any appeal taken from an assessment by the trustees of damages done by trespassing animals, such additional compensation as the board of supervisors may allow. [C., '51, § 2548; R., '60, §§ 909, 911; C., '73, § 3809; C., '97, § 591; S., '13, § 591; 37 G. A., ch. 76, § 2; 40 Ex. G. A., S. F. 151, § 30.]

NOTE: Compensation on township hall funds, see § 5575.

5573. Compensation of assessor. Each township assessor shall receive in full for all services required of him by law, a sum to be paid out of the county treasury, and fixed annually by the board of supervisors at its January session, for the current year, on the basis of three and one-half dollars for each day of eight hours which said board determines may necessarily be required in the discharge of all official duties of such assessor.

In townships having a population of thirty thousand or over and situated entirely within the limits of a city acting under special charter, such compensation shall be four dollars per day. [R., '60, § 730; C., '73, § 3810; C., '97, § 592; S., '13, § 592; 37 G. A., ch. 76, § 3; 40 Ex. G. A., S. F. 151, § 31.]

CHAPTER 284

TOWNSHIP HALLS

5574. Election.
 5575. Tax.
 5576. Transfer of fund.
 5577. Location.

5578. Construction.
 5579. Custodian.
 5580. Bond.
 5581. Tax for repairs.

5574. Election. The trustees, on a petition of a majority of the resident freeholders of any civil township, shall submit to the electors thereof, by posting notices of such election in four conspicuous places in the township, thirty days before election, and the form of the proposition shall be: Shall the proposition to levy a tax of mills on the dollar for the erection of a public hall be adopted? [C., '97, § 567; 40 G. A., ch. 256, § 1.]

5575. Tax. If a majority of the votes cast are in favor of the tax, the trustees shall certify such fact to the board of supervisors, and they shall thereupon levy a tax not to exceed the rate voted and not to exceed three mills on the dollar on the taxable property of the township; and when such tax is collected by the treasurer, it shall be paid to the township clerk; but said clerk shall not receive to exceed one per cent for handling said money. [C., '97, § 568; 40 G. A., ch. 256, § 2.]

5576. Transfer of fund. When there are funds in the hands of any township clerk, raised under the provisions of this chapter, when same is not desired for the purposes for which it was raised, then said fund may be transferred to the road fund of any township wherein same was raised, when a petition is presented to the trustees, signed by a majority of the electors of said township that voted at the last regular election prior to the signing of said petition, as shown by the poll books of said township, said transfer of funds to be made by the township clerk upon order of the trustees after the filing of said petition with said clerk. [S., '13, § 592-b; 40 G. A., ch. 256, § 3.]

5577. Location. Any public hall built under the provisions of this chapter shall be located by the township trustees so as to accommodate the greatest number of the resident taxpayers, and for such purpose the trustees may pur-

chase land not to exceed in value one hundred dollars. [C., '97, § 569; 40 G. A., ch. 256, § 4.]

5578. Construction. The township trustees shall have charge of the building of such hall, shall receive bids, and shall let the building of the same to the lowest responsible bidder, and the township clerk shall pay out of the funds collected, only on the order of the trustees of said township. [C., '97, § 570; 40 G. A., ch. 256, § 5.]

5579. Custodian. The township clerk, under the direction of the trustees, shall be the custodian of the building, and the use thereof may be permitted by the township trustees to citizens of the township for any lawful purpose; and, for the purposes of this chapter, the township clerk is hereby clothed with all the powers and duties of a constable of the township, to maintain order within and about the premises, protect the property, and enforce orders of the township trustees with respect thereto. A copy of this section shall be at all times kept posted in a conspicuous place in said hall. [C., '97, § 571; 40 G. A., ch. 256, § 6.]

5580. Bond. When a tax is voted as provided in this chapter, the township clerk shall, before drawing any of said tax from the treasury of the county, execute a bond, with penalty double the amount of said tax, which bond shall be approved by the board of supervisors. [C., '97, § 572; 40 G. A., ch. 256, § 7.]

5581. Tax for repairs. The trustees of any township where such building has been erected are hereby authorized to certify to the board of supervisors that a tax of not exceeding in any one year, one-half mill on the dollar, on the taxable property of the township, should be levied, to be used in keeping such building in repair, to furnish same with necessary furniture, and provide for the care thereof. When such certificate is filed in the auditor's office, the board of supervisors shall levy such tax. [C., '97, § 573; 40 G. A., ch. 256, § 8.]

CHAPTER 285

TOWNSHIP LICENSES

- 5582. License required.
- 5583. Limitations and conditions.
- 5584. Record.

- 5585. Revocation.
- 5586. Appeal.
- 5587. Violations.

5582. License required. No person shall, for himself or for any other person, firm, or corporation, keep or operate for hire or for profit any theater, moving picture show, pool or billiard room or table, dance hall, skating rink, club house, road house, amusement park, or bowling alley, outside the limits of cities and towns without first procuring a license therefor from the township trustees.

This section shall not apply to baseball games or county fairs. [37 G. A., ch. 358, § 1; 40 G. A., ch. 98, § 1; 40 Ex. G. A., H. F. 276, § 1.]

5583. Limitations and conditions. The granting of a license shall be discretionary with the trustees; provided, however, that a license to operate a theater or moving picture show shall not be denied in any unincorporated village having a population of one thousand or more except for good cause. Licenses shall not be granted for a less period than six months nor for a longer period than one year, shall specify the place where the business may be carried on, the date of expiration of the license, and be signed by the chairman of the board and its clerk. [37 G. A., ch. 358, § 1; 40 G. A., ch. 98, § 1; 40 Ex. G. A., H. F. 276, § 2.]

5584. Record. When a license is granted, the terms and conditions on which the place shall be operated shall be entered of record in the minutes of the board and the licensee shall stand charged with notice thereof and

shall, on demand, be furnished with a copy of such terms and conditions on payment of the sum of fifty cents. Said terms and conditions shall be reasonably uniform for different licensees under like circumstances and conditions. [40 G. A., ch. 98, § 1; 40 Ex. G. A., H. F. 276, § 3.]

5585. Revocation. The trustees may at any time, in their discretion, revoke any license issued. In case a license is revoked the licensee shall be repaid a pro rata part of the license fee. All license fees received under provisions of this chapter shall be paid into the township road fund. [40 Ex. G. A., H. F. 276, § 4.]

5586. Appeal. Any person aggrieved by the action of the trustees in revoking a license may appeal therefrom to the district court of the county by serving a notice on the chairman of the board of trustees within twenty days after the final decision of said board. Such appeal shall be tried de novo and in equity. [40 Ex. G. A., H. F. 276, § 5.]

5587. Violations. Any person who violates any of the foregoing provisions of this chapter, or who violates any of the terms or conditions under which he is permitted to operate under a license, shall be fined any sum not exceeding twenty-five dollars. [37 G. A., ch. 358, § 2; 40 G. A., ch. 98, § 3; 40 Ex. G. A., H. F. 276, § 6.]

TITLE XV

CITY AND TOWN GOVERNMENT

CHAPTER 286

INCORPORATION

NOTE: Certain provisions of this chapter made applicable to special charter cities by § 6756.

GENERAL PROVISIONS

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- 5590. Jurisdiction.
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- 5602. Records deposited.
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- 5604. Expenses.

GENERAL PROVISIONS

5588. **How effected.** When the inhabitants of part of any county, or of two or more counties lying contiguous to each other, not embraced within the limits of any city or town, desire to become incorporated as a town, they may apply to the district court of the proper county, by a petition in writing signed by not less than twenty-five of the qualified electors of the territory proposed to be embraced in such town, which petition shall describe said territory, and contain or have annexed thereto an accurate plat thereof, and shall state the name proposed for such town. [R., '60, § 1031; C., '73, § 421; C., '97, § 599.]

5589. **Proof required.** Proof of the residence and qualification of the petitioners as electors shall be made by affidavit or otherwise, as directed by the court. [C., '73, § 421; C., '97, § 599.]

5590. **Jurisdiction.** If the territory embraced within the limits of said proposed town

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- 5612. Platted territory.
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CHANGE IN NAME

- 5619. Resolution—notice.
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lies in more than one county, the district court of either of said counties shall have jurisdiction of such proceedings, but that in which the petition for incorporation is first filed shall have exclusive jurisdiction thereafter. [C., '97, § 599.]

5591. **Change in territorial limits.** The court is vested with power to change or limit the territory proposed to be incorporated, before appointing the commissioners as herein provided. [C., '97, § 600; S., '13, § 600.]

5592. **Commissioners—notice of election.** Upon compliance with the foregoing provisions of this chapter, the court shall at once appoint five commissioners, who shall at once give notice of an election for incorporation, for not less than three successive weeks preceding the same, by posting notices in three public places within the limits of the proposed town, and by publication, once each week, for three consecutive weeks in one or more newspapers published in the county where the court is held; which notice shall state the time and

place of holding the election, and a description of the limits of the proposed town, and that a plat and description thereof is on file in the office of the clerk of the district court. [R., '60, § 1032; C., '73, § 422; C., '97, § 600; S., '13, § 600.]

5593. Election—ballots—canvass. The commissioners shall act as judges and clerks of the election, and shall qualify as required by law, and the proposition to be submitted thereat shall be: "Shall the proposition for incorporation be adopted?" and the commissioners shall have charge of the printing of the ballots, and shall cause the proposition to be placed upon them, and the elector shall designate his vote in the same manner provided with respect to like or similar propositions in the title on elections. The commissioners shall promptly report the result of the election to the court, or judge thereof, which may be confirmed and approved, or set aside, by said court, or judge in vacation. If it is set aside, the court or judge thereof may order a new election with the same or other commissioners. [R., '60, § 1032; C., '73, § 422; C., '97, § 601.]

5594. Election of officers. If a majority of the ballots cast at such election be in favor of the incorporation and the result has been confirmed and approved, the court, or in vacation a judge thereof, shall order the election of a mayor, treasurer, assessor, and council. The commissioners shall give notice for two consecutive weeks of the time and place of holding the election, by publication once each week in a newspaper published and of general circulation in the county where the court is held, and by posting the same in five public places within the limits of such town. At said election the qualified voters residing within the limits of the town shall elect the officers. The election shall be conducted, so far as practicable, in the manner of municipal elections, and the commissioners shall act as judges and clerks of election. [R., '60, § 1037; C., '73, §§ 423, 425; C., '97, § 602; S., '13, § 602; 40 Ex. G. A., S. F. 153, § 1.]

5595. Report—judgment. The commissioners shall promptly report the results of the election to the court, and it, or in vacation a judge thereof, may confirm and approve the election and report, or set the same aside and order a new election with the same or other commissioners. Upon the confirmation of the election and report, a judgment shall be entered of record, declaring the town duly incorporated and confirming and approving the first election of officers.

Should any officer fail to qualify, the court or judge shall declare the office vacant and appoint some other person to fill the vacancy. [C., '97, § 603; 40 Ex. G. A., S. F. 153, § 2.]

5596. Record—costs. The clerk of the court shall enter the proceedings in the matter of the incorporation and election of officers in the complete record book and file a certified copy of the entry in the office of the secretary of

state and in the office of the recorder, who shall record the same. The costs of all the proceedings for the incorporation shall be paid by the town if established, otherwise they shall be paid by the petitioners, and judgment shall be entered accordingly. [C., '97, § 603; 40 Ex. G. A., S. F. 153, § 3.]

5597. Terms of officers. The officers elected shall hold office until their successors are elected at the general city election held in the second March thereafter, and have qualified, but the term of the assessor shall begin on the first day of January succeeding his election. [R., '60, § 1037; C., '73, §§ 390, 425; C., '97, §§ 603, 650; S., '13, § 602; 40 Ex. G. A., S. F. 153, § 4.]

DISCONTINUANCE

5598. How effected. Upon a petition of the voters equaling twenty-five per cent of the number voting at the last preceding municipal election, to the district court of the county wherein a municipal corporation is situated, for the discontinuance of the same, the court shall, thirty days prior to the next regular city or town election, cause notice to be given, that the question of discontinuing such corporation will be submitted to the legal voters thereof at the said election, by publication once a week for two weeks in a newspaper published in said city or town; if none be so published, then in one published in the county or counties in which said city or town is situated, and by posting the same in five public places therein. The proposition submitted shall be: "Shall the proposition to discontinue the corporation of (inserting name) be adopted?" The clerk of the city or town shall cause the proposition to be printed on the ballots. [C., '73, §§ 447, 448; C., '97, § 604; 40 Ex. G. A., S. F. 153, § 5.]

5599. Canvass—judgment. The vote shall be taken and canvassed in the same manner as other municipal elections, and returns thereof made to the district court. If it finds that a majority of the legal votes cast were for the discontinuance of the incorporation, then a judgment shall be entered discontinuing the same, and, upon the entry of said judgment, its corporate powers shall cease. [C., '73, §§ 449, 450; C., '97, § 605.]

5600. Indebtedness determined. The court shall cause notice to be given, in a manner to be prescribed by it, requiring all claims against the corporation to be filed in said court within a time fixed in the notice, not exceeding six months, and all claims not so filed shall be forever barred. At the expiration of the time so fixed, the court shall adjudicate said claims, which shall be treated as denied. Any citizen of such town or city at the time the vote was taken may appear and defend against any claim so filed, or the court may, in its discretion, appoint some person for this purpose, in which event the proceedings shall conform as near as may be, to those prescribed for the prosecution of actions by ordinary proceedings. [C., '73, § 449; C., '97, § 605.]

5601. Indebtedness paid—surplus. The court shall have full power to wind up the affairs of the corporation, to dispose of its property, and to make provision for the payment of all indebtedness thereof, and for the performance of its contracts and obligations, and shall order such taxes levied from time to time as may be requisite therefor, which the board of supervisors shall levy against the property within the corporation. Said taxes shall be collected by the county treasurer like other taxes, and paid out under the orders of the court, and any surplus shall be paid into the temporary school fund of the district or districts where the same is levied. [C., '73, §§ 449, 453; C., '97, § 606.]

5602. Records deposited. The books, documents, records, papers, and corporate seal of any city or town so discontinued shall be deposited with the county auditor of the county in which the council last held its sessions, for safe keeping and reference in future. All court records of any mayor or other officer shall be deposited with the nearest justice in the township in the county where the office of mayor or other officer is situated, who shall have authority to execute and complete all unfinished business standing on the same. [C., '73, § 451; C., '97, § 607.]

5603. Notice of discontinuance. When the incorporation of any city or town shall have been discontinued, the clerk of the court shall cause a notice thereof to be published, once each week, for four consecutive weeks in a newspaper published in the county where the court is held, and shall also certify the fact to the secretary of state and to the recorder of the county. [C., '73, § 452; C., '97, § 608; S., '13, § 608.]

5604. Expenses. All expenses of the election and of winding up the affairs of the corporation shall be paid by it. [C., '73, § 450; C., '97, § 609.]

CONSOLIDATION

5605. How effected. When any city or town desires to be annexed to another contiguous city or town, the council of each shall appoint three commissioners who shall meet and fix the terms upon which the proposed annexation shall be made, and make report thereof to their respective councils. If both councils approve the proposed terms, they shall by identical ordinances so declare, and therein determine whether the question shall be voted upon at a special election, fixing the date thereof, or at the next regular city election. Thereupon a copy of the ordinances, together with a statement that both councils have adopted the same, shall be published once in a newspaper, if any be published in either of said cities or towns, but when none be so published in one or both of said cities or towns, then in a newspaper published in the county or counties in which said city or town is situated and of general circulation in both cities or towns, and be posted in five public places therein, at least

ten days prior to the election specified in the ordinance. [R., '60, § 1044; C., '73, § 432; C., '97, § 612; 40 Ex. G. A., S. F. 153, § 6.]

5606. Election—record. The proposition to be submitted at the election shall be: "Shall the proposition for the annexation of (naming the city or town) to (naming the city or town) be adopted?" If a majority of the votes cast in each city or town is in favor of annexation, the council of each shall, by ordinance, so declare. A certified copy of the whole proceedings for the annexation shall be filed with the clerk of the city or town to which such annexation is made, who shall file a certified copy thereof with the secretary of state, and in the recorder's office of the county, who shall record the same. [R., '60, § 1044; C., '73, § 432; C., '97, § 612; 40 Ex. G. A., S. F. 153, § 7.]

5607. Consolidation complete. When certified copies of the proceedings are so filed, the annexation shall be complete, and the city or town to which the annexation is made shall have the power, and it shall be its duty, to pass such ordinance as will carry into effect such annexation, and thereafter the city or town annexed shall be a part of the city or town to which the annexation is made. [R., '60, § 1045; C., '73, § 433; C., '97, § 613.]

5608. Enforcement of duty. Any citizen of the annexed town or city may maintain legal proceedings to compel the city or town, and the council thereof, to which annexation is made, to execute such terms and conditions, but such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or towns, and they may be enforced as hereinafter provided. [C., '97, § 613.]

5609. Debts of annexing city. All present indebtedness of the city to which annexation is made shall be paid by such city by a tax to be levied exclusively upon the property subject to taxation within the limits of the same as it existed prior to such annexation, and none of the real estate or property embraced within the limits of the annexed city or town shall ever be subjected, in any way, to the payment of any part of said indebtedness. [C., '97, § 614.]

5610. Debts of annexed city. The indebtedness of the city or town annexed shall be paid by such city or town; and the council of the city as it exists after annexation is authorized, and it is made its duty, to provide for the payment of such indebtedness by the levy of taxes upon the property subject to taxation within the limits of such city or town so annexed, and to continue such tax from year to year so long as the same shall be necessary; but if such city or town owns any real estate, the fair market value thereof at the time of its annexation shall be credited upon its said indebtedness, and the amount of such credit shall be assumed and paid by such city as it exists after annexation, and such property

shall become the property of such city as enlarged. [C., '97, § 614.]

5611. Actions. Suits to enforce claims or demands existing at the time of annexation against the city or town annexed may be prosecuted or brought against the city or town to which annexation is made, and judgments obtained shall be paid as hereinbefore provided for the payment of the indebtedness of such annexed city or town. [C., '97, § 614.]

ANNEXATION OR SEVERANCE

5612. Platted territory. Platted territory adjoining any city or town may be annexed thereto and become a part thereof by proceeding as follows:

1. The council of the city or town desiring to annex adjoining territory may so provide by resolution, therein describing the territory proposed to be annexed and directing the mayor to institute therefor a suit in equity against the owners of such property.

2. The petition shall contain:

a. A description of the entire property proposed to be annexed and of that portion thereof owned by each defendant.

b. The facts constituting the desirability of such annexation.

c. A plat of such territory showing its relation to the corporate limits.

3. If the court finds in favor of the annexation, it shall enter a decree accordingly; and if not, the petition shall be dismissed. No costs shall be taxed against any defendant who fails to make defense. [C., '73, § 431; C., '97, § 611; 40 Ex. G. A., S. F. 153, § 8.]

5613. Unplatted territory. Territory, not platted, adjoining any city or town may be annexed thereto and become a part thereof by proceeding as follows:

1. The council may provide by resolution adopted at least one month before any regular election, for the annexation of territory described therein.

2. The proposition shall be submitted to the voters at said election in the following form:

"Shall the proposition to annex the territory described in the resolution adopted by the council of the city (or town) of on the day of be approved?" Notice of the submission of said proposition shall be given by publication in a newspaper of general circulation in said city or town once each week for four consecutive weeks preceding said election.

3. If the proposition is adopted by a majority of those voting thereon, the council shall cause to be filed in the district court a suit in equity against the owners of the property proposed to be annexed describing in the petition such property and attaching thereto a plat thereof showing its location in reference to the limits of such city or town.

4. Like proceedings shall be had as provided in section 5612. [R., '60, § 1043; C., '73, § 430; C., '97, §§ 610, 615; S., '13, § 615; 40 Ex. G. A., S. F. 153, § 8-a1.]

5614. Annexation by resolution. In case any territory adjoining any city or town has been platted into tracts of less than ten acres and has been substantially built up and the inhabitants thereof are enabled to secure the benefits of the city or town government in the way of police and fire protection, or may be furnished with light and water by said city or town or under a franchise granted thereby, the council of the city or town may by resolution incorporate such territory into the city or town. [40 Ex. G. A., S. F. 153, § 8-a2.]

5615. Application for annexation. All the owners of any territory adjoining any city or town may make application, in writing, to the council of such city or town, attaching thereto a plat of such territory showing the situation thereof with reference to the existing limits of such city or town, and if the council thereof, by resolution, assent thereto, such territory shall thereafter be and become a part of such city or town. [R., '60, § 1038; C., '73, § 426; C., '97, §§ 617, 621; 40 Ex. G. A., S. F. 153, § 8-a3.]

5616. Petition for annexation. Ten per cent of the inhabitants of any platted territory adjoining any city or town may petition the council thereof to have such territory annexed thereto. The council may consent to such annexation or submit the matter to the voters of said city or town, and if the council consent or the proposition carries at the election the proceedings shall be the same as provided in section 5612, except that the petitioners shall be plaintiffs and the city or town and all the owners of property in the territory, other than the petitioners, shall be defendants. [R., '60, § 1038; C., '73, § 426; C., '97, §§ 617, 621; 40 Ex. G. A., S. F. 153, § 8-a4.]

5617. Severance of territory. Territory may be severed from any city or town by proceeding as follows:

1. A majority of the resident property owners of such territory or the city or town may bring suit in equity in the district court therefor and the proceedings shall so far as applicable be the same as provided in section 5612. Notice of suit shall be such as the court may direct.

2. If the court finds that such territory, or any part thereof, shall be severed from any city or town, it shall thereupon appoint three disinterested persons as commissioners to examine into the matter and the equitable distribution of the assets, and equitable distribution and assumption of the liabilities of such city or town which have accrued during the time such territory has been a part thereof, as between such city or town and the severed territory.

3. The commissioners shall receive evidence on the question from the parties interested and submit their findings to the court at the next term thereof and any interested party may file objections thereto and the court shall determine the matter by trial de novo and enter a decree in accordance with the very right of

the matter. [R., '60, §§ 1048-1052; C., '73, §§ 440-444; C., '97, §§ 622-626; S., '13, § 622; 40 Ex. G. A., S. F. 153, § 8-a5.]

5618. Filing of records. When any territory has been annexed to or severed from any city or town the clerk thereof shall make and certify a transcript of such part of the records of such city or town as shows the final action of the council and shall file the same for record in the office of the recorder of the county in which the city or town is located and also in the office of the secretary of state. And in like manner the clerk of the district court shall make and file a certified copy of the record of the final action of the court on such proceedings and when such certified copies have been filed the annexation or severance, as the case may be, shall be complete and all persons shall be bound to take notice thereof. [R., '60, §§ 1053, 1054; C., '73, §§ 445, 446; C., '97, § 627; 40 Ex. G. A., S. F. 153, § 8-a6.]

CHANGE IN NAME

5619. Resolution—notice. The corporate name of any city or town may be changed as follows: The council may, by resolution, propose such change of name, setting forth therein the proposed new name, which shall not be the same as that of any city, town, or postoffice, existing in the state at the time of the passage of such resolution. The question shall then be submitted to a vote of the qualified electors at the next regular city or town election, or at a special election, as the council may provide. Notice that a change of name is to be

voted on at any election shall be published in a newspaper published in said city or town; if none be so published, then in one published in the county or counties in which said city or town is situated. [C., '97, § 628; 40 Ex. G. A., S. F. 153, § 9.]

5620. Election. The proposition to be submitted at such election shall be: "Shall the proposition to change the name of (here insert the name of the city or town) to (here insert the proposed name) be adopted?" and the proposition shall be printed and placed upon the ballots, and the election shall be conducted in the same manner as provided with respect to like or similar propositions in the title on elections. [C., '97, § 629.]

5621. Record filed. If a majority of the votes cast is in favor of the proposed change, the clerk of the city or town shall enter upon the records thereof the result of such election, and set forth in such record the new name adopted, as well as the original name thereof, and shall cause to be filed for record a certified copy of the entry so made in the office of the recorder of the county or counties in which such city or town is situated, and in the office of the secretary of state. [C., '97, § 629.]

5622. Change complete. When certified copies are made and filed as required by the preceding section, the change of name shall be complete, and the new name adopted shall be judicially recognized in all subsequent proceedings wherein said city or town may be interested. [C., '97, § 630.]

CHAPTER 287

ORGANIZATION AND OFFICERS

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5623. Classes of cities — towns — villages. The municipal corporations referred to in this title shall be divided into cities of the first class, cities of the second class, and towns.

1. *First class.* Every municipal corporation now organized as a city of the first class, or having a population of fifteen thousand or over, shall be a city of the first class.

2. *Second class.* Every municipal corporation now organized as a city of the second class, or having a population of two thousand, but not exceeding fifteen thousand, shall be a city of the second class.

3. *Towns.* Every municipal corporation having a population of less than two thousand shall be deemed a town.

4. *Villages.* Town sites platted and unincorporated shall be known as villages. [R., '60, §§ 1077, 1078; C., '73, §§ 507, 508; C., '97, § 638.]

5624. Change of class—loss of population. Within six months after the publication of any state or federal census, the executive council shall cause a statement and list of each city or town affected thereby in its class as a corporation to be published in some newspaper at the seat of government and in each city or

town, the class of which is changed. No city shall be affected in its classification by a subsequent loss of population, unless, in a city of the second class, it shall have dropped below fifteen hundred, or in a city of the first class, below ten thousand. [R., '60, § 1079; C., '73, § 509; C., '97, § 639; S., '13, § 639; 40 Ex. G. A., H. F. 154, § 1.]

5625. Change of class—ordinances—wards. Before the next election in a city or town after a change of class, the council shall make and publish such ordinances as may be necessary to perfect such organization in respect to the election, duties, and compensation of officers. All assets and property of the corporation shall be held and administered as provided by law for its new class as a corporation. Upon the change of a town to a city, the council shall, for the purpose of holding the first election, divide the same into wards. [R., '60, §§ 1079, 1080; C., '73, §§ 509, 510; C., '97, § 640; 40 Ex. G. A., H. F. 154, § 2.]

5626. Wards. Cities may be, by the council thereof, divided into wards, new ones created, or the boundaries changed, but in all cases, whether it be the creation of wards or the

changing of the boundaries thereof, the same shall be laid off, as nearly as may be, in a rectangular form, conforming the lines to the center of the streets or alleys, and giving to each ward, as far as practicable, an equal population; but in cities of the second class, the number shall not be increased beyond five nor decreased to less than two. [R., '60, § 1092; C., '73, § 520; C., '97, § 641; S., '13, § 641.]

5627. Elections. Regular city and town elections shall be held on the last Monday in March, and elective officers shall be chosen biennially to succeed officers whose terms expire. The voting places shall be fixed by the council, at least one polling place for each precinct or ward as the case may be, and the election shall be conducted in the manner provided by law for general elections. [R., '60, § 1130; C., '73, § 501; C., '97, § 642; S., '13, § 646; 40 Ex. G. A., H. F. 154, § 3.]

5628. Residence in precinct — exception. Each qualified elector may vote at said election, who, for ten days has been a resident of the precinct in which he offers to vote. Electors who are registered and otherwise qualified and who change residence from the precinct where registered to another precinct within ten days preceding the election, may vote in the precinct where registered except at elections when councilmen are to be elected by the voters of a ward or district. [R., '60, § 1130; C., '73, § 501; C., '97, § 642; 40 G. A., ch. 115, § 1; 40 Ex. G. A., H. F. 154, § 3-a1.]

5629. Tie votes — contesting elections. A tie vote for any city or town office shall be determined as provided in the title on elections. The election of any person to a city or town office may be contested on the same grounds and in the same manner provided for contesting elections to county offices, so far as applicable. The mayor shall be the presiding officer of the court, but if his election is contested, the council shall select one of its members to act in his place. [C., '97, §§ 678, 679; 40 Ex. G. A., H. F. 154, § 4.]

5630. Qualifications of officers. Every officer elected or appointed in a city or town shall be a qualified voter thereof, and every officer elected by any ward or district of a city or town shall reside within the limits of said ward or district. [R., '60, §§ 1091, 1093; C., '73, §§ 511, 518, 521; C., '97, §§ 643, 644; 40 Ex. G. A., H. F. 154, § 5.]

5631. Council — how composed — election. Councils shall be composed in towns, of five councilmen at large, and in cities, except as otherwise provided, of two councilmen at large and one councilman from each ward; but if any city embraces within its limits the whole or part of two or more townships, two of which parts contain one thousand or more electors, only one councilman at large shall be chosen from any one township. [R., '60, §§ 1081, 1093; C., '73, §§ 511, 521; C., '97, §§ 645, 646; S., '13, §§ 645, 646; 40 Ex. G. A., H. F. 154, § 6.]

5632. Officers elected at large. In all cities and towns, the mayor, treasurer, and assessor, and in cities of the first class, the solicitor, auditor, and city engineer, and where there is no municipal or superior court, the police judge, shall be elected by the entire electorate. [R., '60, §§ 1081, 1084, 1090, 1106; C., '73, §§ 390, 511, 514, 517, 532, 535; C., '97, §§ 647, 648, 649; S., '13, §§ 647, 648, 649; 40 Ex. G. A., H. F. 154, § 7.]

5633. Officers appointed by council. In all cities and towns the council, at its first meeting after the biennial election, shall appoint a clerk, and in cities of the second class shall appoint a city solicitor, and may appoint a city engineer. [R., '60, §§ 1086, 1093, 1103, 1105; C., '73, §§ 515, 522, 532, 534; C., '97, § 651; S., '13, § 651; 38 G. A., ch. 147, § 1.]

5634. Officers appointed by the mayor. The officers to be appointed by the mayor shall be:

1. A marshal, and such police and other officers as may be provided by ordinance; and in emergencies such special policemen as he may think proper, reporting such appointments to the council at its next regular meeting. Such special appointments shall continue in force until such meeting, unless sooner terminated by the mayor.

2. A health physician.

3. A street commissioner.

4. In cities of the first class, when necessary, a wharfmaster. [R., '60, §§ 1086, 1103, 1105, 1106; C., '73, §§ 515, 532, 534, 535; C., '97, § 652; S., '13, § 652; 40 Ex. G. A., H. F. 154, § 8.]

5635. Police matrons — appointment — number. In cities having a population of twenty-five thousand or more, for each station house provided therein for the detention or imprisonment of women or children under arrest, the mayor may, and in cities having a population of thirty-five thousand or over shall, appoint one or more women, residents of the city, as police matrons, who shall be over thirty years of age. The appointees shall be, so far as applicable, subject to the same regulations and restrictions as policemen, and hold their positions during good behavior, unless by reason of age or infirmity they become incapacitated to perform the duties of the position. [C., '97, § 654; S., '13, § 654.]

5636. Other officers. Cities and towns may, by general ordinance, provide for the appointment, by the mayor, of such additional officers, as they may deem necessary, including superintendent of markets, harbor masters, and port wardens, usual and proper for the regulation and control of navigation, trade, or commerce, or needful and proper for the good government of the city or town, or the due exercise of its corporate powers, and fix their term of office. [R., '60, §§ 1095, 1098; C., '73, §§ 524, 528; C., '97, § 655; S., '13, § 655.]

5637. Clerk of police court. The council may provide, by ordinance, for the appointment of a clerk of the police court by the judge

thereof, who shall hold his office subject to removal; the appointment or removal, when made, to be entered in the records of the court. [R., '60, § 1116; C., '73, § 542; C., '97, § 656.]

5638. Removal of officers. All persons appointed to office in any city or town may be removed by the officer or body making the appointment, but every such removal shall be by written order, which shall give the reasons therefor and be filed with the city clerk. [C., '97, § 657; S., '13, § 657.]

NOTE: Removal of city or town officers, see §§ 1117, 1118.

5639. Mayor—powers and duties. In cities and towns, the mayor shall have powers and perform duties as follows:

1. *Executive officer—magistrate.* He shall be a conservator of the peace, and, within the limits of the same, shall have all the powers conferred upon sheriffs to suppress disorders. He shall be the chief executive officer thereof, and it shall be his duty to enforce all regulations and ordinances; he may, upon view, arrest anyone guilty of a violation thereof, or of any crime under the laws of the state, and shall, upon information supported by affidavit, issue process for the arrest of any person charged with violating any ordinance of the city; shall supervise the conduct of all corporate officers, examine into the grounds of complaint made against them, and cause all neglect or violation of duty to be corrected, or report the same to the proper tribunal, that they may be dealt with as provided by law.

2. *Office.* He shall keep an office at some convenient place in the city or town, to be provided by the council, and keep the corporate seal thereof in his charge.

3. *Signature.* He shall sign all commissions, licenses, and permits granted by the authority of the council, and do such other acts as by law or ordinance may require his signature or certificate.

4. *Other duties.* He shall also perform such other duties compatible with the nature of his office as the council may from time to time require.

5. *Presiding officer—vote.* He shall be the presiding officer of the council with the right to vote only in case of a tie.

6. *Report.* He shall, at the first regular meeting of the newly elected council in April, and at such other times as he may deem expedient, report to it concerning the municipal affairs of the city or town, and recommend such measures as to him may seem advisable.

7. *Hold police court.* Until a police judge or judge of superior court shall be elected and qualifies in cities entitled to elect such officer, he shall have all the powers and jurisdiction and shall hold the police court in such manner as is required of such judge.

8. *Station houses for women.* In all cities containing a population of twenty-five thousand or more, he shall designate one or more station houses within such city for the detention or imprisonment of all women and

children under arrest in said city, and see that provisions are made by which the rooms or cells set apart for them shall be separate from and out of sight of the rooms or cells in which male prisoners are imprisoned. [R., '60, §§ 1082, 1085, 1091, 1102, 1105, 1121; C., '73, §§ 506, 512, 518, 519, 531, 534, 537, 547; C., '97, § 658; S., '13, § 658.]

5640. Clerk—duties. In all cities and towns the clerk shall perform the following duties:

1. Attend all meetings of the council, but in no event have the right to vote on any question before it.

2. Make an accurate record of all proceedings had, rules and ordinances adopted by the council, and the same shall at all times be open to the public.

3. Supply the treasurer with a statement of all warrants issued after each meeting, giving the number and amounts of each.

4. Have the custody of all by-laws and ordinances of the city or town.

5. Perform such duties as may be required by ordinance. [R., '60, §§ 1082, 1093; C., '73, §§ 512, 522; C., '97, § 659.]

5641. Warrants—how drawn. The auditor, clerk, or other officer of cities and towns whose duty it is to draw the warrants thereof, shall not draw any such warrant except upon the vote of the council. [C., '97, § 900; 37 G. A., ch. 196, § 1; 39 G. A., ch. 3.]

5642. List of warrants. The officer drawing such warrants shall, on the first Monday of each month, furnish the council a sworn and complete list of all warrants, and the amount thereof, drawn by him during the preceding month, which list shall state on whose account and the object and purpose for which each warrant was drawn. [C., '97, § 901.]

NOTE: Above section made applicable to special charter cities by § 6717.

5643. Prohibitions as to warrants. All the provisions of sections 5158, 5159, 5255 to 5257, inclusive, shall be applicable to cities and towns, their officers and employees, subject only to such modifications as may be necessary therefor. [C., '97, § 903; 40 Ex. G. A., S. F. 177, § 14-a1.]

5644. Treasurer—general duties. The treasurer of the city or town shall receive all money payable to the city or town, and disburse the same only on warrants drawn and signed by the proper officer, sealed with the city seal, and perform such other duties as may be prescribed by law or ordinance. He shall keep in a book provided by the town a register and description of all warrants reported to him by the clerk. [R., '60, §§ 1103, 1106; C., '73, §§ 532, 535; C., '97, § 660.]

5645. Unpaid warrants. When a warrant drawn on the treasury is presented for payment, and not paid for want of money, he shall indorse the fact thereon, with the date

of presentation, and sign it, and thereafter it shall draw interest at six per cent per annum, unless issued under a resolution or contract providing that it shall not draw interest, or shall draw interest at a lower rate. [C., '97, § 660.]

5646. Record of warrants. He shall keep a record of all warrants drawn upon the treasury and presented, in a book so ruled as to show in separate columns, as to each warrant, the number, date, principal, name of drawee, when paid, to whom paid, and the amount of interest paid, and all such warrants shall be paid in the order of their presentation. [C., '97, § 660.]

5647. Calls for warrants. He shall issue calls for outstanding warrants at any time he may have funds on hand for the payment thereof; shall give notice of the number of the warrants which will be paid, by posting a written notice thereof in the mayor's office, and in the treasurer's office when there is one, and, at the expiration of ten days from the date of the posting, interest on the warrants so named shall cease. [C., '97, § 660.]

5648. Indorsement—cancellation. When a warrant which draws interest is taken up, he shall also indorse upon it the date and amount of interest allowed, and such warrants shall be canceled and not reissued. [C., '97, § 660.]

5649. Monthly returns. He shall make returns monthly, or oftener if required by the council, to the officer drawing such warrants, showing the warrants paid and the amount of principal and interest paid. [C., '97, § 660.]

5650. Report of financial condition. He shall make a written report under oath to the council at its first regular meeting in each month, showing the financial condition of the city. [C., '97, § 660.]

5651. Deposit of funds. Treasurers of cities and towns shall, with the approval of the council as to place and amount of deposit, by resolution entered of record, deposit city and town funds in any bank or banks in the city or town to which the funds belong, at interest at the rate of not less than two and one-half per cent per annum on ninety per cent of the daily balances, payable at the end of each month. Interest shall accrue to the benefit of the general fund. [S., '13, § 660-a; 40 Ex. G. A., H. F. 154, § 9.]

5652. Bond—action on. Before such deposit is made in any bank, it shall file a bond in a sum to be fixed by the council, which shall not be less than double the amount which it is estimated will be on deposit at any one time, with sureties to be approved by the treasurer and city council, and conditioned to hold the treasurer harmless from all loss by reason thereof.

In case an approved surety company's bond is furnished, such bond may be accepted in an

amount ten per cent in excess of the estimated deposits.

All bonds shall be filed with the city clerk and action thereon may be brought by the treasurer or the city, as the council may elect. [S., '13, § 660-a; 40 Ex. G. A., H. F. 154, § 10.]

5653. Refusal of local bank. If no such bank will accept said deposits, under the conditions set forth, then said funds may be deposited in any bank in the state which will accept them under said conditions. [S., '13, § 660-b; 40 Ex. G. A., H. F. 154, § 11.]

5654. Private use of funds. No treasurer shall loan or in any manner use for private purposes any funds coming into his hands as treasurer. [S., '13, § 660-c; 40 Ex. G. A., H. F. 154, § 12.]

5655. Expense of bond. If the treasurer request it, the city or town shall pay the reasonable expense of procuring the bond for the city treasurer, at a premium not exceeding one-half of one per cent per annum of the amount thereof. [S., '13, § 660-d; 40 Ex. G. A., H. F. 154, § 13.]

5656. Assessor—duties—deputies—returns. All assessors elected by cities and towns shall perform the same duties as township assessors. They may appoint such number of deputies as the council shall authorize. In cities of the first class having a population of sixty thousand or over, the board of supervisors of the county shall furnish the assessor with supplies and an office; and said assessor shall appoint such number of deputies as the board of supervisors may authorize, such appointments to be approved by said board. If any city or town is situated in two or more counties, the assessor shall make returns of the assessment to the proper county. [C., '73, § 390; C., '97, § 661; S., '13, § 661.]

5657. Marshal—duties. The marshal shall be ex officio chief of police and may appoint one or more deputy marshals, who may perform his duties, and who, in cities of the first class, shall be members of the police force. He shall have the supervision and general direction of the police force, and shall be the ministerial officer of the corporation. He shall attend upon the sittings of the mayor's and police court, execute within the county and return all writs and other process directed to him from the mayor's and police court, suppress all riots, disturbances, and breaches of the peace, arrest all disorderly persons in the city or town and all persons committing any offense against the ordinances thereof, and forthwith bring such persons before the proper court for examination or trial. He shall pursue and arrest any person fleeing from justice, and shall diligently enforce all laws, ordinances, and regulations for the preservation of the public welfare and good order, and shall have the same powers and duties as constables in similar cases. [R., '60, §§ 1086, 1104, 1106, 1107; C., '73, §§ 515,

533, 536, 537; C., '97, §§ 653, 662, 663; S., '13, § 652; 40 Ex. G. A., H. F. 154, § 14.]

5658. Policemen—powers and duties. The officers and members of the police force shall have such powers and perform such duties as may be provided by law or ordinance, and shall have the same powers as marshals to make arrests and suppress riots, disturbances, and breaches of the peace. [R., '60, §§ 1096, 1108; C., '73, §§ 525, 537; C., '97, § 664.]

5659. Police matrons. Police matrons shall have charge of all the women and children under arrest, accompanying to court such as may require such aid. They shall be subject to the authority of the marshal and the rules and regulations prescribed by his authority, and in stations, when on duty, shall be subject to the authority of the officers in command. In cities where workhouses are established for the detention of women, or where there are houses of detention, they shall have at all times the right of entering such establishments, and shall visit them whenever in their judgment such visits may be necessary. A suitable place shall be provided for the police matrons, when not on duty, for rest and refreshment. [C., '97, § 665.]

5660. Other officers. The solicitor, engineer, auditor, physician, superintendent of markets, street commissioner, wharfmaster, harbor master, port warden, and such additional officers as may be provided for, shall have such powers and perform such duties as are prescribed by law or ordinance. [R., '60, §§ 1103, 1106; C., '73, §§ 532, 535; C., '97, § 666.]

5661. Statement of supplies. In all cities, each officer or board in charge of any department shall furnish and file in the city clerk's office, thirty days before the beginning of each fiscal year, which shall be the first day of April of each year, a sworn detailed statement of the supplies necessary for his or its department during the next fiscal year. [C., '97, § 667.]

5662. Executive and legislative functions. All legislative and other powers granted to cities and towns shall be exercised by the councils, except those conferred upon some officer by law or ordinance. All executive functions and powers shall be exercised by the mayor and other officers and boards, and neither the council nor the members thereof shall exercise any executive function unless expressly conferred by law. [R., '60, §§ 1081, 1090, 1091, 1095; C., '73, § 511; C., '97, § 668; S., '13, §§ 668, 879-p; 40 Ex. G. A., H. F. 154, § 15.]

5663. City and town councils. City and town councils shall:

1. *Organization—quorum.* On the first Monday after their election, assemble at 12 o'clock noon and organize. A majority of the whole number of members to which the corporation is entitled shall be necessary to constitute a quorum.

2. *Meetings.* Determine the time and place of holding their meetings which shall at all times be open to the public, and in the absence of the mayor or clerk appoint a temporary chairman or clerk, as the case may be, from their own number, which appointment shall be entered of record.

3. *Special meetings.* Hold special meetings when called by the mayor or any three members of the council. Notice thereof shall be given personally or left at the usual place of residence of each member of the council, and a record of the service of notice made by the clerk.

4. *Rules—journal.* Determine the rules of their own proceedings, and cause to be kept a journal thereof which shall be open to public inspection.

5. *Attendance of members.* Have power to compel the attendance of absent members in such manner and under such penalties as they may prescribe.

6. *Seal.* Cause to be provided a seal in the center of which shall be the name of the city or town, and around the margin the words "city seal" or "town seal", as the case may be, which shall be affixed to all transcripts, orders, or certificates which it may be necessary or proper to authenticate.

7. *Election of officers.* Make, viva voce, all appointments or elections of officers, except for the purpose of filling vacancies in offices not filled by election by the council, and a concurrence of a majority of the whole number of members of the council shall be required. On the vote resulting in an election or appointment the name of each member and for whom he voted shall be recorded.

8. *Election for filling vacancies.* Elect by ballot persons to fill vacancies in offices not filled by election by the council, and the person receiving a majority of the votes of the whole number of members shall be declared elected to fill the vacancy.

9. *Terms of officers.* Fix by ordinance the terms of service, which shall not exceed two years, of all officers whose terms are not prescribed by law.

10. *Powers of officers.* Prescribe by ordinance the powers to be exercised and duties performed by officers in so far as such powers and duties are not defined by law.

11. *Police force.* Have power to establish a police force and organize the same under the general supervision of the marshal, and to provide one or more stationhouses.

12. *Custody of women and children.* appropriate annually in cities having a population of twenty-five thousand inhabitants or more, such sums as may be necessary to secure separate care and confinement in stationhouses of all women and children under arrest, and for the appointment, salaries, and maintenance of police matrons.

13. *Community civic congress.* In any city or town erecting a soldiers', sailors', and marines' memorial building, appoint a community civic congress to serve without compensation,

composed of three residents especially fitted for and interested in community work, who may cooperate with the council in all matters pertaining to community improvement, child welfare, social and recreational activities. Such congress may be appointed in any city or town.

14. *Control of finances.* Provide for the management and control of the finances and of the property, real and personal, belonging to the city or town.

15. *Advertise for supplies.* In cities, advertise in at least two newspapers published and of general circulation in the city for three weeks by one insertion in each newspaper per week, for bids for furnishing all supplies for the several departments of the city. The last publication of said advertisement shall be two weeks before the beginning of the fiscal year.

16. *Appropriations.* Make separate appropriations in cities for all the different expenditures of the city government for each fiscal year at or before the beginning thereof, and it shall be unlawful for it or any officer, agent, or employee of the city to issue any warrant, enter into any contract, or appropriate any money in excess of the amount thus appropriated during the year for which the appropriation is made. No city shall appropriate in the aggregate an amount in excess of its annual legally authorized revenue, but cities may anticipate their revenues for the year for which appropriation is made, or bond or refund their outstanding indebtedness. 1. [R., '60, §§ 1081, 1093; C., '73, §§ 511, 522; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 2. [R., '60, § 1095; C., '73, § 524; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 3. [R., '60, § 1095; C., '73, § 524; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 4. [R., '60, § 1093; C., '73, § 522; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 5. [R., '60, § 1093; C., '73, § 522; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 6. [R., '60, §§ 1047, 1094; C., '73, §§ 454, 523; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 7. [R., '60, § 1134; C., '73, § 493; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 8. [R., '60, § 1101; C., '73, §§ 514, 524; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 9. [R., '60, § 1095; C., '73, § 524; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 10. [R., '60, § 1095; C., '73, § 524; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 11. [R., '60, § 1096; C., '73, § 524; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 12. [C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 13. [37 G. A., ch. 182, § 4; 38 G. A., ch. 170, § 2; 40 Ex. G. A., H. F. 154, § 16.] 14. [R., '60, § 1122; C., '73, § 490; C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 15. [C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.] 16. [C., '97, § 668; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 16.]

5664. *Compensation of councilmen.* Councilmen in cities of the first class shall be paid an amount prescribed by ordinance, not in excess of two hundred fifty dollars per annum,

which shall be in full compensation of all services of such councilmen of every character connected with their official duties, except when acting as members of the board of review, for which service they shall receive not more than two dollars a day for each day when acting as a board of review, to be paid out of the county treasury; and in all other cities and towns they shall receive not to exceed one dollar each for every regular or special meeting, and in the aggregate not exceeding fifty dollars in any one year; but in such cities and towns the members shall be paid in addition to the foregoing, for services as members of the board of review, an amount not exceeding one dollar for each session of not less than three hours, and the compensation for services as members of the board of review shall be paid out of the county treasury. [R., '60, § 1095; C., '73, § 505, C., '97, § 669; S., '13, § 669.]

5665. *Fees of mayor.* Mayors of cities and towns, where no salary is provided by ordinance in lieu of fees, shall receive, for holding a mayor's or police court, or discharging the duties of a justice of the peace, the compensation allowed by law for similar services for such officers, to be paid in the same manner. [R., '60, §§ 1091, 1121; C., '73, §§ 519, 547; C., '97, § 670.]

5666. *Fees of police judge.* The police judge shall be entitled, in all criminal cases prosecuted before him in behalf of the state, to the same fees, to be collected in the same manner, as a justice of the peace in like cases; in prosecutions before him in behalf of the city, to such fees, not exceeding those for services of like nature in state prosecutions, as the council may by ordinance prescribe. [R., '60, § 1118; C., '73, § 544; C., '97, § 671.]

5667. *Compensation of matrons.* Police matrons shall receive not less in any case than the minimum salary paid to policemen in the city in which they are appointed. [C., '97, § 672.]

5668. *Fees of marshal and deputy.* The marshal shall receive, in criminal cases arising under ordinances, the same fees as constables receive for similar services, payable from the treasury of the city or town; and in criminal cases arising under the state law, the same fees as constables receive for similar services, payable from the county treasury. In civil proceedings he shall receive the same fees as constables receive for similar services payable in the same way. The deputy marshal shall receive the same fees for services performed as the marshal. [R., '60, §§ 1086, 1104, 1107; C., '73, §§ 515, 533, 536; C., '97, § 673.]

5669. *Compensation of assessors and deputies.* Town assessors and assessors in cities of the second class, and their deputies, shall receive the same compensation as township assessors, which shall be determined in the

same manner and payable from the county treasury.

In cities of the first class, including those under the commission form of government, the compensation of the assessor shall be not more than eighteen hundred dollars per annum, or not less than five dollars per day for the time actually employed, to be fixed by the board of supervisors; and that of the deputies not more than five dollars or less than three dollars and fifty cents per calendar day, Sunday excepted, for the time actually employed, to be fixed by the board of supervisors.

In cities under the commission form of government having a population of more than forty-five thousand, and in cities acting under special charter having a population of more than forty-five thousand, the board of supervisors shall fix the compensation of the assessor at twenty-five hundred dollars per annum, and the compensation of not more than two head deputy assessors at eighteen hundred dollars per annum.

In cities where extra or special services are to be performed by the assessor, the board of supervisors may by special contract with the assessor determine the compensation to be paid. [C., '97, § 674; S., '13, § 674; 38 G. A., ch. 103, § 1; 39 G. A., ch. 23, § 1.]

5670. Salaries in lieu of fees. It may be provided by ordinance that any city or town officer elected or appointed shall receive a salary in lieu of all other compensation; and in such case such officer shall not receive for his own use any fees or other compensation for his services as such officer, but shall collect the fees authorized by law or ordinance, and pay the same as collected, or as prescribed by ordinance, into the city or county treasury, as the case may be. [C., '97, § 675.]

5671. Compensation of other officers. All officers elected or appointed in any city or town, whose compensation is not fixed by law, shall receive such salary, compensation, or fees for their services as the council may by ordinance from time to time prescribe.

For all attested certificates and transcripts, other than those ordered by the council, the clerk shall be paid the same fees as are allowed to county officers for like services. [R., '60, §§ 1094, 1095, 1098; C., '73, §§ 523, 524, 528; C., '97, § 676.]

5672. Ineligibility—change of compensation. No member of any city or town council shall, during the time for which he has been elected, be appointed to any municipal office which has been created or the emoluments of which have been increased during the term for which he was elected, nor shall the emoluments of any city or town officer be changed during the term for which he has been elected or appointed, unless the office be abolished. No person who shall resign or vacate any office shall be eligible to the same during the time for which he was elected or appointed, when, during the time, the emoluments of the office have been increased. [R., '60, §§ 1091, 1122; C., '73, § 490,

491, 519; C., '97, §§ 668, 677; S., '13, § 668; 40 Ex. G. A., H. F. 154, § 17.]

5673. Interest in contracts. No officer, including members of the city council, shall be interested, directly or indirectly, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the city or town. [S., '13, § 879-q.]

5674. Free passes or franks. No such officer shall accept or receive, directly or indirectly, from any person, firm, or corporation operating within the said city or town any railway, inter-urban railway, street railway, gasworks, waterworks, electric light or power plants, telegraph line, or telephone exchange, or other business using a public franchise, any frank, free pass, or ticket, or other service upon terms more favorable than is granted to the public generally, except where, by franchise granted by the municipality to any such person or corporation, any officers of said municipality are granted such privileges as part of such franchise, and except that members of the police and fire departments of any city or town shall be carried without charge. Any violation of the provisions of this or the preceding section shall be a misdemeanor. [S., '13, § 879-q.]

5675. Accounts. All cities and towns shall establish and keep their accounts so the same shall exhibit a true and detailed statement of all public funds collected, received, and expended on account of such municipality for any purpose whatever, by any and all public officers, employees, or other persons. Such accounts shall show the receipt, use, and disposition of all public property, and the income, if any, derived therefrom, and of all sources of public income and the amount due and received from each source. All receipts, vouchers, and other documents kept, or that may be required to be kept, necessary to prove the validity of every transaction and the identity of every person having any beneficial relation thereto, shall be filed and preserved in the office of the clerk or recorder as the case may be. [S., '13, § 741-a.]

NOTE: Above section and the following section made applicable to special charter cities by § 6719.

5676. Separate accounts. Separate accounts shall be kept for every appropriation, showing date and manner of each payment made out of the funds provided by such appropriation, the name and address of each person or corporation to whom paid, and for what purpose paid.

Separate accounts shall be kept for each department, public improvement, or undertaking, and for each public utility owned or operated by the said municipality.

Said separate accounts for each public utility shall show the true and entire cost of the said utility and operation thereof, the amount collected annually by general or special taxation for the services rendered to the public, and the amount and character of the service ren-

dered therefor, and the amount collected annually from private users, if any, for the services rendered to them, and the amount and character of the services rendered therefor. [S., '13, § 741-b.]

5677. Annual report. Each city or town shall, through its chief accounting and warrant issuing officer, make an annual public report which shall contain an accurate statement in summarized form of all collections made or receipts of the municipality from all sources, all accounts due the public but not collected, and all expenditures for every purpose, and, except as otherwise provided by law, a statement in detail of the cost of operation and income of each public utility operated or owned by the municipality. It shall show in detail the entire public debt of the municipality and the amount of debt which it may under the law contract for the year in which report is made. [S., '13, §§ 741-c, 1056-a7; 40 Ex. G. A., H. F. 158, § 22.]

5678. Accounting officers. All accounting officers of all boards and commissions, departments and offices within the municipality receiving or disbursing public funds shall file with the auditor or clerk within thirty days from the expiration of their fiscal year, a report in writing of official transactions in the form and manner required by law. In case of refusal or gross neglect to comply with the law governing the time and method of accounting for and reporting municipal transactions, the official delinquent shall be deemed guilty of a misdemeanor. The auditor or clerk may institute legal proceedings to enforce the making of such reports. [S., '13, § 1056-a7; 40 Ex. G. A., H. F. 158, § 23.]

5679. Publication. The annual report shall be published in two newspapers of general circulation in the city or town, or in one if no other is published therein, and if none be published, by posting a copy in three public places within the city or town. [S., '13, § 741-c; 40 Ex. G. A., H. F. 158, § 24.]

5680. Report—failure to make. On or before the first day of May of each year, the official making the report for each city or town shall forward to the auditor of state a certified copy of the annual report. If such official fails to file his report with the auditor of state

within the time prescribed, the auditor may send an examiner or examiners to make the report and the expenses thereof shall be charged against the delinquent city or town. [S., '13, § 1056-a9; 40 Ex. G. A., H. F. 158, § 25.]

5681. Report—by whom made. It shall be the duty of the auditor or clerk who served in the capacity during the time covered by the report, to prepare and file the same, and if said official has retired from office, the council shall allow him such compensation for preparing the report as may be deemed proper, not to exceed five dollars per day for the days actually employed in such service. [S., '13, § 1056-a9; 40 Ex. G. A., H. F. 158, § 26.]

5682. Publication by state auditor. The auditor of state shall prepare said reports for publication in a separate volume. Said reports shall show under appropriate schedules the total receipts and expenditures, assets and indebtedness, and related data of all cities and towns in the state, together with comments and recommendations respecting desirable changes in the law governing financial administration in municipalities. [S., '13, § 1056-a9; 40 Ex. G. A., H. F. 158, § 27.]

5683. League of municipalities. Cities and towns may by resolution annually appropriate out of the general fund to pay dues to the league of Iowa municipalities not to exceed the following amounts: Municipalities of less than two thousand population, ten dollars; from two thousand to five thousand, twenty dollars; from five thousand to ten thousand, thirty dollars; from ten thousand to thirty thousand, forty dollars; from thirty thousand to fifty thousand, fifty dollars; all over fifty thousand, sixty dollars. In addition they may pay the expenses of not more than two delegates to the annual meeting of the league. [S., '13, § 694-b; 40 Ex. G. A., H. F. 158, § 28.]

NOTE: Above section and the following section made applicable to special charter cities by § 6757.

5684. Accounting—reports. The league shall keep and make such accounts and reports as shall be required by the state municipal accounting department, and the same shall be annually checked by said department and published in the volume of municipal accounts. [S., '13, § 694-c.]

CHAPTER 288

DEPARTMENT OF PUBLICITY, DEVELOPMENT, AND GENERAL WELFARE

5685. Department authorized.
5686. Objects.

5685. Department authorized. Any city in this state shall have power to establish by ordinance, upon the terms and conditions hereinafter prescribed, a department under control of the city council, said department to be known as the department of publicity, development, and general welfare, and the mayor, with the approval of the council, shall have power to appoint a superintendent of such department, and may employ such assistants as may be necessary to perform the work of said department, at such compensation as may be fixed by resolution of such city council. [S., '13, § 679-m.]

5686. Objects. Said department shall be for the purpose of collecting and distributing, by correspondence, advertising, and other means, information relating to the industrial, commercial, manufacturing, residential, educational, and other advantages and resources of such city; and for the purpose of encouraging and promoting the establishment and development of industries and manufacturing, commercial, and other interests in such cities and the increase of population thereof; and for the purpose of investigating, promoting, and doing such things as may be for the general welfare of such city and the inhabitants thereof; provided, however, nothing in this chapter shall be construed as authorizing cities to invest any funds raised by taxation in private enterprises or to pay from such funds any bonuses for same. The duties of the superintendent and other employees of said department shall be such as may be prescribed

5687. Election.
5688. Expenses—funds available.

from time to time by the city council, and they shall be at all times under the supervision and control of the mayor in performing said duties. [S., '13, § 679-n.]

5687. Election. The said department can only be established upon the approval of sixty per cent of the legal voters of said city who shall vote on said question, and such question may be submitted by the council of such city at any general, city, or special election for such purpose, at which election the question submitted shall be: "Shall the city of (naming it) establish a department of publicity, development, and general welfare?" If said question shall be answered in the affirmative by not less than sixty per cent of the voters voting thereon, the said department may be established for a period of not to exceed five years from the date of such election. Within one year of the end of such period or at any time thereafter the question may be resubmitted and said department reestablished for a like period, provided that not less than sixty per cent of the voters thereon vote in favor thereof. [S., '13, § 679-o.]

5688. Expenses—funds available. The expenses of said department may be defrayed out of any and all funds received by such city from fines and penalties and out of any funds that may be in the treasury of said city, not derived from general taxation nor from special taxes levied for other purposes. [S., '13, § 679-p.]

CHAPTER 289

CIVIL SERVICE

NOTE: Certain provisions of this chapter made applicable to special charter cities by § 6758.

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| 5689. Appointment of commission. | 5702. Removal or discharge. |
| 5690. Qualifications. | 5703. Removal or discharge of subordinates. |
| 5691. Optional appointment. | 5704. Appeal. |
| 5692. Chairman—clerk. | 5705. Notice of appeal. |
| 5693. Rooms and supplies. | 5706. Charges. |
| 5694. Applicability—exceptions. | 5707. Time and place of hearing. |
| 5695. Examination excused. | 5708. Oaths—books and papers. |
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| 5697. Preferences. | 5710. Public trial. |
| 5698. Names certified—temporary appointment. | 5711. Decision. |
| 5699. Chief of police and chief of fire department. | 5712. Employees diminished. |
| 5700. Qualifications. | 5713. Campaign contributions. |
| 5701. Employees under civil service. | |

5689. Appointment of commission. In cities having a population of eight thousand or over, having a paid fire department, the mayor, with the approval of the council, shall appoint three civil service commissioners who shall hold office, one until the first Monday in April of the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after such appointment, whose successors shall be appointed for a term of six years. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 1; 40 Ex. G. A., S. F. 155, § 1.]

5690. Qualifications. The commissioners must be citizens of Iowa and residents of the city for more than five years next preceding their appointment, and shall serve without compensation. No person while on said commission, shall hold or be a candidate for any office of public trust. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 1; 40 Ex. G. A., S. F. 155, § 1.]

5691. Optional appointment. In cities having a population of less than eight thousand, the council may appoint such commission, or may provide by ordinance for the exercise of the powers and performance of the duties of the commission by the council. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 1; 40 Ex. G. A., S. F. 155, § 2.]

5692. Chairman—clerk. The chairman of the commission for each biennial period shall be the member whose term first expires. The city clerk shall be clerk of the commission and keep a record of all its meetings. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 1; 40 Ex. G. A., S. F. 155, § 3.]

5693. Rooms and supplies. The council shall provide suitable rooms in which the commission may hold its meetings and supply

the commission with all necessary equipment to enable it properly to perform its duties. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 1; 40 Ex. G. A., S. F. 155, § 4.]

5694. Applicability—exceptions. The provisions of this chapter shall apply to all appointive officers and employees, including deputy clerks and bailiffs of the municipal court, in cities under the commission form of government having a population of more than 100,000, except:

1. City clerk, solicitor, assistant solicitor, assessor, treasurer, auditor, civil engineer, health physician, chief of police, market master.

2. Laborers whose occupation requires no special skill or fitness.

3. Election officials.

4. Secretary to the mayor or to any commissioner, and municipal court bailiffs who are employed exclusively as court room attendants.

5. Commissioners of any kind.

In all other cities, the provisions of this chapter shall apply only to members of the police and fire departments, except:

1. Chief of police.

2. Chief of fire department in cities under the manager plan.

3. Matrons, janitors, clerks, stenographers, and secretaries.

4. Casual employees. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 3; 40 Ex. G. A., S. F. 155, § 5.]

5695. Examination excused. Persons now holding positions for which they have heretofore been appointed or employed after competitive examination, or who have rendered long and efficient service, shall retain their positions without further examination, but may be removed for cause. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 5; 40 Ex. G. A., S. F. 155, § 6.]

5696. Examinations required. Such commission shall, on the first Monday of April and October of each year, or oftener if it shall deem it necessary, under such rules as it may prescribe, hold examinations for the purpose of determining the qualifications of applicants for positions, which examinations shall be practical in their character and shall relate to such matters as will fairly test the physical and mental fitness of the person examined to discharge the duties of the position to which he seeks to be appointed. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 3; 40 Ex. G. A., S. F. 155, § 7.]

5697. Preferences. In all examinations and appointments under the provisions of this chapter, honorably discharged soldiers, sailors, or marines of the regular or volunteer army or navy of the United States shall be given the preference, if otherwise qualified. [S. S., '15, § 1056-a32; 39 G. A., ch. 166, § 2; 40 Ex. G. A., S. F. 155, § 7-a.]

5698. Names certified—temporary appointment. Such commission shall, as soon as possible after every such examination, certify to the city council the names of five persons for each class of positions in cities of less than fifty thousand population and ten persons for each class of positions in cities of more than fifty thousand population, who, according to its records, have the highest standing as a result of such examination for the position they seek to fill, and all vacancies in positions under civil service which shall occur before the holding of the next examination shall be filled from said list.

Such appointments from civil service lists shall, in cities under the commission form, be made by the superintendents of the respective departments, with the approval of the council.

In cities under the manager plan such appointments shall be made by the manager, and in other cities, by the chiefs of the respective departments.

In the case of deputy clerks or bailiffs of the municipal court, the appointments, if under civil service, shall be made by the clerk or bailiff thereof, respectively.

If the list for any cause shall be reduced to less than three for any class of positions, then the body or person having the appointing power may temporarily fill a vacancy until the next examination by the commission. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 3; 40 Ex. G. A., S. F. 155, § 8.]

5699. Chief of police and chief of fire department. In cities under the commission plan, the chief of the fire department shall be appointed from the civil service list, and the superintendent of public safety with the approval of the council shall appoint the chief of police and chief of the fire department; in cities under the manager plan the manager shall make such appointments, and in all other cities such appointments shall be made by the

mayor. [39 G. A., ch. 102, § 1; 39 G. A., ch. 216, § 5; 40 Ex. G. A., S. F. 155, § 9.]

5700. Qualifications. All appointive officers and employees of cities shall be selected with reference to their qualifications and fitness and for the good of the public service, and without reference to their political faith or party allegiance. [S. S., '15, § 1056-a32; 40 Ex. G. A., S. F. 155, § 10.]

5701. Employees under civil service—qualifications. Except as otherwise provided, no person shall be appointed or employed in any capacity in the fire or police department, or any department which is governed by the civil service, until such person shall have passed a civil service examination as provided in this chapter, and has been certified to the city council as being eligible for such appointment; provided, however, that in cases of emergency, in which the peace and order of the city is threatened by reason of fire, flood, storm, or mob violence, making additional protection of life and property necessary, in which case the person having the appointing power may deputize additional persons, without examination, to act as peace officers until such emergency shall have passed. In no case shall any person be appointed or employed in any capacity in the fire or police department, or any department which is governed by civil service, unless such person:

1. Is a citizen of the United States and has been a resident of the city for more than one year, but such residence in the city shall not be a necessary qualification for appointment as chief of police or chief of fire department.

2. Is of good moral character.

3. Is able to read and write the English language.

4. Is not a liquor or drug addict.

5. Has not been convicted of a felony.

6. Has not borne arms against the United States government.

7. Has not claimed exemption from military service on account of being a conscientious objector. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 5; 40 Ex. G. A., S. F. 155, § 11.]

5702. Removal or discharge. No person appointed from the civil service list shall be removed arbitrarily, but may be removed, after hearing, by a majority vote of the civil service commission for misconduct or failure to properly perform his duties. [S. S., '15, § 1056-a32; 40 Ex. G. A., S. F. 155, § 12.]

5703. Removal or discharge of subordinates. The person having the appointing power as provided in this chapter, or the chief of police and the chief of the fire department may peremptorily suspend or discharge any subordinate then under his direction, for neglect of duty, disobedience of orders, or misconduct.

Chiefs of police and fire departments of cities under the commission plan shall report suspensions or discharges made by them to the superintendent of public safety within twenty-four hours thereafter.

In cities under the manager plan, such report shall be made to the manager, unless the suspension or discharge is made by him, in which case he shall report the same to the city council.

In other cities, the report shall be made to the mayor.

Such report shall be in writing, stating the reasons for such suspension or discharge. The person or body to whom the report is made shall affirm or revoke such suspension or discharge, according to the facts and merits of the case. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 4; 40 Ex. G. A., S. F. 155, § 13.]

5704. Appeal. If there is an affirmation of the suspension or discharge of any person who secured his appointment or employment through examination by the civil service commission, he may, within five days thereafter, appeal therefrom to said commission. If the appointment or employment was secured through civil service examination by the city council, the appeal shall be made to such council. If the suspension or discharge is revoked, the person who suspended or discharged such officer or employee may in like manner appeal. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 4; 40 Ex. G. A., S. F. 155, § 14.]

5705. Notice of appeal. If the appeal be taken by the person suspended or discharged, notice thereof, signed by the appellant and specifying the ruling appealed from, shall be filed with the city clerk; if by the person making such suspension or discharge, such notice shall also be served upon the person suspended or discharged. [S. S., '15, § 1056-a32; 40 Ex. G. A., S. F. 155, § 15.]

5706. Charges. Within five days from the service of such notice of appeal, the person or body making the ruling appealed from shall file with the body to which the appeal is taken a written specification of the charges and grounds upon which the ruling was based. If such charges are not so filed the person suspended or discharged may present the matter to the body to whom the appeal is to be taken by affidavit, setting forth the facts, and such body shall forthwith enter an order reinstating the person suspended or discharged for want of prosecution. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 4; 40 Ex. G. A., S. F. 155, § 16.]

5707. Time and place of hearing. Within five days after such specifications are filed, the commission or council, as the case may be, shall fix the time, which shall be not less than five nor more than twenty days thereafter, and place for hearing the appeal and shall notify the parties in writing of the time and place so fixed, and the notice shall contain a copy of the specifications so filed. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 4; 40 Ex. G. A., S. F. 155, § 17.]

5708. Oaths—books and papers. The presiding officer of the commission or the council,

as the case may be, shall have power to administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction. The council or commission shall cause subpoenas to be issued for such witnesses and the production of such books and papers as either party may designate. The subpoenas shall be signed by the chairman of the commission or mayor, as the case may be. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 4; 40 Ex. G. A., S. F. 155, § 18.]

5709. Contempt. In case a witness is duly subpoenaed and refuses to attend, or in case a witness appears and refuses to testify or to produce required books or papers, the official body hearing the appeal shall, in writing, report such refusal to the district court of the county or to any judge thereof, and said court or judge shall proceed with said person or witness as though said refusal had occurred in a proceeding legally pending before said court or judge. [40 Ex. G. A., S. F. 155, § 19.]

5710. Public trial. The trial of all appeals shall be public, and the parties may be represented by counsel. [S. S., '15, § 1056-a32; 40 Ex. G. A., S. F. 155, § 20.]

5711. Decision. The council or civil service commission, as the case may be, shall determine the matter on its merits. If the appeal is taken by a suspended or discharged employee and reversed, he shall be reinstated as of the date of his suspension or discharge, and be entitled to compensation for such part of the period while suspended as the commission may determine. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 4; 40 Ex. G. A., S. F. 155, § 21.]

5712. Employees diminished. Whenever the public interest requires a diminution in the number of employees under the civil service, the same may be reduced by resolution of the council. In case it thus becomes necessary to discharge any such employees, the persons discharged shall be those who have shown the least efficiency and competency and whose service has been of the shortest duration. The persons so discharged shall receive a certificate showing the length of their service, and that they have been honorably discharged. [S., '13, § 679-h; 40 Ex. G. A., S. F. 155, § 22.]

5713. Campaign contributions. No officer or employee under civil service shall, directly or indirectly, contribute any money or anything of value, to any candidate for nomination or election to any office, or to any campaign or political committee. Any person violating any provision of this section shall pay a fine of not less than twenty-five dollars or more than one hundred dollars, or be imprisoned in the county jail not to exceed thirty days. [S. S., '15, § 1056-a32; 39 G. A., ch. 216, § 6; 40 Ex. G. A., S. F. 155, § 23.]

CHAPTER 290

ORDINANCES

- 5714. Power to pass.
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- 5718. Signing—veto—passing over veto.
- 5719. Recording.
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5714. Power to pass. Municipal corporations shall have power to make and publish, from time to time, ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by this title, and such as shall seem necessary and proper to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof, and to enforce obedience to such ordinances by fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days. [R., '60, §§ 1071-1073; C., '73, § 482; C., '97, § 680; 40 Ex. G. A., H. F. 158, § 30.]

5715. General requirements. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. An ordinance revising or amending an ordinance or section thereof shall specifically repeal the ordinance or section amended or revised, and set forth in full the ordinance or section as amended or revised. When a city or town shall make a complete revision of its ordinances by rearrangement and grouping of the same under appropriate titles, parts, chapters, and sections, the enactment of said revision of ordinances, as so rearranged and grouped, shall be considered a sufficient compliance with the provisions of this section. [R., '60, § 1122; C., '73, § 489; C., '97, § 681; 38 G. A., ch. 21, § 1; 40 Ex. G. A., H. F. 156, § 1.]

5716. Reading. Ordinances of a general or permanent nature and those for the appropriation of money shall be fully and distinctly read on three different days, unless three-fourths of the council shall dispense with the rule. [R., '60, § 1122; C., '73, § 489; C., '97, § 682.]

5717. Majority vote. No resolution or ordinance for any of the purposes hereinafter set forth, except as specifically provided by law, shall be adopted without a concurrence of a majority of the whole number of members elected to the council, by call of the yeas and nays which shall be recorded:

1. To pass or adopt any by-law or ordinance.

2. To pass or adopt any resolution or order to enter into a contract.

3. To pass or adopt any ordinance or resolution for the appropriation or payment of money. In cities all money shall be appropriated by ordinance, but in towns it may be appropriated by resolution.

4. To direct the opening, straightening, or widening of any street, avenue, highway, or alley.

5. To direct the making of any improvement which will require proceedings to condemn private property.

6. To direct the repair of any street improvement or sewer, the cost of which is to be assessed upon property or against the owners thereof. [R., '60, §§ 1122, 1134, 1135; C., '73, §§ 466, 489, 493, 494; C., '97, §§ 683, 684, 793; S., '13, §§ 683, 693; 38 G. A., ch. 255, §§ 1, 2; 40 Ex. G. A., H. F. 156, § 2.]

5718. Signing — veto — passing over veto. The mayor shall sign every ordinance or resolution passed by the council before the same shall be in force, and, if he refuses to sign any such ordinance or resolution, he shall call a meeting of the council within fourteen days thereafter and return the same, with his reasons therefor. If he fails to call the meeting within the time fixed above, or fails to return the ordinance or resolution with his reasons as herein required, such ordinance or resolution shall become operative without such signature, and the clerk shall record it in the ordinance book, with a minute of the facts making it operative. Upon the return of any such ordinance or resolution by the mayor to the council, it may pass the same over his objections, upon a call of the yeas and nays, by not less than a two-thirds vote of the council, and the clerk shall certify on said ordinance or resolution that the same was passed by a two-thirds vote of the council, and sign it officially as clerk. [C., '97, § 685.]

5719. Recording. All ordinances shall, as soon as may be after their passage, be recorded in a book kept for that purpose, and be authenticated by the signatures of the presiding officer of the council and the clerk. Immediately following the record of every ordi-

nance, the clerk shall append a certificate, stating therein the time and manner of publication thereof, which certificate shall be presumptive evidence of the facts therein stated. [R., '60, § 1133; C., '73, § 492; C., '97, § 686; 40 G. A., ch. 116, § 1; 40 Ex. G. A., H. F. 156, § 3.]

5720. Publication. All ordinances of a general or permanent nature, and those imposing any fine, penalty, or forfeiture, shall be published in some newspaper published and of general circulation in the city or town; but if there be no such newspaper, such ordinances may be published in a newspaper designated by the council and having a general circulation in such city or town, or by posting copies thereof in three public places therein, two of which shall be at the post office and the mayor's office. When the ordinance is published in a newspaper it shall take effect from and after its publication; when published by posting, it shall take effect ten days thereafter. It shall be a sufficient defense to any suit or prosecution for such fine, penalty, or forfeiture, to show that no such publication was made. [R., '60, § 1133; C., '73, § 492; C., '97, § 686; 39 G. A., ch. 84, § 1; 40 G. A., ch. 116, § 1; 40 Ex. G. A., H. F. 156, § 4.]

5721. Book form. When any city or town shall cause or has heretofore caused its ordinances to be published in book or pamphlet form, such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned or provided for therein, in all courts and places, without further proof. When the ordinances are so published, it shall not be necessary to publish them in the manner provided for in the preceding section. [C., '97, § 687.]

5722. Proceedings published or posted. Immediately following a regular or special meeting of the city or town council, the clerk shall prepare a condensed statement of the proceedings of said council, including the list

of claims allowed and from what funds appropriated, and cause the same to be published in one or more newspapers of general circulation, published in said city or town; provided, however, that in cities and towns in which no newspaper is published, such statement and list of claims shall be posted in at least three public places on the business streets of said city or town. [S. S., '15, § 687-a; 37 G. A., ch. 157, § 1.]

5723. Cost of publishing. The compensation allowed each newspaper for such publication shall not exceed one-third of the legal fee provided by statute for the publication of legal notices. [S., '13, § 687-b.]

5724. Certification to county recorder. Immediately after the passage by the city council of an ordinance or resolution establishing any restricted district, building lines, or fire limits, the city clerk shall certify such ordinance or resolution and plat of said district to the county recorder of the county in which the city is situated. [39 G. A., ch. 200, § 1.]

NOTE: Above section and the three following sections made applicable to special charter cities by § 6722.

5725. Recordation. Whenever such ordinance or resolution shall have been certified to the county recorder, then he shall record the same in the miscellaneous record or other book provided for special records. [39 G. A., ch. 200, § 2.]

5726. Index. The county recorder shall index, in the appropriate records, the said ordinance or resolution and the plat filed in accordance with the provisions of the second preceding section. [39 G. A., ch. 200, § 3.]

5727. Fees. In no case shall it be the duty of the county recorder to make the records herein designated except and until the usual and customary fees for such work have been paid into his hands. [39 G. A., ch. 200, § 4.]

CHAPTER 291

MAYORS' AND POLICE COURTS

- 5728. Police court.
- 5729. Clerk as counsel.
- 5730. Jurors.
- 5731. Jurisdiction of courts.
- 5732. Jurisdiction of mayor.

- 5733. Jurisdiction of justice of peace.
- 5734. Transfer of case—fees.
- 5735. Procedure—appeal—judicial notice.
- 5736. Fines recovered by action.
- 5737. Commitment.

5728. Police court. In cities of the first class wherein there is no municipal or superior court there shall be a police court which in all criminal actions shall have the jurisdiction of a justice of the peace court and a mayor's court. It shall be a court of record, and have a seal to be provided by the council, with the name of the state in the center and the style of the court around the margin. It

shall be held in suitable rooms to be provided by the city, and shall always be open for business. [R., '60, §§ 1116, 1117, 1119; C., '73, §§ 543, 545; C., '97, § 688; 40 G. A., ch. 257, § 1.]

5729. Clerk as counsel. The clerk of the police court shall not be in any way concerned as counsel or agent in the prosecution or defense of any person before such court. [R., '60, § 1116; C., '73, § 542; C., '97, § 689.]

5730. Jurors. Provisions shall be made by ordinance for selecting, summoning, and impaneling jurors in the police court, who shall have the qualifications of jurors as provided by law, and for all other matters touching said court that may tend to make it efficient. [R., '60, §§ 1116, 1119; C., '73, §§ 542, 545; C., '97, § 690.]

5731. Jurisdiction of courts. In cities having a superior, municipal, or police court, such court shall have exclusive jurisdiction of all actions or prosecutions for violation of city ordinances. [C., '97, § 691; S., '13, § 691; 40 G. A., ch. 257, § 2.]

5732. Jurisdiction of mayor. In other cities and towns, the mayor shall have exclusive jurisdiction of all actions or prosecutions for violations of city or town ordinances, and shall have, in criminal matters, the jurisdiction of a justice of the peace, coextensive with the county, and in civil cases, the jurisdiction within the city or town that a justice of the peace has within the township. [R., '60, §§ 1085, 1102, 1105; C., '73, § 506; C., '97, § 691; S., '13, § 691; 40 G. A., ch. 257, § 2.]

5733. Jurisdiction of justice of peace. If the mayor or judge of the superior, municipal, or police court is absent or unable to act, the nearest justice of the peace shall have jurisdiction and hold court in criminal cases, and receive the statutory fees, to be paid by the city or county as the case may be. [C., '97, § 691; S., '13, § 691; 40 G. A., ch. 257, § 2.]

5734. Transfer of case—fees. When an information is filed before the mayor for the violation of an ordinance of the city or town, he may, upon his own motion only, at any time before trial, transfer the case for further proceedings to any justice of the peace court within such city or town, and such justice of the peace shall have jurisdiction thereof to the same extent and with the same power as the mayor. The fees taxable after the transfer of the case, fixed by ordinance, shall be paid by

the city or town to such justice. [R., '60, § 1105; C., '73, § 544; C., '97, § 691; S., '13, § 691; 40 G. A., ch. 257, § 3.]

5735. Procedure—appeal—judicial notice. The proceedings before a mayor or a police court shall be, as far as applicable, in accordance with the law regulating similar proceedings before a justice of the peace, unless otherwise provided; but there shall be no change of venue in actions or prosecutions under ordinances, and the trial shall be by the court without a jury, except on appeal; appeals and writs of error shall be taken from the mayor or the police court in the same time and manner, and subject to the same restrictions. If a city or town is situated in two or more counties, the appeal or writ of error shall be taken to or in the district court of the county in which the mayor's court or police court is held. On the hearing of such appeal, or writ of error, the court shall take judicial notice of the ordinances of the city or town. [R., '60, §§ 1085, 1102, 1105, 1120, 5105; C., '73, §§ 506, 546, 4707; C., '97, § 692.]

5736. Fines recovered by action. Fines and penalties may in all cases, and in addition to any other mode provided, be recovered by action before a justice of the peace or other court of competent jurisdiction, in the name of the proper municipal corporation, for its use. In any such action, where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing, as near as may be, the facts of the alleged violation. [R., '60, § 1074; C., '73, § 483; C., '97, § 693.]

5737. Commitment. Whenever a fine and costs imposed for the violation of any ordinance are not paid, the person convicted may, by the court having jurisdiction of the case, be committed to jail until the fine and costs are paid, not to exceed thirty days. [R., '60, § 1100; C., '73, § 484; C., '97, § 694.]

CHAPTER 292

GENERAL POWERS

NOTE: This chapter made applicable to special charter cities by § 6759.

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5738. Bodies corporate — name — authority. Cities and towns are bodies politic and corporate, under such name and style as may be selected at the time of their organization, with the authority vested in the mayor and a common council, together with such officers as are in this title mentioned or may be created under its authority, and shall have the general powers and privileges granted, and such others as are incident to municipal corporations of like character, not inconsistent with the statutes of the state, for the protection of their property and inhabitants, and the preservation of peace and good order therein, and they may sue and be sued, contract and be contracted with, acquire and hold real and personal property, and have a common seal. [C., '51, § 664; R., '60, §§ 1047, 1056, 1057, 1090, 1094, 1095; C., '73, §§ 454-456, 517, 523, 524; C., '97, § 695.]

5739. Nuisances. They shall have power to prevent injury or annoyance from anything dangerous, offensive, or unhealthful; to cause any nuisance to be abated, and to provide for the assessment of the cost thereof to the property. They may prohibit any public or private nuisance, and may maintain actions in equity to restrain and abate any nuisance. [R., '60, §§ 1057, 1096; C., '73, §§ 456, 526; C., '97, § 696; S., '13, §§ 696, 713-b; 40 Ex. G. A., H. F. 158, § 1.]

5740. Inflammable junk. The depositing or storing of inflammable junk, such as old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles, within the fire limits of any city, unless it be in a building of fire-proof construction, is a public nuisance. [37 G. A., ch. 184, § 1; 40 Ex. G. A., H. F. 158, § 2.]

5741. Smoke. The emission of dense smoke in cities of fifteen thousand inhabitants or over is a nuisance and such cities may provide the necessary rules for smoke inspection. [S., '13, §§ 713-a, 713-b; 40 Ex. G. A., H. F. 158, § 3.]

5742. Power to regulate. They shall have power to regulate:

1. *Slaughterhouses.* The operation of packing houses and slaughterhouses, renderies, tallow chandleries, soap factories, bone factories, tanneries, and manufactories of fertilizers and chemicals.

2. *Parades.* Parades, by providing that before any association, company, society, order, exhibition, or aggregation of persons shall parade or march upon their streets, they shall first obtain from the mayor a permit, to be issued without charge, which shall state the time, manner, and condition of such parade or march. 1. [R., '60, §§ 1057, 1096; C., '73, § 456; C., '97, § 696; S., '13, § 696; 40 Ex. G. A., H. F. 158, § 4.] 2. [R., '60, § 1057; C., '73, § 456; C., '97, § 705; 40 Ex. G. A., H. F. 158, § 4.]

5743. **Power to regulate and license.** They shall have power to regulate and license:

1. *Hotels.* Hotels, restaurants, and eating houses.

2. *Engineers.* Engineers of stationary engines, and provide for their examination.

3. *Peddlers.* Peddlers, house movers, bill-posters, itinerant doctors, itinerant physicians and surgeons, junk dealers, scavengers, pawn-brokers, and persons receiving actual possession of personal property as security for loans, with or without a mortgage or bill of sale thereon.

4. *Employment bureaus.* Keepers of intelligence or employment offices, bureaus, and agencies, and all persons doing the business of seeking employment for others, or procuring or furnishing employees for others, or giving information whereby employees or employers may be obtained.

5. *Billboards.* The construction, location, and maintenance of billboards.

6. *Sales.* Sales of auctioneers, bankrupt and dollar stores, and the like, and those of transient merchants, and to define by ordinance who shall be considered transient merchants; but the exercise of such power shall not interfere with sales made by sheriffs, constables, coroners, marshals, executors, guardians, assignees of insolvent debtors or bankrupts, or any other person required by law to sell real or personal property. 1. [R., '60, § 1063; C., '73, § 463; C., '97, § 700; S., '13, § 700; 40 Ex. G. A., H. F. 158, § 5.] 2. [S., '13, § 700; 40 Ex. G. A., H. F. 158, § 5.] 3. [C., '73, § 462; C., '97, § 700; S., '13, § 700; 40 Ex. G. A., H. F. 158, § 5.] 4. [S., '13, § 700; 40 Ex. G. A., H. F. 158, § 5.] 5. [S., '13, § 700-b; 40 Ex. G. A., H. F. 158, § 5.] 6. [R., '60, § 1063; C., '73, §§ 462, 463; C., '97, § 700; S., '13, § 700; 40 Ex. G. A., H. F. 158, § 5.]

5744. **Power to restrain and prohibit.** They shall have power to restrain and prohibit:

1. *Barbed wire.* The use of barbed wire to inclose land within the corporation, and provide for the removal of such wire.

2. *Tainted provisions.* The sale of tainted or unsound meat or other provisions, and to provide for the immediate seizure and destruction thereof.

3. *Offensive materials.* The deposit and removal of offensive materials and substances, and those engendering offensive odors and sights, so as to protect the public against the same.

4. *Pawnbrokers.* The purchasing or receiving by pawnbrokers and junk or second-hand dealers, of any property from minors, without the written consent of their parents or guardians, and to provide for the examination of the premises of such persons for the purpose of discovering stolen property.

5. *Animals running at large.* The running at large of cattle, horses, swine, sheep, and other animals, or fowl, within the limits of the corporation, and to authorize the distraining, impounding, and sale of the same, for the penalty incurred and the costs of the proceeding.

6. *Begging.* Begging in and on the streets and other public places.

7. *Riots.* Riots, noise, disturbance, and disorderly assemblies, and to punish any person engaged in riotous, noisy, or disorderly conduct.

8. *Gambling.* All gambling games or devices; to authorize the destruction of all instruments or devices used for the purpose of gaming or gambling.

9. *Gambling houses.* Gambling houses, bawdy houses, disorderly houses, houses of ill-fame, road houses where lewdness is carried on, opium or hop joints or places resorted to for the use of opium or hasheesh, and places where intoxicating liquor is illegally kept, sold, or given away, and to punish the keepers and inmates thereof, and persons resorting thereto, and persons who, knowing the character or reputation of such places, transport others to or from any of the above described places. 1. [C., '97, § 741; 40 Ex. G. A., H. F. 158, § 6.] 2. [R., '60, §§ 1057, 1096; C., '73, §§ 456, 526; C., '97, § 696; S., '13, § 696; 40 Ex. G. A., H. F. 158, § 6.] 3. [R., '60, § 1057; C., '73, § 456; C., '97, § 696; S., '13, § 696; 40 Ex. G. A., H. F. 158, § 6.] 4. [C., '97, § 701; 40 Ex. G. A., H. F. 158, § 6.] 5. [R., '60, § 1061; C., '73, § 459; C., '97, § 706; 40 Ex. G. A., H. F. 158, § 6.] 6. [37 G. A., ch. 425, § 1; 40 Ex. G. A., H. F. 158, § 6.] 7. [R., '60, § 1057; C., '73, § 456; C., '97, § 705; 40 Ex. G. A., H. F. 158, § 6.] 8. [R., '60, § 1057; C., '73, § 456; C., '97, § 702; 40 Ex. G. A., H. F. 158, § 6.] 9. [R., '60, § 1057; C., '73, § 456; C., '97, § 704; S., '13, § 704; 37 G. A., ch. 393, § 1; 40 Ex. G. A., H. F. 158, § 6.]

5745. **Power to regulate, license, or prohibit.** They shall have power to regulate, license, or prohibit:

1. *Public dance halls.* Public dance halls, skating rinks, swimming pools, fortune tellers, palmists, and clairvoyants.

2. *Billiard halls.* Billiard halls, billiard tables, pool tables, and all other tables kept for hire, bowling alleys, and shooting galleries or places.

3. *Circuses.* Circuses, menageries, theaters, theatrical exhibitions, shows, and exhibitions of all kinds; but lectures on scientific, historical, or literary subjects shall not come within this provision.

4. *Dogs.* The running at large of dogs within their limits, and to require them to be kept upon the premises of the owners thereof unless licensed to run at large, and to provide for the destruction thereof when found at large contrary to and in violation of the provisions of any ordinance passed pursuant to the power herein granted.

5. *Sales at auction.* Sales at auction in streets, highways, avenues, alleys, and public places. 1. [S., '13, § 700-a; 40 Ex. G. A., H. F. 158, § 7.] 2. [R., '60, § 1057; C., '73, § 456; C., '97, § 702; 40 Ex. G. A., H. F. 158, § 7.] 3. [R., '60, § 1062; C., '73, § 460; C., '97, § 703; 40 Ex. G. A., H. F. 158, § 7.] 4. [R., '60, § 1061; C., '73, § 459; C., '97, § 707; 40 Ex. G. A., H. F.

158, § 7.] 5. [R., '60, § 1063; C., '73, § 463; C., '97, § 708; 40 Ex. G. A., H. F. 158, § 7.]

5746. Power to establish and regulate. They shall have power to establish and regulate:

1. *Slaughterhouses.* Slaughterhouses, and in cities having five thousand or more inhabitants, to build and control the same.

2. *Sanitary districts.* Sanitary districts for the collection and disposal of garbage and other such waste material as may become dangerous to the public health or detrimental to the best interests of the community, and to adopt rules necessary for the administration thereof.

3. *Garbage disposal plants.* Garbage disposal plants, and erect or purchase the same. 1. [R., '60, § 1057; C., '73, § 456; C., '97, § 696; S., '13, § 696; 40 Ex. G. A., H. F. 158, § 8.] 2. [S. S., '15, § 696-b; 37 G. A., ch. 367, § 1; 40 Ex. G. A., H. F. 158, § 8.] 3. [S. S., '15, § 696-b; 37 G. A., ch. 367, § 1; 40 Ex. G. A., H. F. 158, § 8.]

5747. Dairy herds and milk. Cities and towns, in addition to powers already granted, shall have within their corporate limits the power by ordinance:

1. To provide for the inspection of milk, skimmed milk, buttermilk, and cream, for domestic or potable use.

2. To establish and enforce sanitary requirements for the production, handling, and distribution of milk, skimmed milk, buttermilk, and cream for domestic or potable use.

3. To compel the tuberculin test by an accredited veterinarian for dairy cattle supplying milk for human consumption.

4. To provide for the pasteurization of milk, skimmed milk, and cream, except that produced from a cow or herd of cows which has been placed and maintained under state or federal supervision for the eradication of tuberculosis, provided that, a cow or herd of cows shall be considered under such supervision when there is on file in the office of the secretary of agriculture an application for such supervision, and except that produced from a cow or herd of cows which has been tested and found free of tuberculosis by an accredited practicing veterinarian. [37 G. A., ch. 342, § 1; 39 G. A., ch. 169, § 1; 40 G. A., ch. 46, §§ 11, 12.]

NOTE: For provisions relative to tuberculosis-free herds, see ch. 129.

5748. Tuberculin test. Any ordinance requiring a tuberculin test of a cow or herd of cows, whose milk is or shall be sold within the corporate limits of any city or town, as provided in the preceding section, shall further provide that if such test has not been previously made, it may be applied at any time within six months from the date of the passage of such ordinance, and the provisions thereof shall apply only after the expiration of said period. [39 G. A., ch. 169, § 2.]

5749. Conflict with state law. Nothing in the two preceding sections shall be construed as giving to such cities and towns authority

to adopt ordinances in conflict with the state law, or to abrogate the authority vested in the secretary of agriculture. [39 G. A., ch. 169, § 4; 40 G. A., ch. 46, §§ 11, 12.]

5750. Burials—cemeteries—crematories. They shall have power to regulate the burial of the dead; to provide, without the limits of the corporation, places for the interment of the dead; to cause any body interred contrary to such regulations to be taken up and buried in accordance therewith; to exercise over all cemeteries within their limits, and those without their limits established by their authority, the powers conferred upon township trustees with reference to cemeteries; or they may, by ordinance, transfer such duties and the general management of such cemeteries to a board of trustees; and to authorize the establishment of crematories for the cremation of the dead, within or without the limits of such corporation, and to regulate the same. [R., '60, § 1060; C., '73, § 458; C., '97, § 697; 40 G. A., ch. 117.]

5751. Filling or draining lots. They shall have power to cause any lot of land within their limits, on which water at any time becomes stagnant, to be filled up or drained in such manner and within such time as may be directed by resolution of the council. Service of a copy of said resolution shall be made upon the owner of such lot, if residing in the county where the same is situated; otherwise publication of such notice shall be made once each week for two consecutive weeks in a daily or weekly newspaper published within such city or town, or, if there be no such newspaper, then by publication of the same in a newspaper published in said county. On the failure of such owner to comply with such directions within the time fixed, it may be done by said city or town and the costs and expenses thereof assessed against said lot, which shall be a debt due to said corporation from the owner of said lot and shall, moreover, from the time of the adoption of such resolution, be a lien thereon as provided in case of special assessments. [R., '60, § 1070; C., '73, § 480; C., '97, § 698.]

5752. Drainage preserved. They shall have power to require the owner or lessee of any lot or tract of ground within their limits, extending into, across, or bordering upon any hollow or ravine which constitutes a drain for surface water, or a watercourse of any kind, who shall, by grading or filling such lot or tract of ground, obstruct the flow of water through such watercourse, to construct through such lot or land a sufficient drain or passageway for water, within such time as the council may designate, notice of which action shall be given as in the preceding section. Upon the failure of such owner or lessee to construct such drain or passageway within the time so fixed, the city or town may construct the same and assess the costs and expenses thereof on such lot or tract of ground,

and the same shall be a lien thereon as provided in case of special assessments. [C., '97, § 699.]

5753. Pawnbrokers and junk dealers. Every pawnbroker, junk dealer, or dealer in second-hand goods conducting business in any city of ten thousand or more population, who shall purchase or receive from any person any tool or implement such as is commonly used by carpenters, bricklayers, plasterers, plumbers, or other mechanics in the construction or erection of buildings, shall, within twenty-four hours after the purchase or receipt of such tool or implement, give notice to the chief of police, captain of police, or police sergeant at a police station in the city where said tool or implement was purchased or received, stating the date on which said tool or implement was purchased or received, and the name of the person from whom same was purchased or received; and the pawnbroker, junk dealer, or dealer in second-hand goods so purchasing or receiving such tool or implement shall not sell or dispose of same for a period of forty-eight hours after the notice is given as above specified, and until the expiration of such time shall keep said tool or implement in his store, shop, or place of business in such place that same can be readily seen and examined. [S. S., '15, § 701-a.]

5754. Penalty—personal liability. Any person violating the provisions of the preceding section shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not more than thirty days or a fine of not to exceed one hundred dollars; and in addition thereto, if it should be proven that such tool or implement was stolen before the sale or delivery to said pawnbroker, junk dealer, or dealer in second-hand goods, and the provisions of said section have not been complied with by the person purchasing or receiving same, then said pawnbroker, junk dealer, or dealer in second-hand goods shall be liable to the owner of said tool or implement for its full value, same to be recovered in a suit at law. [S. S., '15, § 701-b.]

5755. Numbering of buildings. They shall have power to require all buildings to be numbered by the owners or lessees thereof, and, in case of failure to comply with such requirement, to cause the same to be done, and to assess the cost thereof against the property or premises numbered. [C., '97, § 709.]

5756. Building code. Cities and towns, including cities under the commission form of government, shall have the power to adopt by ordinance a building code, providing for the districting of such cities into one or more districts, establishing reasonable rules and regulations for the erection, reconstruction, and inspection of buildings of all kinds within their limits and for a fee for such inspection, and providing penalties for violation thereof. [S., '13, § 709-a.]

5757. Building lines. All cities of the first and second class, including cities under commission form of government, may establish, by ordinance, building lines on private or public property at such distance back from the street or highway line as may be determined necessary or proper by the city council to promote the public health, safety, order, and general welfare. After the establishment of any such building line, no building, other structure, or addition thereto shall be erected between said line and the street or highway line. [38 G. A., ch. 145, § 1.]

NOTE: Ordinance establishing "building lines" to be certified by clerk and filed with and recorded by county recorder, see §§ 5724 to 5727, inc.

5758. Resolution. Whenever the council of any such city shall deem it advisable or necessary for the benefit of the city as a whole to establish a building line as authorized in the preceding section, it shall, in a proposed resolution, which shall be published for two consecutive days in some newspaper of general circulation in the city, the last publication to be not less than five days before the time set for the hearing, declare such advisability or necessity, stating the street or highway adjacent to which the line is to be established, location thereof and the time when and the place where all objections to the establishment of the same will be heard. At such hearing the ordinance may be amended but it shall not be adopted until the next regular council meeting. [38 G. A., ch. 145, § 2.]

5759. Dangerous structures. Cities and towns shall have the power to provide for the repair, removal, or destruction of any building, structure, or inclosure which is dangerous or liable to fall, and to levy and collect a special tax against the property and the owner for the expense thereof, as other special taxes are levied and collected. [C., '97, §§ 710, 712; 40 Ex. G. A., H. F. 158, § 9.]

5760. Fires—electric apparatus—fire limits. Cities, including cities acting under commission form of government, and towns shall have power to make regulations for protection against fire and electrical apparatus, to establish fire limits, to prohibit within such limits the erection of all buildings and structures of every kind, additions thereto, substantial alterations thereof involving partial rebuilding, not constructed of fireproof materials, in whole or in part, as prescribed by ordinance, and to remove or take down any building or structure or part thereof erected contrary to such ordinances and to collect the cost thereof from the owner. [R., '60, § 1058; C., '73, § 457; C., '97, § 711; S., '13, § 711.]

NOTE: Ordinance establishing "fire limits" to be certified by clerk and filed with and recorded by county recorder, see §§ 5724 to 5727, inc.

5761. Electric installation. Cities and towns shall have the power to prescribe rules for the installation of electric light and power wiring,

electrical fixtures and appliances, and electrical work and materials; to provide for the inspection of such work, materials, and the manner of installation; to compel the removal of dangerous electric light and power wiring, electrical fixtures and appliances, and electrical work installed in violation of the manner prescribed. This section shall not apply to substations, central power stations, and the installations therein belonging to and operated by public utility corporations operating under state charters and franchises. [S. S., '15, § 711-a; 40 Ex. G. A., H. F. 158, § 10.]

5762. Fire protection. They shall have power to regulate and control the building, construction, and erection of chimneys, stacks, flues, fireplaces, hearths, stovepipes, ovens, boilers, and all apparatus used for heating purposes, and the use of lights in stables, shops, and other places; to regulate or prohibit bonfires and the use of fireworks, firecrackers, torpedoes, Roman candles, skyrockets, and other pyrotechnic displays; to prevent the deposit of ashes and combustible matter in unsafe places, and to provide for the collection of the costs and expenses incurred in any of the matters provided for in this section and in section 5760, in the manner authorized for the collection of special assessments. [C., '97, § 712; 40 Ex. G. A., H. F. 158, § 11.]

5763. Steam boilers and magazines. They shall have power to provide for the inspection of steam boilers, and all places used for the storage of explosives or inflammable substances or materials, and to prescribe the necessary means and regulations to secure the public against accidents and injuries therefrom, to provide for the collection of fees for such inspection and penalties therefor, and to assess the costs and expenses of such proceedings against the property and owners thereof in the manner provided for special assessments. [C., '97, § 713; 37 G. A., ch. 394, § 1.]

5764. Gunpowder—combustibles. They shall have power to regulate the transportation and keeping of gunpowder, inflammable oils, or other combustibles, and to provide or license magazines for storing the same, and prohibit their location or maintenance within a given distance of the corporate limits of such cities or towns. [R., '60, § 1057; C., '73, § 456; C., '97, § 714.]

5765. Wood or lumber yards. They shall have power to prohibit or regulate the piling or depositing of any kind of wood, lumber, or timber upon any lot or property within the city limits within a distance of one hundred yards of any dwelling house. [C., '97, § 715.]

5766. Fire department. They shall have power to organize, keep, and maintain a fire department and fire companies; to purchase or lease necessary ground and construct or lease buildings therefor; provide engines, apparatus, and such other instruments as may be necessary; pay for services rendered by members of

the fire department at any fire; and cities having a population of five thousand or more may maintain a paid fire department. [R., '60, § 1096; C., '73, § 525; C., '97, § 716.]

5767. Levy—percentage—maturity. Such cities shall have the power, after the purchase of the property and equipment, by ordinance or resolution to levy at any one time the whole or any part of the cost of such property and equipment upon such taxable property and determine the percentage of tax, not exceeding one and one-half mills, to be paid each year, and the number of years, not exceeding ten, given for the maturity of each installment thereof. Certificates of such levy shall be filed with the county auditor in which said city is located, setting forth the amount of percentage and maturity of said tax or each installment thereof, certified as correct by the city clerk or auditor, and thereupon said tax shall be placed upon the tax lists of the proper county or counties, and collected as other taxes. [S., '13, § 716-c.]

5768. Markets. They shall have power to establish and regulate markets and scales, to build market houses, and establish and regulate the same; to provide for the measuring or weighing of merchandise offered for sale, to prevent forestalling, and regulate or prohibit huckstering in the markets; to prescribe the kind and description of articles which may be sold in the markets, and the stands or places to be occupied by the vendors; to authorize the immediate arrest of any person violating its regulations, and the seizure and removal from the market of any article of produce in his possession.

No charge or assessment of any kind shall be made or levied on any wagon or other vehicle, or the horses attached thereto, or the owner thereof, bringing produce or provisions to any of the markets in the city, or through the streets contiguous thereto, for standing in or occupying a place in any of the market spaces, or in the streets contiguous thereto, on market days and evenings previous thereto. [R., '60, §§ 1057, 1096; C., '73, §§ 456, 526; C., '97, § 717.]

5769. Wharves, docks, and piers. They shall have power to establish, construct, and regulate landing places, wharves, docks, piers, and basins; to use for such purposes any public building or any property belonging to or under the control of the city, and the shore or bank of any lake or river not the property of individuals, to the extent and in any manner that the state can grant such use or control, and fix the rates for landing, wharfage, and dockage. [R., '60, § 1098; C., '73, § 528; C., '97, § 718.]

5770. Ferries. They shall have the exclusive power to establish, regulate, and license ferries from any landing place in such city; to impose reasonable terms and restrictions in relation to the keeping thereof, the time,

manner, and rates of the carriage and transportation of persons and property thereon; to provide for the revocation of any license, and for the punishment by fines and penalties of the violation of any ordinance prohibiting unlicensed ferries, or regulating those established and licensed. [R., '60, § 1099; C., '73, § 529; C., '97, § 719.]

5771. Infirmary—outdoor relief. Cities of the first class shall have the power to establish and maintain, either within or without the limits of the city, an infirmary for the accommodation of the poor of the city, and to provide for the distribution of outdoor relief. [R., '60, § 1111; C., '73, § 538; C., '97, § 733.]

5772. Jail—stationhouse. Cities and towns may erect, establish, and maintain a jail, which shall be in the keeping of the marshal under such rules as the council shall provide, and the provisions of the chapter on county jails shall apply, so far as applicable, to such jails and the persons in charge thereof. Any city or town shall have the right to use the jail of the county for the confinement of such persons as may be subject to imprisonment under the ordinances of such city or town, but it shall pay the county the cost of keeping such prisoners. Cities of the first class shall have power to erect, lease, establish, and maintain stationhouses for the detention of persons arrested, which shall be under the control of the marshal. [R., '60, § 1116; C., '73, §§ 485, 542; C., '97, §§ 735, 5660; 40 Ex. G. A., H. F. 158, § 13.]

5773. City hall. Any city or town may, when authorized by the voters, erect a city or town hall to be used for general community and municipal purposes, including assembly hall, auditorium, public hall, armory, council chamber and offices, waterworks offices, fire or police station, or for any one or more of such purposes. The council may prescribe rules whereby such building may be used for other than municipal purposes, and fix the compensation to be paid therefor. [S. S., '15, §§ 741-d, 741-g; 37 G. A., ch. 182, § 1; 39 G. A., ch. 21, § 1; 40 Ex. G. A., H. F. 164, § 1.]

5774. Public works—protection of subcontractors. Cities and towns shall have power to provide by ordinance, or by provisions in contracts for any work of public improvement, that the contractor shall, before receiving certificates or payment therefor, furnish the council vouchers showing that all subcontractors and workmen who have furnished materials for or performed labor upon such improvement have been fully paid for such materials or labor. [C., '97, § 736.]

NOTE: Labor and material on public improvements, see chapter 452.

5775. Plumbing—inspector. They shall have power by ordinance to prescribe rules and regulations for all plumbing connecting any building with sewers, cesspools, vaults, water

mains, and gas pipes; and may prescribe the kind and size of materials to be used in such plumbing, and the manner in which the same shall be done; and to appoint an inspector thereof, and define his duties and powers; and to provide for the assessment of the cost of such inspection and replacing of the pavement to the property; and to prescribe penalties for the violation of such ordinance. Nothing herein shall be construed as authorizing the annulment of any rules or regulations relating to such plumbing made by the local or state board of health, but such ordinance shall conform to and enforce the same. [C., '97, § 737; S., '13, § 737; 37 G. A., ch. 392, § 1.]

5776. License—board of examiners. Cities having a population of less than six thousand and towns shall have power to regulate and license plumbers, to create a board of examiners to determine the qualifications thereof, to prescribe rules for the installation of plumbing work and materials, to provide for the inspection of such work, materials, and installation, and to compel the removal of plumbing installed in violation thereof. [S., '13, § 737-a; 38 G. A., ch. 378, § 1; 40 Ex. G. A., H. F. 158, § 14.]

5777. Regulations. All cities having a population of six thousand or more shall adopt and enforce ordinances regulating the business of plumbing, and prescribe rules not inconsistent with law for the installation and inspection of plumbing, and prescribe the grade of material to be used and compel the removal of plumbing installed in violation of such rules. [38 G. A., ch. 378, § 2; 40 Ex. G. A., H. F. 158, § 15.]

5778. Examiners. In such cities the council shall, by ordinance, appoint a board of examiners, consisting of three members, one of whom shall be a practical journeyman plumber, one a member of the local board of health, and one a practical master plumber, two of whom shall constitute a quorum for the transaction of business. [38 G. A., ch. 378, § 3; 40 Ex. G. A., H. F. 158, § 16.]

5779. Board—when not necessary. If there is no resident practical journeyman plumber or practical master plumber in the city, the council shall not be required to appoint a board of examiners, and every city not having a board of examiners shall require every person engaged as a master or employing plumber, or journeyman plumber, to have a certificate or license from some examining board within the state. [38 G. A., ch. 378, § 3; 40 Ex. G. A., H. F. 158, § 17.]

5780. Expenses—compensation. The council shall provide suitable rooms in which the board of examiners may hold its meetings, and shall provide for the payment of the necessary incidental expenses incurred by the board, and may also provide a per diem compensation for the members of said board not exceeding ten dollars per day for the time

actually spent in performing their duties. [38 G. A., ch. 378, § 3; 40 Ex. G. A., H. F. 158, § 18.]

5781. Examinations—license—fee. The board shall, when so directed by the council, and under such rules as the council shall prescribe, hold examinations of applicants for licenses to work either as master or employing plumber or journeyman plumber, and if satisfied as to the competency of the applicant shall issue to such plumber a license. The amount of the fee for such examination shall not exceed ten dollars for a master or employing plumber, and shall not exceed five dollars for a journeyman plumber. Fees for the renewal of a master or employing plumber's certificate shall not be more than two dollars, and for a journeyman plumber's license, shall not be more than one dollar. [38 G. A., ch. 378, § 3; 40 Ex. G. A., H. F. 158, § 19.]

5782. Term of license. A plumber's license shall be valid and recognized throughout the state for a period of one year, and may be renewed from year to year upon payment of the renewal fee. Such license shall not be transferable, and shall expire on the thirty-first day of December of each year. Any license may be revoked by a board of examiners for repeated violations of plumbing ordinances. [38 G. A., ch. 378, § 4; 40 Ex. G. A., H. F. 158, § 20.]

5783. Definition of terms. The term "journeyman plumber" shall mean a person who does any plumbing work which is by law, ordinance, or rule subject to official inspection. The term "master or employing plumber" shall include any person, firm, or corporation other than a journeyman plumber engaged in the business of installing plumbing. The term "plumbing" shall mean any receptacle or appliance installed or used to receive waste water, house soil, slops, or sewage. [38 G. A., ch. 378, § 6; 40 Ex. G. A., H. F. 158, § 21.]

5784. Sanitary toilets. Cities and towns, including cities under the commission plan,

shall have the power to compel the removal, abandonment, and disuse of all outside water-closets, privies, and privy vaults where there is a sanitary sewer in the street or alley or where a sanitary sewer may hereafter be placed in a street or alley abutting upon property that has an outside water-closet, privy, or privy vault, and shall have the power to compel and cause to be installed sanitary toilet and toilet facilities to be connected with the sanitary sewer. [38 G. A., ch. 316, § 1; 40 G. A., ch. 118.]

5785. Action by local board of health. The board of health of any city or town, whenever it deems it necessary that any outside water-closet, privy, or privy vault be abandoned and removed where there is a sanitary sewer in the street or alley or where a sanitary sewer may hereafter be placed in a street or alley abutting upon property upon which an outside water-closet, privy, or privy vault is located, may order that said outside water-closet, privy, or privy vault be abandoned and removed and that a sanitary toilet and toilet facilities be installed and connected with the sanitary sewer. [38 G. A., ch. 316, § 2; 40 G. A., ch. 118.]

5786. Special assessment. In any case where the board of health of any city or town shall order the removal and disuse of any outside water-closet, privy, or privy vault and shall order that a sanitary toilet and toilet facilities be installed and connected with the sanitary sewer, and the city council or board of commissioners shall determine that any property owner or owners are unable to pay for the installing of the sanitary toilet and toilet facilities and for connecting them to the sanitary sewer, then the city council or board of commissioners may have the necessary toilet installed and assess the cost against the property and the cost shall be a special assessment against the property. The assessment and collection of this cost shall be made according to the provisions in chapter 308. [38 G. A., ch. 316, § 3.]

CHAPTER 293

PARK COMMISSIONERS

NOTE: This chapter made applicable to special charter cities by § 6760.

- 5787. Election—appointment.
- 5788. Residence requirement.
- 5789. Qualification—organization.
- 5790. Treasurer.
- 5791. Compensation.
- 5792. Tax levy.
- 5793. Additional tax levy.
- 5794. Certification and collection.
- 5795. Anticipation of taxes.
- 5796. Park fund—how expended.
- 5797. Acquisition of real estate.
- 5798. General powers.
- 5799. Annual report.

- 5800. Bonds.
- 5801. Lien of bonds.
- 5802. Mortgages.
- 5803. Form and maturity of bonds.
- 5804. Payment of bonds.
- 5805. Jurisdiction.
- 5806. Defacement of trees.
- 5807. Rules and regulations.
- 5808. City engineer—poles and wires.
- 5809. Condemnation of property.
- 5810. Appropriation.
- 5811. How expended.
- 5812. Existing contracts and bonds.
- 5813. Soldiers' monuments.

5787. Election — appointment. There shall be elected at the regular municipal election in each city containing a population of forty thousand or over, and all other cities and towns may, by ordinance, provide for the election of three park commissioners whose terms of office shall be six years, one to be elected at each regular municipal election, but at the first election three shall be elected and hold their offices respectively for two, four, and six years, their respective terms to be decided by lot and their successors shall be elected for the full term of six years.

Provided, however, that in all cities and towns not now having park commissioners the ordinance establishing such park commissioners shall not be in force until it has been submitted to the voters at a special or regular municipal election and approved by a majority of the votes cast at such election. In the event that such ordinance is approved by a majority of the votes cast at such election, the city council shall have the power to appoint three park commissioners to hold such office until the next regular city election. [C., '97, § 850; S., '13, § 850-a.]

5788. Residence requirement. Where any such city contains more than one organized township, at least one commissioner shall be a resident of each of said townships. [C., '97, § 858; S., '13, § 850-j.]

5789. Qualification—organization. The commissioners shall, within ten days after their election, qualify by taking the oath of office and organize as a board by the election of one of their number as chairman and one as secretary, but each commissioner, before he enters upon the duties of his office, shall give a bond with sureties to be approved by the council, in the penal sum of one thousand dollars, conditioned for the faithful discharge of his office. [C., '97, §§ 851, 861; S., '13, § 850-b.]

5790. Treasurer. The city treasurer shall be the treasurer of said board and pay out all moneys under the control of the board on orders signed by the chairman and secretary, but shall receive no compensation for his services as such treasurer. [C., '97, §§ 851, 861; S., '13, § 850-b.]

5791. Compensation. Each of the commissioners shall receive such salary as shall be fixed by the city council, not to exceed in the aggregate annually ten dollars for each thousand population or fraction thereof according to the last state or federal census, said compensation to be paid out of the park fund. [C., '97, §§ 851, 861; S., '13, § 850-b.]

5792. Tax levy. The board shall, on or before the first day of August of each year, determine and fix the amount or rate not exceeding two and one-half mills on the dollar in all cities and towns on the taxable valuation of such city or town, to be levied, collected, and appropriated for the ensuing year for general park purposes, and shall cause the same to be certified to the city council, which shall levy such tax or so much thereof as it may deem necessary to promote park interests, and certify the per cent thereof to the county auditor with the other taxes for said year. [C., '97, §§ 852, 860; S., '13, § 850-c; 38 G. A., ch. 312, § 1; 40 G. A., ch. 258.]

5793. Additional tax levy. In cities having a population of over twenty-five hundred, said board is further authorized to submit to the electors of any such city voting at a city election or a special election called for that purpose, the question of the levy of a further additional tax for park purposes, not to exceed five mills on the dollar on all taxable property of the city over any term of years not exceeding thirty, to be used for the sole and only pur-

pose of purchasing and paying for real estate and permanently improving the same for park purposes. [C., '97, § 852; S., '13, § 850-c; 38 G. A., ch. 312, § 1; 39 G. A., ch. 162, § 1.]

5794. Certification and collection. When a majority of the electors of said city at any such election shall have declared in favor thereof, said board shall certify to the county auditor in each year and cause to be collected such additional tax during all of the years for which the same has been approved and ordered by the voters. [C., '97, § 852; S., '13, § 850-c; 38 G. A., ch. 312, § 1.]

5795. Anticipation of taxes. The board may anticipate the collection of said additional tax authorized to be levied for the purchase of real estate for park purposes and permanently improving the same and for that purpose may issue park certificates or bonds with interest coupons, and the provisions of chapter 320 shall be operative as to such certificates, bonds, and coupons, in so far as they may be applicable. The proceeds of such tax shall be kept as a separate fund and shall be used for the purpose of such acquisition of real estate and the permanent improvement thereof and for no other purpose whatsoever. [C., '97, § 852; S., '13, § 850-c; 38 G. A., ch. 312, § 1.]

5796. Park fund—how expended. No money of this fund shall be appropriated or expended for any purpose except as provided in this chapter and when any annual tax or part thereof has been pledged for the payment of any bonds or the interest thereon, such tax or part thereof shall be devoted to no other purpose. Such fund may be used:

1. In purchasing or acquiring real estate for park purposes, including streets or highways to connect one park with another, or to connect a park with streets or highways, or for other purposes necessary and incident to the establishment and maintenance of parks and paving streets adjacent thereto.

2. For the purpose of improving and maintaining the same and defraying the necessary expenses connected therewith, including the compensation of the board, its officers, and employees.

3. For the payment of one or more park policemen to be recommended by the board and appointed by the mayor.

4. For the purpose of paying for the necessary lights as fixed by the park board and paying for such water supply as may be necessary in such parks. [C., '97, § 852; S., '13, § 850-d.]

5797. Acquisition of real estate. Said park board may acquire real estate within or without the city for park purposes by donation, purchase, or condemnation, and take the title to the same in the name of the board in trust for the public and hold the same exempt from taxation. [C., '97, § 853; S., '13, § 850-e.]

5798. General powers. It may sell, subject to the approval of the city council, exchange,

or lease any real estate acquired by it which shall be found unfit or not desirable for park purposes; shall keep a report of all transactions; shall have exclusive control of all parks and pleasure grounds acquired by it or of any other ground owned by the city and set apart for like purposes; and may make contracts, sue and be sued, but shall incur no indebtedness in excess of the amount of taxes already levied and available for the payment thereof, except bonds hereby authorized. [C., '97, § 853; S., '13, § 850-e.]

5799. Annual report. It shall make an annual detailed report to the council at the regular April meeting of the amounts of money expended and the purposes for which used, and such annual statement shall be published as part of the annual municipal report. [C., '97, § 853; S., '13, § 850-e.]

5800. Bonds. For the purpose of paying for real estate it may issue bonds in amounts needed, notwithstanding the limitation of section 6238; provided, however, that the annual interest on the aggregate of such bonds outstanding shall not be in excess of sums as follows:

1. For towns and cities of less than twenty-five thousand population, a sum equal to the proceeds of a tax of one and one-quarter mills on the dollar of the aggregate taxable value of property therein subject to taxation.

2. For cities of twenty-five thousand population or more, a sum equal to the proceeds of a tax of one and three-quarters mills on the dollar of the aggregate taxable value of property therein subject to taxation. [C., '97, § 853; S., '13, § 850-e; 37 G. A., ch. 84, § 1.]

5801. Lien of bonds. Bonds issued under the provisions of sections 5792 to 5795, inclusive, shall be a lien upon all of the real estate acquired by the commissioners therewith or with the proceeds thereof, and such bonds or proceeds shall be used for the purchase of real estate or the permanent betterment and improvement thereof. [C., '97, § 855; S., '13, § 850-f; 38 G. A., ch. 312, § 2.]

5802. Mortgages. The board shall have the power to mortgage any real estate purchased or controlled by it for park purposes to a trustee for the purpose of securing the payment of said bonds, and after the issuance there shall be pledged for the payment of the interest thereon such amount of the annual tax levied by virtue of said sections as shall be necessary to make such payment, and the residue of said tax may be used by the board for the payment of such bonds, for the purchase of real estate, or the permanent improvement of the park and pleasure grounds of the city. [C., '97, § 855; S., '13, § 850-f; 38 G. A., ch. 312, § 2.]

5803. Form and maturity of bonds. Such bonds to be issued by the board shall mature in not less than five nor more than thirty years

from date and may be made payable in annual series; shall be in sums of not less than one hundred dollars nor more than one thousand dollars, bearing interest at a rate not exceeding five per cent per annum, payable annually or semiannually. [C., '97, § 854; 38 G. A., ch. 312, § 2; 40 G. A., ch. 108, § 3; 40 G. A., ch. 120, § 1.]

5804. Payment of bonds. Said board, after the issuance of any such bonds, shall annually, in the year of the serial maturity of each thereof, set aside a sufficient sum to pay such annual serial maturity out of the tax levied by it under the provisions of sections 5792 to 5795, inclusive, which sum shall be applied in payment of the principal of said serially maturing bonds respectively and not otherwise. [C., '97, § 854; S., '13, § 850-f; 38 G. A., ch. 312, § 2.]

5805. Jurisdiction. The jurisdiction of such board shall extend over all lands used for parks within or without the corporate limits, and all ordinances of such cities and towns shall be in full force and effect in and over the territory occupied by such parks. [C., '97, § 862; S., '13, § 850-g.]

5806. Defacement of trees. Any person who shall, except by the authority of such commissioners, cut, break, or deface any tree or shrub growing in such park or parks, or any avenue thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days. [C., '97, § 862; S., '13, § 850-g.]

5807. Rules and regulations. The board may in writing prescribe rules and regulations for the government of the parks or public grounds under their control and persons resorting thereto, which rules and regulations shall be in force when entered in the record of the proceedings of the board, and a copy thereof signed by the commissioners has been posted at each gate or principal entrance to any such park or public grounds, and a wilful violation thereof shall be a misdemeanor, punishable by a fine not exceeding one hundred

dollars or imprisonment in the county jail not exceeding thirty days. [C., '97, § 856; S., '13, § 850-h.]

5808. City engineer—poles and wires. The board shall be entitled to the services of the city engineer, when requested, without expense to it. It shall have the power to regulate or forbid the erection of poles or the stretching of wire for electric light, street railway, or other corporations or persons in such parks or in or along streets or highways or over public places laid out or controlled by it. [C., '97, § 857; S., '13, § 850-i.]

5809. Condemnation of property. If said board and the owners of any property desired by it for park purposes can not agree as to the price to be paid therefor, it may cause the same to be condemned in the manner provided for taking land for municipal purposes. [C., '97, § 858; S., '13, § 850-j.]

5810. Appropriation. In cities and towns not having a park board the council may appropriate each year not exceeding five per cent of the general fund for the improvement and maintenance of public parks. [S., '13, § 850-k.]

5811. How expended. Said fund so appropriated shall be expended under the direction of a committee of three persons, consisting of the mayor, one member of the council appointed by the council, and one resident property owner of such city or town appointed by the council, which committee shall receive no compensation for their services. [S., '13, § 850-l.]

5812. Existing contracts and bonds. Nothing in this chapter shall be construed to affect any contracts heretofore entered into by any park board or any bonds issued by such boards but all such contracts shall be carried out and all such bonds shall be paid under the terms thereof. [S., '13, § 850-m.]

5813. Soldiers' monuments. Cities and towns, including cities under the commission form of government, may by ordinance permit soldiers' monuments or memorial halls, which may be erected under the provisions of chapter 33, to be located and erected in any public park or public grounds of the city or town. [S., '15, § 850-o.]

CHAPTER 294

RIVER FRONT IMPROVEMENT COMMISSION

NOTE: This chapter made applicable to special charter cities by § 6826.

- 5814. Cities affected.
- 5815. Petition.
- 5816. Election.
- 5817. Vacancies.
- 5818. Organization—secretary—treasurer—bond.
- 5819. Title to river bed—lost boundary lines.
- 5820. Powers.
- 5821. Profiles and specifications—approval.
- 5822. Additional powers—annual report—tax—river front improvement fund.

- 5823. Bonds—mortgages.
- 5824. Cities may aid.
- 5825. Rules and regulations.
- 5826. Police protection—water supply—poles and wires.
- 5827. Wharves—landing places—bath and boat houses.
- 5828. What prohibited.
- 5829. Soldiers' monuments.

5814. Cities affected. The provisions of this chapter shall apply only to cities of the first class acting under the general incorporation laws and cities acting under the commission form of government having a population of less than twenty-five thousand; provided, however, that the increase in population of any city subsequent to the establishment or appointment of a river front improvement commission therein shall in no manner invalidate or affect the title, standing, or authority of such commission. [S., '13, § 879-o.]

5815. Petition. Whenever five hundred electors of any city whose corporate limits are divided by a meandered stream shall, in writing, petition the governor of this state for the appointment of a commission, as provided for by this chapter, he shall, within one month thereafter, appoint three electors, residents of the city of the said electors so petitioning, who shall constitute a body corporate, to be known as the river front improvement commission of, inserting in said blank the name of the city of the said electors so applying. [S., '13, § 879-a.]

5816. Election. One commissioner shall be elected at each biennial city election to succeed one of the commissioners so appointed, whose term shall expire when his successor is elected and qualified. [S., '13, § 879-b.]

5817. Vacancies. In case vacancy arises in the commission, the governor of the state shall fill such vacancy by appointment for the unexpired portion of the term, or until the next election, as the case may be. [S., '13, § 879-n.]

5818. Organization—secretary—treasurer—bond. The commissioners shall, within ten days after their appointment, qualify by taking the oath of office, determine by lot the order of the expiration of their terms, and organize by the election of one of their number as chairman; they shall also elect a secretary, not one of their number; and shall also elect a treasurer,

not one of their number, who shall give bonds in the sum of twenty-five thousand dollars, the penalty of which may be increased by the commission. The treasurer shall receive and pay out all moneys under the control of said commission as ordered by it, but shall receive no compensation for his services. Each of the commissioners shall be reimbursed for the actual expenses incurred or money paid out by him in connection with the discharge of his official duties, but shall receive no compensation for his services. An itemized statement of all expenses and moneys received and paid out shall be made under oath and filed with the secretary and allowed by the commission. [S., '13, § 879-c.]

5819. Title to river bed—lost boundary lines. When said commissioners have been so appointed and qualified, the fee simple title to the bed of the meandered stream, separating the corporate limits of the city for which they are appointed, shall immediately vest in the commission in trust for the public, and the same while held by the commission shall be exempt from taxation; but the fee title to the channel or bed of the stream to be located and preserved as hereinafter provided shall remain in the state; and the vested rights of riparian owners and owners of water powers shall not be injuriously affected by this chapter. Where the original boundary lines separating the land under the control of said commission from the land of the state or of any adjoining land owner, or the monuments marking the same have been lost, destroyed, or in dispute, said commissioners may proceed to have said boundary lines established as disputed corners and boundaries are established. [S., '13, § 879-d; 40 G. A., ch. 259, § 1.]

5820. Powers. Said commission may redeem lands between the meandered lines of such stream; construct, regulate, and maintain dams across such stream; provide for and protect, by secure walls or banks, a channel adequate to carry flood waters of a volume

equal to all reasonable expectations, based on past experience and the area drained by such stream, according to expert authority; beautify such walls or banks, and park so much thereof as public interest may require; and where circumstances permit, make any part of the area redeemed and acquired suitable for sites for public buildings. The acts of said commission so far as the same may affect city parks theretofore under the jurisdiction of the park commissioners or additions acquired thereto, shall be subject to the approval of the board of park commissioners. [S., '13, § 879-e; 38 G. A., ch. 97, § 1; 40 G. A., ch. 259, § 2.]

5821. Profiles and specifications—approval. Said commission may adopt plans, profiles, and specifications for the improvement of the said river channel and banks, and the reclaiming of lands between the meandered lines of said stream within such city, and the construction of dams; but before the beginning of the execution of the same, such plans, profiles, and specifications shall be approved by the executive council. [S., '13, § 879-f.]

5822. Additional powers—annual report—tax-river front improvement fund. Said commission may acquire real estate and riparian and other rights within such city in the vicinity of such stream by donation or purchase, or by condemnation for the public uses herein authorized in the manner provided by law for the taking of private property for public use, and shall take the title to property in the name of the commission and its successors, in trust for the public, and hold the same exempt from taxation. It may sell and convey or lease or exchange any property acquired by it, by virtue of this chapter and otherwise. It shall have exclusive control of all the lands acquired by it, and of the banks and waters of such stream for carrying out the purposes of this chapter; may make contracts, and sue and be sued. It shall keep a record of all its transactions, which shall during ordinary business hours be open to inspection by the public, and shall make an annual report of all moneys received and expended by it and for what general purposes, and of all moneys owing to it and by it and for what general purposes, to the city council at the regular November meeting, and publish such report in some newspaper in the city. The commission shall, subject to the approval of the city council, in each year determine and fix the amount or rate, not exceeding two mills on the dollar, on the taxable value of the taxable property of such city, to be levied, collected, and appropriated for the ensuing year for the purpose of paying for real estate, riparian and other rights, for improvements, and for accomplishing the purposes of the creation of said commission, and to provide for the payment of interest upon bonds and to retire such bonds, if any, and to meet the necessary expenses incident to the business of said commission. Said commission shall, on or before the first Monday in September of each year,

certify to the county auditor the amount or rate of taxes so fixed, to be known as river front improvement fund, and when collected, the same is to be paid over to the treasurer of the commission, and by him paid out on its orders, and the board of supervisors of the county in which said city is situated shall levy said tax as fixed by said commission. [S., '13, § 879-g.]

5823. Bonds—mortgages. For the purpose of paying for real estate and improvements and accomplishing the purposes of its creation, said commission may issue bonds in such amounts as it may deem necessary, and may execute trust deeds or mortgages upon its property acquired by virtue of this chapter and otherwise or any part thereof to secure the payment of said bonds and interest thereon. [S., '13, § 879-h.]

5824. Cities may aid. Such city shall not be liable for any indebtedness incurred by said commission or for any bond issued by said commission. Such cities are hereby authorized to aid in making the improvements specified in this chapter by appropriating money from its general fund or from the surplus remaining at the end of the fiscal year in any special fund, except in cases where such diversion of moneys is especially prohibited by statute, and may appropriate in aid of the improvements herein provided for, the reasonable saving effected in the building of bridges and otherwise by reason of said improvements. [S., '13, § 879-i.]

5825. Rules and regulations. Said commission may, in writing, prescribe rules and regulations for the government of the public grounds under their control and persons resorting thereto, which rules and regulations shall be enforced when entered in the record of the proceeding of the commission, and a copy thereof signed by the commissioners has been posted at each gate or principal entrance to any such public grounds, and a wilful violation thereof shall be a misdemeanor, punishable by fine not exceeding twenty-five dollars. Anyone who shall cut, break, or deface any tree or shrub growing in such public grounds, without authority, shall be guilty of a misdemeanor and be punished by fine not exceeding one hundred dollars or by imprisonment not exceeding thirty days in jail. Any magistrate in the city shall have jurisdiction to try such offenses. [S., '13, § 879-j.]

5826. Police protection—water supply—poles and wires. The mayor, on written request of the commission, shall furnish adequate police protection for such public grounds and the city shall furnish such water supply as may be necessary therefor, and properly light the same at its expense. The commission shall be entitled to the services of the city engineer, when requested, without expense to it. It shall have the power to permit or forbid the erection of poles or the stretching of wires for electric light, street railway, or other purposes by

persons or corporations, in such public grounds or in or along streets or highways or over public places laid out or controlled by it. [S., '13, § 879-k.]

5827. Wharves—landing places—bath and boat houses. Said commission shall have power, in and over the bed and banks of such river as specified, to construct and regulate the use of wharves, landing places, bathhouses, boathouses, and other suitable structures and shall have exclusive jurisdiction over the water of such stream, within the corporate limits of such city and may maintain said stream in a suitable condition for boating, skating, and other public amusements and purposes. [S., '13, § 879-l.]

5828. What prohibited. No member of the commission shall, during the time for which he has been appointed or elected, or for one year

thereafter, be appointed to any office in the gift of the commission which shall be created, or the emolument of which shall be increased, during the term for which he was elected, nor shall he be interested directly or indirectly in any contract for work or service to be performed for the commission or in the purchase or sale of any property sold to or by the commission. [S., '13, § 879-m.]

5829. Soldiers' monuments. Any river front improvement commission elected under the provisions of this chapter, may, by contract or by resolution duly entered of record, authorize and permit the location and erection of any soldiers' monument or memorial hall which may be erected under the provisions of chapter 33, to be located and erected upon grounds held in trust by such commission. [S. S., '15, § 879-o1.]

CHAPTER 295

COMMUNITY CENTER HOUSES AND RECREATION GROUNDS .

5830. Community center houses authorized.

5831. Community center districts.

5832. Managing board—superintendent—salaries.

5830. Community center houses authorized. All cities having a population of fifty thousand or over shall have power to provide for the several districts in said city, or for any one of such districts, as hereinafter defined, a community center house with recreation grounds adjacent for the use, recreation, and instruction of the residents of said district, and to submit to the electors of any such district at a regular city election, or special election called for that purpose, the question of the establishment of such improvement and of the issuance of district bonds to provide the same. And in cities where buildings and grounds suitable for community center activities are owned and maintained by the city, the city council may, by resolution, establish such buildings or grounds as community centers without submitting the question of the establishment thereof to the electors. [37 G. A., ch. 51, § 1; 38 G. A., ch. 184, § 1.]

5831. Community center districts. The city council shall, for the purpose herein contemplated, have power to divide the city into community center districts and to determine the area to be benefited and define the boundary of such districts, having regard to existing natural community centers and the probable development thereof in the future growth of the city, the intention being to provide for such outlying districts within the city as by reason of distance, means of communication, or other causes, have or are likely to develop a distinct community life, a community center house and grounds for recreation, community meetings, instruction and entertainment, and for the general betterment and development of the life of the district affected. [37 G. A., ch. 51, § 2.]

5833. Rules and regulations.

5834. Maintenance in connection with school premises.

5832. Managing board—superintendent—salaries. For each community center district the city council shall appoint from the residents of said district three persons especially fitted for and interested in such work, who shall be known as the "community center board", and the said board shall be placed in charge of such community center improvement, subject to such direction, rules, and regulations as the city council may deem necessary; and said board shall make a report in writing to the city council on or before the fifteenth day of January of each year as to the operation of said community center, including the expense thereof, for the preceding year.

Subject to the approval of the city council, the said community center board shall have authority to determine the character of the activities of said community center, and said board or a majority thereof shall, promptly on their appointment, recommend to the city council the name of some person peculiarly fitted for such work, who shall be known as the community center superintendent, who shall be placed in charge of such community center and shall have such powers and perform such duties in that connection as may be directed by the board, acting under the city council. The members of said community center board shall serve without compensation, and the superintendent shall be elected for such term and upon such salary as may be fixed by the city council. The said community center board may (but only with the consent of the city council) employ such additional help as may prove necessary. All salaries shall be paid monthly. Such salaries and all other expenses incurred in the maintenance of such community center shall be paid out of the community center fund for

said district, but only after being allowed and ordered paid by the city council. [37 G. A., ch. 51, § 8.]

5833. Rules and regulations. The city council shall request suggestions for rules and regulations to be adopted for the government and operation of such community center improvement from the community center board and superintendent, and from such public-spirited citizens as are interested in such development and particularly in the child welfare of such city, and shall carefully consider all such suggestions, and shall thereafter determine and promulgate the rules and regulations which shall govern in the operation and management of such community center. Such rules and regulations may thereafter be modified and changed from time to time by the city council. [37 G. A., ch. 51, § 9.]

5834. Maintenance in connection with school premises. The name that may be adopted for said community center district, and the location of the improvements, shall be determined by the city council; and in this connection said city council is authorized, if it shall deem it

advisable, and with the consent of the school board, to locate such community center improvement in connection with, adjacent to, or as a part of public school buildings and grounds erected or to be erected and maintained within said community center district, and to cooperate with the boards having the custody and management of public school buildings or grounds within said district, and, by making arrangements satisfactory to such boards, to provide for the supervision, instruction, and oversight necessary to carry on public educational and recreational activities, and for a division between the school board and the community center district of the cost of buildings, recreation grounds, and equipment to be used in connection with such school as a community center, and of the expense of operation thereof; provided further that in case such community center shall be established or maintained in connection with a public school operated within said community center district, the city council shall have authority to arrange as it may deem best with the school board for the necessary personal supervision of such community center, other than that contemplated herein where such center is operated independently. [37 G. A., ch. 51, § 10.]

CHAPTER 296

MUNICIPAL BANDS

NOTE: This chapter made applicable to certain special charter cities by § 6761.

5835. Levy.
5836. Petition.
5837. Election.

5838. Duty to levy tax.
5839. Revocation of authority.
5840. Disposition of funds.

5835. Levy. Cities having a population of not over forty thousand and towns may, when authorized as hereinafter provided, levy each year a tax of not to exceed two mills for the purpose of providing a fund for the maintenance or employment of a band for musical purposes. [39 G. A., ch. 37, § 1.]

5836. Petition. Said authority shall be initiated by a petition signed by ten per cent of the legal voters of the city or town, as shown by the last regular municipal election. Said petition shall be filed with the council or commission and shall request that the following question be submitted to the voters, to wit: "Shall a tax of not exceeding (here insert number) mills be levied each year for the purpose of furnishing a band fund?" [39 G. A., ch. 37, § 2.]

5837. Election. When such petition is filed, the council or commission shall cause said question to be submitted to the voters at the first following general municipal election. [39 G. A., ch. 37, § 3.]

5838. Duty to levy tax. Said levy shall be deemed authorized if a majority of the votes cast at said election be in favor of said proposition, and the council or commission shall then levy a tax sufficient to support or employ such band, not to exceed two mills on the assessed valuation of such municipality. [39 G. A., ch. 37, § 4.]

5839. Revocation of authority. A like petition may at any time be presented to the council or commission asking that the following proposition be submitted, to wit: "Shall the power to levy a tax for the maintenance or employment of a band be canceled?" Said submission shall be made at any general municipal election as heretofore provided, and if a majority of the votes cast be in favor of said question, no further levy for said purpose shall be made. [39 G. A., ch. 37, § 5.]

5840. Disposition of funds. All funds derived from said levy shall be expended as set out in section 5835 by the council or commission. [39 G. A., ch. 37, § 6.]

CHAPTER 297

COMFORT STATIONS

5841. Number.
5842. Requirements.

5841. Number. Any town of one thousand or more inhabitants and any city of less than twenty-five thousand inhabitants may establish and maintain one public comfort station. Any city of more than twenty-five thousand inhabitants and less than fifty thousand may establish and maintain two public comfort stations, and any city of over fifty thousand inhabitants may establish and maintain three public comfort stations. [37 G. A., ch. 232, § 1; 40 G. A., ch. 260.]

5842. Requirements. All public comfort stations shall have one room for men and one room for women. Such stations shall be so located within the principal business parts of the city as will best accommodate the public, and shall be of sufficient size to accommodate

5843. Management.

the patrons of such stations. They shall be furnished with suitable, adequate, and sanitary toilets and lavatories, and shall be at all times kept clean, sanitary, and properly heated during cold weather. [37 G. A., ch. 232, § 2.]

5843. Management. Each city maintaining public comfort stations shall establish and maintain a commission consisting of three persons, at least one of whom shall be a woman, appointed by the mayor, which commission shall have complete supervision over all comfort stations in that city. The members of the commission shall serve without compensation. This commission shall have power to handle all funds and employ such help as may be necessary to properly conduct such stations. [37 G. A., ch. 232, § 3.]

CHAPTER 298

JUVENILE PLAYGROUNDS

NOTE: This chapter made applicable to special charter cities by § 6762.

5844. Authorization.
5845. Commission—appointment and duties.
5846. Joint maintenance.

5844. Authorization. Cities may, when authorized by the voters, provide one or more playgrounds and recreation centers, either on lands to be acquired, or on lands already owned or to be leased by the city. The number and location thereof shall be determined by the city council. [S. S., '15, § 879-r; 40 G. A., ch. 122, § 1; 40 Ex. G. A., S. F. 163, § 1.]

5845. Commission—appointment and duties. The council of any city which establishes any playground as provided by law, may by ordinance create a playground commission consisting of not less than five nor more than nine members who shall be appointed by the mayor with the approval of the council, and all of whom shall be qualified electors of such city and shall serve without compensation. The full term of office of each member of the commission shall be three years, but those first appointed may be for shorter periods. The council may confer on such commission all or any part of its powers in relation to the equipment, maintenance, and conduct of playgrounds. [40 Ex. G. A., S. F. 163, § 1-a1.]

5846. Joint maintenance. Cities shall, so far as possible, cooperate with the school boards

5847. Superintendents—assistants—maintenance.
5848. Cooperation—rules.

within said cities in providing for joint operation and maintenance of all public playgrounds within said cities. [40 G. A., ch. 123, § 1; 40 Ex. G. A., S. F. 163, § 1-a2.]

5847. Superintendents — assistants — maintenance. The council, or commission where one exists, shall appoint a suitable superintendent and all necessary assistants for each playground and fix their term of employment, salaries, and duties. The superintendent shall have control of the children while playing on such grounds. All salaries and expenses incurred in the maintenance of such grounds shall be paid from the playground maintenance fund. [S. S., '15, § 879-v; 37 G. A., ch. 181, § 2; 40 Ex. G. A., S. F. 163, § 2.]

5848. Cooperation—rules. The council or commission shall cooperate with the board of education, the superintendent of schools, and with public-spirited citizens interested in child welfare in the government and operation of playgrounds and to that end it may, from time to time, adopt and enforce such rules as it may deem advisable. [S. S., '15, § 879-w; 40 Ex. G. A., S. F. 163, § 3.]

CHAPTER 299

PUBLIC LIBRARIES

NOTE: This chapter made applicable to special charter cities by § 6764.

- 5849. Formation—maintenance.
- 5850. Donations.
- 5851. Library trustees.
- 5852. Term of office.
- 5853. Qualifications.
- 5854. Vacancies.
- 5855. "Vacancy" defined.
- 5856. Compensation.
- 5857. Joint libraries.

- 5858. Powers.
- 5859. Power to contract.
- 5860. Method of use.
- 5861. Rate of tax.
- 5862. Township tax.
- 5863. County tax.
- 5864. Uniting with historical associations.
- 5865. Fund—treasurer.
- 5866. Report.

5849. Formation—maintenance. Cities and towns may provide for the formation and maintenance of free public libraries open to the use of all inhabitants under proper regulations, and may purchase, erect, or rent buildings or rooms suitable for this purpose and provide for the compensation of necessary employees. [C., '73, § 461; C., '97, § 727; S., '13, § 727; 40 Ex. G. A., S. F. 165, § 1.]

5850. Donations. They may receive, hold, and dispose of all gifts, donations, devises, and bequests that may be made to them for the purpose of establishing, increasing, or improving any library; and when the conditions thereof have been accepted by the city, their performance may be enforced by the library board by an action of mandamus against the council or by other proper action. The council may apply the profits accruing therefrom to best promote the prosperity and utility of the library. [C., '73, § 461; C., '97, § 727; S., '13, § 727; 40 Ex. G. A., S. F. 165, § 1.]

5851. Library trustees. In any city or town in which a free library has been established, there shall be a board of library trustees, consisting of five, seven, or nine members, to be appointed by the mayor, by and with the approval of the city council, which shall also establish by ordinance the number to be appointed. [C., '97, § 728; S. S., '15, § 728; 39 G. A., ch. 265.]

5852. Term of office. Of said trustees so appointed on boards to consist of nine members, three shall hold office for two years, three for four years, and three for six years; on boards to consist of seven members, two shall hold office for two years, two for four years, and three for six years; and on boards to consist of five members, one shall hold office for two years, two for four years and two for six years, from the first day of July following their appointment in each case, and at their first meeting they shall cast lots for their respective terms, reporting the result of such lot to the council. All subsequent appointments, what-

ever the size of the board, shall be for terms of six years each, except to fill vacancies. [C., '97, § 728; S. S., '15, § 728; 39 G. A., ch. 265.]

5853. Qualifications. Bona fide citizens and residents of the city or town, male or female, over the age of twenty-one years, are alone eligible to membership. [C., '97, § 728; S. S., '15, § 728; 39 G. A., ch. 265.]

5854. Vacancies. Vacancies in the board shall be filled by appointment by the mayor, by and with approval of the city council, such appointees to fill out the unexpired term for which the appointment is made. [C., '97, § 728; S. S., '15, § 728; 39 G. A., ch. 265.]

5855. "Vacancy" defined. The removal of any trustee permanently from the city, or his absence from six consecutive regular meetings of the board, except in case of sickness or temporary absence from the city, without due explanation of absence, shall render his office as trustee vacant. [C., '97, § 728; S. S., '15, § 728; 39 G. A., ch. 265.]

5856. Compensation. Members of said board shall receive no compensation for their services. [C., '97, § 728; S. S., '15, § 728; 39 G. A., ch. 265.]

5857. Joint libraries. In cities and incorporated towns where a college or university is located, it shall be lawful for the city or town and such institution of learning to jointly establish and maintain a public library for their mutual benefit upon such terms and conditions as regards maintenance, control, appointment of library trustees, and other incidents of joint control as may in any lawful manner be mutually agreed upon between them; but no city or town may undertake to contribute toward the maintenance more than the amount produced by a rate of taxation therefor allowed by law, and no person shall be appointed or confirmed as library trustee other than such having the qualifications required by law. [C., '97, § 728; S. S., '15, § 728; 39 G. A., ch. 265.]

5858. Powers. Said board of library trustees shall have and exercise the following powers:

1. To meet and organize by the election of one of their number as president of the board, and by the election of a secretary and such other officers as the board may deem necessary.

2. To have charge, control, and supervision of the public library, its appurtenances and fixtures, and rooms containing the same, directing and controlling all the affairs of such library.

3. To employ a librarian, such assistants and employees as may be necessary for the proper management of said library, and fix their compensation; but, prior to such employment, the compensation of such librarian, assistants, and employees shall be fixed for the term of employment by a majority of the members of said board voting in favor thereof.

4. To remove such librarian, assistants, or employees by a vote of two-thirds of such board for misdemeanor, incompetency, or inattention to the duties of such employment.

5. To select and make purchases of books, pamphlets, magazines, periodicals, papers, maps, journals, furniture, fixtures, stationery, and supplies for such library.

6. To authorize the use of such libraries by nonresidents of such cities and towns and to fix charges therefor.

7. To make and adopt, amend, modify, or repeal by-laws, rules, and regulations, not inconsistent with law, for the care, use, government, and management of such library and the business of said board, fixing and enforcing penalties for the violation thereof.

8. To have exclusive control of the expenditures of all taxes levied for library purposes as provided by law, and of the expenditure of all moneys available by gift or otherwise for the erection of library buildings, and of all other moneys belonging to the library fund.

Said board shall keep a record of its proceedings. [C., '97, § 729; S., '13, § 729.]

5859. Power to contract. Contracts may be made between the board of trustees of any free public library and any city, town, school corporation, township, or county for its use by their respective residents. Townships and counties may enter into such contracts, but may only contract for the residents outside of cities and towns. Such contract by a county shall supersede all contracts between the library trustees and townships or school corporations outside of cities and towns. [S., '13, §§ 592-a, 729-a; 38 G. A., ch. 252, § 1; 39 G. A., ch. 234, § 1; 40 Ex. G. A., S. F. 165, § 2.]

5860. Method of use. Such use shall be accomplished by one or more of the following methods in whole or in part:

1. By lending the books of such library to such residents on the same terms and conditions as to residents of the city or town in which said library is situated.

2. By the establishment of depositories of books of such library to be loaned to such residents at stated times and places.

3. By the transportation of books of such library by wagon or other conveyance for lending the same to such residents at stated times and places.

4. By the establishment of branch libraries for lending books to such residents. [S., '13, § 729-a; 39 G. A., ch. 234, § 1; 40 Ex. G. A., S. F. 165, § 3.]

5861. Rate of tax. Such contracts shall provide for the rate of tax to be levied during the period thereof, and shall remain in force until terminated by a majority vote of the electors of such school corporation, civil township, county, city, or town voting on the proposition at such election. [S., '13, § 729-a; 39 G. A., ch. 234, § 1; 40 Ex. G. A., S. F. 165, § 4.]

5862. Township tax. The board of trustees of any township which has entered into such a contract shall at the April meeting levy a tax not exceeding one mill on the dollar on all taxable property in the township to create a fund to fulfill its obligation under the contract. [S., '13, § 592-a; 40 Ex. G. A., S. F. 165, § 5.]

5863. County tax. The board of supervisors, after it makes such contract, shall levy annually on the taxable property of the county outside of cities and towns, a tax of not more than one mill to create a fund to fulfill its obligation under the contract. [S. S., '15, § 422; 40 Ex. G. A., S. F. 165, § 6.]

5864. Uniting with historical associations. Whenever a local county historical association shall be formed in any county having a free public library, the trustees of such library are hereby authorized to unite with such historical association and to set apart the necessary room and to care for such articles as may come into the possession of said association; said trustees are also authorized to purchase necessary receptacles and materials for the preservation and protection of such articles as are in their judgment of a historical and educational nature and pay for the same out of the library fund. [S., '13, § 729-e.]

5865. Fund—treasurer. All moneys received and set apart for the maintenance of such library shall be deposited in the treasury of such city or town to the credit of the library fund, and shall be kept by the treasurer separate and apart from all other moneys, and paid out upon the orders of the board of trustees, signed by its president and secretary.

Provided that in any city or incorporated town where a free public library is maintained jointly by the city or town and an institution of learning, for the support and maintenance of which both the city and the institution of learning contribute, the library trustees may elect a library treasurer therefor, and it shall be the duty of the city treasurer to pay over to said library treasurer any and all library taxes that may be collected by him monthly. [C., '97, § 730; S., '13, § 730.]

5866. Report. The board of trustees shall each year make to the council a report for the year ending December thirty-first, containing a statement of the condition of the library, the number of books added thereto, the number circulated, the number not returned or lost,

the amount of fines collected, and the amount of money expended in the maintenance thereof during such year, together with such further information as it may deem important. [C., '97, § 731.]

CHAPTER 300

MUNICIPAL HOSPITALS

- 5867. Trustees.
- 5868. Organization.
- 5869. Treasurer.
- 5870. Compensation—expenses.

- 5871. Management.
- 5872. Jurisdiction.
- 5873. Appropriation.

5867. Trustees. Cities may by ordinance provide for the election, at a general, city, or special election, of three hospital trustees, whose terms of office shall be six years; but at the first election, three shall be elected and hold their office, respectively, for two, four, and six years, and they shall by lot determine their respective terms. [S., '13, § 741-o; 40 Ex. G. A., H. F. 166, § 2.]

sonal expenses incurred as such trustee, but an itemized statement of all such expenses and moneys paid out shall be made under oath by each of such trustees and filed with the secretary and allowed only by the affirmative vote of the full board. [S., '13, § 741-p.]

5868. Organization. The said trustees shall within ten days after their election qualify by taking the oath of office, and organize as a hospital board by the election of one of their number as chairman and one as secretary, but no bond shall be required of them. [S., '13, § 741-p.]

5871. Management. Said board of trustees shall be vested with authority to provide for the management, control, and government of such city hospital and shall provide all needed rules and regulations for the economic conduct thereof. In the management of said hospital no discrimination shall be made against practitioners of any school of medicine recognized by the laws of the state. [S., '13, § 741-p.]

5869. Treasurer. They shall also elect a treasurer not one of their number, who shall give bonds in the sum of twenty-five thousand dollars, the penalty of which may be increased by the board. The treasurer shall receive and pay out all the moneys under the control of the said board as ordered by it, but shall receive no compensation for his services. [S., '13, § 741-p.]

5872. Jurisdiction. The jurisdiction of such cities and towns shall extend over all lands used for hospital purposes without the corporate limits if so located, and all ordinances of such cities and towns shall be in full force and effect in and over the territory occupied by such hospitals. [S., '13, § 741-t.]

5870. Compensation—expenses. No trustee shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenses actually made for per-

5873. Appropriation. In a city maintaining a hospital the council may appropriate each year not exceeding five per cent of the general fund for its improvement and maintenance. [S., '13, § 741-u; 40 Ex. G. A., H. F. 166, § 1.]

CHAPTER 301

BRIDGES

NOTE: This chapter made applicable to special charter cities by § 6765.

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| 5874. Construction and repair. | 5884. Notice—conditions. |
| 5875. Cities controlling bridge fund. | 5885. Certification of tax. |
| 5876. Levy authorized. | 5886. Tax levied. |
| 5877. Limitation—certification of levy. | 5887. Collection—payment. |
| 5878. Certificates or bonds. | 5888. Forfeiture. |
| 5879. How paid. | 5889. Contract for use of bridge. |
| 5880. Bonds for construction. | 5890. Tax to purchase. |
| 5881. Additional power. | 5891. Question submitted. |
| 5882. Aiding county bridge. | 5892. Bonds or warrants—tolls. |
| 5883. Question submitted. | 5893. Tax in cities after annexation. |

5874. Construction and repair. Cities shall have the care, supervision, and control of all public bridges and culverts within their corporate limits; shall cause the same to be kept open and free from nuisance, and shall construct and keep in repair all public culverts within the limits of said corporations.

They may aid in the construction of county bridges within the limits of the city, or of any bridge contiguous thereto on a highway leading to the city, or of any bridge across any unnavigable river which divides the county in which the city is located from another state by appropriating a sum not exceeding ten dollars per linear foot therefor. [R., '60, § 1097; C., '73, § 527; C., '97, § 757; 40 Ex. G. A., S. F. 167, § 1.]

5875. -Cities controlling bridge fund. Cities of the second class having a population of five thousand or over, which are traversed by a stream two hundred feet or more in width from shore line to shore line, and cities of the first class, shall have full control of the city bridge fund levied and collected therein, and shall use the same for the construction and repair of bridges, culverts, and approaches thereto, and payment of bridge bonds, and interest thereon, issued by such city, and shall be liable for the defective construction thereof and for failure to maintain the same in safe condition. [C., '97, § 758; S. S., '15, § 758; 40 Ex. G. A., S. F. 167, § 2.]

5876. Levy authorized. When the whole or any part of the cost of the building or reconstruction of any bridge by such city shall be ordered paid from the city bridge fund, it may, after the completion of the work, by resolution levy at one time the whole or any part of the cost of such improvement upon all the taxable property within the city and determine the whole percentage of tax necessary to pay the same and the percentage to be paid each year, not exceeding two-thirds of the maximum annual limit of the tax such city may levy for a bridge fund; and the number of years, not

exceeding twenty-five, given for the maturity of each installment thereof. [S. S., '15, § 758-a; 40 Ex. G. A., S. F. 167, § 3.]

5877. Limitation—certification of levy. No part of such costs shall be levied against the property owned by the city, county, state, or the United States. Certificates of such levy shall be filed with the auditor of the county or counties in which the city is located, setting forth the amount or percentage and maturity of said tax or each installment thereof, upon the assessed valuation of all the property in said city, certified as correct by the city clerk or auditor, and thereupon said tax shall be placed upon the tax lists of the proper county or counties. [S. S., '15, § 758-a; 40 Ex. G. A., S. F. 167, § 4.]

5878. Certificates or bonds. Any such city may anticipate the collection of taxes authorized to be levied for a city bridge fund and for that purpose may issue bridge certificates or bonds with interest coupons, and the provisions of chapter 320 shall be operative as to such certificates, bonds, and coupons in so far as they may be applicable. [S., '13, § 758-b.]

5879. How paid. Said certificates, bonds, and interest thereon shall be secured by said assessments and levies and shall be payable only out of the funds derived from such levies and pledged to the payment of the same, and no certificates or bonds shall be issued in excess of taxes authorized and levied to secure the payment of the same. It shall be the duty of such city to collect such funds, with interest thereon, and to hold the same separate and apart in trust for the payment of said certificates, bonds, and interest and to apply the proceeds of said funds pledged for that purpose to the payment of said certificates, bonds, and interest. [S., '13, § 758-c.]

5880. Bonds for construction. Cities of the first class, and also cities of the second class having a population of five thousand or over

and which are traversed by a stream two hundred feet or more in width from shore line to shore line, are hereby authorized to contract indebtedness and to issue bonds for the purpose of constructing bridges. Such bonds shall be payable in not exceeding twenty annual installments and bear interest at not exceeding five per cent per annum, and shall be made payable at such place and be of such form as the city council shall by ordinance designate. But no city shall become indebted in excess of five per cent of the actual value of the taxable property of said city as shown by the last preceding assessment roll. [S. S., '15, § 758-d.]

5881. Additional power. The preceding section shall be construed as granting additional power without limiting the power already existing in cities of the first class, and also cities of the second class having a population of five thousand or over and which are traversed by a stream two hundred feet or more in width from shore line to shore line. [S. S., '15, § 758-e.]

5882. Aiding county bridge. Cities and towns may vote to aid in the construction of any county bridge, when the estimated cost of the same is not less than ten thousand dollars, to the extent of one-half the estimated cost thereof as fixed by the board of supervisors.

A city having a population of five thousand or more may vote a tax, not to exceed two per cent of the assessed value of the taxable property in such city, to construct, or aid any company which is or may be incorporated under the laws of this state in the construction of, a highway or combination bridge across any navigable boundary river of this state, commencing or terminating in such city, suitable for use as highway, or for both highway and railway and street railway purposes. [C., '97, § 759.]

5883. Question submitted. Whenever a petition shall be presented to the council, signed by a majority of the resident freehold taxpayers thereof, asking that the question of constructing or aiding in the construction of a bridge as provided in the preceding section be submitted to the qualified electors, it shall be its duty to immediately give notice of a special election, by publication in some newspaper published therein, and also by posting copies of such notice in five public places therein, at least ten days before such election. [C., '97, § 760.]

5884. Notice—conditions. Such notice shall specify the time and place of holding the election, the proposed location of the bridge to be aided, the rate per cent of tax to be levied, the amount which the board of supervisors is authorized to cause to be collected each year, and all the conditions in the petition.

In case of proposed aid to a private corporation, the notice shall also state its name, the amount of work required to be done on such bridge, and any other conditions which are to be performed before said tax or any part there-

of shall become due and payable. Such notice may also contain terms and conditions to be performed by said corporation receiving such aid after the completion of such bridge, which terms and conditions shall be obligatory and binding upon it, its successors and assigns. [C., '97, § 761.]

5885. Certification of tax. At such election the question of taxation shall be submitted to the electors thereof. If a majority of the votes be for taxation, the clerk of such city or town shall forthwith certify to the county auditor of the proper county the result, the rate per cent of the tax voted, the year or years during which the same is to be collected, the amount to be collected each year, the terms and conditions upon which the same when collected is to be paid, and, if aid is voted to a private corporation, its name, together with a copy of the notice under which the election was held. The certificate shall be filed with the county auditor, who shall cause the same to be recorded in the office of the recorder of deeds. The expenses of the giving of the notice and holding the election shall be audited and paid out of the county treasury as other claims against the county. [C., '97, § 762.]

5886. Tax levied. After such certificate shall have been filed and recorded, the board of supervisors shall, at the time of levying the ordinary taxes, levy each year on the taxable property of such city or town the taxes voted as shown by said certificate. [C., '97, § 763.]

5887. Collection—payment. Said taxes shall be collected in the same manner, subject to the same penalties for nonpayment after delinquent, and to the same laws after they are collected or collectible, as other taxes, in conformity with the terms and conditions of the notice of election; when collected they shall be paid by the county treasurer, on the order of the board of supervisors, specifying the special bridge fund from which each order is payable; but in no case shall said board make such order until the conditions specified in the petition and notice have been complied with. Such taxes, when payable to the city or town, shall be paid over as other city or town taxes. When payable to a private corporation, they shall be paid over by the county treasurer to such corporation, upon the order of the president or a majority of the directors thereof, after said council shall have certified to the county treasurer that the conditions required, as set forth in the notice for the special election at which the tax was voted, have been complied with, and the council, or a majority of its members, shall make such certificate whenever such conditions shall have been so performed. [C., '97, § 764.]

5888. Forfeiture. Should any taxes levied under the provisions of the foregoing sections remain in the county treasury more than one year after the same shall have been collected, the right to them shall be forfeited and they shall be refunded to the taxpayers; and the

board of supervisors shall cause any remaining levy to be canceled and stricken from the tax books, which cancellation shall remove all liens created thereby, and it shall make no further levies under said certificate. [C., '97, § 765.]

5889. Contract for use of bridge. Cities situated on a river wholly in the state, or one forming its boundary line, and from which to the opposite shore a bridge has been or may be constructed by any railroad company, corporation, or person, shall have power to contract with the railroad company, corporation, or person owning such bridge for the use of the same as a public highway; which contract may be for the joint use of such bridge, or for the sole use of such portion thereof as may be devoted or adapted to highway travel; and may assume the sole liability, or any portion thereof, for damages to persons or property by reason of their being on any portion of said bridge or approach to either end thereof, caused by the running of cars or locomotives thereon by any corporation, company, or person entitled to its use, whether the damage results from the negligence of the person engaged in running said cars or locomotives or otherwise, and to indemnify the owners of said bridge, and all others entitled to use the same, from liability for damage so caused, to the extent or proportion thereof assumed in the said contract; and the city may thereafter, and during the continuance of said contract, manage and control said bridge so far as necessary to regulate the highway travel thereon, and may regulate the same as a free or toll bridge, and prescribe such rates of toll as to it from time to time shall seem proper, and make all necessary police regulations for the government of the highway travel thereon, and levy the necessary tax, not exceeding in any one year ten mills on the dollar, for the purpose of carrying out the terms of such contract. [C., '97, § 766.]

5890. Tax to purchase. Any city in this state which has voted aid to any company for the construction of a highway or combination bridge across any navigable boundary river of this state, a condition of which vote, or the granting or acceptance of such aid, was that the city should have the right to purchase such bridge from the company so aided, its successors or assigns, may, at any time after

such taxes voted in aid are collected, vote an additional tax of not exceeding five per cent of the assessed value of the taxable property of such city for the purpose of securing the funds necessary to enable it to make such purchase. Such taxes shall be payable in such annual installments, not less than ten, as the electors may determine. [S., '13, § 766-a.]

5891. Question submitted. The question of whether or not such additional taxes shall be voted shall be submitted to the electors of such city before the city elects to make such purchase, and the submission thereof shall be governed in all respects by sections 5883 to 5887, inclusive, so far as the same are applicable. [S., '13, § 766-b.]

5892. Bonds or warrants—tolls. After such taxes are voted the city may issue its bonds, warrants, or other certificates drawing such interest not exceeding five per cent per annum as the city council may determine, payable from such taxes as they are collected, and from no other source, and pledging them for their payment. Such taxes shall be used for no other purpose and such bonds, warrants, or certificates shall not be sold for less than their par or face value with accrued interest. The city council shall fix the rate of tolls or charges for passing over the bridge, and such tolls shall be large enough to pay the interest upon the bonds, warrants, or certificates issued for its purchase together with the expense of maintaining and operating it. [S., '13, § 766-c; 40 G. A., ch. 108, § 4.]

5893. Tax in cities after annexation. In any case where aid has been extended and bridges erected in two separate cities, and subsequent thereto one of such cities has been annexed to the other, the electors residing in the territory which comprised either of the separate cities before annexation, may vote taxes upon the property in such territory for the purchase of such bridge, and the proceedings in such case shall be the same as provided in the three preceding sections, except that the petition to the city council shall be signed by a majority of the resident freehold taxpayers of the territory in which the vote is to be had, and the taxes, when voted and properly certified, shall be levied only upon the property in such territory. [S., '13, § 766-d.]

CHAPTER 302

INTERSTATE BRIDGES

NOTE: This chapter made applicable to special charter cities by § 6766.

5894. Purchase of bridges.

5895. Proceedings attending purchase.

5896. Form of submission.

5897. Appraisers—fees.

5898. Tolls.

5899. Management and maintenance.

5894. Purchase of bridges. Any city in this state, including cities under the commission plan, where a tax upon the property of said city has been voted and paid to aid any company in the construction of a highway or combination bridge across any navigable river forming part of the boundary of this state, whether it was a condition of the vote or acceptance of such tax that said city had a right to buy said bridge from the company so aided, its successors or assigns, or not, or whether the time within which by the terms of the vote by which such option to purchase was granted to said city has expired or not, at any time after the taxes so voted in aid of such construction of such bridge have been paid over to said company, may vote an additional tax not exceeding five per cent upon the taxable property of said city for the purpose of procuring funds with which to enable such city to purchase said bridge, such taxes to be payable in such annual installments as the electors of said city may determine, such determination by the electors to be at an election called for that purpose, and the notice submitting such question shall state the price to be paid for such bridge, including its approaches. [37 G. A., ch. 140, § 1.]

5895. Proceedings attending purchase. The mayor and city council of such city shall have power to enter into a contract with the corporation or company owning such bridge for the purchase thereof together with its franchises at a price to be agreed upon, which price shall not be greater than the value of such bridge or the cost thereof, with the taxes so voted and paid over by the authorities of said city deducted therefrom.

Unless there is an appraisal as hereinafter provided the original cost of construction shall be considered the value thereof.

No such contract shall become binding upon said city until the same has been submitted to the electors of said city and approved by them by the affirmative vote of a majority of the electors voting for or against the same; the question of the levy of such tax shall be submitted to such electors at the same election, the affirmative vote of a majority of all electors voting for or against the same being necessary to make the contract binding on said city.

If at such election the proposition to make such purchase upon the terms and at the price named in the question submitted and the proposition to vote such tax shall either of them be defeated by not receiving the affirmative vote of a majority of all electors voting for or against the same, such contract shall be considered at an end and said tax defeated. [37 G. A., ch. 140, § 2.]

5896. Form of submission. The questions as to whether the said contracts shall become binding upon the said city, and the taxes levied or bonds issued by the city authorities, shall, when submitted to the electors of said city, be submitted in the form and manner provided by sections 5883 to 5887, inclusive, so far as the same are applicable thereto. [37 G. A., ch. 140, § 3.]

5897. Appraisers—fees. In case a majority of the members of the city council of such city shall by resolution declare their wish to have the said city purchase said bridge, its approaches and franchises, and be unable to agree with the owner of such bridge upon the value thereof, such value shall be ascertained by three appraisers named by the governor of Iowa, no one of whom shall be an officer, employee, or stockholder or such owner of said bridge, or a taxpayer or voter in the city proposing to make such purchase or in the county of the state opposite and adjoining said bridge. Such appraisers shall be paid fifteen dollars per day for the time necessarily and actually employed in making such appraisal, together with their actual and necessary traveling expenses, the same to be paid by the city. [37 G. A., ch. 140, § 4.]

5898. Tolls. If any such city shall thus become the owner of any such bridge, the city council shall have power from time to time to fix the rates of toll or charges for passing over the bridge, which tolls shall be large enough to pay for the maintenance and operating expenses, interest upon any bonds issued for its purchase, and sufficient after five years to provide a sinking fund of at least five per cent of such outstanding bonds, and for their payment at maturity. [37 G. A. ch. 140, § 5.]

5899. Management and maintenance. If any such city shall thus become the owner of any

such bridge, it shall operate the same by officers or employees selected by the mayor and approved by the city council of said city, who shall have police powers and shall maintain order upon said bridge. One of such officers shall be superintendent and authorized to make proper inspection of the structure, see that the same is at all times kept in repair and safe for the traveling public, and that the navigation laws and regulations of the United States are observed.

The said city shall have power to prescribe and enforce proper regulations respecting the passing of stock in droves, and persons and vehicles over said bridge.

Such bridge shall be kept open for travel at all hours of the day or night unless some unavoidable accident shall make such travel for the time unsafe.

The rates of toll and copies of such regulation shall be kept posted at each end of such bridge. [37 G. A., ch. 140, § 6.]

CHAPTER 303

DOCKS

Note: This chapter made applicable to special charter cities by § 6767.

5900. Department of public docks—election.
5901. Commissioners—appointment of—qualifications — terms — organization—removal—vacancies.

5900. Department of public docks—election. The city council or board of commissioners in any incorporated town or city, including cities under commission plan situated on any natural or artificial navigable waterway within or bordering upon the state of Iowa, may, when in their judgment deemed expedient, create a department known as the department of public docks, providing that before said commission may go into operation, the question shall be submitted to the qualified electors of said city or town at a regular election or a special election called for that purpose; and provided further, that a majority of those voting at said election shall vote in favor of the creation of such department of public docks. [S., '13, § 741-w.]

5901. Commissioners—appointment—qualifications—terms—organization—removal—vacancies. The department of public docks shall be administered by a dock board consisting of three members to be known as commissioners of public docks. Within three months, or as soon as possible after the time when this chapter shall go into effect, the mayor of the municipality shall appoint, with the approval of the council, as members of the dock board, three commissioners of public docks, who have been residents of the municipality in which they are appointed for a period of not less than five years, and who shall not at the time of their appointment or during their term of office be interested in or be employed by any common carrier, and said board shall act without compensation. Said commissioners when first appointed shall hold office for a term of one, two, and three years respectively, and shall determine by lot among themselves which commissioners shall hold the said respective terms. Thereafter, one commissioner with the said qualifications shall be appointed annually by the mayor and the term of office of such commissioner shall be three years. The mem-

5902. Powers and duties.

5903. Regulations applicable—control by state officers.

bers of the board shall qualify by taking oath for the faithful performance of their duties. Within ten days after their appointment the commissioners shall meet and organize the dock board by the election from among their number of a president and a secretary of said board, and shall from time to time adopt rules and regulations for the government of their department and to govern their proceedings, which shall be adopted by resolution recorded in a book kept by the board and known as the book of rules and regulations, and said rules and regulations shall be in force after publication in some newspaper published and circulated in the municipality. The dock board shall maintain an office and keep a record of all of its proceedings and acts, and books of account showing all of its financial transactions, which records and books of accounts shall at all times be open to public inspection. If any commissioner shall at any time during his said incumbency cease to have the qualifications required by this section for his appointment, or shall wilfully violate any of his duties under the law, such commissioner shall be removed by the mayor after written charges have been preferred against him and a due hearing of such charges has been had by the mayor upon reasonable notice to such commissioner. Vacancies occurring in the board through resignation or otherwise shall be filled by the mayor for the unexpired term. [S., '13, § 741-w1.]

5902. Powers and duties. The board shall have power and it shall be its duty for and in behalf of the city or town, hereinafter called the municipality, for which it is organized:

1. *General plan.* To prepare or cause to be prepared a comprehensive general plan for the improvement of its harbor and water front, making provision for the needs of commerce and shipping, and providing for the construction of such docks, basins, piers, quay walls, wharves,

warehouses, tunnels, belt railway connecting with all railway lines within the municipality, and such cranes, dock apparatus, and machinery equipment as it may deem necessary for the convenient and economical accommodation and handling of water craft of all kinds and of freight and passengers, and the free interchange of traffic between the waterway and the railways and the railways and the waterway; which plan shall be filed in the office of the board and be open to public inspection, and which may from time to time be changed, altered, or amended by the board, as the requirements of shipping and commerce and the advance of knowledge and information on the subject may suggest.

2. *Purchase and condemnation of property.* To purchase or acquire by condemnation or other lawful means, such personal property, lands, or rights or interest therein, including easements, as may be necessary for use in the provision and in the construction of any publicly owned harbor, dock, basin, pier, slip, quay wall, wharf, warehouse, or other structure, and in the construction of a belt railway and railway switches, and appurtenances as provided for in such plan as may be adopted by the board. If the board shall deem it proper and expedient that the municipality shall acquire possession of such wharf property, lands, or rights or interests therein, including easements, and no price can be agreed upon between the board and the owner or owners thereof, the board may direct the municipal corporation attorney to take legal proceedings to acquire same for the municipality in manner as is or may be provided by the general laws of the state in the case of corporations having the right of eminent domain. The title of all lands, property, and rights acquired by the board shall be taken in the name of the municipality it represents.

3. *Control of property.* The board shall have exclusive charge and control of the wharf property belonging to the municipality including belt railway located in whole or in part therein, all the wharves, piers, quay walls, bulkheads, and structures thereon and waters adjacent thereto, and all the slips, basins, docks, water fronts, the structures thereon, and the appurtenances, easements, uses, reversions, and rights belonging thereto, which are now owned or possessed by the municipality, or to which the municipality is or may become entitled, or which the municipality may acquire under the provisions hereof or otherwise. The board shall have the exclusive charge and control of the building, rebuilding, alteration, repairing, operation, and leasing of said property and every part thereof, and of the cleaning, grading, paving, sewerage, dredging, and deepening necessary in and about the same.

4. *Abutting property—jurisdiction and improvement.* The board is hereby vested with jurisdiction and authority over that part of the streets and alleys and public grounds of the municipality which abut upon or intersect its navigable waters, lying between the harbor line and the first intersecting street measuring backward from high-water mark, to the extent

only that may be necessary or requisite in carrying out the powers vested in it by this chapter; and it is hereby declared that such jurisdiction and authority shall include the right to build retaining or quay walls, docks, levees, wharves, piers, warehouses, or other constructions, including belt railway and railway switches, across and upon such streets and alleys and public grounds, and to grade, fill, and pave the same to conform to the general level of the wharf, or for suitable approaches thereto; provided that such improvements shall be paid for out of funds in the hands of the board and not by assessments against abutting property.

5. *Control consistent with navigation laws—collect tolls.* The board is also vested with exclusive government and control of the harbor and water front consistent with the laws of the United States governing navigation, and of all wharf property, belt railway, wharves, piers, quay walls, bulkheads, docks, structures, and equipment thereon, and all the slips, basins, waters adjacent thereto, and submerged lands and appurtenances belonging to the municipality, and may make reasonable rules and regulations governing the traffic thereon and the use thereof, with the right to collect reasonable dockage, wharfage, sheddage, storage, craning fees, and tolls thereon, as hereinafter provided.

6. *Rules and regulations—specifications—ordinances—publication.* The board shall have power to make general rules and regulations for the carrying out of the plans prepared and adopted by it for the building, rebuilding, repairing, alteration, maintenance, and operation of all structures, erections, or artificial constructions upon or adjacent to the water front of the municipality, whether the same shall be done by the board or by others; and except as provided by the general rules of the board, no new structures or repairs upon or along said water front shall be undertaken, except upon application to the board and under permit by it and in accordance with the general plans of the board and in pursuance of specifications submitted to the board and approved by it upon such application. The general rules and regulations of the board, whenever adopted by it, shall be embodied in the form of ordinances and certified copies thereof shall, forthwith upon their passage, be transmitted to the clerk of the municipality who shall cause the same to be transcribed at length in a book kept for that purpose and the same shall be included in any compilation or publication of the ordinances of the municipality. Upon filing any such certified copy of any such ordinances, the said clerk shall forthwith cause the same to be published once in some newspaper of general circulation published in the municipality, or if none is there published, then in the next nearest newspaper published in this state, and the said ordinance shall be in force and effect from and after the date of said publication. Provided, however, that if the said ordinances are included in any book or pamphlet of ordinances

published by said municipality, no other publication shall be required, and they shall be in force and effect from the date said book or pamphlet is published. The said ordinances of the board shall not be considered or construed as ordinances of said municipality except as they may be adopted as ordinances of said municipality, and the provisions of the code and statutes of the state now or hereafter enacted relative to ordinances of cities and towns shall not apply to ordinances passed by said board unless express reference be made thereto in said statutes.

7. *Tolls and charges—regulations.* The board shall have the power to fix and regulate and from time to time to alter the tolls, fees, dockage, wharfage, crantage, sheddage, storage, and other charges for all public-owned docks, levees, belt railway, piers, quay walls, slips, basins, wharves, and their equipment, or the use of any portion of the water front of the municipality, which charges and rates shall be collectible by the board and shall be reasonable with a view only of defraying the necessary annual expenses of the board in constructing and operating the improvements and works herein authorized; a schedule of such charges and regulations shall be enacted by the board in the form of ordinances and a certified copy thereof shall be transmitted to the clerk of the municipality in like manner as other ordinances of the board before the same shall go into or be in effect, and a copy of same shall be kept posted in a conspicuous place in the office of the board.

8. *Assistants — officers — ordinances.* The board shall have power to employ such assistants, employees, clerks, workmen, and laborers as may be necessary in the efficient and economical performance of the work authorized by this chapter. All officers, places, and employments in the permanent service of the board shall be provided for by ordinance duly passed by the board and the same shall be transmitted to the clerk of the municipality as provided for other ordinances of the board.

9. *Construction work plans—approval—public inspection—bids—exceptions — emergencies.* In the construction of docks, levees, wharves, and their appurtenances, or in contracting for the construction of any work or structures authorized by this chapter, the board shall proceed only after full and complete plans (approved by the board) and specifications for said work have been prepared and submitted and filed with the board by its engineer for public inspection, and after public notice asking for bids for the construction of such work, based upon such plans and specifications, has been published in some newspaper of general circulation published within the municipality, or if none so published, then in the nearest newspaper published in this state, which publication shall be made at least thirty days before the time fixed for the opening of said bids and contracting for such work; and such contract may then be made with the lowest responsible bidder therefor, unless the board deems the bids ex-

cessive or unsuitable, in which event it may proceed to readvertise for bids, or the board may do the work directly, purchasing such materials and contracting for such labor as may be necessary without further notice or proposals for bids; except that it shall make no purchase of materials in amounts exceeding five hundred dollars except by public letting upon ten days' notice, published as aforesaid, specifying the materials proposed to be purchased; provided, however, that said public letting shall not be required in case no satisfactory bids are received, or in case of an emergency where the delay of advertising and public letting might cause serious loss or injury to the work. The board shall, in all cases, have the right to reject any and all bids, and may either readvertise therefor, contract with others at a figure not exceeding the lowest bidder without further advertising, or do the work directly as hereinbefore provided.

10. *Tax levy—dock fund.* To defray the expense of exercising the powers conferred by this chapter, or any portion of such expense in excess of the income from the aforesaid rates and charges to be collected by the board, the council of the municipality shall levy a special tax upon the taxable property of the municipality, not exceeding two mills on the dollar, and which, if there is a bond issue as herein provided, may be levied and made payable for a period not exceeding ten years or the term for which the bonds may be issued, and any portion of which may be pledged to the payment of such bonds and which portion shall be set apart as a sinking fund for the payment thereof, and which bonds may be by said municipality made payable out of said funds only, or may be made payable as general indebtedness of said municipality. The provisions of section 6238 shall not apply to said indebtedness evidenced by such bonds. The board shall annually make to the council a report of the receipts and disbursements made by or on account of said board, and shall file with the council an estimate of the amounts necessary to be raised by taxation to defray the expenses of the board. The council shall at the time of levying annual taxes levy a sufficient tax not exceeding said two mills to meet the said estimate and which shall be collected as other taxes and paid over to the treasurer of the municipality and by him credited to the fund to be known as the dock fund.

11. *Bonds—limitation.* Whenever said dock board shall deem it necessary or advisable to issue bonds for the purpose of constructing any of the works or improvements herein authorized or purchasing property for said purpose, the said board shall petition the council of the municipality to issue such bonds stating the purpose for which said bonds are requested and thereupon the council shall issue the said bonds if the municipality is not thereby indebted in excess of the limit imposed by section 3 of article 11 of the constitution of the state of Iowa; or if the council does not deem it advisable to issue said bonds, if

the same would not be in excess of said limitation, the council shall submit the question of issuing said bonds to the voters of said municipality, and if a majority of said voters voting at a special election or general election vote in favor thereof, said bonds shall be issued. The proceeds of said bonds when issued shall be paid to the municipal treasurer and credited to the dock fund. If the municipality is already indebted beyond the said limitation the council may, if it deem it advisable, levy a special tax not exceeding two mills on the dollar per annum for the purpose of paying bonds and which may be levied for a period not exceeding ten years or the term of the bonds; and in anticipation of the collection of the said tax, bonds may be issued for the said purpose designated in said petition, and which bonds shall be payable only out of the proceeds of said special tax already levied at the time of their issuance, and the municipality shall not be indebted on said bonds or any further obligated than to collect and apply the proceeds of said tax to the liquidation of said bonds.

12. *Funds, how disbursed—books audited.* All funds collected by the dock board, or by the municipality for dock purposes from the proceeds of taxes, bonds, or otherwise, shall be deposited with the treasurer of the municipi-

ality and disbursed by him only upon warrants or orders duly signed by the president and countersigned by the secretary of the dock board and which shall state distinctly the consideration for which same are drawn, and a permanent record shall be kept by the board of all warrants or orders so drawn, showing the date, amount, consideration, and to whom payable. When paid the same shall be canceled and kept on file by the treasurer of the municipality. The books of the board shall from time to time be audited by the municipal auditor under the direction of the mayor, in such manner and at such times as he may direct or prescribe, and all of said books and records of the board shall at all times be open to public inspection. [S. '13, § 741-w2.]

5903. Regulations applicable—control by state officers. All state regulations for the control and operation of railroads, common carriers, and public utilities shall apply to and have full force and effect in regard to all powers, duties, and actions of the department of public docks and the same shall be subject to and under the control of the state board of railroad commissioners or the public utility commission now or hereafter established by law. [S., '13, § 741-w4.]

CHAPTER 304

ELECTRIC UTILITIES

5904. Regulations.
5905. Franchise—election.
5906. Notice.

5904. Regulations. Cities and towns shall have the power to authorize and regulate telegraph, district telegraph, telephone, street railway, and other electric wires, and the poles and other supports thereof, by general and uniform regulation, and to provide the manner in which, and places where, the same shall be placed upon, along, or under the streets, roads, avenues, alleys, and public places of such city or town, and may divide the city into districts for that purpose. [C., '97, § 775.]

5905. Franchise—election. No franchise shall be granted, renewed, or extended by any city or town for the use of its streets, highways, avenues, alleys, or public places, for any of the purposes named in the preceding section unless a majority of the legal electors voting thereon vote in favor of the same at a general, city or town, or special election. The council may order the question of the granting, renewal, or extension of any such franchise so submitted; or the mayor shall submit said question to such vote upon the petition of twenty-five property owners of each voting precinct in a city, or fifty property owners in any town. [C., '97, § 776; S., '13, § 776; 40 Ex. G. A., H. F. 168, § 4.]

5907. Time of election.
5908. Ballots—procedure.
5909. Costs.

5906. Notice. Notice of such election shall be given by publication once each week for four consecutive weeks in some newspaper published in the city or town, or if none be published therein, in a newspaper published in the county and of general circulation in the city or town. [C., '97, § 776; S., '13, § 776; 40 Ex. G. A., H. F. 168, § 5.]

5907. Time of election. The election shall be held on a date not less than five nor more than twenty days after the last publication of said notice. [C., '97, § 776; S., '13, § 776; 40 Ex. G. A., H. F. 168, § 5.]

5908. Ballots—procedure. The clerk shall prepare the ballots, and the proposition shall be submitted as provided for in the title on elections. [C., '97, § 776; S., '13, § 776; 40 Ex. G. A., H. F. 168, § 5.]

5909. Costs. The party applying for the franchise, or a renewal or extension thereof, shall pay all expenses incurred in holding the election. [C., '97, § 776; S., '13, § 776; 40 Ex. G. A., H. F. 168, § 5.]

CHAPTER 305

VIADUCTS

NOTE: This chapter made applicable to special charter cities by § 6768.

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| 5910. Authorization. | 5918. Hearing. |
| 5911. Limitations. | 5919. Notice. |
| 5912. Damages. | 5920. Service. |
| 5913. Procedure. | 5921. Use and compensation. |
| 5914. Payment. | 5922. Repair fund. |
| 5915. Tax permissible. | 5923. Apportionment of repairs. |
| 5916. Specifications. | 5924. Mandamus. |
| 5917. Apportionment of cost. | 5925. Contempt—optional procedure. |

5910. Authorization. Cities having a population of five thousand or over shall have power to require any railroad company, owning or operating any railroad tracks upon or across any public streets of such city, to erect, construct, reconstruct, complete, and maintain, to the extent hereinafter provided, any viaduct upon or along such streets, and over or under such tracks, including the approaches thereto, as may be declared by ordinances of such city necessary for the safety and protection of the public. [C., '97, § 770; 38 G. A., ch. 106, § 1.]

5911. Limitations. The approaches to any such viaduct shall not exceed a total distance of eight hundred feet, but no such viaduct shall be required on more than every fourth street running in the same direction, and no railroad company shall be required to build or contribute to the building of more than one such viaduct, with its approaches, in any one year; nor shall any viaduct be required until the board of railroad commissioners shall, after examination, determine the same to be necessary for the public safety and convenience, and the plans of said viaduct, prepared as hereinafter provided, shall have been approved by said board. [C., '97, § 770.]

5912. Damages. When a viaduct shall be by ordinance declared necessary for the safety and protection of the public, the council shall provide for appraising, assessing, and determining the damages which may be caused to any property by reason of the construction of the same and its approaches. [C., '97, § 771; S., '13, § 771.]

5913. Procedure. The proceedings for such purpose shall be the same as are provided in case of taking private property for works of internal improvement. [C., '97, § 771; S., '13, § 771.]

5914. Payment. The damages assessed shall be paid by the city out of the general bridge fund, or in cities having a population of twelve thousand or over from any other fund

or funds legally available therefor. [C., '97, § 771; S., '13, § 771.]

5915. Tax permissible. In cities having a population of twelve thousand or over, where a viaduct is required to be constructed and the plans therefor have been approved and there are no available funds in the general bridge fund, or any fund or funds of said city which may be legally used for the payment of such damages, such city may levy an annual tax not exceeding two mills on the dollar for the purpose of creating a fund to be known as a viaduct fund for the payment of damages caused to property by reason of the construction of such viaduct and approaches thereto. [S., '13, § 771-a.]

5916. Specifications. The width, height, and strength of any viaduct and the approaches thereto, and the material and manner of construction thereof, shall be such as may be required by the council. [C., '97, § 772.]

5917. Apportionment of cost. When two or more railroad companies own or operate separate lines of track to be crossed by a viaduct, the proportion thereof and the approaches thereto to be constructed by each, or the cost to be borne by each, shall be determined by the council. [C., '97, § 773; S., '13, § 773.]

5918. Hearing. The council shall fix a time and place where it will consider such matters and any objections that may be made to the construction of such viaduct and the approaches thereto. [S., '13, § 773.]

5919. Notice. Not less than twenty days' written notice of such hearing shall be given to the company or companies owning or operating the track or tracks over or under which it is proposed to construct such viaduct. [S., '13, § 773.]

5920. Service. Said notice may be served in the same manner and upon the same persons or officers as in the case of an original notice. [S., '13, § 773.]

5921. Use and compensation. Such cities shall have power to regulate the use of such viaducts and to authorize or forbid the use thereof by street railway companies and to require the payment of compensation for such use. [S., '13, § 773.]

5922. Repair fund. After the completion thereof, any revenue derived therefrom by the crossing thereon of street railway lines shall constitute a special fund, and shall be applied in making repairs to such viaduct. [C., '97, § 773; S., '13, § 773.]

5923. Apportionment of repairs. One-half of all ordinary repairs to such viaduct or its approaches shall be paid out of such fund, or be borne by the city, and the remaining half by the railroad company; and if the track of more than one company is crossed, the costs of such repairs shall be borne by such companies in the same proportion as was the original cost of construction. [C., '97, § 773; S., '13, § 773.]

5924. Mandamus. If any railroad company neglects or refuses, for more than thirty days after such notice as may be prescribed by ordinance, to comply with the requirements of any ordinance passed under the provisions of this chapter, the city may enforce the construction, maintenance, or repair of such viaduct and approaches by proceedings in mandamus, and the court shall require the issues to be made up at the first term to which such action is brought and shall give the same precedence over other civil business. [C., '97, § 774; S., '13, § 774.]

5925. Contempt—optional procedure. Refusals to comply with, or violations of, the orders of the court in such proceedings may be punished as contempts, by fine and imprisonment as provided in section 7884; or the city may construct or repair the viaduct or approaches, or any portion thereof, which such railroad company was required to construct or maintain, and recover the cost thereof from such company. [S., '13, § 774.]

CHAPTER 306

JITNEY BUSESSES

NOTE: This chapter made applicable to special charter cities by § 6769.

5926. Regulation and license.
 5927. Excluding from streets.
 5928. Use of street.
 5929. Terminus—resulting right.
 5930. Bond.
 5931. Beneficiary.

5932. Amount of bond.
 5933. General insurance policy.
 5934. Filing and fee.
 5935. Application for license.
 5936. Granting or rejecting.
 5937. Violations.

5926. Regulation and license. Cities and towns, including cities acting under the commission form of government, and cities acting under the city manager plan of government, shall have power, under the restrictions and conditions hereinafter named, to regulate and license so-called jitney busses and all motor vehicles operating upon the streets and avenues of such cities and towns and engaged in carrying passengers for hire on a plan similar to that followed by street railway companies; to require such vehicles to be operated over reasonable routes and upon reasonable schedules; to impose penalties within the limits of section 5714 for the violation of any ordinance enacted hereunder, not inconsistent and in conflict with this chapter. [S. S., '15, § 754-a; 39 G. A., ch. 115, § 1.]

5927. Excluding from streets. The city or town council may prohibit any such jitney bus or motor vehicle from operating on that part of any such street or avenue on which there is operated a street car line or lines when such street car line is maintained and operated under a franchise granted by any such city or town. [S. S., '15, § 754-a; 39 G. A., ch. 115, § 2.]

5928. Use of street. Such jitney or motor bus may cross such street or avenue at right angles with said street car line or lines, and

in addition thereto said jitney or motor busses may travel over such streets and avenues so far only as is necessary to cross bridges. [39 G. A., ch. 115, § 2.]

5929. Terminus—resulting right. Said busses and vehicles may have a terminus in the business district of such city or town, and for the purpose of going to and from such terminus said busses and vehicles may travel over such portion only of said prohibited streets and alleys as is necessary to connect directly with the licensed route of said busses and vehicles over the streets and alleys on which there are no street car line or lines. [39 G. A., ch. 115, § 2.]

5930. Bond. No such license shall be granted by any such city or town unless and until the applicant therefor shall file in the office of the clerk of the district court of the county in which said city or town may be located, an indemnity bond with sureties to be approved by the clerk of said district court, which said sureties shall qualify as provided in the chapter on "securities and investments of trust funds" in the title on "particular actions and special proceedings". [S. S., '15, § 754-a; 39 G. A., ch. 115, § 3.]

5931. Beneficiary. The said bond shall inure to the benefit of the estate of any passenger killed and to the benefit of any passen-

ger who may suffer bodily injury or property damage by reason of negligence or misconduct on the part of the driver, owner, or operator of any such jitney bus or motor vehicle. [S. S., '15, § 754-a; 39 G. A., ch. 115, § 3.]

5932. Amount of bond. The said bond shall be in the following penal sums to wit: If there is carried in such jitney bus or motor vehicle less than ten passengers, at least five thousand dollars; and if there is carried therein ten passengers or more, at least ten thousand dollars. [39 G. A., ch. 115, § 3.]

5933. General insurance policy. In lieu of such bond there may be filed in such office a liability insurance policy issued by a company authorized to do business in the state in like amounts for a single claim as for the bonds above provided, and conditioned that the same shall inure to the benefit of any passenger upon such vehicle or vehicles in the same manner and way as the bonds above provided. [39 G. A., ch. 115, § 3.]

5934. Filing and fee. When said bond or policy is approved by said clerk he shall file the same in his office for the purpose herein expressed and shall receive for filing and approving the same a fee of one dollar. [39 G. A., ch. 115, § 3.]

5935. Application for license. No such license shall be granted by any such city or town unless and until the applicant therefor shall, after the said bond or liability insurance policy is thus approved, file in the office of the clerk of such city or town an application for such license stating:

1. The type of motor car or jitney bus to be used.
2. The horsepower and the factory number thereof.
3. The state license number thereof.

4. The seating capacity thereof according to its trade rating.

5. The street or streets upon which it is intended to operate.

6. The age, name, and residence of the person to be in the immediate charge thereof as driver and a statement showing that such driver has attained the age of at least eighteen full years, and if more than one person is to be in the immediate charge of such jitney or motor bus, then there must be given the name, age, and residence of each said persons and a statement showing that each of said persons has attained the age of eighteen full years.

7. The qualifications and experience of the person who is to be the driver of such jitney or motor bus, and if more than one person is to drive the same, then a statement of qualification of each such person.

8. The name of the owner or owners of the bus or busses proposed to be operated.

9. That the said bond herein above named has been filed and approved as herein above provided. [39 G. A. ch. 115, § 3.]

5936. Granting or rejecting. The city or town council may grant or reject the said application, and if the said application is rejected other applications may be made, and likewise the city or town council may grant or reject the same. [S. S., '15, § 754-a; 39 G. A., ch. 115, § 4.]

5937. Violations. It shall be unlawful for any such jitney or motor bus to thus operate upon any such streets or avenues without said license; and any person, corporation, or co-partnership who shall operate any such jitney or motor bus without such license shall be held guilty of a misdemeanor and punished by a fine of not less than fifty dollars nor more than three hundred dollars, or shall stand committed to the county jail for a period not exceeding sixty days. [S. S., '15, § 754-a; 39 G. A., ch. 115, § 5.]

CHAPTER 307

STREETS AND PUBLIC GROUNDS

NOTE: This chapter made applicable to special charter cities by § 6770.

GENERAL POWERS

- 5938. Establishment—improvement.
- 5939. Acceptance of dedication.
- 5940. Optional payments.
- 5941. Term of assessments.
- 5942. District designated.
- 5943. Interpretation.
- 5944. Width of street.
- 5945. Duty to supervise.
- 5946. Duty to drag.
- 5947. "Roads" as streets.
- 5948. Embankments and fills.
- 5949. Lighting.
- 5950. Snow and ice.

GRADE OF STREETS

- 5951. Grades and grading.
- 5952. Uniformity.
- 5953. Change.
- 5954. Appraisers.
- 5955. Notice.

GENERAL POWERS

5938. **Establishment—improvement.** Cities and towns shall have power to establish, lay off, open, widen, straighten, narrow, vacate, extend, improve, and repair streets, highways, avenues, alleys, public grounds, wharves, landings and market places within their limits. [R., '60, §§ 1064, 1097; C., '73, §§ 464, 465, 527; C., '97, § 751; S. S., '15, § 751; 40 Ex. G. A., H. F. 168, § 1.]

5939. **Acceptance of dedication.** No street, avenue, highway, or alley dedicated to public use by the proprietor of the ground in any municipal corporation shall be deemed a public street, avenue, highway, or alley, or be under the use or control of such municipality, unless the dedication shall be accepted and confirmed by a resolution specially passed for such purpose. [R., '60, § 1097; C., '73, §§ 465, 527; C., '97, § 751; S. S., '15, § 751; 40 Ex. G. A., H. F. 168, § 1.]

5940. **Optional payments.** The expenses of such extension, repairs, and improvements may be paid from the general fund, the grading fund, or from the highway or poll taxes of such cities or towns, or partly from each of such funds, or by assessing all or any portion of the cost thereof on abutting and adjacent property according to the benefits derived from such extension, repairs, and improvements. [R., '60, § 1064; C., '73, §§ 465, 466; C., '97, §§ 751,

- 5956. Assessment.
- 5957. Confirmation or annulment.
- 5958. Limitation.
- 5959. Appeal.
- 5960. Trial.
- 5961. Costs.

SIDEWALKS

- 5962. Permanent sidewalks.
- 5963. Objections.
- 5964. Payment under waiver.
- 5965. Payment under nonwaiver.
- 5966. Certificates of levy—lien.
- 5967. Certificates—effect.
- 5968. Temporary sidewalks.
- 5969. Repair.

USE OF STREETS

- 5970. Conveyances—transportation.
- 5971. Driving or riding.
- 5972. Flagmen and gates.
- 5973. Speed of trains.

818; S. S., '15, § 751; 40 Ex. G. A., H. F. 168, § 2.]

5941. **Term of assessments.** Such assessments may be made to extend over a period not to exceed twenty years, payable in equal annual installments, and certificates or bonds may be issued in anticipation thereof. [39 G. A., ch. 184, § 1; 40 Ex. G. A., H. F. 168, § 2.]

5942. **District designated.** The district benefited and in which adjacent property is to be assessed, shall be designated and determined by the council in the resolution ordering such extension, repairs, and improvements. [S. S., '15, § 751; 40 Ex. G. A., H. F. 168, § 2.]

5943. **Interpretation.** Nothing in the three preceding sections shall be construed as changing the manner of assessing abutting and adjacent property for the cost of paving, guttering, curbing, or macadamizing streets and alleys. [S. S., '15, § 751; 40 Ex. G. A., H. F. 168, § 2.]

5944. **Width of street.** They shall have power to provide that the width of all streets, highways, avenues, and alleys of all additions to any city or town shall conform to the width of the existing streets, highways, avenues, and alleys of such cities and towns. [C., '97, § 752.]

5945. **Duty to supervise.** They shall have the care, supervision, and control of all public highways, streets, avenues, alleys, public

squares, and commons within the city, and shall cause the same to be kept open and in repair and free from nuisances. [R., '60, § 1097; C., '73, § 527; C., '97, § 753.]

5946. Duty to drag. The councils of cities and towns, respectively, shall cause the main-traveled roads within the corporate limits leading into the city or town to be dragged at the times and in the manner provided by law for the dragging of roads outside such corporate limits. [S., '13, § 1570-b4; 40 Ex. G. A., H. F. 168, § 3.]

5947. "Roads" as streets. Such portions of all roads as lie within the limits of any city or town shall conform to the direction and grade and be subject to all regulations of other streets in such town or city. [R., '60, § 916; C., '73, § 953; C., '97, § 1508.]

5948. Embankments and fills. Cities of the first class shall have power to construct embankments where streets cross ravines, or where it is necessary that fills should be made for the purpose of retaining the street at grade to the full width of the remaining portions thereof. Such cities may purchase or condemn lands suitable for such purposes in the manner provided for condemning land by cities; but when the abutting property shall be brought to grade, such city shall reconvey the land so taken to the owner from whom the same was taken, or his grantees, upon the payment by him or them of the price originally paid by said city at the time said property was purchased or condemned. [C., '97, § 784.]

5949. Lighting. They shall have power to light streets, avenues, alleys, highways, public places, grounds, buildings, landings, market places, and wharves. [R., '60, § 1064; C., '73, § 464; C., '97, § 756.]

5950. Snow and ice. They shall have power to remove snow, ice, or accumulations from abutting property from the sidewalk, without notice to the property owner, if the same has remained upon the walk for the period of ten hours, and assess the expenses thereof on the property from the front of which such snow, ice, or accumulations shall be removed; but the expense shall not exceed one and one-half cents per front foot of any lot, and the same shall be certified and collected as other special taxes. [C., '97, § 781.]

GRADE OF STREETS

5951. Grades and grading. They shall have power to establish grades and provide for the grading of any street, highway, avenue, alley, public ground, wharf, landing, or market place, the expense thereof to be paid from the general or grading fund, or from the highway or poll taxes of such city or town, or partly from each such funds. [C., '73, § 465; C., '97, § 782.]

5952. Uniformity. They shall have power to provide that the grading of all streets, highways, avenues, alleys, public grounds, wharves,

landings, or market places of all additions to any city or town shall be done in the same manner, and conform to existing streets, avenues, highways, and alleys thereof. [C., '97, § 783.]

5953. Change. When any city or town shall have established the grade of any street or alley, and any person shall have made improvements on the same, or lots abutting thereon, according to the established grade thereof, and such grade shall thereafter be altered in such a manner as to damage, injure, or diminish the value of such property so improved, said city or town shall pay to the owner of such property the amount of such damage or injury. [C., '73, § 469; C., '97, § 785.]

5954. Appraisers. The amount of such damage or injury shall be determined and assessed by three disinterested freeholders, one of whom shall be selected by the mayor, one by the owner of the property, and one by the two so appointed; or, in case of their disagreement, by the council. If the owner fails to select an appraiser within ten days from the time of receiving notice to select same, then the council shall select all such appraisers. [C., '73, § 469; C., '97, § 786.]

5955. Notice. The appraisers shall take an oath to faithfully and impartially discharge their duties. They shall give ten days' notice in writing to the owner of the property affected of the time and place of their meeting to view the premises and make their assessment, if such owner resides in the county; which notice shall be served in the same manner as original notices in the district court. If the owner resides outside of the county, or his residence is unknown, notice shall be given by publication once a week for three weeks in some newspaper published in the city or town where the property is located. [C., '73, § 469; C., '97, § 787.]

5956. Assessment. The appraisers shall view the premises, and, in their discretion, receive evidence, and may adjourn from day to day. When the appraisal is completed, the appraisers shall sign and return the same to the council, which shall be done within thirty days from the date of their selection. [C., '73, § 469; C., '97, § 788.]

5957. Confirmation or annulment. The council may, in its discretion, confirm or annul the appraisal, and, if annulled, all proceedings shall be void and of no effect; but, if confirmed, an order of confirmation shall be entered by the clerk in the record of the proceedings of the council. [C., '73, § 469; C., '97, § 789.]

5958. Limitation. No alteration of grade shall be made until the damages assessed shall have been paid or tendered to the owner of the property so injured or damaged. [C., '73, § 469; C., '97, § 789.]

5959. Appeal. Any person interested may appeal from the order of confirmation to the

district court of the county in which such property is located, by giving written notice thereof to the mayor, within twenty days after the order of confirmation is entered. [C., '73, § 469; C., '97, § 790.]

5960. Trial. On the trial of the appeal, all questions involved in the proceedings, including the amount of damages, shall be open to investigation, and the burden of proof shall, in all cases, be upon the city or town to show that the proceedings are in accord with the provisions of this chapter. [C., '73, § 469; C., '97, § 790.]

5961. Costs. The cost of such proceedings, incurred prior to the order of confirmation or annulment of the appraisal, shall in all cases be paid by the city or town. If the person appealing recovers more damages than were awarded by the appraisers, he shall recover the costs of the appeal; if he recovers the same or less than the award, the costs of the appeal shall be taxed to him. [C., '73, § 469; C., '97, § 790.]

SIDEWALKS

5962. Permanent sidewalks. Cities and towns shall have power to provide for the construction, reconstruction, and repair of permanent sidewalks upon any street, highway, avenue, public ground, wharf, landing, or market place within the limits of such city or town; and to assess the cost thereof on the lots or parcels of land in front of which the same shall be constructed; but the construction of permanent sidewalks shall not be made until the bed of the same shall have been graded so that, when completed, such sidewalks will be at the established grade.

Unless the owners of a majority of the linear feet of the property fronting on said improvements petition the council therefor, the same shall not be made unless three-fourths of all the members of the council shall by vote order the making thereof. [C., '73, § 466; C., '97, § 779; S., '13, § 779; 40 Ex. G. A., H. F. 168, § 6.]

5963. Objections. All objections to the cost of construction of permanent sidewalks, as provided by the code, against the lots or parcels of land in front of which the same are constructed, and all objections to the prior proceedings, on account of errors, irregularities, or inequalities, must be made in writing and filed with the city clerk prior to the date fixed for said assessment; and all objections not so made shall be deemed waived, except where fraud is shown. [S., '13, § 791-a.]

5964. Payment under waiver. If the owner of any lot or parcel of land against which an assessment for permanent sidewalks is made shall, at the time of making said special assessment, promise and agree in writing, indorsed on a certificate, or in a separate agreement, that in consideration of having the right to pay his assessment in installments, he will not make any objection of illegality or irregularity

as to the assessment or levy of such tax upon and against his property, and will pay said assessment, with interest thereon at such rate, not exceeding six per cent per annum, as shall by ordinance or resolution of the council be prescribed, such tax, so levied against the lot or parcel of land of such owner, shall be payable in seven equal installments, the first of which shall mature and be payable on the date of said assessment and the others, with interest on the whole amount unpaid, annually thereafter, at the same time and in the same manner as the March semiannual payment of ordinary taxes. [S., '13, § 791-b.]

5965. Payment under nonwaiver. Where no such promise and agreement in writing shall be made by the owner of any lot or parcel of land, then the whole of said assessment so levied upon and against the property of such owner shall be assessed and collected as provided for in section 6227. All such taxes, with interest, shall become delinquent on the first day of March next after their maturity and shall bear same rate of interest, with same penalties as ordinary taxes. [S., '13, § 791-b.]

5966. Certificates of levy—lien. A certificate of levy of such special assessment, fixing the number of installments and the time when payable, certified as correct by the city clerk, shall be filed with the auditor of the county, or each of the counties, in which the city is situated and thereupon said special assessment, as shown therein, shall be placed on the tax list of the proper county and said taxes and special assessment, with all interest and penalties thereon, shall become and remain a lien upon such lot or parcel of land until the same is paid; and said lien shall have precedence over all other liens, except ordinary taxes. [S., '13, § 791-c.]

5967. Certificates—effect. Such certificate shall be the same as certificates of the levy of special assessments for street improvements, and shall create the same rights and liabilities and the same procedure shall apply thereto. [S., '13, §§ 791-d-791-g; 40 Ex. G. A., H. F. 168, § 7.]

5968. Temporary sidewalks. They shall have power to provide for the laying, relaying, and repairing of temporary sidewalks upon any street, avenue, public ground, wharf, landing, or market place within the limits of such city or town, at a cost not exceeding sixty cents a linear foot, to prescribe a uniform width thereof, and to regulate the grade of the same, and to provide for the assessment of the cost thereof on the property in front of which the same shall be laid. [C., '73, § 468; C., '97, § 777; S., '13, § 777; 38 G. A., ch. 150, § 1; 40 Ex. G. A., H. F. 168, § 8.]

5969. Repair. Cities and towns shall have power to repair sidewalks without notice to the property owner, and assess the expense

thereof on the property in front of which such repairs are made, and the same shall be certified and collected as other taxes. [C., '73, § 467; C., '97, § 780.]

USE OF STREETS

5970. Conveyances — transportation. They shall have power:

1. To regulate, license, and tax all carts, wagons, street sprinklers, drays, coaches, hacks, omnibuses, and every description of conveyance kept for hire.

2. To fix the rate and prices for the transportation of persons and property from one part of the city to another in the vehicles above named, and to require such persons to keep exposed to view, in or upon such vehicle, a printed table of the rates and prices so fixed.

3. To establish stands for hackney coaches, cabs, omnibuses, drays, and express wagons, and to enforce the observance and use thereof.

4. To prescribe the width of the tires of all vehicles habitually used in the transportation of persons or articles from one part of the city to another.

5. To require vehicles and bicycles to carry lamps giving sufficient light. [R., '60, § 1063; C., '73, §§ 463, 537; C., '97, § 754.]

5971. Driving or riding. Cities and towns shall have power to restrain and regulate the riding and driving of horses, live stock, vehicles, and bicycles within the limits of the corporation, and prevent and punish fast or immoderate riding or driving within such limits. [R., '60, § 1057; C., '73, § 456; C., '97, § 755.]

5972. Flagmen and gates. Cities and towns shall have power to compel railroad companies to place flagmen, or to erect, construct, maintain, and operate suitable mechanical signal devices or gates, upon public streets at railroad crossings, under such regulations as may from time to time be made by the council; provided that in cases where a controversy arises between the railroad company and the council as to the necessity for such flagmen, signal devices, or gates, the matter shall be determined by the board of railroad commissioners. [C., '97, § 769; 39 G. A., ch. 152.]

5973. Speed of trains. Cities and towns, subject to the approval of the railroad commission, shall have power to regulate the speed of trains and locomotives on railways running over the streets or through the limits of the city or town. [C., '73, § 456; C., '97, § 769; 39 G. A., ch. 152.]

CHAPTER 308

STREET IMPROVEMENTS, SEWERS, AND SPECIAL ASSESSMENTS

NOTE: Certain provisions of this chapter made applicable to special charter cities by § 6912.

- 5974. Definitions.
- 5975. Street improvements.
- 5976. Grading required.
- 5977. Grading cost assessable.
- 5978. Preparing for oiling—cost.
- 5979. Use of old material.
- 5980. Sale of salvage.
- 5981. Gas, water, and other connections.
- 5982. Connections under waterworks trustees.
- 5983. Installation—cost.
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- 5985. Outlets and purifying plants.
- 5986. Main sewer assessments.
- 5987. "Adjacent property" and "main sewer".
- 5988. State building.
- 5989. Condemnation.
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- 5991. Resolution of necessity—contents.
- 5992. Additional contents.
- 5993. Plat and schedule.
- 5994. Cost of schedule.
- 5995. Time of hearing—objections permitted.
- 5996. Remonstrance—vote required—amendment.
- 5997. Notice.
- 5998. Improvement ordered.
- 5999. Record—vote required.
- 6000. Yeas and nays.
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- 6002. Exception as to oiling.
- 6003. Agreement to repair.
- 6004. Bids—notice.
- 6005. Deposit—rejection of bids.
- 6006. Bond.
- 6007. Certification to county auditor—record book.
- 6008. Lien generally.
- 6009. Lien on rights of way.
- 6010. Release on rights of way.
- 6011. Cost at intersections.
- 6012. Cost of improvements.
- 6013. Railroad right of way.
- 6014. Cost of paved roadway.
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- 6016. Cost of repairs.
- 6017. Deficiencies—nonassessable property.
- 6018. Assessment.
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- 6029. Objections waived.
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- 6036. Division of property.
- 6037. Tax sale.
- 6038. Right of purchaser.
- 6039. City as purchaser.
- 6040. Sales by city—fund credited.
- 6041. Assignment of certificate.
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- 6043. Roadway district fund.
- 6044. Payment from primary road fund.
- 6045. Application for payment.
- 6046. Decision by supervisors.
- 6047. Review by commission.
- 6048. Approval of plans—estimates—payment.
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- 6051. Certification to county auditor.
- 6052. Improvements by railways.
- 6053. Maintenance by railways.
- 6054. Construction and assessment by city.
- 6055. Enforcing railway assessment.
- 6056. Action by city.
- 6057. Reimbursement of property owner.
- 6058. Appeal on valuation.
- 6059. Relevy.
- 6060. Reassessment in certain cases.
- 6061. Correction of assessments.
- 6062. "Time" or "order"—interpretation.
- 6063. Appeal on assessment.
- 6064. Perfecting appeal.
- 6065. Trial, judgment, and costs.
- 6066. Payment after appeal or objection.

5974. Definitions. The following words as used in this chapter shall have the meanings as stated:

1. The word "cities" shall include towns.
2. The word "repair" shall include reconstruct and resurface.
3. The word "street" shall include highway, avenue, alley, and public place.
4. The word "lot" shall include tract or parcel of land. [C., '97, § 779; S., '13, §§ 779, 792-f; 40 Ex. G. A., S. F. 169, § ½.]

5975. Street improvements. Cities shall have power:

1. To improve any street by grading, parking, curbing, paving, oiling, graveling, macadamizing, or guttering the same or any part thereof, or by constructing electric light fixtures along same, and to repair such improvements.
2. To establish districts, the boundaries of which may be changed as may be just and equitable, for the improvement or repair, by paving or graveling, of such streets within the

corporation as in the judgment of the council constitute main traveled ways into and out of such cities. 1. [R., '60, § 1097; C., '73, §§ 466, 527; C., '97, §§ 779, 792; S., '13, §§ 779, 792, 792-f; 37 G. A., ch. 172, § 1; 39 G. A., ch. 284, § 1; 40 Ex. G. A., S. F. 169, § 1.] 2. [S. S., '15, §§ 840-h, 840-i; 39 G. A., ch. 138, §§ 1, 2; 40 Ex. G. A., S. F. 169, § 1.]

5976. Grading required. The construction of permanent parking, curbing, paving, graveling, macadamizing, or guttering shall not be done until the bed therefor shall have been graded, so that such improvement, when fully completed, will bring the street up to the established grade. [C., '97, § 792; S., '13, § 792; S. S., '15, § 840-q; 40 Ex. G. A., S. F. 169, § 2.]

5977. Grading cost assessable. Only so much of the cost of the removal of the earth and other material as lies between the subgrade and the established grade shall be assessed to private property. [C., '97, § 792; S., '13, § 792; 40 Ex. G. A., S. F. 169, § 2.]

5978. Preparing for oiling—cost. The cost of preparing a street to receive oil shall be paid by the city, except that portion between the rails of any railway or street railway, and one foot outside thereof. [37 G. A., ch. 172, § 1; 40 Ex. G. A., S. F. 169, § 2.]

5979. Use of old material. Upon repaving, they may use the old material for such repair and dispose of the waste material and salvage from the old pavement as the council may by resolution direct. The value of the salvage so used or the proceeds derived from the sale thereof shall be equitably applied upon the cost of the new improvement. [S., '13, §§ 792, 792-f; 38 G. A., ch. 25, § 1; 40 Ex. G. A., S. F. 169, § 3.]

5980. Sale of salvage. No salvage may be sold until the owner of property assessed for the original construction of the paving shall have been given ten days' notice in writing requiring him to elect whether he desires such salvage, which notice shall be personally served on the owner or his agent, or, if neither be found, by posting in a conspicuous place on the property. The election, if made, shall be in writing and filed with the clerk. No owner electing to take salvage shall be entitled to a pro rata distribution derived from the proceeds of sale of salvage. [40 Ex. G. A., S. F., 169, § 3.]

5981. Gas, water, and other connections. They shall have power to require the connections from gas, water, and steam-heating pipes, sewers, and underground electric construction, to the curb line of adjacent property, to be made before the permanent improvement of the street and, if such improvements have already been made, to regulate the making of such connections, fix the charges therefor, and make all needful rules in relation thereto, and the use thereof. If the

owners of property on such streets fail to make such connections in the manner and within the time fixed by the council, it may cause the same to be made, and assess the cost thereof against the property for which they are made. [C., '97, §§ 779, 809; S., '13, §§ 779, 792-f; 40 Ex. G. A., S. F. 169, § 4.]

5982. Connections under waterworks trustees. When any city having a board of waterworks trustees has ordered any street permanently improved by paving, graveling, or macadamizing, the council shall at once notify the board of the passage of the resolution of necessity. The board shall report to the council the lots and names of the owners and the requirements in respect to connections from any water mains or pipes to the curb line of the abutting and adjacent property. Thereupon the council shall pass a resolution requiring the respective owners of the said abutting or adjacent property to make said connections in the manner required by the rules of the board, and fixing a time therefor. Notice thereof shall be given by two publications in some newspaper published in such city, the first of which shall be at least twenty days prior to the time fixed in said resolution. [C., '97, § 809; S., '13, §§ 779, 792-f; 38 G. A., ch. 92, § 1; 40 Ex. G. A., S. F. 169, § 5.]

5983. Installation—cost. If the owner fail to put in the said water connections before the time fixed or within such additional time, not exceeding thirty days, as may be granted by the council, the board of waterworks trustees shall put in said connections and certify the actual cost thereof to the council. The council shall assess the same to the respective lots in the manner in which other special assessments are made. [C., '97, § 809; S., '13, §§ 779, 792-f; 38 G. A., ch. 92, § 1; 40 Ex. G. A., S. F. 169, § 6.]

5984. Sewers. Cities shall have the power to construct and repair sewers and catch basins in any street within their limits. Any city may by ordinance be divided into such sewer districts as the council may determine, numbering them consecutively, or the entire city may be included in one district. [C., '73, § 465; C., '97, §§ 791, 794; S., '13, § 840-a; 38 G. A., ch. 59, § 1; 40 Ex. G. A., S. F. 169, § 7.]

5985. Outlets and purifying plants. They may construct outlets and purifying plants in connection with or as additions to sanitary sewers, and such outlets and plants may be considered as a part of the sewer system, and the cost thereof may be assessed against property benefited thereby. [S. S., '15, § 840-g; 37 G. A., ch. 222, §§ 1, 2; 40 Ex. G. A., S. F. 169, § 8.]

5986. Main sewer assessments. In addition to other powers, cities having a population of less than forty-seven thousand shall have power to assess the whole or any part of the cost of the construction of any main sewer or system of main sewers to the respective lots as adjacent property which are included within

a district to be fixed by the council, which may include all territory within the drainage area of such main sewer or main sewer system. [S., '13, § 840-d; 40 Ex. G. A., S. F. 169, § 9.]

5987. "Adjacent property" and "main sewer". All such lots which may be furnished with sewer connections or drained by such main sewer or sewer system, shall be considered as adjacent property.

A main sewer shall be held to mean any sewer that is commonly referred to by any one of the following terms: "intercepting sewer, out-fall sewer, or trunk sewer." [S., '13, §§ 840-c, 840-d; 40 Ex. G. A., S. F. 169, § 9.]

5988. State building. Any city in which any state building may be situated shall permit the officers in charge thereof and the persons constructing or improving the same, to construct sewers therefor through or under any of its streets, or to connect the same with its sewer system under the same regulations that are provided for private property owners. [C., '97, § 794; 40 Ex. G. A., S. F. 169, § 10.]

5989. Condemnation. Cities shall have power to condemn, in the manner provided for the condemnation of land for their needs, right of way through private property to and along ravines and natural watercourses sufficient for the construction and maintenance of sewers. The cost of such right of way shall constitute a part of the expense of sewers and be assessed accordingly. [C., '97, §§ 791, 795; S., '13, § 840-a; 38 G. A., ch. 59, § 1; 40 Ex. G. A., S. F. 169, § 11.]

5990. Cross sewers. They shall have power to provide the terms and conditions on which cross and lateral sewers may be connected with main sewers. In cases where sewers have been paid for in whole or in part by special assessment, they may pay to the parties to whom the benefits have been assessed an equitable proportion of the money collected for the purpose of connecting such cross or lateral sewers. [C., '97, §§ 791, 796; S., '13, § 840-a; 40 Ex. G. A., S. F. 169, § 12.]

5991. Resolution of necessity—contents. When the council shall deem it necessary to construct, reconstruct, or resurface any street improvement or to construct or reconstruct any sewer, it shall, in a proposed resolution, declare such necessity, stating the kinds of material proposed to be used and method of construction, whether private property will be assessed, and, in case of sewers, the kinds and size, and what adjacent property is proposed to be assessed therefor, and in both cases designate the location and terminal points thereof. That the plat and schedule are on file in the office of the clerk shall be stated in the resolution. [C., '73, §§ 465, 466; C., '97, §§ 791, 810; S. S., '15, §§ 810, 840-j; 39 G. A., ch. 138, § 3; 40 Ex. G. A., S. F. 169, § 13.]

5992. Additional contents. The council may, in addition to the requirements of the preceding

section, incorporate in the resolution of necessity notice of its intention to issue bonds, as provided in section 6109, and may also provide that unless property owners at the time of the final consideration of said resolution have on file with the clerk objections to the amount of the proposed assessment, they shall be deemed to have waived all objections thereto. [40 Ex. G. A., S. F. 169, § 13-a1.]

5993. Plat and schedule. Before the resolution of necessity is introduced, the council shall prepare and file with the clerk a plat and schedule showing:

1. The boundaries of the district, if any.
2. The streets to be improved.
3. The width of such improvement.
4. Each lot proposed to be assessed.
5. An estimate of the cost of the proposed improvement, stating the same for each different type of construction and kind of material to be used.
6. In each case the amount thereof which is estimated to be assessed against each lot. [S. S., '15, § 840-k; 40 Ex. G. A., S. F. 169, § 14.]

5994. Cost of schedule. The cost of making the plat and schedule shall be paid from the improvement fund. [40 Ex. G. A., S. F. 169, § 14.]

5995. Time of hearing—objections permitted. The council shall fix the time for the consideration of the proposed resolution of necessity, at which time the owners of property subject to assessment for the proposed improvement or sewer may appear and make objection to the boundaries of the proposed district, to the cost of improvement, to the amount proposed to be assessed against any lot, and to the passage of the proposed resolution. [C., '97, § 810; S. S., '15, §§ 810, 840-m; 39 G. A., ch. 138, § 5; 40 Ex. G. A., S. F. 169, § 13.]

5996. Remonstrance—vote required—amendment. No resolution providing for the improvement of streets by paving shall be passed except by unanimous vote of the entire council, if, at the time set for its consideration, a remonstrance shall have been filed with the council signed by sixty per cent of the property owners and by the owners of seventy-five per cent of the property subject to assessment. At the hearing the resolution may be amended and passed, or passed as proposed. [R., '73, § 466; C., '97, § 810; S. S., '15, §§ 810, 840-m; 40 Ex. G. A., S. F. 169, § 13.]

5997. Notice. It shall cause notice of the time when said resolution will be considered by it for passage to be given by two publications in some newspaper published in the city, the last of which shall be not less than two nor more than four weeks prior to the day fixed for its consideration; but if there be no such newspaper, such notice shall be given by posting copies thereof in three public places within the limits of the city. [C., '97, § 810; S., '13, § 840-a; S. S., '15, §§ 810, 840-l; 38 G. A., ch. 384, § 1; 40 Ex. G. A., S. F. 169, § 15.]

5998. Improvement ordered. After the passage of the resolution of necessity, the council by another resolution may order the construction, reconstruction, or resurfacing of the improvement or the construction or reconstruction of the sewer. [C., '97, §§ 794, 811; S. S., '15, § 840-n; 39 G. A., ch. 138, § 6; 40 Ex. G. A., S. F. 169, § 16.]

5999. Record—vote required. The record shall show whether the improvement or sewer was petitioned for or made on motion of the council. If the improvement or sewer is made on the motion of the council, such resolution shall require for passage the vote of three-fourths of all the members of the council, or, in cities under the commission form of government having but three members of the council, the vote of two members; but if petitioned for by a majority of the resident owners of property to be assessed for the construction thereof, the resolution may be passed by a majority vote of the council. [C., '97, §§ 793, 794, 811; S., '13, §§ 792-b, 793; 40 Ex. G. A., S. F. 169, § 16.]

6000. Yeas and nays. The final vote on the resolution of necessity and the vote on the resolution ordering the improvement or sewer shall be by yeas and nays and entered of record. [C., '97, § 811; S. S., '15, § 840-n; 40 Ex. G. A., S. F. 169, § 16.]

6001. Contract. When the construction or repair of any such street improvement or sewer is ordered, the council shall contract for furnishing labor and material and for the construction or repair, either of the entire work in one contract, or for parts thereof in separate and specified sections; but no work shall be done under any such contract until a certified copy thereof shall have been filed in the office of the clerk. [C., '97, §§ 791, 812; S., '13, § 840-a; 40 Ex. G. A., S. F. 169, § 17.]

6002. Exception as to oiling. The city may oil the streets without letting a contract therefor. [37 G. A., ch. 172, § 1; 40 Ex. G. A., S. F. 169, § 17.]

6003. Agreement to repair. All contracts for the construction or repair of street improvements (except graveling, oiling, or repairs other than reconstruction or resurfacing) or sewers, shall contain a provision obligating the contractor and his bondsmen from the time of acceptance by the city to keep in good repair such street improvement for not less than four years or such sewer for not less than two years. [C., '97, § 814; S., '13, § 814; 38 G. A., ch. 234, § 1; 39 G. A., ch. 2, § 1; 39 G. A., ch. 210, § 1; 40 G. A., ch. 124, § 1; 40 Ex. G. A., S. F. 169, § 18.]

6004. Bids—notice. All contracts for the construction or repair of street improvements and for sewers shall be let in the name of the city to the lowest bidder by sealed proposals, upon giving notice by two publications in a newspaper published in said city, the first of

which shall be not less than fifteen days before the date set for receiving bids, which notice shall state as nearly as practicable the extent of the work, the kinds of materials for which bids will be received, when the work shall be done, the terms of payment fixed, and the time the proposals will be acted upon. If there be no such newspaper, such notice shall be given by posting the same in three public places within the limits of such city. [C., '97, § 813; S. S., '15, § 813; 38 G. A., ch. 383, § 1; 40 Ex. G. A., S. F. 169, § 19.]

6005. Deposit—rejection of bids. All bids must be accompanied, in a separate envelope, by a check on an Iowa bank, certified by such bank and payable to the order of the treasurer, at his office, in a sum to be named in the notice for bids, as security that the bidder will enter into a contract for the doing of the work and will give bond as required in the following section. Such checks shall be returned to the respective bidders whose bids have not been accepted. All bids may be rejected and new bids ordered. [C., '97, § 813; S. S., '15, § 813; 40 Ex. G. A., S. F. 169, § 20.]

6006. Bond. Each contractor for street improvements or sewers shall give bond to the city, with sureties to be approved by the council, for the faithful performance of the contract, and suit on such bond may be brought in the county in which the council may hold its sessions. [C., '97, § 815; S., '13, § 840-a; 38 G. A., ch. 234, § 1; 39 G. A., ch. 2, § 1; 39 G. A., ch. 210, § 1; 40 G. A., ch. 124; 40 Ex. G. A., S. F. 169, § 21.]

6007. Certification to county auditor—record book. After a contract has been made by any city for the construction or repair of any street improvement or sewer, the clerk shall certify as correct and file with the auditor of each county in which said city is situated, a copy of the resolution directing the construction or repair of said improvement or sewer, and a copy of the plat and schedule referred to in the resolution of necessity and on file in his office. In all counties where taxes are collected in two or more places, they shall be filed in the office of the auditor in the place where said special taxes are collected, and be preserved by him as a part of the records of his office. The auditor shall keep a book properly ruled for the purpose and enter thereon opposite each lot number the amount of the estimated assessment against the same. [C., '97, § 816; S., '13, § 816; 40 Ex. G. A., S. F. 169, § 22.]

6008. Lien generally. Thereupon all special taxes for the cost thereof, or any part of said cost, which are to be assessed and levied against real property, or any railway or street railway, together with all interest and penalties on all of said assessments, shall become and remain a lien on such property from the date of the filing of said papers with the county auditor until paid, and such liens shall have precedence over all other liens except ordinary taxes, and shall

not be divested by any judicial sale. [C., '97, § 816; S., '13, §§ 792-f, 816; 40 Ex. G. A., S. F. 169, § 23.]

6009. Lien on rights of way. Any such assessment against a railway or street railway shall be a first and paramount lien upon the track thereof within the limits of the city. [C., '97, § 816; S., '13, §§ 792-f, 816; 40 Ex. G. A., S. F. 169, § 23.]

6010. Release on rights of way. No part of the line of any railway or street railway shall be released from the lien for any part of any unpaid assessment which has been made against it for street improvements, until the whole assessment shall have been paid. [C., '97, § 828; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 44.]

6011. Cost at intersections. Except for that part for which railways or street railways are liable, the whole or any part of the cost of any street improvement or sewer at the crossings of streets may be assessed against privately owned property not exceeding one-half of such cost at spaces opposite streets intersecting but not crossing, and at spaces opposite property owned by the city or the United States, may be assessed against privately owned property. In the case of sewers, such cost may be paid from the sewer fund or district sewer fund, or the general fund, as provided in the fourth succeeding section. In case of street improvements, such cost may be paid from the improvement fund. [C., '97, § 817; S., '13, § 792-f; 37 G. A., ch. 172, § 1; 40 Ex. G. A., S. F. 169, § 24.]

6012. Cost of improvements. The cost of construction, reconstruction, or resurfacing of any street improvement, except as provided in the preceding section, and except for that part for which railways or street railways are liable, shall be assessed as a special tax against all lots according to area, so as to include one-half of the privately owned property between the street improved and the next street, whether such privately owned property abut upon said street or not. In no case except where the district method of assessment is used, shall property situated more than three hundred feet from the street so improved be so assessed. Such assessment for improvements upon an alley shall be confined to privately owned property within the block or blocks improved, and if not platted into blocks, to property not more than one hundred fifty feet from the improved alley. [C., '73, § 466; C., '97, §§ 779, 792, 818; S., '13, §§ 779, 792; S. S., '15, § 792-g; 40 Ex. G. A., S. F. 169, § 25.]

6013. Railroad right of way. The right of way of any railroad company shall be subject to special assessment for sidewalks and street improvements as is other private property, and such assessment shall constitute a debt due personally from the railroad company owning

or leasing such right of way. [S., '13, § 791-i; 40 Ex. G. A., S. F. 169, § 26.]

6014. Cost of paved roadway. Not more than one-half of the cost of the construction of a roadway within an assessment district may be paid by the city, and the part of the cost not so paid shall be assessed against the lots embraced in the paving district established therefor. [S. S., '15, §§ 840-i, 840-o, 840-p; 37 G. A., ch. 376, § 1; 39 G. A., ch. 138, § 7; 40 Ex. G. A., S. F. 169, § 27.]

6015. Cost of sewers. The cost, or any part thereof, of reconstructing or repairing sewers, including that provided for in the fourth preceding section, may be paid from the district sewer fund of the sewer district in which the same is situated or from the sewer fund, or for main sewers from the main sewer fund or from the general fund; and the portion thereof not so paid, and not in excess of three dollars per linear foot of sewer, shall be assessed against the property abutting on such sewer in proportion to the number of linear front feet of each lot thereof, and upon adjacent property in proportion to the benefit thereto; but in estimating the benefits to result therefrom to adjacent property, each lot shall be considered as wholly unimproved. Said methods of assessment may be combined. [C., '97, § 819; S., '13, §§ 840-a, 840-d; 38 G. A., ch. 59, § 1; 40 Ex. G. A., S. F. 169, § 28.]

6016. Cost of repairs. The cost, or any part thereof, of the repair of any street improvement may be paid from the improvement fund or the general fund. The cost, or any part thereof, of the repair of any sewer may be paid from the sewer fund or district sewer fund, or for main sewers from the main sewer fund or the general fund, or part from each of said funds. [C., '73, § 465; C., '97, §§ 779, 791, 832; S., '13, §§ 779, 792-f, 840-a, 840-d; S. S., '15, § 840-r; 38 G. A., ch. 59, § 1; 40 Ex. G. A., S. F. 169, § 29.]

6017. Deficiencies—nonassessable property. If the special assessment which may be levied against any lot shall be insufficient to pay its proportion of the cost of constructing or repairing a street improvement or sewer, the deficiency, if for a street improvement, may be paid out of the general fund or the improvement fund, and if for a sewer, may be paid out of the general fund or the sewer fund. If there be property against which no special assessment can be levied, the proportion of the cost of the improvement or sewer which might otherwise be assessed against such property shall be paid in like manner. [S., '13, § 792-b; 40 Ex. G. A., S. F. 169, § 46.]

6018. Assessment. When the construction or repair of any street improvement or sewer, or such part thereof as under the contract is to be paid for when done, shall have been completed, the council shall within thirty days thereafter accept or reject the work, and after acceptance of the work shall, within thirty

days, ascertain the cost thereof, including the cost of the estimates, notices, inspection, and preparing the assessment and plat, and shall also ascertain what the proportion of such cost shall be, by law or the resolution of the council under which such improvement was made or sewer constructed, assessable upon private property, and shall within said time assess such portions upon and against such private property. [C., '97, § 820; S., '13, §§ 779, 820, 840-a; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 30.]

6019. Privately owned property defined. All property except streets, property owned by the United States, and property owned by the city, shall be deemed privately owned property. [S. S., '15, § 792-g; 40 Ex. G. A., S. F. 169, § 31.]

6020. Exemption. The council may exempt the homestead of any honorably discharged soldier or sailor of the Mexican war or the war of the rebellion or his unmarried widow from any charge or claim on account of such special assessment, if such person is not the owner of sufficient nonexempt property to pay the special assessment. If such exemption is made, the special assessment shall be paid from the general fund. [37 G. A., ch. 94, § 1; 40 Ex. G. A., S. F. 169, § 32.]

6021. Assessment—rate. When any city council levies any special assessment for any public improvement against any lot, such special assessment shall be in proportion to the special benefits conferred upon the property thereby and not in excess of such benefits. Such assessment shall not exceed twenty-five per cent of the actual value of the lot at the time of levy, and the last preceding assessment roll shall be taken as prima facie evidence of such value. [S., '13, §§ 792-a, 792-f; S. S., '15, §§ 840-a, 840-j, 840-r; 40 Ex. G. A., S. F. 169, § 33.]

6022. Additional limitation. No special assessment against any lot shall be more than ten per cent in excess of the estimated cost. [40 Ex. G. A., S. F. 169, § 13-a1.]

6023. Plat and schedule. In assessing that part of the cost of the construction or repair of any street improvement or sewer, or completed part thereof, which is assessable against private property, the council shall cause to be prepared a plat of the streets or the parts thereof on which the same shall have been constructed or repaired, showing the separate lots, or specified portion thereof, subject to assessment for such improvement, the names of the owners thereof so far as practicable, and the amount to be assessed against each lot, and against any railway or street railway, and shall file said plat and schedule in the office of the clerk, which shall be subject to public inspection. [C., '97, § 821; S., '13, § 792-f; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 34.]

6024. Cost of oiling streets. Upon the completion of the oiling of a street, the officer designated by the council to have charge thereof shall, within thirty days, file with the clerk a statement of the amount due, if the work was done by contract; or if done by the municipality, an itemized, verified statement of expenditures for materials and labor used in making such improvement. [37 G. A., ch. 172, § 2; 40 Ex. G. A., S. F. 169, § 35.]

6025. City engineer—duties. The city engineer, or other person employed by the council to discharge the duties of such office, shall, under its direction, make or assist in making all estimates for street improvements and sewers, furnish the necessary grades and lines, see that the work conforms thereto and is in accordance with the resolution of the council, and make or assist in making each required assessment, plat, and schedule. [C., '97, § 822; S., '13, §§ 792-f, 840-a; 40 Ex. G. A., S. F. 169, § 36.]

6026. Notice of assessment. After filing the plat and schedule for street improvements or sewers, or the report of cost of oiling streets, the council shall give notice by two publications in each of two newspapers published in the city, if there be that number, otherwise in one, and by handbills posted in conspicuous places along the line of such street improvement or sewer; but if no such newspaper is published within the limits of such city, then such notice shall be given by posting copies thereof in three public places within its limits. Said notice shall state that said plat and schedule or report are on file in the office of the clerk, and that within twenty days after the first publication all objections thereto, or to the prior proceedings, on account of errors, irregularities, or inequalities, must be made in writing and filed with the clerk. [C., '97, § 823; S., '13, § 823; S. S., '15, § 840-r; 37 G. A., ch. 172, § 3; 38 G. A., ch. 386, § 1; 40 Ex. G. A., S. F. 169, § 37.]

6027. Notice to common carrier. When any common carrier or railway, not including street railways, owning any land or property affected by any proposed assessment for public improvement in any city or county, shall have filed in the office of the clerk of said city, or with the auditor of said county, as the case may be, wherein such improvement is proposed, an instrument in writing giving a complete description of such land and designating the name and postoffice address of its agent in said state upon whom service of notice may be made, the clerk of said city, or the county auditor of said county, shall, not less than ten days prior to the date set for the levying of assessments covering such improvement, mail a notice thereof in a registered letter addressed to such person or agent so designated. Failure to give such notice shall not delay or invalidate the proceedings or assessment. [39 G. A., ch. 196, § 1; 40 Ex. G. A., S. F. 169, § 38.]

6028. Hearing and decision. The council having heard such objections and made the necessary corrections, shall then make the special assessments as shown in said plat and schedule, as corrected and approved. [C., '97, § 823; S., '13, § 823; 37 G. A., ch. 172, § 4; 40 Ex. G. A., S. F. 169, § 37.]

6029. Objections waived. All objections to errors, irregularities, or inequalities in the making of said special assessments, or in any of the prior proceedings or notices, not made before the council at the time and in the manner provided in section 6026, shall be waived except where fraud is shown. [C., '97, § 824; S. S., '15, § 840-r; 37 G. A., ch. 172, § 5; 40 Ex. G. A., S. F. 169, § 39.]

6030. Levy. The special assessments in said plat and schedule, as corrected and approved, shall be levied at one time, by resolution, against the property affected thereby. [C., '97, § 825; S., '13, § 825; S. S., '15, § 840-r; 37 G. A., ch. 172, § 4; 40 Ex. G. A., S. F. 169, § 40.]

6031. Maturity when no waiver made. Special assessments when levied and certified shall be payable at the office of the county treasurer within thirty days after the date of such levy, with interest at the rate of six per cent per annum from the date of the levy until paid. [C., '97, § 825; S., '13, § 825; 37 G. A., ch. 172, § 4; 39 G. A., ch. 242, § 1; 40 Ex. G. A., S. F. 169, § 40.]

6032. Maturity under implied waiver. Unless the owner of any lot or railway or street railway, the assessment against which is embraced in any bond or certificate provided for by law, shall, within thirty days from the date of such assessment, file written objections to the legality or regularity of the assessment or levy of such tax upon and against his property, such owner shall be deemed to have waived objection on these grounds and shall have the right to pay said assessment, with interest thereon not exceeding six per cent per annum, in ten equal annual installments. In no case shall the owner of any lot be liable for more than the value of the property included in such assessment. The cost of oiling the streets may not be paid in installments. [C., '97, § 825; S., '13, § 825; S. S., '15, § 840-r; 37 G. A., ch. 172, § 4; 39 G. A., ch. 242; 39 G. A., ch. 255, § 1; 40 Ex. G. A., S. F. 169, § 41.]

6033. Installments—payment—delinquency. The first installment, with interest on the whole assessment from date of levy by the council, shall mature and be payable thirty days from the date of such levy, and the others, with interest on the whole amount unpaid, annually thereafter at the same time and in the same manner as the March semiannual payment of ordinary taxes.

Any or all installments not yet paid together with accrued interest thereon may be paid on the due date of any installment.

All such taxes with interest shall become delinquent on the first day of March next after

their maturity, and shall bear the same interest with the same penalties as ordinary taxes.

Upon the payment of any installment, there shall be computed and collected interest on the whole assessment remaining unpaid up to the first day of April following. [C., '97, §§ 825, 827; S., '13, §§ 825, 840-a; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 42.]

6034. Certification of levy. A certificate of levy of such special assessment, stating the number of installments, the rate of interest, and time when payable, certified as correct by the clerk, shall be filed with the auditor of the county, or of each of the counties, in which such city is located, and thereupon said special assessment as shown therein shall be placed on the tax list of the proper county. [C., '97, § 826; S. S., '15, § 840-r; 37 G. A., ch. 172, § 4; 40 Ex. G. A., S. F. 169, § 43.]

6035. Right of payment. The owner of any property against which a street improvement or sewer assessment has been levied, shall have the right to pay the same, or the unpaid installments thereof, with all interest, as the case may be, up to the time of said payment, with any penalties and the cost of any proceedings for the sale of the property for such special assessment or installments. [C., '97, § 828; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 44.]

NOTE: Right to pay after appeal or objection, see § 6066.

6036. Division of property. If any owner of property subject to special assessment shall divide the same into two or more lots, he may discharge the lien upon any one or more of them by payment of the amount unpaid, calculated by the ratio of square feet in area of such lot or lots to the area of the whole lot. [C., '97, § 828; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 44.]

6037. Tax sale. Property against which a special assessment has been levied for street improvements or sewers may be sold for any sum of principal or interest due and delinquent at any regular or adjourned tax sale, in the same manner, with the same forfeitures, penalties, and right of redemption, and certificates and deeds on such sales shall be made in the same manner and with like effect, as in case of sales for the nonpayment of ordinary taxes. [C., '97, § 829; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 45.]

6038. Right of purchaser. The purchaser at such sale shall take the property charged with the lien of the remaining unpaid installments and interest. [C., '97, § 829; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 45.]

6039. City as purchaser. At any such sale, where bonds have been issued in anticipation of such special taxes and interest, the city may be a purchaser, and be entitled to all the rights of purchasers at tax sales. [C., '97, § 829; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 45.]

6040. Sales by city—fund credited. The proceeds subsequently realized from sales of any property so purchased by a city shall be covered into the improvement fund. [C., '97, § 829; S. S., '15, § 840-r; 40 Ex. G. A., S. F., 169, § 45.]

6041. Assignment of certificate. Any holder of any special assessment certificate against a lot, or any holder of a bond payable in whole or in part out of a special assessment against a lot, which has been sold for taxes, either general or special, shall be entitled to an assignment of any certificate of tax sale of said property for any general taxes or special taxes thereon, upon tender to the holder or to the county auditor of the amount required to redeem therefrom. [C., '97, § 816; S., '13, §§ 792-f, 816; 40 Ex. G. A., S. F. 169, § 23.]

6042. Improvement fund. When the whole or any part of the cost of the construction or repair of any street improvement shall be ordered paid from the improvement fund, the city shall have the power, after the completion of the work, by resolution to levy at one time such cost upon all the taxable property within such city, and determine the whole percentage of tax necessary to pay the same, and the percentage to be paid each year, not exceeding the maximum annual limit of said taxes, and the number of years, not exceeding ten, given for the maturity of each installment thereof. [C., '97, § 830; 40 Ex. G. A., S. F. 169, § 47.]

6043. Roadway district fund. When part of the cost of constructing or repairing a roadway within an assessment district is to be paid by the city, it may levy an annual tax for such purpose upon all the taxable property in such city, except moneys and credits, but the aggregate of all such levies shall not exceed ten mills; except that in cities having a population of fifty thousand or more, such levies shall not exceed fifteen mills in the aggregate. [S. S., '15, § 840-o; 37 G. A., ch. 376, § 1; 39 G. A., ch. 138, § 7; 40 Ex. G. A., S. F. 169, § 48.]

6044. Payment from primary road fund. If, in any city, extensions of primary roads are being improved or to be improved, under the provisions of subsection 2 of section 5975, any or all of that portion of the improvement not specially assessable on the property within the assessment district and which would under the law have to be met by a tax on the city as a whole, may be paid from the primary road fund allotted to the county in which such city is located. [39 G. A., ch. 230, § 1; 40 Ex. G. A., S. F. 169, § 49.]

6045. Application for payment. Before proceeding with such improvement for which it is proposed to make part payment from the primary road fund, the city council shall by resolution make application to the board of supervisors therefor. This resolution shall specifically state:

1. The location of the improvement proposed, giving the starting point and terminus thereof.

2. The approximate length thereof.

3. The width or widths of paving proposed.

4. An estimate of the cost of the proposed improvement.

5. An estimate of the amount that can be specially assessed against the property within the proposed district.

6. A statement of the amount to be borne by the city.

7. A statement of the amount proposed to be paid from the primary road fund.

The resolution shall be accompanied by a plat on which are indicated the road or street to be improved, the primary road connecting therewith, the location of other streets or roads in the vicinity, and the approximate boundaries of the assessment district which it is proposed to establish. [39 G. A., ch. 230, § 2; 40 G. A., ch. 127, § 1; 40 Ex. G. A., S. F. 169, § 50.]

6046. Decision by supervisors. The board of supervisors shall examine said application and shall, within thirty days after the filing thereof with the county auditor, take action thereon. The board may approve said application in whole or in part or may wholly reject the same, whereupon the resolution, together with a record of the board's action thereon, shall be forwarded to the state highway commission for final review. [39 G. A., ch. 230, § 3; 40 Ex. G. A., S. F. 169, § 51.]

6047. Review by commission. The said commission shall examine said resolution and the action of the board thereon, and shall within thirty days make final determination thereof. It may approve the application in whole or in part or may wholly reject the same. If the application be approved in any part, the commission shall make an appropriation in aid of said improvement from the primary road fund allotted said county.

The city council and the board of supervisors shall be immediately notified of the action taken. [39 G. A., ch. 230, § 3; 40 Ex. G. A., S. F. 169, § 51.]

6048. Approval of plans—estimates—payment. The plans and specifications for the improvement shall receive the approval of the state highway commission before the contract is let, or before it becomes effective. When the work or any substantial portion thereof is completed to the satisfaction of the state highway commission, payment of the pro rata share thereof, payable out of the primary road fund, may be made. The estimates payable from the said fund shall be prepared, approved, and paid in the usual manner for primary road bills generally, except that said bills shall be approved by the city council instead of the board of supervisors. [39 G. A., ch. 230, § 4; 40 Ex. G. A., S. F. 169, § 52.]

6049. Election not required—limitation. The provisions of section 4694 relative to voting on the question of hard surfacing the primary roads shall not apply to improvements made under the five preceding sections; but in counties which have not authorized the hard surfacing of the primary roads, and in which the said primary roads have not all been built to finished grade and drained, the state highway commission shall give preference to such grading and draining projects, and not to exceed twenty per cent of the annual allotment of the primary road funds may be spent under the provisions of the five preceding sections. [39 G. A., ch. 230, § 5; 40 Ex. G. A., S. F. 169, § 53.]

6050. Sewer fund. When the whole or any part of the cost of constructing or repairing any sewer shall be ordered paid from the sewer fund of any sewer district or from the sewer fund or from the main sewer fund, the council may, after the completion of the work, by resolution levy at one time the whole or any part of such cost upon all the taxable real property within such sewer district or within the city, as the case may be, and determine the whole percentage of tax necessary to pay the same, and the percentage to be paid each year, not exceeding the maximum annual limit of said taxes, and the number of years, not exceeding ten, given for the maturity of each installment thereof. [C., '97, § 831; S., '13, §§ 840-a, 840-d; 40 Ex. G. A., S. F. 169, § 54.]

6051. Certification to county auditor. Certificates of such levies shall be filed with the auditor of the county or counties in which the city is located, setting forth the amount or percentage and maturity of the tax, or each installment thereof, designating by reasonable description the real property upon which the tax is to be levied, certified as correct by the clerk, and thereupon the tax shall be placed upon the tax list of the proper county or counties. [C., '97, §§ 830, 831; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 55.]

6052. Improvements by railways. All railway and street railway companies shall be required to construct and repair all street improvements between the rails of their tracks, and one foot outside thereof, at their own expense, unless by ordinance of the city, or by virtue of the provisions or conditions of any ordinance of the city under which said railway or street railway may have been constructed or may be maintained, it may be required to improve other portions of said street, and in that case said railway or street railway shall construct and repair the improvement of that part of the street specified by such ordinance; and such improvement, or repair thereof, shall be of the material and character ordered by said city, and shall be done at the time the remainder of said improvement is constructed or repaired. [C., '97, § 834; S. S., '15, § 840-r; 37 G. A., ch. 172, § 1; 40 Ex. G. A., S. F. 169, § 56.]

6053. Maintenance by railways. When an improvement is made, said companies shall lay,

in the best approved manner, such rail as the council may require. They shall keep the part of the improvement they are liable to construct or maintain up to grade. [C., '97, § 834; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 57.]

6054. Construction and assessment by city. If the owner of said railway or street railway shall fail or refuse to comply with the order of the council to construct or repair an improvement, such work may be done by the city, and the expense thereof shall be assessed upon the real estate and personal property of said railway or street railway company within said city, and against such railway or street railway company, in the manner hereinbefore provided for the assessment of such cost against private property and the owners thereof. [C., '97, § 834; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 58.]

6055. Enforcing railway assessment. Any special assessment made under this chapter against any railway or street railway shall be a debt due personally from such railway. Such special assessments and each installment thereof, and certificates issued therefor when due, may be collected by action at law, in the name of the city against such railway or street railway, or the lien thereof enforced against the property of such railway or street railway, on or against which the same has been levied, by action in equity, at the election of the plaintiff; and in any action at law where pleadings are required, it shall be sufficient to declare generally for work and labor done, or materials furnished, on the particular street, the levy of the tax and nonpayment of the same; and in any action in equity, it shall be sufficient to aver the same matters, together with a description of the property, or parts thereof, against which such lien is sought to be enforced. [R., '60, § 1068; C., '73, § 478; C., '97, § 840; S., '13, § 791-i; 40 Ex. G. A., S. F. 169, § 59.]

6056. Action by city. Such action may be maintained by the city for the use of any person entitled thereto or any part thereof, upon filing a bond conditioned to pay all costs adjudged against the plaintiff and protect it from all liability therefrom or damages growing out of the same; the amount of the bond to be fixed by the court, or a judge thereof in vacation, and the sureties thereon to be approved by the clerk of said court. [R., '60, § 1068; C., '73, § 478; C., '97, § 840; S., '13, § 791-i; 40 Ex. G. A., S. F. 169, § 60.]

6057. Reimbursement of property owner. Before any street railway company shall lay its track upon any street that has been paved, and which at the time is not being repaved, it shall pay into the city treasury the value of all paving between its tracks, and one foot outside thereof, which value shall be determined by the city council, but in no case shall exceed the original cost of the paving, and the money thus paid shall be refunded to the owners of the property assessed for said improvement in proportion to the amounts origi-

nally assessed against such property. [C., '97, § 835; S., '13, § 835; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 61.]

6058. Appeal on valuation. The company or any person affected by or interested in such determination of the value of such pavement may appeal therefrom to the district court within thirty days thereafter, in the manner by which appeals are taken from the levy of special assessments. [S., '13, § 835; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 61.]

6059. Relevy. When by reason of nonconformity to any law or resolution, or by reason of any omission, informality, or irregularity, any special tax or assessment levied is invalid or is adjudged illegal, the council shall have power to correct the same by resolution, and may reassess and relevy the same, with the same force and effect as if done at the proper time and in the manner provided by law or by the resolution relating thereto. [C., '97, § 836; S., '13, § 840-a; S. S., '15, §§ 836, 840-r; 40 Ex. G. A., S. F. 169, § 62.]

6060. Reassessment in certain cases. Whenever any such special tax or assessment, upon property not by law exempt therefrom, shall be adjudged void for any jurisdictional defect, or other reason, and the city adjudged liable to pay the same, the council shall as to such property have power, by resolution, to cause to be prepared a schedule and proposed reassessment in proportion to and not in excess of benefits, and to cause notice thereof to be given, and to hear objections thereto and make necessary corrections, and thereupon the council shall reassess and relevy such special tax or special assessment as so corrected with the same force and effect as if jurisdiction had been acquired in the first instance and all subsequent proceedings had been regularly and legally had. [S. S., '15, §§ 836, 840-r; 40 Ex. G. A., S. F. 169, § 63.]

6061. Correction of assessments. When, in making any special assessment, any property is assessed too little or too much, the same may be corrected and a reassessment and relevy made in conformity therewith; and any tax collected in excess of the proper amount shall be refunded to the person paying the same. Such corrected assessments shall be a lien on the lots the same as the original, and shall be certified by the clerk to the county auditor in the same manner, and shall, so far as practicable, be collected in the same installments, draw interest at the same rate, and be enforced in the same manner as the original assessment. [C., '97, § 837; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 64.]

6062. "Time" or "order" — interpretation. Any provision of law, resolution, or ordinance specifying a time when or the order in which acts shall be done in a proceeding which may result in a special assessment, shall be taken to be subject to the qualifications of the three preceding sections. [C., '97, § 838; S. S., '15, § 840-r; 40 Ex. G. A., S. F. 169, § 65.]

6063. Appeal on assessment. Any person affected by the levy of any special assessment for street improvements or sewers may appeal therefrom to the district court. The person appealing shall be designated as plaintiff and the city or town as defendant. [C., '97, § 839; S., '13, §§ 792-c, 792-f, 840-a; S. S., '15, § 840-r; 37 G. A., ch. 172, § 6; 38 G. A., ch. 59, § 1; 40 G. A., ch. 125, § 1; 40 Ex. G. A., S. F. 169, § 66.]

6064. Perfecting appeal. Said appeal must be perfected:

1. By serving upon the mayor or clerk, in the manner in which original notices in ordinary actions are served, within fifteen days from the date of said levy, a written notice of appeal, signed by the plaintiff or by his agent or attorney, directed to the defendant, and designating with reasonable certainty the assessment appealed from and the property of plaintiff affected thereby, and

2. By filing within said fifteen days in the office of the clerk of the district court, an appeal bond, approved by the clerk of said court, in an amount equal to five per cent of plaintiff's assessment appealed from and in no event less than two hundred fifty dollars, conditioned for the payment of all costs which may be adjudged against plaintiff, and

3. By filing in the office of the clerk of the said court on or before noon of the second day of the first term of said court convening after the serving of said notice, a petition which shall briefly state the grounds of complaint against said assessment. [C., '97, § 839; 37 G. A., ch. 172, § 6; 40 G. A., ch. 125, § 1; 40 Ex. G. A., S. F. 169, § 67.]

6065. Trial, judgment, and costs. Upon appeal, all questions touching the validity of said assessment or the amount thereof, and not waived, shall be heard and determined in equity. The court may make such assessment as should have been made, or may direct the making of such assessment by the council. Costs shall be taxed as in other actions. [C., '97, § 839; 37 G. A., ch. 172, § 6; 40 G. A., ch. 125, § 1; 40 Ex. G. A., S. F. 169, § 68.]

6066. Payment after appeal or objection. When any special assessment has been reduced on appeal, the property owner may, within twenty days after final determination of the appeal, pay an amount equal to the installments which would have matured under the revised assessment had objections not been filed, together with interest on the entire revised assessment from the date of the original levy and shall be entitled to pay the remaining installments as provided in section 6032.

In case objections are filed but no appeal is taken, if such objection be withdrawn within thirty days from the date of the assessment or if said objection be overruled by the council at a hearing as in this chapter provided for, the property owner may pay the special assessment in the same manner as in this section provided in case of successful appeal. [40 Ex. G. A., S. F. 169, § 69.]

CHAPTER 309

JOINT MUNICIPAL IMPROVEMENT OF HIGHWAYS

6067. Authorization.
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 6070. Notice—objections.
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 6072. Duty of separate boards.
 6073. Benefited districts—assessments.

6074. Construction—record.
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6067. Authorization. In all counties in which there is located a permanent federal or state institution within a distance of five miles from the corporate limits of the county seat, to which institution there is a main traveled thoroughfare leading from said county seat to said institution through another city or town in the county, such counties, cities, or towns shall have the power to improve said thoroughfare to said institution by grading, paving, and curbing the same by the joint action of said counties, cities, and towns, and shall have the power and authority to maintain and keep said thoroughfare in repair. [38 G. A., ch. 315, § 1.]

6068. Joint board created. Whenever such city or town located as above indicated desires joint action in the improvement, maintenance, and repair of any such thoroughfare, the council of such city or town shall fix the time and place for a joint meeting of the board of supervisors and the councils of any city or town through which any such thoroughfare runs, and give ten days' written notice of such meeting. [38 G. A., ch. 315, § 2.]

6069. Resolution of necessity. On the day fixed for such joint meeting the several bodies above referred to shall organize themselves into a joint board with the mayor of the city initiating the proceedings presiding, and shall then by resolution determine the necessity for the grading, paving, and curbing of such thoroughfare, the character and extent thereof, the method of construction, the one or more kinds and size thereof, the property to be assessed therefor, the location and terminal points thereof, and the percentage of the total cost thereof to be borne by the county, and by said city and town, or each of them if there be more than one. [38 G. A., ch. 315, § 2.]

6070. Notice—objections. Said joint board shall cause twenty days' notice of the time when said resolution will be considered by such joint board for passage to be given by four publications in each of said cities and towns in some newspaper of general circulation published therein, the last of which shall be not less than two nor more than four weeks prior

to the time fixed for its consideration, at which time the owners of the property subject to assessment for the same may appear and make objection to the contemplated improvement and the passage of said proposed resolution, at which hearing the same may be amended and passed, or passed as proposed. [38 G. A., ch. 315, § 2.]

6071. Substituted service. If within the limits of either of such corporations no such newspaper is published, then such notice may be given by posting copies thereof in three public places within the limits of the corporation in which no such newspaper is published, two of which places shall be the postoffice and the mayor's office of such city or town. [38 G. A., ch. 315, § 2.]

6072. Duty of separate boards. After the adoption of the resolution of necessity herein provided for by the joint board, then the board of supervisors and the council of each of said cities and towns shall proceed to carry out the terms thereof by initiating and prosecuting to a completion the necessary proceedings in each of said corporations, except that the proposals for bids and the making of the contract for the improvement shall be left with the city or town initiating the proceedings. [38 G. A., ch. 315, § 2.]

6073. Benefited districts—assessments. Such counties, cities, and towns shall have power to establish benefited districts to embrace all or such portions of said counties, cities, and towns as in the judgment of the board of supervisors and the city council thereof will receive special benefits from the grading, paving, and curbing of such thoroughfare, to change the boundaries of same from time to time as may become in the judgment of such board of supervisors and city council just and equitable, and to assess so much of the cost of such grading, paving, and curbing against all lots or tracts of land contained in the benefited district within which such improvements are made as shall equal and be in proportion to the special benefits conferred by said improvement and not in excess thereof. In no case shall such assess-

ment exceed twenty-five per cent of the actual value of said lots or tracts at the time of levy thereof. [38 G. A., ch. 315, § 3.]

6074. Construction—record. Whenever the resolution of necessity herein above provided for has been adopted and the provisions of the preceding sections of this chapter complied with, the council initiating the proceedings hereunder may by ordinance or resolution order the construction of said grading, paving, and curbing upon a ye and nay vote entered of record, which record shall also show whether such improvement was petitioned for or made on the motion of the council, and whether the improvement was the result of the joint action of the counties, cities, and towns interested. [38 G. A., ch. 315, § 4.]

6075. Levy. Such counties, cities, or towns, as the case may be, shall have power, after the completion of any improvement contemplated in this chapter, to levy upon all taxable property, excepting moneys and credits, in said counties, cities, and towns, an annual tax for the purpose of paying that portion of the cost of such improvement not borne by the special assessments levied against the lots or tracts of land embraced in the improvement district established therefor, but such levy shall not exceed one mill for any one year. [38 G. A., ch. 315, § 5.]

6076. Limitations. In no event shall such counties, cities, or towns, as the case may be, be authorized and empowered to pay more than fifty per cent of the total cost of any improvement contemplated in this chapter out of the fund raised by the levy provided for in the

preceding section, nor out of any other county, city, or town fund. [38 G. A., ch. 315, § 6.]

6077. Anticipation of levy. Any such county, city, or town may anticipate the collection of taxes authorized to be levied by the second preceding section, and for that purpose may issue paving certificates or bonds with interest coupons, and the provisions of chapters 308 and 320 shall be operative as to such certificates, bonds, and coupons in so far as they may be applicable. [38 G. A., ch. 315, § 6.]

6078. Levy pledged. Said certificates, bonds, and interest thereon shall be secured by said levy and shall be payable only out of the funds derived therefrom and pledged to the payment of the same, and no certificates or bonds shall be issued in excess of taxes authorized and levied to secure the payment of the same. It shall be the duty of such counties, cities, and towns to collect such funds with interest thereon and to hold the same separate and apart in trust for the payment of said certificates, bonds, and interest, and to apply the proceeds of said funds pledged for that purpose to the payment of said certificates, bonds, and interest. [38 G. A., ch. 315, § 7.]

6079. Additional power. This chapter shall be construed as granting additional power without limiting the power already existing in counties, cities, and towns, and all the provisions of chapters 308 and 320, so far as the same are additional and not in conflict with this chapter and applicable thereto, shall be and remain in full force and effect and may be resorted to whenever necessary to carry out the spirit and purpose of this chapter. [38 G. A., ch. 315, § 8.]

CHAPTER 310

PROTECTION FROM FLOODS

NOTE: This chapter made applicable to special charter cities by § 6771.

6080. Authorization.
6081. Petition—plat and schedule.
6082. Resolution of necessity.
6083. Notice—objections—amendment.
6084. Bids—contract.
6085. Notice—sealed proposals.
6086. Deposit with bid.
6087. Bond to maintain.
6088. Bond to perform.
6089. Assessment.
6090. Statutes governing.
6091. Appeal—waiver.

6092. Objections waived.
6093. Notice to railway companies.
6094. Duty to construct.
6095. Construction by city.
6096. Condemnation.
6097. Streets extended.
6098. Filling abandoned channel.
6099. Assessments exceeding one-fourth value.
6100. Levy for deficiency.
6101. Certification to county auditor.
6102. Assessments and levies pledged.
6103. Bonds—indebtedness.

6080. Authorization. Cities and towns may, in accordance with the provisions of this chapter, protect lots, lands, and property within their limits from danger and damage from floods and high water, by deepening, widening, straightening, altering, changing, diverting, or otherwise improving watercourses within their limits, by constructing levees, embankments,

or conduits therefor, and may levy special assessments and other taxes to defray the expense of such improvements, and issue bonds and certificates in anticipation of such special assessments and taxes. [S. S., '15, § 849-a; 37 G. A., ch. 414, § 1; 38 G. A., ch. 285, § 2; 40 Ex. G. A., H. F. 170, § 1.]

6081. Petition—plat and schedule. Upon the filing of a petition requesting the exercise of the powers mentioned in the preceding section, signed by one hundred resident taxpayers of the city or town, the council may, or on its own motion it may, direct the city engineer or other competent person to make necessary surveys, to prepare plans and specifications for doing the work, to furnish the council with an estimate of the cost, including an estimate of the damages to property, if any, and a map or plat showing the boundaries of the district which will be specially benefited by such improvement, a schedule showing, as nearly as may be, the ownership and value of each lot or parcel of land or other property therein as shown by the last assessment roll, and an estimate of the benefit to each lot or parcel of land and to any railway or street railway within such improvement district. The plans, specifications, estimates, maps, plats, and schedule so prepared shall be filed with the clerk. [S., '13, § 849-b; 38 G. A., ch. 285, § 3; 40 Ex. G. A., H. F. 170, § 2.]

6082. Resolution of necessity. If the council upon receiving the said plans, specifications, estimates, maps, plats, and schedules, shall approve, or modify and approve, the same, it shall in a proposed resolution, of which the plat and schedule is made a part by reference, declare the necessity and advisability of such improvement, describing the same in general terms, stating the estimated cost thereof, and fixing the boundaries of the territory or district specially benefited. [S., '13, § 849-c; 38 G. A., ch. 285, § 4.]

6083. Notice—objections—amendment. The council shall cause fourteen days' notice of the time when said resolution will be considered for passage to be given by two publications in some newspaper of general circulation published in the city, the last of which shall be not less than two nor more than four weeks prior to the time fixed for its consideration, at which time the owners of the property affected by such improvement may appear and make objections in writing to the contemplated improvement, to the assessment district, or to their assessments, as shown by the plat and schedule, or to the passage of such proposed resolution, at which hearing the district or the assessments may be changed, and the resolution be amended and passed, or passed as proposed. [S., '13, § 849-c; 38 G. A., ch. 285, § 4.]

6084. Bids—contract. When the making of any such improvement is ordered, the council shall advertise for bids and may enter into a contract or contracts for furnishing the labor and materials for doing the work. [S., '13, § 849-d; 38 G. A., ch. 285, § 5.]

6085. Notice—sealed proposals. All contracts for such improvement shall be let in the name of the city to the lowest bidder, by sealed proposals, upon giving notice for at least ten days by two publications in a newspaper pub-

lished in said city, which notice shall state as nearly as practicable the extent of the work, the one or more kinds of material for which bids will be received, when the work shall be done, the terms of payment, and whether a maintenance fund shall be required, and the time the proposals will be received and acted upon. All bids may be rejected and new bids invited. [S., '13, § 849-d; 38 G. A., ch. 285, § 6.]

6086. Deposit with bid. All bids must be accompanied, in a separate envelope, with a certified check payable to the order of the city treasurer, in the sum named in the notice for bids, as security that the bidder will, if his bid is accepted, enter into a contract for the doing of the work, and will give bond as required by this chapter. All such checks, where the bid has not been accepted, shall be returned to the respective bidders. [S., '13, § 849-d; 38 G. A., ch. 285, § 6.]

6087. Bond to maintain. All contracts for making such improvement may contain a provision obligating the contractor and his bondsmen to keep the improvement in good repair for one year after the acceptance of the same by the city, and bond shall be so conditioned as to conform to such provision. [S., '13, § 849-d; 38 G. A., ch. 285, § 7.]

6088. Bond to perform. Each contractor for such improvement, or part thereof, shall give bond to the city, with sureties to be approved by the council, for the faithful performance of the contract, and suit on such bond may be brought in the county in which the council holds its sessions. [S., '13, § 849-d; 38 G. A., ch. 285, § 8.]

6089. Assessment. When the work is contracted for, the council shall assess the lands and other property included within the improvement district for such part of the cost of the improvement as shall be equal and in proportion to the benefit conferred by the improvement, but not in excess of twenty-five per cent of the value of said lands and other property after the improvement shall have been made. [S., '13, § 849-e; 38 G. A., ch. 285, § 9; 40 G. A., ch. 128, § 1; 40 Ex. G. A., H. F. 170, § 3.]

6090. Statutes governing. The levy of the assessment, the filing of the certificate of assessment, the payment of interest on installments, the payment of the installments of assessment, and the sale of property for unpaid assessments shall all be in conformity with sections 6010, and 6030 to 6040, inclusive. [S., '13, § 849-e; 38 G. A., ch. 285, § 10.]

6091. Appeal—waiver. Any person aggrieved by the action of the council in making any of the assessments herein provided for, may appeal therefrom to the district court of the county in which it is made, within twenty days of the date of the assessment, and have the right to review the action of the council in the said court, in the manner now provided by law. [38 G. A., ch. 285, § 11.]

6092. Objections waived. All objections to errors, irregularities, or inequalities in the making of said special assessments, or in any of the prior proceedings or notices not made before the council at the time and in the manner herein provided, shall be waived. [38 G. A., ch. 285, § 11.]

6093. Notice to railway companies. If the improvement contracted for is to cross the right of way of a railroad or street railway company, the city clerk shall cause to be served upon such company, in the manner for the service of original notices, a notice in writing stating the nature of the improvement, the place where it will cross the right of way of such company, and full requirements for its complete construction across such right of way as shown by the plans, specifications, maps, and plats of the engineer, and directing such company to construct, within a time fixed by the city council, not exceeding six months from the date of the service of the notice, in such manner as not to interfere with the construction of the diverted channel, and in such manner as not to obstruct, impede, or interfere with the free flow of water, the necessary bridge, or bridges, where the diverted channel crosses the right of way. [38 G. A., ch. 285, § 12.]

6094. Duty to construct. Upon receiving such notice it shall be the duty of such railroad or street railway company, to provide the necessary temporary structure to carry its tracks during the constructing of the channel, and to construct the necessary permanent bridge, or bridges, within the time specified in said notice. [38 G. A., ch. 285, § 12.]

6095. Construction by city. If such company shall fail, neglect, or refuse to comply with the notice within the time fixed, the temporary structure may be provided, and the bridge, or bridges, may be built, under the supervision of the engineer in charge of the channel improvement, and such railroad or street railway company, shall be liable for the cost of the construction of such structures, in addition to its liability for assessment for special benefits as other property is assessed, and the cost of such structures may be collected by the city from the company in any court having jurisdiction. [38 G. A., ch. 285, § 12.]

6096. Condemnation. Such cities may purchase or condemn, and appropriate, such private property, including railroad right of way and property, as may be necessary to carry into effect the provisions of this chapter, and the costs of such property shall be included in the cost of the improvement. [S., '13, § 849-g; 38 G. A., ch. 285, § 13.]

6097. Streets extended. A street or alley intersecting the stream or old channel may be projected across it so as to make a continuous street or alley, and the expense of filling all such streets or alleys shall be included in and

paid as a part of the costs of such improvements. [S., '13, § 849-f; 38 G. A., ch. 285, § 14.]

6098. Filling abandoned channel. There may be included as a part of the improvement the work of filling the old channel at other places than at the intersection of the same by a street or alley and, if included, the city engineer shall be required to furnish plans and specifications, estimates, plats, and schedules, and the ownership and value of each lot or parcel of land in the old channel; and, when the improvement is completed, the council shall assess the cost of such filling against the lots and land or parts of lots or land in the channel wholly or partly filled. [40 G. A., ch. 128, § 2.]

6099. Assessments exceeding one-fourth value. The limitation in section 6021, relative to twenty-five per cent of the value, shall not be applicable in the assessment of the cost of said work of filling, provided, however, that such cost shall not exceed the benefits conferred on the tract so filled. [40 G. A., ch. 128, § 2.]

6100. Levy for deficiency. After the contract or contracts for making such improvement have been entered into, the council shall ascertain the cost of the work, including the cost of property purchased or condemned and appropriated, and the cost of filling the old channel as ordered by the council, and the cost of surveys, plans and specifications, estimates, notices, inspection, and supervision, and the preparing of plats and schedules of assessments, and shall thereupon by resolution levy the whole of the said cost remaining, after deducting the amount of the special assessments for benefits conferred upon the lands and other property within the improvement district, at one time as a special tax. Such tax shall be levied upon all the taxable property of the city except moneys and credits, and the levy shall not exceed in the aggregate five mills per year for all improvements made. [S., '13, § 849-e; 38 G. A., ch. 285, § 15; 40 G. A., ch. 128, § 3; 40 Ex. G. A., H. F. 170, § 4.]

6101. Certification to county auditor. A certificate of such levies and of the special assessments for benefits conferred upon lands and property within the improvement district shall then be filed by the clerk with the auditor of the county or counties in which the city is located, and thereupon such taxes and assessments shall be placed upon the tax lists. [S., '13, § 849-e; 38 G. A., ch. 285, § 15; 40 Ex. G. A., H. F. 170, § 5.]

6102. Assessments and levies pledged. The entire cost of constructing any improvement authorized by this chapter, and any bonds or certificates issued in anticipation thereof, shall be paid out of the special taxes and special

assessments authorized by this chapter; and no part of said cost, and no part of any such bonds or certificates, shall ever be a charge upon or paid out of any other fund or the proceeds of any other assessment, tax, or levy. [S., '13, § 849-i; 38 G. A., ch. 285, § 17.]

6103. Bonds—indebtedness. Cities having fifty thousand population or more may contract indebtedness and issue bonds for the purpose of paying for improvements contemplated by this chapter. Such bonds shall be payable in not to exceed twenty-five equal

annual installments, shall bear interest not to exceed five per cent per annum, payable semi-annually, and shall be made payable at such place and be of such form as the council may by resolution designate. For the purpose of this chapter a city may become so indebted in an amount which with all other municipal indebtedness for general purposes may equal, but not exceed, five per cent of the actual value of the taxable property of said city as shown by the last preceding assessment roll. [S., '13, § 849-j; 38 G. A., ch. 285, § 18; 40 Ex. G. A., H. F. 170, § 6.]

CHAPTER 311

BONDS AND CERTIFICATES FOR STREET IMPROVEMENTS AND SEWERS

NOTE: Certain provisions of this chapter made applicable to special charter cities by § 6931.

- 6104. Certificates authorized.
- 6105. Requirements.
- 6106. Payment.
- 6107. Rights of bearer.
- 6108. Limitation on sale.
- 6109. Bonds authorized.
- 6110. Designation—amount.
- 6111. Bonds kept separate.
- 6112. Bonds—series.
- 6113. Maturity—name of street—interest.
- 6114. Form.
- 6115. Registration and delivery.

- 6116. Security and reports.
- 6117. Sale.
- 6118. Proceeds pledged.
- 6119. Accounts required.
- 6120. Payment regulated.
- 6121. Payment from special fund.
- 6122. Limitation on issue.
- 6123. Liability of city.
- 6124. Interest—temporary loan.
- 6125. Sewer bonds authorized—form—indebtedness.
- 6126. Interpretation.

6104. Certificates authorized. The council may provide by resolution for the issuance of street improvement and sewer certificates payable to the bearer or to the contractors who have constructed any street improvement or sewer or completed part thereof, in payment or part payment therefor and may negotiate the same. [C., '97, § 841; 40 Ex. G. A., S. F. 171, § 1.]

6105. Requirements. Each of said certificates shall state the amount of one or more assessments or the part thereof made against the property designated therein, including railroads and street railways, and the owners thereof liable to assessment for the cost of the same. Said certificates shall bear interest at a rate not exceeding six per cent per annum, payable annually or semiannually, as fixed by the council. [C., '97, § 841; 40 Ex. G. A., S. F. 171, § 1.]

6106. Payment. Said certificates may be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount paid to be applied to the payment of the certificate issued therefor. [C., '97, § 841; 40 Ex. G. A., S. F. 171, § 1.]

6107. Rights of bearer. Such certificate shall transfer to the bearer all of the rights and interest of the city or town in every such assessment or part thereof, described therein,

and shall authorize the bearer to collect and receive every assessment embraced in the certificate by or through any of the methods provided by law for their collection as the same may mature. [C., '97, § 841; 40 Ex. G. A., S. F. 171, § 2.]

6108. Limitation on sale. No certificate shall be issued or negotiated by the city or town for less than its par value with accrued interest up to the date of the delivery thereof. [C., '97, § 841; 40 Ex. G. A., S. F. 171, § 2.]

6109. Bonds authorized. For the purpose of providing for the payment of the assessed cost of any street improvement or sewer which is to be or has been assessed upon property subject to assessment therefor, including railroads and street railways liable for the payment thereof, the council may by resolution provide for the execution and delivery of bonds for the amount of the assessed cost or any part thereof in anticipation of the deferred payment of assessments levied therefor. [C., '97, § 842; 37 G. A., ch. 244, § 1; 40 Ex. G. A., S. F. 171, § 3.]

6110. Designation—amount. Such bonds shall be called street improvement bonds or sewer bonds and be issued in amounts of one hundred dollars or multiples thereof, not exceeding one thousand dollars, except that one bond, which shall not exceed one thousand

dollars, may be issued for the amount necessary to make up the exact amount of such cost. [C., '97, § 842; 40 Ex. G. A., S. F. 171, § 3.]

6111. Bonds kept separate. Street improvement bonds shall not include any sewer assessments, nor sewer bonds any street improvement assessments. [C., '97, § 842; 40 Ex. G. A., S. F. 171, § 3.]

6112. Bonds—series. Street improvement and sewer bonds, respectively, issued for any one levy shall all bear the same date and be divided into as many series as there are installment payments of said special assessment, and each series shall be as nearly equal in amount as practicable. [C., '97, § 843; 40 Ex. G. A., S. F. 171, § 4.]

6113. Maturity—name of street—interest. Each series of bonds shall mature on the first day of either April, May, or June, as may be determined by the council, in the years in which the installments of said special taxes come due, shall bear the name of the street, avenue, highway, alley, or district in which said street improvement or sewer is located, and shall bear interest at a rate not exceeding five per cent per annum, payable annually or semiannually, and coupons for said interest shall be attached thereto. [C., '97, § 843; 39 G. A., ch. 64, § 1; 40 G. A., ch. 108, § 5; 40 Ex. G. A., S. F. 171, § 4.]

6114. Form. Said bonds shall be signed by the mayor, countersigned by the clerk, and sealed with the corporate seal, and coupons shall be attested by the signature of the clerk, and shall be substantially in the following form, but subject to changes that will conform them to the resolution of the council, to wit:

The city (or town) of, in the state of Iowa, promises to pay as hereinafter stated, to the bearer hereof, on the..... day of, the sum of dollars, with interest thereon at the rate of per cent per annum, payable..... annually, on the presentation and surrender of the interest coupons hereto attached. Both principal and interest of this bond are payable at the.....bank in the city (or town) of....., state of..... This bond is issued by the city (or town) of under and by virtue of chapter 311 of the code of Iowa and the resolution of said city, (or town) duly passed on theday of....., 1.....

This bond is one of a series of bonds of like tenor, date, and amount, numbered from..... to.....and issued for the purpose of defraying the cost of improving, curbing, and paving a portion of.....street or alley (or constructing a sewer on.....street or alley), as described in said resolution, in said city (or town) which cost is payable by the abutting and adjacent property along said improvements, and is made by law a lien on all said property. It is payable in..... equal annual installments, with interest on all

deferred payments at the rate of five per cent per annum, but only out of the..... fund created by the collection of said special tax, and said fund can be used for no other purpose.

It is hereby certified and recited that all the acts, conditions, and things required to be done, precedent to and in issuing this series of bonds, have been done, happened, and performed, in regular and due form, as required by law and said resolution, and for the assessment, collection, and payment hereon of said special tax, the full faith and diligence of said city (or town) of.....are hereby irrevocably pledged.

In testimony whereof, the city (or town) of....., by its council, has caused this bond to be signed by its mayor and countersigned by its city (or town) clerk, and the seal of said city (or town) to be thereto affixed, this.....day of....., 1.....

..... City (or Town) Clerk. Mayor.

No..... On the.....day of....., the city (or town) of....., Iowa, promises to pay to bearer, as provided in said bond, the sum ofdollars, at the.....bank, in the city (or town) of....., beingmonths' interest due that day on its improvement bond No....., dated 1.....

Attested. City (or Town) Clerk. [C., '97, § 843; 40 G. A., ch. 108, § 5; 40 Ex. G. A., S. F. 171, § 5.]

6115. Registration and delivery. When such bonds have been issued they shall be delivered to the clerk, who shall register them in a book or books to be kept for that purpose, countersign them, and then deliver the same to the city treasurer or some bank selected by the council. [C., '97, § 844.]

6116. Security and reports. The council may require of the treasurer or bank such security or such additional security as it may think necessary to secure the payment in full of the proceeds thereof. The city treasurer shall report to the clerk the number of bonds delivered by him, and the amount received therefor, or for which credit has been given by the contractor. [C., '97, § 844.]

6117. Sale. The bonds may be sold at public or private sale, but shall not be sold or negotiated for less than their par value with accrued interest from date to the time of delivery thereof. [C., '97, § 845.]

6118. Proceeds pledged. All the proceeds of bonds and of certificates negotiated shall be paid to the city treasurer, and shall be used only to pay for the cost of street improvements or sewers included in the assessment or assessments pledged to the payment thereof. [C., '97, § 845.]

6119. Accounts required. All money received by said treasurer as proceeds of said bonds or certificates shall be kept in the same manner and subject to all the regulations regarding other money of the city, except that he shall keep an account of each levy of such special assessments, and all interest received and paid shall be credited and charged to such fund. [C., '97, § 845.]

6120. Payment regulated. No money received by the city treasurer from the sale of street improvement and sewer bonds or certificates shall be paid out, nor shall any certificate be issued to the contractor or sold, except upon the resolution of the council ordering the same; and no such resolution for the delivery of any bonds or certificates, or the payment of any of the proceeds of said bonds or certificates, shall be made until the certificate of the city engineer or other competent person selected has been filed, stating that the work contracted for or a completed part thereof, as the case may be, has been completed according to the terms and stipulations of the contract. [C., '97, § 846; 40 Ex. G. A., S. F. 171, § 6.]

6121. Payment from special fund. Such street improvement and sewer certificates, bonds, and coupons shall be payable out of funds derived from the special taxes and interest thereon pledged to the payment of the same. [C., '97, § 847.]

6122. Limitation on issue. Such certificates or bonds shall not be delivered in excess of the special taxes levied. [C., '97, § 847.]

6123. Liability of city. Such certificates, bonds, and coupons shall not make the city

liable in any way, except for the proper application of said special taxes. [C., '97, § 847.]

6124. Interest—temporary loan. If any interest shall become due on any of said bonds when there is no fund from which to pay the same, the council may make a temporary loan for the payment thereof, which loan shall be repaid from the special taxes and interest pledged to secure said bonds, but in case of purchase by the city at tax sale of the property on which such tax is levied, it shall then be repaid from the city improvement fund. [C., '97, § 847.]

6125. Sewer bonds authorized—form—indebtedness. Cities and towns, including cities operating under the commission form of government, are hereby authorized to contract indebtedness and to issue bonds for the purpose of building and constructing sewers. Said bonds shall be payable in not more than twenty annual installments and at interest not exceeding five per cent per annum, and shall be made payable at such place and be of such form as the city council shall by ordinance designate; but no city or town shall become indebted in excess of five per cent of the actual value of the taxable property of said city or town as shown by the last preceding assessment roll. The indebtedness so incurred for building or constructing sewers shall not be considered an indebtedness incurred for general or ordinary purposes. [38 G. A., ch. 243, § 1.]

6126. Interpretation. The preceding section shall be construed as granting additional power, without limiting the power already existing, in cities and towns, including cities operating under the commission form of government. [38 G. A., ch. 243, § 2.]

CHAPTER 312

HEATING PLANTS, WATER OR GAS WORKS, AND ELECTRIC PLANTS

NOTE: Sections 6127 to 6143, inclusive, made applicable to special charter cities by § 6788.

- 6127. Cities and towns may purchase.
- 6128. Franchise may be granted.
- 6129. Utilization of waste.
- 6130. Purchase of utility products.
- 6131. Election required.
- 6132. Question submitted.
- 6133. Notice—time of election—costs.
- 6134. General powers granted.
- 6135. Special condemnation proceedings—limitation.
- 6136. Court of condemnation.
- 6137. Procedure.
- 6138. Notice—service.

- 6139. Powers of court—duty of clerk—vacancy.
- 6140. Costs—expenses.
- 6141. Jurisdiction of city.
- 6142. Sale of products—rates—taxes—equipment.
- 6143. Regulation of rates and service.
- 6144. Management by board of trustees.
- 6145. Notice of election.
- 6146. Form of submission.
- 6147. Trustees—terms—compensation—vacancies.
- 6148. Compensation in certain cities.
- 6149. Powers of trustees.
- 6150. Water for military reservations.
- 6151. Mains in highways.

6127. Cities and towns may purchase. Cities and towns shall have the power to purchase, establish, erect, maintain, and operate within or without their corporate limits, heating plants, waterworks, gasworks, or electric light or power plants, with all the necessary

reservoirs, mains, filters, streams, trenches, pipes, drains, poles, wires, burners, machinery, apparatus, and other requisites of said works or plants, and lease or sell the same. [C., '73, §§ 471-473; C., '97, § 720; S., '13, § 720; 40 Ex. G. A., H. F. 172, § 1.]

6128. Franchise may be granted. They may grant to individuals or private corporations the authority to erect and maintain such works or plants for a term of not more than twenty-five years, and may renew, amend, or extend the terms of the grant; but no exclusive franchise shall be granted, amended, extended, or renewed. [C., '73, § 473; C., '97, § 720; S., '13, § 720; 40 Ex. G. A., H. F. 172, § 1.]

6129. Utilization of waste. Cities with a population of less than ten thousand may utilize the steam and excess power of such works or plants in the manufacture of artificial ice, and may install machinery and equipment therefor. [38 G. A., ch. 326, § 1; 40 Ex. G. A., H. F. 172, § 1.]

6130. Purchase of utility products. They may enter into contracts with persons, corporations, or municipalities for the purchase of heat, gas, water, or electric current for either light or power purposes, for the purpose of selling the same either to residents of the municipality or to others, including corporations, and shall have power to erect and maintain the necessary transmission lines therefor, either within or without their corporate limits, to the same extent, in the same manner, and under the same regulations, and with the same power to establish rates and collect rents, as is provided by law for cities having municipally owned plants. [C., '73, § 471; C., '97, § 720; S., '13, § 720; 40 Ex. G. A., H. F. 172, § 2.]

6131. Election required. No such works or plants shall be authorized, established, erected, purchased, leased, or sold, or franchise granted, extended, renewed, or amended, or contract of purchase provided for in the preceding section shall be entered into unless a majority of the legal electors voting thereon vote in favor of the same. [C., '73, § 471; C., '97, § 720; S., '13, § 720; 40 Ex. G. A., H. F. 172, § 3.]

6132. Question submitted. The council may order any of the questions provided for in the five preceding sections submitted to a vote at a general or municipal election or at one specially called for that purpose, or the mayor shall submit said question to such a vote upon the petition of twenty-five property owners of each voting precinct in a city, or of fifty property owners of any incorporated town. [C., '97, § 721; S., '13, § 721; 40 Ex. G. A., H. F. 172, § 4.]

6133. Notice—time of election—costs. Notice of the election shall be given by publication once each week for four consecutive weeks in some newspaper published in the county and of general circulation in the city or town. The election shall be held on a day not less than five nor more than twenty days after the last publication of notice. The person asking for the granting, renewal, or extension of a franchise shall pay the costs in-

curred in holding the election. [C., '97, § 721; S., '13, § 721; 40 Ex. G. A., H. F. 172, § 4.]

6134. General powers granted. They shall have power:

1. *Condemnation.* To condemn and appropriate so much private property as may be necessary for the construction and operation of said works or plants, and for the purpose of constructing and maintaining dams across the nonnavigable waters and watercourses of the state in forming reservoirs and sources of water to supply such waterworks and plants, as provided for the condemnation of land for city purposes.

2. *Bonds.* To issue bonds for the payment of the cost of establishing the same, including the cost of land condemned on which to locate them.

3. *Delegated power.* To confer by ordinance the power to appropriate and condemn private property for such purpose upon any individual or corporation authorized to construct and operate such works or plants. [C., '73, § 474; C., '97, § 722; S., '13, § 722; 40 Ex. G. A., H. F. 172, § 5.]

6135. Special condemnation proceedings—limitation. When any city or town shall have voted at an election to purchase, establish, erect, maintain, and operate heating plants, waterworks, gasworks, or electric light or power plants, or when it has voted to contract an indebtedness and issue bonds therefor, and in such city or town there shall then exist any such utility, or incomplete parts thereof or more than one, not publicly owned, and the contract or franchise of the owner of which utility has expired or been surrendered, and such owner and the city or town cannot agree upon terms of purchase, it may, by resolution, proceed to acquire by condemnation any one or more of such utilities or incomplete parts thereof. When so acquired it may apply the proceeds of the bonds in payment therefor and in making extensions and improvements to such works or plants so acquired, but not more than one utility may be so acquired when such municipality is indebted in excess of the statutory limitation of indebtedness for such purposes for any such acquired property. [C., '73, § 474; C., '97, § 722; S., '13, § 722; 40 Ex. G. A., H. F. 172, § 6.]

6136. Court of condemnation. Upon the passage of the resolution as provided in the preceding section and the presentation of a certified copy thereof to the supreme court while in session, or to the chief justice of the supreme court, the said court or chief justice shall within five days thereafter appoint as a court of condemnation three district court judges from three judicial districts, of whom one shall be from the district wherein the city or town is located, if not a resident of the city or town, and shall enter an order requiring said judges to attend as such court of condemnation at the county seat of the county in

which said city or town is located within ten days thereafter, and the said district court judges shall so attend and shall constitute a court of condemnation. [S. S., '15, § 722-a; 40 Ex. G. A., H. F. 172, § 7.]

6137. Procedure. Said court when it meets to organize or at any time during the proceedings, which may be adjourned from time to time for any purpose, may fix the time for the appearance of any person or persons that any party desires to have joined in the proceedings, and whom the court deems necessary. The time for appearance shall be sufficiently remote to serve notice upon such parties, but if the time for appearance occur after the proceedings are begun, such proceedings may be reviewed by the court to give all parties a full opportunity to be heard. [S. S., '15, § 722-a; 40 Ex. G. A., H. F. 172, § 8.]

6138. Notice—service. Persons not voluntarily appearing, but having any right, title, or interest in or to the property which is the subject of condemnation, or any part thereof, including all leaseholders, mortgagees, and trustees of bondholders, who are to be made parties to the proceedings shall be served with notice thereof and of the time and place of meeting of said court in the same manner and for the same length of time as for the service of original notice, either by personal service, or by service by publication, the time so set being the time at which the parties so served are required to appear, and actual personal service of the notice within or without the state shall supersede the necessity for publication. [S. S., '15, § 722-a; 40 Ex. G. A., H. F. 172, § 9.]

6139. Powers of court—duty of clerk—vacancy. The court of condemnation shall have power to summon and swear witnesses, take evidence, order the taking of depositions, require the production of any books or papers, and may appoint a shorthand reporter. It shall perform all the duties of commissioners in the condemnation of property. Such duties and the method of procedure and condemnation, including provisions for appeal, shall, except as herein otherwise specifically provided, be, as nearly as may be, as provided for the taking of private property for works of internal improvement. The clerk of the district court of the county where the city or town is located shall perform all of the duties required of the sheriff in such condemnation; and in case of a vacancy in the court, such vacancy shall be filled in the manner in which the original appointment was made. When necessary by reason of such vacancy, the court may review any evidence in its record. [S. S., '15, § 722-a; 40 Ex. G. A., H. F. 172, § 10.]

6140. Costs—expenses. The costs of said proceedings shall be the same and paid in the same manner as in proceedings in the district court, and the said district court judges of said court of condemnation shall receive, while engaged in such service, their actual expenses,

which expenses shall be taxed as costs in the case. [S., '13, § 722-b.]

6141. Jurisdiction of city. For the purpose of maintaining and protecting such works or plants from injury, and protecting the water of such waterworks from pollution, the jurisdiction of such city or town shall extend over the territory occupied by such works, and all reservoirs, mains, filters, streams, trenches, pipes, drains, poles, wires, burners, machinery, apparatus, and other requisites of said works or plants used in or necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken for five miles above the point from which it is taken. [C., '73, § 472; C., '97, § 723.]

6142. Sale of products—rates—taxes—equipment. They may sell the products of municipal heating plants, waterworks, gasworks, or electric light or power plants to any municipality, individual, or corporation outside the city or town limits, as well as to individuals or corporations within its limits, and may with the consent of the board having jurisdiction thereof erect in the public highway the necessary poles upon which to construct transmission lines; and shall, from time to time in such manner as they deem equitable, assess upon each tenement or other place supplied with heat, water, gas, light, or power, reasonable rents or rates fixed by ordinance, and shall levy a tax as provided by law to pay or aid in paying the expenses of running, operating, renewing, and extending such works, and the interest on any bonds issued to pay all or any part of their construction. [C., '73, § 475; C., '97, § 724; S., '13, § 724; 40 Ex. G. A., H. F. 172, § 11.]

6143. Regulation of rates and service. They shall have power to require every individual or private corporation operating such works or plant, subject to reasonable rules and regulations, to furnish any person applying therefor, along the line of its pipes, mains, wires, or other conduits, with gas, heat, water, light, or power, and to supply said city or town with water for fire protection, and with gas, heat, water, light, or power for other necessary public purposes and to regulate and fix the rent or rate for water, gas, heat, light, or power; to regulate and fix the rents or rates of water, gas, heat, and electric light or power; to regulate and fix the charges for water meters, gas meters, electric light or power meters, or other device or means necessary for determining the consumption of water, gas, heat, electric light or power, and these powers shall not be abridged by ordinance, resolution, or contract. [C., '73, §§ 473, 475; C., '97, § 725; S., '13, § 725.]

6144. Management by board of trustees. The council of any city or town, other than cities of the first class but including cities of the first class under the commission form of government having a population of less than fifty

thousand which owns or may hereafter acquire waterworks, heating plant, gasworks, or electric light or electric power plant, may, and upon petition of ten per cent of the qualified electors of such city or town shall, at any general election, or at a special election called for that purpose, submit the question as to whether the management and control of such waterworks, heating plant, gasworks, or electric light or electric power plant shall be placed in the hands of a board of trustees. [38 G. A., ch. 85, § 1; 40 G. A., ch. 129.]

6145. Notice of election. Notice of such election shall be given by publication in one newspaper published in said city or town once each week for not less than three consecutive weeks, and the election shall be held not less than seven nor more than ten days after the completion of such publication. If no newspaper is published in such city or town, notice may be given by posting notices for three weeks in five public places in such city or town. [38 G. A., ch. 85, § 2.]

6146. Form of submission. The question to be submitted shall be in the following form: "Shall the city (or town) of place the management and control of its waterworks (or heating plant, or gasworks, or electric light or electric power plant) in the hands of a board of trustees?" [38 G. A., ch. 85, § 2.]

6147. Trustees — terms — compensation — vacancies. If a majority of the votes cast at such election are in favor of placing the management and control of any or all of the said utilities in the hands of trustees, the mayor shall, within ten days after such election, appoint a board of three trustees, which appointment shall be approved and confirmed by the council. The first appointees shall hold office, one for two years, one for four years, and one for six years, and their successors shall be appointed for a term of six years. All vacancies occurring on said board shall be filled in the manner original appointments are made. The compensation of each trustee shall be not more than one hundred dollars per year, and each trustee shall execute and furnish to the

city an official bond in the sum of twenty-five hundred dollars to be approved by the mayor and filed with the city clerk. [38 G. A., ch. 85, § 3; 40 Ex. G. A., H. F. 172, § 13.]

6148. Compensation in certain cities. In cities operating under the commission plan and having a population of less than fifty thousand the compensation of said trustees shall be not to exceed three hundred dollars per year to each member of said board. [38 G. A., ch. 85, § 5; 40 G. A., ch. 129.]

6149. Powers of trustees. The board of trustees shall have all the power and authority in the management and control of the utilities mentioned in the question submitted to the voters at such election as is conferred upon waterworks trustees appointed as provided in chapter 313. [38 G. A., ch. 85, § 4; 40 Ex. G. A., H. F. 172, § 14.]

6150. Water for military reservations. All individuals or private corporations to which any city in this state has granted authority to erect and maintain waterworks with all the necessary reservoirs, mains, filters, pipes, and other appurtenances in such city shall, whenever the United States has, or may hereafter establish a military reservation within a distance of five miles from either of the boundaries of such city, be authorized to use said waterworks plant in said city and the mains now or hereafter laid in the highways of said city for the purpose of furnishing water to such military reservation, such authority to continue so long as under franchises now held or hereafter granted such individuals or corporations shall be authorized to maintain and operate such waterworks plant in such city. [S., '13, § 742-d.]

6151. Mains in highways. The board of supervisors of any county in which such military reservation is or may hereafter be located shall have the power to authorize any such individual or corporation to lay its mains in any of the highways of the county for the purpose of extending the same to any such military reservation. [S., '13, § 742-e.]

CHAPTER 313

PURCHASE AND CONSTRUCTION OF WATERWORKS IN CERTAIN CITIES

NOTE: This chapter made applicable to special charter cities by § 6787.

- 6152. Tax—sinking fund.
- 6153. Use of fund.
- 6154. Authority granted.
- 6155. Contracts—bonds—purchase of waterworks.
- 6156. Election—powers of council—preliminary work.

- 6157. Trustees—appointment—bond—removal.
- 6158. Powers—waterworks fund—how disbursed.
- 6159. Fixing rates.
- 6160. Additional powers.

6152. Tax—sinking fund. Cities of the first class, and cities of the second class having a population of over ten thousand, shall have power to levy, in addition to the regular water tax authorized by law, a tax of two mills upon the dollar upon all the property within the corporate limits of said cities, excepting lots greater than ten acres in area used for horticultural or agricultural purposes, for the purpose of creating a sinking fund to be used as provided in this chapter for the purchase or erection of waterworks in such cities, or for the payment of any indebtedness incurred by such cities for waterworks now owned by the same. The proceeds of such two-mill levy shall be deposited in one or more solvent banks or trust companies of the city making such levy, at a rate of interest not less than three per cent per annum, compounded semiannually, and payable, principal and interest, on demand, after sixty days' notice in writing. The city treasurer depositing the proceeds of such tax shall exact from the bank or trust company wherein such money is deposited a satisfactory bond, payable to the city, to be approved by the treasurer and mayor of such city, and to be filed in the office of the city treasurer. [C., '97, § 742; S., '13, § 742; 39 G. A., ch. 49, § 1.]

6153. Use of fund. Any city in which a sinking fund has been accumulated as provided in the preceding section, in which waterworks have not been purchased under this chapter, may apply such sinking fund and all accumulations thereof upon the payment of the cost of waterworks purchased or erected under the provisions of the preceding chapter. [S., '13, § 742-a1; 40 Ex. G. A., S. F. 173, § 1.]

6154. Authority granted. Cities of the first class, and cities of the second class having a population of over ten thousand, are hereby authorized to purchase or erect waterworks, under the provisions of this chapter, for the purpose of supplying said cities and the inhabitants thereof with water, and are authorized to continue the levy of the two-mill tax herein provided for until the purchase price,

principal and interest, or the cost incurred in the erection of said works, or the indebtedness heretofore incurred for and on account of such works, is fully paid and discharged. [C., '97, § 744; S., '13, § 744; 39 G. A., ch. 49, § 3.]

6155. Contracts—bonds—purchase of waterworks. Cities levying such sinking fund tax are hereby authorized to let a contract or contracts for the purchase or erection of waterworks, and, upon the approval and adoption of such contract or contracts as hereinafter provided, to apply such sinking fund upon the cost thereof, and cities so purchasing or constructing and those now owning such waterworks are authorized to pledge the proceeds of the continuing two-mill levy provided for in this chapter, and the regular water levy, and the net revenues derived from the operation of the waterworks, and shall have the right to mortgage or bond such works, to secure the payment of the purchase price or the cost of constructing such waterworks, or the cost of making necessary extensions and improvements of such waterworks; and such cities shall have the right to execute additional mortgage or mortgages or bonds upon such works for the purposes above set forth. Provided that said additional mortgage or mortgages or bonds shall bear not more than six per cent interest per annum; but no part of the general fund of such city shall be applied upon such contracts, bonds, or mortgages. In the payment thereof, the city and holders of said contracts, bonds, or mortgages shall be restricted to the proceeds of the said taxes and the net revenues of the said waterworks, as hereinbefore provided; and such contract, contracts, or bonds shall not bear a higher rate of interest than five per cent per annum, payable semiannually. Cities of the first class, and cities of the second class having a population of over ten thousand, which have adopted or may adopt an ordinance availing themselves of the privileges conferred herein, shall in addition thereto have and possess the following powers:

1. In addition to mortgage on the water plant to secure the bonds hereinbefore authorized,

the said city may, in addition to the security of said mortgage and as a part thereof, grant a franchise to maintain and operate said plant on foreclosure sale under said mortgage, said franchise to become effective only on the passing of title under the said foreclosure sale and to continue for a period of not exceeding twenty-five years thereafter; providing that the granting of such franchise shall be approved by a majority of the electors of said city voting at an election thereon, which election shall be held as provided in the following section.

2. They shall have power to issue the general bonds of the city creating an indebtedness of said city to an amount which, with its other existing indebtedness, shall not exceed five per cent of the actual value of the taxable property of said city as shown by the last preceding assessment, the said bonds or proceeds of sale thereof to be used in the purchase or construction of a water plant, as herein provided; provided, however, that such bonds can be issued by order of the city council of said city only after a contract for the purchase or construction of a water plant and providing for the issuance of such bonds has been approved by the majority of the electors of said city voting at an election thereon to be held in accordance with the provisions of the following section. Neither the said bonds nor the proceeds thereof shall be diverted to another purpose than as herein provided. Said cities may purchase or contract a water plant and pay for the same partly out of the water bonds and partly out of the general bonds herein provided, or wholly out of either class of bonds or proceeds thereof, as such city may determine. The general bonds of the city herein provided shall bear interest at not exceeding five per cent per annum, payable semiannually, and shall be payable not more than twenty years after date and be in the general form of bonds provided by section 5277, with such changes as may be necessary to conform the same to this statute and the ordinances or contract of the city under which they are issued. [C., '97, § 745; S., '13, § 745; 39 G. A., ch. 49, § 4.]

6156. Election—powers of council—preliminary work. Said contract or contracts shall not be binding upon said city until the same shall have been approved by the city council at a regular meeting, or a special meeting called for such purpose, and shall have been adopted by a majority of the electors of said city voting at a city or special election, which shall have been duly called after thirty days' notice by said city. The proposition to be submitted at said election, and the form of ballot, shall be: "Shall the contract or contracts approved by the city council in relation to the waterworks be adopted?" The proposition shall be printed and placed on the ballots, and the voter shall designate his choice, and the election shall be conducted, in the manner provided in the title on elections. When a majority of the electors of said city at any election shall have declared in favor of the purchase or erection of any

waterworks, or shall have authorized the incurring of indebtedness or issuance of bonds for waterworks, the city council may provide by contract or otherwise without submission of same to the electors, for surveys, examinations, appraisements, estimates, plans, specifications, advertisements for bids, and all other necessary work preliminary to the making of such contract or contracts for purchase or erection of waterworks, and pay for the same and the expense of said election out of said sinking fund. [C., '97, § 746; S., '13, § 746.]

6157. Trustees — appointment — bond — removal. The waterworks owned by such cities shall be managed and operated by a board of waterworks trustees, which shall be composed of three resident electors, appointed for the term of six years by the mayor of said city. Upon the approval of the contract for the purchase or erection of waterworks by cities as herein provided, the mayor thereof shall, within ten days, appoint such board, the first appointees thereto to hold office, one for two years, one for four years, and one for six years. All vacancies occurring on said board shall be filled in the same manner that original appointments are made. Each trustee shall receive a compensation of not to exceed three hundred dollars per year, and shall execute and furnish to the city an official bond in the sum of five thousand dollars to be approved by the mayor and filed with the city clerk. [C., '97, § 747; S., '13, §§ 747-a, 747-b; 39 G. A., ch. 49, § 5; 40 Ex. G. A., S. F. 173, § 2.]

6158. Powers—waterworks fund—how disbursed. The said board of trustees shall have the power to carry into execution the contract or contracts for the purchase or erection of such waterworks, and to employ a superintendent and such other employees as may be necessary and proper for the operation of such works, for the collection of water rentals, and for the conduct of the business incident to the operation thereof. The said board of trustees shall require of the superintendent, and of the other employees as they may deem proper, good and sufficient bonds, the amount thereof to be fixed and approved by said board, for the faithful performance of their duty, such bonds to run in the name of the city and to be filed with the city treasurer and kept in his office. All money collected by the board of waterworks trustees shall be deposited at least weekly by them, with the city treasurer; and all money so deposited and all tax money received by the city treasurer from any source, levied and collected for and on account of the waterworks, shall be kept by the city treasurer as a separate and distinct fund. The city treasurer shall be liable on his official bond for such funds the same as for other funds received by him as such treasurer. Such moneys shall be paid out by the city treasurer only on the written order of the board of waterworks trustees, who shall have full and absolute control of the application and disbursement thereof for the purposes prescribed by law, in-

cluding the payment of all indebtedness arising in the construction of such works, and the maintenance, operation, and extension thereof. [C., '97, § 748; S., '13, § 748.]

6159. Fixing rates. The board of trustees shall from time to time fix the water rentals or rates to be charged for the furnishing of water, and such rates, with the proceeds of the five-mill water levy and the sinking fund levy of two mills, shall be sufficient for the maintenance and operation of such works and the proper and necessary extension thereof, for all repairs, and for the payment of the purchase price or cost, principal and interest, incurred in the purchase or erection of such works, as the same falls due, according to the

tenor of the mortgage and bonds given to secure the payment of such purchase price or cost. The board shall make quarterly statements giving full and complete reports of the receipts and disbursements of the board. Said reports shall be filed in the office of the city clerk on the second Monday in January, April, July, and October, for the quarters preceding the first day of said months. The reports shall be audited by the board of public works, or by the city council if there be no such board. [C., '97, § 749; 40 Ex. G. A., S. F. 173, § 3.]

6160. Additional powers. The powers conferred by this chapter are in addition to the powers elsewhere granted in this code in respect to waterworks. [C., '97, § 750.]

CHAPTER 314

PURCHASE OF WATERWORKS BY CITIES OF ONE HUNDRED THOUSAND OR OVER

- 6161. Authorization—election.
- 6162. Purchase—condemnation.
- 6163. Power to bond.
- 6164. Power to tax.
- 6165. Power to incur debt.
- 6166. Anticipation of tax.
- 6167. Terms of bonds.
- 6168. Trust fund.
- 6169. Certificates authorized.
- 6170. Trustees must recommend.
- 6171. Liability of city.
- 6172. Sinking fund.
- 6173. Trustees—election—number—term.
- 6174. Chairman—eligibility to office.
- 6175. Bond.
- 6176. Power and duties.

- 6177. Rules—records—accounts—financial statement—examination.
- 6178. Rates.
- 6179. Rates for city.
- 6180. Rates generally.
- 6181. Tax authorized.
- 6182. Payment by city.
- 6183. Mortgage—restriction—interest.
- 6184. Free or discriminatory rates.
- 6185. Extension of mains.
- 6186. Notice to install mains.
- 6187. Duty to install.
- 6188. Lease—limitation.
- 6189. Political activity forbidden.
- 6190. Construction of chapter.

6161. Authorization — election. All cities now or hereafter having a population of one hundred thousand inhabitants or over, including cities acting under the commission plan of government, shall have the power to own, construct, erect, establish, acquire, purchase, maintain, and operate a waterworks within their corporate limits, and extensions thereto for not more than ten miles beyond such limits, with all of the necessary appurtenances, real estate, buildings, galleries, mains, pipes, power plants, or systems, and lease as lessor or sell the same or any part thereof; and such city shall also have power to acquire, own, and sell the negotiable bonds or other evidences of indebtedness of such waterworks; provided, however, no such waterworks shall be constructed or purchased, nor when once acquired be leased or sold, until the construction, purchase, leasing, or selling of such waterworks shall have been approved by a majority of the legal voters of such city voting thereon at a general election, city election, or at a special election called for that purpose, and in no event shall such waterworks when once acquired be leased by such city, as lessor, for a period longer than twenty-five years. [38 G. A., ch. 288, § 1.]

6162. Purchase—condemnation. In the exercise of any of the powers herein granted, any such city may acquire and hold any or all necessary property of the character specified in the preceding section, including existing franchises or contracts, either by purchase or condemnation proceedings. If by condemnation proceedings, the value of the property shall be determined by a court of condemnation as provided in chapter 312. [38 G. A., ch. 288, § 2; 40 Ex. G. A., H. F. 174, § 1.]

6163. Power to bond. For the purpose of acquiring such waterworks either by purchase, condemnation, or construction, and from time to time making permanent extensions thereof, additions to and betterments of the same and of the power plants and equipment, including the acquisition of additional real estate, any such city may borrow money and may issue its negotiable bonds therefor. [38 G. A., ch. 288, § 3.]

6164. Power to tax. It shall have the power to levy upon all the taxable property within the corporate limits of said city for said purposes in addition to all other taxes now provided by law a special tax not exceeding in

any one year five mills on the dollar, for a period of years not exceeding fifty. [38 G. A., ch. 288, § 3.]

6165. Power to incur debt. Such cities may for the purpose of purchasing, erecting, maintaining, and operating waterworks incur an indebtedness not exceeding in the aggregate added to all other indebtedness five per cent of the actual value of the taxable property within such city, the amount of such taxable property to be ascertained by the last state and county tax lists previous to the incurring of such indebtedness. [38 G. A., ch. 288, § 3.]

6166. Anticipation of tax. Any such city desiring to own, construct, erect, acquire, purchase, establish, and maintain such waterworks may issue bonds in anticipation of the special tax authorized in section 6164. Such bonds shall be known as public service bonds, and said bonds and interest thereon shall be secured by said assessment and levy and (unless otherwise paid out of the surplus income derived from the operation of the waterworks) shall be payable only out of the proceeds thereof pledged to the payment of the same, and shall be issued and sold in accordance with the provisions of chapter 320, except as herein otherwise provided. [38 G. A., ch. 288, § 4.]

6167. Terms of bonds. In issuing such bonds, the city council may cause portions of the same to become due at different definite periods, but none of such bonds so issued shall be payable more than fifty years from their date.

Said bonds shall be issued in sums of not less than one hundred dollars nor more than one thousand dollars, each running not more than fifty years, and bearing interest not exceeding five per cent per annum, payable semi-annually. [38 G. A., ch. 288, § 4; 39 G. A., ch. 82, § 1; 40 G. A., ch. 108, § 6.]

6168. Trust fund. It shall be the duty of the city treasurer to collect and receive said tax and to hold the same separate and apart in trust for the payment of said bonds and interest, and to apply the proceeds of said tax pledged for that purpose to the payment of said bonds and interest. [38 G. A., ch. 288, § 4.]

6169. Certificates authorized. Every such city may issue interest-bearing public service certificates to provide for the acquisition, extension, or improvement of any waterworks property or equipment. Such certificates may be issued as aforesaid to an amount ten per cent in excess of the cost of any such extensions, improvements, waterworks property, or equipment, on account of which such certificates are issued. [38 G. A., ch. 288, § 5.]

6170. Trustees must recommend. No ordinance providing for the issuance of such certificates shall be effective until there be filed with the city clerk, prior to the adoption of such ordinance, the recommendation of the

waterworks trustees for the issuance of such certificates. [38 G. A., ch. 288, § 5.]

6171. Liability of city. Such certificates shall in no case become an obligation of the city or be payable out of any general fund, but shall be payable solely out of a sinking fund representing a specific portion of the income derived from the waterworks on account of which they were issued. [38 G. A., ch. 288, § 5.]

6172. Sinking fund. Every such city shall have the additional power to provide, by ordinance, for a sinking fund to be derived from the earnings of any waterworks acquired by it pursuant to the terms of any ordinance, contract, or other regulation. [38 G. A., ch. 288, § 6.]

6173. Trustees—election—number—term. Whenever any such city becomes the owner of waterworks, the council shall, unless a board of trustees exists, forthwith elect, from nominations made by the mayor, trustees for such waterworks. The board of trustees shall consist of five resident voters, who shall hold office, one until the first Monday in April of the second year after his appointment, two until the first Monday in April of the fourth year after appointment, and two until the first Monday in April of the sixth year after appointment. Subsequent appointments shall be for a term of six years. Vacancies shall be filled as original appointments are made. If the waterworks are leased or sold, the term of office of each member of the board shall be held to have expired. [38 G. A., ch. 288, § 7; 40 Ex. G. A., H. F. 174, § 2.]

6174. Chairman—eligibility to office. The chairman of the board shall be selected by a majority vote of the members thereof, for such term as the board may determine. No person shall be eligible for appointment on the board while he holds or is a candidate for, or has within one year held, any other salaried civil, federal, state, county, or city office or position. [38 G. A., ch. 288, § 7; 40 Ex. G. A., H. F. 174, § 3.]

6175. Bond. A bond in the sum of five thousand dollars shall be required of each member of the board before entering upon the duties of his office, conditioned as provided by law, with sureties to be approved by the council. When so approved, said bond shall be filed in the office of the city clerk. [38 G. A., ch. 288, § 8; 40 Ex. G. A., H. F. 174, § 4.]

6176. Power and duties. The board of waterworks trustees shall have supervision over and be responsible for all details of administration and operation of said waterworks, the board to determine all questions of engineering, mechanical, and operating details, extensions of mains, except as otherwise specifically provided, and other improvements and betterments of said waterworks; and report to the council at such stated periods as the

council may determine, all information necessary for its guidance in the issuance of bonds and the performance of such other duties as may be required of it under this chapter as amended, it being the intent and purpose of this section to give such board of waterworks trustees complete management and control of said waterworks, together with all land and property now or heretofore held and used in connection therewith, with the right to make all necessary contracts pertaining to the operation, maintenance, extensions, and improvements of the same, as well as the right to sue and be sued. [38 G. A., ch. 288, § 9; 40 G. A., ch. 130, § 1.]

6177. Rules—records—accounts—financial statement—examination. The board shall immediately after its organization make and prescribe all the necessary rules for the government of the waterworks, and prescribe the form of records and the kind of accounts to be made and kept in the operation of such waterworks. It shall institute and require the keeping of a uniform and perfected system of accounts and requisitions showing the purchase, storing, and use of materials for operation, construction, and other purposes. Said accounts shall be kept distinct and separate from other city accounts, and in such manner as to show the true and complete financial results of the operation of said waterworks. The board shall at least once a year cause to be prepared and printed for public distribution a full and complete financial report. The account of such waterworks shall be examined at least once a year by an expert accountant selected by the city council. [38 G. A., ch. 288, § 10; 39 G. A., ch. 82, § 3.]

6178. Rates. The board of waterworks trustees, in all such cities owning and operating a waterworks under this chapter, shall determine the rates to be charged for water. [38 G. A., ch. 288, § 11; 40 G. A., ch. 130, § 2.]

6179. Rates for city. In fixing the rate to be paid by the city for water for public uses the board shall take into consideration the quantity used and fix the rate accordingly, but in no event shall such rate exceed an annual rental or rate of three hundred fifty dollars for each mile of main pipe laid and in operation, including hydrant connections, and not including more than one line of pipe on the same street, and not including any pipe less than six inches in diameter laid since August 17, 1896. [40 G. A., ch. 130, § 2.]

6180. Rates generally. Rates to private consumers and to the city shall be so fixed as to produce an amount which with other revenues collectible shall be sufficient to cover:

1. Interest on the entire outstanding indebtedness of said waterworks, including that portion that is a general obligation against the city.

2. The cost of all operating expenses, including insurance against legal liability and payment of judgment resulting from such liability.

3. A sufficient sum by way of a depreciation fund to cover such repairs and replacement as may properly be charged against such fund.

4. A sufficient annual provision for a sinking fund to fully pay at maturity all bonds and certificates which by their terms are payable out of the special tax provided for in this chapter, or out of the earnings of the property purchased under the powers herein granted.

5. A surplus in addition to the requirements set out in the last four preceding paragraphs to be used as a working capital of not to exceed one hundred twenty-five thousand dollars; provided, however, that the board may absorb all surplus in excess of fifty thousand dollars by reducing water rates to consumers and must so absorb all such surplus in excess of one hundred twenty-five thousand dollars. [38 G. A., ch. 288, § 11; 40 G. A., ch. 130, § 2.]

6181. Tax authorized. If necessary to procure funds, the city is hereby authorized to levy a sufficient tax as provided in paragraph 17 of section 6211 and section 6212 to provide funds to pay for the water used by such city for public uses. [40 G. A., ch. 130, § 2.]

6182. Payment by city. The sums payable by the city for water furnished as herein provided shall hereafter be paid by the city in May of each year for the last six months of the preceding year, and in November of each year for the first six months of that current year. [38 G. A., ch. 288, § 11; 40 G. A., ch. 130, § 2.]

6183. Mortgage—restriction—interest. In addition to all the powers hereinbefore granted, such cities shall have the right to mortgage or bond such waterworks and pledge the net revenues thereof to secure the payment of the purchase price, and the extension and improvement thereof, but no part of the general fund of such cities shall be applied upon such contracts, bonds, or mortgages. In the payment of the securities authorized to be issued by this section the city and holders thereof shall be restricted to the property mortgaged and the net revenues thereof, and such contract or bonds and all other bonds or certificates issued under this chapter shall not bear a higher rate of interest than five per cent per annum, payable semiannually. [38 G. A., ch. 288, § 12; 39 G. A., ch. 82, § 2; 40 G. A., ch. 108, § 7.]

6184. Free or discriminatory rates. It shall be unlawful for the board or any person or corporation to give or receive free water service, or to give or receive water service at a more favorable rate than that accorded to the general public except as herein provided. Any person or persons violating, either directly or indirectly, the provisions of this section shall upon conviction be punished by a fine of not less than three hundred dollars or sixty days in jail for each and every offense. [38 G. A., ch. 288, § 13; 40 G. A., ch. 130, § 3.]

6185. Extension of mains. The board of waterworks trustees shall establish such rules regarding the extension of mains as in its be-

lief will inure to the greatest benefit of the city, and shall avoid granting special favors in the extension of mains by requiring property owners when necessary to make certain guarantees or to pay certain sums to cover the cost of unprofitable extensions. [38 G. A., ch. 288, § 14.]

6186. Notice to install mains. It shall be the duty of the city council, immediately after the passage of any ordinance or resolution ordering any street improvement or sewer upon any street or streets in which a water main should be laid or extended prior to such improvement as indicated by a majority vote of the council, to give notice in writing to the board of waterworks trustees of such action, and to forward to said board a copy of such resolution or ordinance ordering the said improvement. [40 G. A., ch. 130, § 4.]

6187. Duty to install. On receipt of said notice, the board shall proceed without unnecessary delay to cause mains to be laid or extended in those streets affected by the resolution or ordinance. [40 G. A., ch. 130, § 4.]

6188. Lease—limitation. The power to lease the waterworks or any part thereof shall be exercised by the city council only upon approval of the board of waterworks trustees. [38 G. A., ch. 288, § 14.]

6189. Political activity forbidden. Any member of said board of waterworks trustees or any employee of such city who is employed in any of the departments of said waterworks who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views or to favor any particular person or candidate for office, or who shall in any manner contribute money, time, labor, or other valuable thing to any person for election purposes, and any member of the city council who shall, by solicitation or otherwise, exert his influence directly or indirectly to influence said board or any member thereof in the hiring or discharging of any employee or employees of said waterworks, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months. [38 G. A., ch. 288, § 15.]

6190. Construction of chapter. Nothing herein shall be held to repeal sections 6142 and 6143. Said sections, however, so far as the rate making power is concerned, shall not apply to the operation of waterworks constructed or purchased under the provisions of this chapter. In all other respects this chapter shall be construed as granting additional power without limiting the power already existing in cities of the first class with a population of one hundred thousand or over. [38 G. A., ch. 288, § 18.]

CHAPTER 315

STREET RAILWAY REGULATIONS

NOTE: This chapter made applicable to special charter cities by § 6785.

6191. General powers.
6192. Condition precedent.

6191. General powers. Cities and towns shall have the power to authorize or forbid the construction of street railways within their limits, and may define the motive power by which the cars thereon shall be propelled; and to authorize or forbid the location and laying down of tracks for railways and street railways on all streets, alleys, and public places. [R., '60, § 1064; C., '73, § 464; C., '97, § 767.]

6192. Condition precedent. No railway track can thus be located and laid down until after the injury to property abutting upon the street, alley, or public place upon which such railway track is proposed to be located and laid down has been ascertained and compensated for in the manner provided with reference to taking private property for works of internal improvement. [C., '73, § 464; C., '97, § 767.]

6193. Vestibules — brakes — transparent shields. Every person, partnership, company,

6193. Vestibules—brakes—transparent shields.
6194. Penalty.

or corporation owning or operating a street railway in this state shall:

1. *Transparent shield.* Provide and maintain upon all motor cars, except trailers, used for the transportation of passengers, not required by law to have an inclosed vestibule, a transparent shield extending the full width of each car and so constructed that it will afford protection to the motorman and passengers on the platform from inclement weather.

2. *Vestibules.* From November first of each year to April first following, provide all cars used for the transportation of passengers with vestibules inclosing the front and rear platforms on all sides for the protection of employees operating such cars when, in the performance of their duties, the employees are required to remain on said vestibule the major portion of their time. Each vestibule shall be heated and shall contain a seat for the use of the motorman or conductor.

3. *Brakes.* Equip all its double truck passenger cars and single truck passenger cars over

thirty-two feet in length with power brakes other than hand brakes capable of bringing such cars to a stop within a reasonable distance, together with equipment for sanding the rails. Said brake and sand equipment shall be so constructed as to be operated by the motorman on the car operated by him.

4. *Toilets.* Provide and maintain toilet facilities for the use of employees at some suitable location upon such line or run, and the running schedule of said cars and the operating thereof shall be such as will permit said employees to use said toilet facilities. 1. [S., '13, § 768-a; 40 Ex. G. A., S. F. 175, § 1.]

2. [C., '97, § 768; S., '13, § 768; S. S., '15, § 768-h; 40 Ex. G. A., S. F. 175, § 1.] 3. [S., '13, §§ 768-c, 768-e, 768-f; 40 Ex. G. A., S. F. 175, § 1.] 4. [S. S., '15, § 768-i; 40 Ex. G. A., S. F. 175, § 1.]

6194. *Penalty.* A violation of any of the provisions of the preceding section shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense. Every day's failure to comply with any of the provisions of said section shall be deemed a separate offense. [C., '97, § 768; S., '13, §§ 768, 768-b, 768-d, 768-g; S. S., '15, § 768-j; 40 Ex. G. A., S. F. 175, § 2.]

CHAPTER 316

CONDEMNATION, PURCHASE, AND DISPOSAL OF LANDS

CONDEMNATION

- 6195. Purposes.
- 6196. Gravel pits.
- 6197. Libraries.
- 6198. Lands for railway purposes.
- 6199. Election required.
- 6200. Purchase—payment of damages.

CONDEMNATION

6195. *Purposes.* Cities and towns shall have power to purchase or provide for the condemnation of, pay for out of the general fund or the specific fund, as may be provided, enter upon and take any lands within or without the territorial limits of the city or town, for the following purposes:

1. For parks, commons, cemeteries, crematories, or hospital grounds.
2. For sites for city halls, community centers, and juvenile playgrounds.
3. For establishing, laying off, widening, straightening, narrowing, extending, and lighting streets, avenues, highways, alleys, wharves, landing places, public squares, public grounds, public markets and market places, and public slaughterhouses.
4. For garbage disposal plants and dump grounds.
5. For the control of streams and surface waters flowing into sewers within the city or town, or necessary for sewer outlets, or sewage disposal plants. They may also condemn easements in lands for the same purposes.
6. For any other purpose provided in this title, and in all cases where such purchase or condemnation may be authorized. 1. [C., '97, § 880; S., '13, § 741-s; S. S., '15, § 880; 40 Ex. G. A., H. F. 176, § 1.] 2. [S. S., '15, §§ 741-d, 879-t; 37 G. A., ch. 51, § 6; 37 G. A., ch. 182, § 1; 39 G. A., ch. 21, § 1; 40 Ex. G. A., H. F. 176, § 1.] 3. [R., '60, § 1064; C., '73, §§ 464, 470; C., '97, § 880; S. S., '15, § 880; 40 Ex. G. A., H. F. 176, § 1.] 4. [C., '97, § 881; S. S., '15, § 881; 40 Ex. G. A., H. F. 176, § 1.] 5. [C.,

- 6201. Streets—conditions prescribed.
- 6202. Limitations.
- 6203. Proceedings for condemnation.

PURCHASE AND DISPOSAL

- 6204. Purchase at execution sale.
- 6205. Disposal of unsuitable lands.
- 6206. Disposal of lands and streets.

'97, § 881; S. S., '15, § 881; 40 Ex. G. A., H. F. 176, § 1.] 6. [R., '60, § 1064; C., '73, §§ 464, 470; C., '97, § 880; S. S., '15, § 880; 40 Ex. G. A., H. F. 176, § 1.]

6196. *Gravel pits.* They shall have the power to purchase or provide for the condemnation of, pay for out of the general fund, the grading fund, or the highway or poll taxes of said city or town, or partly from each of said funds, lands within or without the territorial limits of the city or town, including a suitable roadway thereto by the most reasonable route, for the purpose of obtaining gravel, stone, or other suitable material with which to improve the streets and alleys of said city or town. [S., '13, § 2024-j; 40 Ex. G. A., H. F. 176, § 2.]

6197. *Libraries.* In any city or town in which a free library has been established, the board of library trustees may condemn real estate in the name of the city or town for the location of library buildings and branch libraries, and for the purpose of enlarging the grounds thereof. [S., '13, § 729-b; 40 Ex. G. A., H. F. 176, § 3.]

6198. *Lands for railway purposes.* They shall have power to acquire by purchase or condemnation, for the purpose of donating and to donate to any railway company owning a line of railroad in operation or in process of construction in such city or town, sufficient land for depot grounds, engine houses, and machine shops for the construction and repair of engines, cars, and other machinery necessary to the convenient use and operation of said railroad. [C., '97, § 885.]

6199. Election required. Such donation or appropriation of funds to procure lands therefor can only be made upon a petition to the council, signed by a majority of the resident freehold taxpayers of the city or town, asking the same and fixing the sum which shall be thus appropriated. Upon the presentation of the petition, the council shall call a special election, at which the question of the proposed donation shall be submitted to the voters. The clerk shall prepare the ballots and the election shall be held in the manner provided for in the title on elections. [C., '97, § 886.]

6200. Purchase — payment of damages. If there shall be a two-thirds majority in favor of the donation, the council shall determine the lands to be donated by metes and bounds, the amount to be appropriated for procuring the same, not exceeding the sum named in the petition, and in the name of the city or town may acquire the same by purchase, or by the payment of the estimated damages in case the same or any part thereof shall be taken in the name of the railway corporation under condemnation proceedings as authorized by law. [C., '97, § 886.]

6201. Streets—conditions prescribed. The council may also vacate and convey all streets and alleys within the boundaries of such site, and prescribe the terms and conditions upon which the grant is made, which shall be binding upon the company accepting it. [C., '97, § 886.]

6202. Limitations. Land set apart as a public park, square, or levee shall not be thus donated, nor shall lands occupied with buildings used for business purposes or private residences be appropriated under the provisions of the three preceding sections without the

consent of the owner or owners being first obtained. [C., '97, § 886.]

6203. Proceedings for condemnation. Proceedings for the condemnation of land as contemplated in this title shall be in accordance with the provisions relating to eminent domain and the taking of private property for public use, except that the jurors shall have the additional qualification of being freeholders of the city or town. [R., '60, §§ 1065, 1066; C., '73, §§ 469, 476, 477; C., '97, § 884; S., '13, §§ 729-c, 2024-b; 40 Ex. G. A., H. F. 176, § 4.]

NOTE: Eminent domain, see ch. 366.

PURCHASE AND DISPOSAL

6204. Purchase at execution sale. They shall have power to acquire real estate, or an interest therein, as a purchaser at an execution sale, when judgment is entered in favor of such city or town or it is otherwise interested in the proceedings. [C., '97, § 882.]

6205. Disposal of unsuitable lands. They shall have power to dispose of and convey lands unsuitable or insufficient for the purpose for which they were originally acquired; but when such lands are so disposed of, enough thereof shall be reserved for streets to accommodate adjoining property owners. Conveyances executed in accordance with this section shall extinguish all the rights and claims of the city or town existing prior thereto. [C., '73, § 470; C., '97, § 883.]

6206. Disposal of lands and streets. They shall have power also to dispose of the title or interest of such corporation in any real estate, or any lien thereon, or sheriff's certificate therefor, owned or held by it, including any street or portion thereof vacated or discontinued, however acquired or held, in such manner and upon such terms as the council shall direct. [C., '73, § 470; C., '97, § 883.]

CHAPTER 317

TAXATION

6207. General fund.
6208. Road dragging fund.
6209. City bridge fund.
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6207. General fund. The council of each city or town shall levy a tax for the year then ensuing, for the purpose of defraying its general and incidental expenses, which shall not exceed ten mills on the dollar. [R., '60, § 1124; C., '73, § 496; C., '97, § 887.]

6208. Road dragging fund. Any city having a population of less than eight thousand, and any town, may levy annually a tax of not more than one mill which shall be used only for dragging streets and roads. [S. S., '15, § 887-a; 40 Ex. G. A., S. F. 177, § 1.]

6209. City bridge fund. Cities may levy annually a tax, which shall be used only for bridge purposes, as follows:

1. Any city with a population of more than thirty-five thousand and with a meandered stream dividing its corporate limits, not exceeding four mills.

2. Other cities of the first class, not exceeding three mills.

3. Cities of the second class with a population of more than five thousand and traversed by a stream two hundred or more feet in width from shore line to shore line, not exceeding five mills. [R., '60, § 710; C., '73, § 796; C., '97, §§ 758, 888, 1303; S. S., '15 §§ 758, 1303; 37 G. A., ch. 6, § 11; 37 G. A., ch. 43, § 1; 38 G. A., ch. 237, § 54; 38 G. A., ch. 355, § 1; 40 Ex. G. A., S. F. 177, § 2.]

NOTE: Above section made applicable to special charter cities by § 6858.

6210. Agricultural lands. No land included within the limits of any city or town which shall not have been laid off into lots of ten acres or less, or which shall not subsequently be divided into parcels of ten acres or less by the extension of streets and alleys, and which shall also in good faith be occupied and used for agricultural or horticultural purposes, shall be taxable for any city or town purpose, except that said lands and all personal property necessary to the use and cultivation of said agricultural or horticultural lands shall be liable to taxation for city and town road purposes, at not exceeding five mills, and for library purposes. [C., '97, §§ 616, 890; S., '13, § 616; 40 G. A., ch. 114; 40 Ex. G. A., S. F. 177, § 3.]

NOTE: Above section made applicable to special charter cities by § 6859.

6211. Taxes for particular purposes. Any city or town shall have power to levy annually the following special taxes:

1. *Grading fund.* Not exceeding three mills, which shall be used only for the purpose of opening, widening, extending, and grading any street, highway, avenue, alley, public ground, or market place.

2. *Water fund.* Not exceeding five mills, which shall be used only to pay the amount due or to become due for water supplied under any contract. In cities of the first class, if the maximum tax is insufficient to pay such amount, the deficiency shall be paid out of the general fund.

3. *Improvement fund.* Not exceeding five mills, which shall be used only to pay for deficiencies in assessments and for plats and schedules as provided by law, and for the construction, reconstruction, and repair of any street improvement at the intersections of streets, highways, avenues, and alleys, and for one-half of the cost of such improvement at the intersections of streets, highways, avenues, and alleys not crossing, and for spaces opposite property owned by the city or town and by the United States, and for the purchase price of property purchased by the city at tax

sale and subsequent taxes assessed against such property.

4. *Drainage tax.* Such number of mills as will pay any special assessment with interest, or any installment thereof with interest, levied against any street, alley, highway, public way, or park by the board of supervisors for drainage purposes.

5. *Sewer fund.* If the city or town comprises one sewer district, not exceeding five mills, which shall be used only to pay for deficiencies in assessments as provided by law, and for the construction, reconstruction, and repair of any sewer at the intersection of streets, highways, avenues, alleys, and for one-half the cost of such sewer at the intersections of streets, highways, avenues, and alleys not crossing, and for spaces opposite property owned by the city or town and by the United States, and for the whole or any part of the construction, reconstruction, or repair of any sewer within the limits of said city or town, and for the maintenance and operation of any sewage disposal plant serving said sewer district.

6. *District sewer fund.* Within a sewer district, not exceeding five mills, which shall be used only to pay all or any part of the cost of construction, reconstruction, or repair of any sewer located and laid in that particular district, and to maintain and operate any sewage disposal plant serving such district. The funds created by this and the preceding subsection may be used to secure control of streams and surface waters flowing into sewers, sewer outlets, and disposal plants.

7. *Sewer outlet and purifying plant fund.* Not exceeding five mills, which shall be used only to construct sewer outlets and sewage purifying plants. The levy made under this subsection shall not be considered a part of the levy for sewer funds under the two preceding subsections.

8. *Fire fund.* Not exceeding one and one-half mills, which shall be used only to acquire property for the use of the fire department and to equip the same. No part of the general fund shall be used for equipping the fire department.

9. *Fire department maintenance fund.* Any city with a population of more than nine thousand, not exceeding seven mills, any city with a population of less than nine thousand and any city under the commission form of government with a population of more than ninety thousand, not exceeding three mills, and any town, not exceeding two mills, which levies shall be used only to maintain a fire department; except that cities with a population under three thousand and towns may also use the fund to purchase fire equipment.

10. *Gas light, electric light, heat, or power funds.* Any city with a population of more than five thousand, not exceeding five mills, and any city with a population of less than five thousand and any town, not exceeding seven mills, which shall be used only to pay the amount due or to become due under any contract for gas light, electric light, heat, or power, including expenses of inspection.

11. *Bond fund.* Such number of mills as will pay the interest accruing before the next annual levy on funding or refunding bonds outstanding, and such proportion of the principal that at the end of five years the sum raised shall equal at least twenty per cent of the amount of the bonds issued; at the end of ten years at least forty per cent of said amount; at the end of fifteen years at least sixty-five per cent of said amount; and at or before the date of the maturity of said bonds a sum equal to the whole amount of the unpaid interest and principal. Said funds shall be used only to meet such obligations.

12. *Water or gas works or electric plant bond fund.* Such number of mills as will pay for waterworks, gasworks, electric light and power plants in the periods and proportions set forth in the preceding subsection, which shall be used only to pay the principal of bonds issued for the construction or purchase of such plants.

13. *Cemetery purchase fund.* Not exceeding one mill, which shall be used only to pay for land acquired for cemetery purposes, and the interest accruing on the cost thereof.

14. *Cemetery fund.* Any city, not to exceed one mill, and any town, not to exceed three mills, which shall be used only for the care, preservation, and adornment of any cemetery owned or controlled by the city or town, or owned and controlled by any private or incorporated cemetery association, township, or other municipality, even though situated in an adjoining county, if actually utilized for burial purposes by the people of the city or town. Said tax may be so expended for the support and maintenance of any such cemetery after it is no longer used for the purpose of interring the dead.

15. *Comfort station fund.* When authorized to maintain comfort stations, not exceeding one-half mill, which shall be used only to defray the expense of establishing and maintaining comfort stations, or such expenses may be paid from the general fund.

16. *Garbage disposal and street cleaning fund.* Within any sanitary district, not exceeding two mills, which shall be used only to pay the cost of the collection and disposal of garbage and such other material as may become dangerous to the public health, and for the oiling and sprinkling, flushing and cleaning of streets therein.

17. *Waterworks fund.* If the authorized water rates or rentals are insufficient to meet the expense of running, operating, and repairing the waterworks owned or operated by the city or town and the interest on any bonds issued to pay for the construction, reconstruction, repair, or extension of such works, not exceeding five mills, which shall be used only to pay the deficiency.

18. *Gas or electric fund.* If the authorized rates or rentals are insufficient to meet the expense of running, operating, and repairing gas or electric light or power plants owned by the city or town, and the interest on any bonds issued to pay for the construction of such

works or plants, not exceeding five mills, which shall be used only to pay the deficiency.

19. *Library fund.* When a free public library has been established, not exceeding five mills, which shall be used only for its maintenance. The rate of levy for this and the fund created by the following subsection shall be determined and certified to the council by the board of library trustees before the first day of August in each year. The council shall make such levies accordingly.

20. *Library building fund.* When the establishment of a public library has been authorized, not exceeding three mills, which shall be used only to purchase real estate and to erect thereon a building or buildings for a public library or to pay the interest on any indebtedness incurred for that purpose and to create a sinking fund for the extinguishment of such indebtedness. When a library building has been fully completed and paid for, no further levy shall be made for that purpose. Any balance remaining in the building fund may be transferred to the maintenance fund.

21. *Library contract fund.* When a public library has not been established, not exceeding one mill, which shall be used only to secure for the inhabitants of the city or town the free use of a public library. When a majority of the resident taxpayers petition the council in writing to secure such privilege, the council shall offer to contract therefor with the designated library.

22. *Community center establishment fund.* When a community center district has been established, within such district, not exceeding three mills for not more than twenty years, which shall be used only to purchase real estate for use as a community center and to construct thereon buildings with proper equipment.

23. *Community center improvement and maintenance fund.* Within such community center district, not exceeding five mills, which shall be used only for the development, improvement, maintenance, and operation of the community center.

24. *Juvenile playground and swimming pool fund.* When any juvenile playground or swimming pool has been established, such number of mills as will liquidate, at maturity, bonds issued for its acquirement.

25. *Playground or swimming pool maintenance fund.* Not exceeding two mills, which shall be used for the maintenance, operation, and improvement of such playground or swimming pool.

26. *Hospital fund.* When a municipal hospital has been established, not exceeding three mills in cities having a population of more than twenty-two thousand, and in other cities not exceeding five mills. Such levies shall not extend for a longer period than twenty years and shall be used only for the purpose of constructing hospitals or purchasing sites therefor and for the retirement of bonds issued in payment thereof.

27. *Hospital maintenance fund.* Not to exceed five mills, which shall be used only to improve, operate, and maintain such hospital.

28. *City hall fund.* Any city with a population of more than four thousand, not exceeding two mills for not more than twenty years, and any city with a population less than four thousand and any town, not exceeding five mills for the same period, which in each case shall be used only to build a city hall and to purchase a site therefor. 1. [C., '97, § 894; S. S., '15, § 894; 37 G. A., ch. 45, § 1; 40 Ex. G. A., S. F. 177, § 5.] 2. [C., '73, § 475; C., '97, § 894; S. S., '15, § 894; 40 Ex. G. A., S. F. 177, § 5.] 3. [C., '97, § 894; S., '13, § 792-f; S. S., '15, § 894; 40 Ex. G. A., S. F. 177, § 5.] 4. [39 G. A., ch. 137, § 1; 40 Ex. G. A., S. F. 177, § 5.] 5. [C., '97, § 894; S., '13, §§ 840-a, 894; 38 G. A., ch. 59, § 1; 38 G. A., ch. 394, § 1; 40 Ex. G. A., S. F. 177, § 5.] 6. [C., '97, §§ 881, 894; S., '13, §§ 840-a, 894; S. S., '15, § 881; 38 G. A., ch. 59; 38 G. A., ch. 394, § 1; 39 G. A., ch. 179, § 1; 40 Ex. G. A., S. F. 177, § 5.] 7. [S. S., '15, § 840-g; 37 G. A., ch. 222, § 1; 40 Ex. G. A., S. F. 177, § 5.] 8. [S., '13, § 716-b; 37 G. A., ch. 151, § 1; 38 G. A., ch. 259, § 1; 40 Ex. G. A., S. F. 177, § 5.] 9. [S., '13, § 716-a; 37 G. A., ch. 131, § 1; 38 G. A., ch. 148, § 1; 38 G. A., ch. 159, § 1; 40 Ex. G. A., S. F. 177, § 5.] 10. [C., '97, § 894; S. S., '15, § 894; 37 G. A., ch. 375, § 1; 40 Ex. G. A., S. F. 177, § 5.] 11. [C., '97, § 894; S. S., '15, § 894; 40 Ex. G. A., S. F. 177, § 5.] 12. [C., '97, § 894; S. S., '15, § 894; 40 Ex. G. A., S. F. 177, § 5.] 13. [C., '97, § 880; S. S., '15, § 880; 40 Ex. G. A., S. F. 177, § 5.] 14. [C., '97, § 894; S. S., '15, § 894; 39 G. A., ch. 89, § 1; 40 G. A., ch. 113, § 1; 40 Ex. G. A., S. F. 177, § 5.] 15. [37 G. A., ch. 232, § 4; 40 Ex. G. A., S. F. 177, § 5.] 16. [S. S., '15, § 696-b; 37 G. A., ch. 367, § 1; 40 Ex. G. A., S. F. 177, § 5.] 17. [C., '73, § 475; C., '97, § 894; S. S., '15, § 894; 40 Ex. G. A., S. F. 177, § 5.] 18. [C., '97, § 894; S. S., '15, § 894; 40 Ex. G. A., S. F. 177, § 5.] 19. [C., '97, §§ 732, 894; S., '13, § 732; S. S., '15, § 894; 40 Ex. G. A., S. F. 177, § 5.] 20. [C., '97, §§ 732, 894; S., '13, § 732; S. S., '15, § 894; 40 Ex. G. A., S. F. 177, § 5.] 21. [S., '13, § 741-n; 40 Ex. G. A., S. F. 177, § 5.] 22. [37 G. A., ch. 51, § 5; 40 Ex. G. A., S. F. 177, § 5.] 23. [37 G. A., ch. 51, § 7; 40 Ex. G. A., S. F. 177, § 5.] 24. [S. S., '15, § 879-s; 40 Ex. G. A., S. F. 177, § 5.] 25. [S. S., '15, § 879-u; 40 G. A., ch. 123, § 1; 40 Ex. G. A., S. F. 177, § 5.] 26. [S., '13, §§ 741-q, 741-r; 37 G. A., ch. 48, §§ 1, 2; 40 Ex. G. A., S. F. 177, § 5.] 27. [S., '13, § 741-u; 37 G. A., ch. 48, § 3; 40 Ex. G. A., S. F. 177, § 5.] 28. [S. S., '15, § 741-e; 37 G. A., ch. 182, § 2; 40 Ex. G. A., S. F. 177, § 5.]

NOTE: Subsections 8 and 9 of above section made applicable to special charter cities by § 6860; subsection 16 made applicable by § 6861.

6212. Limitation of certain taxes. No tax authorized in subsections 2, 10, 12, 17, and 18 of the preceding section shall be levied against property lying wholly without the limits of the benefit of the works or plants therein mentioned, which limits shall be fixed by the city council. [C., '97, § 894; S. S., '15, § 894; 40 Ex. G. A., S. F. 177, § 6.]

6213. Main sewer fund. Any city of the first class shall have power to levy annually not exceeding five mills, which shall be used only to pay for the construction, reconstruction, or repair of any main sewer within the city; but the aggregate tax levied by such city in any one year for a sewer fund, district sewer fund, and main sewer fund shall not exceed eight mills. [S., '13, §§ 840-b, 840-f; 40 Ex. G. A., S. F. 177, § 7.]

6214. Park tax. Cities having a population of eighty-five thousand or more shall have power to levy annually, in addition to all other taxes for park purposes, not exceeding one-half mill, which shall be used only to purchase real estate for park, art, or memorial purposes. [38 G. A., ch. 168, § 1; 40 Ex. G. A., S. F. 177, § 8.]

NOTE: Above section made applicable to special charter cities by § 6857.

6215. Transfer of funds. Cities having a population of eight thousand eight hundred or less, and towns, may make either temporary or permanent transfers from the grading fund, improvement fund, sewer fund, the waterworks fund, gas or electric plant fund, water fund, gas or electric light or power fund, to any of said funds by resolution concurred in by a unanimous vote of the council, if approved by a judge of the district court in the county wherein such city or town is located at a hearing had on a day to be fixed by said judge. [37 G. A., ch. 126, § 1; 40 Ex. G. A., S. F. 177, § 9.]

6216. Notice of hearing—limitation. Not less than five days before the date of said hearing, notice thereof shall be given by publication in one or more newspapers published in the city or town of general circulation therein. The notice shall be addressed generally to the taxpayers of the city or town, and shall recite the substance of the resolution adopted by the council, and set forth specifically the funds from and to which the transfer is to be made, the amount of money involved, and the time when objections to the proposed transfer may be filed. Proof of publication shall be made as for the publication of original notices, and the order of the judge shall be indorsed on the original resolution and entered in the record book of the municipality as a part of the resolution. In no case shall the transfer of funds be made where as a result of the transfer, more money is placed in any one fund than would have been placed in such fund by the levy of the maximum millage provided therefor. [37 G. A., ch. 126, § 1; 40 Ex. G. A., S. F. 177, § 10.]

6217. Consolidated tax levy. In lieu of any or all of the separate annual levies for the general fund, the grading fund, the improvement fund, the city or town sewer fund, the water fund, and the gas or electric light or power fund, cities and towns may levy one tax which shall not in the aggregate exceed the total amount of taxes which such municipality might have levied therefor. The city

or town making such consolidated levy shall, prior to the first day of April thereafter, appropriate the estimated revenue from such consolidated levy, in such ratio as the council may determine, for any purpose for which such funds might have been used, but no part thereof shall be used for any other purpose. [38 G. A., ch. 112, § 1; 40 Ex. G. A., S. F. 177, § 11.]

6218. Budget-publication-objections. Whenever the power granted in the preceding section is exercised by any city or town, it shall be the duty of the council prior to the first day of April each year to make up and prepare an annual budget on the basis of estimates of the expenses of the several departments of such city or town. Such estimates shall show not only the purpose for which the consolidated levy authorized in the preceding section is to be used, but in addition thereto the purpose for which all other levies authorized to be made by said city or town are to be used, so that said budget when so made up will show all of the proposed expenditures for the ensuing year. Such budget of proposed expenditures shall be published in one or more newspapers of general circulation published in such city or town, but where no newspaper is published in such town then by posting in three public places, the publication to be at least two weeks before said budget is finally adopted by the council, and the time when such budget will be considered by the council for final adoption shall be stated in said publication. On the day thus fixed for considering said budget, full opportunity shall be given for hearing any objections or protests which any taxpayer of the city or town may desire to make to any item or items in such budget or to any omissions therefrom. [38 G. A., ch. 112, § 2.]

6219. How construed. Nothing in the two preceding sections shall be construed to affect or repeal any of the existing statutes authorizing tax levies in cities and towns. [38 G. A., ch. 112, § 3.]

6220. Levy for park purposes. The board of supervisors shall, at the time of levying county taxes, levy on all property within the city the tax certified to them by the park commissioners for said city. If such commissioners fail to certify a tax or a sufficient tax for the purpose of paying the interest on bonds issued by the commissioners for park purposes that may be due or will mature within the fiscal year next ensuing, the board of supervisors shall levy such tax as shall be necessary to pay such interest; and if such commissioners each year for fifteen years before the maturity of bonds issued by them, as provided in chapter 311, fail to certify a tax equal to one-fifteenth of the principal of such bonds over and above the amount necessary for the interest on the same, the board shall annually levy such tax as may be equal to one-fifteenth of the principal thereof, which tax

shall be set aside by the commissioners in the same manner and for the same purpose as directed in chapter 311. [C., '97, § 895.]

6221. Bridge tax. The board of supervisors of the county in which a city or town is situated shall levy a special tax on the assessable property in such city or town to aid in the construction of highway or combination bridges, when such tax shall have been voted by the city or town. [C., '97, § 896.]

6222. Surplus of tax. When a tax has been levied by any city or town to pay off a judgment against such municipality, or by any city or town or by the executive council to pay the principal and interest, or either of them, of funding or refunding bonds issued by such municipality, such tax shall not be held invalid if the rate of tax levied raises a sum in excess of the amount sought for such specific object, but the excess shall go into the general city or town funds. Money so raised is especially appropriated for such purposes, and constitutes a distinct fund in the hands of the treasurer until the obligation assumed is discharged. [C., '51, §§ 123, 124; R., '60, §§ 259, 260; C., '73, §§ 318, 319; C., '97, § 897.]

6223. Anticipation of revenue. Loans may be negotiated or warrants issued by any municipal corporation in anticipation of its revenues for the fiscal year in which such loans are negotiated or warrants issued, but the aggregate amount of such loans and warrants shall not exceed the estimated revenue of such corporations for the fund or purpose for which the taxes are to be collected for such fiscal year. [R., '60, § 1129; C., '73, § 500; C., '97, § 898.]

6224. Aiding outside highway. When a petition shall be presented to the council of any city or town, signed by one-third of the resident taxpayers thereof, asking that the question of aiding in the construction or repair of any highway leading thereto be submitted to the voters thereof, the council shall immediately give notice of a special election by posting a notice in five public places in said city or town at least ten days before said election, which shall give the time and place of holding the election, the particular highway proposed to be aided, and the proportion of the highway tax then levied and not expended, or next thereafter to be levied, to be appropriated. [C., '73, § 488; C., '97, § 899.]

NOTE: Above section and two following sections made applicable to special charter cities by § 6772.

6225. Question submitted. At this election a proposition for an appropriation of a portion of the highway tax to aid in the construction or repair of the particular highway, and the proportion of such tax proposed to be so appropriated, shall be submitted to the voters of such city or town, and the clerk shall cause the proposition to be printed and placed upon the ballots and the election shall

be conducted in the same manner as provided with respect to like or similar propositions in the title on elections. [C., '73, § 488; C., '97, § 899.]

6226. Limit on aid. If a majority of the votes polled be for adoption of the proposition, then the council may aid in the construction or repair of said highway to the extent of said appropriation, which shall not exceed fifty per cent of such tax, in the same manner as they otherwise would were said highway within the corporate limits of said city or town. No part of such tax shall be used or expended more than five miles from the limits of such city or town, and not more than twenty-five per cent thereof more than two miles from such limits. [C., '73, § 488; C., '97, § 899.]

6227. Certification of taxes and assessments—collections. All assessments and taxes of every kind and nature levied by the council, except as otherwise provided by law, shall be certified by the clerk on or before the first day of September to the county auditor, and by him placed upon the tax list for the current year, and the county treasurer shall collect all assessments and taxes so levied in the same manner as other taxes, and when delinquent they shall draw the same interest and penalties. [R., '60, §§ 1123, 1126; C., '73, §§ 495, 498; C., '97, § 902; S., '13, § 902; 40 Ex. G. A., S. F. 177, § 12.]

6228. Tax sales. Sales for such assessments and taxes when delinquent shall be made at the same time and in the same manner as such sales are made for other taxes, and should there be other delinquent taxes or assessments due from the same person, and collectible by the county treasurer, the sale shall be for all such delinquent assessments and taxes, and all the

provisions of law relating to the sale of property for delinquent taxes shall be applicable so far as may be to such sales. [R., '60, §§ 1123, 1126; C., '73, §§ 495, 498; C., '97, § 902; S., '13, § 902; 40 Ex. G. A., S. F. 177, § 13.]

6229. Taxes paid over. Before the third Monday of each month, the county treasurer shall give written notice to the mayor of each municipality in the county of the amount collected for each fund up to the first day of that month, including the amounts collected to pay bonds issued to pay the costs of public improvements for which special assessments have been levied and certified, and the mayor of each municipality shall draw an order therefor in favor of the city treasurer, countersigned by the clerk or auditor of the municipality, upon the county treasurer, who shall pay such taxes to the treasurers of the several municipalities only on such order. [R., '60, §§ 1123, 1126; C., '73, §§ 495, 498; C., '97, § 902; S., '13, § 902; 39 G. A., ch. 18, § 1; 40 Ex. G. A., S. F. 177, § 14.]

6230. Diversion of funds. Any councilman or officer of a city or town who shall participate in, advise, consent, or allow any tax or assessment levied by such city or town or by other lawful authority for city or town purposes to be diverted to any other purpose than the one for which it was levied and assessed, or who shall in any way become a party to such diversion, shall be guilty of embezzlement. [C., '97, §§ 743, 833, 894, 904; S., '13, §§ 716-a, 741-q; S. S., '15, §§ 879-u, 894; 37 G. A., ch. 51, § 7; 37 G. A., ch. 126, § 2; 37 G. A., ch. 131, § 1; 38 G. A., ch. 288, § 16; 40 Ex. G. A., S. F. 177, § 15.]

NOTE: Above section made applicable to special charter cities by §§ 6773 and 6864.

CHAPTER 318

ROAD POLL TAX

NOTE: This chapter made applicable to special charter cities by § 6897.

- 6231. Tax authorized.
- 6232. Collection—exemption.
- 6233. Action to recover.
- 6234. Exemptions.

6231. Tax authorized. Any city or town shall have the power to provide that all able-bodied male residents of the corporation, including the male officers and employees of any state institution situated within such city or town, but not including any committed inmate of such institution, between the ages of twenty-one and forty-five shall, between the first day of February and the first day of October of each year, and within fifteen days after receipt of the demand for payment by the clerk, pay in money to the street commissioner or city or town clerk a sum to be fixed by the city or

- 6235. Expenditure.
- 6236. Certification of unpaid tax.
- 6237. Action.

town council on or before February first of each year, not exceeding five dollars. [C., '73, § 487; C., '97, § 891; S., '13, § 891; 39 G. A., ch. 191; 40 G. A., ch. 131; 40 G. A., ch. 246, § 7.]

6232. Collection—exemption. It shall be the duty of the said clerk to make demand upon said resident for the payment of said poll tax, and said demand shall be made by serving a personal notice or by sending notice through the mails. Any person claiming to be exempt under the provisions of the preceding section

shall furnish the mayor or other proper officer with an affidavit showing the extent and nature of the disabilities entitling him to such exemption, and if said affidavit is approved by the city or town council then said affiant will be relieved from payment of said tax. [C., '73, § 487; C., '97, § 891; S., '13, § 891; 39 G. A., ch. 191; 40 G. A., ch. 131.]

6233. Action to recover. In case of failure to pay said sum of money as provided in the second preceding section said corporation may recover same, and penalty of not more than two dollars, by action brought in the name of such city or town in any court having jurisdiction over the subject matter of the action. [C., '73, § 487; C., '97, § 892; S., '13, § 892; 39 G. A., ch. 191; 40 G. A., ch. 131.]

6234. Exemptions. No property or wages belonging to said person shall be exempt to the defendant on an execution issued upon said judgment. [C., '97, § 892; S., '13, § 892; 39 G. A., ch. 191.]

6235. Expenditure. The tax and money so collected shall be expended upon the streets, avenues, highways, alleys, or public grounds of said corporation. [C., '97, § 892; S., '13, § 892; 39 G. A., ch. 191.]

6236. Certification of unpaid tax. All of said tax remaining unpaid on the fifteenth day of November in each year shall be certified to the county auditor at any time before the following first day of December and shall be entered by him upon the tax list of said county and treated and collected as ordinary county taxes, and shall be a lien upon all the real property of the delinquent. [C., '73, § 487; C., '97, § 892; S., '13, § 892; 39 G. A., ch. 191.]

6237. Action. The entry of such tax and penalty upon the tax list shall not prevent the bringing of an action therefor as authorized by law. Such action must be commenced within one year from the first day of October following the giving of notice for the payment of said tax. When judgment has been rendered therefor and paid in whole or in part after the same has been certified to the county auditor, the court receiving such payment shall execute duplicate receipts, exclusive of costs, if so requested, and upon filing such receipt or duplicate with the county auditor he shall make the proper entries on the tax-lists, showing the full payment of such tax and penalty, or part thereof as the case may be. [C., '73, § 487; C., '97, § 893; 40 Ex. G. A., S. F. 177, § 4.]

CHAPTER 319

INDEBTEDNESS

- 6238. Limitation.
- 6239. Purposes.
- 6240. Application of limitation.
- 6241. Election required.
- 6242. Initiation of proceedings.
- 6243. Election called.
- 6244. Notice.

6238. Limitation. No county or other political or municipal corporation shall become indebted in any manner for its general or ordinary purposes to an amount exceeding in the aggregate one and one-fourth per cent of the actual value of the taxable property within such corporation. The value of such property shall be ascertained by the last tax list previous to the incurring of the indebtedness. [S., '13, § 1306-b; 37 G. A., ch. 303, § 1; 40 Ex. G. A., H. F. 178, § 1.]

NOTE: Above section made applicable to certain special charter cities by § 6775.

6239. Purposes. Cities and towns when authorized to acquire the following named public utilities and other improvements may incur indebtedness for the purpose:

1. Of purchasing, erecting, extending, reconstructing, or maintaining and operating waterworks, gasworks, electric light and power plants, or the necessary transmission lines therefor, and heating plants.

2. Of purchasing or erecting garbage disposal plants.

- 6245. Questions submitted—manner of submission.
- 6246. Majorities required.
- 6247. Limitation.
- 6248. Issuance of bonds.
- 6249. Maturity of bonds—interest.
- 6250. Payment of bonds.
- 6251. Construction.

3. Of erecting and equipping community center houses and recreation grounds.

4. Of acquiring lands and establishing juvenile playgrounds, swimming pools, and recreation centers thereon or on lands already owned or to be leased by the city or town.

5. Of constructing city and town halls.

6. Of erecting a building or buildings for a public library.

7. Of constructing hospitals.

1. [S., '13, § 1306-b; 38 G. A., ch. 250, §§ 1, 2; 40 Ex. G. A., H. F. 178, § 2.]
2. [S. S., '15, § 696-b; 37 G. A., ch. 367, § 1; 40 Ex. G. A., H. F. 178, § 2.]
3. [37 G. A., ch. 51, § 5; 40 Ex. G. A., H. F. 178, § 2.]
4. [S. S., '15, § 879-s; 40 Ex. G. A., H. F. 178, § 2.]
5. [S. S., '15, § 741-f; 37 G. A., ch. 182, § 2; 40 Ex. G. A., H. F. 178, § 2.]
6. [C., '97, § 732; S., '13, § 732; 40 Ex. G. A., H. F. 178, § 2.]
7. [S., '13, § 741-r; 37 G. A., ch. 48, § 2; 40 Ex. G. A., H. F. 178, § 2.]

NOTE: For applicability of certain provisions of above section to special charter cities, see §§ 6762, 6763, 6764, 6774, and 6775.

6240. Application of limitation. No indebtedness for the extraordinary purposes mentioned in the preceding section shall be charged against or counted as a part of the one and one-fourth per cent available for general ordinary purposes until the other three and three-fourths per cent of the five per cent of indebtedness permitted by the constitution has been exhausted. [S., '13, § 1306-b; 37 G. A., ch. 85, § 1; 40 Ex. G. A., H. F. 178, § 3.]

NOTE: Above section made applicable to certain special charter cities by § 6775.

6241. Election required. No such indebtedness shall be incurred until authorized by an election. [C., '73, § 461; C., '97, § 727; S., '13, §§ 727, 741-r; S. S., '15, §§ 696-b, 741-g, 879-r; 37 G. A., ch. 48, § 2; 37 G. A., ch. 51, § 1; 37 G. A., ch. 367, § 1; 40 G. A., ch. 122, § 1; 40 Ex. G. A., H. F. 178, § 4.]

NOTE: Above section made applicable to special charter cities by § 6776.

6242. Initiation of proceedings. The proceedings to call such an election may be instituted by the council, except that before an election may be called for any of the following purposes a petition shall be filed with the council, requesting that such action be taken:

1. For any of the purposes mentioned in subsections 1, 4, and 7 of section 6239, the petitions shall be signed by qualified electors of the city or town equal in number to twenty-five per cent of those who voted at the last regular municipal election.

2. For the establishment of community center houses and recreation grounds, it shall be signed by fifteen per cent of the resident freeholders of the district within which the same is to be constructed. 1. [S., '13, §§ 741-v, 1306-c; S. S., '15, § 879-r; 37 G. A., ch. 303, § 2; 38 G. A., ch. 250, § 3; 40 Ex. G. A., H. F. 178, § 5.] 2. [37 G. A., ch. 51, § 3; 40 Ex. G. A., H. F. 178, § 5.]

6243. Election called. The council on receipt of any such petition shall at the next regular meeting call a special election, fixing the time and place thereof, or may submit the proposition as a special question at the next regular municipal election. The council may reject a petition for a community center, or change the area of any district petitioned for. [S., '13, § 1306-d; 37 G. A., ch. 51, § 3; 40 Ex. G. A., H. F. 178, § 6.]

6244. Notice. It shall give notice of any election held under the provisions of this chapter by publication once each week for four consecutive weeks in some newspaper published in the city or town, or if none be published therein, in a newspaper published in the county and of general circulation in the city or town. The election shall be held on a day not less than five nor more than twenty days after the last publication of notice. [S., '13, § 1306-d; S. S., '15, § 741-h; 40 Ex. G. A., H. F. 178, § 7.]

6245. Questions submitted—manner of submission. Each proposition mentioned in section 6239 shall be submitted on a separate ballot, but more than one of such propositions may be so submitted at the same election, and as a part of each proposition so submitted there shall be stated on the ballot: The amount of indebtedness to be contracted, if any; the amount of bonds to be issued, if any; the annual rate of tax to be levied, if any, for the payment of such bonds and interest thereon. The form of the ballot shall be substantially as follows:

Shall (Here name city or town.)
 (Here state the particular proposition to be voted upon.) and contract indebtedness for such purpose not exceeding \$. and issue bonds for such purpose not exceeding \$. and levy tax annually upon the taxable property in (Here name YES
 of city or town), not exceeding NO
 mills per annum for the
 payment of such bonds and the
 interest thereon?

[S., '13, § 1306-d; S. S., '15, §§ 741-h, 879-r; 37 G. A., ch. 51, § 4; 37 G. A., ch. 181, § 1; 37 G. A., ch. 303, § 3; 38 G. A., ch. 250, § 4; 40 G. A., ch. 122, § 2; 40 Ex. G. A., H. F. 178, § 8.]

6246. Majorities required. A majority of all the legal votes cast on the particular question at the election shall be sufficient to authorize the municipality to contract the indebtedness, except that if the question submitted is one in connection with waterworks, gasworks, electric light or power plants, heating plants, or the establishment of a hospital, the affirmative vote shall also be as large as a majority of all the legal votes cast at the preceding municipal election. [C., '97, § 727; S., '13, §§ 727, 741-q, 1306-e, 741-v; S. S., '15, §§ 696-b, 741-g, 879-r; 39 G. A., ch. 51, § 4; 40 Ex. G. A., H. F. 178, § 9.]

NOTE: Above section made applicable to special charter cities by § 6776.

6247. Limitation. If a question for the establishment of community center houses or juvenile playgrounds fails to secure the requisite majority it shall not again be submitted at an election for two years. [S. S., '15, § 879-r; 37 G. A., ch. 51, § 4; 40 Ex. G. A., H. F. 178, § 10.]

6248. Issuance of bonds. If the municipality is authorized to incur the indebtedness, the council shall issue bonds and make provisions for the payment thereof with interest. [S., '13, §§ 741-r, 741-v; S. S., '15, § 696-b, 741-f, 879-s; 37 G. A., ch. 51, § 5; 37 G. A., ch. 220, § 1; 37 G. A., ch. 367, § 1; 38 G. A., ch. 247, § 1; 40 Ex. G. A., H. F. 178, § 11.]

6249. Maturity of bonds—interest. Bonds issued under the provisions of this chapter shall bear interest at the rate of not more than five per cent per annum and shall become due in not more than twenty years after issuance and

may be issued serially. [C., '97, § 726; S., '13, §§ 741-r, 1306-e; S. S., '15, § 726; 37 G. A., ch. 51, § 5; 37 G. A., ch. 367, § 1; 40 G. A., ch. 108, § 1; 40 Ex. G. A., H. F. 178, § 12.]

NOTE: Above section made applicable to special charter cities by § 6777.

6250. Payment of bonds. Bonds for garbage disposal plants shall be paid from the general fund of the city or town, but other bonds

shall be paid from the particular fund created therefor. [C., '97, § 881; S., '13, § 741-q; S. S., '15, § 881; 37 G. A., ch. 51, § 5; 40 Ex. G. A., H. F. 178, § 13.]

6251. Construction. Nothing in this chapter shall be construed to repeal chapter 225 or as being applicable to bonds issued under section 6155. [S., '13, § 1306-f; 40 Ex. G. A., H. F. 178, § 14.]

CHAPTER 320

BONDS

NOTE: This chapter made applicable to special charter cities by § 6778.

- 6252. Funding.
- 6253. Form.
- 6254. Signing.
- 6255. Resolution required.
- 6256. Registration.
- 6257. Monthly reports.
- 6258. Sale or exchange.

6252. Funding. Cities and towns may settle, adjust, renew, or extend the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars or upwards, whether evidenced by bonds, warrants, or judgments, and may fund or refund the same and issue coupon bonds therefor; but no bonds shall be issued under this section for any other purpose than is above authorized. [C., '97, § 905.]

6253. Form. Such bonds shall be issued in sums of not less than one hundred dollars nor more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding five per cent per annum payable annually or semiannually, and shall be substantially in the following form, but subject to changes that will conform them to the resolution of the council, to wit:

The city (or town) of in the state of Iowa, for value received promises to pay to bearer dollars, lawful money of the United States of America, on, with interest on said sum from the date hereof until paid at the rate of per cent per annum, payable annually on the first day of and in each year, on presentation and surrender of the interest coupons hereto attached; both principal and interest payable at

This bond is issued by the city (or town) of, pursuant to the provisions of section, chapter, of the code of Iowa, and in conformity to a resolution of the council of said city (or town) duly passed, on the day of, And it is hereby represented and certified that all things requisite according to the laws and constitution of the state of Iowa to be done precedent to the lawful issue of this bond have been performed as required by law, and that

- 6259. Delivery—cancellation—sale—proceeds.
- 6260. Taxes to pay.
- 6261. Anticipation of special taxes.
- 6262. How denominated.
- 6263. Assessments and levies pledged.
- 6264. Limitation of action.
- 6265. Maturity of municipal bonds.

the total indebtedness of said city, including this bond, does not exceed the constitutional or statutory limitations.

In testimony whereof said city (or town) by its council has caused this bond to be signed by its mayor and attested by its auditor (or clerk), with the seal of said city (or town) attached, this day of

.....
Mayor of the city (or town)
of

Attest:

.....
Clerk of the city (or town) of
(Form of Coupon.)

The treasurer of the city (or town) of, Iowa, will pay to bearer dollars, on, at, for annual interest on its bond, dated No.

Attest:

.....
Clerk of the city (or town) of
[C., '97, § 906; 40 G. A., ch. 108, § 8; 40 Ex. G. A., S. F. 179, § 1.]

6254. Signing. Said bonds shall be numbered consecutively, signed by the mayor, and attested by the auditor or clerk as the case may be, with the seal of the city (or town) affixed. The interest coupons attached thereto shall be attested by the signature of the clerk, or a facsimile thereof. [C., '97, § 907; 40 Ex. G. A., S. F. 179, § 2.]

6255. Resolution required. All bonds issued under the provisions of this chapter shall be issued pursuant to, and in conformity with, a resolution adopted by the council of said city or town, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear,

and whether payable annually or semiannually, the place where the principal and interest shall be payable, and when to become due, and such other provisions, not inconsistent with law, in reference thereto, as the council shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the council, and when so entered shall constitute a contract between the city or town and the purchasers or holders of said bonds. [C., '97, § 908; 40 Ex. G. A., S. F. 179, § 3.]

6256. Registration. When bonds have been executed as aforesaid, they shall be delivered to the treasurer of the city or town, and his receipt taken therefor, who shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and, if exchanged, what evidences of debt were received therefor, which record shall at all times be open to the inspection of the citizens of said city or town. The treasurer shall thereupon certify upon the back of each bond as follows: "This bond duly and properly registered in my office this day of"

Treasurer of the city (or town) of"
and shall stand charged on his official bond with all bonds so delivered to him, and the proceeds thereof. [C., '97, § 909.]

6257. Monthly reports. The treasurer shall report under oath to the council of said city or town, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report, and the date of such sale or exchange, and, when exchanged, a description of the indebtedness for which exchanged. [C., '97, § 909.]

6258. Sale or exchange. The council may provide by resolution for the exchange of such bonds or any part thereof, for legal indebtedness of the city or town evidenced by bonds, warrants, or judgments which were outstanding when the resolution authorizing such bonds was passed; or said council may by resolution order said bonds sold as provided by law for the sale of public bonds. [C., '97, § 910; 39 G. A., ch. 43, § 1; 40 Ex. G. A., S. F. 179, § 4.]

6259. Delivery — cancellation — sale — proceeds. After registration, the treasurer shall deliver bonds to the purchasers thereof upon payment therefor. When bonds are exchanged for indebtedness, he shall at once cancel the warrants or bonds or secure proper credits therefor on judgments and the cancellation of such judgments as are paid. Bonds shall not be exchanged for less than par plus accrued interest. The proceeds of the sale of such bonds shall be used only for the purpose for which such bonds were issued. [C., '97, § 910; 39 G. A., ch. 43, § 1; 40 Ex. G. A., S. F. 179, § 5.]

6260. Taxes to pay. Cities and towns issuing bonds under this chapter shall levy taxes for the payment of the principal and interest thereof, in accordance with the provisions of the chapter relating to taxation. [C., '97, § 911; 40 Ex. G. A., S. F. 179, § 6.]

6261. Anticipation of special taxes. Any city or town may anticipate the collection of taxes authorized to be levied for the grading fund, city improvement fund, district sewer fund, city sewer fund, the fund for equipping fire departments, the fund for the construction of sewer outlet and purifying plants, the fund for paving roadways, and the fund for flood protection, and cities of the first class may so anticipate the taxes used for the fund for the construction of main sewers, and for that purpose may issue certificates or bonds with interest coupons. [C., '97, § 912; S., '13, §§ 716-d, 840-e, 849-h, 912-a; S. S., '15, §§ 840-g, 840-p; 37 G. A., ch. 222, § 1; 38 G. A., ch. 168, § 1; 38 G. A., ch. 285, § 16; 40 Ex. G. A., S. F. 179, § 7.]

6262. How denominated. Such certificates and bonds shall be respectively denominated city grading certificates or bonds, city improvement certificates or bonds, district sewer certificates or bonds of the particular sewer district, city sewer certificates or bonds of said city, fire department equipment certificates or bonds, sewer outlet and purifying plant certificates or bonds, paved roadway certificates or bonds, flood protection certificates or bonds, and main sewer certificates or bonds, and all the provisions of this chapter shall apply to such certificates, bonds, and coupons, with such changes only as are necessary to adapt them thereto. [C., '97, § 912; S., '13, § 840-e; 40 Ex. G. A., S. F. 179, § 8.]

6263. Assessments and levies pledged. Said certificates or bonds and interest thereon shall be secured by said assessments and levies, and shall be payable only out of the respective funds named, pledged to the payment of the same, and no certificates or bonds shall be issued in excess of taxes authorized and levied to secure the payment of the same. It shall be the duty of said city to collect said several funds with interest thereon, and to hold the same separate and apart, in trust, for the payment of said certificates or bonds and interest, and to apply the proceeds of said funds pledged for that purpose to the payment of said certificates or bonds and interest. [C., '97, § 912; S., '13, §§ 716-a, 716-e; S. S., '15, § 840-g; 40 Ex. G. A., S. F. 179, § 9.]

6264. Limitation of action. No action shall be brought questioning the legality of any of the bonds authorized by this chapter, waterworks bonds, gasworks bonds, or electric light or power plant bonds, from and after three months from the time the same are ordered issued by the proper authority. [C., '97, § 913.]

6265. Maturity of municipal bonds. Cities of the first class, including cities under com-

mission form of government, when issuing bonds for the purchase of real estate for park and other municipal purposes, are hereby authorized to cause portions of said bonds to

become due at different definite periods, but none of such bonds so issued shall be due and payable in more than fifty years from date. [37 G. A., ch. 7, § 1.]

CHAPTER 321

PLATS

NOTE: This chapter made applicable to special charter cities by § 6780.

6266. Subdivisions or additions.
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 6268. Conveyances according to plat.
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 6282. Streets, alleys, and public grounds.
 6283. Correction of plat.
 6284. Vacation by lot owners—petition—notice.
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 6287. Public lands.

6266. Subdivisions or additions. Every original proprietor of any tract or parcel of land, who has subdivided, or shall hereafter subdivide the same into three or more parts, for the purpose of laying out a town or city, or addition thereto, or part thereof, or suburban lots, shall cause a plat of such subdivisions, with references to known or permanent monuments, to be made, giving the bearing and distance from some corner of a lot or block in said town or city to some corner of the congressional division of which said town, city, or addition is a part, which shall accurately describe all the subdivisions thereof, numbering the same by progressive numbers, giving their dimensions by length and breadth, and the breadth and courses of all the streets and alleys established therein. [C., '73, § 559; C., '97, § 914.]

6267. Covenant of warranty. The duty to file for record a plat as provided in the preceding section shall attach as a covenant of warranty, in all conveyances of any part or parcel of such subdivisions, by the original proprietors against any and all assessments, costs, and damages paid, lost, or incurred by any grantee or person claiming under him, in consequence of the omission on the part of said proprietor to file such plat. [C., '73, § 559; C., '97, § 914.]

6288. Replatting.
 6289. Plat by auditor.
 6290. Execution and filing—effect.
 6291. Costs and expenses.
 6292. Collection or assessment of costs.
 6293. Platting for assessment and taxation.
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 6295. Insufficiency of description—plat ordered.
 6296. Appeal.
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 6299. Requirements.
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 6301. Conditions—jurisdiction.
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 6304. Notice of resurvey.
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 6306. Contest—decree.
 6307. Sale or lease without plat.
 6308. Public squares transferred for school purposes.
 6309. Manner of transfer.

6268. Conveyances according to plat. Description of lots or parcels of land in such subdivisions according to the number and designation thereof on said plat, in conveyances or for the purposes of taxation, shall be valid. [C., '73, § 559; C., '97, § 914.]

6269. Streets and blocks. The plat of any addition to any city or town or subdivision of any part or parcel of lands lying within or adjacent to any city or town shall be divided by streets into blocks, and such blocks and streets shall conform as nearly as practicable to the size of blocks and the widths of streets therein, and shall be extensions of the existing system of streets. [C., '73, § 559; C., '97, § 916; S., '13, § 916; 40 Ex. G. A., ch. 78, § 1.]

6270. Grade of streets. The council may require the owner of the land to bring all streets to a grade acceptable to the council before the plat is approved. [38 G. A., ch. 241, § 1; 40 Ex. G. A., ch. 78, § 1.]

6271. Alleys. It may require alleys to be platted separating abutting lots and if so platted, the alleys shall conform as nearly as practicable to the width of alleys in the city or town and shall be extensions of the existing system of alleys. [S., '13, § 916; 40 Ex. G. A., ch. 78, § 1.]

6272. Filing—approval. All such plats, except subdivisions of less than one block, shall be filed with the clerk of the city or town and when so filed the council within a reasonable time shall consider the same, and shall, if it is found to conform to the provisions of the three preceding sections, by resolution approve the plat and direct the mayor and clerk to certify the resolution which shall be affixed to the plat. [C., '97, § 916; S., '13, § 916; 40 Ex. G. A., ch. 78, § 2.]

6273. Acknowledgment. Each plat shall be accompanied by a correct description of the land or parcel of land subdivided and by a statement to the effect that the subdivision as it appears on the plat is with the free consent and in accordance with the desire of the proprietor, signed and acknowledged by such proprietor and his spouse, if any, before some officer authorized to take the acknowledgment of deeds. [C., '73, § 560; C., '97, § 915; S., '13, § 915; 40 Ex. G. A., ch. 78, § 3.]

6274. Abstract of title—opinion—certificates. Every plat shall have attached thereto a complete abstract of title accompanied by an opinion from an attorney at law showing that the fee title is in the proprietor and that the land platted is free from encumbrance, or is free from encumbrance other than that secured by the bond provided for in the second following section, and a certified statement from the treasurer of the county in which the land lies that it is free from taxes, and from the clerk of the district court that it is free from all judgments, attachments, mechanics' or other liens as appears by the record in his office, and from the recorder of the county that the title in fee is in such proprietor and that it is free from encumbrance or free from encumbrance other than that secured by the bond provided for in the second succeeding section, as shown by the records of his office. [C., '97, § 915; S., '13, § 915; 40 Ex. G. A., ch. 78, § 4.]

6275. Encumbrances — payment—creditor's refusal. If the land so platted is encumbered with a debt certain in amount and which the creditor will not accept with accrued interest to the date of proffered payment if it draws interest, or with a rebate of six per cent per annum if it draws no interest, or if the creditor cannot be found, then such proprietor, and if a corporation, its proper officer or agent, may make an affidavit stating either that the proprietor offered to pay the creditor the full amount of his debt, or the debt with the rebate, as the case may be, and that he would not accept the same, or that he cannot be found. [C., '97, § 915; S., '13, § 915; 40 Ex. G. A., ch. 78, § 5.]

6276. Encumbrance—bond. The proprietor shall then execute and file with the recorder a bond in double the amount of the encumbrance, which bond shall be approved by the recorder and clerk of the district court. The bond shall run to the county and be for the

benefit of purchasers of land subdivided by the plat and shall be conditioned for the payment of the encumbrance, and the cancellation thereof, of record as soon as practicable after the same becomes due and to hold all purchasers and those claiming under them forever harmless from such encumbrance. [C., '97, § 915; S., '13, § 915; 40 Ex. G. A., ch. 78, § 6.]

6277. Record—filing The signed and acknowledged plat, the abstract, and the attorney's opinion, together with the certificates of the clerk, recorder, and treasurer, and the affidavit and bond, if any, together with the certificate of approval of the council, shall be entered of record in the plat book in the auditor's office. When so entered, the signed and acknowledged plat shall be entered of record in the office of the county recorder, and shall be of no validity until so filed. [C., '51, §§ 635, 636; R., '60, §§ 1019, 1020; C., '73, § 560; C., '97, §§ 915, 917; S., '13, § 915; 40 Ex. G. A., ch. 78 § 7.]

6278. Effect of record. Such acknowledgment and recording shall be equivalent to a deed in fee simple of such portion of the premises platted as is set apart for streets or other public use, or as is dedicated to charitable, religious, or educational purposes. [C., '51, § 637; R., '60, § 1021; C., '73, § 561; C., '97, § 917; 40 Ex. G. A., ch. 78, § 7.]

6279. Change of name of street. Cities and towns shall have authority to change by ordinance the name of a platted street. The mayor and city or town clerk shall certify and file the ordinance, after its passage, with the county recorder and county auditor in the county where the said city or town is located, which shall be entered of record in the recorder's office and a reference made on the margin of the original plat referring to the record of such change of name. [S., '13, § 917-a.]

6280. Vacation by proprietor before sale. Any such plat may be vacated by the proprietor thereof, at any time before the sale of any lots, by a written instrument declaring the same to be vacated, executed, acknowledged, and recorded in the same office with the plat to be vacated, and the execution and recording of such writing shall operate to annul the plat so vacated, and to divest all public rights in the streets, alleys, and public grounds described therein. In cases where any lots have been sold, the plat may be vacated as in this chapter provided by all the owners of lots joining in the execution of the writing aforesaid. [C., '73, § 563; C., '97, § 918.]

6281. Partial vacation by proprietor. Any part of a plat may be thus vacated, provided it does not abridge or destroy any right or privilege of any proprietor in said plat, but nothing contained in this section shall authorize the closing or obstruction of highways. [C., '73, § 564; C., '97, § 919.]

6282. Streets, alleys, and public grounds. When any part of a plat is vacated, the

proprietors of the lots may inclose the streets, alleys, and public ground adjoining them in equal proportion, except as provided in sections 6286 and 6287. [C., '73, § 565; C., '97, § 919.]

6283. Correction of plat. The recorder in whose office the plats are recorded shall write across that part of the plat so vacated the word "vacated", and make a reference on the same to the volume and page in which the instrument is recorded. [C., '73, § 566; C., '97, § 919.]

6284. Vacation by lot owners—petition—notice. Whenever the owners of any tract of land which has been platted into town lots, and the plat of which has been recorded, shall desire to vacate the plat or a part thereof, a petition, signed by all the owners of it or the part to be vacated, shall be filed in the office of the clerk of the district court of the county in which the land is situated, returnable at the ensuing term, and notice thereof given at least four weeks, by posting notices in three conspicuous places in the town where the vacation is prayed, and one upon the door of the courthouse of the county. [C., '97, § 920.]

6285. Time of hearing—notice. At the term of court next following the filing of the petition and notice, the court shall fix a time for hearing the petition, and notice of the day so fixed shall be given by the clerk in some newspaper published in the county at least one week before the day appointed for the hearing. [C., '97, § 920.]

6286. Decree. At the hearing of the petition, if it shall appear that all the owners of lots in the plat or part thereof to be vacated desire the vacation, and there is no valid objection thereto, a decree shall be entered vacating such portion of the plat, and the streets, alleys, and avenues therein, and for all purposes of assessment such portion of the town shall be as if it had never been platted into lots; but if any street as laid out on the plat shall be needed for public use, it shall be excepted from the order of vacation and shall remain a public highway. [C., '97, § 920.]

6287. Public lands. Vacations made under this chapter shall not be construed to affect any lands lying within any city or town which have been dedicated or deeded to the public for parks or other public purposes. [C., '97, § 920.]

6288. Replatting. The owner of any lots in a plat vacated may cause the same and a proportionate part of the adjacent streets and public grounds to be replatted and numbered by the county surveyor in the same manner as is required for platting in the first instance, and when such plat is acknowledged by such owner, and is recorded in the recorder's office of the county, such lots may be conveyed and assessed by the numbers given them on such plat. [C., '73, § 567; C., '97, § 921.]

6289. Plat by auditor. Whenever the original proprietor of any subdivision of land has sold or conveyed any part thereof, or invested the public with any rights therein, and has failed and neglected to execute and file for record a plat as provided in this chapter, the county auditor shall by mail or otherwise notify some or all of such owners, and demand its execution. If such owners, whether so notified or not, fail and neglect for thirty days after the issuance of such notice to execute and file said plat for record, the auditor shall cause one to be made, making any survey necessary therefor. [C., '73, § 568; C., '97, § 922; S., '13, § 922; 40 Ex. G. A., ch. 78, § 8.]

6290. Execution and filing—effect. Said plat shall be signed and acknowledged by the auditor, who shall certify that he executed it by reason of the failure of the owners named to do so, and file it for record in his office and in the office of the county recorder, and when so filed it shall have the same effect as if executed, acknowledged, and recorded by the owners. [C., '73, § 568; C., '97, § 922; S., '13, § 922; 40 Ex. G. A., ch. 78, § 9.]

6291. Costs and expenses. A correct statement of the costs and expenses of such plat, survey, and record, verified by oath, shall be by the auditor laid before the board of supervisors, which shall allow the same. [C., '73, § 568; C., '97, § 922; S., '13, § 922; 40 Ex. G. A., ch. 78, § 10.]

6292. Collection or assessment of costs. The auditor shall at the same time assess the amount pro rata upon the several subdivisions of said tract, lot, or parcel so subdivided, and it shall be collected in the same manner as general taxes, and shall go to the general county fund; or said board may direct suit to be brought in the name of the county to recover from the original proprietor such cost and expense. [C., '73, § 568; C., '97, § 922; S., '13, § 922; 40 Ex. G. A., ch. 78, § 11.]

6293. Platting for assessment and taxation. Whenever a congressional subdivision of land of one hundred sixty acres or less, or any lot or subdivision, is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof can not, in the judgment of the county auditor, be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the same, he shall cause to be made and recorded in his office and the office of the county recorder a plat of such tract or lot with its several subdivisions, including and replatting in such plat such other plats or parts thereof included within the same lot or congressional subdivision of land as may seem to him to be required in accordance with the provisions of this chapter, proceeding as directed in the four preceding sections, and all of their provisions shall govern. [C., '73, § 569; C., '97, § 923; S., '13, § 923.]

6294. Appeal. The owners of said land shall have the same right of appeal to the board of supervisors as is provided in sections 6296 and 6297 in the case of warranty deeds, and under the same conditions as to notice and hearing; provided, however, that parties aggrieved shall have sixty days within which to appeal. [39 G. A., ch. 13, § 1.]

6295. Insufficiency of description—plat ordered. Every conveyance of land in this state shall be deemed to be a warranty that the description therein contained is sufficiently definite and accurate to enable the auditor to enter the same on the plat book required to be kept; and when there is presented for entry on the transfer book any conveyance in which the description is not sufficiently definite and accurate, the auditor shall note such fact on the deed, with that of the entry for transfer, and shall notify the person presenting it that the land therein is not sufficiently described, and must be platted within thirty days thereafter. [C., '73, § 570; C., '97, § 924; S., '13, § 924.]

6296. Appeal. Any person aggrieved by the opinion of the auditor may within said thirty days appeal therefrom to the board of supervisors, by giving notice thereof in writing, and thereupon no further proceeding shall be taken by the auditor. [C., '73, § 570; C., '97, § 924; S., '13, § 924.]

6297. Hearing. At its next session the board of supervisors shall determine said matter and direct whether the plat shall be executed and filed, and within what time. [C., '73, § 570; C., '97, § 924; S., '13, § 924.]

6298. Auditor to prepare plat. If the grantor in such conveyance shall neglect for thirty days thereafter to file for record a plat thereof, and of the appropriate congressional subdivision in which the same is found, duly executed and acknowledged as required by the auditor, or, in case of appeal, as directed by the board of supervisors, then the auditor shall proceed as is provided in this chapter, and cause such plat to be made and recorded in his office and the office of the county recorder, and thereupon the same result shall follow as provided in section 6293. [C., '73, § 570; C., '97, § 924; S., '13, § 924.]

6299. Requirements. Such plat shall describe said tract and any other subdivisions of the smallest congressional subdivision of which the same is part, numbering them by progressive numbers, setting forth the courses and distances, the number of acres, and such other memoranda as is necessary; and descriptions of such lots or subdivisions according to the number and designation thereof on said plat shall be deemed sufficient for all purposes. [C., '73, § 570; C., '97, § 924; S., '13, § 924.]

6300. Resurvey of town plats. In all cases where the original plat of any city, town, or village, or any addition thereto, has been or

may be lost or destroyed after the sale and conveyance of any subdivision, block or lot thereof by the original proprietor and before the same shall have been recorded, or the property so platted has been indefinitely located or the plat is materially defective, any three persons owning real property within the limits of such plat may have the same resurveyed and replatted, and such plat recorded as hereinafter directed. [C., '97, § 925; 40 Ex. G. A., ch. 78, § 12.]

6301. Conditions—jurisdiction. In no case shall such plat or replat be made and recorded as hereinafter directed, without the consent in writing, endorsed thereon, of the original proprietor, if he be alive and known, nor before an order has been entered by the district court upon application of the parties desiring a replat to be made, that such replat is necessary. The court shall have jurisdiction of the matter upon proof of publication of notice of the application for at least two weeks in some newspaper of general circulation in the city or town. [C., '97, § 925; 40 Ex. G. A., ch. 78, § 12.]

6302. How resurvey made. The county surveyor of any county in which is situated any city, town, village, or addition thereto, as contemplated in this chapter, may, and upon payment of his legal fees by any person desiring the same must, make a resurvey of such city, town, village, or addition, or any portion, and plat thereof, which plat shall conform as near as may be with the original lines of the parcel or tract so resurveyed, and be made in all respects in accordance with the provisions of this chapter. [C., '97, § 926; S., '13, § 926.]

6303. Power of surveyor. In making a resurvey and plat, the surveyor may summon witnesses, administer oaths, and take and hear evidence touching the original plat lines and subdivisions, whether the original proprietor is dead, and any other matter which may assist in arriving at and establishing the true lines and boundaries. [C., '97, § 926; S., '13, § 926.]

6304. Notice of resurvey. No resurvey shall be made except upon notice to be given by the surveyor by a publication of the contemplated resurvey once each week for four consecutive weeks in some newspaper printed in the county. [C., '97, § 926; S., '13, § 926.]

6305. Plat certified and filed—effect. When the surveyor has completed the plat, he shall attach his certificate thereto, to the effect that it is a just, true, and accurate plat of said city, town, village, or addition so surveyed by him; which shall be filed for record in the office of the recorder of the proper county, and from the date of such filing it shall be treated in all courts of this state as though the same had been made by the original proprietor thereof. [C., '97, § 927.]

6306. Contest—decree. Any person may at any time within six months from the date of its

filing for record, commence an action in equity against the persons employing the surveyor, setting up his cause of complaint and asking that such record be canceled. If it appears on the trial that the city, town, village, or addition was originally laid out and platted; that the original proprietor had sold any or all of the lots thereof; that he intended to dedicate to the public the streets, alleys, or public squares therein; that the plat thereof has never been recorded, but is lost; that the plat was indefinitely located or materially defective; that the proprietor is dead or his place of residence unknown; and that the re-survey and plat for record is a substantially accurate survey and plat of the original plat of such city, town, village, or addition, then the action shall be dismissed at the cost of the complainants; otherwise the court shall set aside said plat and cancel the same of record at the cost of the defendant. [C., '97, § 925; 40 Ex. G. A., ch. 78, § 13; 40 Ex. G. A., S. F. 182, § 39.]

6307. Sale or lease without plat. Any person who shall dispose of or offer for sale or lease any lots in any town, or addition to any town or city, until the plat thereof has been acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot and part of lot sold or disposed of, leased, or offered for sale. [R., '60, § 1027; C., '73, § 572; C., '97, § 930.]

6308. Public squares transferred for school purposes. The people of any town located wholly within an independent school district, wherein is situated a public square or plat of ground deeded or dedicated to the town or public, may transfer or rededicate to said school district such square or plat for the purposes of a public school lot, to be used for the erection thereon of a public schoolhouse, or for playgrounds in connection with such schoolhouse. [C., '97, § 931.]

6309. Manner of transfer. When a plat or lot of the character described in the preceding section is located in such town, and one-half of the resident voters thereof, according to the last census, shall petition the mayor and council, asking them to submit to the voters of the town, at a general or special election, the question whether or not such public plat or lot shall be transferred to such independent district and dedicated and used for school pur-

poses, they shall submit the question to the voters of the town, in accordance with the prayer of said petition, after giving ten days' notice in writing or printing thereof, in which the proposition submitted shall be clearly set forth and signed by the mayor, three of which notices shall be posted in public and conspicuous places in the town, and one published in the last two issues preceding such election of a weekly newspaper published therein, or, if there be none, then in the weekly newspaper published elsewhere in the county, having the largest circulation in said town. The notice shall also state the manner of voting, which shall be by ballot. The ballot shall contain the words: "Shall the proposition to transfer lot (or block, or square, as the case may be, describing it), for the purposes of a public schoolhouse lot, be adopted?" Such election shall be conducted as ordinary town elections are, under the supervision of the town authorities, who shall canvass the vote as provided in other cases. If it shall appear that two-thirds of the votes cast at such election are in favor thereof, then such transfer shall be complete, and the lot, block, or square may be appropriated and used for the purposes indicated by said vote, and shall be no longer held for any other purpose.

In the event that any such town shall have discontinued its organization or shall have failed to exercise its municipal powers and elect officers for a period of more than ten years, then the petition hereinbefore provided for may be presented to the board of directors within such school corporation, whereupon, if signed by one-third of the resident electors thereof, it shall be the duty of said board within ten days after the filing of the same to call an election in said district for which they shall give the same notices as required in sections 4195 and 4197, at which election the proposition submitted shall be in the same form as in the instance of a submission of such proposition in the case of a town election, and such election shall be held as provided for the holding of other school elections. If it shall appear that a majority of the votes cast at such election are in favor of such proposition, then a transfer of such public square or plat of ground shall be complete and such lot, plat, block, or square may be appropriated and used for the purposes indicated by said vote and shall be no longer held for any other purpose. [C., '97, § 932; S. S., '15, § 932.]

CHAPTER 322

DISABLED AND RETIRED FIREMEN AND POLICEMEN

NOTE: This chapter made applicable to cities under city manager plan by § 6684, and to special charter cities by § 6781.

- 6310. Pension funds.
- 6311. Boards of trustees—officers.
- 6312. Investment of surplus.
- 6313. Gifts, devises, or bequests.
- 6314. Membership fee—assessments.
- 6315. Who entitled to pension—conditions of retirement.
- 6316. Disability—how contracted.
- 6317. Retired members assigned for light duty.
- 6318. Pensions—widow—children—dependents.
- 6319. Exemption.
- 6320. Volunteer or call firemen.
- 6321. Reexamination of retired members.
- 6322. Decision of board.
- 6323. Provisions subject to alteration.
- 6324. Moneys drawn—how paid—report.
- 6325. City marshal.
- 6326. Hospital expense.

6310. Pension funds. Any city or town having an organized fire department may, and all cities having an organized police department or a paid fire department shall, levy annually a tax not to exceed one-half mill for each such department, for the purpose of creating firemen's and policemen's pension funds; cities operating under commission form of government and having a population exceeding one hundred twenty-five thousand, may levy an additional tax not to exceed one-half mill for each such department for such purpose; cities operating under city manager and having a population exceeding thirty-five thousand, may levy an additional tax not to exceed one mill for each such department for such purpose. All moneys derived from each tax so levied, and all moneys received as membership fees and dues, and all moneys received from grants, donations, and devises for the benefit of each fund shall constitute separate funds, to be known and designated as a policemen's pension fund and a firemen's pension fund. No levy or collection of taxes for either of said funds shall be made so as to create or maintain a balance therein in excess of ten thousand dollars at the end of any fiscal year. [S., '13, §§ 932-a, 932-j; 40 G. A., ch. 261, § 1; 40 Ex. G. A., ch. 12, § 1.]

6311. Boards of trustees—officers. The chief officer of each department, with the city treasurer and the city solicitor or attorney of such cities or towns, shall be ex officio members of and shall constitute separate boards of trustees for the management of each fund. The chief officer of the department shall be president and the city treasurer treasurer of such boards, and the faithful performance of the duties of the treasurer shall be secured by his official bond as city treasurer. Such trustees shall not receive any compensation for their services as members of said boards. [S., '13, §§ 932-a, 932-b, 932-j, 932-k; 40 G. A., ch. 261, § 2.]

6312. Investment of surplus. The boards shall have power to invest any surplus left in such funds, respectively, at the end of the fiscal year, but no part of the funds realized from any tax levy shall be used for any purpose other than the payment of pensions. Investments shall be limited to interest-bearing bonds of the United States, of the state of Iowa, of any county, township, or municipal corporation of the state of Iowa. All such securities shall be deposited with the treasurer of the boards of trustees for safe-keeping. [S., '13, § 932-l; S. S., '15, § 932-c; 40 G. A., ch. 261, § 3.]

6313. Gifts, devises, or bequests. Each board may take by gift, grant, devise, or bequest, any money or property, real or personal, or other thing of value for the benefit of said funds. All rewards in moneys, fees, gifts, or emoluments of every kind or nature that may be paid or given to any police or fire department or to any member thereof, except when allowed to be retained or given to endow a medal or other permanent or competitive reward on account of extraordinary services rendered by said departments or any member thereof, and all fines and penalties imposed upon members, shall be paid into the said pension fund and become a part thereof. [S., '13, §§ 932-d, 932-m; 40 G. A., ch. 261, § 4.]

6314. Membership fee—assessments. Every member of said departments shall be required to pay to the treasurer of said funds a membership fee to be fixed by the board of trustees, not exceeding five dollars, and shall also be assessed and required to pay annually an amount equal to one per cent per annum upon the amount of the annual salary paid to him, which assessment shall be deducted and retained in equal semiannual installments out of such salary. [S., '13, §§ 932-d, 932-m; 40 G. A., ch. 261, § 5.]

6315. Who entitled to pension—conditions of retirement. Any member of said departments who shall have served twenty-two years or more in such department, and shall have reached the age of fifty years; or who shall while a member of such department become mentally or physically permanently disabled from discharging his duties, shall be entitled to be retired, and upon retirement shall be paid out of the pension fund of such department a monthly pension equal to one-half the amount of salary received by him monthly at the date he actually retires from said department. If any member shall have served twenty-two years in said department, but shall not have reached the age of fifty years, he shall be entitled to retirement, but no pension shall be paid while he lives until he reaches the age of fifty years. [S., '13, §§ 932-e, 932-n; 37 G. A., ch. 23, § 1; 38 G. A., ch. 19, § 1; 38 G. A., ch. 45, § 1; 39 G. A., ch. 30, § 1; 39 G. A., ch. 31, § 1; 40 G. A., ch. 261, § 6.]

6316. Disability—how contracted. No member who has not served five years or more in said department shall be entitled to be retired and paid a pension under the provisions of this chapter, unless such disability was contracted while engaged in the performance of his duties, or by reason of following such occupation. The question of disability shall be determined by the trustees upon the advice of a physician appointed by the board of trustees for that purpose. After any member shall become entitled to be retired, such right shall not be lost or forfeited by discharge or for any other reason except conviction for felony. [S., '13, §§ 932-e, 932-n; 37 G. A., ch. 23, § 1; 40 G. A., ch. 261, § 7.]

6317. Retired members assigned for light duty. The chief of the police department and the chief of the fire department of such city may assign any member of such departments, respectively, retired or drawing pensions under the provisions of this chapter, to the performance of light duties in such department. [S., '13, §§ 932-e, 932-n; 37 G. A., ch. 23, § 1; 40 G. A., ch. 261, § 8.]

6318. Pensions—widow—children—dependents. Upon the death of any acting or retired member of such departments, leaving a widow or minor children, or dependent father or mother surviving him, there shall be paid out of said fund as follows:

1. To the surviving widow, so long as she remains unmarried and of good moral character, thirty dollars per month.

2. If there be no surviving widow, or upon the death or remarriage of such widow, then to his dependent father and mother, if both survive, or to either dependent parent, if one survives, thirty dollars per month.

3. To the guardian of each surviving child under sixteen years of age, eight dollars per month.

The aggregate of all such payments shall not exceed one-half of the amount of the salary of such member at the time of his death or

retirement. [S., '13, §§ 932-e, 932-n; 37 G. A., ch. 23, § 1; 38 G. A., ch. 19, § 1; 38 G. A., ch. 45, § 1; 39 G. A., ch. 30, § 1; 39 G. A., ch. 31, § 1; 40 G. A., ch. 261, § 9.]

6319. Exemption. All pensions paid under the provisions of this chapter shall be exempt from liability for debts of the person to or on account of whom the same is paid, and shall not be subject to seizure upon execution or other process. [S., '13, §§ 932-e, 932-n; 37 G. A., ch. 23, § 1; 40 G. A., ch. 261, § 10.]

6320. Volunteer or call firemen. The provisions of this chapter shall apply to volunteer or call members of a paid fire department, but the amount of pension to be paid to such members shall be determined by the board of trustees. [S., '13, § 932-e; 40 G. A., ch. 261, § 11.]

6321. Reexamination of retired members. The board of trustees of each department shall have power, at any time, to cause any member of such department retired by reason of physical or mental disability to be brought before it and again examined by competent physicians for the purpose of discovering whether such disability yet continues and whether such retired member should be continued on the pension roll, and shall have power to examine witnesses for the same purpose. Such member shall be entitled to reasonable notice that such examination will be made, and to be present at the time of the taking of any testimony, shall have the right to examine the witnesses brought before the board and to introduce evidence in his own behalf. All witnesses shall be examined under oath, which may be administered by any member of such board. [S., '13, §§ 932-g, 932-p; 40 G. A., ch. 261, § 12.]

6322. Decision of board. The decision of such board upon such matters shall be final and conclusive, in the absence of fraud, and no appeal shall be allowed therefrom. Such disabled member shall remain upon the pension roll unless and until reinstated in such department by reason of such examination. [S., '13, §§ 932-g, 932-p; 40 G. A., ch. 261, § 13.]

6323. Provisions subject to alteration. The provisions of this chapter shall be, at all times, subject to alteration or change, and all persons claiming benefits under the provisions of this chapter shall be entitled to receive only such benefits as provided by law at the time such benefits shall accrue. [S., '13, §§ 932-h, 932-q; 40 G. A., ch. 261, § 14.]

6324. Moneys drawn—how paid—report. All pensions paid and all moneys drawn from the pension fund under the provisions of this chapter shall be upon warrants signed by the appropriate board of trustees, which warrants shall designate the name of the person and the purpose for which payment is made. The treasurer shall prepare annually, immediately after the first day of January, and file with the city clerk a report for each fund of the receipts and expenditures for the year ending December

thirty-first of the previous year, showing the money on hand, how invested, and all moneys received and paid out. [S., '13, §§ 932-i, 932-r; 40 G. A., ch. 261, § 15.]

6325. City marshal. Service by any member of the police department as city marshal shall not deprive him of any rights under this chapter. In any matter in which said city marshal shall be individually interested and which requires the action of the board of trustees of the policemen's pension fund, he shall not act as a member of said board, but the mayor of the city shall act with the other two trustees of the board with respect thereto. Upon the termination of his term as city marshal, he shall regain the rank he held in the police department at the time of his appointment as

city marshal. [38 G. A., ch. 344, § 1; 40 G. A., ch. 261, § 16.]

6326. Hospital expense. Cities and towns are hereby authorized and empowered to provide hospital, nursing, and medical attention for the members of the police and fire departments of such cities, when injured while in the performance of their duties as members of such department, and the cost of such hospital, nursing, and medical attention shall be paid out of the appropriation for the department to which such injured person belongs; provided that any amounts received by such injured person under the workmen's compensation law of the state, or from any other source for such specific purposes, shall be deducted from the amount paid by such city or town under the provisions of this section. [40 G. A., ch. 133.]

CHAPTER 323

HOUSING LAW

NOTE: This chapter made applicable to certain special charter cities by § 6818.

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GENERAL PROVISIONS

6327. Applicability. This chapter shall be known as the housing law and shall apply to every city of the first class and cities under commission form of government which, by the last state or federal census, had a population of fifteen thousand or more, and to every city as its population shall reach fifteen thousand thereafter by any state or federal census. [38 G. A., ch. 123, § 1.]

6328. Cities and towns—authority. In all other cities having a population of less than fifteen thousand, and in incorporated towns, the council may adopt ordinances for the regulation and control of any or all matters covered by the provisions of this chapter, in so far as same may be reasonably applicable, and fix penalties for the violation thereof; and fix rules and regulations not inconsistent with those provided in this chapter for the enforcement of said ordinances. [38 G. A., ch. 123, § 1.]

6329. Definitions. Certain words in this chapter are defined for the purposes thereof as follows: Words used in the present tense include the future; words in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word "person" includes a corporation as well as a natural person.

1. *Dwelling.* A "dwelling" is any house or building or portion thereof which is occupied in whole or in part as the home or residence of one or more human beings, either permanently or transiently.

2. *Classes of dwellings.* For the purposes of this chapter dwellings are divided into the following classes: "Private dwellings", "two-family dwellings", and "multiple dwellings".

a. A private dwelling is a dwelling occupied by but one family alone.

b. A two-family dwelling is a dwelling occupied by but two families alone.

c. A multiple dwelling is a dwelling occupied by more than two families.

3. *Classes of multiple dwellings.* All multiple dwellings are for the purposes of this

chapter divided into classes, viz.: class A and class B.

Class A. Multiple dwellings of class A are dwellings which are occupied more or less permanently for residence purposes by several families and in which the rooms are occupied in apartments, suites, or groups. This class includes tenement houses, flats, apartment houses, apartment hotels, bachelor apartments, studio apartments, kitchenette apartments, and all other dwellings similarly occupied whether specifically enumerated or not.

Class B. Multiple dwellings of class B are dwellings which are occupied, as a rule transiently, as the more or less temporary abiding place of individuals who are lodged, with or without meals, and in which as a rule the rooms are occupied singly. This class includes hotels, lodging houses, boarding houses, furnished room houses, club houses, asylums, boarding schools, convents, hospitals, jails, and all other dwellings similarly occupied whether specifically enumerated herein or not.

4. *Hotel.* A "hotel" is a multiple dwelling of class B in which persons are lodged for hire and in which there are more than twenty-five sleeping rooms.

5. *Family occupancy.* For the purposes of this chapter, a "family" is a group of persons living together, whether related to each other by birth or not, and may consist of one or more persons.

6. *Mixed occupancy.* In cases of mixed occupancy where a building is occupied only in part as a dwelling, the part so occupied shall be deemed a dwelling for the purposes of this chapter.

7. *Yards.* A "rear yard" is an open unoccupied space on the same lot with a dwelling, between the extreme rear line of the lot and the extreme rear line of the house. A yard between the front line of the house and the front line of the lot is a "front yard". A yard between the side line of the house and the side line of the lot which extends from the front line or front yard to the rear yard is a "side yard".

8. *Courts.* A "court" is an open unoccupied space, other than a yard, on the same lot with a dwelling. A court not extending to the street or front or rear yard is an inner court.

A court extending to the street or front yard or rear yard is an outer court.

9. *Corner and interior lots.* A "corner lot" is a lot of which at least two adjacent sides abut upon a street. A lot other than a corner lot is an "interior lot". The word "lot" is any deeded parcel of land whether a full platted lot or not.

10. *Front, rear, and depth of lot.* The front of a lot is that boundary line which borders on the street. In case of a corner lot the owner may elect by statement on his plans either street boundary line as the front. The rear of a lot is the side opposite to the front. The depth of a lot is the dimension measured from the front of the lot to the extreme rear line of the lot. In case of irregular shaped lots the mean depth shall be taken.

11. *Public hall.* A "public hall" is a hall, corridor, or passageway not within the exclusive control of one family.

12. *Stair hall.* A "stair hall" is a public hall and includes the stairs, stair landings, and those portions of the building through which it is necessary to pass in going between the entrance floor and the roof.

13. *Basement, cellar, attic.* A "basement" is a story partly underground but having at least one-half of its height above the curb level, and also one-half of its height above the highest level of the adjoining ground. A basement shall be counted as a story.

A "cellar" is a story having more than one-half of its height below the curb level, or below the highest level of the adjoining ground. A cellar shall not be counted as a story for purposes of height measurement. If any part of a story is in that part the equivalent of a basement or cellar, the provisions of this chapter relative to basements and cellars shall apply to such part of said story.

In the case of private dwellings and two-family dwellings an "attic", or space in a sloping roof, if not occupied for living purposes, shall not be counted as a story; in the case of multiple dwellings an attic room shall be counted as a story if used for living purposes.

14. *Height.* The "height" of a dwelling is the perpendicular distance measured in a straight line from the curb level to the highest point of the roof beams in the case of flat roofs, and to the average of the height of the gable in the case of pitched roofs; the measurements in all cases to be taken through the center of the front of the house. Where a dwelling is situated on a terrace above the curb level such height shall be measured from the level of the adjoining ground. Where a dwelling is on a corner lot and there is more than one grade or level, the measurements shall be taken from the mean elevation.

15. *Curb level.* The "curb level" is the level of the established curb in front of the building measured at the center of such front. Where no curb has been established the city engineer shall establish such curb level or its equivalent for the purposes of this chapter.

16. *Occupied spaces.* Outside stairways, fire towers, porches, platforms, balconies, boiler flues, and other projections shall be considered as part of the building and not as a part of the yards or courts or unoccupied spaces. This provision shall not apply to uninclosed outside porches not exceeding two story in height which do not extend into the front or rear yard a greater distance than ten feet from the front or rear walls of the building, nor to any such porch which does not extend into the side yard a greater distance than twelve feet from the side wall of the building nor exceed twelve feet in its other horizontal dimension, nor to an enclosed rear porch or attached garage with or without sleeping porch above and not exceeding twelve by twenty feet, nor to cornices or eaves not exceeding eighteen inches in width.

17. *Fire-resistive constructed dwelling.* A dwelling of fire-resistive construction is one with brick, stone, or concrete walls and with brick, tile, concrete, or terra cotta floors and roof. Floor and roof supports to be of brick, concrete, or metal with all metal protected by tile, concrete, or similar fire-resistant material. But this definition shall not be construed as prohibiting the use of wooden flooring on top of the fireproof floors or the use of wooden sleepers, nor as prohibiting wooden handrails or treads of hardwood not less than one inch thick.

18. *Wooden buildings.* A "wooden building" is a building of which the exterior walls or a portion thereof are of wood. Court walls are exterior walls.

19. *Nuisance.* The word "nuisance" shall be held to embrace nuisance as known at common law or in equity jurisprudence; and whatever is dangerous to human life or detrimental to health, whatever dwelling is overcrowded with occupants or is not provided with adequate ingress or egress to or from the same, or is not sufficiently supported, ventilated, sewerage, drained, cleaned, or lighted, in reference to its intended or actual use, and whatever renders the air or human food or drink unwholesome, are also severally, in contemplation of this chapter, nuisances, and all such nuisances are hereby declared illegal.

20. *Construction of certain words.* The word "shall" is always mandatory and not directory, and denotes that the dwelling shall be maintained in all respects according to the mandate as long as it continues to be a dwelling. Wherever the words "charter", "ordinances", "regulations", "superintendent of buildings", "health department", "the board of health", "health officer", "commissioner of public safety", "commissioner of public health", "department charged with the enforcement of this chapter", "corporation counsel", "mayor", "city treasury", or "fire limits" occur in this chapter they shall be construed as if followed by the words "of the city in which the dwelling is situated".

Wherever the words "health department", "health officer", or "duly authorized assistant", or "board of health", "commissioner of public safety", or "commissioner of public health" are employed in this chapter, such words shall be deemed and construed to mean the official or officials in any city to whom is committed the charge of safeguarding the public health. The terms "superintendent of buildings", "building department", and "inspector of buildings" shall embrace the department and the executive head thereof specially charged with the execution of laws and ordinances relating to the construction of buildings. Wherever the words "occupied" or "used" are employed in this chapter such words shall be construed as if followed by the words "or is intended, arranged, designed, built, altered, converted to, rented, leased, let or hired out, to be occupied or used".

Wherever the words "dwelling", "two-family dwelling", "multiple dwelling", "building", "house", "premises" or "lot" are used in this chapter, they shall be construed as if followed by the words "or any part thereof". Wherever the words "city water" are used in this chapter, they shall be construed as meaning any public supply of water through street mains; and wherever the words "public sewer" are used in this chapter they shall be construed as meaning any part of a system of sewers that is used by the public or by concerted action of several users, whether or not such part was constructed at the public expense. Wherever the word "street" is used in this chapter it shall be construed as including for the purpose hereinafter stated any public alley sixteen feet or more in width, namely, for the sole purpose of determining the required open space around and the allowable height of any building abutting thereon.

"Approved fire-resistive material" means as set forth by ordinances, or if not so determined, as approved by the superintendent of buildings. [38 G. A., ch. 123, § 2.]

6330. Alteration—change of class. A building not a dwelling, if hereafter converted or altered to such use, shall thereupon become subject to such provisions of this chapter relative to dwellings hereafter erected as the board of health may require. A dwelling of one class if hereafter altered or converted to another class shall thereupon become subject to such provisions of this chapter relative to such latter class as the board of health may require. [38 G. A., ch. 123, § 3.]

6331. Unlawful alteration. No dwelling hereafter erected shall at any time be altered so as to be in violation of any provision of this chapter.

No dwelling erected prior to the passage of this chapter shall at any time be altered so as to be in violation of those provisions of this chapter applicable to such dwelling.

If any dwelling or any part thereof is occupied by more families than provided in this

chapter, or is erected, altered, or occupied contrary to law, such dwelling shall be deemed an unlawful structure and the health officer may cause such dwelling to be vacated. Any such dwelling shall not again be occupied until it, or its occupation, as the case may be, has been made to conform to the law. [38 G. A., ch. 123, § 4.]

6332. Dwelling rebuilt. If a dwelling be damaged by fire or other cause to the extent of sixty-five per cent or more of its original value, exclusive of the value of the foundations, such dwelling shall not be repaired or rebuilt except in conformity with the provisions of this chapter relative to dwellings hereafter erected; provided, however, the owner shall be permitted to rebuild a building of the same size as before, subject to such reasonable provisions regarding light, ventilation, and sanitation as the board of health may prescribe. [38 G. A., ch. 123, § 5.]

6333. Dwelling moved. If any dwelling be hereafter moved from one lot to another it shall thereupon be made to conform to all the provisions of this chapter relative to dwellings hereafter erected, unless the board of health shall in a written permit for such removal certify that such dwelling is reasonably safe and sanitary. [38 G. A., ch. 123, § 6.]

6334. Sewer connections—water supply. The provisions of this chapter with reference to sewer connections and water supply shall be deemed to apply only where connection with a public sewer and with public water mains is or becomes reasonably accessible. All questions of the practicability of such sewer and water connections shall be decided by the health officer or such other official as the board of health may direct. [38 G. A., ch. 123, § 7.]

6335. Minimum requirements—power of cities. The provisions of this chapter shall be held to be the minimum requirements adopted for the protection of health, welfare, and safety of the community. Nothing herein contained shall be deemed to invalidate existing ordinances or regulations of any city imposing requirements higher than the minimum requirements laid down in this chapter relative to light, ventilation, sanitation, fire prevention, egress, occupancy, maintenance, and uses for dwellings; nor be deemed to prevent any city subject to this chapter from enacting and putting in force from time to time ordinances and regulations imposing requirements higher than the minimum requirements laid down in this chapter; nor shall anything herein contained be deemed to prevent such cities from prescribing for the enforcement of such ordinances and regulations, remedies and penalties similar or additional to those prescribed herein. Every city subject to this chapter is empowered to enact such ordinances and regulations and to prescribe for their enforcement; and to

enact such other ordinances pertaining to the housing of the people, not in conflict with the provisions of this chapter, as shall be deemed advisable by the city council. No ordinance, regulation, ruling, or decision of any municipal body, officer, or authority shall repeal, amend, modify, or dispense with any of the said minimum requirements laid down in this chapter, except as specifically provided herein. [38 G. A., ch. 123, § 8.]

6336. Improvements. All improvements specifically required by this chapter upon dwellings erected prior to the date of its passage shall be made within one year from said date, unless time is extended by the health department. [38 G. A., ch. 123, § 10.]

6337. Application of provisions. All the provisions of this chapter shall apply to all classes of dwellings, except that in sections where specific reference is made to one or more specific classes of dwellings such provisions shall apply only to those specific classes to which reference is made. [38 G. A., ch. 123, § 11.]

LIGHT AND VENTILATION

6338. Height of buildings. No dwelling hereafter erected shall exceed in height one and one-half times the width of the widest street upon which it abuts, nor in any case shall it exceed one hundred feet in height. Such width of street shall be determined by measuring from the front line of the building as constructed to the street line of the opposite side of the street. The provisions of this section shall not apply to hotels. [38 G. A., ch. 123, § 12.]

6339. Rear yards. Immediately behind every single and two-family dwelling hereafter erected there shall be, except as hereinafter provided, a rear yard extending across the lot, for a distance equal to at least the width of the dwelling. Such yard shall be open and unobstructed from the ground to the sky. Every part of such yard shall be directly accessible from every other part thereof. The depth of said yard shall be measured at right angles from the rear lot line to the extreme rear part of the dwelling. Such rear yard space shall in no case be less than ten feet deep, and two feet additional for each story of the dwelling on said lot above the first.

An irregular shaped lot, or lot subject to building line restrictions, may be occupied by a dwelling without complying with the provisions of this section, if the total yard space equals that required by this section.

The provisions of this section shall not apply to hotels. [38 G. A., ch. 123, § 13.]

6340. Building to side line of lot—side yards. Dwellings hereafter erected may be built up to the side lot line, if the side wall is without windows, or if with windows the air and light required by this chapter are provided otherwise than by windows on the lot line, or if the

side lot line abuts on a street or alley. If, however, any side yard is left, it shall be open and unobstructed from the ground to the sky, and its width shall be proportionate to the height of the dwelling, and no side yard shall be less in width in any part than as follows:

1. *Multiple dwellings.* In the case of all multiple dwellings hereafter erected, one story in height and having a side yard, the width of the side yard measured to the side lot line shall be at least four feet, and such side yard shall be increased in width by one foot for each additional story above the first.

2. *Private dwellings and two-family dwellings.* In the case of private dwellings and two-family dwellings hereafter erected, one story or two stories in height, the width of the side yard measured to the side lot line shall be at least four feet; such side yard shall be increased in width one foot for each additional story above the second.

3. *Distance between buildings on same lot.* Where more than one dwelling is erected upon the same lot, the distance between them shall not be less than eight feet in the case of dwellings of one or two stories in height, this distance to be increased two feet for each additional story above the second. [38 G. A., ch. 123, § 14.]

6341. Courts—size of. The size of all courts in dwellings hereafter erected shall be proportionate to the height of the dwelling. No court shall be less in any part than the minimum sizes prescribed in this section. The minimum width of an outer court for a one-story dwelling shall be five feet, for a two-story dwelling six feet, for a three-story dwelling seven feet, and shall increase one foot for each additional story above three stories. The least dimension of an inner court shall never be less than twice the minimum width prescribed by this section for an outer court. The width of all courts adjoining the lot line shall be measured to the lot line and not to an opposite building. [38 G. A., ch. 123, § 15.]

6342. Covered courts. No court of a dwelling hereafter erected shall be covered by a roof or skylight. Every such court shall be at every point open from the ground to the sky unobstructed; except that in the case of hotels, courts may start on the floor level of the lowest bedroom story, and in the case of other multiple dwellings where there are stores or shops on the lower story or stories, courts may start on the top of such lower story or stories. [38 G. A., ch. 123, § 16.]

6343. Air intake. In all dwellings hereafter erected every inner court extending through more than one story shall be provided with a horizontal air intake at the bottom. [38 G. A., ch. 123, § 17.]

6344. Corners of courts. Nothing contained in the foregoing sections concerning courts shall be construed as preventing the cutting off of the corners of said courts. [38 G. A., ch. 123, § 18.]

6345. Other buildings on same lot. If any building is hereafter placed on the same lot with a dwelling, there shall always be maintained between the said buildings an open and unoccupied space extending upwards from the ground. If such buildings are placed at the side of each other the space between them shall conform to the provisions of section 6340 relating to side yards, but shall be twice the minimum therein required. If such buildings are placed one at the rear of the other the space between them shall be the same as that prescribed in section 6339 for rear yards. In all cases the height of the highest building on the lot shall regulate the dimensions.

No building of any kind shall be hereafter placed upon the same lot with a dwelling so as to decrease the minimum sizes of courts or yards hereinbefore prescribed, except that, in case of a lot less than seventy-five feet deep, a one-story garage, not more than twenty-five feet deep, measured lengthwise of the lot, nor more than twenty-five feet in the other dimensions, or other one-story building, of like dimensions, used exclusively for domestic purposes and not as a dwelling or for the shelter or habitation of animals or fowls of any kind, may occupy one-third of the depth of the open space in this section prescribed.

If any dwelling is hereafter erected upon any lot upon which there is already another building, it shall comply with all the provisions of this chapter, and, in addition, the space between the said building and the said dwelling shall be of such size and arranged in such manner as is herein prescribed, the height of the highest building on the lot to regulate the dimensions. [38 G. A., ch. 123, § 19; 40 Ex. G. A., ch. 82, § 1.]

6346. Windows. In every dwelling hereafter erected every room shall have at least one window opening directly upon the street or a public alley or other public space at least sixteen feet in width, or upon a yard or court of the dimensions specified in this chapter, and located on the same lot, and such window shall be so located as to properly light all portions of such rooms. This provision shall not, however, apply to rooms used as art galleries, swimming pools, gymnasiums, squash courts, or for similar purposes, provided such rooms are adequately lighted and ventilated. [38 G. A., ch. 123, § 20.]

6347. Window area. In every dwelling hereafter erected the total window area in each room shall be at least one-eighth of the superficial floor area of the room, and the total minimum window area shall be made so as to open in all its parts. [38 G. A., ch. 123, § 21.]

6348. Living and bed rooms. In every dwelling hereafter erected all living rooms and bed rooms shall be of the following minimum sizes: Every such room shall contain at least eighty square feet of floor area, except that kitchenettes may be forty square feet in area; no such room, except kitchenette, shall be in

any part less than seven feet wide. In multiple dwellings of class A, in each apartment, group, or suite of rooms there shall be at least one room containing not less than one hundred twenty square feet of floor area. [38 G. A., ch. 123, § 22.]

6349. Height of rooms. No room in a private dwelling hereafter erected shall be in any part less than eight feet three inches high from the finished floor to the finished ceiling downstairs and seven feet six inches upstairs; except that an attic room used for living purposes in such private dwelling need be seven feet six inches in but one-half of its area.

No room in a two-family dwelling or multiple dwelling hereafter erected shall be in any part less than eight feet three inches high from the finished floor to the finished ceiling, except that in a two-family dwelling constructed so as to be occupied on two floors by one family, the height of the rooms on the second floor shall be the same as herein provided for a private dwelling. [38 G. A., ch. 123, § 23.]

6350. Partitions. In every dwelling hereafter erected an alcove in any room intended or used for separate occupancy shall be separately lighted and ventilated as provided for rooms in the foregoing sections. No part of any room in a dwelling hereafter erected shall be inclosed or subdivided at any time, wholly or in part, by a fixed partition for permanent separate occupancy, unless such part of the room so inclosed or subdivided shall be separately lighted and ventilated as provided for rooms in the foregoing sections. [38 G. A., ch. 123, § 24.]

6351. Windows in bathrooms. In every dwelling hereafter erected every water-closet compartment and every bathroom shall have an aggregate window area of at least four square feet between stop beads opening directly upon the street, or upon a yard or court of the dimensions specified in this chapter. Every such window shall be made so as to open in all its parts. Nothing in this section contained shall be construed so as to prohibit a general toilet room containing several water-closet compartments separated from each other by dwarf partitions, provided such toilet room is adequately lighted and ventilated to the outer air as above provided, and that such water-closets are supplemental to the water-closet accommodations required by the provisions of section 6358.

The above provision shall not apply to hotels or dwellings that have a system of forced ventilation so constructed as entirely to change the air in every bathroom, toilet room, or water-closet compartment every seven minutes. [38 G. A., ch. 123, § 25.]

6352. Lighting and ventilation of halls. Every multiple dwelling, every public hall, and stair hall shall have adequate lighting and ventilation as the board of health may require. [38 G. A., ch. 123, § 26.]

SANITATION

6353. Cellar rooms. In dwellings hereafter erected no room in the cellar shall be occupied for living purposes. [38 G. A., ch. 123, § 27.]

6354. Basement rooms. In dwellings hereafter erected no room in the basement shall be occupied for living purposes, unless in addition to the other requirements of this chapter such room shall have sufficient light and ventilation, shall be well drained and dry, and shall, in the opinion of the board of health, be fit for human habitation. [38 G. A., ch. 123, § 28.]

6355. Basement or cellar under entrance floor. Every dwelling hereafter erected shall have a basement, cellar, or excavated space under the entire entrance floor, at least three feet in depth, or shall be elevated above the ground so that there will be a clear air space of at least eighteen inches between the top of the ground and the floor joists so as to insure ventilation and protection from dampness; provided, however, that cement floors may be laid on the ground level if desired. [38 G. A., ch. 123, § 29.]

6356. Courts and yards graded and drained. In every dwelling hereafter erected all courts, areas, and yards shall be properly graded and drained, and when required by the health officer the courts shall be properly concreted in whole or in part as may be necessary. [38 G. A., ch. 123, § 30.]

6357. Sinks and washbowls. In every dwelling hereafter erected and not exempted in section 6334, there shall be a proper sink and washbowl with running water, exclusive of any sink in the cellar. In two-family dwellings and in multiple dwellings of class A there shall be such a sink or washbowl in each apartment, suite, or group of rooms. [38 G. A., ch. 123, § 31.]

6358. Water-closets. In every dwelling hereafter erected there shall be a separate water-closet. Each such water-closet shall be placed in a compartment completely separated from every other water-closet; such compartment shall be not less than thirty inches wide, and shall be inclosed with partitions which shall extend to the ceiling. Every such compartment shall have a window opening directly upon the street or upon a yard or court of the minimum sizes prescribed by this chapter and located upon the same lot. Nothing in this section contained shall be construed so as to prohibit a general toilet room containing several water-closet compartments separated from each other by dwarf partitions, provided such toilet room is adequately lighted and ventilated to the outer air as above provided and that such water-closets are supplemental to the water-closet accommodations required by other provisions of this section for the occupants of said house. No water-closet fixture shall be incased with any woodwork. No water-closet shall be placed in a cellar of a multiple dwelling ex-

cept with written permit from the health officer. In two-family dwellings and in multiple dwellings of class A hereafter erected there shall be for each family a separate water-closet constructed and arranged as above provided and located within each apartment, suite, or group of rooms. In multiple dwellings of class B hereafter erected there shall be provided at least one water-closet for every twenty occupants or fraction thereof. Every water-closet compartment hereafter placed in any dwelling shall be provided with proper means of lighting the same at night. The provisions of this section regarding windows in water-closet compartments shall not apply to dwellings that have a system of forced ventilation as provided in section 6351. [38 G. A., ch. 123, § 32.]

6359. Accessibility to city water and sewers. No multiple dwelling shall hereafter be erected unless there is accessible city water and a public sewer, or a private sewer connected directly with a public sewer. No cesspool or similar means of sewage disposal shall be used in connection with any dwelling where connection with a public sewer is practicable. [38 G. A., ch. 123, § 33.]

6360. Plumbing fixtures. In every dwelling hereafter erected no plumbing fixture shall be incased, but the space underneath shall be left entirely open. Plumbing pipes shall be exposed, when so required by the health officer. All plumbing work shall be sanitary in every particular and, except as otherwise specified in this chapter, shall be in accordance with the plumbing regulations of said city. All fixtures shall be trapped. Pan, plunger, and long hopper closets will not be permitted. Wooden sinks will not be permitted. [38 G. A., ch. 123, § 34.]

FIRE PROTECTION

6361. Dwellings—fire-resistive materials. No dwelling shall hereafter be erected exceeding four stories in height, unless it shall be of fire-resistive material; the building, however, may step up to follow the street grade, provided no part of it is over four stories in height. [38 G. A., ch. 123, § 35.]

6362. Egress from multiple dwellings. Every multiple dwelling hereafter erected exceeding two stories in height shall have at least two independent ways of egress, each of which shall extend from the ground floor to the roof, and shall be located remote from each other, and each shall be arranged as provided elsewhere in this chapter. One of such ways of egress shall be a flight of stairs constructed and arranged as provided in sections 6365 to 6368, inclusive. In multiple dwellings of class A the second way of egress shall be directly accessible to each apartment, group, or suite of rooms without having to pass through the first way of egress. In multiple dwellings of class B the second way of egress shall be

directly accessible from a public hall. The second way of egress may be any one of the following, as the owner may select:

1. A system of outside balcony fire escapes constructed and arranged so as to comply with the state fire laws.

2. An additional flight of stairs, either inside or outside, constructed and arranged as provided in sections 6364 to 6367, inclusive.

3. A fire tower located, constructed, and arranged as may be required by the superintendent of buildings. [38 G. A., ch. 123, § 36.]

6363. Flat-roofed multiple dwellings. Every flat-roofed multiple dwelling hereafter erected exceeding one story in height shall have in the roof a bulkhead or a scuttle not less than two feet by three feet in size. Such scuttle or bulkhead shall be fireproof or covered with metal on the outside and shall be provided with stairs leading thereto and easily accessible to all occupants of the building. No scuttle or bulkhead shall be located in a closet or room, but shall be located in the ceiling of the public hall on the top floor, and access through the same shall be direct and uninterrupted. [38 G. A., ch. 123, § 37.]

6364. Stairs in two-story multiple dwellings. Every multiple dwelling two stories or more in height hereafter erected shall have at least one flight of stairs extending from the entrance floor to the roof; and the stairs and public halls therein shall each be at least four feet wide in the clear. All stairs shall be constructed with a rise of not more than eight inches and with treads not less than ten inches wide and not less than four feet long in the clear. Winding stairs will not be permitted. [38 G. A., ch. 123, § 38.]

6365. Stairs in multiple dwellings. In multiple dwellings hereafter erected which exceed two stories in height, the stair halls shall be constructed of fire-resistive material throughout. The risers, strings, and balusters shall be of metal, concrete, or stone. The treads shall be of metal, slate, concrete, or stone, or of hardwood not less than two inches thick. Wooden handrails will be permitted if constructed of hardwood. The floors of all such stair halls shall be constructed of iron, steel, or concrete beams and fireproof filling, and no wooden flooring or sleepers shall be permitted. In multiple dwellings hereafter erected which exceed two stories in height, at least one flight of stairs shall be inclosed in fireproof walls from the cellar to the roof. [38 G. A., ch. 123, § 39.]

6366. Stair halls in such dwellings. In all multiple dwellings hereafter erected which exceed two stories in height, all stair halls shall be inclosed on all sides with walls of brick or other fire-resistive material not less than eight inches thick. The doors opening from such stair halls shall be fire-resistive and self-closing fire doors of the swinging type. There shall be no transom or sash or similar opening from such stair hall to any other part of the building

occupied for living purposes. [38 G. A., ch. 123, § 40.]

6367. Multiple dwelling of less than five stories. In multiple dwellings hereafter erected less than five stories high, where there is but one stairway, the entrance hall shall be not less than five feet wide in the clear; and in multiple dwellings five or more stories high, the width shall be not less than six feet and the entrance hall shall have an additional width of two feet for each additional stairway served. In every multiple dwelling hereafter erected, access shall be had from the street or alley to the yard, either in a direct line or through a court. [38 G. A., ch. 123, § 41.]

6368. Dumb-waiters, chutes, and shafts. In multiple dwellings hereafter erected all dumb-waiters, chutes, ventilating and miscellaneous shafts shall be inclosed in an inclosure of fire-resistive material with self-closing fire doors at all entrances into same, including cellar entrances.

In multiple dwellings hereafter erected which shall exceed two stories in height or which are occupied by more than two families above the grade floor, elevators, if provided, shall not be permitted in well holes or in the same shaft as the stairs, but shall be in a separate shaft or inclosure of fire-resistive material such as brick not less than eight inches in thickness, reinforced concrete not less than four inches in thickness, well burned tile or terra cotta not less than six inches in thickness.

All entrances into elevator shafts shall be protected by fire doors either self-closing or closed inside by elevator operator. [38 G. A., ch. 123, § 42.]

6369. Inside cellar stairs. In multiple dwellings hereafter erected inside cellar stairs shall be in an inclosure constructed of fire-resistive walls and shall have a fire-resistive self-closing door of the swinging type at the bottom. [38 G. A., ch. 123, § 43.]

6370. Closets in multiple dwellings. In multiple dwellings hereafter erected no closet of any kind shall be constructed under any staircase leading from the entrance story to the upper stories, but such space shall be left entirely open and kept clear and free from incumbrance. [38 G. A., ch. 123, § 44.]

6371. Cellar entrance. In every multiple dwelling hereafter erected there shall be an entrance to the cellar or other lowest story from the outside of said building. [38 G. A., ch. 123, § 45.]

6372. Wooden multiple dwellings. No wooden multiple dwelling shall hereafter be erected exceeding two stories in height and no wooden building now used as a multiple dwelling shall hereafter be altered into a multiple dwelling exceeding two stories in height. [38 G. A., ch. 123, § 46.]

ALTERATIONS

6373. Enlargement of dwellings. No dwelling shall hereafter be enlarged or its lot diminished, or other building placed on the lot, so that the rear yard or side yard shall be less in size than the minimum sizes prescribed in sections 6339 and 6340 for dwellings hereafter erected. [38 G. A., ch. 123, § 47.]

6374. Inner courts. An inner court hereafter constructed in a dwelling erected prior to the passage of this chapter, if extending only through one or two stories, shall be not less than six feet by eight feet in size; and if it extends through more than two stories, it shall be not less than eight feet by ten feet in size. All inner courts shall be opened to the sky, without skylight, or roof of any kind. [38 G. A., ch. 123, § 48.]

6375. Additional halls or rooms. Any additional room or hall that is hereafter constructed or created in a dwelling shall comply in all respects with the provisions of this chapter with reference to dwellings hereafter erected, except that it may be of the same height as the other rooms of the same story of the dwelling. [38 G. A., ch. 123, § 49.]

6376. Light and ventilation. No dwelling shall be so altered or its lot diminished that any room or public hall or stairs shall have its light or ventilation diminished in any way not approved by the health officer. [38 G. A., ch. 123, § 50.]

6377. Stairs. No stairs leading to the roof in any multiple dwelling shall be removed or be replaced with a ladder. [38 G. A., ch. 123, § 51.]

6378. Bulkheads. Every bulkhead hereafter constructed in a multiple dwelling shall be constructed of fire-resistive material or covered with metal. [38 G. A., ch. 123, § 52.]

6379. Public halls or stairs. No public hall or stairs in a multiple dwelling shall be reduced in width so as to be less than the minimum width prescribed in sections 6364 and 6367. [38 G. A., ch. 123, § 53; 40 Ex. G. A., ch. 82, § 2.]

6380. Dumb-waiter and elevator shafts. All dumb-waiters and elevators hereafter constructed in multiple dwellings shall be in inclosures constructed of fire-resistive material with fire-resistive doors at all openings at each story, including the cellar. In the case of dumb-waiter shafts such doors shall be self-closing; and such shafts shall be completely separated from the stairs by walls of approved fire-resistive material inclosing the same.

This section does not apply to dumb-waiter shafts or elevator shafts which are already in existence, but only to those which may be installed after this chapter takes effect. [38 G. A., ch. 123, § 54.]

6381. Water-closets. Any water-closet hereafter placed in a dwelling, except one provided to replace a defective or insanitary fixture in the same location, shall comply with the provisions of sections 6351, 6358, and 6360, relative to water-closets in dwellings hereafter erected. [38 G. A., ch. 123, § 55.]

6382. Height of dwellings. No dwelling shall be increased in height so that it exceeds one and one-half times the width of the widest street on which it abuts nor in any case exceeds one hundred feet. [38 G. A., ch. 123, § 56.]

6383. General rule as to alterations. Except as specified above, no dwelling shall be so altered nor shall its lot be so diminished, nor shall any building be so placed on the same lot, as to cause the dwelling to be in violation of the requirements of this chapter for dwellings hereafter erected; nor shall any room, public hall, or stairs have its light or ventilation diminished in any way not approved by the health officer. [38 G. A., ch. 123, § 57.]

6384. Skylights—ventilators. All new skylights hereafter placed in a multiple dwelling shall be provided with ventilators having a minimum opening of forty square inches and also with either fixed or movable louvers or with movable sashes, and shall be of such size as may be determined to be practicable by the health officer. [38 G. A., ch. 123, § 58.]

6385. Divided rooms—window. No part of any room in a dwelling shall hereafter be inclosed or subdivided for separate occupancy, wholly or in part by a fixed partition, unless such part of a room so inclosed or subdivided shall contain a window as required by sections 6346, 6347, and 6350 and have a floor area of not less than eighty square feet. [38 G. A., ch. 123, § 59; 40 Ex. G. A., ch. 82, § 3.]

MAINTENANCE

6386. Lights. In every multiple dwelling a proper light shall be kept burning by the owner in the public hallways near the stairs upon each floor every night from sunset to sunrise throughout the year if so required by the health officer. [38 G. A., ch. 123, § 60.]

6387. Water-closets. No water-closet shall be maintained in the cellar of any dwelling without a permit in writing from the health officer, who shall have power to make rules and regulations governing the maintenance of such closets. Under no circumstances shall the general water-closet accommodations of any multiple dwelling be permitted in the cellar or basement thereof; this provision, however, shall not be construed so as to prohibit a general toilet room containing several water-closets, provided such water-closets are supplementary to those required by law. [38 G. A., ch. 123, § 61.]

6388. Number of water-closets. In every dwelling existing prior to the passage of this

chapter, there shall be provided at least one water-closet for every two apartments, groups, or suites of rooms, or fraction thereof, except that in multiple dwellings of class B there shall be provided at least one water-closet for every twenty occupants or fraction thereof. [38 G. A., ch. 123, § 62.]

6389. Cellar or basement rooms. No room in the cellar of any dwelling erected prior to the passage of this chapter shall be occupied for living purposes. And no room in the basement of any such dwelling shall be so occupied without a written permit from the health officer. No such room shall hereafter be occupied unless all the following conditions are complied with:

1. Such room shall be at least seven feet high in every part from the floor to the ceiling.
2. The ceiling of such room shall be in every part at least three feet six inches above the surface of the street or ground outside of or adjoining the same.
3. There shall be appurtenant to such room the use of a water-closet.
4. At least one of the rooms of the apartment of which such room is an integral part shall have a window or windows opening directly to the street or yard, with an aggregate of at least twelve square feet in size clear of the sash frame, and which shall open readily for purposes of ventilation.
5. The lowest floor shall be waterproof and damp proof.
6. Such room shall have sufficient light and ventilation, shall be well drained and dry, and shall be fit for human habitation. [38 G. A., ch. 123, § 63.]

6390. Color cellar walls. The cellar walls and cellar ceilings of every multiple dwelling shall by the owner be thoroughly whitewashed or painted a light color and shall be so maintained by him when required by the health officer. [38 G. A., ch. 123, § 64.]

6391. Floor beneath water-closets. In all two-family dwellings and multiple dwellings the floor or other surface beneath and around water-closets and sinks shall be maintained in good order and repair and if of wood shall be kept well painted. [38 G. A., ch. 123, § 65.]

6392. Repair of dwelling. Every dwelling and all the parts thereof shall be kept in good repair by the owner, and the roof shall be kept so as not to leak, and all rain water shall be so drained and conveyed therefrom as not to cause dampness in the walls or ceilings. [38 G. A., ch. 123, § 66.]

6393. Water supply—sinks. Every dwelling not exempted in section 6384 shall have within the dwelling at least one proper sink with running water furnished in sufficient quantity at one or more places exclusive of the cellar. In two-family dwellings and multiple dwellings of class A there shall be at least one sink on

every floor, accessible to each family on the floor occupied by said family without passing through any other apartment. Where city water is not available the owner shall provide proper and suitable tanks, pumps, or other appliances to receive and to distribute an adequate and sufficient supply of water at each floor in the said dwelling at all times of the year, during all hours of the day and night. But a failure in the general supply of city water shall not be construed to be a failure on the part of such owner, provided proper and suitable appliances to receive and distribute such water have been provided in said dwelling. [38 G. A., ch. 123, § 67.]

6394. Catch basins. In the case of dwellings where, because of lack of city water supply or sewers, sinks with running water are not provided inside the dwellings, one or more catch basins or some other approved convenience for the disposal of waste water, if necessary in the opinion of the health officer, shall be provided in the yard or court, level with the surface thereof and at a point easy of access to the occupants of such dwelling. [38 G. A., ch. 123, § 68.]

6395. Accumulations of dirt. Every dwelling and every part thereof shall be kept clean and shall also be kept free from any accumulation of dirt, filth, rubbish, garbage, or other matter in or on the same, or in the yards, courts, passages, areas, or alleys connected with or belonging to the same. The owner of every dwelling and in the case of a private dwelling the occupant thereof, shall thoroughly cleanse or cause to be cleansed all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, water-closets, cesspools, drains, halls, cellars, roofs, and all other parts of the said dwelling, or part of the dwelling of which he is the owner or in case of a private dwelling the occupant, to the satisfaction of the health officer, shall keep the said parts of the said dwelling in a cleanly condition at all times. [38 G. A., ch. 123, § 69.]

6396. Color of walls of courts. In multiple dwellings the walls of all courts, unless built of a light color brick or stone, shall be thoroughly whitewashed by the owner or shall be painted a light color by him, and shall be so maintained. Such whitewash or paint shall be renewed whenever necessary, as may be required by the health officer. [38 G. A., ch. 123, § 70.]

6397. Color of walls of other rooms. In all multiple dwellings erected prior to this chapter, the health officer may require the walls and ceilings of every room that does not open directly on the street to be calcimined or painted so as to furnish adequate lighting of such room and may require this to be renewed as often as may be necessary. [38 G. A., ch. 123, § 71.]

6398. Garbage receptacles. The owner of every dwelling and in the case of a private dwelling the occupant shall provide for said dwelling, keep clean and in place, proper covered receptacles of nonabsorbent material for holding garbage, refuse, rubbish, and other waste matter. Garbage chutes are prohibited. [38 G. A., ch. 123, § 72.]

6399. Animals. No horse, cow, calf, swine, sheep, goat, chickens, geese or ducks shall be kept in any dwelling or part thereof. Nor shall any such animal be kept on the same lot or premises with a dwelling except under such conditions as may be prescribed by the health officer. No such animal, except a horse, shall under any circumstances be kept on the same lot or premises with a multiple dwelling. No dwelling or the lot or premises thereof shall be used for the storage or handling of rags or junk. [38 G. A., ch. 123, § 73.]

6400. Articles dangerous to life or health. No dwelling nor any part thereof, nor of the lot upon which it is situated, shall be used as a place of storage, keeping, or handling of any article dangerous or detrimental to life or health; nor of any combustible article except under such conditions as may be prescribed by the fire commissioner, or the proper official, under authority of a written permit issued by him. [38 G. A., ch. 123, § 74.]

6401. Openings where paint, oil, gasoline, or drugs are stored. There shall be no transom, window, or door opening into a public hall from any part of a multiple dwelling where paint, oil, gasoline, or drugs are stored or kept for the purpose of sale or otherwise. This provision shall not apply to hotels. [38 G. A., ch. 123, § 75.]

6402. Janitors. In any multiple dwelling in which the owner thereof does not reside, there shall be a janitor, housekeeper, or other responsible person who shall have charge of the same, if the health officer shall so require. [38 G. A., ch. 123, § 76.]

6403. Overcrowding of rooms. If any room in a dwelling is overcrowded the health officer may order the number of persons sleeping or living in said room to be so reduced that there shall be not less than four hundred cubic feet of air to each adult and two hundred cubic feet of air to each child under twelve years of age occupying such room. [38 G. A., ch. 123, § 77.]

6404. Subletting of lodgings—eviction. The health officer may prohibit in any multiple dwelling the letting of lodgings therein by any of the tenants occupying such multiple dwelling, and may prescribe conditions under which lodgers or boarders may be taken in multiple dwellings. It shall be the duty of the owner in the case of multiple dwellings to see that the requirements of the health officer in this regard are at all times complied with, and a failure to so comply on the part of any tenant, after

due and proper notice from said owner or from the health officer, shall be deemed sufficient cause for the summary eviction of such tenant and the cancellation of his lease. The provisions of this section may be extended to private dwellings and two-family dwellings, as may be found necessary by the health officer. [38 G. A., ch. 123, § 78.]

6405. Dwellings unfit for habitation—eviction. Whenever it shall be certified by an inspector or officer of the health department that a dwelling is infected with contagious disease or that it is unfit for human habitation, or dangerous to life or health by reason of want of repair, or of defects in the drainage, plumbing, lighting, ventilation, or the construction of the same, or by reason of the existence on the premises of a nuisance likely to cause sickness among the occupants of said dwelling, the health officer may issue an order requiring all persons therein to show cause why they should not be required to vacate such house within a time to be set by him, for the reasons to be mentioned in said order. In case such order is not complied with within the time specified, the health officer may cause said dwelling to be vacated. The health officer, whenever he is satisfied that the danger from said dwelling has ceased to exist, or that it is fit for human habitation, may revoke said order or may extend the time within which to comply with the same. [38 G. A., ch. 123, § 79.]

6406. Nuisances. Whenever any dwelling or any building, structure, excavation, business pursuit, matter, or thing, in or about a dwelling, or the lot on which it is situated, or the plumbing, sewerage, drainage, light, or ventilation thereof, is in the opinion of the health officer in a condition or in effect dangerous or detrimental to life or health, the health officer may after notice and failure to correct, declare that the same to the extent he may specify is a public nuisance, and may order the same to be removed, abated, suspended, altered, or otherwise improved or purified as the order shall specify. [38 G. A., ch. 123, § 80.]

6407. Fire escapes. The owner of every multiple dwelling on which there are fire escapes shall keep them in good order and repair, and whenever rusty shall have them properly painted with two coats of paint. No person shall at any time place an obstruction of any kind before or upon such fire escape. [38 G. A., ch. 123, § 81.]

6408. Scuttles and bulkheads. In all multiple dwellings where there are scuttles or bulkheads, they and all stairs or ladders leading thereto shall be easily accessible to all occupants of the building and shall be kept free from obstruction and ready for use at all times. No scuttle and no bulkhead door shall at any time be locked with a key, but may be fastened on the inside by movable bolts or hooks. [38 G. A., ch. 123, § 82.]

IMPROVEMENTS

6409. Windows. No room in a dwelling erected prior to the passage of this chapter shall hereafter be occupied for living purposes unless it shall have a window of an area of not less than eight square feet opening directly upon the street, or upon a rear yard not less than four feet deep, or above the roof of an adjoining building, or upon a court or side yard of not less than twenty-five square feet in area open to the sky without roof or skylight, unless such room is located on the top floor and is adequately lighted and ventilated by a skylight, opening directly to the outer air; except that a room which can not be made to comply with the above provisions may be occupied if provided with a sash window of not less than fifteen square feet in area, opening into an adjoining room in the same apartment group or suite of rooms, which latter room opens directly on the street or on a rear yard of the above dimensions. Said sash window shall be a vertically sliding pulley-hung sash not less than three feet by five feet between stop beads, both halves shall be made so as to readily open, and the lower half shall be glazed with translucent glass, and so far as possible it shall be in line with windows in the said outer room opening on the street or rear yard so as to afford a maximum of light and ventilation. [38 G. A., ch. 123, § 83.]

6410. Light and ventilation. In all multiple dwellings erected prior to the passage of this chapter the public halls and stairs shall be provided with as much light and ventilation to the outer air as may be deemed practicable by the board of health who may order the cutting in of windows and skylights and such other improvements and alterations in said dwellings as in its judgment may be necessary and appropriate to accomplish this result. All new skylights hereafter placed in such dwellings shall be of such size as may be determined to be practicable by said board of health. [38 G. A., ch. 123, § 84.]

6411. Sinks and water-closets. In all multiple dwellings erected prior to the passage of this chapter the woodwork incasing sinks except sinks in butler's pantries, and water-closets shall be removed and the space underneath said fixtures shall be left open. The floor and wall surfaces beneath and around the said fixtures shall be put in good order and repair, and if of wood shall be kept well painted. Defective and insanitary water-closet fixtures shall be replaced by proper fixtures, as defined by this chapter. [38 G. A., ch. 123, § 85.]

6412. Sewer connections. Whenever a connection with a sewer is possible, all privy vaults, range closets, cesspools, or other similar receptacles used to receive fecal matter, urine, or sewerage, shall, before July 1, 1920,

with their contents, be completely removed and the place where they were located properly disinfected under the direction of the health officer. Such appliances shall be replaced by individual water-closets of durable nonabsorbent material, properly sewer-connected, and with individual traps and properly connected flush tanks providing an ample flush of water to thoroughly cleanse the bowl. Each such water-closet shall be located inside the dwelling or other building in connection with which it is to be used in a compartment completely separated from every other water-closet, and such compartment shall contain a window of not less than four square feet in area opening directly to the street or rear yard or on a side yard or court of the minimum size prescribed in sections 6340 and 6341. Such water-closets shall be provided in such numbers as required by section 6388. Such water-closets and all plumbing in connection therewith shall be sanitary in every respect and, except as in this chapter otherwise provided, shall be in accordance with the local ordinances and regulations in relation to plumbing and drainage. Pan, plunger, and long hopper closets will not be permitted except upon written permit of the health officer. No water-closet shall be placed out of doors. [38 G. A., ch. 123, § 86.]

6413. Freedom from dampness. The floor of the cellar or lowest floor of every dwelling shall be free from dampness, and, when necessary in the judgment of the health officer, shall be concreted with not less than two inches of concrete of good quality and with a finished surface. [38 G. A., ch. 123, § 87.]

6414. Access to shaft or court. In every dwelling where there is a court or shaft of any kind, there shall be at the bottom of every such shaft and court a door giving sufficient access to such shaft or court to enable it to be properly cleaned out; provided that where there is already a window giving proper access it shall be deemed sufficient. [38 G. A., ch. 123, § 88.]

6415. Ways of egress. Every multiple dwelling exceeding two stories in height shall have at least two independent ways of egress constructed and arranged as provided in section 6362. In the case of multiple dwellings erected prior to the passage of this chapter, where it is not practicable in the judgment of the building inspector to comply in all respects with the provisions of that section, said building inspector shall make such requirements as may be appropriate to secure proper means of egress from such multiple dwellings for all the occupants thereof. No existing fire escape shall be deemed a sufficient means of egress unless the following conditions are complied with:

1. All parts of it shall be of iron, cement, or stone.

2. The fire escape shall consist of outside balconies which shall be properly connected with each other by adequate stairs or stationary ladders, with openings not less than twenty-four by twenty-eight inches.

3. All fire escapes shall have proper drop ladders or stairways from the lowest balcony of sufficient length to reach a safe landing place beneath.

4. All fire escapes not on the street shall have a safe and adequate means of egress from the yard or court to the street or alley or to the adjoining premises.

5. Prompt and ready access shall be had to all fire escapes, which shall not be obstructed by bathtubs, water-closets, sinks, or other fixtures, or in any other way. [38 G. A., ch. 123, § 89.]

6416. Additional egress. Whenever any multiple dwelling is not provided with sufficient means of egress in case of fire, the building inspector shall order such additional means of egress as may be necessary. [38 G. A., ch. 123, § 90.]

6417. Skylight — access to roof. Unless there is a bulkhead in the roof there shall be over every inside stairway used by more than one family, a skylight or scuttle not less than two feet by three feet in size. Every flat roof multiple dwelling, exceeding one story in height, shall have at least one convenient and permanent means of access to the roof located in a public part of the building and not in a room or closet. [38 G. A., ch. 123, § 91.]

REQUIREMENTS AND REMEDIES

6418. Plans, plat, and specifications required. Before the construction or alteration of a dwelling, or the alteration or conversion of a building for use as a dwelling is commenced and before the construction or alteration of any building or structure on the same lot with a dwelling, the owner, or his agent or architect, shall submit to the board of health a detailed statement in writing, certified by the affidavit of the person making the same, of the specifications for such dwelling or building, upon blanks or forms to be furnished by such board of health, and also full and complete copies of the plans of such work. With such statement there shall be submitted a plat of the lot showing the dimensions of the same, the location of the proposed building and all other buildings on the lot. [38 G. A., ch. 123, § 92.]

6419. Detailed requirements. Such statement shall give in full the name and residence, by street and number, of the owner or owners of such dwelling or building and the purposes for which such dwelling or building will be used. If such construction, alteration, or conversion is proposed to be made by any other person than the owner of the land in fee, such statement shall contain the full name and residence, by street and number, not only of

the owner of the land, but of every person interested in such dwelling, either as owner, lessee, or in any representative capacity. Said affidavit shall allege that said specifications and plans are true and contain a correct description of such dwelling, building, structure, lot, and proposed work. [38 G. A., ch. 123, § 92.]

6420. By whom made. The statements and affidavits herein provided for may be made by the owner, his agent or architect, or by the person who proposes to make the construction, alteration, or conversion, or by the agent or architect of such person. [38 G. A., ch. 123, § 92.]

6421. Who deemed agent. No one, however, shall be recognized as the agent of the owner or of such person unless he shall file with said health officer a written instrument signed by such owner or person, as the case may be, designating him as such agent. [38 G. A., ch. 123, § 92.]

6422. Perjury. Any intentional false oath in a material point in any such affidavit shall be deemed perjury. [38 G. A., ch. 123, § 92.]

6423. Filing and preservation. Such specifications, plans, and statements shall be filed in said health department and shall be deemed public records, but no such specifications, plans, or statements shall be removed from said health department. [38 G. A., ch. 123, § 92.]

6424. Approval. The health officer shall cause all such plans and specifications to be examined. If such plans and specifications conform to the provisions of this chapter they shall within five days be approved by the health officer or his duly authorized assistant, and a written certificate to that effect shall be issued by him to the person submitting the same. The health officer shall, from time to time, approve changes in any plans and specifications previously approved by him, provided the plans and specifications when so changed shall be in conformity with law. [38 G. A., ch. 123, § 92.]

6425. Construction prohibited. The construction, alteration, or conversion of such dwelling, building, or structure, or any part thereof, shall not be commenced until the filing of such specifications, plans, and statements, and the approval thereof, as above provided. [38 G. A., ch. 123, § 92.]

6426. Certificate of health officer. No permit shall be granted and no plan approved by the department of buildings, where such exists, for the construction or alteration of a dwelling or for the alteration or conversion of any building for use as a dwelling until there has been filed in the office of the department of buildings a certificate of the health officer issued as above provided to the effect that such dwelling conforms to the provisions of this chapter. [38 G. A., ch. 123, § 92.]

6427. Construction authorized. The construction, alteration, or conversion of such dwelling, building, or structure shall be in accordance with such approved specifications and plans. [38 G. A., ch. 123, § 92.]

6428. Permit automatically canceled. Any permit or approval which may be issued by the health officer, but under which no work has been done above the foundation walls within one year from the time of the issuance of such permit or approval, shall expire by limitation. [38 G. A., ch. 123, § 92.]

6429. Revocation of permit. The health officer or his duly authorized assistant shall have power to revoke or cancel any permit or approval in case of any failure or neglect to comply with any of the provisions of this chapter, or in case any false statement or representation is made in any specifications, plans, or statements submitted or filed for such permit or approval. [38 G. A., ch. 123, § 92.]

6430. Enforcement in certain cities. In cities of more than one hundred thousand population, as shown by the last state or federal census, having a department or division of building inspection in charge of a person devoting his entire time to the supervision of building construction and to the enforcement of laws and ordinances relating to building construction, repair, alteration, removal, and to related matters, the city council may by ordinance provide that said person shall be charged with the powers and duties charged in sections 6418 to 6429, inclusive, to the board of health and to the health officer, and that all plans, specifications, affidavits, forms, and statements, in said sections prescribed to be filed with the health officer shall be filed with such person; and that said person may issue valid permits, certificates, and orders providing, without the certificate of the health officer hereinbefore provided to be filed in the office of the department of buildings. [39 G. A., ch. 160, § 1.]

6431. New or altered buildings—habitation. No part of a building hereafter constructed as or altered into a dwelling shall be occupied in whole or in part for human habitation until the issuance of a certificate by the health officer that such part of said dwelling conforms to the requirements of this chapter relative to dwellings hereafter erected. Such certificate shall be issued within three days after written application therefor if said dwelling at the date of such application shall be entitled thereto. [38 G. A., ch. 123, § 93.]

6432. Rents uncollectible. If any building hereafter constructed as, or altered into, a dwelling be occupied in whole or in part for human habitation in violation of the last section, during such unlawful occupation no rent shall be recoverable by the owner or lessee of such premises for said period, and no action or special proceeding shall be maintained therefor or for possession of said premises for non-payment of said rent, and said premises shall

be deemed unfit for human habitation and the health officer may cause them to be vacated accordingly. [38 G. A., ch. 123, § 94.]

6433. Violations. Every person who shall violate or assist in the violation of any provision of this chapter shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars or more than one hundred dollars, and in default in payment thereof, by imprisonment in the county jail for not more than thirty days. [38 G. A., ch. 123, § 95.]

6434. Civil liability. The owner of any dwelling, or of any building or structure upon the same lot with a dwelling, or of the said lot, where any violation of this chapter, or a nuisance as herein defined, exists who has been guilty of such violation or of creating or knowingly permitting the existence of such nuisance, and any person who shall violate or assist in violating any provision of this chapter, shall also jointly and severally for each such violation and each such nuisance be subject to a civil penalty of fifty dollars to be recovered for the use of the health department in civil action brought in the name of the municipality by the health officer. Such persons and also said premises shall also be liable in such case for all costs, expenses, and disbursements paid or incurred by the health department, by any of the officers, agents, or employees thereof in the removal of any such nuisance or violation. [38 G. A., ch. 123, § 95.]

6435. Additional liability. Any person who having been served with a notice or order to remove any such nuisance or violation shall fail to proceed in good faith to comply with said notice or order within five days after such service, or shall continue to violate any provisions or requirements of this chapter in the respect named in said notice or order, shall also be subject to a civil penalty of fifty dollars. [38 G. A., ch. 123, § 95.]

6436. Recovery. For the recovery of any such penalties, costs, expenses, or disbursements, an action may be brought in any court of competent civil jurisdiction. [38 G. A., ch. 123, § 95.]

6437. Lien on property. The existence of a nuisance in or upon such dwelling, structure on the same lot with a dwelling, or on such lot, which the owner thereof has created or permitted to exist and any violation of this chapter as to such dwelling, structure, and lot of which the owner has been guilty shall in such proceeding subject such dwelling, structure, and lot respectively to a penalty of fifty dollars, which shall be a lien thereon until paid; and any violation of an order made or a notice given by the health officer, permitted or committed by the owner of a dwelling, structure on the same lot with a dwelling, or such lot, shall in such proceeding subject the dwelling, structure, and lot respectively to a penalty of fifty dollars, which penalty shall be a lien thereon until paid. [38 G. A., ch. 123, § 95.]

6438. Practice and procedure generally. Except as herein otherwise specified, the procedure for the prevention of violations of this chapter or for the vacation of premises unlawfully occupied, or for other abatement of nuisances, or for the bringing of action therefor, shall be in accordance with the existing practice and procedure. [38 G. A., ch. 123, § 96.]

6439. Action to enjoin. In case any dwelling, building, or structure is constructed, altered, converted, or maintained in violation of any provision of this chapter, or of any order or notice of the health officer, or in case a nuisance exists in any such dwelling, building, or structure or upon the lot on which it is situated, said health officer may institute any appropriate action or proceeding to prevent such unlawful construction, alteration, conversion, or maintenance, to restrain, correct, or abate such violation or nuisance, to prevent the occupation of said dwelling, building, or structure, or to prevent any illegal act, conduct, or business in or about such dwelling or lot. [38 G. A., ch. 123, § 96.]

6440. Injunction. In any such action or proceeding said health officer may by petition duly verified, setting forth the facts, apply to the district, superior, or municipal court, or to any judge thereof in term time or vacation, for an order granting the relief for which said action or proceeding is brought, or for an order enjoining all persons from doing or permitting to be done any work in or about such dwelling, building, structure, or lot, or from occupying or using the same for any purpose until the entry of final judgment or order. [38 G. A., ch. 123, § 96.]

6441. Authority to execute. In case any notice or order issued by said health officer is not complied with, said health officer may apply to the district, superior, or municipal court or to any judge thereof in term time or vacation for an order authorizing him to execute and carry out the provisions of said notice or order, to correct any violation specified in said notice or order, or to abate any nuisance in or about such dwelling, building, or structure or the lot upon which it is situated. [38 G. A., ch. 123, § 96.]

6442. Orders authorized. The court or any judge thereof is hereby authorized to make any order specified in the two preceding sections. [38 G. A., ch. 123, § 96.]

6443. Eviction. If the occupant of a dwelling shall fail to comply with the provisions of this chapter after due and proper notice from the health officer, such failure to comply shall be deemed sufficient cause for the eviction of such tenant by the owner and the cancellation of his lease. [38 G. A., ch. 123, § 97.]

6444. Name and address of agent filed. Every owner, agent, or lessee of a dwelling may file in the health department a notice containing the name and address of an agent of

such dwelling, for the purpose of receiving service of all notices required by this chapter, and also a description of the property by street number or otherwise as the case may be, in such manner as will enable the health department easily to find the same. The name of the owner or lessee may be filed as agent for this purpose. [38 G. A., ch. 123, § 98.]

6445. Notices generally. Every notice or order required by this chapter shall be served at least ten days before the time for doing the thing in relation to which it shall have been issued, unless otherwise herein provided. The posting of a copy of such notice or order in a conspicuous place in the dwelling, together with the mailing of a copy thereof on the same day that it is posted, to the owner and lessee of the dwelling affected thereby, and each person, if any, whose name has been filed with the health department in accordance with the provisions of the preceding section at his address as filed, shall be sufficient service thereof. [38 G. A., ch. 123, § 99.]

6446. Notice of actions. In any action brought by the health officer in relation to a dwelling for injunction, vacation of the premises, or abatement of nuisance, or to establish a lien thereon, or to recover a civil penalty, service of notices shall be in the manner provided by law for the service of original notices; provided that if the address of any agent whose name and address have been filed in accordance with the provisions of the second preceding section is in the county in which the dwelling is situated, then such notice may be served upon such agent. [38 G. A., ch. 123, § 100.]

6447. Enforcement generally. The provisions of this chapter shall be enforced in each city by the health officer, except that the department of buildings, where such department exists in a city, shall enforce the provisions contained in sections 6361 to 6372, inclusive, and 6415 to 6417, inclusive. [38 G. A., ch. 123, § 101.]

6448. Construction. The powers conferred by this chapter upon the public officials heretofore in this chapter mentioned shall be in addition to the powers already conferred upon said officers, and shall not be construed as in any way limiting their powers except as provided in section 6335. [38 G. A., ch. 123, § 102.]

6449. Inspection of multiple dwellings. The health officer or such other appropriate public official as the mayor may designate, shall cause an inspection to be made of every multiple dwelling at least once a year. Such inspection shall include thorough examination of all parts of such multiple dwelling and the premises connected therewith. The health officer or such other official so designated is also hereby empowered to make similar inspections of all dwellings as frequently as may be necessary; and shall make inspection at any time on complaint of the owner, tenant, or other person concerned. [38 G. A., ch. 123, § 103.]

6450. Entrance and survey of buildings. The health officer and all inspectors, officers, and employees of the board of health, and such other persons as may be authorized by the health officer, may without fee or hindrance enter, examine, make necessary records, and survey all premises, grounds, erections, structures, apartments, dwellings, buildings, and every part thereof in the city. The owner or his agent or representative and the lessee and occupant of every dwelling and every person having the care and management thereof shall at all reasonable times when required by any such officers or persons give them free access to such dwellings and premises. The owner of

a dwelling and his agents and employees shall have right of access to such dwelling at reasonable times for the purpose of bringing about compliance with the provisions of this chapter or any order issued thereunder. [38 G. A., ch. 123, § 104.]

6451. Ordinances. All charter provisions, regulations, and ordinances of cities are hereby superseded in so far as they do not impose requirements other than the minimum requirements of this chapter, and except in case of such higher local requirements, this chapter shall in all cases govern. [38 G. A., ch. 123, § 107.]

CHAPTER 324

MUNICIPAL ZONING

NOTE: This chapter made applicable to special charter cities by § 6820.

6452. Building restrictions—powers granted.
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6452. Building restrictions—powers granted. For the purpose of promoting the health, safety, morals, or the general welfare of the community, any city or town, including cities acting under the commission plan of government, is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. [40 G. A., ch. 134, § 1.]

6453. Districts. For any or all of said purposes the local legislative body, hereinafter referred to as the council, may divide the city or town into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations and restrictions shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts. [40 G. A., ch. 134, § 2.]

NOTE: Ordinances establishing restricted districts to be certified by city clerk and filed with and recorded by county recorder, see §§ 5724 to 5727, inc.

6454. Basis of regulations. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the street; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city or town. [40 G. A., ch. 134, § 3.]

6455. Regulations and boundaries. The council of such city or town shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published

in a paper of general circulation in such city or town. [40 G. A., ch. 134, § 4.]

6456. Changes—hearing—notice. Such regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending the depth of one lot or not to exceed two hundred feet therefrom, or of those directly opposite thereto, extending the depth of one lot or not to exceed two hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of at least three-fourths of all the members of the council. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments. [40 G. A., ch. 134, § 5.]

6457. Zoning commission. In order to avail itself of the powers conferred by this chapter, the council shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations and restrictions to be enforced therein. Where a city plan commission already exists, it may be appointed as the zoning commission. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and such council shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the council amendments, supplements, changes, or modifications. [40 G. A., ch. 134, § 6.]

6458. Board of adjustment. The council shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinances in harmony with its general purpose and intent and in accordance with general or specific rules therein contained and provide that any property owner aggrieved by the action of the council in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners. [40 G. A., ch. 134, § 7.]

6459. Membership. The board of adjustment shall consist of five members each to be appointed for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a

term of three years, one for a term of two years, and one for a term of one year. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. [40 G. A., ch. 134, § 7.]

6460. Rules—meetings—general procedure. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this chapter. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. [40 G. A., ch. 134, § 7.]

6461. Appeals. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. [40 G. A., ch. 134, § 7.]

6462. Effect of appeal. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. [40 G. A., ch. 134, § 7.]

6463. Powers. The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such

board is required to pass under such ordinance.

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. [40 G. A., ch. 134, § 7.]

6464. Decision on appeal. In exercising the above mentioned powers such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. [40 G. A., ch. 134, § 7.]

6465. Vote required. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. [40 G. A., ch. 134, § 7.]

6466. Petition for certiorari. Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board. [40 G. A., ch. 134, § 7.]

6467. Writ—restraining order. Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order. [40 G. A., ch. 134, § 7.]

6468. Return. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely

set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. [40 G. A., ch. 134, § 7.]

6469. Trial—judgment—costs. If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from. [40 G. A., ch. 134, § 7.]

6470. Preference in trial. All issues in any proceedings under the foregoing sections shall have preference over all other civil actions and proceedings. [40 G. A., ch. 134, § 7.]

6471. Actions to correct violations. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the council, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. [40 G. A., ch. 134, § 8.]

6472. Conflicting rules, ordinances, and statutes. Wherever the regulations made under authority of this chapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this chapter shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this chapter, the provisions

of such statute or local ordinance or regulation shall govern. [40 G. A., ch. 134, § 9.]

6473. Restricted residence districts. When any city or town shall have taken advantage

of and proceeded under the provisions of this chapter, then chapter 325 shall be no longer operative as to such city or town. [40 G. A., ch. 134, § 10.]

CHAPTER 325

RESTRICTED RESIDENCE DISTRICTS

NOTE: This chapter made applicable to special charter cities by § 6821.

6474. Petition.

6475. Ordinance—scope.

6474. Petition. Cities of the first class, including cities under commission form of government, may, and upon petition of sixty per cent of the owners of the real estate in the district sought to be affected residing in such city shall, designate and establish, by appropriate proceedings, restricted residence districts within its limits. [37 G. A., ch. 138, § 1.]

NOTE: Ordinances establishing restricted districts to be certified by city clerk and filed with and recorded by county recorder, see §§ 5724 to 5727, inc.

6475. Ordinance—scope. In the ordinance designating and establishing such restricted residence district, every such city is hereby empowered to provide and establish reasonable rules and regulations for the erection, reconstruction, altering, and repairing of buildings of all kinds, within said district, as well as the use and occupancy of such buildings; and to provide that no building or other structure,

6476. Ordinance—violations.

except residences, schoolhouses, churches, and other similar structures, shall thereafter be erected, altered, or repaired, or occupied without first securing from the city council of such city a permit therefor, such permit to be issued under such reasonable rules and regulations as may in said ordinance be provided. [37 G. A., ch. 138, § 2.]

6476. Ordinance—violations. Any building or structure erected, altered, repaired, or used in violation of any ordinance passed under the authority of the two preceding sections, shall be deemed a nuisance, and every such city is hereby empowered to provide by ordinance for the abatement of such nuisance, either by fine or imprisonment, or by action in the district or municipal court of the county in which such city is located, or by both; such action to be prosecuted in the name of the city. [37 G. A., ch. 138, § 3.]

CHAPTER 326

GOVERNMENT OF CITIES BY COMMISSION

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GENERAL PROVISIONS

6477. **Terms defined.** In the construction of this chapter the following rules shall be observed, unless such construction would be inconsistent with the manifest intent, or repugnant to, the context of the statute.

1. The words "councilman" or "alderman" shall be construed to mean "councilman" when applied to cities under this chapter.

2. When an office or officer is named in any law referred to in this chapter, it shall, when applied to cities under this chapter, be construed to mean the office or officer having the same functions or duties under the provisions of this chapter, or under ordinances passed under authority thereof.

3. The word "franchise" shall include every special privilege in the streets, highways, and public places of the city, whether granted by the state or city, which does not belong to citizens generally by common right.

4. The word "electors" shall be construed to mean persons qualified to vote for elective officers at regular municipal elections. [S., '13, § 1056-a35.]

6478. **Petitions.** Petitions provided for in this chapter shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides, his age, and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made. [S., '13, § 1056-a40.]

ADOPTION OF PLAN

6479. **Cities affected.** Any city having by the last preceding state or national census

RIVER FRONT COMMISSION AND FIRE DEPARTMENT IN CERTAIN CITIES

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a population of two thousand or over, may become organized as a city under the provisions of this chapter by proceeding as hereinafter provided. [S., '13, § 1056-a17.]

6480. **Reduction in population — effect.** Whenever any city shall have been heretofore or may be hereafter organized on the commission plan under the provisions of this chapter, no reduction of the population of such city shown by a subsequent census shall have any effect upon the organization, rights, powers, duties, or obligations of such city or any of its officers, but the same shall continue and remain as though no such reduction or apparent reduction of population was made to appear. [S., '13, § 1056-a17a.]

6481. **Population — how determined.** The population in this chapter referred to shall be the population as shown by the last preceding state or national census excepting where such census of any such city shows a less population than at the time the voters of such city adopted the plan of government in this chapter provided for, in which case the population shown by the census immediately preceding such adoption shall govern. [40 Ex. G. A., ch. 7, § 30.]

6482. **Petition.** Upon petition of electors equal in number to twenty-five per cent of the votes cast for all candidates for mayor at the last preceding city election of any such city, the mayor shall, not less than thirty days prior to the election to be held as herein provided, by proclamation submit the question of organizing as a city under this chapter at a special election to be held at a time specified therein, and within two months after said petition is filed; provided, however, that in case not less than ten per cent of the qualified electors of any city reside in each of two or more townships, said petition shall be signed

by not less than ten per cent of the qualified electors of said city residing in each of said townships. [S., '13, § 1056-a18.]

6483. Question submitted. At such election, the proposition to be submitted shall be, "Shall the proposition to organize the city of (name the city), under chapter 326 of the code be adopted?" and the election thereupon shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other city elections. [S., '13, § 1056-a18.]

6484. Officers elected. If the majority of the votes cast shall be in favor thereof, cities having a population of twenty-five thousand and over shall thereupon proceed to the election of a mayor and four councilmen, and cities having a population of two thousand and less than twenty-five thousand shall proceed to the election of a mayor and two councilmen, as hereinafter provided. [S., '13, § 1056-a18.]

6485. First election. At the next regular city election after the adoption of such proposition there shall be elected a mayor and councilmen. In the event, however, that the next regular city election does not occur within one year after such special election the mayor shall, within ten days after such special election, by proclamation call a special election for the election of a mayor and councilmen, sixty days' notice thereof being given in such call, such election in either case to be conducted as hereinafter provided. [S., '13, § 1056-a18.]

6486. Certification of adoption. Immediately after such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county auditor, each a certificate stating that such proposition was adopted. [S., '13, § 1056-a18.]

6487. Resubmission of question. If said plan is not adopted at the special election called, the question of adopting said plan shall not be resubmitted to the voters of said city for adoption within two years thereafter, and then the question to adopt shall be resubmitted upon the presentation of a petition signed by electors as hereinbefore provided, equal in number to twenty-five per cent of the votes cast for all candidates for mayor at the last preceding general city election. [S., '13, § 1056-a18.]

THE COUNCIL

6488. Membership. In every city having a population of twenty-five thousand and over there shall be elected at the regular biennial municipal election a mayor and four councilmen, and in every city having a population of two thousand and less than twenty-five thousand, there shall be elected at such election a mayor and two councilmen. [S., '13, § 1056-a20.]

6489. Nomination — election — terms. Said officers shall be nominated and elected at large.

Said officers shall qualify and their terms of office shall begin on the first Monday after their election. [S., '13, § 1056-a20.]

6490. Vacancies. If any vacancy occurs in any such office the remaining members of said council shall appoint a person to fill such vacancy during the balance of the unexpired term. [S., '13, § 1056-a20.]

6491. Termination of terms. The terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the terms of office of the mayor and councilmen first elected under the provisions of this chapter shall then cease and determine, and the terms of office of all other appointive officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare. [S., '13, § 1056-a20.]

6492. Nomination by primary. Candidates to be voted for at all general municipal elections at which a mayor and councilmen are to be elected under the provisions of this chapter shall be nominated by a primary election, and no other names shall be placed upon the general municipal ballot except those selected in the manner hereinafter prescribed. [S., '13, § 1056-a21; 40 Ex. G. A., ch. 7, § 2.]

6493. Time, place, and manner of conducting. The primary election for such nomination shall be held on the second Tuesday preceding the general municipal election. It shall be held at the same places, so far as possible, and the polls shall be opened and closed at the same hours, as are required for said general municipal election. [S., '13, § 1056-a21; 40 Ex. G. A., ch. 5, § 115-a1; 40 Ex. G. A., ch. 7, § 3.]

6494. Judges and clerks. The judges and clerks of election appointed for the general municipal election shall be the judges and clerks of the primary election. [39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 4.]

6495. Affidavit of candidacy. Any person desiring to become a candidate for mayor or councilman shall, at least ten days prior to said primary election, file with the city clerk a statement of such candidacy, in substantially the following form:

State of Iowa }
County. } ss
I,....., being first duly sworn, say that I reside at street, city of, county of, state of Iowa; that I am a qualified voter therein; that I am a candidate for nomination to the office of (here specify the office of mayor, or the particular department or departments, as the case may be), to be voted upon at the primary election to be held on Tuesday of 19, and I hereby request that my name be printed upon the official primary ballot for nomina-

tion by such primary election for such office.

(Signed)

Subscribed and sworn to (or affirmed) before me by on this day of, 19

(Official signature of officer administering oath).

[S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 5.]

6496. Nominating petition. The candidate shall, at the time of filing his statement of candidacy, file therewith a petition of at least one hundred qualified voters requesting such candidacy. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 6.]

6497. Form of petition. Said petition shall be in substantially the following form:

PETITION ACCOMPANYING NOMINATING STATEMENT

The undersigned, duly qualified electors of the city of, and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination for (here specify the office of mayor or the particular department or departments, as the case may be) at the primary election to be held in such city on the Tuesday of, 19....

We further state that we know him to be a qualified elector of said city and a man of good moral character and qualified in our judgment for the duties of such office.

Name of Qualified Electors. Street Residence No. City of Residence.

[S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 7.]

6498. Verification. The affidavit of one or more electors of the city, as to the qualifications and residence, with street number, of each signer of the petition, shall be indorsed on or attached to each petition. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 8.]

6499. Publication of ballot. Immediately upon the expiration of the time of filing the statements and petitions for candidacies, the said city clerk shall cause to be published for three successive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballot, in the first of the precincts as arranged by him, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 9.]

6500. Preparation of ballots. The city clerk shall cause the primary ballots to be printed upon plain, substantial white paper, and to be authenticated by a facsimile of his

signature. No ballot shall have any party designation thereon. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 10.]

6501. Form of ballot in major cities. The ballots in all cities having a population of twenty-five thousand or over shall be in substantially the following form:

OFFICIAL PRIMARY BALLOT CANDIDATES FOR NOMINATION FOR MAYOR AND COUNCILMEN OF (Name of City) AT THE PRIMARY ELECTION (Place a cross in the square preceding the name of the person for whom you wish to vote) FOR MAYOR

- (Vote for one)
[] Name of candidate
[] Name of candidate

FOR SUPERINTENDENT OF ACCOUNTS AND FINANCES

- (Vote for one)
[] Name of candidate
[] Name of candidate

FOR SUPERINTENDENT OF PUBLIC SAFETY

- (Vote for one)
[] Name of candidate
[] Name of candidate

FOR SUPERINTENDENT OF STREETS AND PUBLIC IMPROVEMENTS

- (Vote for one)
[] Name of candidate
[] Name of candidate

FOR SUPERINTENDENT OF PARKS AND PUBLIC PROPERTY

- (Vote for one)
[] Name of candidate
[] Name of candidate

Attest: OFFICIAL BALLOT (Signature)

City Clerk.

[S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 11.]

6502. Combination of offices. In cities having a population of two thousand and not over twenty-five thousand the two councilmen shall be nominated and elected as follows:

- 1. One councilman to preside over the departments of "accounts and finances" and "public safety".
2. One councilman to preside over the departments of "parks and public property" and "streets and public improvements". [39 G. A., ch. 109, § 1; 40 G. A., ch. 135, § 2; 40 Ex. G. A., ch. 7, § 1.]

6503. Form of ballot in minor cities. The ballot in all cities having a population of two thousand and less than twenty-five thousand shall be in substantially the following form:

OFFICIAL PRIMARY BALLOT CANDIDATES FOR NOMINATION FOR MAYOR AND COUNCILMEN OF (Name of City) AT THE PRIMARY ELECTION (Place a cross in the square preceding the name of the person for whom you wish to vote)

FOR MAYOR

(Vote for one)

- Name of candidate
- Name of candidate

FOR SUPERINTENDENT OF ACCOUNTS, FINANCES, AND PUBLIC SAFETY

(Vote for one)

- Name of candidate
- Name of candidate

FOR SUPERINTENDENT OF PARKS AND PUBLIC PROPERTY, STREETS AND PUBLIC IMPROVEMENTS

(Vote for one)

- Name of candidate
- Name of candidate

Attest: OFFICIAL BALLOT (Signature)

..... City Clerk.

[S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 G. A., ch. 135, § 2; 40 Ex. G. A., ch. 7, § 12.]

6504. Arrangement of names. The names of the candidates shall be arranged and printed upon the primary election ballots in the following manner, to wit: The city clerk shall prepare a list of the election precincts of his city, by arranging the various wards or precincts of such city in numerical order. He shall then arrange the surnames of all candidates for such offices alphabetically for the respective offices for the first precinct in the list; thereafter, for each succeeding precinct, the name or names appearing first for the respective offices in the last precinct should be placed last, so that the names that were second before the change shall be first after the change. [39 G. A., ch. 109, § 2; 40 Ex. G. A., ch. 7, § 13.]

6505. Number of ballots. The city clerk shall cause to be delivered at each polling place a number of said ballots equal to twice the number of votes cast in such polling precinct at the last general municipal election for mayor. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 14.]

6506. Qualification of electors—challenges. Persons who are qualified to vote at the general municipal election shall be qualified to vote at such primary election. Challenges can be made by not more than two persons, to be appointed at the time of opening the polls by the judges of election; and the law applicable to challenges at a general municipal election shall be applicable to challenges made at such primary election. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 15.]

6507. Canvass of votes—return. Judges of election shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in such precinct for each of the candidates, and make return thereof to the city clerk, upon proper blanks to be furnished by the said city clerk, within six hours after the closing of the polls. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 16.]

6508. Canvass of returns—publication. On the day following the primary election, the city clerk shall publicly canvass said returns so received from the polling precincts, and shall make and publish in all the newspapers of said city, at least once, the result thereof. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 17.]

6509. General municipal ballot. The ballot at such general municipal election shall be in the same general form as for such primary election, so far as applicable. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 18.]

6510. Ballot with dual candidates. The city clerk in preparing the ballots for the ensuing general municipal election shall cause to be printed under the caption for a particular office, or combination of offices if any, the names of the two candidates who received the highest number of votes at the primary for said particular office, or combination of offices. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 G. A., ch. 135, § 2; 40 Ex. G. A., ch. 7, § 19.]

6511. Ballot with one candidate. If there be but one candidate, at the primary election, for a particular office, or combination of offices, his name shall be printed upon the general municipal ballot as a candidate for said particular office, or combination of offices, as the case may be. [40 Ex. G. A., ch. 7, § 20.]

6512. Arrangement and rotation of names. The names of the candidates shall be arranged and printed upon the general municipal election ballot in the same manner in which they are arranged and printed on the municipal primary ballot. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 2; 40 Ex. G. A., ch. 7, § 21.]

6513. Qualification of electors. All electors of cities under this chapter, who by the laws governing cities of the first and second class would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this chapter. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 22.]

6514. General municipal election statutes. In all elections in such cities, the election precincts, voting places, method of conducting election, canvassing the vote, and announcing the results shall be the same as by law provided for election of officers in cities of the first or second class, so far as the same are applicable and not inconsistent with the provisions of this chapter. [S., '13, § 1056-a21; 39 G. A., ch. 109, § 1; 40 Ex. G. A., ch. 7, § 23.]

6515. Services for hire. Any person who shall agree to perform any services in the interest of any candidate for any office provided in this chapter, in consideration of any money or other valuable thing for such services performed in the interest of any candidate, shall be punished by a fine not exceeding three hun-

dred dollars, or be imprisoned in the county jail not exceeding thirty days. [S., '13, § 1056-a22.]

6516. Bribery and illegal voting. Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this chapter, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person making false answer to any of the provisions of this chapter relative to his qualifications to vote at said election; any person wilfully voting or offering to vote at such election who has not been a resident of this state for six months next preceding said election, or who is not twenty-one years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such precinct where he offers to vote; and any person knowingly procuring, aiding, or abetting any violation hereof shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than ten nor more than ninety days. [S., '13, § 1056-a23.]

6517. Salaries. The mayor and councilmen shall have an office in the city hall, and their total compensation shall be as follows:

1. In cities having by the last preceding state or national census a population of less than twenty-five thousand, the mayor and councilmen shall receive as their annual salaries the amount to be fixed by ordinance, as follows: For the mayor, not to exceed the sum of one hundred fifty dollars per annum for each one thousand of population, or major portion thereof, in such city, and for each councilman in such city, not to exceed the sum of one hundred twenty dollars per annum for each one thousand population, or major portion thereof; provided, however, that in such city no mayor shall receive a salary greater than the sum of twenty-five hundred dollars per annum, nor in such city shall a councilman receive as his annual salary an amount greater than two thousand dollars per annum; and provided, further, that during the first term of office under the provisions of this chapter, the mayor and councilmen shall by ordinance fix their compensation as herein provided for their term of office; but thereafter the salary of any such officer shall not be increased or decreased during the term for which he shall have been elected or appointed.

2. In cities having by such census a population of twenty-five thousand and less than forty thousand, the mayor's annual salary shall be twenty-five hundred dollars, and that of each councilman, eighteen hundred dollars.

3. In cities having by such census a population of forty thousand and less than sixty thousand, the mayor's annual salary shall be three thousand dollars, and that of each councilman twenty-five hundred dollars.

4. In cities having by such census a population of sixty thousand or more, the mayor's annual salary shall be thirty-five hundred dollars, and that of each councilman, three thousand dollars.

Such salaries shall be payable in equal monthly installments. [S., '13, § 1056-a28.]

6518. Increase in salary. Any increase in salary occasioned under the provisions of this scale by increase in population in any city shall commence with the month next after the official publication of the census showing such increase therein. [S., '13, § 1056-a28.]

6519. Salaries of minor officers. Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance provide, payable in equal monthly installments. The salary or compensation of all other employees of such city shall be fixed by the council and shall be payable monthly or at such shorter periods as the council shall determine. [S., '13, § 1056-a28.]

6520. Governing body. Every city having a population of twenty-five thousand and over shall be governed by a council consisting of the mayor and four councilmen, and every city having a population of two thousand and less than twenty-five thousand shall be governed by a council consisting of the mayor and two councilmen, chosen as provided in this chapter, each of whom shall have the right to vote on all questions coming before the council. [S., '13, § 1056-a24.]

6521. Quorum. In cities having four councilmen three members of the council shall constitute a quorum, and in cities having two councilmen, two members of the council shall constitute a quorum. [S., '13, § 1056-a24.]

6522. Affirmative vote required. In cities having four councilmen the affirmative vote of three members, and in cities having two councilmen the affirmative vote of two members shall be necessary to adopt any motion, resolution, or ordinance, or pass any measure, unless a greater number is provided for in this chapter. [S., '13, § 1056-a24.]

6523. Yeas and nays—writings—reading. Upon every vote the yeas and nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon. [S., '13, § 1056-a24.]

6524. Presiding officer. The mayor shall preside at all meetings of the council. He shall have no power to veto any measure. [S., '13, § 1056-a24.]

6525. Meetings. Regular meetings of the council shall be held on the first Monday after the election of councilmen, and thereafter at least once each month. The council shall provide by ordinance for the time of holding regular meetings, and special meetings may be

called from time to time by the mayor or two councilmen. All meetings of the council, whether regular or special, at which any person not a city officer is admitted, shall be open to the public. [S., '13, § 1056-a29.]

6526. President. The mayor shall be president of the council and preside at its meetings, and shall supervise all departments and report to the council for its action all matters requiring attention in either. [S., '13, § 1056-a29.]

6527. Vice president. The superintendent of the department of accounts and finances shall be vice president of the council, and in case of vacancy in the office of mayor, or the absence or inability of the mayor, shall perform the duties of mayor. [S., '13, § 1056-a29.]

6528. Minor officers and assistants. The council shall, at the first regular meeting after election, or as soon as practical thereafter, elect by majority vote the following city officers:

1. Clerk.
2. Solicitor.
3. Assessor.
4. Treasurer.
5. Auditor.
6. Civil engineer.
7. Health physician.
8. Marshal.
9. Market master.
10. Street commissioner.

11. Such other officers and assistants as shall be provided by ordinance, and are necessary for the proper and efficient conduct of the affairs of the city. [S. S., '15, § 1056-a26; 40 Ex. G. A., ch. 7, § 25.]

6529. Officers in certain cities. In cities having a population of less than twenty-five thousand such only of the above named officers shall be appointed as may, in the judgment of the mayor and councilmen, be necessary for the proper and efficient transaction of the affairs of the city. [S. S., '15, § 1056-a26; 40 Ex. G. A., ch. 7, § 26.]

6530. Police judge. In those cities of the first class not having a superior court, the council shall appoint a police judge. [S. S., '15, § 1056-a26; 40 Ex. G. A., ch. 7, § 27.]

6531. In cities of second class. In cities of the second class not having a superior court the mayor shall hold police court, as now provided by law. [S. S., '15, § 1056-a26; 40 Ex. G. A., ch. 7, § 28.]

6532. Removal of officers. Any officer or assistant elected or appointed by the council may be removed from office at any time by vote of a majority of the members of the council, except as otherwise provided for in this chapter. [S. S., '15, § 1056-a26; 40 Ex. G. A., ch. 7, § 29.]

NOTE: Removal of city officers, see § 1117.

6533. Create and discontinue offices. The council shall have power from time to time to create, fill, and discontinue offices and employments other than herein prescribed, according to their judgment of the needs of the city; and may by majority vote of all the members remove any such officer or employee, except as otherwise provided for in this chapter; and may by resolution or otherwise prescribe, limit, or change the compensation of such officers or employees. [S., '13, § 1056-a27.]

6534. Interest in contracts. No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for the city; and no such officer or employee shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for any person, firm, or corporation operating interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. [S., '13, § 1056-a31.]

6535. Free passes—services. No such officer or employee shall accept, or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of said city, any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line or telephone exchange, or other business using or operating under a public franchise, any frank, free pass, free ticket or free service, or accept or receive, directly or indirectly, from any such person, firm, or corporation, any other service upon terms more favorable than is granted to the public generally. [S., '13, § 1056-a31.]

6536. Violations. Any violation of the provisions of the two preceding sections shall be a misdemeanor, and every such contract or agreement shall be void. [S., '13, § 1056-a31.]

6537. Exceptions. Such prohibition of free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to city officials heretofore provided by any franchise or ordinance be affected by the second preceding section. [S., '13, § 1056-a31.]

6538. Political activity. Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence directly or indirectly to influence other officers or employees of such city to adopt his political views or to favor any particular person or candidate for office, or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding three hundred dollars or by imprisonment in the county jail not exceeding thirty days. [S., '13, § 1056-a31.]

REMOVAL FROM OFFICE

6539. Removal by electors—petition. The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five per cent of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. [S., '13, § 1056-a36.]

6540. Examination. Within ten days from the date of filing such petition the city clerk shall examine and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. [S., '13, § 1056-a36.]

6541. Amendment. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect. [S., '13, § 1056-a36.]

6542. Election called. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding the said election, not less than thirty days or more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed. [S., '13, § 1056-a36.]

6543. Notice of election—procedure. The council shall make or cause to be made publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other city elections. [S., '13, § 1056-a36.]

6544. Nominations. So far as applicable, except as otherwise herein provided, nominations hereunder shall be made without the intervention of a primary election by filing with the clerk, at least ten days prior to said special election, a statement of candidacy accompanied by a petition signed by electors entitled to vote at said special election equal in number to at least ten per cent of the entire vote for all candidates for the office of mayor at the last preceding general municipal election, which said statement of candidacy and petition shall be substantially in the form set out in sections 6495 and 6497, so far as the same are applicable, substituting the word "special" for the word "primary" in such statement and petition, and stating therein that such person is a candidate for election instead of nomination. [S., '13, § 1056-a36.]

6545. Incumbent as candidate. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. [S., '13, § 1056-a36.]

6546. Form of ballot. The ballot for such special election shall be in substantially the following form:

OFFICIAL BALLOT

Special election for the balance of the unexpired term
of as
for

(Vote for one only)
(Names of Candidates)

.....

(Name of present incumbent)

Official ballot attest:

(Signature)
City Clerk.

[S., '13, § 1056-a36.]

6547. Result—removal—tenure. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant.

The successor of any officer so removed shall hold office during the unexpired term of his predecessor. [S., '13, § 1056-a36.]

6548. Failure to remove—cumulative remedy. If the incumbent receives the highest number of votes, he shall continue in office. The said method of removal shall be cumulative and additional to the methods heretofore provided by law. [S., '13, § 1056-a36.]

ABANDONMENT OF PLAN

6549. Procedure. Any city which shall have operated for more than six years under the provisions of this chapter may abandon such organization hereunder, and accept the provisions of the general law of the state then applicable to cities of its population, or if now organized under special charter may resume said special charter by proceeding as follows: Upon the petition of not less than twenty-five per cent of the electors of such city a special election shall be called, at which the following proposition only shall be submitted:

"Shall the city of (name of city) abandon its organization under chapter 326 of the code, and become a city under the general law governing cities, or if now organized under special charter, resume said special charter?"

If the majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of such officers such city shall become a city under such general law of the state; but such change shall not in any manner or degree affect the property, rights, or liabilities of any nature of such city, but shall merely extend to such change in its form of government. The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, generally as provided by sections 6539 to 6543, inclusive, in so far as the provisions thereof are applicable. [S., '13, § 1056-a39.]

ORDINANCES AND RESOLUTIONS

6550. When effective. No ordinance passed by the council, except when otherwise required by the general laws of the state or by the provisions of this chapter, except an ordinance for the immediate preservation of the public peace, health, or safety, which contains a statement of its urgency and is passed by a two-thirds vote of the council, shall go into effect before ten days from the time of its final passage. [S., '13, § 1056-a38.]

6551. Petition of protest. If during said ten days a petition signed by electors of the city equal in number to at least twenty-five per cent of the entire vote cast for all candidates for mayor at the last preceding general municipal election at which a mayor was elected, protesting against the passage of such ordinance, be presented to the council, the same shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such ordinance; and if the same is not entirely repealed, the council shall submit the ordinance, as is provided by section 6557 to the vote of the electors of the city, either at the general election or at a special municipal election to be called for that purpose; and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. [S., '13, § 1056-a38.]

6552. Petition — examination and certification. Said petition shall be in all respects in accordance with the provisions of said section except as to the percentage of signers, and be examined and certified to by the clerk in all respects as is provided in section 6556. [S., '13, § 1056-a38.]

6553. Time limit on enactment. Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption thereof. [S., '13, § 1056-a30.]

6554. Signing and recording. Every resolution or ordinance passed by the council must be signed by the mayor, or by two councilmen, and be recorded, before the same shall be in force. [S., '13, § 1056-a24.]

6555. Franchises. No franchise or right to occupy or use the streets, highways, bridges, or public places in any such city shall be granted, renewed, or extended, except by ordinance, and every franchise or grant for interurban or street railways, gas or waterworks, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities within said city, must be authorized or approved by a majority of the electors voting thereon at a general or special election as provided in chapter 304. [S., '13, § 1056-a30.]

6556. Petitions for ordinances. Any proposed ordinance may be submitted to the council by petition signed by electors of the city equal in number to the percentage hereinafter required. The signatures, verification, authentication, inspection, certification, amendment, and submission of such petition shall be the same as provided for petitions under sections 6539 to 6543, inclusive. [S., '13, § 1056-a37.]

6557. Ordinance passed or election called. If the petition accompanying the proposed ordinance is signed by electors equal in number to twenty-five per cent of the votes cast for all candidates for mayor at the last preceding general election, and contains a request that the said ordinance be submitted to a vote of the people if not passed by the council, such council shall either (a) pass said ordinance without alteration within twenty days after attachment of the clerk's certificate to the accompanying petition, or (b) forthwith after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the council shall call a special election, unless a general municipal election is fixed within ninety days thereafter, and at such special or general municipal election, if one is so fixed, such ordinance shall be submitted without alteration to

the vote of the electors of said city. [S., '13, § 1056-a37.]

6558. Ordinance passed or election had. If the petition is signed by not less than ten nor more than twenty-five per cent of the electors, as above defined, then the council shall, within twenty days, pass said ordinance without change, or submit the same at the next general city election occurring not more than thirty days after the clerk's certificate of sufficiency is attached to said petition. [S., '13, § 1056-a37.]

6559. Form of ballot. The ballots used when voting upon said ordinance shall contain these words: "For the ordinance" (stating the nature of the proposed ordinance), and "Against the ordinance" (stating the nature of the proposed ordinance). [S., '13, § 1056-a37.]

6560. Multiple submission—limitation. Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of the four preceding sections; but there shall not be more than one special election in any period of six months for such purpose. [S., '13, § 1056-a37.]

6561. Adoption by electors—status. If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition, or which shall be adopted by a vote of the people, can not be repealed or amended except by a vote of the people. [S., '13, § 1056-a37.]

6562. Amendments. The council may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general city election; and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. [S., '13, § 1056-a37.]

6563. Publications. Whenever any ordinance or proposition is required by this chapter to be submitted to the voters of the city at any election, the city clerk shall cause such ordinance or proposition to be published once in each of the daily newspapers published in said city, such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on. [S., '13, § 1056-a37.]

GENERAL POWERS AND DUTIES

6564. The council. The council shall have and possess, and the council and its members shall exercise, all executive, legislative, and judicial powers and duties now had, possessed, and exercised by the mayor, city council, solicitor, assessor, treasurer, auditor, city engineer, and other executive and adminis-

trative officers in cities of the first and second class, and in cities under special charter, and shall also possess and exercise all executive, legislative, and judicial powers and duties now had and exercised by the park commissioners, the board of police and fire commissioners, and board of waterworks trustees, in all cities wherein park commissioners, board of police and fire commissioners, and board of waterworks trustees now exist or may be hereafter created. [S., '13, § 1056-a25.]

6565. Departments. The executive and administrative powers, authority, and duties in such cities shall be distributed into and among five departments, as follows:

1. Department of public affairs.
2. Department of accounts and finances.
3. Department of public safety.
4. Department of streets and public improvements.
5. Department of parks and public property. [S., '13, § 1056-a25.]

6566. Department superintendents. The mayor shall be superintendent of the department of public affairs and each councilman shall be superintendent of the particular department or combination of departments to which he was elected, as the case may be. [S. S., '15, § 1056-a26; 39 G. A., ch. 109, § 3; 40 Ex. G. A., ch. 7, § 24.]

6567. Statutes applicable. All laws governing cities of the first and second class and not inconsistent with the provisions of this chapter, and sections 6735, 6736, 6779, 6786, 6789 to 6793, inclusive, 6817, 6823 to 6825, inclusive, and 6932, now applicable to special charter cities and not inconsistent with the provisions of this chapter, shall apply to and govern cities organized under this chapter. [S., '13, § 1056-a19.]

6568. Existing ordinances. All by-laws, ordinances, and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this chapter. [S., '13, § 1056-a19.]

6569. Existing limits, rights, property, and liability. The territorial limits of such city shall remain the same as under its former organization, and all rights and property of every description which were vested in any such city under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time, and no suit or prosecution of any kind, shall be affected by such change, unless otherwise provided for in this chapter. [S., '13, § 1056-a19.]

6570. Revision of appropriations. If, at the beginning of the term of office of the first council elected in such city under the provisions of this chapter, the appropriations for the expenditures of the city government for the current fiscal year have been made, said

council shall have power, by ordinance, to revise, repeal, or change said appropriations and to make additional appropriations. [S., '13, § 1056-a34.]

6571. Discretionary powers. The council shall determine the powers and duties to be performed by, and assign them to, the appropriate department; shall prescribe the powers and duties of officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments; and may make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city. [S., '13, § 1056-a25.]

6572. Library trustees. The board of library trustees in all cities organized under the commission form of government shall consist of five members (except in cities which have heretofore maintained a library under lease or contract fixing a different number of trustees) and said board shall have and exercise all the powers possessed by library boards in cities not organized and acting under this chapter. [S., '13, § 1056-a26a.]

6573. How selected—terms. The said board of five trustees shall be selected as follows: At the first meeting of the council, or as soon as practicable thereafter, the mayor shall appoint, by and with the approval of the council, five library trustees, one to serve for the period of five years, one for four years, one for three years, one for two years, and one for one year, and until their successors are elected and qualify. Upon the election of said five trustees the term of the existing board of nine trustees heretofore acting under the general law shall cease. Annually thereafter there shall be elected in like manner one trustee to serve for five years and to take the place of the trustee whose term first expires. [S., '13, § 1056-a26b.]

6574. Flood protection—division of work—levy. Whenever in any such city proceedings have been or shall be begun for the purpose of providing flood protection under the provisions of chapter 310, the council shall have power, after the election in said chapter provided for has been had, and without again submitting the matter at an election, to divide the work into parts, sections, or districts, and determine what property would be benefited by the work or improvement in each part, section, or district; to omit parts of said work or any part, section, or district; and to contract for any part, section, or district separately and proceed therewith the same as if the entire work or improvement was contracted for, done, or made. Whenever in any such city the tax provided for in said chapter has not been levied beginning on the date fixed in the resolution of necessity and in the proposition submitted to a vote of the electors, and a part of the

period in which such levy is authorized to be made by such vote has expired without such levy having been made, and no certificates or bonds have been issued or sold for the payment of the improvement as provided in said chapter, the council shall have the power to continue the levy provided for in said chapter and in the proposition theretofore submitted to a vote of the electors, for a period not exceeding twenty years, including the several years, if any, for which such tax has heretofore been levied; and it is hereby made the duty of the council to make the levy in the manner provided in section 6100, and to appropriate and apply the proceeds collected after January 1, 1914, from such tax so levied to the payment of flood protection bonds issued by such city under section 6103 if any such there be. [S., '13, § 1056-a41.]

6575. Special assessments. In all cases where special assessments are authorized and no other mode of proceeding is provided by law, the assessment shall be made as nearly as practicable in the manner provided for assessing the cost of street improvements and sewers. [S., '13, § 1056-a42.]

6576. Certificate for repair of bridges. Any such city shall have power to issue certificates as provided in sections 5877 to 5879, inclusive, for the whole or any part of the expense of repairing bridges. [S., '13, § 1056-a43.]

6577. Repairs by street railway companies. In every such city the owner of any street railway occupying or using any bridge shall construct, reconstruct, and repair the paving or flooring on said bridge three and one-half feet each way from the center line of the space between the rails of its tracks, the same to be ordered, done, assessed, and paid for in the manner provided for paving in sections 6052 to 6054, inclusive, 6057 and 6058. [S., '13, § 1056-a44.]

6578. Parks and cemeteries. In addition to the taxes now or hereafter authorized by law every such city shall have the power to levy upon all taxable property therein the following taxes:

1. A tax of not more than one and five-tenths mills on the dollar for the purpose of caring for and improving the parks of said city.
2. A tax of not more than one mill on the dollar for the purpose of caring for and improving any cemetery owned by such city. [S., '13, § 1056-a45.]

6579. Fund for cemeteries. Every such city shall have power to create a fund from tax levies heretofore or hereafter authorized for cemeteries or from the sale of lots in cemeteries, or from other sources, including bequests or donations for the permanent maintenance of cemeteries, and the fund thus created shall not be used for any other purpose; and the city council shall have authority to

cause such accumulations to be invested in bonds of the United States, or in municipal bonds or certificates, or other evidence of indebtedness issued by authority of and according to law of this or any other state, when such bonds are at or above par. [S., '13, § 1056-a46.]

6580. Lease of city property—vote. Any such city, by a two-thirds vote of its council, shall have authority to lease any city property for a term of not exceeding one year from the date of leasing the same, where, in the judgment of the council expressed by a two-thirds vote thereof, any such property may not be needed for the immediate use of such city. [S., '13, § 1056-a47.]

6581. Monthly itemized statement—copies. The council shall each month print in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the state library, the city library, the daily newspapers of the city, and to persons who shall apply therefor at the office of the city clerk. [S., '13, § 1056-a33.]

6582. Annual examination. At the end of each year the council shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of such examination in the manner above provided for publication of statements of monthly expenditures. [S., '13, § 1056-a33.]

DRAINAGE IN CERTAIN CITIES

6583. Authorization. All cities in this state organized and existing under this chapter and having a population of one hundred thousand or over, into or through which a stream flows which furnishes drainage for any city or town farther up the stream, and whose boundary lines join, shall have the power to construct, repair, and maintain the necessary drains and sewers to preserve and protect the health of such cities. [38 G. A., ch. 407, § 1.]

6584. Resolution of necessity—notice—objections. When any such city located as above indicated desires to construct, repair, and maintain any such sewer or drain, the council of such city shall by resolution determine the necessity for the construction of such drains and sewers, the character and extent thereof, the method of construction, the one or more kinds and size thereof, the property to be assessed therefor, the location and terminal points thereof, and cause twenty days' notice of time when said resolution will be considered by such council for passage to be given by four publications in said city in some newspaper of general circulation published therein, the last of which shall be not less than two nor more than four weeks prior to the time fixed for the consideration of said resolution,

at which time the owners of the property subject to assessment for the same may appear and make objection to the contemplated improvement, sewer, or drain, and the passage of said proposed resolution, at which hearing the same may be amended and passed or passed as proposed. [38 G. A., ch. 407, § 2.]

6585. Sewer districts—assessments. Such city shall have power to establish sewer districts to embrace all or such portions of said commission-governed cities as in the judgment of the council thereof will receive special benefits from the construction, repair, improvement, or reconstruction of such sewer or sewers, to change the boundaries of same from time to time as may become in the judgment of such council just and equitable, and to assess so much of the cost of such drains and sewers against all lots or tracts of land contained in the sewer district within which such improvements are made as shall equal and be in proportion to the special benefits conferred by said improvement and not in excess thereof. In no case shall such assessment exceed twenty-five per cent of the actual value of said lots or tracts at the time of levy thereof. [38 G. A., ch. 407, § 3.]

6586. Construction ordered. Whenever the resolution of necessity herein above provided for has been adopted and the provisions of the three preceding sections complied with, the council may by ordinance or resolution order the construction, repair, improvement, or reconstruction of said drain or sewer upon a ye and nay vote entered of record, which record shall also show whether such improvement was petitioned for or made on the motion of the council. [38 G. A., ch. 407, § 4.]

POLICE EQUIPMENT IN CERTAIN CITIES

6587. Applicability of act. The four following sections shall apply only to cities having a population of seventy thousand or more as shown by the last United States or state census. [S., '13, § 1056-a59; 40 G. A., ch. 136, § 1.]

6588. Equipment authorized. The council of any city organized under this chapter shall have the power to levy a special tax upon all taxable property in said city, not to exceed one mill on the dollar each year, for the purpose of purchasing and maintaining apparatus and equipment for use in police service in the department of public safety, but nothing in this section or the three following sections shall be held to extend the powers of such cities to make annual levies for general and special taxes in excess of forty-eight mills on the dollar of the taxable value of the property therein. [S., '13, § 1056-a55.]

6589. Levy. When the whole or any part of the cost of purchasing and maintaining apparatus and equipment for use in police service in the department of public safety of any city organized under this chapter shall be

ordered paid from the city fund designated to purchase and maintain apparatus and equipment for use in police service in the department of public safety, to be levied upon all the taxable property within such city, it shall have the power after the purchase of said apparatus and equipment, by ordinance or resolution, to levy at any one time the whole or any part of the cost of such apparatus and equipment upon all the taxable property within such city and determine the whole percentage of taxes necessary to pay the same, and the percentage to be paid each year not exceeding one-half of the maximum annual limit of the tax such city may levy for funds to purchase and maintain apparatus and equipment for police service in the department of public safety, and the number of years, not exceeding ten, given for the maturity of each installment thereof, but no part of such costs shall be levied against property owned by the city, county, state, or the United States. Certificates of such levy shall be filed with the auditor of the county or counties in which said city is located, setting forth the amount or percentage and maturity of said tax, or each installment thereof, upon the assessed valuation of all taxable property in said city, certified as correct by the city clerk or auditor, and thereupon said tax shall be placed upon the tax lists of the proper county or counties. [S., '13, § 1056-a56.]

6590. Bonds. Any such city may anticipate the collection of taxes authorized to be levied for the purchase and maintenance of apparatus and equipment for police service in the department of public safety, and for that purpose may issue police equipment fund certificates or bonds with interest coupons, and the provisions of chapter 320 shall be operative as to such certificates, bonds, and coupons, in so far as they may be applicable. [S., '13, § 1056-a57.]

6591. Pledge of special fund. Said certificates, bonds, and interest thereon shall be secured by said assessments and levies and shall be payable only out of the funds derived from such levies and pledged to the payment of the same, and no certificates or bonds shall be issued in excess of taxes authorized and levied to secure the payment of the same. It shall be the duty of such city to collect such funds with interest thereon and to hold the same separate and apart in trust for the payment of said certificates, bonds, and interest, and to apply the proceeds of such funds pledged for such purpose to the payment of said certificates, bonds, and interest. [S., '13, § 1056-a58.]

GARBAGE PLANTS IN CERTAIN CITIES

6592. Tax. The council of any city having a population of seventy thousand or more, organized under this chapter, shall have the power to levy a tax upon all taxable property in said city not to exceed one mill on the dollar each year for the purpose of acquiring a location for and equipment, maintenance, and construction of a garbage disposal plant or system, but

nothing in this and the three following sections shall be held to extend the powers of such cities to make annual levies for general and special taxes in excess of forty-eight mills on the dollar of the taxable value of the property therein. [S., '13, § 1056-a61; 39 G. A., ch. 54.]

6593. Levy. When the whole or any part of the cost of purchasing a location for and equipment, maintenance, and construction of a garbage disposal plant or system by any such city, shall be ordered paid from the city fund designated for such purchase, equipment, maintenance, and construction, to be levied upon all taxable property within such city, it shall have the power, after purchase of the property, equipment, maintenance, and construction of any such plant or system, by ordinance or resolution, to levy at any one time, the whole or any part of the total cost of such plant or system and the maintenance thereof upon all the taxable property within such city and determine the whole percentage of taxes necessary to pay the same, and the percentage to be paid each year not exceeding one-half of the maximum annual limit of the tax such city may levy for funds to purchase a location for, maintain, equip, and construct a garbage disposal plant or system, and the number of years, not exceeding ten, given for the maturity of each installment thereof, but no part of such cost shall be levied against property owned by the city, county, state, or the United States. Certificates of such levy shall be filed with the auditor of the county or counties in which said city is located, setting forth the amount or percentage and maturity of said tax, or each installment thereof, upon the assessed valuation of all taxable property in said city, certified as correct by the city clerk or auditor, and thereupon said tax shall be placed upon the tax list of the proper county or counties. [S., '13, § 1056-a62.]

6594. Bonds. Any such city may anticipate the collection of taxes authorized to be levied for the purchase of its location and for the equipment, maintenance, and construction of a garbage disposal plant or system, and for that purpose may issue garbage disposal plant certificates or bonds with interest coupons, and the provisions of chapter 320 shall be operative as to such certificates, bonds, and coupons, in so far as they may be applicable. [S., '13, § 1056-a63.]

6595. Payment. Said certificates, bonds, and interest thereon shall be secured by said assessments and levies and shall be payable only out of the funds derived from such levies and pledged to the payment of the same, and no certificates or bonds shall be issued in excess of taxes authorized and levied to secure the payment of the same. It shall be the duty of such city to collect such funds, with interest thereon, and to hold the same separate and apart in trust for the payment of said certificates, bonds, and interest, and to apply the

proceeds of such funds pledged for that purpose to the payment of said certificates, bonds, and interest. [S., '13, § 1056-a64.]

RIVER FRONT COMMISSION AND FIRE DEPARTMENT
IN CERTAIN CITIES

6596. Transfer of powers. All cities which have heretofore been organized and acting under special charters and which have heretofore, or shall hereafter adopt the plan of government provided in this chapter, and in which river front improvement commissions have been or shall hereafter be organized, under chapter 294, shall have and may exercise all the rights and powers conferred by said chapter on the said river front improvement commission, and all such rights and powers are hereby transferred to and vested in the city council of any such city or cities. Said council shall have the power to elect and shall elect a commission of three persons, to be known as the river front improvement commission, whose duties shall be to carry out the powers and duties with respect to the beds and banks of streams in such cities, herein conferred upon said city council, or such limited powers in respect thereto as the council may prescribe by ordinance. Said commission shall be elected biennially on the first Tuesday in May, and shall hold office for a term of six years and until their successors are elected and qualify. The members of the river front improvement commission shall be elected, one for two years, one for four years, and one for six years. [S., '13, § 1056-a48.]

6597. Meandered streams. Every city specified in the preceding section shall have control of all the meandered streams within the boundaries thereof, and of the beds, banks, and waters of such streams. Said cities shall have power to prevent the placing or maintenance of nuisances and obstructions in such streams, or on or along the banks thereof, and to abate and remove such nuisances or obstructions therefrom, and to recover the expense thereof from the person or persons causing, placing, or maintaining such nuisances therein or thereon; to deepen, widen, straighten, or change the channels of such streams; to improve and beautify the banks of such streams; to construct levees, embankments, and other works to protect the city and its property and its inhabitants and their property from floods; to acquire and take by purchase or condemnation any real property necessary for any such works or improvements; to assess upon property benefited by any such works or improvements, the cost thereof, to the extent of the special benefits conferred thereby, but not in excess of such special benefit and not in excess of twenty-five per cent of the actual value of the property benefited; to provide funds for any of the expenditures herein authorized, by levy upon all the taxable property in such city of a continuous tax of not more than two mills on the dollar each year for not more than ten years, and to issue bonds in anticipation of such tax,

and to pledge the proceeds of said tax to the payment of said bonds. The said special tax levy and the issuance of bonds in anticipation thereof, the general plans recommended by the river front improvement commission, and the estimated costs of said improvement based upon surveys, plans, and estimates made by the city engineer shall be provided for by ordinance. [S., '13, § 1056-a49.]

6598. Tax sales—redemptions. Whenever any property shall have been heretofore sold for any taxes or special assessment by any city specified in the second preceding section, or by the treasurer thereof, the county treasurer shall have the power and it shall be his duty to collect said taxes and on any such sale to issue tax sale deeds therefor in the same manner and under the same provisions of law as are or may hereafter be applicable to tax sales made by the county treasurer; and any tax sale deed heretofore or hereafter issued on any such sale shall have the same force and effect as though the tax sales had been made by the county treasurer. Redemptions from such tax sales shall be made as from sales made by the county treasurer. [S., '13, § 1056-a50.]

6599. Care of streets. The council of any city specified in section 6596 shall have the power to divide the city into not less than five road districts for the purpose of cleaning, sprinkling, and repairing the streets and public places, or any of said purposes, and to provide for the manner of doing the same and for the payment of the cost thereof out of the district road fund, and shall determine the amount of money necessary for such purposes in each district; and such city council may levy a special tax not exceeding two mills on the dollar on all taxable property in each of said road districts, to be known as the road district fund and to be used only to pay the cost of cleaning, sprinkling, and repairing the streets and public places in such districts. [S., '13, § 1056-a51.]

6600. Tax for fire department. The council of any city specified in section 6596 shall have the power to levy a special tax upon all taxable property in said city, not exceeding six mills on the dollar each year, for the purpose of acquiring property for the use of the fire department and equipping and maintaining such department. But the levies of general and special taxes in such cities shall not exceed, in the aggregate, forty-eight mills on the dollar of the taxable value of the property therein. [S., '13, § 1056-a52.]

MEANDERED STREAMS IN CERTAIN CITIES

6601. Improvement authorized. All cities which have heretofore, or shall hereafter adopt the plan of government provided in this chapter, and which have their corporate limits divided by a meandered stream, and which have a population of thirty-five thousand or more according to the last preceding state or federal

census, shall have power to acquire land along or adjacent to such stream as may be deemed desirable by the council of any such city for park purposes, or as sites for public buildings, or shall, by such council, be deemed necessary for the widening, straightening, and improving of the channel of such stream and the improvement of the banks thereof, by purchase, or by condemnation in the manner provided by law for the taking of private property for public use, and shall have power to improve said land for public purposes. [40 G. A., ch. 137, § 1.]

6602. Leases. Such cities may temporarily lease any property so acquired when, in the judgment of the city council, public interests or welfare will thereby be subserved. [40 G. A., ch. 137, § 2.]

6603. Election — bonds — tax. The city councils of any such cities may submit to the electors thereof at a regular city election or at a special election called by the city council for that purpose, the question of the issuance of bonds to provide for the payment for land to be acquired under the provisions of the second preceding section, and for permanently improving the same for public purposes, and if a majority of the electors voting at any such election shall vote in favor thereof the city council may issue bonds maturing not more than fifty years from date of issuance, or serially within such period, payable at such place and of such form as the city council may by ordinance designate, and in an amount not in excess of that authorized by said electors.

In issuing such bonds, such cities may become indebted in an amount which, added to all other indebtedness, shall not exceed five per cent of the actual value of the taxable property in such city as shown by the last preceding assessment roll.

For the purpose of providing for the payment of said bonds and the interest thereon, such cities shall have the power to levy upon all the taxable property within the limits thereof an annual tax of not exceeding five mills on the dollar until such bonds and the interest thereon have been fully paid or provided for, not exceeding fifty years. [40 G. A., ch. 137, § 3; 40 Ex. G. A., H. F. 333, § 1.]

6604. Notice—ballot. Notice of such election shall be given in two newspapers published in said city, if there be two, but if not, then in one, once each week for at least four consecutive weeks. The election shall be held not less than five nor more than twenty days after the last publication of such notice. The question to be submitted shall be in the following form:

Shall the city issue bonds in the amount of \$ for the purpose of acquiring land along and adjacent to the within the city limits

Yes

No

(Name of stream)

and permanently improve the same for public purposes?
[40 G. A., ch. 137, § 4.]

6605. Interpretative clause. The four preceding sections shall be construed as granting additional power without limiting the power already granted to cities designated in section 6601. [40 G. A., ch. 137, § 5.]

PARKS, SWIMMING POOLS, ETC., IN CERTAIN CITIES

6606. Powers granted. The council of any city organized under this chapter, and having a population of fifty thousand, shall have the power to establish, in and in connection with the parks, swimming pools, bathing beaches, bathhouses, armories, ice rinks, dance pavilions, shelter houses, wading pools, and river walls, and to pave, macadamize, and otherwise improve the roadways, drives, avenues, and walks in and through such parks. [37 G. A., ch. 194, § 1; 40 Ex. G. A., H. F. 338, § 1.]

6607. Tax for swimming pools, and paving. The council of any such city shall have the power, and it is hereby authorized in its discretion, to certify to the county auditor and to cause to be collected, a special tax of not to exceed one-half mill on the dollar on all taxable property of the city to be used for the construction of such swimming pools, bathing beaches, bathhouses, armories, ice rinks, dance pavilions, shelter houses, wading pools, and river walls, and an additional special tax of one-half mill on the dollar on all taxable property of the city to be used for the sole and only purpose of paving, macadamizing, and otherwise improving the roadways, drives, avenues, and walks in and through such parks. The city council may anticipate the collection of said additional tax herein authorized to be levied for the purposes herein stated, and for that purpose may issue park certificates or bonds with interest coupons, and the provisions of chapter 320 shall be operative as to such certificates, bonds, and coupons, in so far as they may be applicable. The proceeds of such special tax shall be kept as a separate fund and shall be used for the purpose of paying certificates or bonds and the coupons issued thereupon and for no other purpose whatsoever. [37 G. A., ch. 194, § 2; 40 Ex. G. A., H. F. 338, § 2.]

MISCELLANEOUS POWER TO CERTAIN CITIES

6608. Trees and shrubbery. Cities now or hereafter having a population of twenty-five thousand or over and organized under this chapter shall have power by ordinance to take and assume charge, custody, and control of all trees and shrubbery upon the public streets, and to plant, prune, care for, and maintain all trees and shrubbery upon the public streets in such manner as not to interfere with public travel and to pay for the same out of the general fund or to provide by ordinance for assessing the cost thereof upon the lots and parcels of land in front of which trees or shrubbery are planted and maintained. No power shall exist to remove other than dead, damaged, or unsightly trees and shrubbery. The carrying into effect of the provisions of any ordinance enacted hereunder shall be

vested in the department of parks and public property. [S., '13, § 1056-a65.]

6609. Sale or gift of islands. The council of any city organized and acting under the provisions of this chapter and having a population of over thirty-five thousand and under fifty thousand, according to the last preceding state census, and the corporate limits of which city are divided by a river, shall have power by ordinance adopted as by law provided, to sell or donate to the county in which such city is located such part of any island in such river belonging to such city as may be desirable or necessary for a courthouse and county seat site. [38 G. A., ch. 111, § 1.]

6610. Street improvements and sewers. Cities under the commission plan having a population of more than twenty thousand, and in which is situated no city cemetery, but contain within their confines a cemetery established for more than twenty years, and is conducted by a cemetery association or corporation operated not for pecuniary profit, and which cemetery contains more than forty acres and is so situated as to for a distance of more than fifteen hundred feet bar access to the city, which cemetery has a frontage of more than fifteen hundred feet upon one of the main traveled streets or highways leading into said city, and upon which street or highway a street car track is laid, and which street or high-

way is so situated as to make it impracticable to levy special assessments against a large portion of the abutting property so situated, for the purpose of building, repairing, and paying for sewer under and curbing and pavement along and upon said street or highway in front of such cemetery are hereby authorized to avail themselves of the provisions of chapter 308 relating to the establishment of districts for the construction, maintenance, and repair of sewers, and for the improvement or repair, by paving or graveling, of such streets within the corporation as in the judgment of the council constitute main traveled highways into and out of cities; and for the proportion of the cost thereof not properly assessable against such street car line and not justly assessable against abutting property other than that owned by the cemetery association, in addition to all other levies now authorized by law, may levy an annual tax not exceeding one mill upon all taxable property excepting moneys and credits contained in said city, or any principal division or district thereof as may be determined or established by the city council. The tax herein provided for may be accumulated from year to year until such special fund is sufficient for the purposes herein authorized. And such city may anticipate the collection of such tax under the provisions of section 6261. [38 G. A., ch. 101, § 1; 40 Ex. G. A., S. F. 169, § 1, par. 2.]

CHAPTER 327

CITY MANAGER PLAN BY ORDINANCE

6611. Duties and compensation.
6612. Appointment—tenure.

6611. Duties and compensation. All cities and towns, except cities under the commission form of government and cities having a population of more than twenty-five thousand as shown by the last preceding census, are hereby authorized to provide by ordinance for the creation of the office of city manager and to fix likewise the duties and powers and compensation of such officer. [S. S., 15, § 679-1a.]

6612. Appointment — tenure. The city manager shall be appointed by a majority vote of the city or town council at a regular meeting of such body, and such manager shall hold office during the pleasure of the said body, and shall be subject to removal by a majority vote thereof. [S. S., '15, § 679-2a.]

6613. Duties imposed. Said city or town after having selected or appointed such city manager may by ordinance provide that the city manager shall perform any or all of the

6613. Duties imposed.
6614. Manager supersedes appointive officers.

duties incumbent upon the street commissioner, or manager of public utilities, cemetery sexton, city clerk, and superintendent of markets, and that he shall superintend and inspect all improvements and work upon the streets, alleys, sewers, and public grounds of the city or town, and perform such other and further duties as may be imposed upon him, and possess such other and further power as may, from time to time, be by ordinance conferred upon him. [S. S., '15, § 679-3a.]

6614. Manager supersedes appointive officers. Whenever by ordinance or resolution of the council the powers and duties heretofore vested in any other appointive municipal officer are to be wholly performed by the said city manager, then no appointment of such appointive officer shall be made, and any appointment of such officer made prior to the adoption of such ordinance or resolution shall be thereby canceled. [S. S., '15, § 679-4a.]

CHAPTER 328

CITY MANAGER PLAN BY POPULAR ELECTION

ADOPTION OF PLAN

- 6615. Organization authorized.
- 6616. Petition—election.
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- 6648. Meetings—presiding officer pro tem.
- 6649. Quorum.
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- 6651. Appointments by council.
- 6652. Powers.
- 6653. Board of review.
- 6654. Official newspapers.
- 6655. Publications.
- 6656. Statutes made applicable.

ADOPTION OF PLAN

6615. Organization authorized. Any city or incorporated town and any city organized under chapter 326 may become organized as a city or incorporated town, as the case may be, under the provisions of this chapter, by proceeding as hereinafter provided. [S. S., '15, § 1056-b; 37 G. A., ch. 68, § 1.]

6616. Petition — election. Upon petition, signed by the electors of any city or town speci-

ORDINANCES AND RESOLUTIONS

- 6657. Ordinances—time limit on enactment.
- 6658. When effective.
- 6659. Petition of protest.
- 6660. Petition—requirements.
- 6661. Adoption by electors—status.
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THE MANAGER

- 6665. Appointment—tenure.
- 6666. Basis for appointment.
- 6667. Manager pro tem.
- 6668. Qualification—bond.
- 6669. Duties.
- 6670. Budget.
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- 6677. Classification of city.
- 6678. General powers conferred.
- 6679. Statutes made applicable.
- 6680. Existing ordinances etc.
- 6681. Existing limits, rights, property, and liability.
- 6682. Departments to continue.
- 6683. Parks and park commissioners.
- 6684. Policemen and firemen—pensions.
- 6685. Notice to person liable over.
- 6686. Limit of indebtedness.

ABANDONMENT OF PLAN

- 6687. Procedure—petition—election.
- 6688. Officers elected.
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fied in the preceding section equal in number to twenty-five per cent of the votes cast for all candidates for mayor at the last preceding election of such city or town, the mayor shall, not less than thirty days prior to the election to be held as herein provided, by proclamation, submit the question of organizing the government of such city or town, under this chapter, at a special election to be held at a time specified in such proclamation, and within two months after such petition is filed with the clerk of such city or town; provided that in case not

less than ten per cent of the qualified electors of any city reside in each of two or more townships, said petition shall be signed by not less than ten per cent of the qualified electors of such city residing in each of such townships. [S. S., '15, § 1056-b1; 37 G. A., ch. 68, § 2.]

6617. Form of submission. At such election, the proposition to be submitted shall be: "Shall the city (or incorporated town, as the case may be) of (name of city or incorporated town), organize under chapter 328 of the code?" [S. S., '15, § 1056-b1.]

6618. Conduct of election. The election at which the question of organizing the government of such city or town, under this chapter, shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to elections in cities and towns organized under the general laws of the state. [S. S., '15, § 1056-b1.]

6619. Certification. Upon the adoption of the proposition to organize the government of such city or town, under this chapter, the mayor shall immediately transmit to the governor, to the secretary of state, and to the county auditor, a certificate that the form of government provided by this chapter has been adopted. [S. S., '15, § 1056-b1.]

6620. Limit on submissions. If such plan of government be not adopted at the special election called, the question of adopting said plan shall not be resubmitted to the voters of such city or town within two years thereafter. [S. S., '15, § 1056-b1.]

THE COUNCIL AND MINOR EMPLOYEES

6621. Number of councilmen. If a majority of the votes cast at such election shall be in favor of the organization of the government of such city or town, under the provisions of this chapter, cities having a population of twenty-five thousand or more shall thereupon proceed to the election of five councilmen, and cities and towns having a population of less than twenty-five thousand shall proceed to the election of three councilmen. [S. S., '15, § 1056-b1.]

6622. Exception. In any city having a population of twenty-five thousand or more, and less than seventy-five thousand, of which the territory embraced within the boundaries of such city lies in two townships which are divided by a watercourse, four councilmen shall be elected, two of whom shall be residents of and elected from that part of the city lying within each of such townships. [S. S., '15, § 1056-b1.]

6623. When elected. The councilmen for which provision is made herein shall be elected at the next regular city or town election after the adoption of such form of government. If, however, the next regular city or town election does not occur within one year after the special election at which such form of government is

adopted, the mayor shall, within ten days after such election, by proclamation, call a special election for the election of councilmen, as herein provided, and shall give thirty days' notice of such special election, which notice shall be included and given in the call for such special election. The special election, so called for the election of councilmen, shall in either case be conducted as hereinafter provided. [S. S., '15, § 1056-b1.]

6624. Temporary officers. The councilmen elected at the special election called by the mayor, after the adoption of the form of government contemplated by this chapter, shall qualify, and their terms of office shall begin on the first Monday after their election, and they shall hold office until the next regular biennial municipal election, and until their successors are elected and qualified. [S. S., '15, § 1056-b3.]

6625. Adjustment of terms. At the first regular biennial election, after the organization of any city or town under the provisions of this chapter, in all such cities and towns where three councilmen are to be elected, one councilman shall be elected for the term of two years, and two for the term of three years. When four councilmen are to be elected, as provided in section 6622, one shall be elected from each township for the term of two years, and one from each township for the term of three years; and in cities where five councilmen are to be elected, two shall be elected for two years, and three for three years. [S. S., '15, § 1056-b3.]

6626. Regular election. At the next regular biennial municipal election, and biennially thereafter, there shall be elected, a member or members of the council for the term of three years to succeed those whose terms of office will expire the first Monday in April following such election, and there shall also be elected at such regular biennial municipal election, a member or members of the council for a term of three years to succeed those whose terms will expire one year after the first Monday in April following such election. [S. S., '15, § 1056-b3.]

6627. Tenure noted on ballots. The time when each candidate for councilman shall begin his term of office shall be specified under his name on the ballot, and all petitions for nomination of members of the council, to be voted for at such regular biennial municipal election, shall specify the length of the term of office for which the candidate seeks nomination. [S. S., '15, § 1056-b3.]

6628. Termination of official terms. The terms of office of the mayor and councilmen or aldermen of any city or incorporated town adopting the form of government contemplated by this chapter, in office at the beginning of the terms of office of the councilmen first elected, under the provisions hereof, shall then cease and determine. [S. S., '15, § 1056-b3.]

6629. Termination of minor positions. Except the members of the library board, whose terms of office shall continue as now provided by law, the terms of office of all other officers, including park commissioners and waterworks trustees, whether elected or appointed, and of all employees of such city or incorporated town, shall be subject to the action of the council or manager. [S. S., '15, § 1056-b3.]

6630. Tenure by council. Except the members of the library board, the council shall have power to determine the tenure of office of any officer or the term of employment of any employee that it is authorized to appoint or employ, and to declare any such office vacant, or to discharge any such employee with or without cause, as it may deem advisable. [S. S., '15, § 1056-b3.]

6631. Tenure by manager. The manager shall have power to determine the tenure of office of any officer or the term of employment of any employee that he is authorized to appoint or employ, and to declare any such office vacant, or to discharge any such employee with or without cause, as he may deem advisable. [S. S., '15, § 1056-b3.]

6632. Vacancies. Any vacancy in the council, caused by death, resignation, removal from office, or removal from the city or town, shall be filled by appointment by the council, and in cities where the territory lies in two townships divided by a watercourse, the member of the council so appointed shall be a resident of the township in which his predecessor in office resided at the time of his election. The person so appointed by the council shall hold his office for the unexpired term of his predecessor. [S. S., '15, § 1056-b25.]

6633. Compensation. The members of the city or town council elected under the provisions of this chapter shall serve and perform all of the duties of their respective offices without compensation. [S. S., '15, § 1056-b9.]

6634. Nominated by petition. Candidates for councilmen to be voted for under the provisions of this chapter shall be nominated by petition, filed with the city or town clerk ten days before the day of election, and no name shall be placed upon the ballot except the names of candidates nominated by such petition. [S. S., '15, § 1056-b4.]

6635. Petitioners. The petition for the nomination of councilmen shall be signed by at least ten electors of the city or town for every one thousand inhabitants of such city or town as shown by the last previous federal or state census, and no petitioner shall sign any petition or petitions for more candidates than are to be elected in the city or town in which such petition is filed. No person shall be deemed nominated for the office of councilman, unless the petition for his nomination shall have been signed as herein required. [S. S., '15, § 1056-b4.]

6636. Form of petition. The petition for the nomination of councilmen shall be substantially in the following form:

"The undersigned, duly qualified electors of (here insert the name of the city or town), and residing at the place set opposite our respective names, hereby nominate (name of candidate), as candidate for the office of councilman, of (name of city or town), and request that his name be placed upon the official ballot of said city (or town), at the municipal election to be held therein, on the..... Monday of....., 19..... We further state that we know the said (name of candidate) to be a qualified elector of said city (or town), a man of good moral character, and, in our judgment, qualified for the duties of councilman.
Name of elector. Residence. Street and number.
....."
[S. S., '15, § 1056-b4; 37 G. A., ch. 15, § 1.]

6637. Residence noted. In cities where the residences are numbered, the street and number of the residence of each elector signing such petition shall be written on the petition immediately after the name of the elector, and no name upon any such petition shall be counted unless the street and number of the residence of the person signing the same appear thereon, as herein provided. [S. S., '15, § 1056-b4.]

6638. Canvass of petitions. Petitions for nomination of councilmen, filed with the city or town clerk, shall, within two days after the expiration of the time within which such petitions may be filed, be canvassed by the city or town council, as the case may be, and the names of all persons who shall have been nominated by such petitions shall, by the clerk, be placed upon the official ballot of the city or town, for the municipal election for which such nominations are made. [S. S., '15, § 1056-b4.]

6639. Arrangement of names. The names of the candidates shall be arranged upon the ballot in the manner provided by section 556, as nearly as may be, with a square at the left of each name, and below the name of each of such candidates, shall appear the words, "Vote for (here insert the number of councilmen to be elected)" as the case may be. [S. S., '15, § 1056-b4.]

6640. Form of ballots. The ballots shall be printed upon plain, substantial, white paper, through which the printing or writing can not be read, and shall be headed, "Candidates for councilmen of (name of city or town), at the general (or special) municipal election of 19....." [S. S., '15, § 1056-b4.]

6641. Voting mark. The candidates upon the ballot shall be voted for by placing a cross in the square preceding the name of the candidate for whom the vote is cast. [S. S., '15, § 1056-b4.]

6642. Ballots—clerk to prepare—number. The city or town clerk shall cause the ballots to be prepared and printed as herein specified, and shall deliver, or cause to be delivered, at every polling precinct in the city or town, a number of ballots equal to twice the number of votes cast in such precinct at the last general municipal election. [S. S., '15, § 1056-b5.]

6643. Conduct of election. The city or town council shall appoint the judges and clerks of the election. The election shall be conducted, the vote canvassed, and the certified return thereof made by the judges of such election as provided by law. The returns from the voting precincts shall be canvassed and the result declared by the council and clerk on the day after the election, and notice of the result given at the time and in the manner provided by statute. [S. S., '15, § 1056-b5.]

6644. Election laws applicable. All of the provisions of sections 6515 and 6516 shall apply to elections held under the provisions of this chapter, and any person violating any of the provisions of either of said sections shall, upon conviction thereof, be punished as therein provided. [S. S., '15, § 1056-b6.]

6645. Mayor—election. The councilmen elected hereunder, after having duly qualified as officers of the city or town in which they are respectively elected, shall, on the first Monday after their election, organize the government of such city or town under the provisions of this chapter, and shall, at that time, elect one of their number as chairman and presiding officer who shall be designated as mayor of the city or town in which he is elected. [S. S., '15, § 1056-b7.]

6646. Official head—service of process. The member of the council so elected shall be recognized as the official head of the city or town, by the courts and officers of the state, upon whom service of civil process may be made. [S. S., '15, § 1056-b7.]

6647. Duties and power. The mayor may take command of the police, and govern the city by proclamation at times of public danger, or during an emergency, and shall be the judge as to what constitutes such public danger or emergency. The election of a member of such city or town council as mayor shall not give him or confer upon him any additional power or authority, except such as is herein provided and such as is ordinarily exercised by a presiding officer. [S. S., '15, § 1056-b7.]

6648. Meetings—presiding officer pro tem. Regular meetings of the council shall be held on the first Monday after the election of councilmen, and on the first Monday of each month thereafter. Special meetings may be called from time to time by two councilmen. All meetings of the council, whether regular or special, shall be open to the public. If, at any meeting, the presiding officer of the council be not

present, the members of the council present shall select one of their number to act as presiding officer pro tem, and his acts as presiding officer pro tem shall have the same force and legality as though performed by the regularly elected presiding officer of the council. [S. S., '15, § 1056-b10.]

6649. Quorum. In all cities where five or four councilmen are chosen, three members of the council shall constitute a quorum, and in cities and incorporated towns in which three councilmen are chosen, under the provisions of this chapter, two of the council shall constitute a quorum. [S. S., '15, § 1056-b8.]

6650. Yeas and nays—motions etc.—signing and recording. Upon every vote of the city or town council, the yeas and nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing, and read before the vote is taken thereon. [S. S., '15, § 1056-b8.]

6651. Appointments by council. The council shall, at the first meeting after its members are elected, appoint a clerk, and at such meeting, or as soon thereafter as practicable, appoint a police judge or magistrate, a solicitor, an assessor, and the members of the library board, as the terms of office of the members of said board shall expire. It may also appoint a corporation counsel, and assistant solicitors, if deemed advisable. [S. S., '15, § 1056-b18.]

6652. Powers. All officers so appointed by the council shall have and exercise all powers conferred upon such officers by the laws governing cities and towns organized under the general laws of the state, and their compensation shall be fixed and paid, and they shall perform the duties of their respective offices, as required by such laws. [S. S., '15, § 1056-b18.]

6653. Board of review. The council shall, on or before the first Monday of April, in each year, also appoint three persons who shall constitute a local board of review of the city or town in which they are appointed. The compensation of such board of review shall be fixed by the council and paid from the general fund of the city or town, and such board shall be governed by the statute relating to boards of review, and shall possess and exercise all of the powers conferred upon local boards of review by law. [S. S., '15, § 1056-b18.]

6654. Official newspapers. The council shall also select one or more newspapers of general circulation published within the city or town, which shall be designated official papers. If no newspaper is published in any town organized under this chapter, the council of such town may, in its discretion, select a newspaper published in the county, which has a circulation in such town, and designate the same the official paper of the town. [S. S., '15, § 1056-b18.]

6655. Publications. All ordinances, resolutions, and proceedings of any city or town, organized under the provisions of this chapter, required to be published, shall be published in the official paper or papers so selected by the council. [S. S., '15, § 1056-b18.]

6656. Statutes made applicable. All of the provisions of sections 6534 to 6538, inclusive, shall apply to all officers and employees elected or appointed in any city or town, organized under this chapter, as fully as though the provisions of such section, were incorporated, and repeated herein. [S. S., '15, § 1056-b11.]

ORDINANCES AND RESOLUTIONS

6657. Ordinances—time limit on enactment. Every ordinance or resolution appropriating money or ordering any sewer or street improvement, or making or authorizing the making of any contract, or granting any franchise, or the right to use and occupy the streets, highways, bridges, or public places of the city or town, for any purpose, shall be complete in the form in which it is finally passed, and, except an ordinance or resolution for an improvement, the preservation of the public peace, health, or safety, which contains a statement of its urgency, shall remain on file with the city or town clerk, for public inspection, at least one week before its final passage or adoption. [S. S., '15, § 1056-b23.]

6658. When effective. No ordinance passed by the council, except when otherwise required by the general laws of the state, or by the provisions of this chapter, and, except an ordinance for an improvement, the preservation of the public peace, health, or safety, which contains a statement of its urgency, and is passed by a unanimous vote of the council, shall go into effect before ten days from the time of its passage. [S. S., '15, § 1056-b23.]

6659. Petition of protest. If during said ten days, a petition, signed by the electors of the city or town, equal in number to at least twenty-five per cent of the entire vote cast in such city or town at the last preceding general or municipal election, as shown by the poll books of such election, protesting against the passage of such ordinance, be presented to the council, such ordinance shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider the same, and, if the same be not repealed, the council shall submit the ordinance to the vote of the electors of the city or town at a regular election or a special election called for that purpose, in the manner provided by subdivision b of section 6557. [S. S., '15, § 1056-b23.]

6660. Petition—requirements. The petition protesting against an ordinance shall be, in all respects, in accordance with the provisions of section 6556, except as to the percentage of signers thereof, and shall be examined and

certified by the clerk, as provided in such section. [S. S., '15, § 1056-b23.]

6661. Adoption by electors—status. If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid ordinance of the city or town; and, any ordinance so adopted can not be repealed or amended except by a vote of the electors of the city or town. [S. S., '15, § 1056-b23.]

6662. Amendment or repeal. The council may submit a proposition for the repeal of any ordinance so adopted by the electors, or for the amendment thereof, to be voted upon at any succeeding regular municipal election; and should such proposition so submitted receive a majority of the votes cast at such election, such ordinance shall thereby be repealed or amended, according to the proposition submitted. [S. S., '15, § 1056-b23.]

6663. Franchises. No franchise or right to occupy or use the streets, highways, bridges, or public places of any such city or town shall be granted, renewed, or extended, except by ordinance, and every franchise or grant for interurban or street railways, gas or waterworks, electric light or power plants, heating plants, telegraph or telephone systems, or other public utilities within such city or town must be authorized or approved by a majority of the electors of such city or town, voting thereon, at a regular or special election, as provided by sections 5905 to 5909, inclusive. [S. S., '15, § 1056-b24.]

6664. Signing and recording. Every resolution or ordinance passed by the council must be signed by a majority of the council, and be recorded before the same shall be in force. [S. S., '15, § 1056-b8.]

THE MANAGER

6665. Appointment—tenure. At the first meeting after its election, or as soon thereafter as practicable, the council shall appoint a competent person manager, who shall be the administrative head of the municipal government of the city or town in which he is appointed. [S. S., '15, § 1056-b12.]

6666. Basis for appointment. The council in making the appointment of a manager, shall consider only the qualification and fitness of the person appointed, and he shall be appointed without regard to his political affiliation, and need not be a resident of the city or town at the time of his appointment. [S. S., '15, § 1056-b14.]

6667. Manager pro tem. During the absence or disability of the manager, the council may designate some properly qualified person to perform and execute the duties of his office. [S. S., '15, § 1056-b14.]

6668. Qualification—bond. Before entering upon the duties of his office, the manager shall take an official oath that he will support the constitution of the United States, the constitution of the state of Iowa, and, without fear or favor, will, to the best of his ability, faithfully and honestly perform the duties of his office, and shall execute a bond in favor of the city or town, for the faithful performance of his duties, in such sum as may be fixed by the council. [S. S., '15, § 1056-b13.]

6669. Duties. The duties of the manager shall be as follows:

1. He shall see that the laws and ordinances of the city or town are faithfully enforced and executed.

2. He shall attend all meetings of the council.

3. He shall recommend to the council such measures as he may deem necessary or expedient for the good government and welfare of the city or town.

4. He shall have the general supervision and direction of the administration of the city or town government.

5. He shall supervise and direct the official conduct of all appointive officers of the city or town, except the clerk, police judge or magistrate, solicitor, corporation counsel, assessor, board of review, and members of the library board.

6. He shall supervise the performance of all contracts for work to be done for the city or town, make all purchases of material and supplies, and see that such material and supplies are received, and are of the quality and character called for by the contract.

7. He shall have power to employ and discharge from time to time, as occasion requires, all employees of the city or town, and to fix the compensation to be paid to such employees, except as otherwise herein provided.

8. He shall have power to discharge summarily and without cause any officer, appointee, or employee that he has power to appoint or employ.

9. He shall supervise and manage all public improvements, works, and undertakings of the city or town, and shall have charge of the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, squares, bridges, viaducts, aqueducts, public highways, sewers, drains, ditches, culverts, streams, and watercourses, except those designated in and which are covered by the provisions of chapter 293, and of all public buildings.

10. He shall manage, supervise, and control market houses, crematories, sewage disposal plants, and farms, and shall enforce all obligations of privately owned or operated public utilities enforceable by the city or town.

11. He shall have charge of the making and preservation of all surveys, maps, plans, drawings, specifications and estimates for public works or public improvements; the cleaning, sprinkling, and lighting of streets, alleys, and public places; the collection and disposal of

waste, and the preservation of tools and appliances belonging to the city or town.

12. He shall manage all municipal water plants, lighting, heating, or power plants, and transportation enterprises.

13. He shall manage, supervise, and control the use, construction, improvement, repair, and maintenance of all recreational facilities of the city or town, including parks, playgrounds, public gymnasiums, and public bathhouses.

14. He may, without notice, summarily cause the affairs of any department or the conduct of any officer under his supervision, or of any employee, to be investigated; and he, or any person appointed by him to examine or investigate the affairs of any department or the conduct of any officer or employee, shall have power to compel the attendance of witnesses, the production of books and papers and other evidence, and to punish for contempt any person who shall fail to attend and testify as a witness when duly summoned, or who shall fail to produce any books, papers, or other evidence under his control when required to do so.

15. He shall take active control of the police, fire, and engineering departments of the city or town, and employ such assistants and employees therein as by him shall be deemed advisable.

16. He shall, in his discretion, issue licenses, authorized by law, and may revoke the same at pleasure. All licenses issued shall be signed by the manager and the clerk, and duly entered in a book kept for that purpose.

17. He shall keep the council fully advised of the financial and other conditions of the city or town, and of its future needs.

18. He shall have power to appoint or employ persons to fill all places for which no other mode of appointment is provided, and shall have power to administer oaths. [S. S., '15, § 1056-b15.]

6670. Budget. The manager shall prepare and submit to the council an annual budget on the basis of estimates of the expenses of the various departments of the city or town. These departmental estimates shall show the expenses of each department for the preceding year, and shall indicate wherein an increase or a diminution is recommended for the ensuing year. Such estimate shall be published in the official newspapers of the city or town two weeks before such estimates are submitted by the manager to the council, and printed copies thereof shall be furnished to any citizen upon request to the manager. The budget so submitted to the council shall be taken up by it in open meeting, and full opportunity shall be given for hearing any objections or protests which any taxpayer of the city or town may desire to make to any item or items in such budget, or to any omissions therefrom. [S. S., '15, § 1056-b16.]

6671. Methods and accounts. He shall, at all times, see that the business affairs of the municipal corporation of which he is manager

are transacted in a modern and scientific method, in an efficient and businesslike manner, and that accurate records of all of the business affairs of the city or town under his management, are fully and accurately kept. [S. S., '15, § 1056-b16.]

6672. Monthly reports. He shall make to the council an itemized monthly report in writing, showing in detail the receipts and disbursements for the preceding month, and such report shall be made by him not later than the tenth day of each month. The reports so made, after having been passed upon by the council, shall be published each month in the official newspapers of the city or town. [S. S., '15, § 1056-b16.]

6673. General accountability — discharge. Such manager shall be under the direction and supervision of the council, and shall hold office at its pleasure. He shall be accountable to the council for his actions and conduct, and for the management of the business affairs of the city or town. He shall perform any duty specially required of him by the council, and may be discharged at the will of the council, without cause. [S. S., '15, §§ 1056-b12, 1056-b16.]

6674. Salary. The salary of the manager shall be fixed by the council, and paid monthly from the treasury of the city or town, upon an order signed by the presiding officer of the council and by the clerk. [S. S., '15, § 1056-b17.]

6675. Councilman ineligible—removal. No councilman elected under the provisions of this chapter shall be appointed by the manager to any office of the city or town in which he is elected, or employed in any department thereof; and any councilman or manager who shall violate the provisions of this section shall be guilty of a misdemeanor. Any councilman or manager violating the provisions of this section may be removed from office, under the provisions of chapter 56. [S. S., '15, § 1056-b19.]

6676. Political activity. The manager shall take no part in any election held for the purpose of electing councilmen, except that he may attend at the polls and cast his vote, if he is a qualified elector of the city or town, and any attempt upon his part to procure the election of any person as councilman, or to induce any elector to vote for any person for councilman, or any solicitation by such manager of any elector to vote for any person or persons for the office of councilman, shall be a misdemeanor, and he may be removed from office under the provisions of chapter 56. [S. S., '15, § 1056-b20; 40 Ex. G. A., H. F. 310, § 1.]

GENERAL POWERS AND DUTIES

6677. Classification of city. Every city which shall adopt the form of government herein contemplated shall, upon the adoption of such

form of government, become a city of the first or second class, under the general laws of the state, according to the population of such city. [S. S., '15, § 1056-b9.]

6678. General powers conferred. The council of every city or town organized hereunder shall have, possess, and may exercise all executive, legislative, and judicial powers, not inconsistent with this chapter, conferred by law upon councils of cities and towns of the same class organized under the general laws of the state; and every city and town organized under this chapter shall have, possess, and may exercise the corporate powers, not inconsistent with the provisions hereof, conferred upon cities and towns of the same class organized under the general laws of the state. [S. S., '15, § 1056-b9.]

6679. Statutes made applicable. All laws governing cities of the first class, organized under the general laws of the state, not inconsistent with the provisions of this chapter, shall apply to and be in force in every city of the first class organized hereunder; all laws governing cities of the second class organized under the general laws of the state, not inconsistent with the provisions of this chapter, shall apply to and be in force in every city of the second class organized hereunder; and all laws governing incorporated towns, not inconsistent with the provisions of this chapter, shall apply to and be in force in every such town organized hereunder. [S. S., '15, § 1056-b2.]

6680. Existing ordinances, etc. All by-laws, ordinances, and resolutions lawfully passed and in force in any such city or incorporated town under its former organization shall be and remain in force until altered or repealed by the council elected under the provisions of this chapter. [S. S., '15, § 1056-b2.]

6681. Existing limits, rights, property, and liability. The territorial limits of such city or town shall remain the same as under its former organization, and all rights and property of every description which were vested in any such city or town under its former organization shall vest in the same when organized under the provisions of this chapter, and no right or liability in favor of or against such city or town existing at the time of the adoption of the form of government herein contemplated, and no suit or prosecution of any kind shall be affected by the change of the form of government of such city or town, unless herein otherwise provided. [S. S., '15, § 1056-b2.]

6682. Departments to continue. All departments of cities and towns which shall adopt the form of government herein contemplated, shall continue to exist as departments of the government of such city or town until abol-

ished, changed, or modified under the provisions of this chapter. [S. S., '15, § 1056-b22.]

6683. Parks and park commissioners. The provisions of chapter 293, relating to parks and park commissioners, shall be applicable to and be in force in cities and towns organized under the provisions of this chapter, to the same extent and effect that such provisions are applicable to and in force in cities and towns of the same class organized under the general laws of the state, except as changed or modified by this chapter. The board of park commissioners shall have and may exercise all powers conferred upon them by the provisions of said chapter, except as herein changed or modified. [S. S., '15, § 1056-b21.]

6684. Policemen and firemen—pensions. The law as it appears in chapter 322 shall be applicable to and effective in cities which adopt the city manager plan of government under the provisions of this chapter. [39 G. A., ch. 103.]

6685. Notice to person liable over. Section 6735 is hereby made applicable to cities and towns organized under this chapter. [40 G. A., ch. 143.]

6686. Limit of indebtedness. In any city adopting the form of government provided for in this chapter, whose indebtedness prior to the time the change in government was made was limited to five per cent of the actual value of the taxable property therein, and whose actual indebtedness, at the date of such change, exceeds one and one-quarter per cent of the actual value of the taxable property of said city, the limit of indebtedness of such city shall be determined by adding to the indebtedness limit, under the general laws for cities, the actual value, as determined by the city council, of municipally owned and operated utilities, and it shall be limited to such an amount; provided, however, that the amount thus arrived at shall in no event exceed five per cent of the actual value of the taxable property in said city, as shown by the state and county tax list. [39 G. A., ch. 41.]

ABANDONMENT OF PLAN

6687. Procedure—petition—election. Any city or town which shall have operated for six years or more under the provisions of this chapter, may abandon its organization hereunder, and accept the provisions of the general law of the state then applicable to cities or towns of like population, or if now organized under special charter, may resume such special charter by proceeding as follows:

Upon the petition of not less than twenty-five per cent of the electors of such city or town, a special election shall be called at which the following proposition shall be submitted:

“Shall the city (or town) of (name of city or town) abandon its organization under chapter 328 of the code, become a city (or town) under the general law governing cities and towns, or if now organized under special charter, resume such special charter?” [S. S., '15, § 1056-b26.]

6688. Officers elected. If the majority of the votes cast at such election be in favor of the abandonment of the form of government provided by this chapter, the officers elected at the next succeeding regular biennial election shall be those then prescribed by the general law of the state for cities and towns of like population, or those prescribed by the special charter of such city, as the case may be, and upon qualification of such officers, such city or town shall become a city or town under the general law of the state, or under special charter, as the case may be. [S. S., '15, § 1056-b26.]

6689. Effect of abandonment. Such change shall not, in any manner, affect the property, rights, or liabilities of such city or town, and shall extend only to such change in the form of government thereof. [S. S., '15, § 1056-b26.]

6690. Law governing procedure. The petition for the abandonment of the form of government herein provided, shall be signed, filed, its sufficiency determined, the election ordered and conducted, and the results declared generally, as provided by sections 6616 to 6618, inclusive, so far as the provisions thereof are applicable. [S. S., '15, § 1056-b26.]

CHAPTER 329

CITIES UNDER SPECIAL CHARTER

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OFFICERS AND EMPLOYEES

6691. Council—number. In any city acting under special charter having a population of twenty thousand or more, as shown by the last state or national census, the council shall consist of two aldermen at large, and one alderman from each ward, elected biennially. [C., '97, § 937; S. S., '15, § 937; 38 G. A., ch. 185, § 1.]

6692. Vacancies filled by election. Vacancies occurring in the office of alderman shall be filled by special election, unless such vacancy shall have occurred less than sixty days prior to a regular city election. [S. S., '15, § 937.]

6693. Election called. Such special election shall be called by a proclamation of the mayor, giving at least ten days' notice of such election, designating the time and polling places therefor and the vacancy to be filled thereat. [S. S., '15, § 937.]

6694. Notice of election. Notice of such election shall be published in at least one newspaper printed and published in said city, and in two if there be such number, for a period of ten days prior to such election. Notice of such election shall be posted at or near the polling places designated for said election for a similar length of time. [S. S., '15, § 937.]

6695. Election board. The election board at any such special election shall be the same as at the last preceding city election. In case of vacancies happening therein the mayor shall make appointments to fill the same, such appointee to be a member of the same political party or organization as the member filling such position before the vacancy. [S. S., '15, § 937.]

6696. Ballots. The city clerk shall, on notice from the mayor, cause ballots to be prepared for such election as provided by law; or, in the event of his refusal or inability to act, the mayor shall cause such ballots to be prepared. [S. S., '15, § 937.]

6697. Nominations. Nominations of candidates for such vacant office may be made by caucus or convention, as provided in section 649; or, in the event such nomination be not made by such caucus or convention, within five days prior to the day fixed for holding such election, then the regular executive or city central committee of any party qualified to nominate by caucus or convention may make such nomination. [S. S., '15, § 937.]

NOTE: Applicability of general primary law to municipal elections, see § 639.

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- 6941. Delinquent taxes.
- 6942. Rights and liabilities.
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6698. Vacancies filled by council. In the event that such vacancy shall have occurred less than sixty days prior to a regular city election, then the vacancy so existing shall be filled by a majority vote of the remaining aldermen of the city council. [S. S., '15, § 937-a.]

6699. Presiding officer. The mayor shall be the presiding officer of the council with the right to vote only in case of a tie. [38 G. A., ch. 185, § 1.]

6700. Marshal—policemen. Cities under special charters shall have power to provide by ordinance for the appointment of a marshal by the mayor, or for his election by the electors thereof, or may dispense with such officer and confer his duties upon any other officer. All policemen shall be appointed and may be removed by the mayor. [C., '97, § 938.]

6701. Police matrons. Police matrons shall be appointed and paid the same compensation as in cities organized under the general law. Such appointees shall be, so far as applicable, subject to the same regulations and restrictions as policemen in such cities. [S., '13, § 654-a; 40 Ex. G. A., S. F. 182, § 3.]

6702. Assessors. They shall provide by ordinance for the election of one or more assessors, who shall discharge the duties usually performed by township assessors, so far as applicable, and such as may be required by ordinance. [C., '97, § 939.]

6703. Other officers—terms. They may provide by ordinance for the election, by the electors, of a marshal, recorder or clerk, treasurer, collector, auditor, attorney, and engineer; and all elective officers hereafter elected shall hold office for the term of two years, and until their successors are elected and qualified, and, when appointed, for such time as may be fixed by ordinance, not exceeding two years. [C., '97, § 940.]

6704. Compensation of aldermen. Aldermen shall be paid an amount prescribed by ordinance, not in excess of six hundred dollars per annum, which shall be in full compensation for all services connected with their official duties. [C., '97, § 943; 38 G. A., ch. 177, § 1.]

6705. Compensation of mayor. The mayor shall receive such salary as may be provided by ordinance, not exceeding two thousand five hundred dollars per annum, and in addition he shall receive for holding a mayor's or police court, or discharging the duties of a justice of the peace, the compensation allowed by law for similar services by such officers, to be

paid in the same manner; which amount shall be in full compensation of all such services. [R., '60, §§ 1091, 1121; C., '73, §§ 519, 547; C., '97, § 945; 38 G. A., ch. 178, § 1.]

6706. Compensation of other officers—report. Police judges, magistrates, marshals, and police officers, in criminal cases under the ordinances, shall receive the fees allowed for similar services in criminal cases under the state law, payable out of the city treasury; and for criminal cases under the state law they shall be paid the same fees that justices and constables receive under the state law, payable from the county treasury. When such officers are paid a salary, the same shall be in lieu of all fees, and such fees, when collected, shall be paid into the city treasury. They shall make, under oath, a monthly report of such fees to the council. [R., '60, §§ 1086, 1104, 1107, 1118; C., '73, §§ 515, 533, 536, 544; C., '97, § 946.]

6707. Change of compensation. The emoluments of any officer shall not be increased or diminished during the term for which he shall have been elected or appointed, nor shall any change of compensation affect any officer during his existing term, unless the office be abolished. [R., '60, § 1122; C., '73, § 491; C., '97, § 944.]

6708. Ineligibility when compensation increased. No person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed, when, during the same time, the emoluments have been increased. [R., '60, § 1122; C., '73, § 491; C., '97, § 944.]

6709. Ineligible to appointment. No member of the council shall, during the time for which he has been elected, or for one year thereafter, be appointed to any municipal office which shall be created, or the emoluments of which shall be increased, during the term for which he was elected. [R., '60, § 1122; C., '73, § 490; C., '97, § 943.]

6710. Interest in contract. No member of the council shall be interested directly or indirectly in any contract for work or service to be performed for the corporation. [R., '60, § 1122; C., '73, § 490; C., '97, § 943.]

MISCELLANEOUS OFFICIAL DUTIES

6711. Estimates. Each officer, board, or committee shall file in the office of the clerk or recorder, thirty days before the beginning of each fiscal year, a detailed statement of the necessary labor, supplies, and materials, and the work to be done by or through his or its department during the next fiscal year, and the estimated cost thereof. [C., '97, § 941.]

6712. Appropriations. The council shall make the appropriations for all the different expenditures for each fiscal year at or before the beginning thereof; and it shall be unlawful to issue any warrant, or to enter into any contract or appropriate any money, in excess of

the amount thus appropriated, for the different expenses of the city during the year for which said appropriations shall be made. [C., '97, § 942.]

6713. Limitation. It shall not appropriate, in the aggregate, an amount in excess of its annual legally authorized revenue, but nothing herein shall prevent such cities from anticipating their revenue for the year for which such appropriations are made, or from bonding or refunding their outstanding indebtedness. [C., '97, § 942.]

6714. Deposit of funds. The treasurer shall deposit city funds in his possession in the same manner and under the same terms as treasurers in cities organized under the general law. [S., '13, § 660-a; 40 Ex. G. A., S. F. 182, § 5.]

6715. Expense of bond. If the treasurer shall request it, the city shall pay the reasonable expense of procuring a bond for the treasurer, not to exceed one-half of one per cent per annum upon the amount thereof. [40 Ex. G. A., S. F. 182, § 5-a1.]

6716. Warrants. The auditor, clerk, or other officer whose duty it is to draw warrants shall draw no warrant except upon the vote of the council, and no warrant for an amount in excess of one thousand dollars. [C., '97, § 1009; 38 G. A., ch. 339, § 1.]

6717. List of warrants. Section 5642 is made applicable to cities acting under special charters. [C., '97, § 1008.]

6718. Annual financial report. Sections 5677 to 5681, inclusive, shall apply to cities acting under special charters. [S., '13, § 1056-a13; 40 Ex. G. A., H. F. 158, § 29.]

6719. Accounts. Sections 5675 and 5676 are applicable to special charter cities. [S., '13, §§ 741-a, 741-b; 40 Ex. G. A., S. F. 182, § 14.]

ORDINANCES

6720. Ordinances—fines. Such cities shall have power to make and publish, from time to time, ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by this chapter, and the charters thereof, and such as are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such cities and the inhabitants thereof; and to enforce obedience to such ordinances by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days. [R., '60, §§ 1071-1073; C., '73, § 482; C., '97, § 947.]

6721. General procedure—veto. Ordinances and resolutions shall be adopted and signed, recorded, published, and evidenced and be subject to veto by the mayor as in cities organized under the general law. [R., '60, § 1076; C., '73, § 3720; C., '97, §§ 951, 952, 954; S., '13, § 952; 40 Ex. G. A., S. F. 182, § 6.]

6722. Applicable statutes. Sections 5724, 5725, 5726, and 5727 are applicable to special charter cities. [40 Ex. G. A., S. F. 182, § 14.]

6723. Jury and change of venue. In any prosecution or proceeding for the violation of any ordinance, the defendant shall not be entitled to a trial by jury or to a change of venue, except on appeal, but shall be tried by the court or magistrate before whom the action is commenced; except in cities where a municipal court has been established, when such trials shall be governed by the law applicable to municipal courts. [C., '97, § 948; 40 Ex. G. A., S. F. 182, § 7.]

6724. Limitation on prosecutions. All suits for the recovery of fines, and prosecutions for the commission of offenses made punishable as herein provided, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered or the prosecution is commenced. [R., '60, § 1075; C., '73, § 486; C., '97, § 950; 40 Ex. G. A., S. F. 182, § 8.]

6725. Commitment—executions. Whenever a fine and costs imposed for the violation of any ordinance are not paid, the person convicted may be committed at hard labor until the fine and costs are paid, not to exceed thirty days, and, in addition thereto, such fine and costs may be collected by the issuance of an execution on such judgment against any property of the defendant, which execution shall have the same force and effect and be executed in the same manner as provided by law for the collection of judgments in civil suits by execution. [C., '97, § 949.]

6726. Transcripts. Transcripts of such judgments may be filed in the district court of the proper county as in civil cases, and with the same force and effect, and execution may be issued thereon from such court. [C., '97, § 949.]

6727. Action to recover. Fines and penalties may in all cases be recovered by action before a justice of the peace or other court of competent jurisdiction, and in the name of the proper municipal corporation. In any such action, where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing, as near as may be, the facts of the alleged violation. [40 Ex. G. A., S. F. 182, § 6-a.]

6728. Accounting. All fees, fines, forfeitures, costs, and expenses collected shall be turned over to the city treasurer by the officer collecting the same on or before the tenth day of each succeeding month, and the city treasurer shall forthwith pay to the county treasurer for the benefit of the school fund the portion of fines and forfeitures collected for the violation of state laws. [40 Ex. G. A., S. F. 182, § 6-a.]

GENERAL PROVISIONS AND POWERS

6729. Powers. Any city organized under special charter shall have and exercise, in addition to the provisions of such special charter, the rights, powers, and privileges contained in this chapter. [C., '97, § 934.]

6730. Applicability of provisions. The provisions of this chapter shall apply only to cities acting under special charters. No provisions of this code, nor laws hereafter enacted, relating to the powers, duties, liabilities, or obligations of cities or towns, shall in any manner affect, or be construed to affect, cities while acting under special charters, unless the same have special reference or are made applicable to such cities.

In all laws hereafter enacted such reference or application shall be in a separate section in the act. [C., '97, § 933; 40 Ex. G. A., S. F. 182, § 1.]

6731. Definition. Wherever the words "cities organized under the general law" appear in this chapter, they refer to the law for cities organized under chapter 286. [40 Ex. G. A., S. F. 182, § 2.]

6732. Application of certain terms. Whenever the words "boards of supervisors", "county auditor or recorder of deeds", and "county treasurer" are used in any section made applicable by this chapter to special charter cities, the words "city council", "city clerk" or "city recorder", and "city collector or treasurer" shall be respectively substituted.

This section shall not be construed as depriving boards of supervisors, county auditors, and county treasurers of their powers to spread tax levies and collect taxes certified by cities acting under special charter as provided in sections 6867, 6868, and 6871. [C., '97, §§ 958, 1024; S., '13, § 958; 40 Ex. G. A., S. F. 182, § 21.]

6733. Unliquidated claim—limitation of action. No suit shall be brought against any such city for any unliquidated claim or demand unless within three months from the time the same became due or cause of action accrued thereon, nor unless a written, verified statement of the general nature, cause, and amount of same is filed with the clerk or recorder thirty days before the commencement of such suit. [C., '97, § 1050.]

6734. Claims for personal injury—limitation. In all cases of personal injury or damage to property resulting from defective streets or sidewalks, or from any cause originating in the neglect or failure of any municipal corporation or its officers to perform their duties, no suit shall be brought against any such city after three months from the time of the injury or damage, and not then unless a written verified statement of the amount, nature, and cause of such injury or damage, and the time when and the place where such injury occurred, and the particular defect or negligence of the city

or its officers which it is claimed caused or contributed to the injury or damage, shall be presented to the council or filed with the clerk within thirty days after said alleged injury or damage was sustained. [C., '97, § 1051.]

6735. Notice to person liable over. In case any action is brought against any such city for damages for injury to person or property claimed to have been caused by or through the negligence of said city, the city may notify in writing any person or corporation, by or in consequence of whose negligence it is claimed by said city the injury occurred or was caused, of the pendency of said suit, the name of the plaintiff and where pending, and the general nature of the claim, and that the city claims that the person or corporation so notified is liable to said city for any judgment obtained against said city, and asking such person or corporation to appear and defend; thereupon any judgment obtained in such suit shall be conclusive in any action by the city against any person or corporation so notified as to the existence of the defect or other cause of the injury or damage, and as to the liability of the city to the plaintiff in the first named suit in consequence thereof, and as to the amount of the damage or injury occasioned thereby; and every such city is hereby empowered to maintain an action against the person or corporation so notified to recover the amount of any such judgment, together with all the expenses incurred by such city in such suit. [C., '97, § 1053.]

NOTE: Above section made applicable to cities under commission form of government by § 6567; and to cities under city manager plan by § 6685.

6736. Purchase on execution. Such cities shall have power to acquire real estate, or any interest therein, as a purchaser at an execution sale, when judgment is entered in favor of the city, or when it has a lien thereon, or is otherwise interested therein. [C., '97, § 1000.]

NOTE: Above section made applicable to cities under commission form of government by § 6567.

6737. Elections. All elections held in such cities shall be governed by the general election laws. [C., '97, § 936.]

6738. Conveyance of land. They shall have power, by a three-fourths vote of all members of the council, to dispose of and convey lands unsuitable, insufficient, or unnecessary for the purposes for which they were originally acquired; but when such lands are disposed of, enough shall be reserved for streets to accommodate adjacent property owners; and to dispose of the title or interest of such city in any real estate, or any lien thereon, or share or certificate therefor, owned or held by it, including any street or portion thereof vacated or discontinued, however acquired or held, upon such terms as the council shall direct. Conveyance executed in accordance with this section shall extinguish all the rights and claims of the city existing prior thereto. [C., '97, § 1001.]

6739. Use of public grounds. Any such cities situated on the Mississippi river, having within their limits public grounds heretofore set apart or dedicated for levee, warehouse, or other public purposes, and in which the use of such ground for such purposes has ceased or been abandoned in whole or in part, may use or provide for the use of such grounds otherwise than for levee and warehouse purposes, as said council of such cities may determine are for the public interest, and upon such terms and conditions as may be fixed by said council. [C., '97, § 1054.]

6740. Condemnation of land. They shall have power to purchase and provide for the condemnation of, and pay for out of the general or grading fund, or assess and levy the whole or any part of the cost thereof upon the property benefited thereby, and enter upon and take any lands within or without the territorial limits of such city, for the following purposes:

1. For parks, commons, cemeteries, crematories, hospital grounds, natatoriums, or public baths.

2. For establishing, laying out, widening, straightening, narrowing, extending, and lighting streets, avenues, highways, alleys, landing places, public squares, public grounds, public markets, or market places, and public slaughterhouses.

3. For obtaining gravel, stone, or other suitable material with which to improve their streets and alleys, including a suitable roadway thereto by the most reasonable route.

4. For any other purpose, where such purchase or condemnation is herein, or in the charters of such cities, or may hereafter be, authorized. [R., '60, § 1064; C., '73, §§ 464, 470; C., '97, § 999; S., '13, § 2024-j; 40 Ex. G. A., S. F. 182, § 36.]

6741. Proceedings to condemn. Proceedings for condemnation of land as contemplated in this chapter shall be in accordance with the provisions of this code relating to taking private property for works of internal improvement, except that the jurors shall have the additional qualification of being freeholders of the city, or as provided in the charters of said cities. [R., '60, §§ 1065, 1066; C., '73, §§ 469, 476, 477; C., '97, § 1002.]

6742. Infirmary—outdoor relief—baths. The council shall have power, by two-thirds vote of the whole council, to establish and maintain, either within or without the limits of the city, an infirmary for the accommodation of the poor of the city, and to provide for the distribution of outdoor relief, and for a public bathhouse or natatorium when declared by the board of health of such city to be essential to the preservation of the public health, and to regulate by ordinance the use of such baths and the conduct and maintenance of the same. The appropriation for the construction and maintenance of such bathhouse or natatorium shall be paid from the general current revenues of said city not appropriated to other purposes. [R., '60, § 1111; C., '73, § 538; C., '97, § 957.]

6743. Smoke nuisance. The emission of dense smoke within the corporate limits of special charter cities having a population of sixteen thousand or over is hereby declared a nuisance. [S., '13, § 713-a; 40 Ex. G. A., S. F. 182, § 19.]

6744. Property inside curb line. Cities under special charters shall have and are hereby granted power to place by ordinance, the exclusive charge, custody, and control of all property outside of the lot or property lines and inside the curb lines and upon the public streets in the park commission. [S. S., '15, § 997-a; 37 G. A., ch. 174, § 1.]

6745. Permanent sidewalks. Special charter cities having a population of twenty-five thousand or over may confer upon the park commission by ordinance, the right to determine the location of permanent sidewalks outside lot or property lines, and upon the public streets. [S. S., '15, § 997-b; 40 Ex. G. A., S. F. 182, § 22.]

6746. Trees and shrubbery. Cities under special charters shall have and are hereby granted the power to place by ordinance, the charge, custody, and control in the park commission, of all trees, shrubbery, flowers, and grass outside of the lot or property lines and inside the curb lines and upon the public streets, and authorize the park commission to plant, cut, prune, remove, transplant, spray, care for, and maintain all trees, shrubbery, flowers, and grass outside of the lot or property lines and inside the curb lines and upon the public streets, in such a manner as not to interfere with public travel; and to pay for the same or any part thereof out of the park fund, or to provide by ordinance for assessing the cost thereof or any part thereof upon the lots and parcels of land in front of which such trees, shrubbery, flowers, and grass are planted and maintained. [S. S., '15, § 997-c; 37 G. A., ch. 174, § 2.]

6747. Board of public works. Such cities shall have power to establish a board of public works, consisting of not more than three members. The members of the board shall consist of one commissioner appointed by the mayor with the approval of the council; when the board consists of two members, the associate member shall be the city engineer; when the board consists of three members, the associate members shall be the city engineer and street commissioner, and shall be appointed for such length of time, possess such qualifications, receive such compensation, be removed for such causes, possess such powers, perform such duties, be governed by such rules and regulations, as may be prescribed by ordinance. [C., '97, § 998.]

6748. Changing watercourses — condemnation. They shall have power to deepen, widen, straighten, wall, fill, cover, alter, or change the channel of any watercourse or part thereof flowing through the city; to construct artificial channels or covered drains sufficient to carry the water flowing in such watercourse, and

divert it from the natural channel, and conduct the same through such artificial channels or covered drains, and fill old channels; and in doing such work, or in carrying off flowing water, or building main or lateral sewers through ravines or hollows, they shall have the right to pass through private property and condemn the same for such purposes; and the cost of such work, including the cost of the land condemned, shall be paid for as provided herein for the payment of the cost of constructing sewers. [C., '97, § 960.]

6749. Eminent domain. They may condemn and appropriate so much private property as shall be necessary to carry into effect the provisions of this chapter relating to the change of watercourses, and the construction of sewers and of artificial channels in the manner provided for condemning land for city purposes. [C., '97, § 961.]

6750. Assessment. If a covered drain or new channel of a watercourse shall be constructed along any street or alley and used by the city as a sanitary or storm waterway, the council shall have the power to assess upon the lots or land adjacent to the line of such covered drain or new channel the whole or a portion of the cost thereof, not exceeding the sum of two dollars per linear foot, in the manner provided for the assessment of the cost of sewers. [C., '97, § 963.]

GENERAL STATUTES MADE APPLICABLE

6751. Memorial buildings. The law relative to soldiers', sailors', and marines' memorial buildings in cities organized under the general law shall apply to special charter cities. [38 G. A., ch. 170, § 1; 40 Ex. G. A., S. F. 182, § 13.]

6752. Sale of bonds. Sections 1175 to 1177, inclusive, are applicable to cities acting under special charters. [40 G. A., ch. 14.]

6753. Freight and passenger elevators. Section 1683 is applicable to cities acting under special charters. [40 G. A., ch. 18, § 5.]

6754. Street as secondary road. Section 4754 is applicable to cities acting under special charters having a population of thirty-five hundred or less. [40 G. A., ch. 90.]

6755. Motor vehicle carriers. Section 5101 is applicable to cities acting under special charters. [40 G. A., ch. 97, § 8.]

6756. Territorial limits. All the provisions of chapter 286 in relation to the extension of the boundaries of cities or towns, the annexation of territory thereto, and the severance of territory therefrom are made applicable to cities acting under special charters. [C., '97, § 935.]

6757. Iowa League of Municipalities. Sections 5683 and 5684 are applicable to special charter cities. [40 Ex. G. A., S. F. 182, § 14.]

6758. Civil service. Chapter 289 shall apply to cities acting under special charters ex-

cept those parts thereof specially applicable to cities having a population of more than one hundred thousand. [S., '13, § 679-a; 40 Ex. G. A., S. F. 182, § 13-a1.]

6759. General powers. Chapter 292 is applicable to special charter cities. [C., '97, §§ 952, 958, 959; S., '13, §§ 694-b, 696-a, 709-a, 711, 713-a, 737-a, 952, 958, 1056-a13; S. S., '15, §§ 696-b, 711-a; 37 G. A., ch. 7, § 1; 37 G. A., ch. 138, § 1; 37 G. A., ch. 182, § 4; 37 G. A., ch. 342, § 1; 37 G. A., ch. 367, § 1; 37 G. A., ch. 425, § 1; 38 G. A., ch. 145, § 1; 38 G. A., ch. 316, § 1; 38 G. A., ch. 378, § 2; 39 G. A., ch. 169, § 1; 40 Ex. G. A., S. F. 182, § 14.]

6760. Park commissioners. Chapter 293 is applicable to special charter cities. [C., '97, §§ 991, 997; S., '13, §§ 991, 991-a; 40 Ex. G. A., S. F. 182, § 35.]

6761. Municipal bands. Chapter 296 is applicable to cities acting under special charters which have a population of not over forty thousand. [39 G. A., ch. 37, § 1.]

6762. Juvenile playgrounds. The law relative to juvenile playgrounds in cities organized under the general law shall apply to special charter cities. [S. S., '15, § 879-r; 37 G. A., ch. 181, § 1; 38 G. A., ch. 222, § 1; 40 Ex. G. A., S. F. 182, § 10.]

6763. City halls. The law relative to city halls in cities organized under the general law shall apply to special charter cities. [S. S., '15, § 741-d; 37 G. A., ch. 182, § 1; 38 G. A., ch. 247, § 1; 40 Ex. G. A., S. F. 182, § 11.]

6764. Public libraries. The law relative to public libraries in cities organized under the general law shall apply to special charter cities. [C., '97, § 952; S., '13, § 952; 39 G. A., ch. 265, § 1; 40 Ex. G. A., S. F. 182, § 12.]

6765. Bridges. Chapter 301 is applicable to cities acting under special charters. [C., '97, § 958; S., '13, § 958.]

6766. Interstate bridges. Chapter 302 is applicable to cities acting under special charters. [37 G. A., ch. 140, § 1.]

6767. Public docks. Chapter 303 is applicable to cities acting under special charters. [S., '13, § 741-w3.]

6768. Viaducts. Chapter 305 is applicable to special charter cities. [40 Ex. G. A., S. F. 182, § 20.]

6769. Jitney busses. Chapter 306 is applicable to special charter cities. [S. S., '15, § 754-a; 39 G. A., ch. 115, §§ 1-5; 40 Ex. G. A., S. F. 182, § 20.]

6770. Streets and public grounds. Chapter 307 is applicable to special charter cities. [C., '97, §§ 958, 777-a, 791-h; S., '13, § 958; 40 Ex. G. A., S. F. 182, § 20.]

6771. Protection from floods. Chapter 310 is applicable to cities acting under special charters. [S., '13, § 963-a; 38 G. A., ch. 285, § 2.]

6772. Outside highways—aid. Sections 6224, 6225, and 6226 are made applicable to cities acting under special charters. [C., '97, § 1008.]

6773. Diversion of funds. Section 6230 is applicable to special charter cities. [40 Ex. G. A., S. F. 182, § 14.]

6774. Indebtedness authorized. Section 6239, subsection 2, is applicable to special charter cities. [40 Ex. G. A., S. F. 182, § 14.]

6775. Indebtedness limited. Sections 6238, 6239, subsection 1, and 6240 are applicable to cities acting under special charters when such cities have a population of less than two thousand. [40 G. A., ch. 132, § 1.]

6776. Elections. Sections 6241 and 6246 are applicable to special charter cities. [C., '97, § 952; S. S., '15, §§ 696-b, 741-d; 38 G. A., ch. 222, § 1; 40 Ex. G. A., S. F. 182, § 14.]

6777. Maturity of bonds—interest. Section 6249 is applicable to special charter cities. [C., '97, § 952; S. S., '15, § 696-b; 40 Ex. G. A., S. F. 182, § 14.]

6778. Bonds and certificates. Chapter 320 is applicable to special charter cities. [C., '97, §§ 1021, 1022; 40 Ex. G. A., S. F. 182, § 17.]

6779. Limitation of action. No action shall be brought questioning the legality of any bond or certificate authorized in the preceding section, or any other bond or certificate authorized by this chapter, from and after three months from the time the same are ordered issued by the proper authority. [C., '97, § 1023; 40 Ex. G. A., S. F. 182, § 18.]

NOTE: Above section made applicable to cities under commission form of government by § 6567.

6780. Plats. Chapter 321 is applicable to special charter cities. [C., '97, § 1024; S., '13, § 917-a; 40 Ex. G. A., S. F. 182, § 37.]

6781. Disabled and retired firemen and policemen. Chapter 322 is applicable to special charter cities. [S., '13, §§ 932-a, 932-j; 40 G. A., chs. 133, 261; 40 Ex. G. A., S. F. 182, § 38.]

6782. Commission form of government. A special charter city having by the last state or national census a population of two thousand or over may become organized as a city under the provisions of chapter 326 by proceeding as therein provided. [S., '13, § 1056-a17.]

6783. Manager plan of government. Any special charter city may become organized as a city under the provisions of chapter 328 by proceeding as therein provided. [S. S., '15, § 1056-b; 37 G. A., ch. 68, § 1.]

6784. Municipal courts. The law relative to municipal courts shall apply to special charter cities. [S. S., '15, § 694-c1; 40 Ex. G. A., S. F. 182, § 9.]

PUBLIC UTILITIES

6785. Street railways. Chapter 315 is applicable to special charter cities. [C., '97, § 958; S., '13, § 958; 40 Ex. G. A., S. F. 182, § 24.]

6786. Railways to maintain drainage. Such cities shall have power to order any railway or street railway to construct and maintain, under the direction and subject to the approval of the city engineer, culverts and drains across its right of way on any street, alley, highway, or other public place as such council may deem necessary, and if any railway or street railway company neglect or refuse, for more than thirty days after such notice as may be prescribed by resolution, to comply with the requirements of any such order, the city may construct such culvert or drain and recover the cost thereof from such company. [C., '97, § 964.]

NOTE: Above section made applicable to cities under commission form of government by § 6567.

6787. Waterworks. Chapter 313 is applicable to cities acting under special charters. [C., '97, § 958; S., '13, § 958.]

6788. Heating, water, gas, and electric plants. Sections 6127 to 6143, inclusive, are applicable to cities acting under special charters. [C., '97, §§ 720, 952; S., '13, §§ 720, 952; 38 G. A., ch. 326, § 1.]

6789. Establishment of utilities. Such cities shall have power to establish, erect, purchase, lease, maintain, or operate, within or without the corporate limits, heating plants, waterworks, gasworks, electric light or electric power plants, with all the necessary reservoirs, mains, filters, streams, trenches, pipes, drains, poles, wires, burners, machinery, apparatus, and other requisites of said works or plants. [C., '73, § 471; C., '97, § 955; S., '13, § 955.]

NOTE: Above section and the four following sections made applicable to cities under commission form of government by § 6567.

6790. Election necessary. No such works or plants shall be thus established, erected, purchased, or leased unless a majority of the electors voting on such proposition shall vote in favor of the same, at a general or special election. [C., '73, § 471; C., '97, § 955; S., '13, § 955.]

6791. Power to grant franchise. They may also grant individuals or private corporations the authority to erect, maintain, or purchase such works or plants or railways, street railways, or telephone systems, for the term of not more than twenty-five years, and may renew or extend the term of such grants for a period not exceeding twenty-five years; but no exclusive franchise shall be thus granted, extended, or renewed, and no franchise shall be granted or authorized, until after notice of the application therefor has been published once each week for four consecutive weeks in some newspaper published in such city. [C., '97, § 955; S., '13, § 955.]

6792. Question submitted. The council may order any of the questions, including the granting to individuals or corporations authority to erect, maintain, or purchase water or gas works, electric light or power plants, or street railway or telephone systems, provided in the three preceding sections, submitted to a vote at a general election, or at one specially called for that purpose; or the mayor shall submit said question to such vote upon the petition of twenty-five property owners of each ward in the city. [C., '97, § 956.]

6793. Notice—costs. Notice of such election shall be given in two newspapers published in said city, if there are two, if not, then in one, once each week for at least four consecutive weeks. The party asking for a renewal or extension of such franchise shall pay the cost incurred in holding such election. [C., '97, § 956.]

6794. Management of waterworks. The waterworks now owned by such special charter cities having a population of thirty-five thousand or more shall be managed and operated by a board of waterworks trustees, which shall be composed of three resident electors, appointed by the mayor of any such city. [S., '13, § 1056-a1.]

NOTE: The above section is a part of 82 G. A., ch. 47, which became effective March 2, 1907.

6795. Appointment. One of such trustees shall be appointed for a term of one year, another for a term of two years, and the remaining trustee for a term of three years, and thereafter each such trustee shall be appointed for a term of three years. [S., '13, § 1056-a1.]

6796. Compensation. Said trustees shall receive no compensation whatever for their duties as such. [S., '13, § 1056-a1.]

6797. Vacancies. All vacancies occurring on said board occasioned by death, resignation, removal, or otherwise, shall be filled by appointment to be made by the mayor of said city for the unexpired term. [S., '13, § 1056-a1.]

6798. Bond. Each trustee upon qualifying shall execute and furnish the city an official bond, in the sum of five thousand dollars, for the faithful performance of his duties, which bond, if sufficient, shall be approved by the city council and filed with the city recorder and by him kept in his office and recorded in a book kept for that purpose. The expense of such bonds shall be paid by the city treasurer, upon the order of the trustees, out of the waterworks funds. [S., '13, § 1056-a1.]

6799. Removal. Any of such trustees may be removed from office for cause under the provisions of chapter 56, and in addition thereto, the mayor may, for like cause after hearing, remove any of such trustees. [S., '13, § 1056-a1.]

6800. Superintendent and employees. The said board of trustees shall employ an efficient

superintendent, and such other employees as may be necessary and proper, for the operation and betterment of such works, for the collection of water rentals, and for the conduct of the business incident to the operation thereof. [S., '13, § 1056-a2.]

6801. Bonds. The said board of trustees shall require of the superintendent, and of the other employees as they may deem proper, good and sufficient bonds, the amount thereof to be fixed and approved by said board, for the faithful performance of their duties, which bonds shall run in the name of the city and be filed with the city recorder and by him kept in his office and recorded in a book kept for that purpose. [S., '13, § 1056-a2.]

6802. Deposit and custody of funds. All money collected by the board of waterworks trustees shall be deposited at least daily by them with the city treasurer; and all money so deposited and all tax money received by the city treasurer from any source, levied and collected for and on account of the waterworks, shall be kept by the city treasurer as a separate and distinct fund, for which funds the city treasurer shall be liable upon his official bond the same as for other funds received by him as such treasurer. [S., '13, § 1056-a2.]

6803. Disbursement. Such moneys shall be paid out by the city treasurer only on the written order of the board of waterworks trustees, who shall have full and absolute control of the application and disbursement thereof for the purposes prescribed by law, including the payment of all indebtedness arising in the maintenance, operation, betterment, and extension of said waterworks; and said board of waterworks trustees shall make no payment of any kind whatsoever, except by written order on the city treasurer. [S., '13, § 1056-a2.]

6804. Anticipation of revenues. For the operation, betterment, and improvement of such works, said board of trustees may incur obligations, and to pay therefor may anticipate the revenues of such works for a period not to exceed one year, unless the city council shall by tax levy make provision for the payment thereof. [S., '13, § 1056-a2.]

6805. Rates. The board of trustees shall fix uniform water rates and make and enforce proper rules and regulations for the collection of water rentals and the supplying of good water service, and shall furnish the city council a schedule of such water rates and duplicate of such rules and regulations for publication as part of the proceedings of the city council. [S., '13, § 1056-a2.]

6806. Reports required. Such board of trustees shall each three months furnish the city council an itemized statement of all receipts and expenditures during such period, including all current liabilities and outstanding accounts, and also complete annual statements, in the form of a balance sheet, which

shall include all assets and liabilities; and, at least annually, and oftener if they see fit, report the general condition and needs of the waterworks plant; and such quarterly and annual statements and such reports shall, when so furnished, be at once published as a part of the proceedings of the city council. [S., '13, § 1056-a2.]

6807. Records required. Said board of trustees shall keep a book wherein a record shall be entered and kept of their proceedings, which proceedings, duly attested, shall be at once published in two of the official newspapers of any such city. [S., '13, § 1056-a2.]

6808. Records public. All books, vouchers, and records of said trustees in any wise relating to the waterworks shall be open to the inspection and examination of any resident of said city. [S., '13, § 1056-a2.]

6809. Cities affected. All the provisions of the fifteen preceding sections shall be held and construed as applying to cities acting under special charters having a population of thirty-five thousand or more as shown by the last state census; and all acts or parts of acts in conflict with said sections shall not be applicable to any such cities in so far as they relate to the future management of waterworks. [S., '13, § 1056-a3.]

6810. Management of heating, gas, and electric plants. The heating plants, gasworks, or electric light or electric power plants authorized to be purchased or erected by cities acting under special charters having a population of less than thirty-five thousand shall be acquired, erected, managed, and operated by a board of trustees, which shall be composed of three resident electors, appointed for the term of six years by the mayor of said city. [40 G. A., ch. 138, § 1.]

6811. Appointment—term. After the authorization of the purchase or erection of such works or plant by the electors of such city, in the manner provided by law, the mayor thereof shall thereafter appoint such board of trustees, the first appointees thereof to hold office for the following designated terms, namely: one for two years, one for four years, and one for six years. [40 G. A., ch. 138, § 1.]

6812. Vacancies. All vacancies occurring on said board, occasioned by expiration of terms, by death, resignation, or removal, shall be filled by appointment by the mayor of such city. [40 G. A., ch. 138, § 1.]

6813. Compensation. The compensation of said trustees shall be not more than three hundred dollars per annum to each member of said board. [40 G. A., ch. 138, § 1.]

6814. Bond. Each of said trustees shall execute and furnish to the city an official bond in the sum of ten thousand dollars to be approved by the mayor and filed with the city clerk. [40 G. A., ch. 138, § 1.]

6815. Removal. Such trustees may be removed from office for proper cause under the provisions of chapter 56. [40 G. A., ch. 138, § 1.]

6816. Power of trustees. The said board of trustees shall have power to contract for the purchase or erection and construction of any such works or plant, and like powers and authority to manage and control the same as are conferred upon waterworks trustees appointed as provided in section 6157. [40 G. A., ch. 138, § 2.]

6817. Regulations of electric wires. Special charter cities shall have power to regulate telegraph, district telegraph, telephone, street car, electric light and power poles, subways, and wires, and provide the manner in which and the places where the same shall be placed, including the right to construct subways under and erect poles upon and along the streets, alleys, and public places; and to compel companies having wires on the same street or alley to use the same poles or subways upon reasonable terms. [C., '97, § 959; 40 Ex. G. A., S. F. 182, § 23.]

NOTE: Above section made applicable to cities under commission form of government by § 6567.

BUILDING RESTRICTIONS

6818. Housing law. Chapter 323 is applicable to cities acting under special charters which, by the last state or federal census, had a population of fifteen thousand or more, and to every such city as its population shall reach fifteen thousand thereafter by any state or federal census; provided, however, that in all other such cities having a population of less than fifteen thousand, the council may adopt ordinances for the regulation and control of any or all matters covered by the provisions of said chapter, in so far as same may be reasonably applicable, and fix penalties for the violation thereof; and fix rules and regulations not inconsistent with those provided in said chapter for the enforcement of said ordinances. [38 G. A., ch. 123, § 1.]

6819. Construction or alteration. Section 6430 is applicable to special charter cities of more than fifty thousand population, as shown by the last state or federal census, having a department or division of building inspection in charge of a person devoting his entire time to the supervision of building construction and to the enforcement of laws and ordinances relating to building construction, repair, alteration, removal, and related matters. [39 G. A., ch. 160, § 1.]

6820. Municipal zoning. Chapter 324 is applicable to cities acting under special charters. [40 G. A., ch. 134, § 1.]

6821. Restricted residence districts. Chapter 325 is applicable to special charter cities. [40 Ex. G. A., S. F. 182, § 14.]

6822. Building permits. Such cities shall require plans and specifications for all build-

ings costing over two thousand dollars, and all buildings to be erected within the fire limits of such cities, to be submitted for approval, and no such building shall be erected until such plans are approved by the board of public works, chief of fire department, or other proper officer of such city. Such city shall require any person, before erecting any building or improvement within the city, to submit plans and specifications for the plumbing, drainage, ventilation, and electric wiring of such building, for approval, and provide for the inspection of the construction thereof, and obtaining a permit for such erection or construction, which shall not be issued until such plans and specifications have been approved by the board of health or electrician, and may make reasonable charges for such approval and inspection, as provided by ordinance, and the money derived therefrom shall be paid monthly to the treasurer or collector. [C., '97, § 1052.]

RIVER FRONT AND LEVEE IMPROVEMENTS

6823. Water front improvement—fund. Any city acting under special charter, which is bounded in part or divided by a river, may improve said water front by constructing retaining walls, filling, grading, paving, macadamizing, or riprapping the same; and to pay for such improvements the council of such city is empowered to levy a tax of not exceeding one mill on the dollar per annum on the taxable property thereof, the same when collected to be known as the levee improvement fund. The proceeds of such fund shall be used exclusively for said purposes. [S., '13, § 1056-a6a.]

NOTE: Above section and the two following sections made applicable to cities under commission form of government by § 6567.

6824. Bonds. In the event that the proceeds of such tax in any one year shall be insufficient to pay for the improvements of that year, or if the city council shall deem best to extend the payment over a number of years, then upon a majority vote of said council approving the same, said cities may borrow the money to make such improvements and issue the negotiable interest-bearing bonds of said city to evidence said debt; provided that the total bond that may be issued under this chapter by any one city shall not exceed one per cent of the assessed value of said city. [S., '13, § 1056-a6b.]

6825. Form of bonds. Said bonds shall be in amounts provided in, and conform in substance to, the requirements of section 6253. [S., '13, § 1056-a6c.]

6826. River front commission. Chapter 294 is applicable to cities acting under special charters. [S., '13, § 879-o.]

6827. Levee improvement commission. Any city acting under special charter may establish a levee improvement commission to consist of the mayor, who shall be its chairman, and not more than four other persons to be appointed by the mayor with the approval of the city council. [S., '13, § 1056-a6d.]

6828. Qualifications — compensation—term. The appointive members shall be residents and qualified electors of the city, and shall hold no other official position in the city, and no member shall receive any salary for his services as a member of such commission. Their term of office shall be fixed by ordinance and shall not exceed six years. [S., '13, § 1056-a6d.]

6829. Bond. Before entering upon their office the appointive members shall each execute a bond in favor of the city in the penal sum of two thousand dollars, with approved fidelity company surety, for the faithful performance of their duties. The expense of this bond shall be paid out of the levee improvement fund. [S., '13, § 1056-a6d.]

6830. Powers and duties. The levee improvement commission shall have full charge and supervision of all improvements of the water front along any river within the corporate limits of the city. It shall have exclusive charge and control of the levee improvement fund and of all moneys derived from the sale of bonds issued by the city council for the purpose of carrying on the work of making water front improvements. It shall pay out of these funds only for the purposes named. [S., '13, § 1056-a6e.]

6831. Ferries. In cities under special charter which have established levee improvement commissions, all of the powers enumerated in section 5770 shall be exercised by the levee improvement commission and in addition thereto in such cities the levee improvement commission shall have the exclusive power to prescribe the character, design, and type of construction of any ferry dock or landing had or used by any ferry running to or from any landing place which is on the water front along any river within the corporate limits of said city; to prescribe the amount of license to be paid by any such ferry for the privilege of having or using any such landing place; to prescribe the terms and conditions under which any such ferry may have the right to run to and from any such landing place; to prescribe the time during which any such ferry shall operate; and to make any other reasonable provisions regarding the operation of such ferry. [37 G. A., ch. 53, § 1.]

6832. Treasurer. The city treasurer shall be the treasurer of the levee improvement commission. He shall keep the levee improvement funds and the moneys derived from the sale of bonds for water front improvements in a separate and distinct fund from which he shall pay no money except upon the order of the levee improvement commission signed by its chairman and secretary, and countersigned by at least one other member of said levee improvement commission. [S., '13, § 1056-a6e.]

BOARD OF HEALTH

6833. Appointment. There shall be appointed in every such city a local board of health consisting of five members, a majority

of whom, including the mayor, shall be members of the city council. The mayor of the city shall be ex officio one of said members and the chairman thereof. The manner of appointment and duration of office of said board shall be determined by ordinance of said city. [C., '97, § 1025.]

6834. Officers appointed — quorum. The board of health shall appoint a physician to the board, who shall hold office during the pleasure of the board. The city clerk or recorder shall be clerk of the board, unless some other clerk may be provided by ordinance. The board of health shall appoint, with the consent of the council, all officers and agents necessary to carry their rules and orders into effect, and shall recommend the compensation or salaries to be paid such officers or agents, which shall be determined by the council. In cases of emergency, the board of health may employ persons to aid in the execution of its orders, and fix the compensation of such employees. The majority of the members of the board shall constitute a quorum for the transaction of all business and the exercise of powers conferred upon the board. [C., '97, § 1026.]

6835. Physician and clerk. It shall be the duty of such clerk and physician to report at least once a year to the department of health the proceedings of such board, and such other facts as may be required, on blanks in accordance with instructions received from the said department. They shall also make special reports whenever required so to do by the said department. [C., '97, § 1027.]

6836. General powers. The local board of health shall make such rules and regulations and orders respecting the connection of buildings and tenements with sewers, and the approval of plans for plumbing and the inspection thereof; and the inspection of milk, provisions, and of all food products sold within such city, and the condemnation and destruction of the same when impure or diseased; the collection and disposition of garbage; the condemnation of impure wells and cisterns; the prompt report of contagious or infectious diseases; nuisances, sources of filth, and cases of sickness within its jurisdiction, and on all boats in its ports and harbors, or railroad cars passing through such city; and for the prevention of nuisances and the preservation of the public health, as said board may judge necessary for the public health and safety; and shall, from time to time, report to the city council ordinances for carrying such rules, regulations, and provisions into effect, and for the appointment of the proper inspectors and officers necessary to enforce the same. [C., '97, § 1028.]

6837. Violation of regulations. Such cities shall have power and may provide by ordinance for the punishment by fine and imprisonment of any person who shall knowingly violate or fail to comply with any rule, regulation, or

order of such local board of health, but the fine shall not exceed one hundred dollars, nor the imprisonment thirty days. The prosecution for the violation of any rule, regulation, or order of such board of health shall be in the name of the city appointing such board, and shall be conducted in the same manner and before the same tribunals as other prosecutions for the violation of ordinances of such city. [C., '97, § 1029.]

6838. Sewer connections. The board of health shall have power to compel all property owners owning property situated on streets along which sewers have been constructed, or within two hundred fifty feet of any sewer, to make proper connections therewith, and to use the same for proper purposes; and in case such owner shall fail to make such connections within the time fixed by such board, they may cause such connections to be made and report the cost and expense thereof to the city council, which shall assess the same against the property so connected, and such assessment shall be a lien on said property which the city council can enforce by the sale of same. [C., '97, § 1030.]

6839. Plumbing. Such board shall have power to prescribe rules and regulations for all plumbing connections of buildings or tenements with any sewer, and for all plumbing, drainage, and ventilation of any building or tenement, and may prescribe the kind and size of materials to be used in any plumbing, drainage, and ventilation of buildings, and the manner in which plumbing shall be done, and compel the plans and specifications for the plumbing of any building to be submitted to and approved by said board before the same is installed, and that such work be done by a competent licensed plumber, and provide for the inspection of the work done under such plans and specifications, and have the power to appoint, with the approval of the city council, an inspector of such plumbing, and define his duties and powers. [C., '97, § 1031.]

6840. Nuisances. Such board may order the owner or occupant of any property, place, or building at his own expense to remove or abate any nuisance, source of filth, or cause of sickness, to dispose of garbage, to destroy diseased or impure milk, provisions, or food products, to purify, fill up, or cease from using any impure well or cistern, to report to the proper officer all contagious or infectious diseases found on his property or property over which he has control, to make sewer connection, and to do such acts as may be required. The board may in its discretion specify in its notice the time and manner of compliance with such order, and if such person neglect to comply with such order he may be punished in accordance with the provisions hereof, and the board may do or cause to be done whatever is required by the order. [C., '97, § 1032.]

6841. Abatement. Whenever the owner, occupant, or person having the control or man-

agement of such property shall not be found in the city, or whenever the board may deem immediate action necessary, it may, without notice to such owner or occupant or person having the control or management of the same, immediately proceed to remove said nuisance, source of filth, or other cause of sickness, and the expense thereof shall be reported to the council and levied and assessed against the property, place, or building, and collected as a special tax, and shall be a lien upon such property, place, and building, or the same may be enforced in any court having jurisdiction, by the proper officer, in the name of the city. [C., '97, § 1033.]

6842. Enjoining. Whenever any person or persons are engaged in a work, or doing things, or threatening to do things, which, in the opinion of the board, will result in a nuisance or endanger the public health, the board may forbid the doing or continuance thereof, and in case any such person shall fail to comply with any such order, after personal service of a notice thereof, he may be proceeded against and punished under the provisions hereof. [C., '97, § 1034.]

6843. Health regulations. Whenever any such board shall make or adopt any general rules and regulations for the public health, they shall be signed by the mayor or other presiding officer and attested by the clerk of such board, and, when so signed and attested, shall be published twice in the official newspaper of such city. When such publication is completed, due proof thereof by affidavit shall be attached to said rules and regulations, and the same shall then be recorded by the clerk of such board in a book kept for such purpose, which record shall be certified to by the mayor or presiding officer and attested by the clerk; such general rules and regulations shall be in force and effect from and after the completion of such record. [C., '97, § 1035.]

6844. Notices. Any notice from the board may be served by any city officer, or by any other person whom the board of health may appoint or designate. [C., '97, § 1036.]

6845. Premises unfit for habitation. The board, when satisfied upon due examination that any cellar, room, tenement, or building in said city, occupied as a dwelling house, has become, by reason of the number of inhabitants or want of cleanliness or other cause, unfit for such habitation, and a cause of nuisance or sickness to the occupants thereof or to the public, may issue a notice to the occupants thereof or any of them, requiring the premises to be put into a proper condition as to cleanliness or health, or may require the occupants to remove from the premises, within such time as the board deems reasonable. If the persons so notified neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleaned at the expense of the owners or property, or the board may remove the occupants forcibly and close up the prem-

ises, and the same shall not again be occupied as a dwelling place until put in a sanitary condition to the satisfaction of the board. [C., '97, § 1037.]

6846. Contagious diseases. Whenever by reason of the prevalence of smallpox, or other contagious or infectious disease, in any such city or the vicinity thereof, the board may deem it dangerous to permit the congregation together of people, the board may, with the consent of the council, by public proclamation published once in some newspaper of general circulation in the city, prohibit the congregation of people in schools, churches, theaters, and in all other buildings in said city, and it shall thereupon become the duty of the principals, teachers, and other persons in charge of such places or buildings specified in said publication to keep the same closed and to prevent the congregation of people therein; and when smallpox is prevalent in said city or its vicinity, the said board of health may, with the consent of the council, by notice served upon the teachers or persons in charge of any of the public or private schools, prohibit the admission therein of any pupil until such pupil shall have proved, to the satisfaction of the board or the persons selected by it for that purpose, that such pupils have been vaccinated within five years prior thereto, or within such time as the board may designate; and said board may in like manner prevent the admission of persons not furnishing satisfactory proof of vaccination into churches, theaters, or other buildings, by notifying the persons in charge thereof not to admit such persons. [C., '97, § 1038.]

6847. Warrant. Whenever the board of health shall think it necessary for the preservation of the lives or the health of the inhabitants to enter a place, building, or vessel within its jurisdiction, for the purpose of examining into and destroying, removing, or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint, under oath, before any justice of the peace, or other judicial officer having jurisdiction to enforce the ordinances of such city, stating the facts of the case so far as he has knowledge thereof. Such officer shall thereupon issue a warrant, directed to the sheriff or any constable of the county, marshal or public officer, commanding him to take sufficient aid and, being accompanied by two or more members of said board, between the hours of sunrise and sunset, repair to the place where such nuisance, source of filth, or cause of sickness may be, and destroy, remove, or prevent the same under the direction of such members of the board. [C., '97, § 1039.]

6848. Removal of diseased person. When any person coming from abroad or residing within such city shall be infected, or lately shall have been infected, with smallpox or other sickness dangerous to the public health, the board shall make provisions in the manner

by it deemed best for the safety of the inhabitants, by removing such sick or infected person to a separate house, if it can be done without injury to his health, and by providing nurses and other assistance and supplies, which shall be charged to the person himself, his parents, or other person liable for his support, if able, otherwise to the county. [C., '97, § 1040.]

6849. Care of such person. If any afflicted person can not be removed without danger to his health, the board shall make provision for him, as directed in the preceding section, in the house in which he may be, and in such case they may cause the persons in the neighborhood to be removed, and take other means as may be deemed necessary for the safety of the inhabitants. [C., '97, § 1041.]

6850. Warrant. Any justice of the peace, or tribunal having jurisdiction to enforce the ordinances of such city, on application under oath, showing cause therefor, by any member of said board, shall issue his warrant, directed to the sheriff or constable of the county or marshal or police officer, commanding him, under the directions of the board, to remove any person infected with contagious disease, or to take possession of condemned houses and lodgings, and to provide nurses and attendants and other necessaries for the care, safety, and relief of the sick. [C., '97, § 1042.]

6851. Meetings—report. Every such board shall meet for the transaction of business at least once each month, and at such other times as occasion may require, and the clerk of the board shall transmit his annual report to the department of health within two weeks after the October meeting, and at such other time as may be required by the said department. Such report shall embrace a history of any epidemic disease which may have prevailed within the city. The failure of the clerk to make such report shall be considered a misdemeanor, for which he shall be subject to a fine of not more than twenty-five dollars. [C., '97, § 1043.]

6852. Powers—assessment of expenses. The foregoing provisions in regard to boards of health shall not in any manner limit the powers of cities acting under special charters in relation to matters affecting the public health, and the city councils of such cities shall provide by ordinance for the manner of the exercise of the powers herein conferred upon such boards, and for the enforcement of the orders, rules, and regulations thereof, and punishment for the violation of the same, as prescribed in this chapter, and shall also have power to provide and shall provide for the assessment of all expenses incurred by said board and by said cities, in consequence of the failure or neglect of any owner or occupant of property to comply with any order of such board, upon the real estate upon which such expenditures are made or expenses incurred, and it shall be a lien thereon from the time

said work is done, and may be assessed, levied, and collected as other special assessments, and may be collected and the lien enforced by civil action in any court of competent jurisdiction. [C., '97, § 1044.]

6853. Proceedings reported. Boards of health shall report their doings and proceedings to the council from time to time as required by ordinance or resolution, and the council shall have supervision over the orders and proceedings of said board. [C., '97, § 1045.]

6854. Construction of powers. The provisions of this chapter in regard to the police powers, sanitary regulations, and regulations for the prevention and spread of fires and of contagious diseases, shall not be construed as a limitation of the general powers of such cities. [C., '97, § 1046.]

GENERAL TAXATION

6855. General levy. The council shall levy a tax for the year then ensuing for the purpose of defraying its general or incidental expenses, which shall not exceed ten mills on the dollar of the assessed valuation of all taxable property in the city; but the aggregate of such levy, together with all levies for special purposes as hereinafter authorized, shall not exceed in any city in any one year, twenty-six mills, excluding city and district sewer tax, road district tax, and any tax levied to pay the principal or interest on any bonds issued by such city, or tax levied to pay judgments, or taxes authorized for library, park, or bridge purposes. [C., '97, § 1003; S., '13, § 1003; 40 G. A., ch. 141.]

6856. Special levies. They shall have power to levy annually the following taxes for special purposes:

1. *Grading fund.* A tax not exceeding three mills on the dollar for a grading fund, to be used for the purpose of opening, widening, extending, or grading any street, public ground, or market place.

2. *Improvement fund.* A tax not exceeding three mills on the dollar for the city improvement fund, to be used for the purpose of paying the cost of the making, reconstruction, and repair of any street improvement at the intersection of streets, and spaces opposite streets intersecting but not crossing, and the spaces opposite property owned by the city or state.

3. *Sewer fund.* A tax not exceeding five mills on the dollar on the assessed valuation of all property therein, for the city sewer fund, to be used to pay the cost of making, reconstructing, or repairing any sewer at the intersection of streets, and all spaces opposite streets intersecting but not crossing, and at spaces opposite property owned by the city or state, or to pay the whole or any part of the cost of making, reconstructing, or repairing any sewer within the limits of such city, and for the maintenance and operation of any sewage disposal plant included in said sewer district. When the city has been divided into

sewer districts, a tax not exceeding five mills on the taxable real property in the sewer district, for the district sewer fund, to be used to pay, in whole or in part, the cost of the making, reconstruction or repair of any sewer located or laid in that particular district, and for the maintenance and operation of any sewage disposal plant included in said sewer districts; provided that, on petition of the owners of two-thirds in value of all the taxable real estate within such sewer district for the construction of a sewer in such district, the maximum percentage of taxes that can be levied in any one year shall not be limited to five mills, but shall be such percentage of the valuation of such property as will produce at least one-tenth of the whole cost of such sewer assessable upon the real property in such district.

4. *Fire fund.* A tax not exceeding five mills on the dollar for the purpose of creating a city fire fund, to be used for paying the expenses of organizing, keeping, and maintaining a fire department, including the expenses of constructing, purchasing, leasing, and maintaining the proper and necessary buildings, grounds, and apparatus therefor; provided that where a paid fire department is maintained, all money derived from the sale of any buildings, grounds, or apparatus of such fire department which was originally paid for out of the fire fund, shall belong to said fire fund.

5. *Road fund.* When any city is divided into road districts, a tax not exceeding two mills on the dollar on all taxable property in such road district, to be known as the district road fund, and to be used only to pay the cost of cleaning, sprinkling, and repairing the streets and public places in such district.

6. *Library tax.* In cities which have established, or may establish, a free public library, a tax as provided in section 6211, subsections 19 and 20.

7. *Tax for water and gas works and electric plants.* A tax not exceeding five mills on the dollar, which, with the rates, rents, or revenues derived therefrom, shall be sufficient to pay the expenses of running, operating, and repairing water and gas works and electric light and power plants owned and operated by such city, and the interest on or principal of any bonds issued to pay the cost of the construction of such works; but such taxes shall not be levied upon the property which lies wholly without the limits of the benefits or protection of such works or plants, which limit shall be fixed by the council each year before making the levy.

8. *Tax for water, gas, and electric light or power.* A tax not exceeding five mills on the dollar for the purpose of paying the amount due, or to become due, to any individual or company operating water or gas works or electric light or power plants, for water, light, gas, or power supplied to the city, the levy to be limited to the property benefited thereby.

9. *Bond fund.* A tax for the purpose of creating a bond fund sufficient to pay the interest, to accrue before the next annual levy,

on funding or refunding bonds outstanding, and to pay the principal of such funding or refunding bonds. In case of such bonds, the levy shall be so made that, dividing the principal into as many parts as the bonds have years to run, not less than one such part shall be levied each year, and shall be made so that the fund derived therefrom shall be available and sufficient to pay the bonds at their maturity.

10. *Water and gas or electric light and power bonds.* A tax to be used exclusively in payment of the principal and interest of bonds issued for the construction of water and gas works, or electric light and power plants, and which shall be levied in the manner provided in the preceding subdivision.

11. *Park tax.* A tax not exceeding two mills on the dollar, as authorized by the vote of the electors, to purchase, improve, and maintain public parks in such city.

12. *Special bridge tax.* A special tax to aid in the construction of bridges, when such tax has been voted by the electors of the city under the provisions of section 5883.

13. *Drainage tax.* A tax in such sum or amount as may be necessary to pay any special assessment, with interest, or any installment of any special assessment, with interest, levied against any street, alley, highway, public way, or park of any city acting under a special charter, levied under the provisions of sections 7627 and 7629. [C., '73, §§ 461, 475; C., '97, § 1005; S., '13, § 1005; 38 G. A., ch. 394, § 1; 39 G. A., ch. 11, § 1; 39 G. A., ch. 137, § 1.]

6857. *Park levy.* Section 6214 is applicable to cities acting under special charters. [38 G. A., ch. 168, § 1.]

6858. *City bridge levy.* Section 6209 is made applicable to special charter cities. [C., '97, § 1004; S., '13, § 1004.]

6859. *Road levy on agricultural land.* Section 6210 is made applicable to special charter cities. [C., '97, § 1004; S., '13, § 1004.]

6860. *Fire department maintenance levy.* Section 6211, subsections 8 and 9, is applicable to special charter cities. [40 Ex. G. A., S. F. 182, § 14.]

6861. *Garbage and street cleaning levy.* Section 6211, subsection 16, is applicable to special charter cities. [S. S., '15, § 696-b; 40 Ex. G. A., S. F. 182, § 14.]

6862. *Excess of judgment or bond tax.* When a tax has been levied to pay any judgment against any such city, or the principal and interest of funding or refunding bonds issued by such city, or for any other special purpose, such tax shall not be held invalid if the amount received exceed the amount sought for such specific object, but the excess shall go into the general fund. Money so raised is especially appropriated for such purposes, and shall constitute a distinct fund in the hands of the treasurer until the obligation is discharged.

[C., '51, §§ 123, 124; R., '60, §§ 259, 260; C., '73, §§ 318, 319; C., '97, § 1006.]

6863. *Anticipating revenue.* Loans may be negotiated or warrants issued by any such city in anticipation of its revenues for the fiscal year in which such loans are negotiated or warrants issued, but the aggregate amount of such loans and warrants shall not exceed one-half the estimated revenue of such corporation for the fund or purpose for which the taxes are to be collected for such fiscal year. [R., '60, § 1129; C., '73, § 500; C., '97, § 1007.]

6864. *Diversion of funds.* Section 6230 is made applicable to cities acting under special charters. [C., '97, § 1008.]

6865. *Valuation.* The assessed or taxable value of all property except moneys and credits including moneyed capital other than moneyed capital within the meaning of section 5219 of the revised statutes of the United States as amended, and the value at which it shall be listed and upon which the levy shall be made, in special charter cities, shall be provided by the city council of such city, and if the city council of such city shall fix the taxable value of property at any portion thereof except twenty-five percent of the actual value thereof as shown by the assessment, such city council, when the levy for city purposes has been determined, shall ascertain the equivalent thereof, based upon such twenty-five percent valuation and shall certify the aggregate of the levy so ascertained to the county treasurer of the county in which such city is located and the county treasurer shall pay to the treasurer of such city, such portion of the five mill tax on moneys and credits collected within such city, as the aggregate levy so certified is of the total levy obtained by adding such certified levy to the levy for all purposes except city purposes. [S., '13, § 1056-a5; 40 Ex. G. A., S. F. 329, § 1.]

6866. *Property valued by executive council.* Where all property except such as is listed and valued by the executive council is assessed upon its full or a certain percentage of its full valuation, the levy upon all such property valued and returned by the executive council shall be on a like percentage of the valuation so returned. [S., '13, § 1056-a6.]

6867. *Levy and collection.* The council shall have power to levy and collect taxes for all general and special purposes in this chapter authorized, upon all property within the city not exempted from taxation by the general law of the state, and to fix the number of mills to be levied on the value thereof, which shall be ascertained by the assessor of said city. [C., '97, § 1010.]

6868. *Assessment procedure.* The council shall provide by ordinance the time and manner of taking such assessment, when the same shall be equalized and returned to the auditor or recorder, and for the assessing and placing upon the tax list all property that may have

been omitted, overlooked, brought into the city before the levy of said tax, or otherwise not returned by the assessor, and to fix the time when such officer shall make out and deliver a copy of the assessment and the taxes levied thereon to the collector or treasurer. [C., '97, § 1010.]

6869. Assessment—equalization. All the property of individuals, companies, copartnerships, and corporations shall be listed and returned by the assessor for city taxation, and the duty of the owner, officer, agent, or individual having control of the same to assist the assessor in listing the same, and the penalties for his neglect or refusal so to do, shall be as provided in title 16, so far as the same may be applicable and not in contravention of any of the provisions herein, or of the charters of such cities; but the equalization of all assessments shall be made by the council as provided by ordinance or the charters of said cities. [C., '97, § 1011.]

6870. Board of review. Sections 7129, and 7132 to 7136, inclusive, are made applicable to special charter cities, except that the words "city treasurer" or "collector" and "city" shall be substituted for "county auditor" or "county" wherever the same appear in said sections. [C., '97, § 1004; S., '13, § 1004.]

6871. Collection through county. The council may provide by ordinance for certifying all taxes and assessments to the county auditor, as provided in sections 6227 to 6229, inclusive, which shall be applicable to the city adopting the provisions thereof, and the taxes so certified shall be collected and paid over in the same way, with the same penalties, rights, and liabilities, as in and for other cities to which such sections are applicable. [C., '97, § 1010.]

6872. Collection procedure. Such cities shall have power and shall provide by ordinance when general or special taxes and assessments shall become delinquent, and the rate of interest which they shall thereafter bear, not exceeding ten per cent per annum on the whole amount thereof, including penalty, and for the sale of both real and personal property for the collection of general and special delinquent taxes and assessments, on such terms as the council may determine. [C., '97, § 1012.]

6873. Sale of real estate—notice. In the sale of real property for taxes and assessments, the notice of the time and place of such sale shall be given by the treasurer or the collector, and shall contain the description of each separate tract to be sold, as taken from the tax list; the amount of taxes for which it is liable, delinquent for each year, and the amount of penalty, interest, and cost thereon; the name of the owner, if known, or the person, if any, to whom it is taxable; by publication in some newspaper in the city once each week for three consecutive weeks, the last of which shall be at least one week before the date of such sale, and by posting a copy thereof at the door

of the office of the collector or treasurer one week before the day of such sale. [C., '97, § 1012.]

6874. Cost of publication. The compensation for such publication shall not exceed twenty cents for each description, and shall be paid by the city. The amount paid therefor shall be collected as a part of the costs of sale and paid into the treasury. [C., '97, § 1012.]

6875. Sufficiency of notice. In all cases such advertisement shall be sufficient notice to the owners and persons having an interest in or claiming title to any lot or parcel of real estate, of the sale of their property for delinquent taxes. [C., '97, § 1012.]

6876. Irregularities disregarded. No irregularity or informality in the advertisement shall affect the legality of any sale or the title of any property conveyed, if it shall appear that said property was subject to taxation for the year or years for which the same was sold, and that the tax was due and unpaid at the time of sale. [C., '97, § 1012.]

6877. Demand unnecessary. A failure of the collector to make personal demand of taxes shall not affect the validity of any sale or the title of any property acquired under such sale. [C., '97, § 1012.]

6878. Adjournment of sale. Section 7259 is made applicable to cities acting under special charters. [C., '97, § 1013.]

6879. Tax list. All assessments and taxes levied by the council, except as otherwise provided by law, shall be placed by the auditor, clerk, or recorder, as provided by ordinance, upon the proper tax book, to be known as the "tax list", properly ruled and headed with distinct columns to correspond with the assessment books, with a column for polls and one for payments, and he shall complete the same by carrying out the consolidated tax and all other taxes levied, and at the end of the list shall make an abstract thereof and apportion the consolidated tax among the respective funds to which it belongs, according to the number of mills levied for each, and certify the same to the collector or treasurer at or before the regular time for the collection and payment of taxes. [R., '60, §§ 1123, 1126; C., '73, §§ 495, 498; C., '97, § 1014.]

6880. Lien on real estate. Taxes upon real estate shall be a lien thereon against all persons except the state. Taxes due from any person upon personal property shall be a lien upon any and all real estate owned by such person or to which he may acquire title. [C., '97, § 1015.]

6881. Lien between vendor and vendee. As between vendor and vendee, such lien shall attach to real estate on the thirty-first day of December following the levy, unless otherwise provided in this chapter. [C., '97, § 1015.]

6882. Stocks of goods. Taxes upon stocks of goods and merchandise shall be a lien thereon, and shall continue a lien thereon when sold in bulk, and may be collected from the owner, purchaser, or vendee, but the property of the seller thereof shall be first exhausted for the payment. [C., '97, § 1015.]

6883. When lien attaches. All of such taxes shall remain a lien on the property aforesaid from and after the date of the levy in each year. [C., '97, § 1015.]

6884. Tax receipt. The collector or treasurer shall in all cases make out and deliver to the taxpayer a receipt, which receipt shall contain the description and the assessed value of each lot and parcel of real estate, and the assessed value of personal property, and in case the property has been sold for taxes and not redeemed, the date of such sale and to whom sold, also the amount of taxes, interest, and costs paid; and the collector or treasurer shall give separate receipts for each year; whereupon he shall make proper entries of such payments on the books of his office. [C., '97, § 1016.]

6885. Payment refused—receipt made conclusive—liability of treasurer. The council may provide by ordinance:

1. That no person shall be permitted to pay taxes of any one year until the taxes for the previous years shall be first paid.

2. That the receipt contemplated in the preceding section shall be conclusive evidence that all taxes and the costs of every kind against the property described in such receipt are paid to the date of such receipt.

3. That for any failure or neglect on the part of the collector, or on the part of anyone acting as collector, he and his bondsmen shall be liable to an action on his official bond for damages sustained by any person or the city for such neglect. [C., '97, § 1016.]

6886. Certificate of purchase. The treasurer or collector of taxes, or person authorized to act as collector, shall make, sign, and deliver to the purchaser of any real property sold for the payment of any taxes or special assessments authorized by the provisions of this chapter, or by any law applicable to such cities, a certificate of purchase, which shall have the same force and effect as certificates issued by county treasurers for the sale of property for delinquent county taxes. [C., '97, § 1017.]

6887. Redemption—terms. Real property sold under the provisions of this chapter, or by virtue of any power heretofore given, may be redeemed before the time of redemption expires, as hereinafter provided, by payment to the treasurer, collector, or person authorized to receive the same, to be held by him subject to the order of the purchaser on surrender of the certificate, or in case the same is lost and destroyed, on his making affidavit of such fact, and of the further fact that it was not assigned,

of the amount for which the same was sold, and ten per cent of such amount immediately added as a penalty, with eight per cent per annum on the whole amount thus made from the day of sale, and the amount of all taxes, either general or special, with interest and costs, paid at any time by the purchaser or his assignee subsequent to the sale, and a similar penalty of ten per cent added as before on the amount of the payment made at any subsequent time, with eight per cent interest per annum on the whole of such amount or amounts from the day or days of payment; provided that such penalty for the nonpayment of the taxes at any subsequent time or times shall not attach, unless such subsequent tax or taxes shall have remained unpaid for thirty days after they became delinquent. [C., '97, § 1018.]

6888. Certificate of redemption. The treasurer, collector, or person authorized to receive the same, upon application of any party to redeem real property sold as aforesaid, and being satisfied that such person has a right to redeem the same, and on payment of the proper amount, shall issue to such party a certificate of redemption, in substance and form as provided for the redemption of property sold for state and county taxes, and shall make proper entry thereof in the sale book, which redemption shall thereupon be deemed complete without further proceedings. [C., '97, § 1018.]

6889. Redemption statutes applicable. The provisions of sections 7277 to 7283, inclusive, shall, so far as the same shall be applicable, and are not herein changed or modified, apply to sales of real estate for delinquent taxes herein contemplated; but where the words "auditor of the county" or "treasurer" are used in said sections the words "city clerk", "recorder", "auditor", or "person authorized to make out the tax list" and "city collector" or "city treasurer or officer authorized to receive same" shall be substituted. [C., '97, § 1018.]

6890. Deed—when executed. Immediately after the expiration of ninety days from the date of service of the notice, as prescribed by sections 7279 to 7284, inclusive, the treasurer, collector, or person authorized to act as collector of taxes, shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser upon the return of the certificate of purchase. [C., '97, § 1019.]

6891. Different parcels. Any number of parcels of real estate bought by one person may be included in one deed, if required by the purchaser. [C., '97, § 1019.]

6892. Formal execution. Deeds executed by the city treasurer, collector, or person authorized to act as collector, may be in form substantially as provided by section 7285, and shall be signed and acknowledged by him in his official capacity. [C., '97, § 1019.]

6893. Force and effect. All deeds and conveyances hereafter made and executed on ac-

count of any general or special tax sale shall be of the same force and effect as deeds made by the county treasurer as provided in sections 7286 to 7288, inclusive, for delinquent county taxes. [C., '97, § 1019.]

6894. Rights and remedies. The purchaser as well as the owner of any real property sold on account of such general or special delinquent taxes or assessments shall be entitled to all the rights and remedies which are granted and prescribed by sections 7269, 7270, and 7289 to 7296, inclusive, but wherever the words "county and county treasurer and auditor" are used, the words "city, city treasurer, city clerk, recorder, auditor, or collector or officer authorized to act as collector", shall be substituted. [C., '97, § 1019.]

6895. Tax and deed statutes applicable. Sections 7185, 7222 to 7226, inclusive, 7240 to 7243, inclusive, 7253, 7266, 7267, 7293 to 7295, inclusive, are hereby made applicable to cities acting under special charters, except that, where the word "treasurer" is used, there shall be used the words "city collector or treasurer or deputy treasurer or deputy or officer authorized to collect city taxes"; and where the word "auditor" is used, there shall be substituted the words "city clerk or recorder". [C., '97, § 1020; S., '13, § 1020.]

6896. Penalty or interest on unpaid taxes. In cities acting under special charters no penalty or interest shall be collected upon taxes or assessments remaining unpaid four years or more, from the first day of January of the year in which the tax books containing the same were first placed in the hands of the city collector or treasurer. [S., '13, § 1056-a4.]

MISCELLANEOUS TAXES

6897. Poll tax. Chapter 318 is made applicable to special charter cities. [C., '97, § 1004; S., '13, § 1004.]

6898. Intoxicating liquors. Title 6 is made applicable to cities acting under special charters. [C., '97, § 1013.]

NOTE: The intoxicating liquor statutes carry a mulct tax provision; see §§ 2051 and 2052.

STREET IMPROVEMENTS AND SEWERS

6899. How paid. The cost of opening, widening, extending, or grading any street or market place shall be paid from the grading fund. The cost of making or reconstructing any street improvement, not ordered to be paid from the city improvement or grading fund or by any railway or street railway, shall be assessed as a special tax against the property abutting thereon, in proportion to the linear front feet thereof. The term "street", wherever used in this chapter, shall be held to include avenue, highway, alley, and public ground. [R., '60, § 1064; C., '73, §§ 464, 465; C., '97, § 969.]

6900. Road districts—cost at intersections. The council may divide the city into road dis-

tricts, or may make each ward a separate road district, or make the entire city into a general district for the purpose of cleaning, sprinkling, and repairing the streets, or for any of said purposes, and provide for the manner of doing the same, and for the payment of the cost thereof out of the district road fund, and shall determine the amount necessary for such purposes in each district, and make appropriations therefor at the time and in the manner in this chapter provided for making appropriations for other purposes; but the cost of making, reconstructing, and repairing streets at the intersection of streets, and one-half of the space opposite streets intersecting and not crossing, and opposite city property in any district, shall be paid from the city improvement fund. [C., '97, § 970; 40 G. A., ch. 140.]

6901. Notice and levy of assessments. After filing the plat and schedule referred to in section 6023, the council shall direct the clerk or recorder to give ten days' notice, by publishing same three times in a newspaper published in said city, that such plat and schedule are on file in the office of the clerk, fixing a time within which all objections thereto or to the prior proceedings must be made in writing; and the council, having heard the objections and made necessary corrections, shall levy the special assessment as shown in such plat and schedule. [C., '97, § 971; S., '13, § 971.]

6902. Levy and payment as tax. The special assessments made in said plat and schedule, as corrected and approved, shall be levied at one time, by resolution, against the property abutting upon or adjacent to such street or sewer, and, when levied and certified, shall be payable as ordinary city taxes. [C., '97, § 972; S. S., '15, § 972.]

6903. Maturity under waiver. If the owner of any lot or parcel of land or railroad or street railway, the assessment against which is embraced in any bond or certificate provided for in chapter 311, shall, within thirty days from the date of such assessment, promise and agree in writing, indorsed on such bond or certificate, or in a separate agreement, that, in consideration of having the right to pay his assessment in installments, he will not make any objections of illegality or irregularity, or to the assessment or levy of such tax upon and against his property, and will pay said assessment, with interest from the date of acceptance of the work by the city council at a rate not exceeding six per cent per annum, as shall by ordinance or resolution of the council be prescribed, then such tax so levied against the lot or parcel of land or railroad or street railway shall be payable in not less than five nor more than ten equal installments, the first of which may become due and payable, with interest from the date of acceptance of the work by the city council on the whole amount, at a time fixed in the year in which the levy is made, or in the following year, and the other installments shall be due and payable,

with interest on the whole amount unpaid, at intervals of one or two years, as fixed by the resolution making the levy, and all of such installments, with interest from the date of acceptance of the work by the city council, shall mature in ten years or less from the time fixed for the payment of the first installment. [C., '97, § 972; S. S., '15, § 972.]

6904. Maturity without waiver. Where no such agreement is made, the whole of such assessment so levied shall mature at one time, and be due and payable, with interest from the date of acceptance of the work by the city council, as hereinafter provided. [C., '97, § 972; S. S., '15, § 972.]

6905. Collection. Such assessments shall be duly entered on the tax books of the city, and shall be then due and payable at the office of the collector, or other officer authorized to collect city taxes, and shall be collected, like other special taxes, as provided by ordinance. [C., '97, § 973.]

6906. Interest. Such assessment shall bear interest from the date of acceptance of the work by the city council at six per cent per annum. Interest on the whole assessment unpaid shall become due and payable at the time fixed by resolution or ordinance for the payment of each installment. [C., '97, § 974; S. S., '15, § 974.]

6907. When delinquent. Such assessment, and each installment with the interest thereon, shall be paid with accrued costs, at the office of the collector or treasurer, by the owner of the property upon which it is levied, at or before the time said property is sold for taxes or interest or both, and each installment and all interest due and unpaid shall become delinquent at the time fixed by ordinance or resolution, and shall bear such interest from the time of becoming delinquent, as ordinary taxes. [R., '60, § 1068; C., '73, § 478; C., '97, § 975.]

6908. When lien attaches. All special assessments shall be a lien upon the property against which the same are assessed from the date of the resolution of the council levying the same and shall be prior and superior to all other liens except ordinary taxes, and shall not be divested by any judicial sale of the property. [R., '60, § 1068; C., '73, § 481; C., '97, § 975; S., '13, § 975.]

6909. Tax sale. Property against which any special assessment has been levied for street improvements or sewers may be sold for any part of the principal or interest, due and delinquent, at any regular, adjourned, or special tax sale, in the same manner and under the same forfeiture, penalty, and right of redemption; and certificates and deeds of such sale shall be made in the same manner and with like effect as in sales of property for nonpayment of ordinary taxes. [C., '97, § 976.]

6910. City as purchaser. The city may be a purchaser at said sale and be entitled to all

the rights of purchasers at tax sales, with the right to sell and dispose of the same by the council. [C., '97, § 976.]

6911. Right of purchaser. The purchaser at any such tax sale shall have the same rights as purchasers at ordinary tax sales, but shall take the property charged with the lien of the remaining unpaid installments and interest. [C., '97, § 976.]

6912. Applicable statutes. Chapter 308 is applicable to special charter cities in so far as the subject matter of said chapter is not specifically provided for in this chapter. [R., '60, §§ 1068, 1069; C., '73, §§ 478, 479; C., '97, §§ 962, 966-979, 984-986; S., '13, §§ 972-e, 979; 37 G. A., ch. 172, § 1; 40 G. A., ch. 126, § 1; 40 Ex. G. A., S. F. 182, § 26.]

6913. Plat and estimate. Before the council orders any street improved or sewer constructed, it shall direct the engineer to prepare a plat, showing the location and general nature of the improvement, the extent thereof, the kinds of material, or, in case of sewers, the size and kinds of material to be used, and an estimate of the cost thereof, and the amount assessable upon any railway or street railway and upon each lot or parcel of land adjacent to such improvement or sewer per square foot in area, and file such plat and estimate in the office of the clerk or recorder. [C., '97, § 965; S., '13, § 965; 40 Ex. G. A., S. F. 182, § 27.]

6914. Publication of notice. Notice of its intention to make such improvement or sewer shall be published by the city clerk or recorder in three consecutive issues of a newspaper of such city, stating that such plat is on file, and, generally, the nature of the improvement, its location, the kinds of material to be used, and the estimate of its cost, and fixing the time before which objections thereto can be filed, which time shall not be less than five days after the last publication of such notice. [C., '97, § 965; S., '13, § 965; 40 Ex. G. A., S. F. 182, § 28.]

6915. Passage of resolution. The council, after considering such objections, shall determine what changes, if any, shall be made in the plan shown by such plat, and may, by resolution, order such improvement or sewer, prescribing generally the extent of the work, the kinds of material, and in case of sewers, the size and kinds of material to be used, when the work shall be completed, the terms of payment, and provide for the publication of notice asking proposals for doing such work, and the time the same will be acted upon. [C., '97, § 965; S., '13, § 965; 40 Ex. G. A., S. F. 182, § 29.]

6916. Street improvement fund. When the whole or any part of the cost of the making or reconstruction of any street improvement shall be ordered paid from the city improvement or grading fund, the council shall have power, after the completion of the work, by resolution, to levy at one time, the whole or any part of

the cost of such improvement upon all the taxable property within such city, and determine the whole percentage of taxes necessary to pay the same, and the percentage to be paid each year, not exceeding the maximum annual limit of said taxes, and the number of years, not exceeding ten, given for the maturity of each installment thereof; but no part of such cost shall be levied against any property owned by the city, county, or state. [C., '97, § 977; 40 Ex. G. A., S. F. 182, § 30.]

6917. Sewer fund. When the whole or any part of the cost of the making or reconstruction of any sewer shall be ordered paid from the district or city sewer fund, the council may, after the completion, by resolution, levy at one time the whole or any part of the cost of such sewer upon all taxable real property within such sewer district or within the city, and determine the whole percentage of taxes necessary to pay the same, and the percentage to be paid each year, not exceeding the maximum annual limit of said taxes, and the number of years, not exceeding ten, given for the maturity of each installment; but no part of such cost shall be levied against the property owned by the city, county, or state. [C., '97, § 978; 40 Ex. G. A., S. F. 182, § 31.]

6918. Certificates of levies. Certificates of levies provided for in the two preceding sections shall be filed with the collector or treasurer, setting forth the amount or percentage and maturity of said taxes and each installment thereof, with a sufficient description of the boundaries of the particular sewer district, and of the real property of the sewer district or city upon which taxes are levied, duly certified as correct by the clerk or recorder, and thereupon said taxes shall be placed on the tax books of the city and collected as provided for the collection of other special taxes. [C., '97, §§ 977, 978; 40 Ex. G. A., S. F. 182, § 32.]

6919. Sewer outlets and purifying plants. Special charter cities may acquire real estate and easements therein for constructing and maintaining sewer outlets and purifying plants as authorized in cities organized under the general law. [C., '97, § 881; S. S., '15, § 881; 40 Ex. G. A., S. F. 182, § 33.]

6920. Relevy. When, by reason of nonconformity to any law or ordinance, or by reason of any omission, informality, or irregularity, any special tax or assessment is invalid, or is adjudged irregular, the council shall have power to correct the same by resolution or ordinance, including the reordering of the work and the preliminary notice, and may reassess and relevy the same with the same effect and force as if done at the proper time and in the manner provided by law or by resolution or ordinance relating thereto; and when so corrected it shall be a lien upon the property from the same time and in the same manner and to the same extent as if the original assessment and levy had been in all respects legal. [C., '97, § 980.]

6921. Correction. When, in making any special assessment, any property is assessed too high or too low, the same may be corrected and a reassessment and relevy made, and any taxes collected in excess of the proper amount shall be refunded. The corrected assessment shall be a lien on the lots and parcels of land the same as the original, and shall be certified by the clerk or recorder to the collector or treasurer in the same manner, and, so far as possible, be collected in the same installments, draw interest at the same rates, and be enforced in the same manner as the original assessments. Any provisions of law, resolution, or ordinance, specifying a time when or order in which acts shall be done in the proceedings which may result in any special assessment, shall be taken to be subject to the qualification of this and the preceding section. [C., '97, § 981.]

6922. Certification—lien. All special assessments, where no other provision is made, shall be levied by the council, and a copy filed with the clerk or recorder, and entered upon the tax book of the collector or treasurer, and be a lien upon the property against which the same is assessed from the date of the levy of such assessment, and shall be prior to all other liens except ordinary taxes, and shall not be divested by any judicial or tax sale. The lien of different special assessments shall take priority in the order of their levy. [R., '60, § 1068; C., '73, § 478; C., '97, § 982.]

6923. Interest—delinquency. Special assessments shall bear interest at the rate of six per cent per annum from the date of the levy, unless otherwise provided, and shall become delinquent thirty days after the levy, and be collected in the same manner, and, when delinquent, they shall bear the same interest, with the same penalties, as ordinary taxes. [R., '60, § 1068; C., '73, § 481; C., '97, § 982.]

6924. Tax sale—procedure. The property upon which any special assessment is a lien, where not otherwise provided, shall be sold for delinquent assessments and interest in the same manner, and with the same force and effect, as property sold for ordinary delinquent city taxes; and tax sale certificates, certificates of redemption from tax sales, and tax deeds shall be made in the same way and with the same force and effect as in sales for ordinary taxes. [C., '97, § 983.]

6925. Call for bonds or certificates. For the purpose of providing for the payment of the assessed cost of any street improvement or sewer which has been, or is to be, assessed upon the property abutting thereon or adjacent thereto, including railways or street railways liable for the payment thereof, the council is authorized from time to time, as the work progresses or is completed, to make requisition on the mayor for the issuance of bonds or certificates, as herein provided, in such denominations as shall be deemed best, in anticipation of the deferred payment of the taxes levied or

to be levied for such improvement. [C., '97, § 987.]

6926. Mayor to execute bonds. It shall be the duty of the mayor to make and execute bonds or certificates accordingly, to an amount not exceeding the cost and expense of such improvement to be actually assessed on the property liable for the payment of the same. [C., '97, § 987.]

6927. Requirements of bonds. The bonds shall bear the name of the street, place, or district improved, or in which any sewer is constructed, which street or place shall be particularly described in the resolution authorizing such issue, and such bonds shall be signed by the mayor, countersigned by the clerk or recorder, and sealed with the corporation seal, and shall bear the same date and be payable at the time fixed in said resolution, and be redeemable at any time at the option of the city, and shall bear interest at a rate not exceeding five per cent per annum, payable semi-annually. [C., '97, § 987; 40 G. A., ch. 108, § 9.]

6928. Form of bonds. The bonds shall be substantially in the following form:

The city of....., in the state of Iowa, promises to pay, as hereinafter stated, to the bearer hereof, on the..... day of....., or at any time before that date, the sum of..... dollars, with interest thereon at the rate of..... per cent per annum, payable on the presentation and surrender of the interest coupons hereto attached. Both principal and interest of this bond are payable at the..... bank in the city of....., state of..... This bond is issued by the city of..... pursuant to and by virtue of the laws of the state of Iowa, and the ordinance of said city passed in accordance therewith, and in accordance with a resolution of the council of said city, duly passed on the.....day of....., A. D. This bond is one of a series of bonds of like tenor, date, and amount, numbered from.....to....., and issued for the purpose of defraying the cost of improving, curbing, and paving a portion of..... street or streets in said city (or constructing a sewer on..... street) as described in said resolution, which cost is assessable to and levied on the property along said improvements, and is made by said law a lien on all abutting or adjacent property, and payable in annual installments, with interest on all deferred payments at the rate of five per cent per annum, and this bond is payable only out of the money derived from the collection of said special tax, and said money can be used for no other purpose. And it is hereby certified and recited that all the acts, conditions and things required to be done, precedent to and in the issuing of this series of bonds, have been done, happened, and performed, in regular and due form, as required by said law and ordinance; and for the assessment, collection, and payment hereon of said special tax, the full faith and diligence

of said city of..... are hereby irrevocably pledged.

In testimony whereof, the city of....., by its city council, has caused this bond to be signed by its mayor and countersigned by its city clerk, with the seal of said city affixed, this day of, A. D.

..... Mayor.
..... City Clerk.

COUPON

No. \$.....
On the.....day of.....the city of....., Iowa, promises to pay to bearer, as provided in said bond, the sum ofdollars, at the.....bank in the city of....., being..... months' interest due that day on its improvement bond No., dated....., A. D.
..... Mayor.

Countersigned.....
..... City Clerk.
[C., '97, § 987; 40 G. A., ch. 108, § 9.]

6929. Duty to levy, collect, and apply. It shall be the duty of the city, its council and officers, to comply with the requirements of this chapter in the issuance of said bonds or certificates, and to assess and levy upon the property liable therefor the cost and expenses of such improvement or improvements, and to collect the same, and to apply the proceeds to the redemption of such bonds and certificates, and to no other purpose. [C., '97, § 987.]

6930. Trust fund—liability of city. Said bonds and certificates shall be payable only out of the fund derived from such assessment. The city shall not be obliged to appropriate money from any other fund to the payment of such bonds or certificates or any part of the same. [C., '97, § 987.]

6931. Sewer bonds and certificates. Chapter 311 is applicable to special charter cities in so far as the subject matter of said chapter is not specifically provided for in this chapter. [C., '97, §§ 978, 988, 990; 40 G. A., ch. 108, § 9; 40 Ex. G. A., S. F. 182, § 34.]

6932. Limitation of action. No action shall be brought, questioning the legality of any street improvement or sewer certificates or bonds, from and after three months from the time the issuance of such certificates or bonds is ordered by the proper authority. [C., '97, § 989.]

NOTE: Above section made applicable to cities under commission form of government by § 6567.

AMENDMENT OF CHARTER

6933. Procedure. On the presentation of a petition signed by one-fourth of the electors, as shown by the vote at the next preceding city election, of any city or town acting under a special charter or act of incorporation, to the governing body thereof, asking that the question of the amendment of such special charter or act of incorporation be submitted to the

electors of such city, such governing body shall immediately propose sections amendatory of said charter or act of incorporation, and shall submit the same, as requested, at the first ensuing city or town election. At least ten days before such election the mayor of such city or town shall issue his proclamation setting forth the nature and character of such amendment, and shall cause such proclamation to be published in a newspaper published therein, or, if there be none, he shall cause the same to be posted in five public places in such city. On the day specified, the proposition to adopt the amendment shall be submitted to the electors thereof for adoption or rejection, in the manner provided by the general election laws. [R., '60, § 1141; C., '73, § 548; C., '97, § 1047.]

6934. Proclamation of result. If a majority of the votes cast be in favor of adopting said amendment, the mayor shall issue his proclamation accordingly; and the amendment shall thereafter constitute a part of said charter. [R., '60, § 1142; C., '73, § 549; C., '97, § 1048.]

6935. Submission at special election. The legislative body of said city may submit any amendment to the vote of the people as aforesaid at any special election, provided one-half of the electors as aforesaid petition for that purpose, and the proceedings shall be the same as at the general election. [R., '60, § 1143; C., '73, § 550; C., '97, § 1049.]

ABANDONMENT OF CHARTER

6936. Abandonment authorized. Any city or town incorporated by special charter may abandon its charter and organize under the provisions of the general law, with the same territorial limits, by pursuing the course hereinafter prescribed. [C., '73, § 434; C., '97, § 631.]

6937. Petition—election. Upon a petition of legal voters, equaling ten per cent of the number voting at the last preceding municipal election in any such city or town, to the council, praying that the question of abandoning its charter be submitted to the legal voters, the council shall immediately direct a special election to be held at which such question shall be decided, specifying at the same time the time and place of holding the same, and appointing the judges and clerks of the election. [C., '73, § 435; C., '97, § 632.]

6938. Notice. The mayor, or, in case there is no mayor, the president of the council, shall at once issue a proclamation giving notice of such election, of the question to be submitted to the electors, and of the time and place of holding the election, which proclamation shall be published, once each week, for four consecutive weeks in some newspaper published in such city or town, and, if there is none published therein, then such proclamation shall be published by posting a copy thereof in five public places within the corporate limits of such city or town, one of which shall be on the door of the mayor's office. [C., '73, § 436; C., '97, § 633; S., '13, § 633.]

6939. Submission—canvass. At such election the proposition to be submitted shall be: "Shall the proposition to abandon the special charter of (naming the city or town) be adopted?" and the proposition shall be printed and placed upon the ballots, and the election shall be conducted in the same manner, as provided with respect to like or similar propositions in the title on elections. The abstract of votes shall be returned to the council or board of trustees, who shall canvass the same and declare the result, which shall be entered on the journal. [C., '73, § 437; C., '97, § 634.]

6940. Officers elected—ordinances—resubmission. If a majority of the votes cast be in favor of the adoption of the proposition, the charter shall be abandoned. Prior to the holding of the next succeeding city election, the mayor shall issue his proclamation and an election shall be held and officers chosen in the city or town under the provisions of the chapter relating to the election of officers for cities or towns of the class to which the corporation will belong when the charter is abandoned. Upon the election and qualification of such officers, the charter of the city or town shall be deemed abandoned, and it shall be held organized under chapter 286. All ordinances in force at the time of the abandonment of the charter not inconsistent or in conflict with the laws of the state shall remain in force until amended or repealed. If a majority of the votes be against the abandonment of the charter, the question shall not be again submitted until after the expiration of one year from the time of such election. [C., '73, § 438; C., '97, § 635; 40 Ex. G. A., S. F. 153, § 10.]

6941. Delinquent taxes. In special charter cities or towns accepting the provisions of the general incorporation laws, all delinquent taxes remaining unpaid upon the tax books thereof, except such as were levied to pay indebtedness created to take stock or aid in the building of railways, shall be certified at the time, and collected and paid over as provided in the title relating to taxation. [C., '73, § 495; C., '97, § 636.]

6942. Rights and liabilities. All rights and property of every description which were vested in any such city or town under its former organization shall vest in the same under the organization herein contemplated, and no right or liability, either in favor of or against it, existing at the time, and no suit or prosecution of any kind, shall be affected by such change; but when a different remedy is given by this title, which can be made properly applicable to any right existing at the time such change is made, the same shall be cumulative to the remedies before provided, and may be used accordingly. [C., '73, § 439; C., '97, § 637.]

6943. Funds. When a special charter city or town shall abandon its charter the funds which it may then have on hand shall be transferred to the appropriate funds under its new organization in such proportions as the council shall determine. [40 G. A., ch. 142, § 1.]

TITLE XVI

TAXATION

CHAPTER 330

PROPERTY EXEMPT AND TAXABLE

- 6944. Exemptions.
- 6945. Road not assessable.
- 6946. Military service—exemptions.
- 6947. Reduction—limitation.
- 6948. Listing by assessors.
- 6949. Exemption by board of supervisors.

- 6950. Petition for exemption.
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- 6952. Grantee or devisee to pay tax.
- 6953. What taxable.
- 6954. County lands.
- 6955. Interest of lessee.

6944. Exemptions. The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including university, agricultural college, and school lands.

2. *Municipal and military property.* The property of a county, township, city, town, school district, or military company, when devoted to public use and not held for pecuniary profit.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of the dead, and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire equipment and grounds.* Fire engines and all implements for extinguishing fires, and the publicly-owned buildings and grounds used exclusively for keeping them and for meetings of fire companies.

5. *Public securities.* Bonds or certificates issued by any municipality, school district, drainage or levee district, or county within the state of Iowa. No deduction from the assessment of the shares of stock of any bank or trust company shall be permitted because such bank or trust company holds such bonds as are exempted above.

6. *Property of associations of war veterans.* The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit.

7. *Property of cemetery associations.* All grounds and buildings used by cemetery associations and societies for cemetery purposes.

8. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries

owned and kept by private individuals, associations, or corporations, for public use and not for private profit.

9. *Property of religious, literary, and charitable societies.* All grounds and buildings used by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used with a view to pecuniary profit. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment.

10. *Moneys and credits—property of students.* Moneys and credits belonging exclusively to the institutions named in subsections 7, 8, and 9, and devoted solely to sustaining them, but not exceeding in amount or income the amount prescribed by their charters or articles of incorporation; and the books, papers, pictures, works of art, apparatus, and other personal property belonging to such institutions and used solely for the purposes contemplated in said subsections and the like property of students in such institutions used for their education.

11. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township.

12. *Homes for soldiers.* The buildings, grounds, furniture, and household equipment of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

13. *Agricultural produce.* The agricultural produce harvested by or for the person as-

essed within one year previous to the listing, all wool shorn from his sheep within such time, all poultry, ten stands of bees, all swine and sheep under nine months of age, and all other domestic animals under one year of age.

14. *Rent.* Obligations for rent not yet due and owned by the original payee.

15. *Private libraries.* Private or professional libraries to the actual value of three hundred dollars.

16. *Family equipment.* Family pictures; household furniture to the actual value of three hundred dollars, and kitchen furniture; beds and bedding requisite for each family; all wearing apparel in actual use; all food provided for the family.

The exemptions allowed in this subsection shall not apply to hotels and boarding houses, except so far as the exempted classes of property shall be for the actual use of the family managing the same.

17. *Farm equipment — drays — tools.* The farming utensils of any person who makes his livelihood by farming, the team, wagon, and harness of the teamster or drayman who makes his living by their use in hauling for others, and the tools of any mechanic, not in any case to exceed three hundred dollars in actual value.

18. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

19. *Fraternal beneficiary funds.* The accumulations and funds held or possessed by fraternal beneficiary associations for the purposes of paying the benefits contemplated by section 8778, or for the payment of the expenses of such associations.

20. *Capital stock of utility companies.* The shares of capital stock of telegraph and telephone companies, freight line and equipment companies, transmission line companies as defined in section 7089, express companies, corporations engaged in merchandising as defined in section 6971, domestic corporations engaged in manufacturing as defined in section 6975, and corporations not organized for pecuniary profit.

21. *Capital stock of loan companies.* Shares of stock of loan corporations as defined in section 6994, if said corporations have been granted the certificate provided for in section 6996. 1. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 2. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 3. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 4. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 5. [S. S., '15, § 1304; 38 G. A., ch. 288, § 17; 40 Ex. G. A., S. F. 183, § 1.] 6. [40 Ex. G. A., S. F. 183, § 1.] 7. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 8. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183,

§ 1.] 9. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 10. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 11. [C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 12. [40 G. A., ch. 145, § 1; 40 Ex. G. A., S. F. 183, § 1.] 13. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 38 G. A., ch. 115, § 1; 40 Ex. G. A., S. F. 183, § 1.] 14. [C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 15. [C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 16. [C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 17. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 18. [R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 19. [S. S., '15, § 1304; 40 Ex. G. A., S. F. 183, § 1.] 20. [C., '51, §§ 468, 469; R., '60, §§ 723, 724; C., '73, §§ 815, 816; C., '97, §§ 1318, 1319, 1323; S., '13, §§ 1330-g, 1342-g, 1346-g; S. S., '15, § 1346-s; 40 Ex. G. A., S. F. 183, § 1.] 21. [38 G. A., ch. 151, § 3; 40 Ex. G. A., S. F. 183, § 1.]

6945. *Road not assessable.* No real estate occupied as a public road shall be assessed and taxed as part of adjacent lands. [C., '73, § 809; C., '97, § 1344.]

6946. *Military service — exemptions.* The following exemptions from taxation shall be allowed:

1. The property, not to exceed three thousand dollars in actual value, and poll tax of any honorably discharged union soldier, sailor, or marine of the Mexican war or the war of the rebellion.

2. The property, not to exceed eighteen hundred dollars in actual value, and poll tax of any honorably discharged soldier, sailor, or marine of the war with Spain, Chinese relief expedition or the Philippine insurrection.

3. The property, not to exceed five hundred dollars in actual value, of any honorably discharged soldier, sailor, marine, or nurse of the war with Germany.

4. The property, to the same extent, of the wife of any such soldier, sailor, or marine, where they are living together, and he has not otherwise received the benefits above provided.

5. The property, to the same extent, of the widow remaining unmarried and of the minor child or children of any such deceased soldier, sailor, or marine. [S., '13, § 4482; 37 G. A., ch. 191, § 1; 38 G. A., chs. 214, 377; 39 G. A., ch. 144, §§ 1-6; 40 Ex. G. A., S. F. 183, § 2.]

6947. *Reduction—limitation.* All persons named in the preceding section shall receive a reduction equal to their exemption, to be made from the homestead, if any; otherwise from other property owned by said persons. Such exemption shall extend only to the period during which such persons remain the owners of such property. [37 G. A., ch. 191, § 1; 38 G.

A., ch. 214, § 1; 39 G. A., ch. 144, §§ 1-6; 40 Ex. G. A., S. F. 183, § 3.]

6948. Listing by assessors. The beneficiary of exemptions allowed by the two preceding sections shall file with the assessor a written statement that he is the owner of the property on which the exemption is claimed, and every assessor shall annually make a list of persons entitled to such exemptions and return such list to the county auditor upon forms to be furnished by the auditor for that purpose; but the failure on the part of any assessor so to do shall not affect the validity of any exemption. [S. S., '15, § 1304-1a; 37 G. A., ch. 191, § 1; 39 G. A., ch. 144, §§ 4-6; 40 G. A., ch. 144; 40 Ex. G. A., S. F. 183, § 4.]

6949. Exemption by board of supervisors. If no such statement is filed, no exemption shall be allowed by the assessor, but it may be allowed by the board of supervisors if such statement is filed before September first of the year following the year for which the same is claimed. [S. S., '15, § 1304-1a; 37 G. A., ch. 191, § 1; 39 G. A., ch. 144, § 5; 40 Ex. G. A., S. F. 183, § 5.]

6950. Petition for exemption. Whenever a person, by reason of age or infirmity, is unable to contribute to the public revenue, such person may file a petition, duly sworn to, with the board of supervisors, stating such fact and giving a statement of property, real and personal, owned or possessed by such applicant, and such other information as the board may require. The board of supervisors may thereupon order the county treasurer to suspend the collection of the taxes assessed against such petitioner, his polls or estate, or both, for the current year, or such board may cancel and remit said taxes, provided, however, that such petition shall first have been approved by the council of the city or town in which the property of the petitioner is located, or by the township trustees of the township in which said property is located. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 39 G. A., ch. 281, § 1; 40 Ex. G. A., S. F. 183, § 1.]

6951. Additional order. The board of supervisors may, if in their judgment it is for the best interests of the public and the petitioner, cancel and remit the taxes assessed against the petitioner, his polls or estate or both, even though said taxes have previously been suspended as provided in the preceding section. [C., '51, § 455; R., '60, § 711; C., '73, § 797; C., '97, § 1304; S. S., '15, § 1304; 39 G. A., ch. 281, § 2; 40 Ex. G. A., S. F. 183, § 1.]

6952. Grantee or devisee to pay tax. In the event that the petitioner shall sell any real estate upon which the tax has been suspended in the manner above provided, or in case any property, or any part thereof, upon which said tax has been suspended, shall pass by devise, bequest, or inheritance to any person other than the surviving spouse or minor child of such infirm person, the taxes, without any accrued penalty, that have been thus suspended shall

all become due and payable, with six per cent interest per annum from the date of such suspension, and shall be enforceable against the property or part thereof which does not pass to such spouse or minor child. [39 G. A., ch. 281, § 1; 40 Ex. G. A., S. F. 183, § 1.]

6953. What taxable. All other property, real or personal, is subject to taxation in the manner prescribed, and this section is also intended to embrace:

1. Ferry franchises and toll bridges, which, for the purpose of this chapter are considered real property.

2. Horses, cattle, mules and asses over one year of age.

3. Sheep and swine over six months of age.

4. Money whether in possession or on deposit.

5. Credits, including bank bills, government currency, property or labor due from solvent debtors on contract or judgment, mortgages or other like securities, accounts bearing interest.

6. Property situated in this state belonging to any bank or company, incorporated or otherwise, whether incorporated in this or any other state.

7. Corporation shares or stocks not otherwise assessed or excepted.

8. Public or municipal bonds, stocks or loans, except as otherwise provided.

9. Household furniture, beds and bedding made use of in hotels and boarding houses and not hereinbefore exempted.

10. Gold and silver plate, watches, jewelry, and musical instruments.

11. Every description of vehicle, including bicycles, except as otherwise provided.

12. Threshing machines.

13. Boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of the state or not, if owned either wholly or in part by inhabitants of this state, to the amount owned in this state. [C., '51, § 456; R., '60, § 712; C., '73, § 801; C., '97, § 1308.]

6954. County lands. All lands in this state which are owned or held by any other county or counties claiming title under locations with swamp land indemnity scrip, or otherwise, shall be taxed the same as other real estate within the limits of the county. [C., '51, § 456; R., '60, § 712; C., '73, § 801; C., '97, § 1308.]

6955. Interest of lessee. In all cases where land belonging to any state institution has been leased and the leases renewed, containing an option of purchase, the interest of the lessees therein shall be subject to assessment and taxation as real estate. The value of such interest shall be fixed by deducting from the value of the lands and improvements the amount required by the lease to acquire the title thereto, which leasehold interest so assessed and taxed may be sold for delinquent taxes and deeds issued thereunder as in other cases of tax sales, and the same rights shall accrue to the grantee therein as were held and owned by the tenant. [C., '97, § 1351.]

CHAPTER 331

LISTING IN GENERAL

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6956. Listing—by whom. Every inhabitant of this state, of full age and sound mind, shall list for the assessor all property subject to taxation in the state, of which he is the owner, or has the control or management, in the manner herein directed:

1. The property of one under disability, by the person having charge thereof.

2. The property of a married woman, by herself or husband.

3. The property of a beneficiary for whom the property is held in trust, by the trustee.

4. The personal property of a decedent, by the executor or administrator, or if there is none, by any person interested therein.

5. The property of a body corporate, company, society or partnership, by its principal accountant, officer, agent or partner, as the assessor may demand.

6. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless listed by the mortgagee or lessee. [C., '51, § 458; R., '60, § 714; C., '73, § 803; C., '97, § 1312; S., '13, § 1312.]

6957. Listing property of another. Any person required to list property belonging to another shall list it in the same county in which he would be required to list it if it were his own, except as herein otherwise directed; but he shall list it separately from his own, giving the assessor the name of the person or estate to which it belongs. [C., '51, § 461; R., '60, § 716; C., '73, § 805; C., '97, § 1316.]

6958. Agent personally liable. Any person acting as the agent of another, and having in his possession or under his control or management any money, notes, and credits, or personal property belonging to such other person, with a view to investing or loaning or in any other manner using or holding the same for pecuniary profit, for himself or the owner,

shall be required to list the same at the real value, and such agent shall be personally liable for the tax on the same; and if he refuse to render the list or to swear to the same, the amount of such money, property, notes, or credits may be listed and valued according to the best knowledge and judgment of the assessor. [R., '60, § 725; C., '73, § 817; C., '97, § 1320.]

6959. Personal property — real estate — buildings. Property shall be taxed each year, and personal property shall be listed and assessed each year in the name of the owner thereof on the first day of January. Real estate shall be listed and valued in each odd-numbered year, and in each year in which real estate is not regularly assessed, the assessor shall list and assess any real property not included in the previous assessment, and also any buildings erected since the previous assessment, with a minute of the tract or lot of land whereon the same are situated, and the auditor shall thereupon enter the taxable value of such buildings on the tax list as a part of the real estate to be taxed; but if such buildings are erected by another than the owner of the real estate, they shall be listed and assessed to the owner as personal property, but buildings and fixtures erected on real estate held under a lease of longer than three years' duration shall be assessed as real estate. [C., '51, §§ 460, 465; R., '60, §§ 719, 720; C., '73, § 812; C., '97, § 1350; 40 G. A., ch. 146, § 1; 40 Ex. G. A., S. F. 183, § 6.]

6960. Unknown owners. When the name of the owner of any real estate is unknown, it shall be assessed without connecting therewith any name, but inscribing at the head of the page the words "owners unknown", and such property, whether lands or town lots, shall be listed as nearly as practicable in the

order of the numbers thereof. [R., '60, § 737; C., '73, § 826; C., '97, § 1353.]

6961. Deceased owner. The real estate of persons deceased may be listed as belonging to his estate or his heirs, without enumerating them. [C., '51, § 461; R., '60, § 716; C., '73, § 805; C., '97, § 1353.]

6962. Description of tracts—manner. No one description shall comprise more than one town lot, or more than the sixteenth part of a section or other smallest subdivision of the land according to the government surveys, except in cases where the boundaries are so irregular that it can not be described in the usual manner in accordance therewith. [C., '97, § 1353.]

6963. Place of listing. Moneys and credits, notes, bills, bonds, and corporate shares or stocks not otherwise assessed, shall be listed and assessed where the owner lives, except as otherwise provided, and except that, if personal property not consisting of moneys, credits, corporation or other shares of stock, or bonds, has been kept in another assessment district during the greater part of the year preceding the first of January, or of the portion of that period during which it was owned by the person subject to taxation therefor, it shall be taxed where it has been so kept. [C., '97, § 1313.]

6964. "Owner" defined. Commission merchants, and all persons, other than warehousemen as defined in section 9718 trading and dealing on commission, and assignees authorized to sell, and persons having in their possession property belonging to another subject to taxation in the assessment district where said property is found, when the owner of the goods does not reside in the county, are, for the purpose of taxation, to be deemed the owners of the property in their possession. [C., '51, § 459; R., '60, § 715; C., '73, § 804; C., '97, § 1314; 40 G. A., ch. 147, § 1.]

6965. Grain, ice, and coal dealers. Each grain, ice, or coal dealer shall be assessed upon the average amount of capital used by him in conducting his business. In estimating the amount of capital so used, there shall be taken into consideration the increase and decrease of the value of grain held in store, and upon the value of his warehouses, ice houses, granaries, or cribs situated upon lands leased from railway companies or other persons, and upon the value, if any, of such leasehold interest. [C., '97, § 1315.]

6966. Business in different districts. When a person, firm, or corporation is doing business in more than one assessment district, the property and credits existing in any one of such districts, or arising from business done in such district, shall be listed and taxed in that district, and the credits not existing in or pertaining especially to the business in any district shall be listed and taxed in that district where

the principal place of business may be. [C., '51, § 463; R., '60, § 717; C., '73, § 806; C., '97, § 1317.]

6967. Branch banks. The personalty, moneys and credits connected with or growing out of all business transacted directly or indirectly by or through the servants, employees or agents of any person, firm or corporation engaged in the banking business, having an office or agency in more than one assessment district for the transaction of business, shall be taxable as provided in chapter 333, for the taxing of private banks and bankers, in the assessment district where said branch business is done. [C., '97, § 1317.]

6968. How assessment made. An assessment made in such district shall be considered and proper deduction made in determining the taxable property of such person or firm, or shares of stock of such corporation, at its principal place of business. [C., '97, § 1317.]

6969. Stipulation for payment. The stipulation for the payment of obligations growing out of the business of such agency, in another district than the place where such agency is located, shall not determine where the property or credits of such parties shall be taxed. [C., '97, § 1317.]

6970. Partners. Any individual of a partnership is liable for the taxes due from the firm. [C., '51, § 463; R., '60, § 717; C., '73, § 806; C., '97, § 1317.]

6971. "Merchants" defined. Any person, firm, or corporation owning or having in his possession or under his control within the state, with authority to sell the same, any personal property purchased with a view to its being sold, or which has been consigned to him from any place out of this state to be sold within the same, or to be delivered or shipped by him within or without this state, except a warehouseman as defined in section 9718, shall be held to be a merchant for the purposes of this title. [C., '51, § 468; R., '60, § 723; C., '73, § 815; C., '97, § 1318; 40 G. A., ch. 147, § 2; 40 Ex. G. A., S. F. 183, § 7.]

6972. Stocks of merchandise. In assessing such stocks of merchandise, the assessor shall require the production of the last inventory and enter the date thereof in the assessment roll. If, in the judgment of the assessor, the inventory is not correct, or if it was taken at such time as to render it unreliable as to the amount or value of such merchandise, he shall assess the same by personal examination. The assessment shall be made at the average value of the stock during the year next preceding the time of assessment, and if the merchant has not been engaged in business for one year, then the average value during such time as he shall have been so engaged, and if commencing on January first, then the value at that time. [C., '51, § 468; R., '60, § 723; C., '73, § 815; C., '97, § 1318; 40 Ex. G. A., S. F. 183, § 8.]

6973. Warehousemen to file list. A warehouseman as specified in section 6971 shall, upon request, file with the assessor of the township or municipality wherein his warehouse is situated, a written statement showing all property in his possession belonging to another subject to taxation, and the name and address of the person, firm, corporation, or estate to which it belongs. [40 G. A., ch. 147, § 3; 40 Ex. G. A., S. F. 183, § 7-a.1.]

6974. Warehouseman deemed owner. If said warehouseman fails to furnish such statement all property in the possession of the warehouseman belonging to another subject to taxation, shall be deemed to be owned by the warehouseman for the purpose of taxation, and he shall be liable for taxes thereon. [40 G. A., ch. 147, § 3; 40 Ex. G. A., S. F. 183, § 7-a.1.]

6975. "Manufacturer" defined—duty to list. Any person, firm, or corporation who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, purifying, combining of different materials, or by the packing of meats, with a view to selling the same for gain or profit, shall be deemed a manufacturer for the purposes of this title, and shall list such property for taxation. [C., '51, § 469; R., '60, § 724; C., '73, § 816; C., '97, § 1319; 40 Ex. G. A., S. F. 183, § 9.]

6976. Assessment—how made. Such personal property, whether in a finished or unfinished state, shall be assessed at its average value estimated upon those materials only which enter into the combination, manufacture, or pack, such average to be ascertained as in section 6972. [C., '51, § 469; R., '60, § 724; C., '73, § 816; C., '97, § 1319; 40 Ex. G. A., S. F. 183, § 9.]

6977. Machinery deemed real estate. Machinery used in manufacturing establishments shall, for the purpose of taxation, be regarded as real estate. [C., '97, § 1319; 40 Ex. G. A., S. F. 183, § 9.]

6978. Manufacturer to list. Corporations organized under the laws of this state for pecuniary profit and engaged in manufacturing as defined in the third preceding section shall list their real estate, personal property not hereinbefore mentioned, and moneys and credits in the same manner as is required of

individuals. [C., '97, § 1319; 40 Ex. G. A., S. F. 183, § 9.]

6979. Public utility plants. The lands, buildings, machinery, and mains belonging to individuals or corporations operating waterworks or gasworks; the lands, buildings, machinery, tracks, poles and wires belonging to individuals or corporations furnishing electric light or power; the lands, buildings, machinery, poles, wires, overhead construction, tracks, cables, conduits, and fixtures belonging to individuals or corporations operating railways by cable or electricity, or operating elevated street railways; and the lands, buildings, tracks, and fixtures of street railways operated by animal power, shall be listed and assessed in the assessment district where the same are situated. [C., '97, § 1343.]

6980. Property in different districts. Where any such property except the capital stock is situated partly within and partly without the limits of a city or town, such portions of the said plant shall be assessed separately, and the portion within the said city or town shall be assessed as above provided, and the portion without the said city or town shall be assessed in the district or districts in which it is located. [C., '97, § 1343.]

6981. Personal property. All the personal property of such individuals and corporations used or purchased by them for the purposes of such gas or waterworks, electric light plants, electric or cable railways, elevated street railways or street railways operated by animal power, including the rolling stock of such railways and street railways, and the animals belonging to such street railways operated by animal power, shall be listed and assessed in the assessment district where usually housed or kept. [C., '97, § 1343.]

6982. Capital stock listed and assessed. The actual value of the capital stock over and above that of the above listed property shall be listed and assessed as prescribed in sections 7008 and 7009. [C., '97, § 1343.]

6983. Real estate of corporations. All real estate owned by corporations, returned in their statements as part of their assets for purposes of taxation, shall be valued therein for such assessment as other real estate, except as otherwise provided, and shall not be otherwise assessed. [C., '97, § 1327.]

CHAPTER 332

MONEYS AND CREDITS

6984. "Credits" defined.
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 6987. Bonus bond levy.
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6984. "Credits" defined. The term credit, as used in this chapter, includes every claim or demand due or to become due for money, labor, or other valuable thing, every annuity or sum of money receivable at stated periods, and all money or property of any kind secured by deed, title bond, mortgage, or otherwise; but pensions of the United States or any of them, or salaries, or payments expected for services to be rendered, are not included in the above term. [C., '51, § 457; R., '60, § 713; C., '73, § 802; C., '97, § 1309.]

6985. Moneys — credits — annuities — bank notes — stock. Moneys, credits, and corporation shares or stocks, except as otherwise provided, cash, circulating notes of national banking associations, and United States legal tender notes, and other notes, and certificates of the United States payable on demand, and circulating or intended to circulate as currency, notes, including those secured by mortgage, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, securities, debentures, bonds other than those of the United States, annuities, and corporation shares or stocks not otherwise taxed in kind, shall be assessed and, excepting shares of stock of national, state, and savings banks, and loan and trust companies, and moneyed capital as hereinafter defined, shall be taxed upon the uniform basis throughout the state of five mills on the dollar of actual valuation, same to be assessed and collected where the owner resides. [C., '51, § 466; R., '60, § 721; C., '73, § 813; C., '97, § 1310; S., '13, § 1310.]

6986. Levy — division of money collected. The millage tax provided for in the preceding section shall be in lieu of all other taxes upon moneys and credits and shall be levied by the board of supervisors, placed upon the tax list and collected by the county treasurer, and the amount collected in the various taxing districts of the state shall be divided between the various funds upon the same pro rata basis as other taxes collected in such taxing district are apportioned. [S., '13, § 1310.]

6987. Bonus bond levy. Until the soldiers' bonus bonds are retired and paid, there shall be levied and collected upon all property taxed at five mills on the dollar of actual valuation as provided in the second preceding section an additional tax of one mill on the dollar of actual valuation. Said tax shall be remitted to the treasurer of state and applied to the payment of the principal and interest of the soldiers' bonus bonds. In determining the annual levy for the payment of the principal and interest on such bonds, the executive council shall take into consideration the funds to be derived from said tax. [40 Ex. G. A., S. F. 183, § 10-a.]

6988. Deduction of debts. In making up the amount of money or credits which any person is required to list, or to have listed or assessed, including actual value of any building and loan shares, he will be entitled to deduct from the actual value thereof the gross amount of all debts in good faith owing by him. [C., '51, § 467; R., '60, § 722; C., '73, § 814; C., '97, § 1311; S., '13, § 1311.]

6989. Good faith debt required. No acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the intent of the preceding section. [C., '51, § 467; R., '60, § 722; C., '73, § 814; C., '97, § 1311; S., '13, § 1311.]

6990. Suretyship. So much only of any liability of such person as security for another shall be deducted as he believes he will be compelled to pay on account of the inability of the principal debtor, and if there are other sureties able to contribute, then so much only as he in whose name the list is made will be bound to contribute. [C., '51, § 467; R., '60, § 722; C., '73, § 814; C., '97, § 1311; S., '13, § 1311.]

6991. Debts not deductible. No person will be entitled to any deduction on account of:

1. Any deposit or security note given in aid of the organization of a mutual insurance company for the premiums of insurance.

2. Any unpaid subscription to any institution, society, corporation or company.

3. Any indebtedness contracted for the purchase of United States bonds or other nontaxable property. [C., '51, § 467; R., '60, § 722; C., '73, § 814; C., '97, § 1311; S., '13, § 1311.]

6992. Stock and "moneyed" capital denied deduction. No deduction for debts shall be allowed from the shares of stock of any state, savings or national bank or loan and trust company, nor from moneyed capital used in competition with banks, within the meaning of section 5219 of the revised statutes of the United States. [S., '13, § 1311.]

6993. Deductions to fiduciary. In listing moneys and credits as provided in this chapter, any administrator, executor, trustee or agent shall be entitled to deductions, as prescribed in the five preceding sections, of debts owing by the legatee, devisee, beneficiary or principal to the same extent as such fund might be reduced if it were held by such legatee, devisee, beneficiary or principal who may be entitled to the income on such trust or fiduciary fund. [S., '13, § 1312.]

6994. Loan corporations. Any domestic corporation engaged in the business of loaning money to deserving persons whose business or circumstances are such as to make it desirable or convenient for them to accumulate funds with which to repay such loans by paying into a fund comparatively small amounts at frequent regular intervals, which fund may be held by such corporation as collateral security for the payment of such loans, may take advantage of the provisions of this and the two following sections on or before January fifteenth of each year by filing with the auditor of state of the state of Iowa a verified report and statement

of its financial condition, and showing the following items:

1. Its total capital stock paid in.
2. Its net surplus and undivided profits.
3. The total amount of loans outstanding.
4. The highest rate of interest charged and collected on loans made by it.
5. Whether its loans have been made to deserving persons whose business or circumstances are such as to make it desirable or convenient for them to accumulate funds with which to repay such loans by paying into a fund comparatively small amounts at frequent regular intervals.

6. Such further information in detail as the auditor of state shall from time to time require. [38 G. A., ch. 151, § 1.]

6995. Examinations—expense. The auditor of state may in his discretion examine the books, records, business, and methods of doing business of such corporation once each year, and the annual expense of said examination shall not exceed twenty-five dollars, which shall be paid by the corporation. [38 G. A., ch. 151, § 2.]

6996. Millage tax. If the auditor of state finds from such report or said examination, or both, that such corporation has honestly and in good faith so conducted its business as to aid deserving persons in the manner provided in the second preceding section, and that the corporation has not collected a usurious rate of interest from borrowers on loans, he shall issue to said corporation a certificate to that effect which shall entitle the corporation to be assessed on the net actual value of its moneys and credits at the rate of five mills on the dollar, which taxation shall be in lieu of all other taxes on its moneys and credits. [38 G. A., ch. 151, § 3; 40 Ex. G. A., S. F. 183, § 10.]

CHAPTER 333

BANKS

6997. Private banks.

6998. National and state bank stock—place of assessment.

6999. List of stockholders and their holdings.

7000. Listing to stockholders.

7001. Statement furnished.

7002. Deductions on account of real estate.

7003. Rule of actual and taxable value.

7004. Refusal to furnish information.

7005. "Moneyed" capital.

7006. Listing.

7007. In special charter cities.

6997. Private banks. Private banks or bankers, or any persons other than corporations hereinafter specified, a part of whose business is the receiving of deposits subject to check, on certificates, receipts, or otherwise, or the selling of exchange, shall prepare and furnish to the assessor a sworn statement showing the assets, aside from real estate, and liabilities of such bank or banker on January first of the current year, as follows:

1. The amount of moneys, specifying separately the amount of moneys on hand or in transit, the funds in the hands of other banks,

bankers, brokers, or other persons or corporations, and the amount of checks or other cash items not included in either of the preceding items.

2. The actual value of credits, consisting of bills receivable owned by them, and other credits due or to become due.

3. The amount of all deposits made with them by others, and also the amount of bills payable.

4. The actual value of bonds and stocks of every kind and shares of capital stock or joint stock of other corporations or companies held

as an investment, or in any way representing assets, and the specific kinds and description thereof exempt from taxation.

5. All other property pertaining to said business, including real estate, which shall be specially listed and valued by the usual description thereof.

The aggregate actual value of moneys and credits less the amount of deposits, the aggregate actual value of bonds and stocks less the portion thereof otherwise taxed in this state, and other property, except real estate, pertaining to the business, shall be assessed and taxed on the same basis as bank stock. Real estate shall be listed and assessed as other real estate. [C., '51, §§ 460, 465; R., '60, §§ 719, 720; C., '73, § 812; C., '97, § 1321; S., '13, § 1321; 40 Ex. G. A., S. F. 183, § 11.]

6998. National and state bank stock—place of assessment. Shares of stock of national banks and state and savings banks and loan and trust companies, located in this state, shall be assessed to the individual stockholders at the place where the bank or loan and trust company is located. [R., '60, § 719; C., '73, § 812; C., '97, § 1322; S., '13, § 1322; 40 Ex. G. A., S. F. 183, § 12.]

6999. List of stockholders and their holdings. At the time the assessment is made the officers of national banks and state and savings banks and loan and trust companies shall furnish the assessor with lists of all the stockholders and the number of shares owned by each. [R., '60, § 714; C., '73, § 819; C., '97, § 1322; S., '13, § 1322; 40 Ex. G. A., S. F. 183, § 12.]

7000. Listing to stockholders. The assessor shall list to each stockholder under the head of corporation stock the total value of such shares. [C., '97, § 1322; S., '13, § 1322; 40 Ex. G. A., S. F. 183, § 12.]

7001. Statement furnished. To aid the assessor in fixing the value of such shares, the said corporation shall furnish him a verified statement of all the matter provided in section 6997, which shall also show separately the amount of the capital stock and the surplus and undivided earnings. [C., '97, § 1322; S., '13, § 1322; 40 Ex. G. A., S. F. 183, § 12.]

7002. Deductions on account of real estate. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate owned by them and in the shares of stock of corporations owning only the real estate (inclusive

of leasehold interests, if any,) on or in which the bank or trust company is located, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation shall not be otherwise assessed. [C., '97, § 1322; S., '13, § 1322; 40 Ex. G. A., S. F. 183, § 13.]

7003. Rule of actual and taxable value. The assessor from such statement shall fix the value of such stock based upon the capital, surplus, and undivided earnings, at the same ratio of assessed value to actual value as the assessed value of real estate in the taxing district where such bank is located generally bears to its actual value.

The taxable value of such shares of stock shall be one-fourth of the assessed value and shall be taxed as other property of such taxing district. [C., '73, §§ 818-820; C., '97, § 1322; S., '13 § 1322; 40 Ex. G. A., S. F. 183, § 12.]

7004. Refusal to furnish information. A refusal to furnish the assessor with the list of stockholders and the information required by sections 6999 and 7001 shall be deemed a misdemeanor and any bank or officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars. [S., '13, § 1322; 40 Ex. G. A., S. F. 183, § 13.]

7005. "Moneyed" capital. All moneyed capital within the meaning of section 5219 of the revised statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, savings, national bank and loan and trust company stock is taxed, in the same taxing district, and at the actual value of the moneyed capital so invested. [S., '13, § 1310.]

7006. Listing. The person or corporation using moneyed capital in competition with bank capital shall furnish the assessor upon demand a full and complete itemized sworn statement showing the amount of moneyed capital so used. [S., '13, § 1310.]

7007. In special charter cities. The provisions of sections 6944, 6946 to 6952, inclusive, 6959, 6971 to 6978, inclusive, 6987, 6996, 6997 to 7004, inclusive, 7008, 7009, 7086, 7087, 7089, 7091, 7102, 7109, 7144 to 7146, inclusive, 7161, 7163 to 7167, inclusive, and 7279 to 7283, inclusive, so far as applicable, shall apply to cities acting under special charters. [S., '13, § 1322-3a; 40 Ex. G. A., S. F. 329, § 2.]

CHAPTER 334

CORPORATION STOCK

- 7008. Shares of stock.
- 7009. Statement to assessor.
- 7010. Valuation of stock.
- 7011. Refusal to make statement.
- 7012. Deducting real estate.
- 7013. Corporation liable.
- 7014. Recovery from stockholder.

- 7015. Building and loan associations—where stock taxed.
- 7016. Funds and real estate—where taxed.
- 7017. Statement of property.
- 7018. Foreign company—statement required—duty of auditor of state.
- 7019. County auditor—duty.
- 7020. Stock classed as moneys and credits.

7008. Shares of stock. The shares of stock of any corporation organized under the laws of this state, except corporations otherwise provided for in chapters 331 to 341, inclusive, and except as provided in section 7102, shall be assessed to the owners thereof as moneys and credits at the place where its principal business is transacted. The assessment shall be on the value of such shares on the first day of January in each year. In arriving at the assessable value of the shares of stock of such corporations, the amount of their capital actually invested in property other than moneys and credits shall be deducted from the actual value of such shares. Such property other than moneys and credits shall be assessed as other like property. [C., '97, § 1323; 40 Ex. G. A., S. F. 183, § 16.]

7009. Statement to assessor. Every such corporation annually, on or before the twenty-fifth day of January, shall furnish to the assessor of the assessment district in which its principal place of business is located, a verified statement showing specifically, with reference to the year next preceding the first day of January then last past:

1. Total authorized capital stock and number of shares thereof.
2. Number of shares of stock issued and par value of each.
3. Amount paid into the treasury on each share and the total capital paid in.
4. Description of each tract of real estate owned by said corporation, and the amount of capital actually invested therein.
5. An itemized list of all other property owned by said corporation, except moneys and credits, together with the location thereof, and the amount of capital actually invested therein.
6. Date, rate per cent, and amount of each dividend declared, and the amount of capital on which each such dividend was declared.
7. Gross and net earnings, respectively, during the year, and amount of surplus.
8. Amount of profit added to sinking fund.
9. Highest price of sales of stock between

the first and tenth days of January of the current year.

10. Highest price of sales of stock during the preceding year, and average price of such sales. [C., '97, § 1323; 40 Ex. G. A., S. F. 183, § 17.]

7010. Valuation of stock. If the assessor is not satisfied with the appraisement and valuation furnished as provided in the two preceding sections, he may make a valuation of the shares of stock based upon the facts contained in the statements above required, or upon any information within his possession, or that shall come to him, and shall, in either case, assess to the owners the stock at the valuation made by him. [C., '97, § 1324.]

7011. Refusal to make statement. If the officers of any corporation refuse or neglect to make the statement required, the assessor shall make a valuation of the capital stock of the defaulting corporation from the best information obtainable. [C., '97, § 1324.]

7012. Deducting real estate. In deducting, under the provisions of this chapter, the value of real estate from the actual value of the properties, shares or capital stock of any person, firm, association or corporation, the actual value at which said real estate is valued by the assessor or other taxing officer or body where the same is assessed shall be the value thereof. [C., '97, § 1324.]

7013. Corporation liable. The corporations described in the preceding sections of this chapter shall be liable for the payment of the taxes assessed to the stockholders of such corporations, and such tax shall be payable by the corporation in the same manner and under the same penalties as in case of taxes due from an individual taxpayer, and may be collected in the same manner as other taxes, or by action in the name of the county. [C., '97, § 1325.]

7014. Recovery from stockholder. Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock and unpaid dividends

therefor. If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such corporation in this state, after giving the stockholders thirty days' notice of the amount of such tax and the time and place of sale, such notices to be by registered letter addressed to the stockholder at his postoffice address, as the same appears upon the books of the company, or is known by its secretary. [C., '97, § 1325.]

7015. Building and loan associations—where stock taxed. The shares of stock of mutual building and loan, or savings and loan associations, exclusively engaged in such business, shall be assessed and taxed to the individual holders thereof at their place of residence. [C., '97, § 1326; S., '13, § 1326.]

7016. Funds and real estate—where taxed. When such association owns real estate, or maintains a reserve, expense or other fund, or its equivalent, the real estate and the total amount of such fund or funds shall be subject to taxation at the principal place of business of the association and shall be assessed against the association as real estate or other personal property, the tax of same to be paid by the association. [C., '97, § 1326; S., '13, § 1326.]

7017. Statement of property. Every domestic and domestic local building and loan, or savings and loan association, on or before the thirty-first day of January of each year, shall furnish to the assessor of the assessment district in which its principal place of business is located a verified statement, show-

ing specifically, with reference to the year preceding the first day of January last past, the total amount of their reserve, expense or other fund, or its equivalent, and the description and value of each tract of real estate owned by such association. [C., '97, § 1326; S., '13, § 1326.]

7018. Foreign company—statement required—duty of auditor of state. The auditor of state shall, on or before the tenth day of February of each year, send to the county auditor of each county a statement of the name and postoffice address of each stockholder of a foreign building and loan, or savings and loan association residing in their respective counties, together with the number of shares owned by each person on the first day of January preceding, and the actual value of each share of stock on said first day of January, which facts shall be reported to him by such associations under the law governing building and loan, or savings and loan associations. [C., '97, § 1326; S., '13, § 1326.]

7019. County auditor—duty. It shall be the duty of the county auditor to immediately furnish to each assessor in his county the name of each stockholder in any such foreign association residing in such assessor's district, together with the number of shares held by each person, and the actual value of each share on the first day of January preceding. [C., '97, § 1326; S., '13, § 1326.]

7020. Stock classed as moneys and credits. Shares of stock issued by building and loan or savings and loan associations shall be classified as moneys and credits for the purposes of taxation. [C., '97, § 1920.]

CHAPTER 335

INSURANCE COMPANIES

7021. Alien companies—tax on gross premiums.

7022. Foreign companies—tax on gross premiums.

7023. Receipts—certificate of authority.

7024. Deduction for debts.

7025. Domestic companies—tax on gross premiums.

7026. Domestic companies—shares of stock.

7027. Personal and real property.

7028. Assessment.

7029. Moneys and credits.

7030. Debts deductible.

7021. Alien companies—tax on gross premiums. Every insurance company or association organized or incorporated under the laws of any state or nation other than the United States, and every other insurance company whose charter may be owned or a majority of whose stock may be controlled or whose business shall be carried on in the interest or for the benefit of any insurance company or association incorporated under the laws of any state or nation other than the United States, shall, at the time of making the annual statements as required by law, pay into the state treasury as taxes two and one-half per cent of the gross amount of premiums received by it or its agents, in cash, promissory obligation, or

other form of settlement for business done in this state, including all insurance upon property situated in this state and upon the lives of persons resident in this state during the preceding year. [C., '51, § 464; R., '60, § 718; C., '73, § 807; C., '97, § 1333; S., '13, § 1333.]

7022. Foreign companies—tax on gross premiums. Every insurance company incorporated under the laws of any state of the United States other than the state of Iowa, not including associations operating under the provisions of chapter 400, or fraternal beneficiary associations doing business in the United States, shall, at the time of making the annual statements as required by law, pay into the state

treasury as taxes two and one-half per cent of the gross amount of premiums received by it for business done in this state, including all insurance upon property situated in this state and upon the lives of persons resident in this state during the preceding year. [C., '51, § 464; R., '60, § 718; C., '97, § 1333; S., '13, § 1333.]

7023. Receipts—certificate of authority. At the time of paying said taxes, said companies and associations shall take duplicate receipts therefor, one of which shall be filed with the commissioner of insurance, and upon filing of said receipt, and not till then, the commissioner of insurance shall issue the annual certificate as provided by law. [C., '73, § 807; C., '97, § 1333; S., '13, § 1333.]

7024. Deduction for debts. No deduction or exemption from the taxes herein provided shall be allowed for or on account of any indebtedness owing by any such insurance company or association; provided, however, that companies doing a fire insurance business may deduct from the gross amount of premiums received, the amount of premiums returned upon canceled policies issued upon property situated in this state. [C., '97, § 1333; S., '13, § 1333.]

7025. Domestic companies—tax on gross premiums. Every insurance corporation or association of whatever kind or character, organized under the laws of the state of Iowa, not including county mutuals or fraternal beneficiary associations, which county mutuals and fraternal beneficiary associations are not organized for pecuniary profit, shall, on or before the first day of March of each year, pay to the treasurer of state a sum equivalent to one per cent of the gross receipts from premiums, assessments, fees, and promissory obligations required by insurance contracts which are received during the next year preceding the first day of January last past, after deducting the amounts actually paid for losses, matured endowments, dividends to policy holders, and the increase in the amount of the reserve as certified by the department actuary in his official statement to the commissioner of insurance on the thirty-first day of December previous, based on the actuaries' table of mortality and four per cent, and the amounts returned to members upon canceled policies, certificates, and rejected applications, during said year, and not until such payment shall the commissioner of insurance issue the annual certificate, as provided by law; provided that insurance companies organized under the provisions of chapter 404 shall only be required to pay to the treasurer of state a sum equivalent to one per cent of the gross receipts from premiums, assessments, fees, and promissory obligations for business done within this state, including all insurance upon property situated in the state, after deducting the amount actually paid for losses on property located within the state, or on claims arising within the state, and the amount returned upon canceled poli-

cies and rejected applications covering property situated or on business done within this state. [S., '13, § 1333-d; 38 G. A., ch. 371, § 1.]

7026. Domestic companies—shares of stock. The shares of stock of every insurance corporation or association having capital stock, organized under the laws of this state, shall be assessed for taxation in the manner provided for the assessment of the shares of corporate stock in sections 7008 to 7014, inclusive, and said shares of stock shall not be otherwise assessed. In addition to the statement required in section 7009, the corporation shall furnish to the assessor a copy of its annual report made to the auditor of state. [S., '13, § 1333-a.]

7027. Personal and real property. Every insurance corporation or association organized under the laws of this state, not including corporations with capital stock, county mutuals, and fraternal beneficiary associations, which county mutuals and fraternal beneficiary associations are not organized for pecuniary profit, shall, on or before the twenty-sixth day of January in each year, for the purpose of assessment of its property, furnish to the assessor of the assessment district in which its principal place of business is located, a statement verified by its president, showing specifically with reference to the year next preceding the first day of January then last past:

1. A duplicate of the statement required by law to be made to the commissioner of insurance for the said year last past.

2. A detailed statement of all its property and assets of every kind and nature whatsoever, and the value of each item thereof, including surplus, guaranty, and reserve fund, and the amount of each. [S., '13, § 1333-b.]

7028. Assessment. It shall be the duty of the assessor, upon the receipt of said statements, and from other information acquired by him, to assess against every corporation or association referred to in the preceding section, the value of all personal property owned by such corporation or association, together with the actual value of each parcel or real estate situated in the assessment district of such assessor, and all the said property shall be assessed at the same rate, and for the same purposes as the property of private individuals, as provided in section 7109. [S., '13, § 1333-b.]

7029. Moneys and credits. In assessing for taxation the moneys and credits of every insurance corporation, company, or association organized under the laws of this state, except county mutuals and fraternal beneficiary associations, which county mutuals and fraternal beneficiary associations are not organized for pecuniary profit, the assessor shall ascertain the debts or liabilities, if any, of such corporation, company, or association to its shareholders or other persons, which debts and liabilities shall be deducted, as provided in sections 6988 to 6992, inclusive. [S., '13, § 1333-c.]

7030. Debts deductible. In ascertaining the indebtedness or liability of such corporation, company or association, a debt shall be deemed to exist on account of its liability on the policies, certificates or other contracts of insurance issued by it equal to the amount of the

surplus or other funds accumulated by any such corporation or association for the purpose of fulfilling its policies, certificates or other contracts of insurance, and which can be used for no other purpose. [S., '13, § 1333-c; 37 G. A., ch. 258, § 1.]

CHAPTER 336

TELEGRAPH AND TELEPHONE COMPANIES

- 7031. Statement required.
- 7032. Additional statement.
- 7033. Failure to make statement.
- 7034. Assessment.
- 7035. Actual value per mile.
- 7036. Taxable value.
- 7037. Hearing.
- 7038. Assessment in each county—how certified.

- 7039. Entry of certificate.
- 7040. Rates of taxation—collection.
- 7041. Other real and personal property.
- 7042. "Company" defined.
- 7043. Line operated by railroad.
- 7044. Maps required.
- 7045. Failure to file.

7031. Statement required. Every telegraph and telephone company operating a line in this state shall, on or before the first day of May in each year, furnish to the executive council a statement verified by its president or secretary showing:

1. The total number of miles owned, operated, or leased within the state, with a separate showing of the number leased.

2. The average number of poles per mile, and the whole number of poles on its lines in this state.

3. The total number of miles in each separate line or division thereof, also the average number of separate wires thereon.

4. The whole number of stations on each line, and the value of the same, including furniture.

5. The whole number of instruments on each separate line, and the gross rental charges per instrument, where the same are rented to patrons of the company making the return, together with the number of stations maintained, other than railroad stations.

6. The gross receipts and operating expenses of said company for the year ending December thirty-first next preceding, on business originating and terminating in this state.

7. The gross receipts and operating expenses of said company for the year ending December thirty-first next preceding, and not included in the statement made under subsection six hereof.

8. The total capital stock of said company.

9. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

10. The market value of such shares of stock on the first day of January next preceding, and if such shares have no market value, the actual value thereof.

11. All real estate and other property owned by such company and subject to local taxation within this state.

12. The specific real estate, together with the permanent improvements thereon, owned by such company and situated outside this

state and taxed as other real estate in the state where located, with a specific description of each piece, where located, and the purpose for which the same is used, and the actual value thereof in the locality where situated.

13. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

14. The total length of the lines of said company.

15. The total length of the lines of said company outside this state. [C., '97, § 1328; S., '13, § 1328.]

7032. Additional statement. Upon the receipt of said statements from the several companies, the executive council shall examine said statements and if it shall deem the same insufficient and that further information is requisite, it shall require the officer making same to make such other or further statement as it may desire. [C., '97, § 1329; S., '13, § 1329.]

7033. Failure to make statement. In case of failure or refusal of any company to make out or deliver to the executive council the statements required in the second preceding section, such company shall forfeit and pay to the state one hundred dollars for each day such report is delayed beyond the first day of May, to be sued and recovered in any proper form of action in the name of the state, and on the relation of the executive council, and such penalty, when collected, shall be paid into the general fund of the state. [C., '97, § 1329; S., '13, § 1329.]

7034. Assessment. The executive council shall, at its meeting on the second Monday in July of each year, proceed to find the actual value of the property of such companies in this state, taking into consideration the information obtained from the statements above required, and any further information they can obtain, using the same as a means for determining the actual cash value of the property of such companies within this state; also tak-

ing into consideration the valuation of all property of such companies, including franchises and the use of the property in connection with lines outside the state, and making such deductions as may be necessary on account of extra value of property outside the state as compared with the value of property in the state, in order that the actual cash value of the property of the company within this state may be ascertained. Said assessment shall include all property of every kind and character whatsoever, real, personal, or mixed, used by said companies in the transaction of telegraph and telephone business; and the property so included in said assessment shall not be taxed in any other manner than as provided in this chapter and section 6944, subsection 20. [C., '97, § 1330; S., '13, § 1330.]

7035. Actual value per mile. The executive council shall ascertain the value per mile of the property of each of said companies within this state by dividing the total value, as above ascertained, by the number of miles of line of such company within the state, and the result shall be deemed and held to be the actual value per mile of line of the property of such company within this state. [S., '13, § 1330-a.]

7036. Taxable value. The taxable value shall be determined by taking the percentage of the actual value so ascertained, as provided by section 7109, and the ratio between the actual value and the assessed or taxable value of the property of each of said companies shall be the same as in the case of property of private individuals. [S., '13, § 1330-a.]

7037. Hearing. At such meeting in July any company interested shall have the right to appear, by its officers or agents, before the executive council and be heard on the question of the valuation of its property for taxation. [S., '13, § 1330-a.]

7038. Assessment in each county—how certified. The executive council shall, for the purpose of determining what amount shall be assessed to any one of said companies in each county of the state into which the line of the said company extends, multiply the assessed or taxable value per mile of line of said company, as above ascertained, by the number of miles in each of said counties, and the result thereof shall be by said council certified to the several county auditors of the respective counties into, over, or through which said line extends. [S., '13, § 1330-b.]

7039. Entry of certificate. At the first meeting of the board of supervisors held after such statement is received by the county auditor, it shall cause such statement to be entered in its minute book, and make and enter therein an order stating the length of the lines and the assessed value of the property of each of said companies situated in each city, town, township, or lesser taxing district in its county, as fixed by the executive council, which shall constitute the taxable value of said property

for taxing purposes, and the taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate. The county auditor shall transmit a copy of said order to the council or trustees of each city, town, or township in which the lines of said company extend. [S., '13, § 1330-c.]

7040. Rate of taxation—collection. All telegraph and telephone property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, cities, towns, townships, or lesser taxing districts, and the county treasurer shall collect such taxes at the same time and in the same manner as other taxes, and the same penalties for the nonpayment shall be due and collectible as for the nonpayment of individual taxes. [S., '13, § 1330-d.]

7041. Other real and personal property. Land, lots, and other real estate and personal property belonging to any telegraph company or telephone company not used exclusively in its telegraph or telephone business shall be subject to assessment and taxation on the same basis as other property of individuals in the several counties where situated. [S., '13, § 1330-e.]

7042. "Company" defined. The word "company" as used in this chapter and section 6944, subsection 20, shall be deemed and construed to mean and include any person, copartnership, association, corporation, or syndicate that shall own or operate, or be engaged in operating, any telegraph or telephone line, whether formed or organized under the laws of this state or elsewhere. [S., '13, § 1330-f.]

7043. Line operated by railroad. No telegraph line shall be assessed which is owned and operated by any railroad company exclusively for the transaction of its business, and which has been duly reported as such in its annual report under the laws providing for the taxation of railroad property. [C., '97, § 1332.]

7044. Maps required. On or before the first day of August, 1904, each telephone or telegraph company owning or operating a telephone or telegraph line, any part of which lies within the state of Iowa, shall file with the several county auditors of the counties within which any part of its line is located, a map of all its lines within said county, except its line within any platted city or town, drawn to a scale of not less than one inch to four miles, on which the location of the line or lines of said company is correctly shown. The map of any line situated upon any highway or street which is the dividing line between taxing districts shall show on which side of said street or highway said line is situated and shall locate all points at which said line may cross said street or highway. A statement showing the length of pole line in each taxing district of each company shall be filed when no map of

the pole lines of such company is required under the terms of this section. A telephone or telegraph company whose line is situated upon the right of way of a railway may file, in lieu of the map required to be filed by the provisions of this section, a certificate setting forth along what lines of railway said company's telephone or telegraph line extends. On or before the first day of March, 1905, and annually thereafter, like maps, statements, or certificates shall be filed with the several county auditors of counties in which any part of said lines may have been extended, constructed, relocated, or taken down entirely, during the preceding calendar year, showing the correct location of all such new or relocated lines, and the location of any part abandoned or taken down, as the same existed on the thirty-first day of December preceding; provided county auditors of the several counties shall, upon application of any company owning or operating a telephone or telegraph line in their respective counties, furnish a

map or maps accurately showing the boundaries of all taxing districts in said county, and the public highways located within such taxing districts. [S., '13, § 1400-a.]

7045. Failure to file. In the event of the failure or refusal of any telephone or telegraph company, owning or operating any telephone or telegraph line not situated upon the right of way of a railway, to file the map required under the provisions of the preceding section, at the time and according to the conditions named, then the county auditor may cause the same to be prepared by the county surveyor and the cost thereof shall, in the first place, be audited and paid by the board of supervisors of the county, out of the county fund, and the amount thereof shall be by said board levied as a special tax against said company and the property of said company, which shall be collected in the same manner as county taxes and become a part of the county fund. [S., '13, § 1400-b.]

CHAPTER 337

RAILWAY COMPANIES

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7046. When assessed—statement required. On the second Monday in July of each year, the executive council shall assess all the property of each railway corporation in the state, excepting the lands, lots, and other real estate belonging thereto not used in the operation of any railway, and excepting railway bridges across the Mississippi and Missouri rivers, and excepting grain elevators; and for the purpose of making such assessment its president, vice president, general manager, general superintendent, receiver, or such other officer as the council may designate, shall, on or before the first day of April in each year, furnish it a verified statement showing in detail for the year ended December thirty-first next preceding:

1. The whole number of miles of railway owned, operated, or leased by such corporation or company within and without the state.

2. The whole number of miles of railway owned, operated, or leased within the state, including double tracks and sidetracks, the mileage of the main line and branch lines to be stated separately, and showing the number of miles of track in each county.

3. A full and complete statement of the cost and actual present value of all buildings of every description owned by said railway company within the state not otherwise assessed.

4. The total number of ties per mile used on all its tracks within the state.

5. The weight of rails per yard in main line, double tracks and sidetracks.

6. The number of miles of telegraph lines owned and used within the state.

7. The total number of engines, and passenger, chair, dining, official, express, mail, baggage, freight, and other cars, including handcars and boarding cars used in constructing and repairing such railway, in use on its whole line, and the sleeping cars owned by it, and the number of each class on its line within the state, each class to be valued separately.

8. Any and all other movable property owned by said railway within the state, classified and scheduled in such manner as may be required by said council.

9. The gross earnings of the entire road, and the gross earnings in this state.

10. The operating expenses of the entire road, and the operating expenses within this state.

11. The net earnings of the entire road, and the net earnings within this state. [C., '73, §§ 810, 1317, 1318; C., '97, § 1334; S., '13, § 1334.]

7047. Real estate holdings—statement required. Each railway or other corporation required by law to report to the executive council under the provisions of the law as it appears in the preceding section shall, on or before the first day of April, 1905, make to the executive council a detailed statement showing the amount of real estate owned or used by it on December 31, 1904, for railway purposes, in each county in the state in which said real estate is situated, including the right of way, roadbed, bridges, culverts, depot grounds, station buildings, yards, section and tool houses, roundhouses, machine and repair shops, water tanks, turntables, gravel beds and stone quarries, and for all other purposes, with the estimated actual value thereof, in such manner as may be required by the executive council. [S., '13, § 1334-a.]

7048. Continuing record. Only one such detailed statement by any corporation shall be necessary, and when received by the council it shall become the record of railway lands of such corporation, and be deemed as annually thereafter reported for valuation and assessment by the executive council. [S., '13, § 1334-a.]

7049. Additional statements. On or before the first day of April of each subsequent year such corporation shall in like manner report all real estate acquired for any of the railway purposes above named during the preceding calendar year; and also a list of any real estate, previously reported, disposed of during the same period, which disposition shall be noted by the council in an appropriate column opposite to the description of said tract in the original report of the same in the record of railway land. [S., '13, § 1334-a.]

7050. Record of railway lands. The executive council shall, by some convenient method of binding, arrange the statements required to be made under the provision of the three preceding sections so as to form a consolidated list of all real estate reported to it as being owned or used for railway purposes within the state of Iowa, which list shall be known as the record of railway lands. [S., '13, § 1334-b.]

7051. Sleeping and dining cars. In addition to the matters required to be contained in the statement made by the company for the purposes of taxation, such statement shall show the number of sleeping and dining cars not owned by such corporation, but used by it in operating its railway in this state during each month of the year for which the return is made, the value of each car so used, and

also the number of miles each month said cars have been run or operated on such railway within the state, and the total number of miles said cars have been run or operated each month within and without the state. Such statement shall show the average daily sleeping car and dining car service or wheelage operated on each part or division of the line or system within the state, designating the points on the line where variations occur, with the mileage of that part having the same daily service or wheelage. [C., '97, § 1340; S., '13, § 1340.]

7052. Gross earnings. For the purpose of making reports to the executive council, the gross earnings of railway companies, owning or operating a line or lines of railway partly within this state and partly within another state, or other states, or territory, or territories, upon their line or lines within this state, shall be ascertained and reported by said railway companies as follows, to wit: The aggregate of the earnings upon business originating and terminating within this state, upon business originating in this state and terminating elsewhere, upon business originating elsewhere and terminating in this state, and upon business neither originating nor terminating in this state but carried on or done over the line or lines in this state or over some part thereof, shall be reported; and with respect to all such interstate business the earnings in this state for the purpose of report shall be actually computed upon the basis of the length of haul or carriage in this state as compared with the length of haul or carriage elsewhere. It is hereby declared that for the purpose of making reports looking to the assessment of railway property for taxation, the gross earnings or business done or carried partly within this state and partly in another state, or other states, or territories, shall be that proportion of the entire earnings of such business that the haul or carriage in this state bears to the entire haul or carriage. [S., '13, § 1340-a.]

7053. Method of accounting. The executive council shall have the power to prescribe such rules and regulations with respect to the keeping of accounts by the railway companies doing business in this state as will insure the accurate division of earnings as aforesaid, and uniformity in reporting the same to the executive council. [S., '13, § 1340-b.]

7054. Net earnings. The executive council shall have the power to prescribe a method for all railway companies doing business in this state, together with the rules and regulations, for the ascertainment of the net earnings of the railway lines in this state, to the end that all such railway companies, in ascertaining and making report of net earnings, shall proceed upon the same basis and in a uniform manner. [S., '13, § 1340-c.]

7055. Reports additional. The reports provided for in the three preceding sections are not in lieu of, but in addition to, the reports provided for by law, and they shall be made at

the time and as a part of the reports already required. [S., '13, § 1340-d.]

7056. Additional rules and regulations. The rules, regulations, method, and requirements herein provided to be made by the executive council shall be made and communicated in writing or print to the said several railway companies and shall be and become binding upon said railway companies from the time they are so communicated; provided, however, that the said executive council shall have the power to prescribe supplemental or additional rules, regulations, and requirements at any time, and communicate them to the several railway companies in the manner aforesaid, and with respect to such additional or supplemental rules, regulations, and requirements, they shall be and become binding upon the said railway companies within thirty days after they are so communicated. [S., '13, § 1340-e.]

7057. Refusal to obey. If any railway company shall fail or refuse to obey or conform to the rules, regulations, method, and requirements so made or prescribed by the executive council under the provisions of the five preceding sections, or to make the reports therein provided, the executive council shall proceed to assess the property of such railway company so failing or refusing, according to the best information obtainable, and shall then add to the taxable valuation of such railway company twenty-five per cent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year. [S., '13, § 1340-f.]

7058. Operating expenses. There shall not be included in said operating expenses any payments for interest or discount, or construction of new tracks except needed sidings, for raising or lowering tracks above or below crossings at grade in cities or towns, for new equipment except replacements, for reducing any bonded or permanent debt, nor for any other item of operating expenses not fairly and reasonably chargeable as such in railway accounts. [C., '97, § 1335.]

7059. Amended statement. The council may demand, in writing, detailed, explanatory and amended statements of any of the items mentioned in section 7046, or any other items deemed by it important, to be furnished it by such railway corporation within thirty days from such demand, in such form as it may designate, which shall be verified as required for the original statement. The returns, both original and amended, shall show such other facts as the council, in writing, shall require. [C., '73, § 1318; C., '97, § 1335.]

7060. Assessment of railways. The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire railway within the state, except as otherwise provided, and shall include the right of way, roadbed, bridges, culverts, rolling stock, depots, station grounds, shops,

buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, said council shall take into consideration the gross earnings per mile for the year ending January first, preceding, and any and all other matters necessary to enable said council to make a just and equitable assessment of said railway property. If a part of any railway is without this state, then, in estimating the value of its rolling stock and movable property, they shall take into consideration the proportion which the business of that part of the railway lying within the state bears to the business of the railway without this state. [C., '73, § 1319; C., '97, § 1336.]

7061. Assessment of sleeping and dining cars. The council shall, at the time of the assessment of other railway property for taxation, assess for taxation the average number of sleeping and dining cars as provided in section 7051 so used by such corporation each month, and the assessed value of said cars shall bear the same proportion to the entire value thereof that the monthly average number of miles such cars have been run or operated within the state shall bear to the monthly average number of miles such cars have been used or operated within and without the state. Such valuation shall be in the same ratio as that of the property of individuals, and shall be added to the assessed valuation of the corporation, fixed under the preceding sections. [C., '97, § 1341.]

7062. Certification to county auditors. On or before the third Monday in August of each year, the council shall transmit to the county auditor of each county, through and into which any railway may extend, a statement showing the length of the main track within the county, and the assessed value per mile of the same, as fixed by a ratable distribution per mile of the assessed valuation of the whole property. [C., '73, § 1320; C., '97, § 1337; S., '13, § 1337; 37 G. A., ch. 416, § 2.]

7063. Plats. Every railroad company owning or operating a line of railroad within this state shall, on or before the first day of August, 1902, place on file in the office of the county auditor of each county in the state into which any part of the lines of any said company lies, a plat of the lines of said companies within said county, showing the length of their said lines and the area of the land owned or occupied by said companies in each government subdivision of land not included within the platted portion of any city or town, within each of said counties, and the length of the said lines within the platted portion of cities and towns. Companies having on file such plats of part or all of their lines, in any of said counties, shall be required to file plats only of that part of their lines not fully shown as above required on the plats now on file. On the first day of January of each year hereafter, like plats shall be filed of all new

lines or extensions of existing lines built or completed within the calendar year preceding. [S., '13, § 1337-a.]

7064. Failure to file. In the event of the failure or refusal of any railroad company to file the plats required under the provisions of the preceding section, at the time or according to the conditions named, then the county auditor may cause the same to be prepared by the county surveyor and the cost thereof shall, in the first place, be audited and paid by the board of supervisors out of the county fund, and the amount thereof shall be by said board levied as a special tax against said company and the property of said company, which shall be collected as county taxes and when collected be paid into the county fund. [S., '13, § 1337-b.]

7065. Property assessed by local authorities. Lands, lots, and other real estate belonging to any railway company, not used exclusively in the operation of the several roads, and all railway bridges across the Mississippi and Missouri rivers, and grain elevators, shall be subject to assessment and taxation on the same basis as property of individuals in the several counties where situated. [C., '73, § 808; C., '97, § 1342.]

7066. Roadbeds. No real estate used by railway corporations for roadbeds shall be

included in the assessment to individuals of the adjacent property, but all such real estate shall be the property of such companies for the purpose of taxation. [C., '73, § 809; C., '97, § 1344.]

7067. Levy and collection of tax. At the first meeting of the board of supervisors held after said statement is received by the county auditor, it shall cause the same to be entered on its minute book, and make and enter therein an order stating the length of the main track and the assessed value of each railway lying in each city, town, township or lesser taxing district in its county, through or into which said railway extends, as fixed by the executive council, which shall constitute the taxable value of said property for taxing purposes; and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of said order to the council or trustees of the city, town or township. [C., '73, § 1321; C., '97, § 1338.]

7068. Rates—purposes. All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purpose as the property of individuals within such counties, cities, towns, townships, and lesser taxing districts. [C., '73, § 1322; C., '97, § 1339.]

CHAPTER 338

FREIGHT LINE AND EQUIPMENT COMPANIES

- 7069. "Company" defined.
- 7070. "Freight line company" defined.
- 7071. "Equipment company" defined.
- 7072. Statement required.

- 7073. Additional statements.
- 7074. Failure to furnish.
- 7075. Assessment.
- 7076. Rate of tax—payment—distress and sale.

7069. "Company" defined. The word "company" as used in this chapter shall be deemed and construed to mean any person, copartnership, association, corporation, or syndicate that may own or operate, or be engaged in operating, furnishing, or leasing cars, as defined and described in the two following sections, whether formed or organized under the laws of this state, or any other state or territory, or any foreign country. [S., '13, § 1342-f.]

7070. "Freight line company" defined. Every company engaged in the business of operating cars, not otherwise listed for taxation or taxed in Iowa, for the transportation of freight, whether such freight be owned by such company, or any other person or company, over any railway line or lines, in whole or in part within this state, such line or lines, not being owned, leased, or operated by such company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture, or refrigerator cars, or by some other name, shall be deemed to be a freight line company. [S., '13, § 1342-a.]

7071. "Equipment company" defined. Every company engaged in the business of furnishing or leasing cars of whatsoever kind or description, to be used in the operation of any railway line or lines, wholly or partially within this state, such line or lines not being owned, leased or operated by such company, and such cars not being otherwise listed for taxation in Iowa shall be deemed to be an equipment company. [S., '13, § 1342-a.]

7072. Statement required. Every freight line and every equipment company, as designated in the two preceding sections, doing business, or owning cars which are operated in this state, shall, annually, on or before the first Monday of June in each year, make out and deliver to the executive council a statement, verified by oath of an officer or agent of such company making such statement, with reference to the first day of January next preceding, showing:

1. The name of the company.
2. The nature of the company, whether a person or persons, an association, copartner-

ship, corporation, or syndicate, and under the laws of what state or county organized.

3. The location of its principal office or place of business.

4. The name and postoffice address of the president, secretary, auditor, treasurer, and superintendent or general manager.

5. The name and postoffice address of the chief officer or managing agent of the company in Iowa.

6. The aggregate number of miles traveled within the state of Iowa by its cars during the preceding calendar year.

7. The average number of miles traveled by the cars of each class of its cars during the preceding calendar year. The number of cars necessary for the mileage traveled within the state of Iowa, under the circumstances that ordinarily attend the use of such cars, and where different classes of cars are used by said company, as to the matters embraced in this and the preceding paragraph, it shall furnish the required information as to each class of said cars, in the form prescribed by blanks to be furnished by the executive council.

8. The actual cash value, on the first day of January next preceding, of the said number of cars necessary to provide for the mileage, to be reported as required by paragraph six of this section.

9. The real estate, personal property, structure, machinery, fixtures and appliances, owned by said company, subject to local taxation within the state, and the location and the actual value thereof in the county, township or district where the same is assessed for local taxation. [S., '13, § 1342-b.]

7073. Additional statements. Upon the filing of such statements the executive council shall examine each of them, and if it shall deem the same insufficient, or if they fail to fully set out the matters required to be reported, it shall require such officer or agent to make such other and further statements as to such matters as it may deem proper. [S., '13, § 1342-c.]

7074. Failure to furnish. In case of the failure or refusal of any company to make and deliver to the executive council any statement or statements required by the second preceding section, such company shall forfeit and pay to the state of Iowa one hundred dollars each day such report is delayed beyond the first Monday of June, to be sued and recovered in

any proper form of action, in the name of the state of Iowa, and such penalty when collected shall be paid into the general fund of the state. [S., '13, § 1342-c.]

7075. Assessment. At the meeting of the executive council on the second Monday in July of each year, it shall value and assess as the property of said company within this state, the cars of the said company necessary, under the circumstances ordinarily attending the use of such cars, for the mileage to be reported under paragraphs six and seven of section 7072, after examining such statements and after ascertaining the actual value of said property of such company therefrom, and from such other information as it may have or obtain. For that purpose the executive council may require such company, by its agents or officers, to appear before said council with such books, papers, or additional statements as the council may require, and may compel the attendance of witnesses in case said council shall deem it necessary to enable it to ascertain the actual value of such property. From the entire actual value of the property within the state so ascertained, there shall be deducted by the said council the actual value of all cars locally assessed, and one-fourth of the residue of such actual value so ascertained shall be by the executive council assessed to said company. [S., '13, 1342-d.]

7076. Rate of tax—payment—distress and sale. The council shall also at said meeting determine the rate of tax to be levied and collected upon said assessments, which shall be equal, as nearly as may be, to the average rate of taxes, state, county, municipal, and local, levied throughout the state during the previous year, which rate shall be ascertained from the records and files in the auditor's office, and said tax shall be in full of all taxes except on real estate, personal property locally assessed, and special assessments, and shall become due and payable at the state treasury on the first day of February following the levy thereof, and if not so paid, the state treasurer shall collect the same by distress and sale of any property belonging to such company in the state in the same manner as is required of county treasurers in like cases; and the order of the executive council in such cases shall be sufficient authority therefor. [S., '13, § 1342-e.]

CHAPTER 339

EXPRESS COMPANIES

- 7077. "Company" defined.
- 7078. "Express company" defined.
- 7079. Statement required.
- 7080. Additional statements.
- 7081. Failure to furnish.
- 7082. Assessment—additional statements—hearing.

- 7083. Actual value—how ascertained.
- 7084. Actual value per mile—taxable value.
- 7085. Assessment in each county—how certified.
- 7086. Entry of certificates.
- 7087. Levy of tax—rates.
- 7088. Action to collect.

7077. "Company" defined. The word "company", as used in this chapter, shall be deemed and construed to mean and include any person, copartnership, association, corporation, or syndicate that may own or operate, or be engaged in operating, any express route as herein defined, whether formed or organized under the laws of this state, any other state or territory, or of any foreign country. [S., '13, § 1346-i.]

7078. "Express company" defined. Every company engaged in conveying to, from, through, in, or across this state, or any part thereof, money, packages, gold, silver, plate, merchandise, or any other article, by express, under a contract, express or implied, with any railroad company, or the managers, lessees, agents, or receivers thereof, provided such company is not a railroad company, a freight line company, nor an equipment company, shall be deemed and held to be an express company within the meaning of this chapter. [C., '97, § 1345; S., '13, § 1346-a.]

7079. Statement required. Every such express company shall, annually, between the first day of February and the first day of March, make out and deliver to the executive council a statement verified by the oath of an officer or agent of said company, making such statement, with reference to the first day of January next preceding, showing:

1. The name of the company, and whether a corporation, partnership, or person, and under the laws of what state or country organized.
2. The principal place of business, and the location of its principal office and the name and postoffice address of its president, secretary, and superintendent or general manager and the name and postoffice address of its principal officers or managing agent in Iowa.
3. The total capital stock of said company; (a) authorized; (b) issued.
4. The number of shares of capital stock issued and outstanding, and the par face value of each share, and in case no shares of stock are issued, in what manner the capital stock thereof is divided, and in what manner such holdings are evidenced.

5. The market value of said shares of stock on the first day of January next preceding, and if such shares have no market value then the actual value thereof; and in case no shares of stock have been issued state the market value, or the actual value, in case there is no market value of the capital thereof, and the manner in which the same is divided.

6. The real estate, buildings, machinery, fixtures, appliances, and personal property owned by said company and subject to local taxation within the state of Iowa, and the location and actual value thereof in the county, township, or district where the same is assessed for local taxation.

7. The specific real estate, together with the improvements thereon, and all bonds, mortgages, and other personal property owned by said company, situated outside of the state of Iowa, and used exclusively outside the conduct of the business, with a specific description of all bonds, mortgages, and other personal property, and the cash value thereof, the purposes for which the same are used, and where the same are kept or deposited and each piece of real estate, where located, the purpose for which the same is used, and the actual value thereof, in the locality where situated.

8. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

9. a. The total length of lines or routes over which the company transports such merchandise, freight, or express.

b. The total length of such lines or routes as are outside of the state of Iowa.

c. The length of such lines or routes within each of the counties, townships, and assessment districts within the state of Iowa. [C., '73, § 811; C., '97, § 1346; S., '13, § 1346-a.]

7080. Additional statements. Upon the filing of such statements, the executive council shall examine each of them, and if it shall deem the same insufficient, or in case it shall deem that other information is requisite, it shall require such officer or agent to make such other and further statements as the executive council may call for. [S., '13, § 1346-b.]

7081. Failure to furnish. In the case of the failure or refusal of any company to make

out and deliver to the executive council any statement or statements required by sections 7079, 7080, and 7082, such company shall forfeit and pay to the state of Iowa one hundred dollars for each day such report is delayed beyond the first Monday in March of that year, to be sued and recovered in any proper form of action in the name of the state of Iowa, on the relation of the executive council, and such penalty when collected shall be paid into the general fund of the state. [S., '13, § 1346-b.]

7082. Assessment—additional statements—hearing. The executive council shall meet on the second Monday in July of each year, and it shall thereupon value and assess the property of such company, in the manner hereinafter set forth, after examining such statements, and after ascertaining the actual value of the property of such company therefrom, and from such other information as it may have or obtain. For that purpose the executive council may require such company, by its agents or officers, to appear before said council with such books, papers, or statements as the council may require, or it may require additional statements to be made by such company, and may compel the attendance of witnesses, in case said council shall deem it necessary, to enable it to ascertain the actual value of such property. Any such company interested may, upon written application, appear before the executive council at such meeting and be heard in the matter of the valuation of the property of such company for taxation. [S., '13, § 1346-c.]

7083. Actual value—how ascertained. The executive council shall first ascertain the actual value of the entire property owned by said company, from said statements or otherwise, for that purpose taking the aggregate market value of all shares of capital stock, in case said shares have a market value, and, in case they have none, taking the actual value thereof or of the capital of said company, in whatever manner the same is divided, in case no shares of capital stock have been issued; provided, however, that in case the whole or any portion of the property of said company shall be incumbered by a mortgage or mortgages, such council shall ascertain the actual value of such property by adding to the market value or the aggregate shares of stock or to the value of the capital, in case there shall be no such shares, the aggregate amount of the market or cash value of such mortgage or mortgages, and the result shall be deemed and treated as the actual value of the property of such company. The executive council shall, for the purpose of ascertaining the actual value of the property within the state of Iowa, next ascertain from such statements or otherwise the actual value of the property, both real and personal, owned by the company, and which is used exclusively outside the general business of the company, and also the actual value of that part of its property, if any, without the state which can not lawfully be considered in determining the mileage value of its routes;

and the aggregate of such values shall be deducted from the entire actual value of the property as above ascertained. The executive council shall next ascertain and deduct the actual value of the sea or ocean routes of any such company, and in ascertaining the same may take into consideration the earnings, both gross and net per mile, of such sea or ocean routes, as compared with the earnings, gross and net, of the land routes of such company, or may ascertain their value in any other practicable manner, and may require that the reports heretofore provided for shall show such earnings. Thereupon the executive council shall ascertain the actual value of the property of such company within the state of Iowa, and for that purpose may take into consideration the proportional value of the company's property without and within the state, and shall take as a basis of valuation of the company's property in this state the proportion of the whole aggregate value of the property of said company, as above ascertained, after making the deductions above provided for which the length of the routes within the state of Iowa bears to the whole length of the routes of such company other than sea or ocean routes, and such amount so ascertained shall be considered and taken to be the entire actual value of the property of such company within the state of Iowa. From the entire actual value of the property within the state so ascertained, there shall be deducted by the said council the actual value of all the real estate, buildings, machinery, appliances, and personal property not used exclusively in the conduct of the business within the state that are subject to local taxation within the counties, townships, and other assessment districts as hereinbefore described in the sixth item of section 7079. [S., '13, § 1346-d.]

7084. Actual value per mile—taxable value. The executive council shall thereupon ascertain the value per mile of the property within the state, by dividing the total value as above ascertained, after deducting the specific properties locally assessed within the state, by the number of miles within the state, and the result shall be deemed and held to be the actual value per mile of the property of such company within the state of Iowa. The assessed or taxable value shall be determined by taking that percentage of the actual value so ascertained, as is provided by section 7109, and such valuation and assessment shall be in the same ratio as that of the property of individuals. [S., '13, § 1346-e.]

7085. Assessment in each county—how certified. Said executive council shall thereupon, for the purpose of determining what amount shall be assessed by it to said company in each county of the state through, across, into, or over which the route of said company extends, multiply the value per mile, as above ascertained, by the number of miles in each of said counties, as reported in said statements, or as otherwise ascertained, and the result thereof, with the mileage and the rate of assessment per

mile, shall be by said council certified to the auditors respectively of the several counties through, into, over, and across which the routes of said company extend. [S., '13, § 1346-f.]

7086. Entry of certificate. At the first meeting of the board of supervisors held after such certificate is received by the county auditor, it shall cause the same to be entered in its minute book, and make and enter therein an order stating the length of the routes and the assessed value of each in each city, town, township, or other taxing district in its county, through or into which said routes extend, which shall constitute the taxable value of said property for taxing purposes, and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. [S., '13, § 1346-g; 40 Ex. G. A., S. F. 183, § 18.]

7087. Levy of tax—rates. The county auditor shall immediately thereafter transmit a copy of said order to the councils of cities, or towns, and to the trustees of each township in the county, and shall also add to the value so apportioned the assessed value of the real estate, buildings, machinery, fixtures, appliances, and personal property not used exclusively in the conduct of the business situated in any township or taxing district as returned by the

assessor thereof, and extend the taxes thereon upon the tax list as in other cases. All such property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, townships, or taxing districts. The property so included in said assessment shall not be otherwise taxed. [S., '13, § 1346-g; 40 Ex. G. A., S. F. 183, § 19.]

7088. Action to collect. In case any such company shall fail or refuse to pay any taxes assessed against it in any county, township, or assessment district in the state, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the state of Iowa by the county attorneys of the different counties of the state, on the relation of the auditors of the different counties of the state, and judgment in such action shall include a penalty of fifty per cent of the amount of the taxes so assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over, or across which the routes of any such company shall extend, or in any county where such company shall have an officer or agent for the transaction of business. [S., '13, § 1346-h.]

CHAPTER 340

ELECTRIC TRANSMISSION LINES

- 7089. "Company" defined.
- 7090. Statement required.
- 7091. Verification.
- 7092. Additional statement.
- 7093. Failure to furnish.
- 7094. Actual value.
- 7095. Taxable value.
- 7096. Hearing.

- 7097. County assessment—certification.
- 7098. Entry of certificate.
- 7099. Rate—purposes.
- 7100. Assessment exclusive.
- 7101. Local assessment.
- 7102. Interest of cooperative members.
- 7103. Reassessment by council.

7089. "Company" defined. The word "company" as used in this chapter and section 6944, subsection 20, shall be deemed and considered to mean and include any person, copartnership, association, corporation, or syndicate (except cooperative corporations or associations which are not organized or operated for profit) that shall own or operate transmission line or lines for the conducting of electric energy located within the state and wholly or partly outside cities and towns, whether formed or organized under the laws of this state or elsewhere. [S. S., '15, § 1346-r; 40 Ex. G. A., S. F. 183, § 17-a1.]

7090. Statement required. Every company owning or operating a transmission line or lines for the conduct of electric energy and which line or lines are located within the state, and which said line or lines are also located wholly or partly outside cities and towns, shall, on or before the first day of May in each year, furnish to the executive council a verified statement as to its entire line or lines within this state, when all of said line or

lines are located outside cities and towns, and as to such portion of its line or lines within this state as are located outside cities and towns, when such line or lines are located partly outside and partly inside cities and towns, showing:

1. The total number of miles of line owned, operated, or leased, located outside cities and towns within this state, with a separate showing of the number of miles leased.

2. The location and length of each division within the state and the character of poles, towers, wires, substation equipment and other construction of each such division, designating the length and portion thereof in each separate county into which each such division extends. [S. S., '15, § 1346-k.]

7091. Verification. The verification of any statement required by law shall, in the case of a person, be made by such person; in the case of a corporation, by the president or secretary thereof; and in the case of a copartnership, association, or syndicate, by some mem-

ber, officer, or agent thereof having knowledge of the facts. [S. S., '15, § 1346-r; 40 Ex. G. A., S. F. 183, § 17-a1.]

7092. Additional statement. Upon receipt of said statements from the several companies, the executive council shall examine such statements, and if it shall deem same insufficient, and that further information is requisite, it shall require the company making same to make such other or further statement as it may desire, notifying such company thereof by registered mail. [S. S., '15, § 1346-l.]

7093. Failure to furnish. In case of the total failure or refusal to make any statement required by sections 7090 and 7092 to be made by May first in any year, or of failure or refusal to make such other or further statement within thirty days from the time the registered notice thereof is received by said company that the same is required by the executive council, such company shall forfeit and pay to the state of Iowa, one hundred dollars for each day the total failure or refusal to make any report is continued beyond the said first day of May of the year in which it is required, or in case of any such other or further report required by the executive council for each day the same is delayed beyond thirty days from the receipt of the notice by said company that same is required, such forfeiture to be sued for and recovered in any proper form of action in the name of the state and on relation of the executive council of the state of Iowa, and such penalty when collected, shall be paid into the general fund. [S. S., '15, § 1346-l.]

7094. Actual value. The executive council shall, at its meeting on the second Monday in July of each year, proceed to find the actual value of that part of such transmission line or lines referred to in section 7090, owned or operated by any company, that is located within this state but outside cities and towns, including the whole of such line or lines when all of such line or lines owned or operated by said company is located wholly outside of cities and towns, taking into consideration the information obtained from the statements required by this chapter, and any further information they can obtain, using the same as a means of determining the actual cash value of such transmission line or lines or part thereof, within this state, located outside of cities and towns. The executive council shall then ascertain the value per mile of such transmission line or lines owned or operated by each company specified in section 7090, by dividing the total value as above ascertained by the number of miles of line of such company within the state located outside of cities and towns, and the result shall be deemed and held to be the actual value per mile of said transmission line or lines of each of said companies within the state located outside of cities and towns. [S. S., '15, § 1346-m.]

7095. Taxable value. The taxable value of such line or lines of which said executive coun-

cil by this chapter is required to find the value, shall be determined by taking the percentage of the actual value so ascertained, as provided by section 7109, and the ratio between the actual value and the assessed or taxable value of the transmission line or lines of each of said companies located outside of cities and towns shall be the same as in the case of the property of private individuals. [S. S., '15, § 1346-m.]

7096. Hearing. At said meeting in July, any company interested shall have the right to appear by its officers, agents and attorneys before the executive council, and be heard on the question of the value of its property for taxation. [S. S., '15, § 1346-m.]

7097. County assessment—certification. The executive council shall, for the purpose of determining what amount shall be assessed to any one of said companies in each county of the state into which the line or lines of the company extend, multiply the assessed or taxable value per mile of line of said company, as ascertained according to the provisions of this chapter, by the number of miles of line in each of said counties, and the result thereof shall be by said council certified to the several county auditors of the respective counties into, over, or through which said line or lines extend. [S. S., '15, § 1346-n.]

7098. Entry of certificate. At the first meeting of the board of supervisors held after said statements are received by the county auditor, it shall cause such statement to be entered in its minute book and make and enter therein an order stating the length of the lines and the assessed value of the property of each of said companies situated in each township or lesser taxing district in each county outside cities and towns, as fixed by the executive council, which shall constitute the taxable value of said property for taxing purposes. The county auditor shall transmit a copy of said order to the trustees of each township and to the proper taxing boards in lesser taxing districts into which the line or lines of said company extend in the county. The taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate. [S. S., '15, § 1346-o.]

7099. Rate—purposes. Such portions of the transmission line or lines within the state referred to in section 7090, as are located outside cities and towns, shall be taxable upon said assessment provided for by sections 7094 to 7097, inclusive, at the same rate, by the same officers and for the same purposes as property of individuals within such counties, townships or lesser taxing districts, outside cities and towns, and the county treasurer shall collect said taxes at the same time and in the same manner as other taxes, and the same penalties shall be due and collectible as for the nonpayment of individual taxes. [S. S., '15, § 1346-p.]

7100. Assessment exclusive. Every transmission line or part thereof, of which the executive council is required by this chapter to find the value, shall be exempt from other assessment or taxation either under sections 6979 to 6982, inclusive, or under any other law of this state except as provided in this chapter. [S. S., '15, § 1346-q.]

7101. Local assessment. All lands, buildings, machinery, poles, towers, wires, station and substation equipment, and other construction owned or operated by any company referred to in section 7090, and where such property is located within any city or town within this state, shall be listed and assessed for taxation in the same manner as provided in sections 6979 and 6980 for the listing and assessment of that part of the lands, buildings, machinery, tracks, poles and wires within the limits of any city or town belonging to individuals or corporations furnishing electric light or power, and where such property, except the

capital stock, is situated partly within and partly without the limits of a city or town. All personal property of every company owning or operating any such transmission line referred to in section 7090, used or purchased by it for the purpose of such transmission line, shall be listed and assessed in the assessment district where usually kept and housed and under sections 6981 and 6982. [S. S., '15, § 1346-q.]

7102. Interest of cooperative members. The value of the interests of members in such cooperative corporations or associations which are not organized or operated for profit shall, for the purpose of taxation, be deemed real estate, and be assessed as part of the real estate served by such transmission line or lines. [40 Ex. G. A., S. F. 183, § 17-a1.]

7103. Reassessment by council. The provisions of chapter 341 shall apply to the property of transmission lines included in and referred to in section 7090. [S. S., '15, § 1346-t.]

CHAPTER 341

REASSESSMENT BY EXECUTIVE COUNCIL

7104. Reassessment and relevy.

7104. Reassessment and relevy. When by reason of nonconformity to any law, or by any omission, informality, or irregularity, or for any other cause, any tax heretofore or hereafter levied and assessed against any person, company, association, or corporation by the executive council is invalid or is adjudged illegal, the executive council may assess and levy a tax against such person, company, association, or corporation for the year or years for which such tax is invalid or illegal, or when necessary may assess and certify the same to the proper county officers, who shall levy such tax as by law in such cases made and provided, with the same force and effect as though done at the proper time and under any valid law,

7105. Voluntary payments.

whether in force at the time of said levy and assessment or thereafter enacted. [S., '13, § 1330-h.]

7105. Voluntary payments. When any person, company, association, or corporation, against whom any tax has been assessed and levied by the executive council and held invalid or illegal, shall have paid the same voluntarily or shall otherwise waive such invalidity and illegality, the executive council shall accept such tax in lieu of the tax to be raised by the reassessment and relevy provided for in the preceding section. [S., '13, § 1330-i.]

CHAPTER 342

LOCAL ASSESSOR

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| <p>7106. Listing and valuation.
 7107. Owner to assist.
 7108. Oath.
 7109. Actual, assessed, and taxable value.
 7110. Forest and fruit-tree reservations.
 7111. Notice of valuation.
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 7125. Persons subject to poll tax.
 7126. Failure to perform duty.
 7127. Examination of assessors.
 7128. Publication of revenue laws.</p> |
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7106. Listing and valuation. Each assessor shall enter upon the discharge of the duties of his office immediately after the second Monday in January in each year, and shall, with the assistance of each person assessed, or who may be required by law to list property belonging to another, enter upon the assessment rolls furnished him for that purpose the several items of property required to be entered for assessment. He shall personally affix values to all property assessed by him. [C., '51, § 473; R., '60, § 733; C., '73, § 822; C., '97, § 1352.]

7107. Owner to assist. The assessor shall list every person in his township and assess all the property therein, personal and real, except such as is heretofore exempted or otherwise assessed. Any person who shall refuse to assist in making out a list of his property, or of any property which he is by law required to assist in listing, or who shall refuse to make either of the oaths or affirmations or combinations thereof required by the next section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum not to exceed five hundred dollars. [C., '51, § 477; R., '60, § 734; C., '73, § 823; C., '97, § 1354; S., '13, § 1354.]

7108. Oath. The assessor shall administer the oath or affirmation printed on the assessment rolls hereinafter prescribed, or combination thereof, to each person assessed, and require the person taking such oath to subscribe the same, and, in case anyone refuses so to do, he shall note the fact in the column of remarks opposite such person's name. [C., '51, §§ 474, 475; R., '60, § 735; C., '73, § 824; C., '97, § 1355; S., '13, § 1355.]

7109. Actual, assessed, and taxable value. All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise pro-

vided, shall be assessed at twenty-five per cent of such actual value.

Such assessed value shall be taken and considered as the taxable value of such property upon which the levy shall be made.

In arriving at said actual value the assessor shall take into consideration its productive and earning capacity, if any, past, present, and prospective, its market value, if any, and all other matters that affect the actual value of the property; and the burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, or inequitable. [C., '97, § 1305; S., '13, § 1305; 40 Ex. G. A., S. F. 183, § 30.]

7110. Forest and fruit-tree reservations. Forest reservations fulfilling the conditions of sections 2604 to 2617, inclusive, shall be assessed on a taxable valuation of one dollar per acre. Fruit-tree reservations shall be assessed on a taxable valuation of one dollar per acre for a period of eight years from the time of planting. In all other cases where trees are planted upon any tract of land, without regard to area, for forest, fruit, shade, or ornamental purposes, or for windbreaks, the assessor shall not increase the valuation of such property because of such improvements. [S., '13, § 1400-l.]

7111. Notice of valuation. The assessor shall, at the time of making the assessment, inform the person assessed, in writing, of the valuation put upon his property, and notify him, if he feels aggrieved, to appear before the board of review and show why the assessment should be changed. [C., '97, § 1356.]

7112. Refusal to furnish statement. If any corporation or person refuse to furnish the verified statements required in chapters 331 to 342, inclusive, or to list his property, or to take or subscribe the oath required, the executive council, or assessor, as the case may be, shall proceed to list and assess such property according to the best information obtainable,

and shall add to the taxable valuation one hundred per cent thereof, which valuation and penalty shall be separately shown, and shall constitute the assessment; and if the valuation of such property shall be changed by any board of review, or on appeal therefrom, a like penalty shall be added to the valuation thus fixed. [C., '51, § 475; R., '60, § 734; C., '73, §§ 823, 1318; C., '97, § 1357.]

7113. False statement. Any person making any verified statement or return, or taking any oath required by this title, who knowingly makes a false statement therein, shall be guilty of perjury. [C., '97, § 1358.]

7114. Meeting of assessors. The county auditor of each county shall, before the third day of January annually, issue a call to all the assessors of his county to meet at his office, or some other place at the county seat, within ten days, for consultation, and to receive from such auditor such information as shall tend to the proper discharge by them of their official duties. It shall be the duty of each of such assessors to attend such meeting, and they shall be allowed pay of one day for such attendance, and mileage at ten cents per mile one way. [C., '97, § 1359; 39 G. A., ch. 121.]

7115. Assessment rolls and books. The auditor shall procure and furnish to each assessor

a supply of blank assessment rolls on which to enter, separately, the names of all persons, partnerships, corporations, or associations assessed, which rolls shall be made in duplicate, except that the oath form in the original may be omitted and the followed inserted in lieu thereof: "If you are not satisfied that the foregoing assessment is correct, you can appear before the board of review, which meets at..... on the first Monday of April next. Dated..... day of..... 19..... Assessor". In assessment districts where the board of review meets at any other time than the date fixed herein, the assessor shall change the date to correspond with the date upon which the board meets. Said duplicate shall be signed by the assessor, detached from the original, and delivered to the person assessed. He shall also furnish to each assessor a supply of blanks in this chapter described as "Assessment Roll, Form No. 2", which shall be in duplicate, and subject to the same conditions as the roll above provided for. The auditor shall also furnish to the assessor two assessment books, each page of which shall be headed "Assessor's book for..... township,.....county, Iowa, independent district of.....", and shall contain columns ruled and headed for the information required by this chapter, which rolls and books shall be substantially in the following form:

ASSESSMENT ROLL.

Name Age Address No. Dogs male female.....

No. road district. Name or number of school district.	Part of Section or Name of Town.	Section or lot.	Township or block.	Range.	Value of new buildings.	No. of acres improved.	No. of acres unimproved.	Total Number of Acres Taxable.		Lands		Total taxable value of real estate.	Ex-emp-tions.	Description of Personal Property.	Actual value.	Remarks.
								Acres	100	Actual value per acre.	Actual value.					
														Colts 1 year old Colts 2 years old Colts 3 years old Horses over 3 years old Stallions Mules and asses over 1 year old Heifers 1 year old Heifers 2 years old Cows Steers 1 year old Steers 2 years old Steers 3 years old or over Bulls Work oxen Sheep 9 months old or over Swine 9 months old or over Vehicles Household furniture of hotel and boarding house Moneys and credits from form No. 2 Merchandise Other personal property Corporation stock Total actual value personal Total taxable value personal Total actual value real estate .. Total net taxable value real estate		

Total number of acres - - - - -
 Total actual value of real estate - - - - - \$
 Total taxable value of real estate - - - - -
 Total exemptions - - - - -
 Net total value of lands and lots - - - - -

Date of Inventory
 Report name of soldier or sailor; or widow of soldier or sailor, and names of persons who by reason of age or infirmity claim to be unable to contribute to public revenue.
 Notice of right to appear before board of review given A. D.
 Changes by board of review are as follows:

STATE OF IOWA, }
County. } ss.
 I,, do solemnly swear (or affirm) that I am the person assessed above, that I have read the foregoing assessment roll of property listed or assessed to me, and that the same is a full, true and correct list of my taxable property, both real and personal property, subject to taxation within this district, and all property which should be listed on this assessment roll to me or by me.
 Subscribed and sworn to (or affirmed) this day of A. D. before me.
 Assessor.

ASSESSOR'S BOOK.

..... Township, County, Iowa.
 Independent District of

Owner's name.		
Under 45.	Polls.	
Over 45.		
Number of road district.		
Name or number of school district.		
Part of section or name of town.		
Section or lot.		
Township or block.		
Range.		
Number of acres improved.		
Number of acres unimproved.		
Acres.	Total No. of acres taxable.	
100.		
Value of new buildings.		
Actual value per acre.	Lands.	
Actual value.		
Actual value.	Lots.	
Total actual value of real estate.		
For Roads.	Exemption.	
For Homesteads.		
Net actual value of lands and lots.		
Total taxable value of real estate.		
Number.	Colts 1 year old.	Horses.
Actual value.		
Number.	Colts 2 years old.	
Actual value.		
Number.	Horses 3 years old and over.	
Actual value.		
Number.	Stallions.	Mules.
Actual value.		
Number.		
Actual value.		

(CONTINUED)

Number.	Heifers 1 year old.	Cattle
Actual value.		
Number.	Heifers 2 years old.	
Actual value.		
Number.	Cows.	
Actual value.		
Number.	Steers 1 year old.	
Actual value.		
Number.	Steers 2 years old.	
Actual value.		
Number.	Steers 3 years old or over.	
Actual value.		
Number.	Bulls.	
Actual value.		
Number.	Swine	
Actual value.		
Number.	Sheep 9 months old or over.	
Actual value.		
Number.	Vehicles.	
Actual value.		
Actual value.	H'sld f'n'ture, hotel and boarding house.	
Actual value.		
Actual value.	Moneys and credits.	
Actual value.		
Corporation stocks.		
Merchandise.		
Other personal property.		
Actual value.	Total personal property.	
Taxable value.		
Actual value of all property.		
Taxable value.		
Male.	Dogs.	
Female.		

ASSESSMENT ROLL—Form No. 2.

ASSESSMENT OF MONEYS AND CREDITS.

Of of township of state of Iowa, January 1,

Notes, Bonds and Other Evidence of Credit.	Actual Value.
Aggregate amount of notes
Aggregate amount of bonds
Aggregate amount of other written evidences of credit
Aggregate amount of money in bank
Aggregate amount of other money
Aggregate amount of book accounts—good
Aggregate amount of book accounts—doubtful
Aggregate amount of checks, drafts and other cash items
Total moneys and credits
Liabilities.	
Total amount of notes
Total amount of accounts
Total amount of other debts
Total amount of debts
Net amount of moneys and credits

The party assessed need list only such of his liabilities as he may desire to have subtracted from his moneys and credits.

STATE OF IOWA County, ss.
 I,, do solemnly swear (or affirm) that the above is a full, true and correct statement of all moneys and credits owned by me, and that the liabilities above given to be deducted therefrom are obligations in good faith actually owed by me.
 Signed
 Subscribed and sworn to (or affirmed) before me by
 this day of
 Assessor.

[C., '51, §§ 471, 473; R., '60, §§ 732, 733; C., '73, § 821; C., '97, § 1360; S., '13, § 1360; 39 G. A., ch. 92, § 1.]

7116. Schedules furnished. The assessor shall furnish to each person, partnership, corporation, or association, except those otherwise assessed as provided by law, a blank known as "Assessment Roll—Form No. 2", as provided in the preceding section, upon which such person, partnership, corporation, or association shall enter and set out all moneys and credits of whatsoever kind or nature belonging to such person, partnership, corporation, or association, and such liabilities as they claim should be deducted from the total of their moneys and credits. The assessor shall carry the aggregate moneys and credits of such persons, partnerships, corporations, or associations to the regular schedule. [C., '97, § 1361; S., '13, § 1361.]

7117. Affidavits combined. It shall be lawful to combine the affidavit with reference to real and personal property, and the affidavit as to moneys and credits, into one affidavit. [S., '13, § 1361.]

7118. Schedules preserved. The assessor shall return all schedules with the assessment books to the county auditor as is provided in this chapter, and the county auditor shall care-

fully keep all schedules known and described in this chapter as "Assessment Roll—Form No. 2", for the period of five years from the time of filing of the same in his office. [C., '97, § 1361; S., '13, § 1361.]

7119. Uniform assessment rolls. The state board of review shall from time to time prepare and certify to each county auditor such instructions as to a uniform method of making up the assessment rolls as it thinks necessary to secure a compliance with the law and uniform returns, which shall be printed upon each assessment roll, and also prepare instructions for the same purpose as to making up the assessment books, which shall be printed therein. [C., '97, § 1362.]

7120. Plat book. The county auditor shall furnish to each assessor a plat book on which shall be platted the lands and lots in his assessment district, showing on each subdivision or part thereof, written in ink or pencil, the name of the owner, the number of acres, or the boundary lines and distances in each, and showing as to each tract the number of acres to be deducted for railway right of way and for roads. [C., '51, § 181; R., '60, § 733; C., '73, § 821; C., '97, § 1364.]

7121. Completion of assessment—oath. The assessment shall be completed by the first day of April, and the assessor shall attach to the assessment rolls his oath in the following form:

I, (A..... B.....), assessor of county of and state of Iowa, do solemnly swear (or affirm) that the actual and taxable values of all property, money and credits, of which a statement has been made and verified by the oath of the person required to list the same, is herein truly set forth in such statement; that in every case, where I have been required to ascertain the amount or value of any property, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and as I verily believe the actual and taxable values thereof are set forth in the annexed return; in no case have I knowingly omitted to demand of any person, of whom I was required to do so, a statement of the items of his property which he was required by law to list, nor to administer the oath to him, unless he refused to take it, nor in any way connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

Subscribed and sworn to (or affirmed) this day of A. D., before me.

[C., '51, § 479; C., '97, § 1365.]

7122. Rolls returned to local board. Such rolls shall be laid before the local board of review on or before the first Monday of April in each year for correction.

In cities of ten thousand population and over, such assessment rolls shall be laid before the local board of review on or before the first Monday in May in each year. [R., '60, § 736; C., '73, § 825; C., '97, § 1366; S., '13, § 1366; 39 G. A., ch. 92, § 1.]

7123. Assessment book—preparation and return. When such correction has been completed, the assessor shall proceed to make up the assessor's books in duplicate from such assessment rolls, allotting a sufficient number of pages to each letter, and return to the county auditor, together with the assessment rolls, plat book, and all statements which have been furnished to him in connection with the assessment. [S., '13, § 1366; 38 G. A., ch. 385, § 1; 39 G. A., ch. 268, § 1.]

7124. Recapitulations—return to city and township clerk. The county auditor shall foot up each column of numbers and values on each page and enter such footings in recapitulation

sheets, and not later than the tenth day of May, return one of the books to the township clerk, and to the city or town clerk.

In cities of ten thousand population and over, one of the assessment books shall be returned to the city clerk not later than the tenth day of June. [C., '51, § 478; R., '60, § 736; C., '73, § 825; C., '97, § 1366; S., '13, § 1366; 39 G. A., ch. 92, § 2; 39 G. A., ch. 268.]

7125. Persons subject to poll tax. The assessor shall furnish to the clerk of the city, town or township, as the case may be, a list of all persons subject to poll tax. [38 G. A., ch. 385, § 1.]

7126. Failure to perform duty. If any assessor or member of any board of review shall knowingly fail or neglect to make or require the assessment of property for taxation to be of and for its taxable value as provided by law or to perform any of the duties required of him by law, at the time and in the manner specified, he shall forfeit and pay the sum of five hundred dollars, to be recovered in an action in the district court in the name of the county and for its use, and the action against the assessor shall be against him and his bondsmen. [R., '60, § 738; C., '73, § 827; C., '97, § 1367.]

7127. Examination of assessors. It shall be lawful for the boards of supervisors, the trustees of townships, and councils of cities and incorporated towns as boards of review to summon any assessor or assessors to appear before them, respectively, to be inquired of under oath with respect to the method by which he or they has or have ascertained and fixed any valuation or valuations returned by him or them, and as to the correctness of any such valuation or valuations, and to administer the oath by any one of their members to the assessor or assessors so summoned before them; and any assessor so summoned who shall fail without good cause to appear, or, appearing, shall refuse to submit to such inquiry, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished accordingly. [C., '97, § 1368.]

7128. Publication of revenue laws. The auditor of state shall publish in pamphlet form the revenue laws of the state for the benefit of the assessors and boards of review, and distribute them to the county auditors, who shall distribute the same to the assessors and boards of their respective counties. [C., '73, § 828; C., '97, § 1369.]

CHAPTER 343

BOARDS OF REVIEW

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7129. Local board of review. The township trustees shall constitute the local board of review for the township or the portion thereof not included within any city or town, and the city or town council shall constitute such board for such city or town.

The board shall meet on the first Monday of April, at the office of the township, city or town clerk or recorder, and sit from day to day until its duties are completed, which shall be not later than the first day of May, and shall adjust assessments for the township, city or town by raising or lowering the assessment of any person, partnership, corporation, or association as to any or all of the items of his assessment, in such manner as to secure the listing of property at its actual value and the assessment of property at its taxable value, and shall also add to the assessment rolls any taxable property not included therein, assessing the same in the name of the owner thereof, as the assessor should have done; provided that:

1. In townships having a population of twenty thousand or more, and situated entirely within the limits of a city under special charter, and in cities having a population of twenty thousand or more, including cities under special charters, the board of review may begin the performance of the duties herein defined on and after the first day of March each year.

2. In cities having a population of ten thousand or over, such board shall meet on the first Monday of May and shall complete its duties not later than the first day of June.

In townships having a population of twenty thousand or more, and situated entirely within the limits of a city under special charter, and in cities under special charters having a population of twenty thousand or more, the city council of said city shall be the board of review, except that the township trustees of said townships may, in the event the city council does not act as such board of review for such townships, be the board of review, the same as township trustees would be in townships in which the township lines are not coterminous with city limits. [C., '73, §§ 829,

830; C., '97, § 1370; S., '13, § 1370; 38 G. A., ch. 244, § 1; 39 G. A., ch. 92, § 3.]

NOTE: Above section made applicable to special charter cities by § 6870.

7130. Clerk—assessment correction. The clerk or recorder of the township, city or town, as the case may be, shall be clerk of the board of review and keep a record of its proceedings, and the assessor shall be present at its meeting and make upon the assessment rolls all corrections or additions directed by the board. At such meetings it shall be the duty of the assessor to read each and every taxpayer's name and assessment on the assessment rolls, and, if the assessment is approved, pass to the next name. After checking the same, the board shall then take up the unchecked names in alphabetical order, and raise or lower the same as in their opinion will be just, checking off each taxpayer as the same is adjusted. [R., '60, § 740; C., '73, § 831; C., '97, § 1371; S., '13, § 1371.]

7131. Notice of assessments raised. In case the value of any specific property or the entire assessment of any person, partnership, corporation, or association is raised, or new property is added by the board, the clerk shall give immediate notice thereof by mail to each at the postoffice address shown on the assessment rolls, and at the conclusion of the action of the board therein the clerk shall post an alphabetical list of those whose assessments are thus raised and added, in a conspicuous place in the office or place of meeting of the board, and enter upon the records a statement that such posting has been made, which entry shall be conclusive evidence of the giving of the notice required. The board shall hold an adjourned meeting, with at least five days intervening after the posting of said notices, before final action with reference to the raising of assessments or the adding of property to the rolls is taken, and the posted notices shall state the time and place of holding such adjourned meeting, which time and place shall also be stated in the proceedings of the board. [C., '97, § 1372; S., '13, § 1372.]

7132. Complaint to board of review. Any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the board of review, which shall consist simply of a statement of the errors complained of, with such facts as may lead to their correction, and any person whose assessment has been raised or whose property has been added to the assessment rolls, as provided in the preceding section, and any member of the board of review aggrieved by any action of the board of review of which he was, at the time complained of, a member, shall make such complaint before the meeting of the board for final action with reference thereto, as provided in said section. [R., '60, § 740; C., '73, § 831; C., '97, § 1373; S., '13, § 1373; 40 G. A., ch. 148, § 1.]

NOTE: Above section and the four following sections made applicable to special charter cities by § 6870.

7133. Appeal. Appeals may be taken from the action of the board with reference to such complaints to the district court of the county in which such board holds its sessions, within twenty days after its adjournment. Appeals shall be taken by a written notice to that effect to the chairman or presiding officer of the reviewing board, and served as an original notice. [C., '73, § 831; C., '97, § 1373; S., '13, § 1373.]

7134. Trial on appeal. The court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof, and its decision shall be certified by the clerk of the court to the county auditor, who shall correct the assessment books in his office accordingly. [C., '97, § 1373; S., '13, § 1373.]

7135. Appeal on behalf of public. Any officer of a county, city, town, township or school district interested or a taxpayer thereof may in like manner make complaint before said board of review in respect to the assessment of any property in the township, city or town and an appeal from the action of the board of review in fixing the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers.

Such appeal is in addition to the appeal allowed to the person whose property is assessed and shall be taken in the name of the county, city, town, township or school district interested and tried in the same manner, except that the notice of appeal shall also be served upon the owner of the property concerning which the complaint is made and affected thereby or person required to return said property for assessment. [S., '13, § 1373.]

7136. Power of court. Upon trial of any appeal from the action of the board of review fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease or affirm the amount of the assessment appealed from. [S., '13, § 1373.]

7137. County board of review. The board of supervisors shall constitute a county board of review, and shall adjust the assessments of the several townships, cities and towns of their county at their regular meeting in June, and add to or deduct from the assessed value of the property substantially as the state board adjusts assessments of the several counties of the state. [R., '60, § 739; C., '73, § 832; C., '97, § 1375.]

7138. Appeals. Appeals may be taken from any action or decision of a county board of review by the board of review of any city, town, or township aggrieved thereby, within the same time and in the same manner as appeals are taken from the local board of review. [C., '97, § 1376.]

7139. Abstract to auditor of state. Each auditor shall, on or before the third Monday in June, make out and transmit to the auditor of state an abstract of the real and personal property in his county, in which he shall set forth:

1. The number of acres of land and the aggregate actual and taxable values of the same, exclusive of town lots, returned by the assessors, as corrected by the county board of review.

2. The aggregate actual and taxable values of real estate in each township, city and town in the county, returned as corrected by the county board of review.

3. The aggregate actual and taxable values of personal property.

4. An abstract as to the number and value of all animals as the same are returned by the assessor, showing the aggregate actual and taxable values and number of each kind or class, and such other facts as may be required by the state board of review. [R., '60, § 741; C., '73, § 833; C., '97, § 1377.]

7140. State board of review. The executive council shall constitute the state board of review, and shall meet at the seat of government on the second Monday of July in each year. The auditor of state shall lay before it the abstracts transmitted to him by the county auditors, as required by the preceding section. [C., '51, §§ 481, 482; R., '60, § 742; C., '73, § 834; C., '97, § 1378; S., '13, § 1378.]

7141. Adjusting county valuations. It shall adjust the valuation of property in the several counties, adding to or deducting from the valuation of each kind or class of property such percentage in each case as will bring the same to its taxable value as fixed in chapters 330 to 344, inclusive. [C., '51, §§ 481, 482; R., '60, § 742; C., '73, § 834; C., '97, § 1379.]

7142. Notice of increase. Before such executive council shall add to the valuation of any kind or class of property any such percentage, it shall serve ten days' notice by mail, on the auditor of the county whose valuation is proposed to be raised and shall hold an adjourned meeting after such ten days' notice, at which time such county may appear by its board of

supervisors, county attorney, or otherwise, and make written or oral protest against such proposed raise, which protest shall consist simply of a statement of the error, or errors, complained of with such facts as may lead to their correction, and at such adjourned meeting final action may be taken in reference thereto. [37 G. A., ch. 139, § 1.]

7143. Adjustment by county auditor. The board shall keep a record of its proceedings

and finish its review and adjustment on or before the third Monday of August. The county auditor shall thereupon add to or deduct from the valuation of each kind or class of property in his county the required percentage, rejecting all fractions of fifty cents or less in the result, and counting all over fifty cents as one dollar. [C., '51, § 483; R., '60, § 743; C., '73, § 836; C., '97, § 1382; S., '13, § 1382; 37 G. A., ch. 416, § 1.]

CHAPTER 344

TAX LIST

7144. Consolidated tax.
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7157. Duty of treasurer.
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7160. Irregularities, errors, and omissions—effect.
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7144. Consolidated tax. All taxes, except road taxes, which are uniform throughout any township or school district shall be formed into a single tax and entered upon the tax list in a single column, to be known as a consolidated tax, and each receipt shall show the percentage levied for each separate fund. [C., '73, § 838; C., '97, § 1383; S., '13, § 1383; 40 Ex. G. A., S. F. 183, § 20.]

7145. Tax list. Before the first day of January in each year, the county auditor shall transcribe the assessments of the several townships, towns, or cities into a book, to be known as the tax list, properly ruled and headed, with separate columns, in which shall be entered the names of the taxpayers, descriptions of lands, number of acres and value, numbers of town lots and value, value of personal property and each description of tax, with a column for polls and one for payments, and shall complete the same by entering the amount due on each installment, separately, and carrying out the total of both installments. He shall also complete each page by footing all columns and balancing with tax totals. [C., '51, § 486; R., '60, § 745; C., '73, § 837; C., '97, § 1383; S., '13, § 1383; 40 G. A., ch. 149, § 1; 40 Ex. G. A., S. F. 183, § 20.]

7146. Correction—tax apportioned. At the time of transcribing said assessments into the tax list, the county auditor shall correct all transfers up to date and place the legal descriptions of all real estate in the name of the owner at said date as shown by the transfer book in his office. At the end of the list for each township, town, or city he shall make an abstract thereof, and apportion the consolidated tax among the respective funds to which it belongs, according to the number of mills levied

for each. [C., '97, § 1383; S., '13, § 1383; 40 Ex. G. A., S. F. 183, § 21.]

7147. Tax list delivered—informality and delay. He shall make an entry upon the tax list showing what it is, for what county and year, and deliver it to the county treasurer on or before the thirty-first day of December, taking his receipt therefor; and such list shall be a sufficient authority for the treasurer to collect the taxes therein levied. No informality therein, and no delay in delivering the same after the time above specified, shall affect the validity of any taxes, sales, or other proceedings for the collection of such taxes. [C., '51, § 487; R., '60, § 748; C., '73, § 843; C., '97, § 1387.]

7148. Aggregate valuations certified. At the time of delivering the list to the treasurer, the auditor shall furnish to the auditor of state a certified statement showing separately the aggregate full and taxable valuations of the real and personal property in the county, and also the aggregate amount of each separate tax as shown by the tax list. [R., '60, § 748; C., '73, § 844; C., '97, § 1388.]

7149. Corrections by auditor. The auditor may correct any error in the assessment or tax list, and may assess and list for taxation any omitted property. [R., '60, § 747; C., '73, § 841; C., '97, § 1385; S., '13, § 1385-b.]

7150. Notice. Before assessing and listing for taxation any omitted property, the auditor shall notify by registered letter the person, firm, corporation, or administrator or other person in whose name the property is taxed, to appear before him at his office within ten days from the time of said notice and show cause, if

any there be, why such correction or assessment should not be made. [S., '13, § 1385-b.]

7151. Right of appeal. Should such party feel aggrieved at the action of said auditor he shall have the right of appeal therefrom to the district court. [S., '13, § 1385-b.]

7152. Adjustment of accounts. If such correction or assessment is made after the books have passed into the hands of the treasurer he shall be charged or credited therefor as the case may be. [S., '13, § 1385-b.]

7153. Expense—report to supervisors. All expense incurred in the making of said correction or assessment shall be borne pro rata by the funds which are affected by said correction and the proceedings shall be reported to the board of supervisors. [S., '13, § 1385-b.]

7154. Procedure on appeal. The appeal provided for in section 7151 shall be taken within ten days from the time of the final action of the auditor, by a written notice to that effect to the auditor, and served as an original notice. The court on appeal shall hear and determine the rights of the parties in the same manner as appeals from the board of review, as prescribed in sections 7134 and 7136. [S., '13, § 1385-c.]

7155. Corrections by treasurer. When property subject to taxation is withheld, overlooked, or from any other cause is not listed and assessed, the county treasurer shall, when apprised thereof, at any time within five years from the date at which such assessment should have been made, demand of the person, firm, corporation, or other party by whom the same should have been listed, or to whom it should have been assessed, or of the administrator thereof, the amount the property should have been taxed in each year the same was so withheld or overlooked and not listed and assessed, together with six per cent interest thereon from the time the taxes would have become due and payable had such property been listed and assessed. [C., '97, § 1374.]

7156. Action by treasurer—apportionment. Upon failure to pay such sum within thirty days, with all accrued interest, he shall cause an action to be brought in the name of the treasurer for the use of the proper county, to be prosecuted by the county attorney, or such other person as the board of supervisors may appoint, and when such property has been

fraudulently withheld from assessment, there shall be added to the sum found to be due a penalty of fifty per cent upon the amount, which shall be included in the judgment. The amount thus recovered shall be by the treasurer apportioned ratably as the taxes would have been if they had been paid according to law. [C., '97, § 1374.]

7157. Duty of treasurer. The treasurer shall assess any real property subject to taxation which may have been omitted by the assessor, board of review, or county auditor, and collect taxes thereon, and in such cases shall note, opposite the tract or lot assessed, the words "by treasurer". [C., '51, § 491; R., '60, § 752; C., '73, § 851; C., '97, § 1398.]

7158. Time limit. Such assessment shall be made within four years after the tax list shall have been delivered to the treasurer for collection, and not afterwards, if the property is then owned by the person who should have paid the tax. [C., '73, § 851; C., '97, § 1398.]

7159. Real estate—duty of owner. In all cases where real estate subject to taxation has not been assessed, the owner, by himself or agent, shall have the same done by the treasurer, and pay the taxes thereon; and if he fails to do so the treasurer shall assess the same and collect the tax assessed as he does other taxes. [R., '60, § 753; C., '73, § 852; C., '97, § 1399.]

7160. Irregularities, errors, and omissions—effect. No failure of the owner to have such property assessed or to have the errors in the assessment corrected, and no irregularity, error or omission in the assessment of such property, shall affect in any manner the legality of the taxes levied thereon, or affect any right or title to such real estate which would have accrued to any party claiming or holding under and by virtue of a deed executed by the treasurer as provided by this title, had the assessment of such property been in all respects regular and valid. [R., '60, § 753; C., '73, § 852; C., '97, § 1399.]

7161. Discovery of property not listed. It shall be lawful for the board of supervisors of any county to employ any person, corporation, or firm for a reasonable salary or per diem to assist the proper officers in the discovery of property not listed or assessed for taxation as required by law. [S., '13, § 1407-f; 40 Ex. G. A., S. F. 183, § 29.]

CHAPTER 345

TAX LEVIES

CERTIFICATION OF TAXES

- 7162. Basis for amount of tax.
- 7163. Amounts certified in dollars.
- 7164. Computation of rate.
- 7165. Permissible excess rate.
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- 7167. Interpretative clause.
- 7168. Record of rates.
- 7169. Excessive tax prohibited.
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COUNTY LEVIES AND LICENSES

- 7171. Annual levies.
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CERTIFICATION OF TAXES

7162. Basis for amount of tax. In all taxing districts in the state, including townships, school districts, cities, towns, and counties, when by law then existing the people are authorized to determine by vote, or officers are authorized to estimate or determine, a rate of taxation required for any public purpose, such rate shall in all cases be estimated and based upon the adjusted taxable valuation of such taxing district for the preceding calendar year. [37 G. A., ch. 343, § 1.]

7163. Amounts certified in dollars. When any authorized tax rate within any taxing district, including townships, school districts, cities, towns, and counties, shall have been thus determined as provided by law, the officer or officers charged with the duty of certifying said authorized rate to the county auditor or board of supervisors shall, before certifying the same, compute upon the adjusted taxable valuation of such taxing district for the preceding calendar year (not including moneys and credits, and other moneyed capital taxed at a flat rate as provided in section 6985), the amount of tax said rate will raise, stated in dollars, and shall certify said computed amount in dollars and not by rate, to the county auditor and board of supervisors. [37 G. A., ch. 343, § 2; 40 Ex. G. A., S. F. 183, § 22.]

7164. Computation of rate. When the valuations for the several taxing districts shall have been adjusted by the several boards for the current year, the county auditor shall thereupon apply such a rate, not exceeding the rate authorized by law, as will (without including moneys and credits and other moneyed capital taxed at a flat rate as provided in section 6985), raise the amount required for such taxing district, and no larger amount. [37 G. A., ch. 343, § 3; 40 Ex. G. A., S. F. 183, § 23.]

- 7173. County orphan fund.
- 7174. Peddlers.
- 7175. Payment—license.
- 7176. "Peddlers" defined.
- 7177. Exceptions.
- 7178. Peddling without license.
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LEVIES BY EXECUTIVE COUNCIL

- 7181. Levy to pay municipal bonds.
- 7182. Annual levy.
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7165. Permissible excess rate. In fixing such rate the auditor, with the approval of the board of supervisors, may provide for an excess in the amount to be raised, not exceeding five per cent on the amount of the tax, for the purpose of meeting possible shrinkage due to exemptions or other cause. [38 G. A., ch. 57, § 1; 40 Ex. G. A., S. F. 183, § 23.]

7166. Fractional rates disregarded. If in adjusting the rate to be levied in any taxing district to conform to law, such rates shall make necessary the levying of a fraction of a mill in excess of one-half of one-tenth of a mill, said fractional excess may be computed as one-tenth of a mill, which latter shall be the smallest required to be spread upon the tax lists for any purpose except rates applicable to a state purpose. [37 G. A., ch. 343, § 3; 40 Ex. G. A., S. F. 183, § 23.]

7167. Interpretative clause. Nothing herein shall be construed as interfering with the right of any taxing district to receive its due proportion of the taxes on moneys and credits and other moneyed capital taxed at a flat rate as provided in section 6985. [37 G. A., ch. 343, § 3; 40 Ex. G. A., S. F. 183, § 23.]

7168. Record of rates. On the determination by the auditor of the necessary rates as herein directed, it is made his duty to enter a record of such rates for each taxing district upon the permanent records of his office in a book to be kept for that purpose. [37 G. A., ch. 343, § 4.]

7169. Excessive tax prohibited. It is hereby made a misdemeanor for the board of supervisors to authorize, or the county auditor to carry upon the tax lists for any year, an amount of tax for any public purpose in excess of the amount certified or authorized as provided by law. [37 G. A., ch 343, § 5.]

7170. Mandatory provisions. The provisions of the eight preceding sections, and the methods of computation, certification, and levy therein provided shall be obligatory on all officers within the several counties of the state upon whom devolves the duty of determining, certifying, and levying taxes. [37 G. A., ch. 343, § 6.]

COUNTY LEVIES AND LICENSES

7171. Annual levies. The board of supervisors of each county shall, annually, at its September session, levy the following taxes upon the assessed value of the taxable property in the county:

1. For state revenue, such rate of tax as shall be fixed by the executive council as hereinafter provided.

2. For ordinary county revenue, not to exceed six mills on a dollar, with a poll tax of fifty cents on each male resident over twenty-one years of age. [C., '51, § 454; R., '60, § 710; C., '73, § 796; C., '97, § 1303; S. S., '15, § 1303; 40 G. A., ch. 75.]

7172. Court expense. In any county where, by reason of extraordinary or unusual litigation the rates herein fixed for ordinary county revenue are found to be insufficient to pay the same, the board of supervisors may create an additional fund to be known as court expense fund, and may levy for such fund such rate of taxes as shall be necessary to pay all court expenses chargeable to the county. Such fund shall be used for no other purpose, and the levy therefor shall be dispensed with when the authorized levy for the ordinary county revenue is sufficient to meet the necessary county expenditures including such court expenses. Provided, further, that the levy for the purpose of providing an additional fund shall not exceed three mills on a dollar. [C., '97, § 1303; S. S., '15, § 1303.]

7173. County orphan fund. The board of supervisors may levy a tax, not exceeding one-half mill on the dollar in any one year, on all the taxable property in its county, at the same time other taxes are levied, and to be collected in the same manner, to aid in and for the maintenance and education of destitute orphans. The fund thus raised shall be called the "county orphan fund", and shall be expended in such sums and manner as the exigencies of each case may demand. If there be such children who are without guardian, or, having one, are neglected, they shall be cared for through some suitable person to be appointed by the board. [C., '73, §§ 1638-1641; C., '97, § 2687.]

7174. Peddlers. Peddlers plying their vocation in any county in this state outside of a city or incorporated town shall pay an annual county tax of twenty-five dollars for each pack peddler or hawker on foot, fifty dollars for each one-horse or two-wheeled conveyance, and seventy-five dollars for each two-horse conveyance, automobile, or any motor vehicle having

attached thereto or made a part thereof a conveyance for merchandise or samples. [C., '51, § 510; R., '60, § 791; C., '73, § 906; C., '97, § 1347; S., '13, § 1347-a; 39 G. A., ch. 52.]

7175. Payment—license. Such tax shall be paid to the county treasurer, who shall issue to the person making such payment duplicate receipts therefor and upon presentation of one of same to the county auditor, he shall issue to the person presenting such receipt a license which shall not be transferable authorizing such person to ply the vocation of a peddler in such county for the term of one year from the date thereof. The license shall be good only in the county in which issued, and shall not authorize peddling in cities and towns. [C., '97, § 1348; S., '13, §§ 1347-a, 1348.]

7176. "Peddlers" defined. The word "peddlers" under the provisions of the two preceding sections, and wherever found in the code, shall be held to include and apply to all transient merchants and itinerant vendors selling by sample or by taking orders, whether for immediate or future delivery. [S., '13, § 1347-a.]

7177. Exceptions. The provisions of the three preceding sections shall not be construed to apply to persons selling at wholesale to merchants, nor to transient vendors of drugs, nor to persons running a huckster wagon, or selling and distributing fresh meats, fish, fruit, or vegetables, nor to persons selling their own work or production either by themselves or employees. [C., '97, § 1347; S., '13, § 1347-a.]

7178. Peddling without license. Any person peddling outside the limits of a city or town without such license or after the expiration thereof, shall be guilty of a misdemeanor, whether he be the owner of the goods sold or carried by him or not, and, on conviction thereof, shall forfeit and pay into the county treasury, in addition to the penalty imposed therefor, double the amount of the tax for one year as fixed in section 7174. [C., '51, §§ 511, 512; R., '60, § 792; C., '73, § 907; C., '97, § 1348; S., '13, § 1348.]

7179. Public shows—license. No person shall exhibit any traveling show or circus, nor show any natural or artificial curiosity, or exhibition of horsemanship in a circus or otherwise for any price, gain, or reward in any county outside the limits of a city or town, until he shall have obtained a license therefor from the county auditor, upon the payment to the county treasurer of such sum as may be fixed by the board of supervisors, not exceeding one hundred dollars for each place in the county at which such show or circus may exhibit. [C., '97, § 1349.]

7180. Violations. Any person exhibiting any such show without first having obtained such license shall be guilty of a misdemeanor, and shall also forfeit and pay to the county treasurer double the amount fixed for such

license, for the benefit of the school fund. [C., '97, § 1349.]

LEVIES BY EXECUTIVE COUNCIL

7181. Levy to pay municipal bonds. Whenever any municipal corporation, board, or tribunal is charged with the duty of levying a tax to pay any bonds or interest thereon, and fails to make such levy, the holder thereof may, after obtaining final judgment thereon, in addition to any other remedies he may have, file a transcript thereof with the auditor of state, taking his receipt therefor, and the same shall be registered in his office, and the state board of review at its regular annual session shall levy upon the taxable property of the county, city, town, or school district for which such bonds were issued a sufficient rate of taxation to realize the amount of interest, or principal and interest, due or to become due on the bonds so filed, prior to the next levy, and the money arising from such levy shall be known as the bond fund, and collected as a part of the state tax, paid into the state treasury, and placed to the

credit of such county, city, town, or school district for the payment of said bonds and interest, and shall be paid out as the interest installments or the principal may mature, by warrants drawn by the auditor of state in favor of the holder of such bonds, as shown by the register in his office, until the same shall be paid; and, when paid, the bonds and coupons shall be canceled and returned to the treasurer of the county, city, town, or school district issuing the same, who shall receipt therefor. [C., '97, § 1381.]

7182. Annual levy. In each year the executive council shall fix the rate in percentage to be levied upon the valuation of the taxable property of the state necessary to raise such amount for general state purposes as shall be designated by the general assembly, either by statute or joint resolution. [S., '13, § 1380-c.]

7183. Rate certified to county auditor. The executive council shall certify the rate so fixed to the auditor of each county. [S., '13, § 1380-d.]

CHAPTER 346

COLLECTION OF TAXES

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7184. Duty of treasurer. The treasurer, after making the entry provided in section 7193, shall proceed to collect the taxes, and the list shall be his authority and justification against any illegality in the proceedings prior to receiving the list; and he is also authorized and required to collect, as far as practicable, the taxes remaining unpaid on the tax books of previous years, his efforts to that end to

include the sending by mail of a statement to each delinquent taxpayer not later than the first day of November of each year. [R., '60, § 751; C., '73, § 846; C., '97, § 1390; 37 G. A., ch. 137, § 1.]

7185. Resistance. If the treasurer, his deputy, or collector is resisted or impeded in the execution of the duties of his office, he may

require any person to assist him therein, and if such person refuses, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action in the name of the county, and the person resisting shall be punished as in the case of resisting an officer in the execution of legal process. [C., '51, § 494; R., '60, § 758; C., '73, § 860; C., '97, § 1408.]

NOTE: Above section made applicable to special charter cities by § 6895.

7186. Actions authorized. In addition to all other remedies and proceedings now provided by law for the collection of taxes on personal property, the county treasurer is hereby authorized to bring or cause an ordinary suit at law to be commenced and prosecuted in his name for the use and benefit of the county for the collection of taxes from any person, persons, firm, or corporation as shown by the tax list in his office, and the same shall be in all respects commenced, tried, and prosecuted to final judgment the same as provided by the code for ordinary actions. [S., '13, § 1452-a.]

7187. Statutes applicable—attachment—damages. All the provisions of chapters 510 and 513 are hereby made applicable to any proceedings instituted by a county treasurer under the preceding section, and a writ of attachment shall be issued upon the county treasurer complying with the provisions of said chapters, for taxes, whether due or not due, except that no bond shall be required from the treasurer or county in such cases, but the county shall be liable for damages, only, as provided by section 12090. [S., '13, § 1452-b.]

7188. Receipt. The treasurer shall in all cases make out and deliver to the taxpayer a receipt, stating the time of payment, the description and assessed value of each parcel of land, and the assessed value of personal property, the amount of each kind of tax, the interest on each and costs, if any, giving a separate receipt for each year; and he shall make the proper entries of such payments on the books of his office. Such receipt shall be in full of the first or second half or all of such person's taxes for that year, but the treasurer shall receive the full amount of any county, state, or school tax whenever the same is tendered, and give a separate receipt therefor. [R., '60, § 760; C., '73, § 867; C., '97, § 1405.]

7189. Distress and sale. The treasurer shall collect all delinquent taxes by distress or sale of any personal property belonging to the person to whom such taxes are assessed, and not exempt from taxation, or any real or personal property upon which they are a lien, but he shall continue to receive the same until collected, and any owner or claimant of any real estate advertised for sale may pay to the county treasurer, at any time before the sale thereof, the taxes due thereon, with accrued penalties, interest, and costs to the time of

payment. [C., '51, §§ 495, 497; R., '60, §§ 759, 760, 769; C., '73, §§ 865, 866; C., '97, § 1414.]

NOTE: Certain property of national guardsmen exempt, see § 461.

7190. Delinquent personal tax list. The treasurer shall, after October first, and before December thirty-first, of each year, enter in a book to be kept in his office as a part of the records thereof, to be known as the delinquent personal tax list, all delinquent personal taxes of any preceding year. [C., '51, § 488; R., '60, § 750; C., '73, § 845; C., '97, § 1389; S., '13, § 1389-a.]

7191. Record—contents. Such entry of tax on delinquent personal tax list shall give the names of delinquents alphabetically arranged, with amounts of tax and for what year or years, and where property was located when assessed. [R., '60, § 750; C., '73, § 845; C., '97, § 1389; S., '13, § 1389-b.]

7192. Lien on real estate. Personal tax entered on delinquent personal tax list, as provided in the two preceding sections, shall constitute a lien on any real estate owned or acquired by any such delinquent, and so remain until the same has been paid or legally canceled, and taxes not so entered for each year shall cease to be a lien. [R., '60, § 750; C., '73, § 845; C., '97, § 1389; S., '13, § 1389-c.]

7193. Former delinquent real estate taxes. The treasurer shall each year, upon receiving the tax list, enter upon the same in separate columns opposite each parcel of real estate on which the tax remains unpaid for any previous year, the amount of such unpaid tax, and unless such delinquent real estate tax is so brought forward and entered it shall cease to be a lien upon the real estate upon which the same was levied, or upon any other real estate of the owner. But to preserve such lien it shall only be necessary to enter such tax, as aforesaid, opposite any tract upon which it was a lien. Any sale for the whole or any part of such delinquent tax not so entered shall be invalid. [R., '60, § 750; C., '73, § 845; C., '97, § 1389; S., '13, § 1389-d.]

7194. Penalty and interest limited—unavailable taxes. No penalty or interest, except for the first four years, shall be collected upon taxes remaining unpaid four years or more from the thirty-first day of December of the year in which the tax books containing the same were first placed in the hands of the county treasurer, and the board of supervisors at the January meeting may declare such tax unavailable, and when so declared by the board, the amount shall be credited to the treasurer by the auditor as unavailable and he shall apportion such tax among the funds to which it belongs. [C., '97, § 1391; S. S., '15, § 1391.]

7195. County credited. Any portion of such tax belonging to the state shall be reported by him in his semiannual settlement sheets to the

auditor of state as unavailable, whereupon the auditor of state shall credit the county with the amount so reported, but nothing in this or the preceding section shall be construed to in any way release the county treasurer from any duty required of him in the collection of delinquent taxes, nor to release the taxpayer from his liability for the same. [S. S., '15, § 1391.]

7196. Subsequent collection. Should any of such tax afterward be collected, the county treasurer shall distribute the net amount collected among the several funds the same as though it had never been declared unavailable, and the portion belonging to the state shall be credited back to the state and included in the treasurer's remittance of other state taxes to the treasurer of state and shall be reported by the county auditor in his semiannual settlement sheets to the auditor of state, who shall recharge the same to the county. [S. S., '15, § 1391.]

7197. Certificate of taxes due. The county treasurer, when requested to do so by anyone having an interest therein, shall certify in writing the entire amount of taxes and assessments due upon any parcel of real estate, together with all sales of the same for unpaid taxes or assessments shown by the books in his office, with the amount required for redemption from the same, if still redeemable, if he is paid or tendered his fees for such certificate at the rate of fifty cents for the first parcel in each township, town, or city, and ten cents for each subsequent parcel in the same township, town, or city, and in computing such fees each description in the tax list shall be reckoned a parcel. [C., '73, § 848; C., '97, § 1393.]

7198. Effect of certificate and receipt. Such certificate, with the treasurer's receipt showing the payment of all the taxes therein specified, and the auditor's certificate of redemption from the tax sales therein mentioned, shall be conclusive evidence for all purposes, and against all persons, that the parcel of real estate in said certificate and receipt described was, at the date thereof, free and clear of all taxes and assessments, and sales for taxes or assessments, except sales whereon the time of redemption had already expired and the tax purchaser had received his deed. [C., '73, § 849; C., '97, § 1394.]

7199. Treasurer liable. For any loss resulting to the county, or any subdivision thereof, or to any tax purchaser, or taxpayer, from an error in said certificate or receipt, the treasurer and his sureties shall be liable on his official bond. [C., '73, § 850; C., '97, § 1395.]

7200. Information as to taxes due. The treasurer, when applied to by letter and receiving thirty cents in postage stamps or money, and ten cents additional for each tract of one hundred sixty acres in excess of three hundred twenty acres, in no case to exceed fifty cents, shall correctly answer the same by mail, giving the amount and interest of unpaid taxes and

of any tax sales thereof as the same appear upon the tax list in his office, and upon the return of the letter or a copy, before the last day of the current month, with the demand due as shown therein, he shall pay the taxes and forward to the sender a tax receipt without further charge. [C., '73, § 3794; C., '97, § 1396.]

7201. Penalty. Any treasurer who shall neglect for twenty days after the receipt of any such letter, with money or stamps inclosed as aforesaid, to answer the same fully as required in the preceding section, or who shall directly or indirectly receive or be concerned in receiving any greater compensation for the service mentioned than as above provided, shall forfeit to the person aggrieved, for each offense, the sum of fifty dollars, which may be recovered in a civil action. [C., '73, § 3795; C., '97, § 1397.]

7202. Lien of taxes on real estate. Taxes upon real estate shall be a lien thereon against all persons except the state. [C., '51, § 495; R., '60, § 759; C., '73, §§ 853, 865; C., '97, § 1400; S., '13, § 1400.]

7203. Personal property tax lien on real estate. Taxes due from any person upon personal property shall be a lien upon any and all real estate owned by such person or to which he may acquire title. [C., '73, § 853; C., '97, § 1400; S., '13, § 1400.]

7204. Lien between vendor and purchaser. As against a purchaser, such liens shall attach to real estate on and after the thirty-first day of December in each year. [C., '97, § 1400; S., '13, § 1400.]

7205. Lien follows certain personal property. Taxes upon stocks of goods or merchandise, fixtures and furniture in hotels, rooming houses, billiard halls, moving picture shows and theaters, shall be a lien thereon and shall continue a lien thereon when sold in bulk, and may be collected from the owner, purchaser or vendee, and such owner, purchaser or vendee of any of such goods, merchandise, furniture or fixtures shall be personally liable for all taxes thereon. [37 G. A., ch. 337, § 1.]

7206. Lien follows building assessed as personalty. In all cases where buildings are assessed as personal property, the taxes shall be and remain a lien on said buildings from the date of levy until paid. [S., '13, § 1400.]

7207. Payment—what receivable. The treasurer is authorized and required to receive in payment of all taxes by him collected, together with the interest and principal of the school fund, the circulating notes of national banking associations organized under and in accordance with the conditions of the act of the congress of the United States, entitled, "An act to provide a national currency secured by the pledge of the United States stocks, and to provide for the redemption thereof", approved February 25, 1863, and acts amendatory thereto,

United States legal tender notes, and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency. [C., '73, § 855; C., '97, § 1402.]

7208. Certain warrants receivable. Auditor's warrants shall be received by the county treasurer in full payment of state taxes, and county warrants shall be received by the treasurer of the proper county for ordinary county taxes, but money only shall be received for the school tax. Road taxes, except the portion payable in money, may be discharged and road certificates of work done received, as provided by law. [C., '51, § 489; R., '60, §§ 754, 2057, 2059; C., '73, §§ 854, 1779; C., '97, § 1401.]

7209. Warrants not receivable. Warrants issued by any city or town shall not be received by the county treasurer in payment of the city or town taxes. [C., '97, § 900.]

7210. Payment—installments. No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation to attend at the office of the treasurer, at some time between the first Monday in January and the first day of March following, and pay his taxes in full, or one-half thereof before the first day of March succeeding the levy, and the remaining half before the first day of September following. [C., '51, § 492; R., '60, § 756; C., '73, § 857; C., '97, § 1403.]

7211. When delinquent. In all cases where the half of any taxes has not been paid before the first day of April succeeding the levy, the whole amount charged against such entry shall become delinquent from the first day of March after due; and in case the second installment is not paid before the first day of October succeeding its maturity, it shall become delinquent from the first day of September after due. [C., '97, § 1403.]

7212. Apportionment. In all cases where taxes are paid by installment, each of such payments, except road taxes, shall be apportioned among the several funds for which taxes have been assessed in their proper proportions. [C., '97, § 1403.]

7213. Road taxes. All road taxes payable to the county treasurer shall be due with the first installment of other taxes, and subject to the penalty for nonpayment as other taxes. [C., '97, § 1413.]

7214. Interest as penalty. If the first installment of taxes shall not be paid by April first, the whole shall become due and draw interest as a penalty of one per cent per month until paid, from the first of March following the levy; and if the first half shall be paid when due, and the last half shall not be paid by October first following such levy, then a like interest shall be charged from the date such last half became delinquent. [C., '51, §§ 495, 497; R., '60, §§ 759, 760; C., '73, § 865; C., '97, § 1413.]

7215. Penalty on personal taxes. On all personal taxes not paid on or before the first Monday in December a penalty of five per cent shall be added and collected in addition to the one per cent per month penalty herein provided; and the tax with all penalties shall be collected at the same time and in the same manner. [C., '73, § 866; C., '97, § 1413; 39 G. A., ch. 66, § 1.]

7216. When interest penalty omitted. No interest as a penalty shall be added to taxes levied by any court to pay a judgment on county, city, town or school district indebtedness, other than the interest which such judgment may draw, nor upon taxes levied in aid of the construction of any railroad. [C., '73, § 866; C., '97, § 1413.]

7217. Assessment of migratory property of nonresident. All personal property, the owner of which is a nonresident of the state, and which property is by the owner thereof intended for sale or consumption at a place, or shipment to a place other than where said property is located, shall be assessed in the owner's name, if the owner is known, and if the owner is unknown or uncertain the same shall be assessed to "unknown owner", and shall be by the assessor sufficiently described so that said property may be identified. [C., '97, § 1404.]

7218. Lien on migratory personal property—maturity of tax. A lien for the tax upon said property as herein provided shall relate back to and exist from the first day of January of the year for which it is assessed, and if anyone seeks to remove the said property from the county before the tax for said year shall be paid, the tax shall immediately become due and collectible. [C., '97, § 1404.]

7219. Enforcement of lien. It shall be the duty of the assessor to notify the county auditor if said property is being, or is about to be, removed from the county. In such event, or if the knowledge of the removal of or intent to remove said property shall come to him in any other authentic manner, the said auditor shall certify such fact to the county treasurer, with a full description of the property as the same appears on the assessor's books, giving assessment district, where located, and the amount of said assessment, and the county treasurer shall thereupon proceed by distress to restrain the removal of said property and secure the lien of the tax due or to become due. [C., '97, § 1404.]

7220. Release of lien by bond. If at the time of such distress the levy for the year is unknown, the auditor is authorized to release the lien of such tax upon a good and sufficient bond, with sureties resident in the county, being filed with said auditor, to be by him approved, which bond shall obligate all parties thereto to pay all taxes due on said property when same are payable. Upon the filing and approving of such bond, the auditor shall make a certificate releasing the said personality from the lien of such tax. [C., '97, § 1404.]

7221. Payment—effect. The payment of said tax shall be a bar against the collection of taxes for same year on said property in any other county in this state. [C., '97, § 1404.]

7222. Collectors—appointment. Immediately after the taxes become delinquent, each county treasurer shall proceed to collect the same by distress and sale of the personal property of the delinquent taxpayers, and for this purpose he may appoint one or more collectors to assist him in collecting the same. [C., '73, § 859; C., '97, § 1407; S., '13, § 1407.]

NOTE: Above section and the four following sections made applicable to special charter cities by § 6895.

7223. Compensation and accounting. Each collector appointed shall receive for his services and expenses the sum of five per cent on the amount of all taxes collected and paid over by him, which percentage he shall collect from the delinquent, together with the whole amount of delinquent taxes and interest; and pay the same to the treasurer at the end of each month. [C., '73, § 859; C., '97, § 1407; S., '13, § 1407.]

7224. Sheriff or constable as collector. In the discharge of his duties as collector, should it become necessary to make the delinquent taxes by distress and sale, or should no collector be appointed, or should the collector fail to institute proceedings to collect said delinquent taxes, the treasurer shall place the same in the hands of the sheriff, or a constable, who shall proceed to collect the same, and either shall be entitled to receive the same compensation, in addition to the five per cent, as constables are entitled to receive for the sale of property on execution. [C., '73, § 859; C., '97, § 1407; S., '13, § 1407.]

7225. Personal property tax collectors. The boards of supervisors may in their discretion authorize the appointment by the treasurer of one or more collectors to assist in the collection of such delinquent personal tax as the board may designate, and may pay such collector as full compensation for all services rendered and expenses incurred a sum not to exceed ten per cent of the amount collected, which sum shall in no event be paid or allowed until all such taxes collected have been paid over to the county treasurer by such collector. [C., '73, § 859; C., '97, § 1407; S., '13, § 1407.]

7226. Current taxes—when delivered for collection. In no case shall delinquent taxes of the current year be turned over for collection, whether designated by the board or otherwise, before the first day of November. [40 G. A., ch. 151.]

7227. Compensation deducted ratably. The amount allowed as compensation to such collector shall be deducted ratably from the several funds to which such taxes so collected by the collector belong. [S., '13, § 1407-1a.]

7228. Taxes certified to another county. In all cases of delinquent taxes in any county, where the person upon whose property the

same were levied shall have disposed of or removed the said property and the treasurer of the county where the taxes were levied can find no property within said county out of which said taxes can be made, the treasurer of the county where said taxes are delinquent shall make out a certified abstract thereof and forward the same to the treasurer of the county in which the delinquent resides or has property, when the treasurer transmitting the said abstract has reason to believe that said taxes can be collected thereby. [C., '73, § 861; C., '97, § 1409; S. S., '15, § 1409.]

7229. Collection in such case. The treasurer forwarding and the one receiving said abstract shall each keep a record thereof, and, upon receipt and filing in the office of the treasurer to whom sent, it shall have the effect of a levy of taxes in that county, and the collection of the same shall be proceeded with in the same manner as in the collection of other taxes. [C., '73, § 862; C., '97, § 1410.]

7230. Penalties collectible. The officer collecting taxes so certified into another county shall, in addition to the penalties on delinquent taxes, assess and collect the further penalty of twenty per cent on the whole amount of such taxes, inclusive of the penalties thereon. [C., '73, § 863; C., '97, § 1411.]

7231. Return. The officer receiving said abstract shall, when in his opinion the taxes are uncollectible, return the same with the indorsement thereon "uncollectible", and, if collected, he shall remit the amount to the treasurer of the county where said taxes were levied, less the penalty provided by the preceding section. [C., '73, § 864; C., '97, § 1412.]

7232. Monthly apportionment. On or before the tenth day of each month the treasurer shall apportion all taxes and interest on the same collected during the preceding month among the several funds to which it belongs according to the number of mills levied for each fund and enter the same upon his cash account, and report the amount of each tax and interest collected on same to the county auditor who shall charge him in each fund with the same. [C., '73, § 868; C., '97, § 1415; S., '13, § 1415.]

7233. Misapplied interest or penalty. Any interest or penalty on delinquent taxes apportioned or transferred to any fund other than the fund upon which same was collected, together with a penalty of ten per cent and interest at six per cent on the aggregate from the time such tax was due and payable, may be recovered in a civil action brought against the county treasurer and his bondsmen by any person in control of the fund affected thereby. [S., '13, § 1415.]

7234. Record of separate funds. The auditor shall keep a complete account with the treasurer, with each separate fund or tax by itself, and in each account he shall charge him with the amounts in his hands at the opening

of such account whether it be delinquent taxes, notes, cash, or other assets belonging to such fund, the amount of each tax for each year when the tax list is received by him, and all additions to each tax or fund whether by additional assessments, interest on delinquent taxes, amount received for licenses, or other items, and upon proper vouchers shall credit him for money disbursed for double and erroneous assessments, including all improper and illegal assessments the correction or remission of which causes a diminution of the tax, and for unavailable or uncollectible taxes, as directed by the board of supervisors. [R., '60, § 761; C., '73, § 869; C., '97, § 1416.]

7235. Refunding erroneous tax. The board of supervisors shall direct the treasurer to refund to the taxpayer any tax or portion thereof found to have been erroneously or illegally exacted or paid, with all interest and costs actually paid thereon. [R., '60, § 762; C., '73, § 870; C., '97, § 1417.]

7236. Sale for erroneous tax. In case any real estate subject to taxation shall be sold

for the payment of such erroneous tax, interest or costs, the error or irregularity in the tax may be corrected at any time provided in this chapter, but such correction shall not affect the validity of the sale or the right or title conveyed by a treasurer's deed, if the property was subject to taxation for any of the purposes for which any portion of the taxes for which the land was sold was levied, and the taxes were not paid before the sale, or the property redeemed from sale. [R., '60, § 762; C., '73, § 870; C., '97, § 1417.]

7237. Remission in case of loss. The board of supervisors shall have power to remit in whole or in part the taxes of any person whose buildings, crops, stock, or other property has been destroyed by fire, tornado, or other unavoidable casualty, if said property has not been sold for taxes, or if said taxes have not been delinquent for thirty days at the time of the destruction. The loss for which such remission is allowed shall be such only as is not covered by insurance. [R., '60, § 818; C., '73, § 800; C., '97, § 1307.]

CHAPTER 347

TAX SALE

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7238. Sale shown. The auditor, when making up the tax list, before it is placed in the hands of the county treasurer, shall designate each piece or parcel of real estate sold for taxes, and not redeemed, by writing opposite the same the year in which it was sold in a column made for that purpose and headed "sold in". [C., '73, § 842; C., '97, § 1386.]

7239. Notice of previous sale. Each county treasurer, when any person offers to pay taxes on any real estate marked "sold", shall notify him of such fact and inform him for what taxes and when the sale was made. [C., '73, § 847; C., '97, § 1392.]

7240. Sale of personal property. If anyone neglects to pay his taxes at or before maturity,

the treasurer may collect the same by distress and sale of his personal property not exempt from taxation, and the tax list alone shall be sufficient warrant therefor. When the treasurer distrains goods, and the owner refuses to give a sufficient bond for the delivery of the same on the day of sale, he may keep them at the expense of the owner. [C., '51, §§ 492, 493; R., '60, §§ 756, 757; C., '73, §§ 857, 858; C., '97, § 1406.]

NOTE: Above section and the three following sections made applicable to special charter cities by § 6895.

7241. Notice of time and place of sale. The treasurer shall give notice of the time and place of their sale within five days after the taking, in the manner constables are required to give notice of the sale of personal property

under execution. [C., '51, § 493; R., '60, § 757; C., '73, § 858.]

7242. Time of sale—adjournment. The time of sale shall not be more than twenty days from the day of taking, but he may adjourn the sale from time to time, not exceeding five days in all, and shall adjourn at least once when there are no bidders, and, in case of adjournment, he shall post up a notice thereof at the place of sale, announcing the time to which the adjournment is ordered. [C., '51, § 493; R., '60, § 757; C., '73, § 858.]

7243. Surplus. Any surplus remaining above the taxes, charges of keeping, and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges. [C., '51, § 493; R., '60, § 757; C., '73, § 858; C., '97, § 1406.]

7244. Annual tax sale. Annually, on the first Monday in December, the treasurer shall offer at his office at public sale all lands, town lots, or other real property on which taxes of any description for the preceding year or years are delinquent, which sale shall be made for the total amount of taxes, interest, and costs due and unpaid thereon. [C., '51, § 496; R., '60, § 763; C., '73, § 871; C., '97, § 1418.]

7245. Dual county seats. In counties having two county seats and divided into two districts for the collection of taxes, such sale may be made by the deputy treasurer and the recorder or his deputy at the county seat where the taxes for the district are collected, and the records thereof shall be kept thereat. Such deputy treasurer and the recorder or his deputy shall have all the powers conferred by law upon the treasurer and auditor in relation to the collection of the revenue, sales for delinquent taxes, redemption therefrom, the execution of tax deeds thereunder, and every other matter connected therewith. [C., '97, § 1418.]

7246. Notice of sale—service. Notice of the time and place of such sale shall be given by the treasurer, and shall contain a description of each separate tract to be sold as taken from the tax list, the amount of taxes for which it is liable delinquent for each year, and the amount of penalty, interest, and costs thereon, the name of the owner, if known, or the person, if any, to whom it is taxed, by publication in some newspaper in the county, once each week, for three consecutive weeks, the last of which shall be at least one week before the day of sale, and by immediately posting a copy of the first publication thereof at the door of the courthouse, if there be one, if not, at the door of the place where the last term of district court was held. [C., '51, § 498; R., '60, § 764; C., '73, §§ 872-874, 3833; C., '97, § 1419; S., '13, § 1419.]

7247. Costs. The compensation for such publication shall not exceed forty cents for

each description, and shall be paid by the county. The amount paid therefor shall be collected as a part of the costs of sale and paid into the county treasury. [C., '51, § 498; R., '60, § 764; C., '73, §§ 873, 3833; C., '97, § 1419; S., '13, § 1419; 38 G. A., ch. 389, § 1.]

7248. Substituted service. If the treasurer can not procure the publication of the notice for the sum herein fixed, then the notice may be given by posting the same in four of the most public places in the county, to be selected by him, for four weeks, and filing a copy thereof with the auditor before the day of sale, with his verified statement thereon that it had been posted as and for the time herein required, and that he could not obtain a publication thereof at the legal rate. [C., '51, § 498; R., '60, § 764; C., '73, §§ 873, 3833; C., '97, § 1419; S., '13, § 1419.]

7249. Certificate of publication. The treasurer shall obtain a copy of the notice of sale, with a certificate of the publication thereof, from the printer or publisher, and file it in the office of the auditor, which certificate shall be substantially in the following form:

I, A..... B....., publisher (or printer) of the....., a newspaper printed and published in the county of.....and state of Iowa, do hereby certify that the foregoing notice and list were published in said newspaper once in each week for three successive weeks, the last of which publications was made on the.....day of....., A. D., and that copies of each number of said paper in which said notice and list were published were delivered by carrier or transmitted by mail to each of the subscribers to said paper, according to the accustomed mode of business in this office.

A..... B.....
State of Iowa, }
.....County. } ss.

The above certificate of publication was subscribed and sworn to before me by the above named A..... B....., who is personally known to me to be the identical person described therein, on the.....day of....., A. D.....

Auditor..... County, Iowa.
[C., '51, § 500; R., '60, § 771; C., '73, § 881; C., '97, § 1420.]

7250. Method of describing lands etc. In all entries required to be made by the auditor, treasurer, or other officer, letters and figures may be used to denote townships, ranges, sections, parts of sections, lots, blocks, date, and the amount of taxes, interest, and costs. [R., '60, § 770; C., '73, § 880; C., '97, § 1421.]

7251. Irregularities in advertisement. No irregularity or informality in the advertisement shall affect the legality of the sale or the title to any real estate conveyed by the treasurer's deed under this and the two following chapters, and in all cases its provisions shall be sufficient

notice to the owners of the sale thereof. [R., '60, § 770; C., '73, § 880; C., '97, § 1421.]

7252. Offer for sale. The treasurer shall, on the day of the sale, at ten o'clock in the forenoon, at his office, offer for sale, separately, each tract or parcel of real estate advertised for sale on which the taxes and costs shall not have been paid. [C., '51, § 499; R., '60, § 765; C., '73, § 875; C., '97, § 1422.]

7253. Bid—purchaser. The person who offers to pay the amount of taxes which are a lien on any parcel of land or town lot for the smallest portion thereof shall be the purchaser, and when such purchaser shall designate the portion of any tract of land or town lot for which he will pay the whole amount of taxes for which it may be sold, the portion thus designated shall be an undivided portion. [C., '51, § 501; R., '60, § 766; C., '73, § 876; C., '97, § 1423.]

NOTE: Above section made applicable to special charter cities by § 6895.

7254. Sale continued. The treasurer shall continue the sale from day to day as long as there are bidders, or until the taxes are all paid. [C., '51, § 499; R., '60, § 767; C., '73, § 877; C., '97, § 1424.]

7255. Prior advertised property—notice and sale. Each treasurer shall, on the day of the regular tax sale each year or any adjournment thereof, offer and sell at public sale, to the highest bidder, all real estate which remains liable to sale for delinquent taxes, and shall have previously been advertised and offered for two years or more and remained unsold for want of bidders, general notice of such sale being given at the same time and in the same manner as that given of the regular sale. [C., '97, § 1425.]

7256. Unavailable tax—credit given. Any taxes on such real estate, in excess of the amount for which the same was sold, shall be credited to the treasurer by the auditor as unavailable, and he shall apportion such excess among the funds to which it belongs, and if any of such excess belongs to the state, it shall be reported by him to the auditor of state as unavailable, who shall give the county credit therefor. [C., '97, § 1425.]

7257. Resale. The person purchasing any parcel or part thereof shall forthwith pay to the treasurer the amount bid, and on failure to do so the same shall at once be again offered as if no such sale had been made. Such payments may be made in the funds receivable in payment of taxes. [C., '51, § 502; R., '60, § 768; C., '73, § 878; C., '97, § 1426.]

7258. Record of sales. The auditor shall attend all sales of real estate for taxes, and keep a record thereof in a book to be kept by him for that purpose, therein describing each tract of real estate on which the taxes and costs were paid by the purchaser as they are

described in the copy of the notice on file in his office, stating in separate columns the amount, as obtained from the treasurer's tax list, of each kind of tax, interest, and costs for each tract, how much and what part of each parcel was sold, to whom, and date thereof. The treasurer shall also keep a book of sales in which he shall make the same record. He shall also note in the tax list, opposite the description of the property sold, the fact and date thereof. [R., '60, § 772; C., '73, § 882; C., '97, § 1427.]

7259. Sale adjourned. When all the real estate advertised for sale has been offered, and a part remains unsold for want of bidders, the treasurer shall adjourn the sale to some day not exceeding two months from adjournment, due notice of which day shall be given at the time thereof, and by keeping such notice posted in a conspicuous place in his office, and no further notice shall be necessary. On the day fixed by the adjournment, the same proceedings shall be had as in the first instance. Further adjournment shall be made from time to time, not exceeding two months, and the sales thus continued until the next regular annual sale, or until all the taxes are paid. [R., '60, § 773; C., '73, § 883; C., '97, § 1428.]

NOTE: Above section made applicable to special charter cities by § 6878.

7260. Misconduct of officers. Any treasurer or auditor failing to attend a sale of lands in person or by deputy shall forfeit and pay the sum of one hundred dollars, to be recovered in an action in the name of the county and for its use. If such officer or deputy shall sell or assist in selling any real estate, knowing it is not subject to taxation, or that the taxes for which it is sold have been paid, or shall knowingly and wilfully sell or assist in selling any real estate for taxes to defraud the owner thereof, or shall knowingly and wilfully execute a deed for property so sold, he shall, upon conviction, be fined in a sum of not less than one thousand nor more than three thousand dollars, or imprisoned in the county jail not exceeding one year, or both fined and imprisoned, and shall be liable to pay the injured party all damages sustained by him on account thereof, and all such sales shall be void. [R., '60, § 774; C., '73, § 884; C., '97, § 1429.]

7261. Fraud of officers. If any treasurer or auditor shall be directly or indirectly concerned in the purchase of any real estate sold for the nonpayment of taxes, he and his sureties shall be liable on his official bond for all damages sustained by the owner of such property, and all such sales shall be void. In addition thereto, the officer so offending shall, upon conviction, be fined in a sum of not more than one thousand dollars. [R., '60, § 775; C., '73, § 885; C., '97, § 1430.]

7262. Subsequent sale. If, from neglect of officers to make returns, or other good cause, real estate can not be advertised and offered

for sale on the first Monday of December, the treasurer shall make the sale on the first Monday of the next succeeding month in which the required notice can be given. [R., '60, § 776; C., '73, § 886; C., '97, § 1431.]

7263. Certificate of purchase. The treasurer shall prepare, sign, and deliver to the purchaser of any real estate sold for the non-payment of taxes a certificate of purchase, describing it as shown in the record of sales, giving the part of each tract or lot sold, the amount of each kind of tax, interest, and costs for each tract or lot as described in such record, and that payment has been made therefor. Not more than one such parcel or description shall be entered upon each certificate of purchase. [C., '51, § 503; R., '60, § 777; C., '73, § 887; C., '97, § 1432; S., '13, § 1432; 39 G. A., ch. 12.]

7264. Loss of certificate. In case of loss of said certificate of purchase, the owner thereof, as appears on record, may, by filing an affidavit of such loss or destruction with the county treasurer, receive a duplicate thereof, which shall take the place of the original certificate and have the same force and effect in law and be subject to the same rules and regulations. [S., '13, § 1432.]

7265. Assignment—presumption from deed recitals. The certificate of purchase shall be assignable by indorsement and entry in the register of tax sales in the office of county treasurer of the county from which said certificate issued, and when such assignment is so entered, it shall vest in the assignee or his legal representatives all the right and title of the assignor. The statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence thereof. [R., '60, § 778; C., '73, § 888; C., '97, § 1433; S., '13, § 1433.]

7266. Payment of subsequent taxes by purchaser. The treasurer shall also prepare, sign, and deliver to the purchaser of any real estate sold for taxes duplicate receipts for taxes, interest, and costs paid by him after the date of his purchase for any subsequent year or years, one of which receipts shall be filed in the office of the auditor and noted on the register of sales therein. [C., '73, § 889; C., '97, § 1434.]

NOTE: Above section and the following section made applicable to special charter cities by § 6895.

7267. Failure to file duplicate receipt. If such duplicate receipt is not so filed before

redemption, such tax shall not be a lien upon the land, and the person paying the tax shall not be entitled to recover it of the owner of the real estate. [C., '73, § 889; C., '97, § 1434.]

7268. School, agricultural college, or university land. When any school, agricultural college, or university land sold on credit is sold for taxes, the purchaser shall acquire only the interest of the original purchaser therein, and no sale of any such lands for taxes shall prejudice the rights of the state, agricultural college, or university. In all cases where the real estate is mortgaged or otherwise incumbered to the school, agricultural college, or university fund, the interest of the person who holds the fee shall alone be sold for taxes, and in no case shall the lien or interest of the state be affected by any sale thereof. The foregoing provision shall include all lands exempt from taxation by law, and any legal or equitable estate therein held, possessed, or claimed for any public purpose, and no assessment or taxation of such lands, nor the payment of any such tax by any person, or the sale and conveyance for taxes of any such lands, shall in any manner affect the right or title of the public therein, or confer upon the purchaser or person who pays such taxes any right or interest in such land. [R., '60, §§ 810, 811; C., '73, § 900; C., '97, § 1435.]

7269. Assessment to wrong person. No sale of real estate for taxes shall be invalid on account of its having been taxed in any other name than that of the rightful owner, if it is in other respects sufficiently described. [R., '60, § 787; C., '73, § 904; C., '97, § 1450.]

7270. Certified copies of records as evidence. The books and records belonging to the offices of the auditor and treasurer, or copies thereof properly certified, shall be sufficient evidence to prove the sale of any real estate for taxes, the redemption thereof, or the payment of taxes thereon. [R., '60, § 788; C., '73, § 905; C., '97, § 1451.]

7271. Failure to obtain deed—cancellation of sale. After eight years have elapsed from the time of any tax sale, and no action has been taken by the holder of a certificate to obtain a deed, it shall be the duty of the county auditor and county treasurer to cancel such sales from their tax sale index and tax sale register. [C., '97, § 1452.]

CHAPTER 348

TAX REDEMPTION

7272. Redemption—terms.
 7273. Nonallowable penalties.
 7274. Agricultural college lands.
 7275. Redemption from sale for part of tax.
 7276. Certificate of redemption—countersigned by treasurer.
 7277. Minors and lunatics.
 7278. Redemption after delivery of deed.
 7279. Notice of expiration of right of redemption.
 7280. Service of notice.
 7281. Agent of nonresident.
 7282. When service deemed complete—presumption.
 7283. Cost—fee—report.

7272. Redemption—terms. Real estate sold under the provisions of this chapter and chapter 347 may be redeemed at any time before the right of redemption is cut off, by the payment to the auditor, to be held by him subject to the order of the purchaser, of the amount for which the same was sold and eight per cent of such amount added as a penalty, with eight per cent interest per annum on the whole amount thus made from the day of sale, and the amount of all taxes, interest, and costs paid by the purchaser or his assignee for any subsequent year or years, with a similar penalty added as before on the amount of the payment for each subsequent year, and eight per cent per annum on the whole of such amount or amounts from the day or days of payment. [C., '51, § 505; R., '60, § 779; C., '73, § 890; C., '97, § 1436; S., '13, § 1436.]

NOTE: Costs of service of notice and costs of affidavit of publication, see § 7283.

7273. Nonallowable penalties. The penalty for nonpayment of taxes of any subsequent year or years shall not attach, unless the same shall have remained unpaid until the first day of April after they become due and have become delinquent, nor shall said penalties apply to taxes voted in aid of the construction of any railroad. [C., '73, § 890; C., '97, § 1436; S., '13, § 1436.]

7274. Agricultural college lands. In redeeming from a sale of a leasehold interest in agricultural college land, the amount to be paid shall include any amount paid by the holder of the certificate as interest or principal due by the terms of the lease or otherwise to prevent a forfeiture thereof, as provided by law, and for which proper voucher shall have been filed with the auditor, with interest thereon at eight per cent per annum from date of payment, which amount shall be paid by the auditor to the holder of the certificate, and the certificate of redemption shall show the amount so paid by the party redeeming. [C., '51, § 505; R., '60, § 779; C., '73, § 890; C., '97, § 1436; S., '13, § 1436.]

7275. Redemption from sale for part of tax. In case a redemption is made of any real estate

sold for a less sum than the taxes, penalty, interest, and costs, the purchaser shall receive only the amount paid and a ratable part of such penalty, interest, and costs. In determining the interest and penalties to be paid upon redemption from such sale, the sum due on any parcel sold shall be taken to be the full amount of taxes, interest, and costs due thereon at the time of such sale, and the amount paid for any such parcel at such sale shall be apportioned ratably among the several funds to which it belongs. Real estate so sold shall be redeemable in the same manner and with the same penalties as that sold for the taxes of the preceding year. [C., '97, § 1437.]

7276. Certificate of redemption—countersigned by treasurer. The auditor shall, upon application of any party to redeem real estate sold for taxes, and being satisfied that he has a right to redeem the same upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate thereof, the date of the redemption, the amount paid, and by whom redeemed, and make the proper entries in the book of sales in his office, and immediately give notice of such redemption to the treasurer. The certificate of redemption shall then be presented to the latter, who shall countersign it, noting such fact in the sale book opposite the entry of the sale, and no certificate of redemption shall be evidence of such redemption without the signature of the treasurer. [R., '60, § 780; C., '73, § 891; C., '97, § 1438.]

7277. Minors and lunatics. If real property of any minor, lunatic or person of unsound mind is sold for taxes, it may be redeemed at any time within one year after such disability is removed, in the manner specified in the following section, or redemption may be made by the guardian or legal representative under sections 7272 to 7274, inclusive, at any time before the delivery of the deed. [R., '60, § 779; C., '73, § 892; C., '97, § 1439.]

NOTE: For applicability of above section and the six following sections to special charter cities, see § 6889.

7278. Redemption after delivery of deed. Any person entitled to redeem lands sold for taxes after the delivery of the deed shall do so by an equitable action in a court of record, in which all persons claiming an interest in the land derived from the tax sale, as shown by the record, shall be made defendants, and the court shall determine the rights, claims, and interest of the several parties, including liens for taxes and claims for improvements made on the land by the person claiming under the tax title. No person shall be allowed to redeem land sold for taxes in any other manner after the service of the notice provided for by the next section and the execution and delivery of the treasurer's deed. [C., '73, § 893; C., '97, § 1440.]

7279. Notice of expiration of right of redemption. After two years and nine months from the date of sale, the holder of the certificate of purchase may cause to be served upon the person in possession of such real estate, and also upon the person in whose name the same is taxed, if such person resides in the county where the land is situated, in the manner provided for the service of original notices, a notice signed by him, his agent, or attorney, stating the date of sale, the description of the property sold, the name of the purchaser, and that the right of redemption will expire and a deed for the land be made unless redemption is made within ninety days from the completed service thereof. [R., '60, § 781; C., '73, § 894; C., '97, § 1441; S., '13, § 1441; 40 Ex. G. A., S. F. 183, § 24.]

7280. Service of notice. Service may be made upon nonresidents of the county by publishing the same once each week, for three consecutive weeks, in some newspaper of said county, or by personal service thereof elsewhere in the same manner as original notices may be served. [C., '73, § 894; C., '97, § 1441; S., '13, § 1441; 40 Ex. G. A., S. F. 183, § 25.]

7281. Agent of nonresident. Any such nonresident may in writing appoint a resident

of the county in which such land is situated as agent, and file said appointment with the treasurer of said county, who shall forthwith record the same in a record kept in his office therefor, and index the same, after which personal service of said notice shall be made upon said agent. [C., '73, § 894; C., '97, § 1441; S., '13, § 1441; 40 Ex. G. A., S. F. 183, § 25.]

7282. When service deemed complete—presumption. Service shall be complete only after an affidavit has been filed with the treasurer, showing the making of the service, the manner thereof, the time when and place where made, and under whose direction the same was made; such affidavit to be made by the holder of the certificate or by his agent or attorney, and in either of the latter cases stating that such affiant is the agent or attorney, as the case may be, of the holder of such certificate; which affidavit shall be filed by the treasurer and entered upon the sale book opposite the entry of the sale, and said record or affidavit shall be presumptive evidence of the completed service of said notice, and the right of redemption shall not expire until ninety days after service is complete. [C., '73, § 894; C., '97, § 1441; S., '13, § 1441; 40 Ex. G. A., S. F. 183, § 27.]

7283. Cost-fee-report. The cost of serving the notice and affidavit of publication shall be added to the amount necessary to redeem. The fee for serving the notice shall be the same as for service of an original notice, including copy fee and mileage. The treasurer shall, upon the filing of proof of service and statement of costs, forthwith report the same in writing to the auditor, who shall enter it on the sale book against the proper tract of real estate. The holder of the certificate of sale or his agent may report in writing to the county auditor the amount of costs incurred in giving such notice, and the auditor shall enter the same in the sale book. No redemption shall be complete until such costs are paid. C., '73, § 894; C., '97, § 1441; S., '13, § 1441; 40 Ex. G. A., S. F. 183, § 28.]

CHAPTER 349

TAX DEED

7284. Deed executed.
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7286. Execution and effect of deed.
7287. Presumptive evidence.
7288. Conclusive evidence.
7289. Facts necessary to defeat deed.
7290. Additional facts necessary.

7291. Sale made by mistake.
7292. Fraudulent sale.
7293. Wrongful sales—purchaser indemnified.
7294. Correcting wrongful sale.
7295. Limitation of actions.
7296. Officers de facto.

7284. Deed executed. Immediately after the expiration of ninety days from the date of completed service of the notice provided in section 7282 the treasurer then in office shall make out a deed for each lot or parcel of land

sold and unredeemed, and deliver it to the purchaser upon the return of the certificate of purchase. The treasurer shall receive twenty-five cents for each deed made by him, and may include any number of parcels of

land purchased by one person in one deed, if desired by him. [C., '51, §§ 503, 504; R., '60, §§ 781, 782; C., '73, § 895; C., '97, § 1442.]

STATE OF IOWA, }
 } ss.
 County.}

7285. Form. Deeds executed by the treasurer shall be substantially in the following form:

KNOW ALL MEN BY THESE PRESENTS, that the following described real estate, viz.: (here follows the description), situated in the county of.....and state of Iowa, was subject to taxation for the year (or years) A. D....., and the taxes assessed thereon for the year (or years) aforesaid remained due and unpaid at the date of the sale hereinafter named; and the treasurer of said county, having on theday of....., A. D....., by virtue of the authority in him vested by law, at (an adjournment of) the sale begun and publicly held on the first Monday of December, A. D., exposed to public sale at the office of the county treasurer in the county aforesaid, in substantial conformity with all the requirements of the statute, the real property above described, for the payment of the taxes, interest and costs then due and remaining unpaid on said property, and at the time and place aforesaid A..... B....., of the county of and state of, having offered to pay the sum of dollars and cents, being the whole amount of taxes, interest and costs then due and remaining unpaid on said property, for (here follows the description of the property sold) which was the least quantity bid for, and payment of said sum having been made by him to said treasurer, the property was stricken off to him at that price; and the said A..... B..... did, on the day of, A. D., duly assign the certificate of the sale of the property as aforesaid and all his right, title and interest to said property to E..... F..... of the county of and state of; and by the affidavit of, filed in said treasurer's office on the day of, A. D., it appears that notice has been given more than ninety days before the execution of these presents to and of the expiration of the time of redemption allowed by law; and three years having elapsed since the date of said sale, and said property having not been redeemed therefrom:

Now, I, C..... D....., treasurer of said county, for the consideration of said sum to the treasurer paid as aforesaid and by virtue of law, have granted, bargained and sold, and by these presents do grant, bargain and sell to the said A..... B..... (or E..... F.....), his heirs and assigns, the real property hereinbefore described, to have and to hold unto him (or E..... F.....), his heirs and assigns, forever; subject, however, to all the rights of redemption provided by law. In witness whereof, I, C..... D....., treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name on this day of....., A. D.

I hereby certify that before me,, in and for said county, personally appeared the above named C..... D....., treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of said county, and acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county, for the purposes therein expressed.

Given under my hand (and seal) this..... day of....., A. D.

[R., '60, § 783; C., '73, § 896; C., '97, § 1443.]

7286. Execution and effect of deed. The deed shall be signed by the treasurer as such, and acknowledged by him before some officer authorized to take acknowledgments, and when substantially thus executed and recorded in the proper record in the office of the recorder of the county in which the property is situated, shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed, and all the right, title, interest, and claim of the state and county thereto. [C., '51, § 503; R., '60, § 784; C., '73, § 897; C., '97, § 1444.]

7287. Presumptive evidence. The deed shall be presumptive evidence in all the courts of this state in all controversies and actions in relation to the rights of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts:

1. That the real property conveyed was subject to taxation for the year or years stated in the deed.
2. That the taxes were not paid at any time before the sale.
3. That the real property conveyed had not been redeemed from the sale at the date of the deed.
4. That the property had been listed and assessed.
5. That the taxes were levied according to law.
6. That the property was duly advertised for sale.
7. That the property was sold for taxes as stated in the deed. [C., '51, § 503; R., '60, § 784; C., '73, § 897; C., '97, § 1444.]

7288. Conclusive evidence. The deed shall be conclusive evidence of the following facts:

1. That the manner in which the listing, assessment, levy, notice and sale were conducted was in all respects as the law directed.
2. That the grantee named in the deed was the purchaser.
3. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affect-

ing the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale and to vest the title in the purchaser were done, except in regard to the points named in the last preceding section wherein the deed shall be presumptive evidence only. [C., '51, § 503; R., '60, § 784; C., '73, § 897; C., '97, § 1444.]

7289. Facts necessary to defeat deed. In all actions involving the title to real estate claimed and held under a deed executed substantially as aforesaid by the treasurer, the person claiming title adverse to the title conveyed thereby shall be required to prove, in order to defeat the title, either:

1. That the real property was not subject to taxation for the year or years named in the deed,

2. That the taxes had been paid before the sale,

3. That the property had been redeemed from the sale and that such redemption was had or made for the use and benefit of persons having the right of redemption, or

4. That there had been an entire omission to list or assess the property, or to levy the taxes, or to give notice of the sale, or to sell the property. [C., '51, § 503; R., '60, § 784; C., '73, § 897; C., '97, § 1445.]

7290. Additional facts necessary. No person shall be permitted to question the title acquired by a treasurer's deed without first showing that he, or the person under whom he claims title, had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the property have been paid by such person, or the person under whom he claims title. [R., '60, § 784; C., '73, § 897; C., '97, § 1445.]

7291. Sale made by mistake. In any case where a person had paid his taxes, and through mistake in the entry made in the treasurer's books, or in the receipt, the land upon which the taxes were paid was afterward sold, the treasurer's deed shall not convey the title. [R., '60, § 784; C., '73, § 897; C., '97, § 1445.]

7292. Fraudulent sale. In all cases where the owner of the lands sold for taxes shall resist the validity of the tax title, he may prove

fraud committed by the officer selling the same, or in the purchaser, to defeat the same, and, if fraud is established, the sale and title shall be void. [R., '60, § 784; C., '73, § 897; C., '97, § 1445.]

7293. Wrongful sales—purchaser indemnified. When, by mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, or when land is sold in consequence of error in describing it in the tax receipt, the county shall hold the purchaser harmless by paying him the amount of principal, interest, and costs to which he would have been entitled had the land been rightfully sold, and the treasurer and his bondsmen shall be liable to the county therefor to the amount of his official bond; or the purchaser, or his assignee, may recover the same directly of him and his bondsmen. [C., '51, § 509; R., '60, § 785; C., '73, § 899; C., '97, § 1446.]

NOTE: Above section and the two following sections made applicable to special charter cities by § 6895.

7294. Correcting wrongful sale. When it shall be made to appear to the treasurer, before the execution of a deed for real estate sold for taxes, or if the deed be returned by the purchaser, that any tract or lot was sold which was not subject to taxation, or upon which the taxes had been paid, he shall make an entry opposite such tract or lot on the sale book that the same was erroneously sold, and such entry shall be evidence of the fact therein stated, and the purchase money shall be refunded to the purchaser. [R., '60, § 789; C., '73, § 901; C., '97, § 1447.]

7295. Limitation of actions. No action for the recovery of real estate sold for the nonpayment of taxes shall be brought after five years from the execution and recording of the treasurer's deed, unless the owner is, at the time of the sale, a minor, insane person, or convict in the penitentiary, in which case such action must be brought within five years after such disability is removed. [R., '60, § 790; C., '73, § 902; C., '97, § 1448.]

7296. Officers de facto. In all actions and controversies involving the question of title to real property held under a treasurer's deed, all acts of assessors, treasurers, auditors, supervisors and other officers de facto shall be of the same validity as acts of officers de jure. [R., '60, § 786; C., '73, § 903; C., '97, § 1449.]

CHAPTER 350

APPORTIONMENT OF TAXES

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7297. Application. When a tract of real estate has been assessed and taxed as one item of property, and thereafter and before the tax is paid, the title to different portions of said real estate becomes vested in different parties in severalty, and the said owners are unable to agree as to what portion of the total tax each portion of the real estate should bear, any of said parties may file with the board of supervisors a written application for the apportionment of said tax. [40 G. A., ch. 152, § 1.]

7298. Notice. In the absence of the appearance of all interested parties, the board shall prescribe the notice which nonappearing parties shall receive, and the time and manner of the service thereof. [40 G. A., ch. 152, § 2.]

7299. Order—record. On the hearing, the board shall apportion said tax to the different portions of the real estate owned in severalty, in accordance with the values thereof. All orders and determinations of the board shall be entered of record in its minutes. An order of apportionment shall definitely identify each portion of said real estate so owned in severalty. [40 G. A., ch. 152, § 3.]

7300. Correction of books. The county auditor shall, upon the making of an order of apportionment, at once correct the tax books in his possession, in accordance with said order, and if said books have been delivered to the county treasurer, the said auditor shall at once

certify said order of apportionment to the said treasurer who shall make said correction. [40 G. A., ch. 152, § 4.]

7301. Effect of order. An order of apportionment, when followed by a correction of the tax book in accordance therewith, shall have the same effect as though the original assessment had been made in the same manner. [40 G. A., ch. 152, § 5.]

7302. Appeal. A party aggrieved by an order of apportionment may appeal therefrom to the district court at any time within ten days from the date of said order, by serving written notice of said appeal on all other parties to said proceeding. Should personal service of said notice within the county be impossible as to any party, any judge of the district court may prescribe the manner of such service. [40 G. A., ch. 152, § 6.]

7303. Trial on appeal. The district court shall try said appeal anew and in equity. The final order of the court shall be certified by the clerk of the district court to the county auditor and shall be treated in the same manner as though originally made by the board of supervisors. [40 G. A., ch. 152, § 7.]

7304. Interpretative clause. This chapter shall not be construed as exclusive of other legal remedies. [40 G. A., ch. 152, § 8.]

CHAPTER 351

INHERITANCE TAX

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7305. "Person" defined—authority of county attorney. In the construction of this chapter the word "person" shall include plural as well as singular, and artificial as well as natural persons. This chapter shall not be construed to confer upon a county attorney authority to represent the state in any case, and he shall represent the treasurer of state only when especially authorized by him to do so. [S., '13, § 1481-a45; 39 G. A., ch. 38, § 14.]

7306. Estates taxable. The estates of all deceased persons in any property whether the decedents be inhabitants of this state or not, and whether such estates consist of real, personal or mixed property, tangible or intangible, and any interest in, or income from any such estate or property which estate or property is, at the death of the decedent owner within this state, or is subject to the jurisdiction of the courts of this state, or thereafter is brought

within this state and becomes subject to the jurisdiction of the courts of this state; or the property of any decedent, domiciled within this state at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the state, except real estate located outside of the state, passing in fee from the decedent owner, which shall pass in any manner herein described shall be subject to tax as herein provided. [C., '97, § 1467; S., '13, § 1481-a; 39 G. A., ch. 38, § 2.]

7307. Property included. The tax hereby imposed shall be collected upon the net market value and shall go into the general fund of the state to be determined as herein provided, of any property passing:

1. By will or under the statutes of inheritance of this or any other state or country.

2. By deed, grant, sale, gift, or transfer made in contemplation of the death of the grantor or donor, or any such deed, grant, sale, gift, or transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor.

3. Under power of appointment hereafter exercised whether the power was created before or after the taking effect of this chapter.

4. Property which is held jointly or as tenants in the entirety by the decedent and any other person or persons or any deposit in banks, or other institution in their joint names and payable to either or to the survivor, except such part as may be proven to have belonged to the survivor; or any interest of a decedent in property owned by a joint stock or other corporate body whereby the survivor or survivors become beneficially entitled to the decedent's interest upon the death of a share holder. The tax imposed upon the passing of property under the provisions of this paragraph shall apply to property held under all such contracts or agreements whether made before or after the taking effect of this chapter.

5. When the decedent shall have disposed of his estate in any manner to take effect at his death with a request secret or otherwise that the beneficiary give, pay to, or share the property or any interest therein received from the decedent, with other person or persons, or to so dispose of beneficial interests conferred by the decedent upon the beneficiaries as that the property so passing would be taxable under the provisions of this chapter if passing directly by will or deed from the decedent owner to those to receive the gift from the beneficiary, compliance with such request shall constitute a transfer taxable under the provisions of this chapter, at the highest rate possible in like cases of transfers by will or deed. [C., '97, § 1467; S., '13, § 1481-a; 39 G. A., ch. 38, § 2.]

7308. Exemptions. The tax imposed by this chapter shall not be collected:

1. When the net value of the estate of decedent passing to the beneficiaries named in class two of section 7313, after deducting the debts as defined herein, does not exceed the sum of one thousand dollars, provided that where such

net value of such estate exceeds one thousand dollars then the whole of said net estate shall be subject to said tax.

2. When the property passes to societies or institutions within this state incorporated for educational or religious purposes, or to cemetery associations or societies within this state organized for purposes of public charity, including humane societies.

3. When the property passes to public libraries or public art galleries within this state, open to the use of the public and not operated for gain, or to hospitals within this state, or to municipal corporations for purely public purposes.

4. Bequests for the care and maintenance of the cemetery or burial lot of the decedent or his family, and bequests not to exceed five hundred dollars in any estate of a decedent for the performance of a religious service or services by some person regularly ordained, authorized, or licensed by some religious society to perform such service, which service or services are to be performed for or in behalf of the testator or some person named in his last will. [S., '13, § 1481-a1; 39 G. A., ch. 38, § 3.]

7309. Liability for tax. Any person becoming beneficially entitled to any property or interest therein by any method of transfer as herein specified, and all administrators, executors, referees, and trustees of estates or transfers taxable under the provisions of this chapter, shall be respectively liable for all such taxes to be paid by them respectively. [C., '97, § 1467; S., '13, § 1481-a; 39 G. A., ch. 38, § 2.]

7310. Accrual of tax—maturity—extension of time. The tax hereby imposed shall be for the use of the state, shall accrue at the death of the decedent owner, and shall be paid to the treasurer of state within eighteen months after the death of the decedent owner except when otherwise provided in this chapter. When in the opinion of the treasurer of state additional time should be granted for payment to avoid hardship, said treasurer may extend the period to a date not exceeding three years from date of death of decedent, but in case of any such extension the tax shall bear six per cent interest from the expiration of eighteen months from decedent's death. [S., '13, § 1481-a; 39 G. A., ch. 38, § 2.]

7311. Lien of tax. The tax shall be and remain a legal charge against and a lien upon such estate, and any and all the property thereof from the death of the decedent owner until paid, provided that said lien shall not continue longer than five years from the date such tax becomes due and payable; provided further, such five year limitation shall not apply to estates or beneficiaries embraced in paragraph 2 of section 7313, in cases where decedent died prior to the taking effect of this chapter. [C., '97, § 1467; S., '13, § 1481-a; 39 G. A., ch. 38, § 2; 39 G. A., ch. 164, § 3.]

7312. Transfers in contemplation of death. If the decedent makes a transfer of, or creates

a trust with respect to, any property in contemplation of his death, or intended to take effect after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth), and if the tax in respect thereto is not paid when due, the transferee or trustee shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of his death, shall be subject to a lien for the payment of such tax. [C., '97, § 1467; S., '13, § 1481-a; 39 G. A., ch. 38, § 2.]

7313. Rate of tax. The property or any interest therein or income therefrom subject to the provisions of this chapter shall be taxed as herein provided.

1. When such property, interest, or income passes to the wife or the husband of the deceased, in excess of the distributive share of such surviving spouse, grantor, donor, or vendor, or to the father or mother or to any child or lineal descendant of such decedent, grantor, donor, or vendor, including a legally adopted child or illegitimate child entitled to inherit under the laws of this state, the tax imposed shall be on the individual share so passing, and shall be as follows:

One per cent on any amount in excess of fifteen thousand dollars and up to thirty thousand dollars.

One and one-half per cent on any amount in excess of thirty thousand dollars and up to forty-five thousand dollars.

Two per cent on any amount in excess of forty-five thousand dollars and up to sixty thousand dollars.

Two and one-half per cent on any amount in excess of sixty thousand dollars and up to ninety thousand dollars.

Three per cent on any amount in excess of ninety thousand dollars and up to one hundred twenty thousand dollars.

Four per cent on any amount in excess of one hundred twenty thousand dollars and up to one hundred eighty thousand dollars.

Five per cent on any amount in excess of one hundred eighty thousand dollars and up to two hundred forty thousand dollars.

Six per cent on any amount in excess of two hundred forty thousand and up to three hundred thousand dollars.

Seven per cent on all sums in excess of three hundred thousand dollars.

Provided that, in case any such child does not survive the decedent, grantor, donor, or vendor, or, for any reason, sufficient property, interest, or income of such decedent does not pass to such child to equal the amount of the exemption to which such child would be entitled under the provisions of this section, but property, interest, or income passes to the spouse or any lineal descendant of such child, the amount so passing to such child, if any, and the amount passing to such spouse or lineal descendant shall be treated collectively as one inheritance and the persons receiving such collective inheritance shall collectively be entitled to the same exemption, prorated according to

the amount passing to each of such persons as if such inheritance had passed entirely to such child.

2. When the property or any interest therein or income therefrom taxable under the provisions of this chapter passes to any person firm, corporation, or society other than those designated in paragraph 1 of this section, the rate of tax imposed shall be as follows:

Five per cent on any amount up to one hundred thousand dollars.

Six per cent on any amount in excess of one hundred thousand dollars and up to two hundred thousand dollars.

Seven per cent on all amounts in excess of two hundred thousand dollars. [C., '97, § 1467; S., '13, § 1481-a; 39 G. A., ch. 38, § 4; 39 G. A., ch. 164, § 1.]

7314. Death prior or subsequent to law—effect. As to estates of decedents passing to beneficiaries named in paragraph 1 of the preceding section, this chapter shall apply only where decedent dies after the taking effect of this chapter, and as to estates of decedents passing to beneficiaries named in paragraph 2 of the preceding section, the rate of tax shall be five per cent as to all persons dying before this chapter takes effect. [39 G. A., ch. 38, § 16.]

7315. Alien beneficiaries. When property or any interest therein shall pass to heirs, devisees, or other beneficiaries subject to the tax imposed by this chapter, who are aliens, nonresidents of the United States, the same shall be subject to a tax of twenty per cent of its true value except when such foreign beneficiaries are brothers or sisters of the decedent owner or are within the class described in paragraph 1 of section 7313, when the rate of tax to be assessed and collected therefrom shall be ten per cent of the value of the property or interest so passing. [C., '97, § 1467; S., '13, § 1481-a; 39 G. A., ch. 38, § 4.]

7316. Rates applied on aggregate value. In determining the inheritance tax due from the estate of any decedent under this chapter, the rates provided in section 7313 shall be applied upon the aggregate value of the property making up said estate after deducting the exemptions herein provided. Where part of said property passes to the class described in paragraph 1 of section 7313 and part to the class described in paragraph 2, the tax applying to each of said classes shall be computed as if the same were a separate estate. [39 G. A., ch. 38, § 4.]

7317. Deductions of debts. There shall be deducted from the gross value of the estate as fixed by the inheritance tax appraisers appointed under the provisions of this chapter, or as fixed by the court, the debts defined as follows:

1. From the estate of such decedent who at the time of his death was domiciled within this

state, there shall be deducted the debts owing by the decedent at the time of his death, the local and state taxes due from the estate in January of the year of his death, and federal taxes, a reasonable sum for funeral expenses, temporary allowance for the widow and children under fifteen years of age as granted by the probate court or judge thereof, court costs, the costs of appraisal made for the purpose of assessing the inheritance tax, the statutory fee of executors, administrators, or trustees estimated upon the appraised value of the property, the amount paid by the executor or administrator for a bond, the attorney fee in a reasonable amount to be approved by the court for the ordinary probate proceedings in said estate, and no other sum; provided, however, that the debt of such decedent owing for or secured by property outside of this state, shall not be deducted before estimating the tax, except when the property for which the debt is owing or by which it is secured is subject to the tax imposed by this chapter, or when the foreign debt exceeds the value of the property securing it or for which it was contracted, when the excess may be deducted, provided that satisfactory proof of the value of the foreign property and the amount of such debt is furnished to the treasurer of state.

Said debts shall not be deducted unless the same are approved and allowed by the court within eighteen months from the death of the decedent, unless otherwise ordered by the judge or court of the proper county.

2. From the estate of such decedent who at the time of his death is domiciled outside of this state, the state treasurer shall deduct such debts and expenses as are chargeable to the property under the laws of this state, provided that in the event that the executor, administrator, or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the treasurer of state, or with the treasurer of state in case there is no administration of the estate within this state, a duly certified statement exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statement shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of the said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

3. An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within two years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under this chapter was collected from such estate, and if such property is included in decedent's

gross estate. [S., '13, § 1481-a2; 39 G. A., ch. 38, § 5.]

7318. Inheritance tax and lien book. The clerk of the district court in and for each county shall provide and keep a suitable book, substantially bound and suitably ruled, to be known as the inheritance tax and lien book, in which shall be kept a full and accurate record of all proceedings in cases where property is charged or sought to be charged with the payment of an inheritance tax under the laws of this state, to be printed and ruled so as to show upon one page:

1. The name, place of residence, and date of death of the decedent.
2. Whether the decedent died testate, or intestate, and, if testate, the record and page where the will was probated and recorded.
3. The name and postoffice address of the executor, administrator, trustee, or grantee, with date of appointment or transfer.
4. The names, postoffice addresses, and relationship, if known, of all the heirs, devisees, and grantees.
5. The appraised valuation of the personal property.
6. The amount of inheritance tax due upon said personal property.
7. A record of payment with amount and date.
8. Date of filing objections and names of objectors.
9. Blank for index and reference to all proceedings and for memorandum entries of the court or judge in relation thereto.

Upon the opposite page of such record shall be printed:

1. Real estate derived from (naming decedent) which is subject to the lien prescribed by the statute for inheritance tax.
2. A full and accurate description of such real estate, by forty-acre or fractional tracts, or by lots, or other complete individual description.
3. The appraised valuation as reported by the appraisers, with a reference to the record of their report, as to each piece of such real estate.
4. The amount of the inheritance tax due upon each such piece.
5. A record of payments, with dates and amounts. [S., '13, § 1481-a25; 39 G. A., ch. 38, § 10.]

7319. Blanks for reports by executors etc. Upon the appointment and qualification of such executor, administrator, or testamentary trustee, the clerk issuing the letters shall at the same time deliver to him a blank form upon which he shall be required to make detailed report of the following facts:

1. Name and last residence of decedent.
2. Date of death.
3. Whether or not he left a will.
4. Name and postoffice of executor, administrator, or trustee.
5. Name and postoffice of surviving wife or husband, if any.

6. If testate, name and postoffice of each beneficiary under will.

7. Relationship of each beneficiary to the testator.

8. If intestate, name and postoffice of each heir at law.

9. Relationship of each heir at law to decedent.

10. Inventory of all the real estate of the decedent, giving amount and description of each tract.

11. Whether the property passes in possession and enjoyment in fee, for life, or for a term of years. [S., '13, § 1481-a26.]

7320. Report required—delinquency. Within thirty days after his qualification, each executor, administrator, or testamentary trustee shall make and return to the clerk, under oath, a full and detailed report as indicated in the preceding section, any will to the contrary notwithstanding, and upon his failure to do so, the clerk shall forthwith report his delinquency to the district court if in session, or to a judge of said court if in vacation, for such order as may be necessary to enforce an observance of this section. [S., '13, § 1481-a26.]

7321. Copy for treasurer of state. Upon the filing of such report, the clerk of the court shall immediately forward a true copy thereof to the treasurer of state. [S., '13, § 1481-a26.]

7322. Entry of lien. If it appears from the inventory or report so filed that the real estate or any part of it is subject to an inheritance tax, it shall be the duty of the executor or administrator or of any person interested in the property if there be no administration, to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular tract of said real estate is situated. [S., '13, § 1481-a26.]

7323. Conveyance—effect. When said real estate or any interest therein, is subject to such tax, no conveyance either before or after the entering of said lien, shall discharge the real estate so conveyed from said lien. [S., '13, § 1481-a26.]

7324. Acceptance of final report. No final settlement of the account of any executor, administrator, or trustee shall be accepted or allowed unless a strict compliance with the provisions of sections 7320 and 7322 has been had by such person. [S., '13, § 1481-a26.]

7325. Record of estates by treasurer. The treasurer of state shall record in a book kept in his office for that purpose, all estates reported to him as liable for a tax under the provisions of this chapter, showing:

1. The name of the decedent.
2. The place of his residence or county from which such estate was reported.
3. The date of his death.
4. The name of the administrator, executor, or trustee.

5. The appraised value of the property, or the value of any taxable pecuniary legacy.

6. The amount of indebtedness that was deducted before estimating the tax.

7. The amount of tax collected.

8. The amount of fees paid for reporting and collecting such tax.

9. The amount of tax, if any, refunded. [S., '13, § 1481-a46.]

7326. Record of deferred estates. He shall also keep a separate record of any deferred estate upon which the tax due is not paid within eighteen months from the death of the decedent, showing substantially the same facts as are required in other cases, and also showing:

1. The date and amount of all bonds given to secure the payment of the tax with a list of the sureties thereon.

2. The name of the person beneficially entitled to such estate or interest, with place of residence.

3. A description of the property or a statement of conditions upon which such deferred estate is based or limited. [S., '13, § 1481-a46.]

7327. Administration on application of treasurer. If, upon the death of any person leaving an estate that may be liable to a tax under the provisions of this chapter, a will disposing of such estate is not offered for probate, or an application for administration made within four months from the time of such decease, the treasurer of state may, at any time thereafter, make application to the proper court, setting forth such fact and praying that an administrator may be appointed, and thereupon said court shall appoint an administrator to administer upon such estate. [S., '13, § 1481-a3.]

7328. Administration avoided. When the heirs or persons entitled to inherit the property of an estate subject to the tax hereby imposed, desire to avoid the appointment of an administrator as provided in the preceding section, they or one of them shall, before the expiration of four months from the death of the decedent file under oath the inventories and reports and perform all the duties required by this chapter, of administrators, including the filing of the lien. Proceedings for the collection of the tax when no administrator is appointed, shall conform as nearly as may be to the provisions of this chapter in other cases. [S., '13, § 1481-a3.]

7329. Nonresident administrator. A nonresident of this state shall not be appointed as executor, administrator, or trustee of any estate that may be subject to the tax imposed by this chapter, unless such nonresident first file a bond conditioned upon the payment of all tax, interest and costs for which the estate may be liable, such bond to be signed by not less than two resident freeholders or by an approved surety company and in an amount not less than twenty-five per cent of the total value of the estate, or of the property within this state if the estate is a foreign estate. [S., '13, § 1481-a3.]

7330. Appraisers. In each county the court shall, annually, at the first term of the court therein, appoint three competent residents and freeholders of said county to act as appraisers of all property within its jurisdiction which is charged or sought to be charged with an inheritance tax. Said appraisers shall serve for one year, and until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the court, and the court, or judge thereof in vacation, may also in its discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term shall be filled by appointment of the court or by a judge in vacation. No person interested in any manner in the estate to be appraised may serve as an appraiser of such estate. [S., '13, § 1481-a4; 39 G. A., ch. 38, § 6.]

7331. Commission to appraisers. Whenever it appears that an estate or any property or interest therein is or may be subject to the tax imposed by this chapter, the clerk shall issue a commission to the appraisers, who shall fix a time and place for appraisement, except that if the only interest that is subject to such tax is a remainder or deferred interest upon which the tax is not payable until the determination of a prior estate or interest for life or term of years, he shall not issue such commission until the determination of such prior estate, except at the request of parties in interest who desire to remove the lien thereon. [S., '13, § 1481-a5.]

7332. Notice of appraisement. It shall be the duty of all appraisers appointed under the provisions of this chapter, upon receiving a commission as herein provided, to forthwith give notice to the treasurer of state and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions, and if not practicable to serve the notice provided for by statute, they shall apply to the court or a judge thereof in vacation for an order as to notice. [S., '13, § 1481-a6.]

7333. Returns required. Upon service of such notice and the making of such appraisement, the said notice, return thereon and appraisement shall be filed with the clerk, and a copy of such appraisement shall at once be filed by the clerk with the treasurer of state. [C., '97, § 1476; S., '13, § 1481-a6.]

7334. Property in different counties. When property is located in more than one county, the appraisers of the county in which the estate is being administered may appraise the whole

estate, or those of the several counties may serve for the property within their respective counties or other appraisers appointed as the district court if in session, or judge thereof in vacation, may direct. [C., '97, § 1476; S., '13, § 1481-a6.]

7335. Objections. The treasurer of state or any person interested in the estate or property appraised may, within twenty days thereafter, file objections to said appraisement and give notice thereof as in beginning civil actions, on the hearing of which as an action in equity either party may produce evidence competent or material to the matters therein involved. [S., '13, § 1481-a7.]

7336. Hearing—order. If upon such hearing the court finds the amount at which the property is appraised is its value on the market in the ordinary course of trade, and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, it shall set aside the appraisement, appoint new appraisers and so proceed until a fair and good appraisement of the property is made at its value in the market in the ordinary course of trade. [S., '13, § 1481-a7.]

7337. Appeal and notice. The treasurer of state or anyone interested in the property appraised may appeal to the supreme court from the order of the district court approving or setting aside any appraisement to which exceptions have been filed. Notice of appeal shall be served within sixty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions. [S., '13, § 1481-a7.]

7338. Bond on appeal. In case of appeal the appellant, if he is not the treasurer of state, shall give bond to be approved by the clerk of the court, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable with cost of appeal. [S., '13, § 1481-a7.]

7339. Cancellation of lien. If upon the hearing of objections to the appraisement the court finds that the property is not subject to the tax, the court shall upon expiration of time for appeal, when no appeal has been taken, order the clerk to enter upon the lien book a cancellation of any claim or lien for taxes. If at the end of twenty days from the filing of the appraisement with the clerk, no objections are filed, the appraisement shall stand approved. [S., '13, § 1481-a7.]

7340. Appraisement of transferred property. Within ninety days after the transfer of any property that may be liable for a tax under the provisions of this chapter, except as herein otherwise provided, the clerk of the proper county upon his own motion or upon the ap-

plication of the treasurer of state, county attorney, or person interested in the property, shall cause the property to be appraised as provided herein. [S., '13, § 1481-a8.]

7341. Appraisal of other property. If there be an estate or property subject to said tax wherein the records in the clerk's office do not disclose that there may be a tax due under the provisions of this chapter, the person or persons interested in the property shall report the matter to the clerk with an application that the property be appraised. [S., '13, § 1481-a8.]

7342. Market value. The appraised value of the property shall in all cases be its market value in the ordinary course of trade, and in domestic estates the tax shall be calculated thereon after deducting the debts as defined herein. [S., '13, § 1481-a8.]

7343. Deduction of debts. The debt of a domestic estate owing for or secured by property outside of the state, shall not be deducted before estimating the tax, except when the property for which the debt is owing or by which it is secured is subject to the tax imposed by this chapter, or when the foreign debt exceeds the value of the property securing it or for which it was contracted, when the excess may be deducted provided that satisfactory proof of the value of the foreign property and the amount of such debt is furnished to the treasurer of state. [S., '13, § 1481-a8.]

7344. Relief from appraisement. All estates subject in whole or in part to the tax imposed by this chapter shall be appraised for the purpose of computing said tax by the regular inheritance tax appraisers; provided that estates liable for the payment of the inheritance tax upon specific legacies, annuities, bequests of money or other property the value of which may be determined without appraisement, and estates which consist of money, book accounts, bank deposits, notes, mortgages, and bonds, need not be appraised by the inheritance tax appraisers if the administrator, executor, or trustee, or the persons entitled to or claiming such property are willing to charge themselves with the full face value of such bequests or property, together with the interest, earnings, or undivided profits which may be due on said properties, at the time of death of the testator or intestate, as the basis for the assessment of said tax. [S., '13, § 1481-a9; 39 G. A., ch. 38, § 7.]

7345. Approval of court and treasurer. In all cases the relief from appraisement for the inheritance tax is dependent upon the consent of the treasurer of state, and the subsequent approval thereof by the court or judge thereof in vacation. [S., '13, § 1481-a9; 39 G. A., ch. 38, § 7.]

7346. Procedure for relief. In the event that the estate has been duly appraised under the ordinary statutes of inheritance or the property has been sold and such appraisement

or selling price is accepted by the treasurer of state as satisfactory for inheritance tax purposes, the court or judge thereof in vacation may, upon proper application, relieve the estate from the appraisement by the inheritance tax appraisers; but in order to obtain such relief, the administrator, executor, trustee, or other party interested must file an application for relief with the consent of the treasurer of state thereto in the office of the clerk of the court before said clerk issues a commission to the inheritance tax appraisers. [S., '13, § 1481-a9; 39 G. A., ch. 38, § 7.]

7347. Relief on exempt estate. The court or judge thereof in vacation may, upon application of the representatives of the estate or parties interested, relieve the estate of the appraisement for tax purposes if it be shown to said court that the market value of the entire estate will not exceed one thousand dollars; provided that prior to the application to said court or judge the written consent of the treasurer of state to such relief is procured. [S., '13, § 1481-a9.]

7348. Record as to relief from appraisement. In all cases where an estate is relieved from an appraisement for inheritance tax purposes, the order granting relief shall be recorded in the clerk's office, and the fact of such relief and reasons therefor shall be duly noted in the decree or order of final settlement made by the court. [S., '13, § 1481-a9; 39 G. A., ch. 38, § 7.]

7349. Remainders—appraisement. When any person, whose estate over and above the amount of his debts, as defined in this chapter, exceeds the sum of one thousand dollars, shall bequeath or devise or otherwise transfer any real property to or for the use of persons exempt from the tax imposed by this chapter, during life or for a term of years, and the remainder to a person or persons not thus exempt, said property, upon the determination of such estate for life or years, shall be appraised at its then actual market value from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainderman during the time of the prior estate, to be ascertained and determined by the appraisers and the tax on the remainder shall be paid by such remainderman as provided in section 7351. [S., '13, § 1481-a10; 39 G. A., ch. 38, § 8.]

7350. Life and term estates—appraisement. Whenever any real property of a decedent shall be subject to such tax and there be an estate or interest for life or term of years given to a party other than those especially exempt by this chapter, the clerk shall cause such property to be appraised at the actual market value thereof, as is provided in ordinary cases, and the party entitled to such estate or interest shall, within one year from the death of decedent owner, pay such tax, and in default thereof the court shall order such interest in said estate, or so much thereof as shall be

necessary to pay such tax and interest, to be sold. [S., '13, § 1481-a11.]

7351. Deferred estate—appraisement. Upon the determination of any prior estate or interest, when the remainder or deferred estate or interest or any part thereof is subject to such tax and the tax upon such remainder or deferred interest has not been paid, the person or persons entitled to such remainder or deferred interest shall immediately report to the clerk of the proper court the fact of the determination of the prior estate, and upon receipt of such report, or upon information from any source, of the determination of any such prior estate when the remainder interest has not been appraised for the purpose of assessing such tax, the clerk shall forthwith issue a commission to the inheritance tax appraisers, who shall immediately proceed to appraise the property as provided in like cases in section 7349 and the tax upon such remainder interest shall be paid by the remainderman within one year next after the determination of the prior estate. If such tax is not paid within said time the court shall then order said property, or so much thereof as may be necessary to pay such tax and interest, to be sold. [S., '13, § 1481-a11; 39 G. A., ch. 38, § 9.]

7352. Life and term estates in personal property. Whenever any personal property shall be subject to the tax imposed by this chapter and there be an estate or interest for life or term of years given to one or more persons and remainder or deferred estate to others, the clerk shall cause the property so devised or conveyed to be appraised as provided herein in ordinary estates and the value of the several estates or interests so devised or conveyed shall be determined as provided in section 7356, and the tax upon such estates or interests as are liable for the tax imposed by this chapter shall be paid to the treasurer of state from the property appraised or by the persons entitled to such estate or interest within eighteen months from the death of the testator, grantor, or donor; provided, however, that payment of the tax upon any deferred estate or remainder interest may be deferred until the determination of the prior estate by the giving of a good and sufficient bond as provided in the next succeeding section. [S., '13, § 1481-a12.]

7353. Payment deferred—bond. When in case of deferred estates or remainder interests in personal property or in the proceeds of any real estate that may be sold during the time of a life, term, or prior estate, the persons interested who may desire to defer the payment of the tax until the determination of the prior estate, shall file with the clerk of the proper district court a bond as provided herein in other cases, such bond to be renewed every two years until the tax upon such deferred estate is paid. If at the end of any two-year period the bond is not promptly renewed as herein provided and the tax has not been paid, the

bond shall be declared forfeited, and the amount thereof forthwith collected. When the estate of a decedent consists in part of real and in part of personal property, and there be an estate for life or for a term of years to one or more persons and a deferred or remainder estate to others, and such deferred or remainder estate is in whole or in part subject to the tax imposed by this chapter, if the deferred or remainder estates or interests are so disposed that good and sufficient security for the payment of the tax for which such deferred or remainder estates may be liable can be had because of the lien imposed by this chapter upon the real property of such estate, then payment of the tax upon such deferred or remainder estates may be postponed until the determination of the prior estate without giving bond as herein required to secure payment of such tax, and the tax shall remain a lien upon such real estate until the tax upon such deferred estate or interest is paid. [S., '13, § 1481-a13.]

7354. Bonds—conditions. All bonds required by this chapter shall be payable to the treasurer of state and shall be conditioned upon the payment of the tax, interest, and costs for which the estate may be liable, and for the faithful performance of all the duties hereby imposed upon and required of the person whose acts are by such bond to be guaranteed, and shall be in an amount equal to twice the amount of the tax, interest, and costs that may be due, but in no case less than five hundred dollars, and must be secured by not less than two resident freeholders or by a fidelity or surety company authorized by the commissioner of insurance to do business in this state. [S., '13, § 1481-a14.]

7355. Removal of property from state—bond. It shall be unlawful for any person to remove from this state any property, or the proceeds thereof, that may be subject to the tax imposed by this chapter, without paying the said tax to the treasurer of state. Any person violating the provisions of this section shall be guilty of a felony and upon conviction shall be fined an amount equal to twice the amount of tax, interest, and costs for which the estate may be liable, but in no case less than two hundred dollars, and imprisoned as the court shall direct, until the fine is paid; provided, however, that the penalty hereby imposed shall not be enforced if, prior to the removal of such property or the proceeds thereof, the person desiring to effect such removal files with the clerk a bond conditioned upon the payment of the tax, interest, and costs, as is provided in the preceding section hereof. [S., '13, § 1481-a15.]

7356. Annuities—life and term estates. The value of any annuity, deferred estate, or interest, or any estate for life or term of years, subject to the inheritance tax, shall be determined for the purpose of computing said tax by the rule of standards of mortality and of value

commonly used in actuaries' combined experience tables as now provided by law. The taxable value of annuities, life or term, deferred or future estates, shall be computed at the rate of four per cent per annum of the appraised value of the property in which such estate or interest exists or is founded. [S., '13, § 1481-a16; 39 G. A., ch. 38, § 10.]

7357. Deferred estates—removal of lien. Whenever it is desired to remove the lien of the inheritance tax on remainders, reversions, or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interests determined according to the rules herein fixed. [S., '13, § 1481-a16; 39 G. A., ch. 38, § 10.]

7358. Duty of executor to pay tax. It is hereby made the duty of all executors, administrators, trustees, or other persons charged with the management or settlement of any estate subject to the tax provided for in this chapter, to collect and pay to the treasurer of state the amount of the tax due from any devisee, grantee, donee, heir, or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate, in which cases the treasurer of state shall collect the same. [S., '13, § 1481-a17.]

7359. Sale to pay tax. Executors, administrators, trustees, or the state treasurer, shall have power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as is now provided by law for the sale of such property for the payment of debts of testators or intestates. [S., '13, § 1481-a17.]

7360. Action to collect. The treasurer of state may bring, or cause to be brought in his name of office, suit, for the collection of said tax, interest and costs, against the executor, administrator, or trustee, or against the person entitled to property subject to said tax, or upon any bond given to secure payment thereof, either jointly or severally, and obtaining judgment may cause execution to be issued thereon as is provided by statute in other cases. The proceedings shall conform as nearly as may be to those for the collection of ordinary debt by suit. [S., '13, § 1481-a17.]

7361. Time of payment extended. If because of necessary litigation or other unavoidable cause of delay enforced payment of the tax hereby imposed, by suit and execution, would result in loss or be to the detriment of the best interests of the estate, the court may extend the time for the payment of the tax. Such extensions of time shall not be granted except in cases where security is given for payment of the tax, interest, and costs. [S., '13, § 1481-a17.]

7362. Tax deducted from legacy or collected. Every executor, administrator, referee,

or trustee having in charge or trust any property of an estate subject to said tax, and which is made payable by him, shall deduct the tax therefrom or shall collect the tax thereon from the legatee or person entitled to said property and pay the same to the treasurer of state, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon. [S., '13, § 1481-a18.]

7363. Final settlement to show payment. No final settlement of the account of any executor, administrator, or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this chapter upon any property or interest therein, that is hereby made payable by such executors, administrators, or trustees, and to be settled by said account, shall have been paid, and the receipt of the treasurer of state for such tax shall be the proper voucher for such payment. Any order contravening the provision of this section shall be void. Upon the filing of such receipt showing payment of the tax, the clerk shall record the same upon the inheritance tax lien book in his office. [S., '13, § 1481-a19; 39 G. A., ch. 38, § 10.]

7364. Jurisdiction of court. The district court in the county in which some part of the property is situated, of the decedent who was not a resident, or such court in the county of which the deceased was a resident at the time of his death or where such estate is administered, shall have jurisdiction to hear and determine all questions regularly brought before it in relation to said tax that may arise affecting any devise, legacy, annuity, transfer, grant, gift, or inheritance, subject to appeal as in other cases. [S., '13, § 1481-a20.]

7365. Treasurer to represent state. The treasurer of state shall in his name of office, with all the rights and privileges of a party in interest, represent the state in any such proceedings. [S., '13, § 1481-a20.]

7366. Bequests to executors or trustees. Whenever a decedent appoints one or more executors or trustees and, in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed the statutory fees as compensation for their services, such excess shall be liable to such tax. [S., '13, § 1481-a21.]

7367. Legacies charged upon real estate. Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee, or treasurer of state, and the same shall remain a charge against and be a lien upon said real estate until it is paid; and payment thereof

shall be enforced by the executor, administrator, trustee, or treasurer of state in his name of office as herein provided. [S., '13, § 1481-a22.]

7368. Maturity of tax—interest. All taxes imposed by this chapter shall be payable to the treasurer of state and, except when otherwise provided in this chapter, shall be paid within eighteen months from the death of the testator or intestate. All taxes not paid within the time prescribed in this chapter shall draw interest at the rate of eight per cent per annum thereafter until paid. [S., '13, § 1481-a23.]

7369. Clerk furnished receipt showing payment. Upon payment of such tax the treasurer of state shall forthwith transmit a duplicate receipt, to the clerk of the court of the county in which the estate is being settled, showing the payment of such tax. [S., '13, § 1481-a23.]

7370. Treasurer to enforce collection. It shall be the duty of the treasurer of state to enforce the collection of the delinquent inheritance tax, and the provisions of law with reference thereto. [38 G. A., ch. 300, § 1; 39 G. A., ch. 209, § 58.]

7371. Investigation by treasurer. The treasurer of state is hereby authorized and empowered to issue a citation to any person who he may believe or have reason to believe has any knowledge or information concerning any property which he believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due to the state under the provisions of the inheritance tax laws of this state, and by such citation require such person to appear before him or anyone designated by him at the county seat of the county where said person resides and at a time to be designated in such citation, and testify under oath as to any fact or information within his knowledge touching the quantity, value, and description of any such property and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the treasurer of state, any books, records, accounts, or documents in the possession of or under the control of any person so cited. [39 G. A., ch. 38, § 15.]

7372. Inspection of books, records, etc. The treasurer of state shall also have the power to inspect and examine the books, records, and accounts of any person, firm or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by him for the proper enforcement of the inheritance tax laws of this state, and the collection of the full amount of the tax which may be due to the state thereunder. [39 G. A., ch. 38, § 15.]

7373. Information confidential. Any and all information acquired by the treasurer of state under and by virtue of the means and methods provided for by the two preceding sections shall be deemed and held by him as

confidential and shall not be disclosed by him except so far as the same may be necessary for the enforcement and collection of the inheritance tax provided for by the laws of this state. [39 G. A., ch. 38, § 15.]

7374. Contempt. Refusal of any person to attend before the treasurer of state in obedience to any such citation, or to testify, or produce any books, accounts, records or documents in his possession or under his control and submit the same to inspection of the treasurer of state when so required, may, upon application of the treasurer of state, be punished by any district court in the same manner as if the proceedings were pending in such court. [39 G. A., ch. 38, § 15.]

7375. Fees. Witnesses so cited before the treasurer of state, and any sheriff or other officer serving such citation shall receive the same fees as are allowed in civil actions; to be audited by the board of audit and paid upon the certificate of the treasurer of state out of funds not otherwise appropriated. [39 G. A., ch. 38, § 15.]

7376. Proof of amount of tax due. Before issuing his receipt for the tax, the treasurer of state may demand from administrators, executors, trustees, or beneficiaries such information as may be necessary to verify the correctness of the amount of the tax and interest, and when such demand is made they shall send to said treasurer certified copies of wills, deeds, or other papers, or of such parts of their reports as he may demand, and upon the refusal or neglect of said parties to comply with the demand of the treasurer of state, it is the duty of the clerk of the court to comply with such demand, and the expenses of making such copies and transcripts shall be charged against the estate, as are other costs in probate, or the tax may be assessed without deducting debts for which the estate may be liable. [S., '13, § 1481-a24.]

7377. Extension of time of appraisement. Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the executor, administrator, trustee, or beneficiary of said estate to file with the clerk of the court a full, complete, and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estates, the court may, upon the application of such representatives or parties in interest, extend the time for making the inheritance appraisement for a period not to exceed three months beyond the time fixed by this chapter. [S., '13, § 1481-a27; 39 G. A., ch. 38, § 10.]

7378. Heirs at law to make report. Whenever any property passing under the intestate laws may be subject to the tax imposed by this chapter, the person or persons entitled to such property shall make or cause to be made to the clerk of the courts of the county wherein such property is located, within ninety days

next following the death of such intestate, a report in writing embodying therein substantially the information required by section 7319. Failure to furnish such report or to probate the will in a testate estate shall not relieve the estate from the lien created hereby or the persons entitled to the property of such decedent from payment of the tax, interest, or other penalties imposed by this chapter. [S., '13, § 1481-a28.]

7379. Taxable estates — record by clerk. The clerk shall enter upon the inheritance tax and lien book the title of all estates subject to the inheritance tax as shown by the inventories or lists of heirs filed in his office, or as reported to him by the county attorney, treasurer of state, or other person, and shall enter in said book as against each estate or title at the appropriate place, all such information relating to the situation and condition of the estate as he may be able to obtain from the papers filed in his office, or from any other source, as may be necessary to the collection and enforcement of the tax. He shall also immediately index in the book kept in his office for that purpose, all liens entered upon the inheritance tax and lien book. Failure to make such entries as are herein required shall not operate to relieve the estate from the lien or defeat the collection of the tax. [S., '13, § 1481-a29; 39 G. A., ch. 38, § 10.]

7380. Probate record. In all cases entered upon the inheritance tax and lien book, the clerk shall make a complete record in the proper probate record of all the proceedings, orders, reports, inventory, appraisements, and all other matters and proceedings therein. [S., '13, § 1481-a30.]

7381. Clerk to report taxable estates. It shall be the duty of each clerk of the district court to make examination from time to time of all reports filed with him by administrators, executors, and trustees, pursuant to law; also to make examination of all foreign wills offered for probate or recorded within his county, as well as of the record of deeds and conveyances in the recorder's office of said county, and if from such examination or from information or knowledge coming to him from any other source, he finds or believes that any property within his county, or within the jurisdiction of the district court of said county, has, since July 4, 1896, passed by will or by the intestate laws of this or any other state, or by deed or other method of conveyance, made in anticipation of or intended to take effect in possession or in enjoyment after the death of the testator, donor, or grantor, to any person other than to or for the use of the persons, societies, or organizations exempt from the tax hereby imposed, he shall make report thereof in writing to the treasurer of state, embodying in such report such information as he may be able to obtain as to the name and residence of decedent, date of death, name and address of administrator, executor, or trustee, the description of any property liable to said

tax and the county in which it is located, and name and relationship of all beneficiaries or heirs. [S., '13, § 1481-a31.]

7382. Information by citizen. Any citizen of the state having knowledge of property liable to such tax, against which no proceeding for enforcing collection thereof is pending, may report the same to the clerk and it shall be the duty of such officer to investigate the case, and if he has reason to believe the information to be true, he shall forthwith enter the estate and report the same substantially as above indicated. [S., '13, § 1481-a31.]

7383. Reporting fee. For reporting such estates or property the clerk shall receive a compensation of one dollar for each one hundred dollars or fraction thereof of tax paid, but not to exceed the sum of five dollars in any one estate, the same to be in addition to the compensation now allowed him by law. [S., '13, § 1481-a31.]

7384. Payment of fee. Except when this information has first been received from another source, the treasurer of state, when he has issued his receipt for the tax in such estate, shall certify to the auditor of state the amount due the clerk for such service and the auditor of state shall issue his warrant on the treasurer of state in favor of said clerk for the sum due as herein provided. [S., '13, § 1481-a31.]

7385. Duty of recorder. Each county recorder shall, upon the filing in his office of any deed, bill of sale, or other transfer of any description whatsoever which shows upon its face that it was made or intended to take effect in possession or enjoyment at or after the death of the maker of such instrument, forward to the treasurer of state a certified copy thereof. [39 G. A., ch. 38, § 11.]

7386. Conflicting claims for fees. In the event of uncertainty or of conflicting claims as to fees due county attorneys or clerks under this chapter, the treasurer of state is empowered to determine the amount of fees, to whom payable, and when the same are due and, as far as possible, such determination shall be in accord with fixed rules made by the treasurer of state. [S., '13, § 1481-a33.]

7387. Inspection of records by court—newly discovered estates—notice—hearing. On the first day of each regular term, the court shall require the clerk to present for its inspection the inheritance tax and lien book hereinbefore provided for, together with all reports of administrators, executors, and trustees which have been filed pursuant to this chapter since the last preceding term. If, from information obtained from the records or reports, or from any other source, the court has reason to believe that there is property within its jurisdiction liable to the payment of an inheritance tax, against which proceedings for collection are not already pending, it shall enter an order of record directing the clerk to notify the

treasurer of state of such fact, and the clerk shall enter said estate on the inheritance tax book. Should any estate, or the name of any grantee or grantees be placed upon the book at the suggestion of the clerk or by order of court, in which the papers already on file in the clerk's office do not disclose that an inheritance tax is due or payable, the clerk shall forthwith give to all parties in interest such notice as the court or judge may prescribe, requiring them to appear on a day to be fixed by the said court or judge, and show cause why the property should not be appraised and subjected to said tax. At any such hearing any person may be required to appear and answer as to his knowledge of any such estate or property, and it shall be the duty of the clerk to notify the treasurer of state of the time and place of such hearing. If upon any such hearing the court is satisfied that any property of the decedent, or any property devised, granted, or donated by him is subject to the tax, the same proceeding shall be had as in other cases, so far as applicable. [S., '13, § 1481-a34; 39 G. A., ch. 38, §§ 10, 19.]

7388. Costs charged against estate — exceptions. In all cases where an estate or interest therein so passes as to be liable to taxation under this chapter, all costs of the proceedings had for the assessment of such tax shall be chargeable to such estate as other costs in probate proceedings and, to discharge the lien, all costs as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court. When a decision adverse to the state has been rendered, with an order that the state pay the costs, it shall be the duty of the clerk of the court in which such action was pending to certify the amount of such costs to the treasurer of state, who shall, if said costs be correctly certified and the case has been finally terminated and the tax if any due has been paid, present the claim to the state board of audit to audit and, said claim being allowed by said board, the auditor of state is directed to issue a warrant on the treasurer of state in payment of such costs. [S., '13, § 1481-a35.]

7389. Securities and assets held by bank, etc. No safe deposit company, trust company, bank, or other institution, person or persons holding securities or assets of the decedent shall deliver or transfer the same to the executor, administrator, or legal representative of said decedent unless the tax for which such securities or assets are liable under this chapter shall be first paid, or the payment thereof is secured by bond as herein provided. It shall be lawful for and the duty of the treasurer of state personally, or by any person by him duly authorized, to examine such securities or assets at the time of any proposed delivery or transfer. Failure to serve ten days' notice of such proposed transfer upon the treasurer of state or to allow such examination on the delivery of such securities or assets to such executor, administrator, or legal representative shall render such safe deposit company, trust com-

pany, bank, or other institution, person or persons liable for the payment of the tax upon such securities or assets as provided in this chapter. [S., '13, § 1481-a36.]

7390. Transfer of corporation stock. If a foreign executor, administrator, or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the treasurer of state on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, interest, and costs, and it is the duty of the treasurer of state to enforce the payment thereof. [S., '13, § 1481-a37.]

7391. Corporations to report transfers. Every Iowa corporation organized for pecuniary profit shall, on July first of each year, by its proper officers under oath, make a full and correct report to the treasurer of state of all transfers of its stocks made during the preceding year by any person who appears on the books of such corporation as the owner of such stock, when such transfer is made to take effect at or after the death of the owner or transferor, and all transfers which are made by an administrator, executor, trustee, referee, or any person other than the owner or person in whose name the stocks appeared of record on the books of such corporation, prior to the transfer thereof. Such report shall show the name of the owner of such stocks and his place of residence, the name of the person at whose request the stock was transferred, his place of residence and the authority by virtue of which he acted in making such transfer, the name of the person to whom the transfer was made, and the residence of such person, together with such other information as the officers reporting may have relating to estates of persons deceased who may have been owners of stock in such corporation. If it appears that any such stock so transferred is subject to tax under the provisions of this chapter, and the tax has not been paid, the treasurer of state shall notify the corporation in writing of its liability for the payment thereof, and shall bring suit against such corporation as in other cases herein provided unless payment of the tax is made within sixty days from the date of such notice. [S., '13, § 1481-a38.]

7392. Foreign estates—deduction of debts. Whenever any property belongs to a foreign estate, which estate in whole or in part passes to persons not exempt herein from such tax, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator, or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the treasurer of state, duly certified statements exhibiting the true

market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. [S., '13, § 1481-a39.]

7393. Property in this state belonging to foreign estate. Whenever any property, real or personal, within this state belongs to a foreign estate and said foreign estate passes in part exempt from the tax imposed by this chapter and in part subject to said tax and there is no specific devise of the property within this state to exempt persons or if it is within the authority or discretion of the foreign executor, administrator, or trustee administering the estate to dispose of the property not specifically devised to exempt persons in the payment of debts owing by the decedent at the time of his death, or in the satisfaction of legacies, devises, or trusts given to direct or collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state belonging to such foreign estate shall be subject to the tax imposed by this chapter, and the tax due thereon shall be assessed as provided in section 7392 relating to the deduction of the proportionate share of indebtedness; provided, however, that if the value of the property so situated exceeds the total amount of the estate passing to other persons than those exempt hereby from the tax imposed by this chapter, such excess shall not be subject to said tax. [S., '13, § 1481-a40; 39 G. A., ch. 38, § 12.]

7394. Compromise settlement. Whenever an estate charged or sought to be charged with the inheritance tax is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof can not with reasonable certainty be ascertained under the provisions of law, the treasurer of state may, with the written approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the district court or judge of the proper court, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate. [S., '13, § 1481-a41; 39 G. A., ch. 38, § 10.]

7395. Unknown heirs. Whenever the heirs or persons entitled to any estate or any interest therein are unknown or their place of residence can not with reasonable certainty be ascertained, a tax of five per cent shall be paid to the treasurer of state upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterwards determined that

any estate or interest passes to aliens, there shall be paid within sixty days after such determination and before delivery of such estate or property, an amount equal to the difference between five per cent, the amount paid, and the amount which such person should pay under the provisions of this chapter. [S., '13, § 1481-a42.]

7396. Refund of tax improperly paid. When, within five years after the payment of the tax, a court of competent jurisdiction may determine that property upon which an inheritance tax has been paid is not subject to or liable for the payment of such tax, or that the amount of tax paid was excessive, so much of such tax as has been overpaid to the treasurer of state shall be returned or refunded to the executor or administrator of such estate, or to those entitled thereto. When a certified copy of the record of such court showing the fact of nonliability of such property to the payment of such tax has been filed with the executive council of the state, the executive council shall, if the case has been finally determined, issue an order to the auditor of state directing him to issue a warrant upon the treasurer of state to refund such tax. Such order of court shall not be given until fifteen days' notice of the application therefor shall have been given to the treasurer of state of the time and place of the hearing of such application, which notice shall be served in the same manner as provided for original notices. [S., '13, § 1481-a43; 39 G. A., ch. 38, § 13.]

7397. Contingent estates. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. When an estate, devise, or legacy can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting. When a devise, bequest, or transfer is one in part contingent, and in part vested so that the beneficiary will come into possession and enjoyment of a portion of his inheritance on or before the happening of the event upon which the possible defeating contingency is based, a tax shall be imposed and collected upon such bequest or transfer as upon a vested interest, at the highest rate possible under the terms of this chapter if no such contingency existed; provided that in the event such contingency reduces the value of the estate or interest so taxed, and the amount of tax so paid is in excess of the tax for which such bequest or transfer is liable upon the removal of such contingency, such excess shall be refunded as is provided in the preceding section in other cases. [S., '13, § 1481-a44.]

CHAPTER 352

SECURITY OF THE REVENUE

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7398. County responsible to state. Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double, or erroneous assessments. [R., '60, § 793; C., '73, § 908; C., '97, § 1453.]

7399. Defaulting treasurer. If any treasurer prove to be a defaulter to any amount of state revenue, such amount shall be made up to the state within the next three years by additional levies in such manner as to annual amounts as the board of supervisors may direct. [R., '60, § 794; C., '73, § 909; C., '97, § 1454.]

7400. Interest on warrants. When interest is due and allowed by the treasurer of any county or the treasurer of state on the redemption of auditor's warrants or county warrants, the same shall be receipted on the warrants by the holder, with the date of the payment, and no interest shall be allowed by the auditor of state or board of supervisors except such as is thus receipted. [R., '60, § 795; C., '73, § 910; C., '97, § 1455.]

7401. Discounting warrants. If the state treasurer or any county treasurer, by himself or through another, discounts auditor's warrants, either directly or indirectly, he shall upon conviction be fined in any sum not exceeding one thousand dollars. [R., '60, § 796; C., '73, § 911; C., '97, § 1456.]

7402. Loans by county treasurer. A county treasurer shall be liable to a like fine for loaning out, or in any manner using for private purposes, state, county, or other funds in his hands. [R., '60, § 797; C., '73, § 912; C., '97, § 1457; S., '13, § 1457.]

7403. Loans by state treasurer. The state treasurer shall be liable to a fine of not more than ten thousand dollars for a like misdemeanor. [R., '60, § 797; C., '73, § 912; C., '97, § 1457; S., '13, § 1457.]

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7404. Deposits by county treasurer. The county treasurer shall, with the approval of the board of supervisors as to place of deposit, by resolution entered of record, deposit state, county, or other funds in any bank or banks in the state to an amount fixed by such resolution at interest at the rate of at least two and one-half per cent per annum on ninety per cent of the daily balances payable at the end of each month, all of which shall accrue to the benefit of the general county fund. [C., '97, § 1457; S., '13, § 1457; 39 G. A., ch. 114, § 2.]

7405. Bond required. Before such deposit is made, such bank shall file a bond with sureties to be approved by the treasurer and the board of supervisors in double the amount deposited, conditioned to hold the treasurer harmless from all loss by reason of such deposit or deposits; provided that in cases where an approved surety company's bond is furnished, said bond may be accepted in an amount equal to ten per cent more than the amount deposited. [C., '97, § 1457; S., '13, § 1457.]

7406. Filing of bond—action thereon. Said bond shall be filed with the county auditor and action may be brought thereon either by the treasurer or the county as the board of supervisors may elect. [C., '97, § 1457; S., '13, § 1457.]

7407. Nonrelease of principal or sureties. Nothing done under the provisions of the five preceding sections shall alter or affect the liability of the treasurer or the sureties of his official bonds. [C., '97, § 1457; S., '13, § 1457.]

7408. Settlement with treasurer. At the meetings in January and June of each year, the board of supervisors shall make a full and complete settlement with the treasurer, and shall certify to the auditor of state all credits to him for double or erroneous assessments and unavailable taxes, and all dues for state

revenue, interest, or delinquent taxes, sales of land, peddlers' licenses, and other dues, the amounts collected therefor, and revenues still delinquent, each year to itself, which reports shall be forwarded by mail. [C., '51, §§ 157, 158; R., '60, § 798; C., '73, § 913; C., '97, § 1458.]

7409. Settlement by retiring treasurer. When a county treasurer goes out of office, he shall make a full and complete settlement with the board of supervisors, and deliver up all books, papers, moneys, and all other property pertaining to the office, to his successor, taking his receipt therefor. [R., '60, § 802; C., '73, § 917; C., '97, § 1461.]

7410. Supervisors to report to state auditor. The board of supervisors shall make a statement of state dues to the auditor of state, showing all charges against the treasurer during his term of office, and all credits made, the delinquent taxes and other unfinished business charged over to his successor, and the amount of money paid over to his successor, showing to what year and to what account the amount so paid over belongs. [R., '60, § 802; C., '73, § 917; C., '97, § 1461.]

7411. Correct balances. The board of supervisors shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer elect. [R., '60, § 802; C., '73, § 917; C., '97, § 1461.]

7412. Custody of public funds. The state treasurer and each county treasurer shall at all times keep all funds coming into their possession as public money, in a vault or safe, to be provided for that purpose, or in some bank legally designated as a depository for such funds. [R., '60, § 804; C., '73, § 918; C., '97, § 1462; S., '13, § 1462.]

7413. Manner and details of settlement. At the time of any examination of any such office, or at the time of any settlement with the treasurer in charge of any such public funds, the treasurer shall produce and count in the presence of the officer or officers making such examination or settlement, all moneys or funds then on deposit in the safe or vault in his office, and shall produce a statement of all money or funds on deposit with any depository wherein he is authorized to deposit such funds, which statement shall be certified by one or more officers of such depository, and shall correctly show the balance remaining on deposit in such depository at the close of business on the day preceding the day of such settlement. The treasurer shall also file a statement setting forth the numbers, dates, and amounts of all outstanding checks, or other items of difference, reconciling the balance as shown by the treasurer's books with those of the depositories. [R., '60, § 804; C., '73, § 918; C., '97, § 1462; S., '13, § 1462.]

7414. Duty of examining officer. It shall be the duty of the officer or officers making such settlement to see that the amount of money produced and counted, together with the amounts so certified by the legally designated depositories, agrees with the balance with which such treasurer should be charged, and he shall make a report in writing of any such settlement or examination, and attach thereto the certified statement of all such depositories. [S., '13, § 1462.]

7415. Report of settlement filed. The report of any such settlement with the treasurer of state shall be filed in the office of the auditor of state, and the report of a settlement with a county treasurer with the auditor of the county. [S., '13, § 1462.]

7416. False statements or reports. Any officer or other person making a false statement or report or in any manner violating any of the provisions of sections 7412 to 7415, inclusive, shall be guilty of a misdemeanor and shall be liable to a fine of not less than five hundred dollars. [S., '13, § 1462-a.]

7417. Official delinquency. If any auditor or treasurer or other officer shall neglect or refuse to perform any act or duty specifically required of him, such officer shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and he and his bondsmen shall be liable on his official bond for such fine, and for the damages sustained by any person through such neglect or refusal. [R., '60, §§ 744, 749, 805; C., '73, § 919; C., '97, § 1463.]

7418. Refund to counties. The auditor of state shall draw his warrant on the state treasury in favor of any county in the state for the amount of any excess in any fund or tax due the state from said county, excepting the state taxes. [C., '97, § 1464.]

7419. Warrant for excess. When it shall appear from the books in the office of the auditor of state that there is a balance due any county in excess of any revenue due the state, except state taxes, he shall draw his warrant for such excess in favor of the county entitled thereto, and forward the same by mail, or otherwise, to the county auditor of the county to which it belongs, and charge the amount so sent to such county. [C., '97, § 1465.]

7420. Delivery to treasurer. The auditor to whom said warrant is sent shall immediately, upon receipt thereof, deliver it to the treasurer of his county, and charge the amount thereof to the treasurer, and shall acknowledge the receipt of the amount to the state auditor. [C., '97, § 1466.]

TITLE XVII

CERTAIN INTERNAL IMPROVEMENTS

CHAPTER 353

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT

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7421. Jurisdiction to establish. The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session, to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed as hereinafter provided any levee, ditch, drain, or watercourse, or to straighten, widen, deepen, or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience, or welfare. [C., '73, § 1207; C., '97, § 1939; S., '13, § 1989-a1; 40 Ex. G. A., H. F. 185, § 1.]

7422. Presumption. The drainage of surface waters from agricultural lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare. [S., '13, § 1989-a1; 40 Ex. G. A., H. F. 185, § 2.]

7423. "Levee" defined—bank protection. For the purpose of this chapter and with reference to improvements along or adjacent to the Missouri river the word "levee" shall be construed to include, in addition to its ordinary and accepted meaning, embankments, revetments, retards, or any other approved system of construction which may be deemed necessary to adequately protect the banks of any

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river or stream, within or adjacent to any county, from wash, cutting, or erosion. [39 G. A., ch. 45, § 1; 40 Ex. G. A., H. F. 185, § 3.]

7424. Definition of terms. Within the meaning of this chapter, the term "board" shall embrace the board of supervisors, the joint boards of supervisors in case of intercounty levee or drainage districts, and the board of trustees in case of a district under trustee management.

The term "commissioners" shall mean the men appointed and qualified to classify lands, fix percentages of benefits, apportion and assess costs and expenses in any levee or drainage district, unless otherwise specifically indicated by law.

The term "appraisers" shall mean the men appointed and qualified to ascertain the value of all land taken and the amount of damage arising from the construction of levee or drainage improvements. [40 Ex. G. A., H. F. 185, § 220-a1.]

7425. General rule for location. The levees, ditches, or drains herein provided for shall, so far as practicable, be surveyed and located along the general course of the natural streams and watercourses or in the general course of natural drainage of the lands of said district; but where it will be more economical or practicable such ditch or drain need not follow the

course of such natural streams, watercourses, or course of natural drainage, but may straighten, shorten, or change the course of any natural stream, watercourse, or general course of drainage. [S., '13, § 1989-a2; 40 Ex. G. A., H. F. 185, § 4.]

7426. Location across railroad. When any such ditch or drain crosses any railroad right of way, it shall when practicable be located at the place of the natural waterway across such right of way, unless said railroad company shall have provided another place in the construction of the roadbed for the flow of the water; and if located at the place provided by the railroad company, such company shall be estopped from afterwards objecting to such location on the ground that it is not at the place of the natural waterway. [S., '13, § 1989-a2; 40 Ex. G. A., H. F. 185, § 5.]

7427. Number of petitioners required. The owner or owners of at least fifteen per cent of the land named in the petition described in section 7429 may file in the office of the county auditor a petition for the establishment of a levee or drainage district. If the district described in the petition is a subdistrict, one or more of the owners of the land affected by the improvement may petition for such subdistrict. [S., '13, §§ 1989-a2, 1989-a23; 40 Ex. G. A., H. F. 185, § 6.]

7428. Straightening creek or river. When the proposed drainage district involves only the straightening of a creek or river, the board of supervisors shall refuse to consider the petition unless the same is signed by owners of at least twenty-five per cent of the acreage affected by or assessed for the expense of the proposed improvement. This section shall not affect drainage projects involving the drainage of swamps or sloughs not in the congressional forty-acre tracts abutting upon such creek or river. [37 G. A., ch. 415, § 1; 40 Ex. G. A., H. F. 185, § 7.]

7429. Petition. The petition shall set forth:

1. An intelligible description of the lands sought to be reclaimed, by congressional divisions or otherwise.

2. That said lands are subject to overflow or are too wet for cultivation.

3. That the public benefit, utility, health, convenience, or welfare will be promoted by leveeing, ditching, tiling, or draining said lands, or by changing the watercourses thereon.

4. The starting point, route, terminus, and lateral branches of the proposed improvement. [S., '13, §§ 1989-a2, 1989-a23; 40 Ex. G. A., H. F. 185, § 6.]

7430. Bond. There shall be filed with the petition a bond in an amount fixed and with sureties approved by the auditor, conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not finally established. [S., '13, § 1989-a2; 40 Ex. G. A., H. F. 185, § 8.]

7431. Additional bond. No preliminary expense shall be incurred before the establishment of such proposed improvement district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of such bond, the board of supervisors shall require the filing of an additional bond by the petitioners and shall not proceed with the preliminary survey or authorize any additional expense until the additional bond is filed in a sufficient amount to cover such expense. [40 G. A., ch. 154; 40 Ex. G. A., H. F. 185, § 8-a1.]

7432. Engineer—bond. The board shall at its first session thereafter, regular, special, or adjourned, appoint a disinterested and competent civil engineer who shall give bond to the county for the use of the proposed levee or drainage district, if it be established, and if not established, for the use of the petitioners, in amount and with sureties to be approved by the auditor, and conditioned for the faithful and competent performance of his duties. [S., '13, § 1989-a2; 40 Ex. G. A., H. F. 185, § 9.]

7433. Compensation. Any engineer employed under the provisions of this chapter shall receive such compensation per diem as shall be fixed and determined by the board of supervisors. [S., '13, § 1989-a41; 40 Ex. G. A., H. F. 185, § 10.]

7434. Discharge. The board may at any time terminate the contract with, and discharge the engineer. [S., '13, § 1989-a2; 40 Ex. G. A., H. F. 185, § 11.]

7435. Assistants. Assistants may be employed by the engineer only with the approval of the board, which shall fix their compensation. [S., '13, § 1989-a42; 40 Ex. G. A., H. F. 185, § 12.]

7436. Record of work. The engineer shall keep an accurate record of the kind of work done by himself and each assistant, the place where done, and the time engaged therein, and shall file an itemized statement thereof with the auditor. No expenses shall be incurred by the engineer except upon authority of the board, and vouchers shall be filed with the claims therefor. [S., '13, § 1989-a42; S. S., '15, § 1527-s21b; 40 Ex. G. A., H. F. 185, § 12.]

7437. Survey. The engineer shall examine the lands described in the petition and any other lands which would be benefited by said improvement or necessary in carrying out the same.

He shall locate and survey such ditches, drains, levees, pumping stations, and other improvements as will be necessary, practicable, and feasible in carrying out the purposes of the petition and which will be of public benefit or utility, or conducive to public health, convenience, or welfare. [S., '13, § 1989-a2; 40 Ex. G. A., H. F. 185, § 13.]

7438. Report. The engineer shall make full written report to the county auditor, setting forth:

1. The starting point, route, and terminus of each ditch, drain, and levee and the character and location of all other improvements.

2. A plat and profile, showing all ditches, drains, levees, and other improvements, the course, length, and depth of each ditch, the length, size, and depth of each drain, and the length, width, and height of each levee, through each tract of land, and the particular descriptions and acreage of the land required from each forty-acre tract or fraction thereof as right of way, together with the congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.

3. The boundary of the proposed district, including therein by color or other designation other lands that will be benefited or otherwise affected by the proposed improvements, together with the location, size, and elevation of all lakes, ponds, and deep depressions therein.

4. Plans for the most practicable and economic place and method for passing machinery, equipment, and material required in the construction of said improvements across any highways, railroads, and other utilities within the proposed district.

5. The probable cost of the proposed improvements, together with such other facts and recommendations as he shall deem material. [S., '13, § 1989-a2; 40 Ex. G. A., H. F. 185, § 14.]

7439. Procedure on report. Upon the filing of the report of the engineer recommending the establishment of the levee or drainage district, the board shall at its first regular, adjourned, or special meeting examine and consider the same, and, if the plan is not approved, the board may employ said engineer or another disinterested engineer to report another plan or make additional examination and surveys and file an additional report covering such matters as the board may direct. Additional surveys and reports must be made in accordance with the provisions of the last two preceding sections. At any time prior to the final adoption of the plans they may be amended, and as finally adopted by the board shall be conclusive unless the action of the board in finally adopting them shall be appealed from as hereinafter provided. [S., '13, § 1989-a3; 40 Ex. G. A., H. F. 185, § 15.]

7440. Notice of hearing. When any plan and report of the engineer has been approved by the board, such approval shall be entered of record in its proceedings as a tentative plan only for the establishment of said improvement. Thereupon it shall enter an order fixing a date for the hearing upon the petition not less than forty days from the date of the order of approval, and directing the auditor immediately to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office, including railway companies having right of way in the proposed district and to each lienholder or encumbrancer

of any land within the proposed district as shown by the county records, and also to all other persons whom it may concern, including actual occupants of the land in the proposed district, without naming individuals, of the pendency and prayer of the said petition, the favorable report thereon by the engineer, and that such report may be amended before final action, the approval thereof by the board as a tentative plan, and the day and the hour set for hearing on said petition and report, and that all claims for damages except claims for land required for right of way, and all objections to the establishment of said district for any reason must be made in writing and filed in the office of the auditor at or before the time set for such hearing. [S., '13, 1989-a3; 38 G. A., ch. 138 § 1; 40 Ex. G. A., H. F. 185, § 16.]

7441. Service by publication—proof. The notice provided in the preceding section shall be served, except as otherwise hereinafter provided, by publication thereof once each week for two consecutive weeks in some newspaper of general circulation published in the county, the last of which publications shall be not less than twenty days prior to the day set for hearing of the said petition. Proof of such service shall be made by affidavit of the publisher, and be on file with the auditor at the time the hearing begins. [S., '13, § 1989-a3; 40 Ex. G. A., H. F. 185, § 17.]

7442. Service on agent. If any person, corporation, or company owning or having interest in any land or other property affected by any proposed improvement under chapters 353 to 362, inclusive, shall file with the auditor an instrument in writing designating the name and postoffice address of his or its agent upon whom service of notice of said proceeding shall be made, the auditor shall, not less than twenty days prior to the date set for hearing upon said petition, send a copy of said notice by registered mail addressed to the agent so designated. Proof of such service shall be made by affidavit of the auditor filed by him in said proceeding at or before the date of the hearing upon the petition, and such service shall be in lieu of all other service of notice to such persons, corporations, or companies.

This designation when filed shall be in force for a period of five years thereafter and shall apply to all proceedings under said chapters during such period. The person, company, or corporation making such designation shall have the right to change the agent appointed therein or to amend it in any other particular. [S., '13, § 1989-a3; 40 Ex. G. A., H. F. 185, § 18.]

7443. Personal service. In lieu of publication, personal service of said notice may be made upon any owner of land in the proposed district, or upon any lienholder or other person interested in the proposed improvement, in the manner and for the time required for service of original notices in the district court. Proof of such service shall be on file with the auditor on the date of said hearing. [S., '13, § 1989-a3; 40 Ex. G. A., H. F. 185, § 19.]

7444. Waiver of notice. No service of notice shall be required upon any person who shall file with the auditor a statement in writing, signed by him, waiving notice, or who enters an appearance in the proceedings. The filing of a claim for damages or objections to the establishment of said district or other pleading shall be deemed an appearance. [S., '13, § 1989-a3; 40 Ex. G. A., H. F. 185, § 20.]

7445. Waiver of objections and damages. Any person, company, or corporation failing to file any claim for damages or objections to the establishment of the district at or before the time fixed for said hearing, except claims for land required for right of way, shall be held to have waived all objections and claims for damages. [S., '13, § 1989-a4; 40 Ex. G. A., H. F. 185, § 21.]

7446. Adjournment for service—jurisdiction retained. If at the date set for hearing, it shall appear that any person entitled to notice has not been properly served with notice, the board may postpone said hearing and set another time for the same not less than thirty days from said date, and notice of such hearing as hereinbefore provided shall be served on such omitted parties. By fixing such new date for hearing and the adjournment of said proceeding to said date, the board shall not lose jurisdiction of the subject matter of said proceeding nor of any parties already served with notice. [S., '13, § 1989-a3; 40 Ex. G. A., H. F. 185, § 22.]

7447. Hearing of petition—dismissal. At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition in form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the establishment of such district, and the board may view the premises included in the said district. If it shall find that the construction of the proposed improvement will not materially benefit said lands or would not be for the public benefit or utility nor conducive to the public health, convenience, or welfare, or that the cost thereof is excessive it shall dismiss the proceedings. [S., '13, § 1989-a5; 40 Ex. G. A., H. F. 185, § 23.]

7448. Establishment—further investigation. If the board shall find that such petition complies with the requirements of law in form and substance, and that such improvement would be conducive to the public health, convenience, welfare, benefit, or utility, and that the cost thereof is not excessive, and no claim shall have been filed for damages, it may locate and establish the said district in accordance with the recommendation of the engineer and the report and plans on file; or it may refuse to establish the proposed district if it deem best, or it may direct the engineer or another one employed for that purpose to make further examination, surveys, plats, profiles, and reports for the modification of said plans, or for new plans in accordance with sections 7437

and 7438, and continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing; but any new parties rendered necessary by any modification or change of plans shall be served with notice as for the original establishment of a district. The county auditor shall appoint three appraisers as provided for in the next section to assess the value of the right of way required for open ditches or other improvements. [S., '13, § 1989-a5; 40 Ex. G. A., H. F. 185, § 24.]

7449. Appraisers. If the board shall find that such improvement will materially benefit said lands, will be conducive to the public health, convenience, welfare, benefit, or utility, and that the law has been complied with as to form and substance of the petition, the service of notice and the survey and report of the engineer, and that said improvement should be made, then if any claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date of which shall be fixed at the time of adjournment, and of which all interested parties shall take notice, and the auditor shall appoint three appraisers to assess damages, one of whom shall be an engineer, and two freeholders of the county who shall not be interested in nor related to any person interested in the proposed improvement, and the said appraisers shall take and subscribe an oath to examine the said premises, ascertain and impartially assess all damages according to their best judgment, skill, and ability. [S., '13, § 1989-a5; 40 Ex. G. A., H. F. 185, § 25.]

7450. Assessment—report—adjournment—other appraisers. The appraisers appointed to assess damages shall view the premises and determine and fix the amount of damages to which each claimant is entitled, and shall place a separate valuation upon the acreage of each owner taken for right of way for open ditches, as shown by plat of engineer, and shall, at least five days before the date fixed by the board to hear and determine the same, file with the county auditor reports in writing, showing the amount of damage sustained by each claimant. Should the report not be filed in time, or should any good cause for delay exist, the board may postpone the time of final action on the subject, and, if necessary, the auditor may appoint other appraisers. [S., '13, § 1989-a6; 40 Ex. G. A., H. F. 185, § 26.]

7451. Award by board. At the time fixed for hearing and after the filing of the report of the appraisers, the board shall examine said report, and may hear evidence thereon, both for and against each claim for damages and compensation, and shall determine the amount of damages and compensation due each claimant, and may affirm, increase, or diminish the amount awarded by the appraisers. [S., '13, § 1989-a6; 40 Ex. G. A., H. F. 185, § 27.]

7452. Dismissal or establishment. The board shall at said meeting, or at an adjourned ses-

sion thereof, consider the costs of construction of said improvement as shown by the reports of the engineer and the amount of damages and compensation awarded to all claimants, and, if in its opinion, such costs of construction and amount of damages awarded create a greater burden than should justly be borne by the lands benefited by the improvement, it shall then dismiss the petition and assess the costs and expenses to the petitioners and their bondsmen, but if it finds that such cost and expense is not a greater burden than should be justly borne by the land benefited by the improvement, it shall finally and permanently locate and establish said district and improvement. [S., '13, § 1989-a6; 40 Ex. G. A., H. F. 185, § 27.]

7453. Dismissal on remonstrance. If, at or before the time set for final hearing as to the establishment of a proposed levee, drainage or improvement district, except subdrainage district, there shall have been filed with the county auditor, or auditors, in case the district extends into more than one county, a remonstrance signed by a majority of the land owners in the district, and these remonstrants must in the aggregate own seventy per cent or more of the lands to be assessed for benefits or taxed for said improvements, remonstrating against the establishment of said levee, drainage or improvement district, setting forth the reasons therefor, the board or boards as the case may be, shall assess to the petitioners and their bondsmen or the remonstrators, or apportion the costs among them as the board or boards may deem just or as said parties may agree upon. When all such costs have been paid, the board or boards of supervisors shall dismiss said proceedings and cause to be filed with the county auditor all surveys, plats, reports, and records in relation to the proposed district. [40 Ex. G. A., H. F. 185, § 27-a]

7454. Dissolution. When for a period of two years from and after the date of the establishment of a drainage district, or when an appeal is taken or litigation brought against said district within two years from the date such appeal or litigation is finally determined, no contract shall have been let or work done or drainage certificates or bonds issued for the construction of the improvements in such district, a petition may be filed in the office of the auditor, addressed to the board of supervisors, signed by a majority of the persons owning land in such district and who, in the aggregate, own seventy per cent or more of all the land embraced in said district, setting forth the above facts and reciting that provision has been made by the petitioners for the payment of all costs and expenses incurred on account of such district. The board shall examine such petition at its next meeting after the filing thereof, and if found to comply with the above requirements, shall dissolve and vacate said district by resolution entered upon its records, to become effective upon the payment of all the costs and expenses incurred in relation to said district.

In case of such vacation and dissolution and upon payment of all costs as herein provided, the auditor shall note the same on the drainage record, showing the date when such dissolution became effective. [40 Ex. G. A., H. F. 185, § 27-b.]

7455. Permanent survey, plat, and profile. When the improvement has been finally located and established, the board may if necessary appoint the said engineer or a new one to make a permanent survey of said improvement as so located, showing the levels and elevations of each forty-acre tract of land and file a report of the same with the county auditor together with a plat and profile thereof. [S., '13, § 1989-a6; 40 Ex. G. A., H. F. 185, § 27-a1.]

7456. Paying or securing damages. The amount of damages or compensation finally determined in favor of any claimant, shall be paid in the first instance by the parties benefited by the said improvement, or secured by bond in the amount of such damages and compensation with sureties approved by the auditor. [S., '13, § 1989-a7; 40 Ex. G. A., H. F. 185, § 28.]

7457. Division of improvement. After the damages as finally fixed, shall have been paid or secured, the board shall divide said improvement into suitable sections, having regard to the kind of work to be done, numbering the same consecutively from outlets to the beginning, and prescribing the time within which the improvement shall be completed. [S., '13, § 1989-a7; 40 Ex. G. A., H. F. 185, § 29.]

7458. Supervising engineer—bond. Upon the payment or securing of damages, the board shall appoint a competent engineer to have charge of the work of construction thereof, who shall be required before entering upon the work to give a bond to the county for the use and benefit of the levee or drainage district, to be approved by the auditor in such sum as the board may fix, conditioned for the faithful discharge of his duties. [S., '13, § 1989-a7; 40 Ex. G. A., H. F. 185, § 30.]

7459. Advertisement for bids. The board shall cause notice to be given by publication once each week for two consecutive weeks in some newspaper published in the county wherein such improvement is located, and such additional advertisement and publication elsewhere as it may direct, of the time and place of letting the work of construction of said improvement, specifying the approximate amount of work to be done in each numbered section of the district, the time fixed for the commencement, which shall not be prior to the date on which the assessment shall be fixed by the board, and the time of the completion thereof, that bids will be received on the entire work and in sections or divisions thereof, and that each bidder will be required to deposit with his bid cash or certified check on

and certified by a bank in Iowa, payable to the auditor or his order, at his office, in an amount equal to ten per cent of his bid, in no case to exceed ten thousand dollars. When the estimated cost of the improvement exceeds fifteen thousand dollars, the board shall make additional publication of such notice as the board may prescribe for two consecutive weeks in some contractors' journal of general circulation. All notices shall fix the date to which bids will be received, and upon which said work will be let. [C., '73, § 1212; C., '97, § 1944; S., '13, § 1944; S. S., '15, § 1989-a8; 39 G. A., ch. 127, § 1; 40 Ex. G. A., H. F. 185, § 33.]

7460. Bids—letting of work. The board shall award contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, bids to be submitted, received and acted upon separately as to the main drain and each of the laterals, exercising their own discretion as to letting such work as to the main drain as a whole, or as to each lateral as a whole, or by sections as to both main drain and laterals, and reserving the right to reject any and all bids and readvertise the letting of the work. [S. S., '15, § 1989-a8; 40 Ex. G. A., H. F. 185, § 34.]

7461. Manner of making bids—deposit. Each bid shall be in writing specifying the portion of the work upon which the bid is made, and filed with the auditor, accompanied with a deposit of cash or a certified check on and certified by a bank in Iowa, payable to the auditor or his order at his office in a sum equal to ten per cent of the amount of the bid, but in any event not to exceed ten thousand dollars. The checks of unsuccessful bidders shall be returned to them, but the checks of successful bidders shall be held as a guarantee that they will enter into contract in accordance with their bids. [S. S., '15, § 1989-a8; 40 Ex. G. A., H. F. 185, § 35.]

7462. Performance bond—return of check. Each successful bidder shall be required to execute a bond with sureties approved by the auditor in favor of the county for the use and benefit of the levee or drainage district and all persons entitled to liens for labor or material in an amount not less than seventy-five per cent of the contract price of the work to be done, conditioned for the timely, efficient, and complete performance of his contract, and the payment, as they become due, of all just claims for labor performed and material used in carrying out said contract. When such contract is executed and bond approved by the board, the certified check deposited with the bid shall be returned to the bidder. [S. S., '15, § 1989-a8; 40 Ex. G. A., H. F. 185, § 36.]

7463. Contracts. All agreements and contracts for work or materials in constructing the improvements of such district shall be in writing, signed by the chairman of the board of supervisors for and on behalf of the district and the parties who are to perform the work or furnish the materials specified in such

contract. Such contract shall specify the particular work to be done or materials to be furnished, the time when it shall begin and when it shall be completed, the amount to be paid and the times of payment, with such other terms and conditions as to details necessary to a clear understanding of the terms thereof. [40 Ex. G. A., H. F. 185, § 37.]

7464. Commissioners to classify and assess. When a levee or drainage district shall have been located and finally established, and the contracts for construction let, or, unless otherwise provided by law, when the required proceedings have been taken to enlarge, deepen, widen, change, or extend any of the ditches, laterals, or drains of such district, or the required proceedings have been had to annex additional lands to such district, the board shall appoint three commissioners to assess benefits and classify the lands affected by such improvement. One of such commissioners shall be a competent civil engineer and two of them shall be resident freeholders of the county in which the district is located, but not living within, nor interested in any lands included in, said district, nor related to any party whose land is affected thereby. The commissioners shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages of benefits and apportion and assess the costs and expenses of constructing the said improvement according to law and their best judgment, skill, and ability. If said commissioners or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the board shall appoint others with like qualifications to take their places and perform said duties. [S. S., '15, § 1989-a12; 37 G. A., ch. 127, § 1; 40 Ex. G. A., H. F. 185, § 38.]

7465. Duties—time for performance—scale of benefits. At the time of appointing said commissioners, the board shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the auditor. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto. They shall also make an equitable apportionment of the costs, expenses, fees, and damages computed on the basis of the percentages fixed. [S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 39.]

7466. Classification as basis for future assessments. This classification when finally established shall remain as a basis for all future assessments connected with the objects of said levee or drainage district, unless the board for good cause shall authorize a revision thereof. [40 Ex. G. A., H. F. 185, § 40.]

NOTE: For similar provision, see § 7476.

7467. Rules of classification. In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

In estimating the benefits as to the lands not traversed by said improvement, they shall not consider what benefits such land shall receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, or brings an outlet nearer to said lands or relieves the same from overflow. [S., '13, § 1989-a13; S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 40.]

7468. Assessment for lateral ditches. In fixing the percentages and assessment of benefits and apportionment of costs of construction on lands benefited by lateral ditches and drains as a part of the entire improvement to be made in a drainage district, the commissioners shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches on the same basis and in the same manner as if said lateral was with its sublaterals, being constructed as a subdistrict as provided in this chapter, reporting separately:

1. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of the main ditch, drain, or watercourse including pumping plant, if any.

2. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of such lateral improvement. [S., '13, § 1989-a23; S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 41.]

7469. Railroad property—collection. The commissioners to assess benefits and make apportionment of costs and expenses shall determine and assess the benefits to the property of any railroad company extending into or through the levee or drainage district, and make return thereof showing the benefit and the apportionment of costs and expenses of construction. Such assessment when finally fixed by the board shall constitute a debt due from the railroad company to the district, and unless paid it may be collected by ordinary proceedings for the district in the name of the county in any court having jurisdiction. All other proceedings in relation to railroads, except as otherwise provided, shall be the

same as provided for individual property owners within the levee or drainage district. [S., '13, § 1989-a18; 40 Ex. G. A., H. F. 185, § 42.]

7470. Public highways. When any public highway extends into or through a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway, and the board of supervisors shall assess the same against such highway. Such assessments against primary highways shall be paid out of the county's allotment of the primary road fund and against all other highways, one-fourth out of the county road fund or county drainage fund, and three-fourths out of the township road fund or township drainage fund. Such assessments shall draw interest at the same rate and from the same time as assessments against lands. [S., '13, §§ 1989-a19, 1989-a26; 37 G. A., ch. 344, § 4; 40 Ex. G. A., H. F. 185, § 43.]

7471. Report of commissioners. The commissioners, within the time fixed or as extended, shall make and file in the auditor's office a written verified report in tabulated form as to each forty-acre tract, and each tract of less than forty acres, setting forth:

1. The names of the owners thereof as shown by the transfer books of the auditor's office or the reports of the engineer on file, showing said entire classification of lands in said district.

2. The amount of benefits to highway and railroad property and the percentage of benefits to each of said other tracts and the apportionment and amount of assessment of cost and expense against each:

a. For main ditches.

b. For laterals.

c. For levees and pumping station.

3. The aggregate amount of all assessments. [S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 44.]

7472. Notice of hearing. The board shall fix a time for a hearing upon the report of the commissioners, and the auditor shall cause notice to be served upon each person whose name appears as owner, naming him, and also upon the person or persons in actual occupancy of any tract of land without naming him, of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a levee or drainage district, and shall state the amount of assessment of costs and expenses of construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the auditor at or before the time set for such hearing. [S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 45.]

7473. Hearing and determination. At the time fixed or at an adjourned hearing, the board shall hear and determine all objections filed to

said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said district as may appear to the board to be just and equitable. [S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 45.]

7474. Evidence—conclusive presumption. At such hearing, the board may hear evidence both for and against the approval of said report or any portion thereof, but it shall not be competent to show that any of the lands in said district assessed for benefits or against which an apportionment of costs and expenses has been made will not be benefited by such improvement in some degree. Any interested party may be heard in argument by himself or counsel. [S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 46.]

7475. Notice of increased assessment. The board shall cause notice to be served upon the owner of any tract of land against which it is proposed to increase the assessment, requiring him to appear at a fixed date, not less than ten nor more than twenty days from the date of service, and show cause why such assessment should not be so increased, which notice shall be served in the same manner as an original notice upon residents of the county or counties in which the district is located, and upon nonresidents of the county or counties by service on any tenant or occupant of the land affected, and upon any agent of any railroad company affected. [S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 46.]

7476. Classification as basis for future assessments. The classification as finally adopted shall remain the basis of all future assessments for the purpose of said district unless revised by the board in the manner provided for reclassification. [S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 45.]

NOTE: For similar provision, see § 7466.

7477. Levy—interest. When the board has finally determined the matter of assessments of benefits and apportionment, it shall levy such assessments as fixed by it upon the lands within such district, and all assessments shall be levied at that time as a tax and shall bear interest at six per cent per annum from that date, payable annually, except as hereinafter provided as to cash payments thereof within a specified time. [S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 46.]

7478. Lien of tax. Such taxes shall be a lien upon all premises against which they are assessed as fully as taxes levied for state and county purposes. [S., '13, § 1989-a45; 40 Ex. G. A., H. F. 185, § 46.]

7479. Levy for deficiency. If the first assessment made by the board for the original cost or for repairs of any improvement is insufficient, the board shall make an additional

assessment and levy in the same ratio as the first for either purpose, payable at the next taxpaying period after such indebtedness is incurred subject, however, to the provisions of section 7484. [S., '13, § 1989-a26; 40 Ex. G. A., H. F. 185, § 45.]

7480. Record of drainage taxes. All drainage or levee tax assessments shall be entered in the drainage record of the district to which they apply, and also upon the tax records of each county. [40 Ex. G. A., H. F. 185, § 47.]

7481. Funds—disbursement—interest. Such taxes when collected shall be kept in a separate fund known as the drainage or levee fund of the district to which they belong, and shall be paid out only for purposes properly connected with and growing out of the drainage or levee improvement of such district, and on order of the board. Interest collected by the treasurer on drainage or levee districts funds shall be credited to the drainage or levee district to which such funds belong. [S., '13, § 1989-a13; 40 Ex. G. A., H. F. 185, § 47.]

7482. Assessments—maturity and collection. All drainage or levee tax assessments shall become due and payable at the same time as other taxes, and shall be collected in the same manner with the same penalties for delinquency and the same manner of enforcing collection by tax sales. [S., '13, § 1989-a26; 40 Ex. G. A., H. F. 185, § 47.]

7483. Payment before bonds or certificates issued. All assessments for benefits, as corrected and approved by the board, shall be levied at one time against the property benefited, and when levied and certified by the board, shall be payable at the office of the county treasurer. Each person or corporation shall have the right, within twenty days after the levy of assessments, to pay his or its assessment in full without interest, and before any improvement certificate or drainage bond is issued therefor, and any certificate at any time after issue, with accrued interest. [S., '13, § 1989-a26; 39 G. A., ch. 214, § 1; 40 Ex. G. A., H. F. 185, § 48.]

7484. Installment payments—waiver. If the owner of any premises against which a levy exceeding twenty dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing indorsed upon any improvement certificate referred to in section 7499, or in a separate agreement, that in consideration of having a right to pay his assessment in installments, he will not make any objection as to the legality of his assessment for benefit, or the levy of the taxes against his property, then such owner shall have the following options:

1. To pay one-third of the amount of such assessment at the time of filing such agreement; one-third within twenty days after the engineer in charge shall certify to the auditor that the improvement is one-half completed; and the remaining one-third within twenty

days after the improvement has been completed and accepted by the board. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at the rate of six per cent per annum, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than twenty equal installments, the number to be fixed by the board and interest at the rate fixed by the board, not exceeding six per cent per annum. One such installment shall be payable at the March semiannual tax-paying date in each year; provided, however, that the county treasurer shall, at the March semiannual tax-paying date, require only the payment of a sufficient portion of the assessments to meet the interest and the amount maturing on bonds or certificates prior to the regular time for the payment of the second installment of taxes and the balance shall be collected with such second installment and without penalty. [S., '13, §§ 1989-a26, 1989-a27; S. S., '15, § 1989-a12; 37 G. A., ch. 344, § 6; 38 G. A., ch. 271, § 1; 39 G. A., ch. 214, § 1; 40 Ex. G. A., H. F. 185, § 49.]

7485. Waiver by township trustees—certificates. If the board of supervisors provides for the issuance of improvement certificates by the owners of lands, the township trustees may execute waivers, and there may be issued improvement certificates for such part of the assessment for benefits to highways as is to be paid by the township, such waivers and certificates to conform as nearly as may be to those executed upon the assessment against lands. [40 Ex. G. A., H. F. 185, § 49.]

7486. Installment payments after appeal. When an owner takes an appeal from the assessment against any of his land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal he shall file in the office of the auditor his written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date. [40 Ex. G. A., H. F. 185, § 49-a1.]

7487. Notice of half and full completion. Within two days after the engineer has filed a certificate that the work is half completed and within two days after the board of supervisors has accepted the completed improvement as in this chapter provided, the county auditor shall notify the owner of each lot or parcel of land who has signed an agreement of waiver as provided in the third preceding section, of such fact. Such notice shall be given by registered mail sent to such owners, respectively, at the addresses filed with the auditor at the time of making such agreement

of waiver. [39 G. A., ch. 214, § 1; 40 Ex. G. A., H. F. 185, § 50.]

7488. Lien of deferred installments. No deferred installment of the amount assessed as between vendor and vendee, mortgagor and mortgagee shall become a lien upon the property against which it is assessed and levied until the thirty-first day of December of the year next preceding that in which it is due and payable. [S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 51.]

7489. Laterals—return of excess levy. In all cases where a drainage district has been constructed consisting of main ditches which are beneficial to the entire district, and also of laterals, and where the assessments have been made based upon the estimated cost of such laterals, and it can be ascertained that the actual cost of constructing such laterals was less than such estimated cost thereof, then the board of supervisors or joint board of supervisors or other officers having control of such drainage district shall be, and hereby are, authorized and directed to return to the party or parties who owned the land benefited and assessed for such laterals at the time the assessment was fixed and levied by the board or boards of supervisors, the respective proportional parts of such excess assessments made for such laterals by the issue of warrants drawn upon the district fund. [40 G. A., ch. 156; 40 Ex. G. A., H. F. 185, § 51-a1.]

7490. Subdrainage district. After the establishment of a drainage district, any person, company, or corporation owning land within such district which has been assessed for benefits, but which is separated from the main ditch, drain, or watercourse for which it has been so assessed, by the land of others, who desires a ditch or drain constructed from his land across the land of such others in order to connect with the main ditch, drain, or watercourse, and shall be unable to agree with such intervening owners on the terms and conditions on which he may enter upon their lands and cause to be constructed such connecting drain or ditch, may file a petition for the establishment of a subdistrict and thereafter the proceedings shall be the same as provided for the establishment of an original district. [S., '13, § 1989-a23; 40 Ex. G. A., H. F. 185, § 52.]

7491. Presumption—jurisdiction. Such connecting ditch or drain which he shall cause to be constructed shall be presumed conducive to the public health, welfare, convenience, and utility the same as if it had been so constructed as a part of the original improvement of said district. When such subdistrict has been established and constructed it shall become and be a part of the improvement of such drainage district as a whole and be under the control and supervision of the board to the same extent and in every way as if it had been a part of the original improvement of such district. [S., '13, § 1989-a23; 40 Ex. G. A., H. F. 185, § 52.]

7492. Reclassification. After a drainage or levee district has been established and the improvements thereof constructed and put in operation, if the board or boards shall find that the original assessments are not equitable as a basis for the expenses of any enlargement or extension thereof which may have become necessary, they shall order a new classification of all the lands in said district by resolution, and appoint three commissioners, one of whom shall be a civil engineer with qualifications as provided in this chapter and two of whom shall be resident freeholders of the county not living within any township into which the improvement extends, and not interested therein nor related to any party whose land is affected thereby, who shall be duly sworn as hereinbefore provided for such commissioners. [37 G. A., ch. 302, §§ 2, 3; 40 Ex. G. A., H. F. 185, § 54.]

7493. Bids required. In case the board shall finally determine that any such changes shall be made involving an expenditure of five thousand dollars or more, said work shall be let by bids in the same manner as is provided for the original construction of such improvements. [40 Ex. G. A., H. F. 185, § 54.]

7494. Procedure governing reclassification. The proceedings for such reclassification shall in all particulars be governed by the same rules as for original classification. The commissioners shall fix the percentage of actual benefits and make an equitable apportionment of the costs and expenses of construction, enlargement, or extension and file a report thereof with the auditor in the same form and manner as for original classification. Thereafter all the proceedings in relation thereto as to notice, hearing, and fixing of percentage of benefits and amount of assessments shall be as in this chapter provided in relation to original classification and assessments, and at such hearing the board may affirm, increase or diminish the percentage and assessment of benefits and apportionment of costs and expenses so as to make them just and equitable, and cause the record of the original classification, percentage of benefits, and assessments to be modified accordingly. [37 G. A., ch. 302, § 3; 40 Ex. G. A., H. F. 185, § 55.]

7495. Drainage warrants received for assessments. Warrants drawn upon the funds of any district shall be accepted by the treasurer in payment of assessments levied upon any lands in that district owned by the persons to whom said warrants were issued, and when the amount of the warrant exceeds the amount of the assessment, the treasurer shall cancel the said warrant, and give the holder thereof a certificate for the amount of such excess, which certificate shall be filed with the auditor, who shall issue a warrant for the amount of such excess, and charge the treasurer therewith. Such certificate is transferable by indorsement, and will entitle the holder to the new warrant, made payable to his order, and bearing the original number, preceded by the

words, "Issued as unpaid balance due on warrant number". [S., '13, § 1989-a13; 39 G. A., ch. 118, § 1; 40 Ex. G. A., H. F. 185, § 56.]

7496. Unpaid warrants—interest. All warrants drawn upon the funds of any drainage district, which can not be paid for want of funds, shall bear interest at the rate of six per cent per annum, payable annually, from and after the date of presentation thereof to the treasurer. The treasurer shall indorse such warrants "Not paid for want of funds", keep a record of the same, together with the name and postoffice address of the holder, issue calls for outstanding warrants at such times as he may have funds to pay the same, and pay such warrants under the same procedure as is provided by law in relation to county warrants generally. No additional presentation of warrants shall be required to entitle the holder to interest on overdue annual interest. [S., '13, § 1989-a9; 37 G. A., ch. 264, § 1; 38 G. A., ch. 162, § 1; 40 Ex. G. A., H. F. 185, § 57.]

7497. Notice of assignment. When such drainage warrant shall be assigned and transferred after having been so indorsed by the treasurer, the assignee thereof shall notify the treasurer of such assignment, giving the treasurer his name and postoffice address; and upon receipt of such notice by the treasurer he shall make a memorandum in the record kept of such warrant, showing the name and address of each successive assignee or holder. [38 G. A., ch. 162, § 2; 40 Ex. G. A., H. F. 185, § 58.]

7498. Call for unpaid warrants. When the treasurer shall have funds on hand to pay any such warrant or warrants, he shall, in addition to the call provided by law for calling for payment of county warrants generally, mail a written notice of such call to the then holder thereof as shown by his said record, and shall make a record of the date of mailing such notice, and at the expiration of thirty days thereafter if such warrants are not presented for payment, interest thereon shall cease. [37 G. A., ch. 264, § 2; 38 G. A., ch. 162, § 3; 40 Ex. G. A., H. F. 185, § 59.]

7499. Improvement certificates. The board may provide by resolution for the issuance of improvement certificates payable to bearer or to the contractors, naming them, who have constructed the said improvement or completed any part thereof, in payment or part payment of such work. [S., '13, § 1989-a26; 40 Ex. G. A., H. F. 185, § 60.]

7500. Form, negotiability, and effect. Each of such certificates shall state the amount of one or more drainage assessments or part thereof made against the property, designating it and the owner thereof liable for the payment of such assessments. Said certificates shall be negotiable and transfer to the bearer all right and interest in and to the tax in every

such assessment or part thereof described in such certificates, and shall authorize such bearer to collect and receive every assessment embraced in said certificate by or through any of the methods provided by law for their collection as the same mature. [S., '13, § 1989-a26; 40 Ex. G. A., H. F. 185, § 61.]

7501. Interest—place of payment. Such certificates shall bear interest not to exceed six per cent per annum, payable annually, and shall be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount to be credited on the certificates issued therefor. [S., '13, § 1989-a26; 40 Ex. G. A., H. F. 185, § 62.]

7502. Sale at par—right to pay. Any person shall have the right to pay the amount of his assessment represented by any outstanding improvement certificate, with the interest thereon to the date of such payment, at any time. No improvement certificate shall be issued or negotiated for the use of the drainage district for less than par value with accrued interest up to the delivery or transfer thereof. Every such certificate, when paid, shall be delivered to the treasurer and by him surrendered to the party to whose assessment it relates. [S., '13, §§ 1989-a26, 1989-a27; 40 Ex. G. A., H. F. 185, § 63.]

7503. Drainage bonds. When a drainage district has been established or the making of any subsequent repair or improvement determined upon, if the board of supervisors shall find that the cost of such improvement will create assessments against the land included therein greater than should be levied in a single year upon the lands benefited by such improvement, then, instead of issuing improvement certificates, as provided in the four preceding sections, the board may fix the amount that shall be levied and collected each year until such cost and expenses are paid, and may issue drainage bonds of the county covering all assessments exclusive of assessments of twenty dollars and less. [C., '97, § 1953; S., '13, § 1989-a27; 39 G. A., ch. 39, § 1; 40 Ex. G. A., H. F. 185, § 64.]

7504. Form. Each of such bonds shall be numbered and have printed upon its face that it is a "Drainage Bond", stating the county and number of the district for which it is issued, the date and maturity thereof, that it is in pursuance of a resolution of the board of supervisors, that it is to be paid only from taxes for levee and drainage improvement purposes levied and collected on the lands assessed for benefits within the district for which the bond is issued. [S., '13, § 1989-a27; 40 Ex. G. A., H. F. 185, § 69.]

7505. Amount—interest—maturity. In no case shall the aggregate amount of all bonds issued exceed the benefits assessed. Such bonds shall not be issued for a greater amount than the aggregate amount of assessments for the payment of which they are issued, nor for a

longer period of maturity than twenty years, and bear a rate of interest not to exceed five per cent per annum, payable semiannually, on June first and December first of each year. [C., '97, § 1953; S., '13, § 1989-a27; 40 Ex. G. A., H. F. 185, §§ 66, 69.]

7506. Maturity—interest—highway benefits. The board shall fix the amount, maturity, and interest of all bonds to be issued. It shall determine the amount of assessments to highways for benefits within the district to be covered by each bond issue. The taxes levied for benefits to highways within any drainage or levee district shall be paid at the same times and in the same proportion as assessments against the lands of private owners. [S., '13, § 1989-a27; 40 Ex. G. A., H. F. 185, § 71.]

7507. When issued. The bonds issued under the provisions of the four preceding sections or the proceeds thereof shall be issued in time to be available for the use of the district at a date not later than ninety days after the actual commencement of the work on the improvements of such district; but in districts where an appeal or appeals have been taken, not later than ninety days after such appeals have been finally determined. [39 G. A., ch. 124, § 1; 40 Ex. G. A., H. F. 185, § 65.]

7508. Sale or application at par—premium. Such bonds may be applied at par with accrued interest to the payment of work as it progresses upon the improvements of the district, or, the board may sell, through the county treasurer, said bonds at not less than par with accrued interest and devote the proceeds to such payment. Any premium derived from the sale of said bonds shall be credited to the drainage fund of the district. [C., '97, § 1953; S., '13, § 1989-a27; 40 Ex. G. A., H. F. 185, § 67.]

7509. Deficiency levy—additional bonds. If any levy of assessments is not sufficient to meet the interest and principal of outstanding bonds, additional assessments may be made on the same classification as the previous ones. Additional bond issues may be made when necessary to complete full payment for improvements, by the same proceedings as previous issues. [C., '97, § 1953; S., '13, § 1989-a27; 40 Ex. G. A., H. F. 185, § 67.]

7510. Record of bonds. A record of the numbers, amounts, and maturities of all such bonds shall be kept by the auditor showing specifically the lands embraced in the district upon which the tax has not been previously paid in full. [S., '13, § 1989-a27; 40 Ex. G. A., H. F. 185, § 69.]

7511. Assessments payable in cash. All assessments of twenty dollars and less shall be paid in cash. [37 G. A., ch. 344, § 6; 40 Ex. G. A., H. F. 185, § 68.]

7512. Payment before bonds issued. The board at the time of making the levy, shall fix a time within which all assessments in excess

of twenty dollars may be paid in cash, and before any bonds are issued, publish notice in an official newspaper in the county where the district is located, of such time. After the expiration of such time, no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issue of the bonds. [40 Ex. G. A., H. F. 185, § 68.]

7513. Appeals. Any person aggrieved may appeal from any final action of the board in relation to any matter involving his rights, to the district court of the county in which the proceeding was held. [S., '13, §§ 1989-a6, 1989-a11, 1989-a14; 38 G. A., ch. 121, § 1; 40 Ex. G. A., H. F. 185, § 72.]

7514. Appeals in intercounty districts. In districts extending into two or more counties, appeals from final orders resulting from the joint action of the several boards or the board of trustees of such district may be taken to the district court of any county into which the district extends. [S., '13, § 1989-a35; 40 Ex. G. A., H. F. 185, § 73.]

7515. Time and manner. All appeals shall be taken within twenty days after the date of final action or order of the board from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken, the order or action appealed from, and stating that the appeal will come on for hearing at the next succeeding term of the court and designating such term. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court. [S., '13, §§ 1989-a6, 1989-a14, 1989-a35; 37 G. A., ch. 344, § 3; 40 Ex. G. A., H. F. 185, § 74.]

7516. Transcript. When notice of any appeal with the bond as required by the preceding section shall be filed with the auditor, he shall forthwith make and certify a transcript of the notice of appeal and appeal bond, and file the same with the clerk. [S., '13, § 1989-a14; 40 Ex. G. A., H. F. 185, § 75.]

7517. Petition—docket fee — waiver — dismissal. On or before the first day of the next succeeding term of court, the appellant shall file a petition setting forth the order or final action of the board appealed from and the grounds of his objections and his complaint, with a copy of his claim for damages or objections filed by him with the auditor. He shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same. [S., '13, § 1989-a14; 37 G. A., ch. 344, § 3; 40 Ex. G. A., H. F. 185, § 76.]

7518. Pleadings on appeal. It shall not be necessary for the appellees to file an answer

to the petition unless some affirmative defense is made thereto, but they may do so. [S., '13, § 1989-a14; 40 Ex. G. A., H. F. 185, § 76.]

7519. Proper parties—employment of counsel. In all actions or appeals affecting the district, the board of supervisors shall be a proper party for the purpose of representing the district and all interested parties therein, other than the adversary parties, and the employment of counsel by the board shall be for the purpose of protecting the rights of the district and interested parties therein other than the adversary parties. [S., '13, § 1989-a14; 40 Ex. G. A., H. F. 185, § 77.]

7520. Plaintiffs and defendants. In all appeals or actions adversary to the district, the appellant or complaining party shall be entitled the plaintiff, and the board of supervisors and drainage district it represents, the defendants. [S., '13, § 1989-a14; 40 Ex. G. A., H. F. 185, § 77.]

7521. Right of board and district to sue. In all appeals or actions for or in behalf of the district, the board and the drainage district it represents may sue as the plaintiffs. [S., '13, § 1989-a14; 40 Ex. G. A., H. F. 185, § 77.]

7522. Trial on appeal—consolidation. Appeals from orders or actions of the board fixing the amount of compensation for lands taken for right of way or the amount of damages to which any claimant is entitled shall be tried as ordinary proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more of such equitable cases. [S., '13, §§ 1989-a6, 1989-a14, 1989-a35; 40 Ex. G. A., H. F. 185, § 78.]

7523. Conclusive presumption on appeal. On the trial of an appeal from the action of the board in fixing and assessing the amount of benefits to any land within the district as established, it shall not be competent to show that any lands assessed for benefits within said district as established are not benefited in some degree by the construction of the said improvement. [S. S., '15, § 1989-a12; 40 Ex. G. A., H. F. 185, § 80.]

7524. Order as to damages—duty of clerk. If the appeal is from the action of the board as to the amount of damages or compensation awarded, the amount found by the court shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of said court to the board of supervisors who shall thereafter proceed as if such amount had been by it allowed to the claimant. [S., '13, § 1989-a6; 40 Ex. G. A., H. F. 185, § 81.]

7525. Costs. Unless the result on the appeal is more favorable to the appellant than the action of the board, all costs of the appeal shall be taxed to the appellant, but if more favorable, the cost shall be taxed to the appellees. [S., '13, § 1989-a6; 40 Ex. G. A., H. F. 185, § 81.]

7526. Decree as to establishing district or including lands. On appeal from the action of the board in establishing or refusing to establish said district, or in including land within the district, the court may enter such order or decree as may be equitable and just in the premises, and the clerk of said court shall certify the decree or order to the board of supervisors which shall proceed thereafter in said matter as if such order had been made by the board. The taxation of costs among the litigants shall be in the discretion of the court. [S., '13, § 1989-a6; 40 Ex. G. A., H. F. 185, § 83.]

7527. Appeal as exclusive remedy — non-appellants. Upon appeal the decision of the court shall in no manner affect the rights or liabilities of any person who did not appeal. The remedy by appeal provided for in this chapter shall be exclusive of all other remedies. [S., '13, § 1989-a46; 40 Ex. G. A., H. F. 185, § 84.]

7528. Reversal by court — rescission by board. In any case where the decree has been entered setting aside the establishment of a drainage district for errors in the proceedings, and such decree becomes final, the board shall rescind its order establishing the drainage district, assessing benefits, and levying the tax based thereon, and shall also cancel any contract made for construction work or material, and shall refund any and all assessments paid. [S., '13, § 1989-a14; 40 Ex. G. A., H. F. 185, § 85.]

7529. Setting aside establishment — procedure. After the court on appeal has entered a decree revising or modifying the action of the board, the board shall fix a new date for hearing, and proceed in all particulars in the manner provided for the original establishment of the district, avoiding the errors and irregularities for which the original establishment was set aside, and after a valid establishment thereof, proceed in all particulars as provided by law in relation to the original establishment of such districts. [S., '13, 1989-a14; 40 Ex. G. A., H. F. 185, § 86.]

7530. Reassessment to cure illegality. Whenever any special assessment upon any lands within any drainage district shall have been heretofore adjudged to be void for any jurisdictional defect or for any illegality or uncertainty as to the terms of any contract and the improvement shall have been wholly completed, the board or boards of supervisors shall have power to remedy such illegality or uncertainty as to the terms of any such contract with the consent of the person with whom such contract shall have been entered into and make certain the terms of such contract and shall then cause a reassessment of such land to be made on an equitable basis with the other land in the district by taking the steps required by law in the making of an original assessment and relieving the tax in accordance with such assessment, and such tax shall have the same

force and effect as though the board or boards of supervisors had jurisdiction in the first instance and no illegality or uncertainty existed in the contract. [40 G. A., ch. 155; 40 Ex. G. A., H. F. 185, § 86-a1.]

7531. Monthly estimate — payment. The supervising engineer shall, on or before the tenth day of each calendar month, furnish the contractor and file with the auditor estimates for work done during the preceding calendar month under the contract on each section, and the auditor shall at once draw warrants in favor of such contractor on the drainage funds of the district or give him an order directing the county treasurer to deliver to him or them improvement certificates, or drainage bonds as the case may be, for eighty per cent of the estimate on work done. Such monthly estimates shall remain on file in the office of the auditor as a part of the permanent records of the district to which they relate. [C., '97, § 1944; S., '13, §§ 1944, 1989-a9; 40 Ex. G. A., H. F. 185, § 87.]

7532. Completion of work — report — notice. When the work to be done under any contract is completed to the satisfaction of the engineer in charge of construction, he shall so report and certify to the board, which shall fix a day to consider said report and shall give notice of the time and purpose of such meeting by one publication in a newspaper of general circulation published in the county seat in said county and the date fixed for considering said report shall be not less than five days after the date of such publication. [S., '13, § 1989-a9; 40 Ex. G. A., H. F. 185, § 88.]

7533. Objections. Any party interested in the said district or the improvement thereof may file objections to said report and submit any evidence tending to show said report should not be accepted. [40 Ex. G. A., H. F. 185, § 89.]

7534. Final settlement. If it finds the work under any contract has been completed and accepted, the board shall compute the balance due, and if there are no liens on file against such balance, it shall enter of record an order directing the auditor to draw a warrant in favor of said contractor upon the levee or drainage fund of said district or give him an order directing the county treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for such balance found to be due, but such warrants, improvement certificates or bonds shall not be delivered to the contractor until the expiration of thirty days after the acceptance of the work. [C., '73, § 1212; C., '97, § 1944; S., '13, §§ 1944, 1989-a9; 37 G. A., ch. 264, § 1; 40 Ex. G. A., H. F. 185, § 90.]

7535. Abandonment of work. In case any contractor abandons or fails to proceed diligently and properly with the work before completion, or in case he fails to complete the same in the time and according to the terms of the contract, the board shall make written demand on him and his surety to proceed with the

work within ten days. Service of said demand may be personal, or by registered mail addressed to the contractor and the surety, respectively, at their places of residence or business, as shown by the records in the auditor's office. [S., '13, §§ 1944, 1989-a10; 40 Ex. G. A., H. F. 185, § 91.]

7536. New contract—suit on bond. Unless the contractor or the surety on his bond shall appear and in good faith proceed to comply with the demand, and resume work under the contract within the time fixed, the board shall proceed to let contracts for the unfinished work in the same manner as original contracts, and apply all funds not paid to the original contractor toward the completion of the work, and if not sufficient for such purpose, may cause suit to be brought upon the bond of the defaulting contractor for the benefit of the district, and the amount of recovery thereon shall be credited to the district. [C., '73, § 1212; C., '97, § 1944; S., '13, §§ 1944, 1989-a10; 40 Ex. G. A., H. F. 185, § 92.]

7537. Construction on or along highway. When a levee or drainage district shall have been established by the board and it shall become necessary or desirable that the levee, ditch, drain, or improvement shall be located and constructed within the limits of any public highway, it shall be so built as not materially to interfere with the public travel thereon. [S., '13, § 1989-a20; 40 Ex. G. A., H. F. 185, § 94.]

7538. Establishment of highways. The board shall have power to establish public highways along and upon any levee or embankment along any such ditch or drain, but when so established the same shall be worked and maintained as other highways and so as not to obstruct or impair the levee, ditch, or drain. [S., '13, § 1989-a20; 40 Ex. G. A., H. F. 185, § 94.]

7539. Bridges. When such levee, ditch, drain, or change of any natural watercourse crosses a public highway, necessitating moving or building or rebuilding any county or township bridge, the board of supervisors shall move, build or rebuild the same, paying the costs and expenses thereof from the county bridge fund, or primary road fund. [S., '13, § 1989-a19; 37 G. A., ch. 344, § 4; 40 Ex. G. A., H. F. 185, § 95.]

7540. Construction across railroad. Whenever the board of supervisors shall have established any levee, or drainage district, or change of any natural watercourse and the levee, ditch, drain, or watercourse as surveyed and located crosses the right of way of any railroad company, the county auditor shall immediately cause to be served upon such railroad company, in the manner provided for the service of original notices, a notice in writing stating the nature of the improvement to be constructed, the place where it will cross the right of way of such company, and the full requirements for its complete construction across such right of way as

shown by the plans, specifications, plat, and profile of the engineer appointed by the board, and directing such company to construct such improvement according to said plans and specifications at the place designated, across its right of way, and to build and construct or rebuild and reconstruct the necessary culvert or bridge where any ditch, drain or watercourse crosses its right of way, so as not to obstruct, impede or interfere with the free flow of the water therein, within thirty days from the time of the service of such notice upon it. [S., '13, § 1989-a18; 40 Ex. G. A., H. F. 185, § 96.]

7541. Duty to construct. Upon receiving the notice provided in the preceding section, such railroad company shall construct the improvement across its right of way according to the plans and specifications prepared by the engineer for said district, and build or rebuild the necessary culvert or bridge and complete the same within the time specified. [S., '13, § 1989-a18; 40 Ex. G. A., H. F. 185, § 97.]

7542. Bridges at natural waterway—costs. The cost of building, rebuilding, constructing, reconstructing, changing, or repairing, as the case may be, any culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be borne by such railroad company without reimbursement therefor. [S., '13, § 1989-a18; 40 Ex. G. A., H. F. 185, § 97.]

7543. Construction when company refuses. If the railroad company shall fail, neglect, or refuse to comply with said notice, the board shall cause the same to be done under the supervision of the engineer in charge of the improvement, and such railroad company shall be liable for the cost thereof to be collected by the county for said district in any court having jurisdiction. [S., '13, § 1989-a18; 40 Ex. G. A., H. F. 185, § 98.]

7544. Cost of construction across railway. The cost of constructing the improvement across the right of way of such company, not including the cost of building or rebuilding and constructing or reconstructing any necessary culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be considered as an element of such company's damages by the appraiser to appraise damages. [S., '13, § 1989-a18; 40 Ex. G. A., H. F. 185, § 98.]

7545. Passing drainage equipment across railway. It shall be the duty of any steam or electric railway company to furnish the contractor unrestricted passage across its right of way, telegraph, telephone and signal lines for his machines and equipment, whenever recommended by the engineer and approved by the board of supervisors and the cost

thereof, shall be considered as an element of such company's damages by the appraisers thereof; provided that if such company shall fail to do so within thirty days after written notice from the auditor, the engineer shall cause the same to be done under his direction and the company shall be liable for the cost thereof to be collected by the county in any court having jurisdiction. Provided, further, that the railway company shall have the right to designate the day and hours thereof within said period of thirty days above mentioned when such crossing shall be made. [39 G. A., ch. 206, § 2; 40 Ex. G. A., H. F. 185, § 99.]

7546. Passage across other public utilities. The owner or operator of a public utility, whether operated publicly or privately other than steam and electric railways shall afford the contractor of any drainage project under this chapter unrestricted passage for his machines and equipment across the right of way lines or other equipment of such utility whenever recommended by the engineer and approved by the board of supervisors. [39 G. A., ch. 205, § 1; 40 Ex. G. A., H. F. 185, § 100.]

7547. Failure to comply. If the owner or operator of the utility fails to afford such passage within fifteen days after written notice from the drainage engineer so to do, the contractor, under the supervision of the engineer, may proceed to do the necessary work to afford such passage and to place said utility in the same condition as before said passage; but the owner or operator shall have the right to designate the hours of the day when such crossing or passage shall be made. [39 G. A., ch. 205, § 1; 39 G. A., ch. 206, § 2; 40 Ex. G. A., H. F. 185, § 101.]

7548. Expenses attending passage. The work necessary to afford such passage shall be deemed to be covered by and included in the contract with the district under which the contractor is operating, and if the work is done by the owner or operator of such utility the reasonable expense thereof shall be paid out of the drainage funds of the district and charged to the account of the contractor. [39 G. A., ch. 205, § 1; 39 G. A., ch. 206, § 2; 40 Ex. G. A., H. F. 185, § 102.]

7549. Annexation of additional lands. After the establishment of a levee or drainage district, if the board becomes convinced that additional lands are benefited by the improvement and should have been included in the district as originally established, it may adopt a resolution of necessity for annexation of such additional land and appoint an engineer with the qualifications provided in this chapter to examine such additional lands, to make a survey and plat thereof showing their relation, elevation, and conditions of drainage with reference to such established district, and to make and file with the auditor a report as in this chapter provided for the original establishment of such district. [S., '13, § 1989-a54; 40 Ex. G. A., H. F. 185, § 103.]

7550. Proceedings on report. If said report recommends the annexation of such lands or any portion thereof, the board shall consider such report, plats, and profiles and if satisfied that any of such lands are materially benefited by the district and that such annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing thereon; and (if such annexation is finally made), as to classification and assessment of benefits, to the same extent and in the same manner as provided in the establishment of an original district. All parties shall have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district. [S., '13, § 1989-a54; 40 Ex. G. A., H. F. 185, § 104.]

7551. Petition for annexation. Annexation may be made and brought under the jurisdiction of the board for all of said purposes upon the petition of the owners of all the lands to be annexed. [S., '13, § 1989-a54; 40 Ex. G. A., H. F. 185, § 105.]

7552. Use of former and abandoned surveys. In cases where proceedings have been taken for the establishment of a levee or drainage district and an engineer has been appointed who has made a survey, return and plat thereof and for any reason the improvement has been abandoned and the proceedings dismissed, and afterwards proceedings are instituted for the establishment of a levee or drainage district which will benefit any territory surveyed in said former proceedings, the engineer shall use so much of the return, levels, surveys, plat, and profile made in the former proceedings as may be applicable. He shall specify in his reports the parts thereof so used, and in case the cost of said returns, levels, surveys, plat, and profile made in said former proceedings has been paid by the former petitioners or their bondsmen, then a reasonable amount shall be allowed said petitioners or bondsmen for the use of the same. [S., '13, § 1989-a16; 40 Ex. G. A., H. F. 185, § 106.]

7553. Unsuccessful procedure—reestablishment. When proceedings have been instituted for the establishment of a drainage district or for any change or repair thereof, or the change of a natural watercourse, and the establishment thereof has failed for any reason either before or after the improvement is completed, the board shall have power to reestablish such district or improvement and any new improvement in connection therewith as recommended by the report of the engineer. As to all lands benefited by such reestablishment, repair, or improvement, the board shall proceed in the same manner as in the establishment of an original district, using as a basis for assessment the entire cost of the proceedings, improvement, and maintenance from the beginning; but in awarding damages and in the as-

assessment of benefits account shall be taken of the amount of damages and taxes, if any, theretofore paid by those benefited, and credit therefor given accordingly. All other proceedings shall be the same as for the original establishment of the district, making of improvements, and assessment of benefits. [S., '13, §§ 1989-a17, 1989-a50; 40 Ex. G. A., H. F. 185, § 108.]

7554. New district including old district. If any levee or drainage district or improvement established either by legal proceedings or by private parties shall be insufficient to properly drain all of the lands tributary thereto, the board upon petition as for the establishment of an original levee or drainage district, shall have power to establish a new district covering and including such old district or improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein. [S., '13, § 1989-a25; 40 Ex. G. A., H. F. 185, § 109.]

7555. Credit for old improvement. When such district as contemplated in the preceding section and the new improvement therein shall include the whole or any part of the former improvement, the commissioners, for classification of lands for assessment of benefits and apportionment of costs and expenses of such new improvement, shall take into consideration the value of such old improvement in the construction of the new one and allow proper credit therefor to the parties owning the old improvement as their interests may appear. In all other respects the same proceedings shall obtain as are provided for the original establishment of levee and drainage districts. [S., '13, § 1989-a25; 40 Ex. G. A., H. F. 185, § 110.]

7556. Repair. When any levee or drainage district shall have been established and the improvement constructed the same shall be at all times under the supervision of the board of supervisors except as otherwise provided for control and management by a board of trustees, and it shall be the duty of the board to keep the same in repair and for that purpose it may cause the ditches, drains, and watercourses thereof to be enlarged, reopened, deepened, widened, straightened or lengthened, or the location changed for better service, or may cause any part thereof to be converted into a closed drain when considered for the best interest of the public. [S., '13, § 1989-a21; 37 G. A., ch. 302, §§ 1, 2; 40 Ex. G. A., H. F. 185, § 116.]

7557. Payment. Such repairs shall be paid for out of the funds of the levee or drainage district in the hands of the county treasurer if there be any. [S., '13, § 1989-a21; 40 Ex. G. A., H. F. 185, § 116.]

7558. Assessment without notice. If such funds are not sufficient and the cost thereof does not exceed ten per cent of the original cost of the improvements in the district a new assessment shall be made on the basis of the old

apportionment and no notice of such assessment shall be necessary. [S., '13, § 1989-a21; 37 G. A., ch. 302, § 1; 40 Ex. G. A., H. F. 185, § 116.]

7559. Assessment with notice. If the cost thereof does exceed ten per cent of the original cost of the improvements in the district, the board may for good reason order a new apportionment of, and assessment upon, the lands in the district to be made; and the same proceedings shall be had and the same rules shall be applied as are provided in this chapter for an original apportionment and assessment; and the same right to appeal shall be given to any interested party. [S., '13, § 1989-a21; 37 G. A., ch. 302, § 1; 40 Ex. G. A., H. F. 185, § 116.]

7560. Additional land. If additional land is required in making such repairs or changes then the same proceedings shall be had as to such additional land as are provided in this chapter for the original establishment of the district and the same rights shall be given all interested parties including the right of appeal from the decision of the board concerning any inclusion of land, damages, apportionment of benefits, and assessment for costs. [S., '13, § 1989-a21; 40 Ex. G. A., H. F. 185, § 116.]

7561. Separate assessments for main ditch and laterals. Notwithstanding the provisions of the five preceding sections, so much of the cost of the work and materials as is required to clean out any specific open ditch or main so as to restore it to its original efficiency or capacity and to preserve its sides at a practical slope must be assessed to the lands in the whole district in the same proportion as the costs and expenses of the construction of such specific open ditch was originally assessed to said lands; and so much of the cost of the work and materials as is required to restore any tile line or lateral to its original efficiency, or to clean any tile line, or to replace broken or defective tile, or to rebuild any bulkhead, must be assessed to the lands benefited by such specific tile line or lateral in the same proportion as the original cost thereof. [40 Ex. G. A., H. F. 185, § 116-a2.]

7562. Reclassification required. If, however, it shall appear that the original assessment or apportionment did not designate separately the amount each tract should pay for the main ditch or drain and the amount it should pay for the lateral drain, then the board shall make such reclassification whenever a new assessment is necessary for repairs or changes according to the principles and rules set forth in sections 7467 and 7468. [40 Ex. G. A., H. F. 185, § 116-a2.]

7563. Improvement of common outlet. When two or more drainage districts outlet into the same ditch, drain, or natural watercourse and the board determines that it is necessary to clean out, deepen, enlarge, extend, or straighten said ditch, drain, or natural watercourse in order to expeditiously carry off the combined waters of such districts, the

board may proceed as provided in the two preceding sections. Each district shall be assessed for the cost of such work in proportion to the benefits derived. [S., '13, § 1989-a24; 38 G. A., ch. 332; 40 Ex. G. A., H. F. 185, § 116-a3.]

7564. Commissioners to apportion benefits. For the purpose of ascertaining the proportionate benefits, the board shall appoint commissioners having the qualifications of benefit commissioners, one of whom shall be an engineer, to determine the percentage of benefits and the sum total to be assessed to each district for the improvement. [40 Ex. G. A., H. F. 185, § 116-a4.]

7565. Time of report. When said commissioners are appointed, the board shall, by proper order, fix the time when the commissioners shall report their findings, but a report filed within thirty days of the time so fixed shall be deemed a compliance with said order. [40 Ex. G. A., H. F. 185, § 116-a5.]

7566. Report and review. The commissioners shall file with the board a detailed report of their findings. Said board shall review said report and may, by proper order, increase or decrease the amount which shall be charged to each district. [40 Ex. G. A., H. F. 185, § 116-a6.]

7567. Levy under original classification. If the amount finally charged against a district does not exceed ten per cent of the original cost of the improvement in said district, the board shall proceed to levy said amount against all lands, highways, and railway rights of way and property within the district, in accordance with the original classification and apportionment. [40 Ex. G. A., H. F. 185, § 116-a6.]

7568. Levy under reclassification. If the amount finally charged against a district exceeds ten per cent of the original cost of the improvement, the board shall order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy said amount upon all lands, highways, and railway rights of way and property within the district, in accordance with said new classification and apportionment. [40 Ex. G. A., H. F. 185, § 116-a6.]

7569. Removal of obstructions. The board shall cause to be removed from the ditches, drains, and laterals of any district any obstructions which interfere with the flow of the water, including trees, hedges, or shrubbery and the roots thereof, and may cause any tile drain so obstructed to be relaid in concrete or any other adequate protection, such work to be paid for from the drainage funds of the district. [38 G. A., ch. 121, § 1; 40 Ex. G. A., H. F. 185, § 117.]

7570. Trees and hedges. When it becomes necessary to destroy any trees or hedges outside the right of way of any ditch, lateral, or

drain in order to prevent obstruction by the roots thereof, if the board and the owners of such trees or hedges can not agree upon the damage for the destruction thereof, the board may proceed to acquire the right to destroy and remove such trees or hedges by the same proceedings provided for acquiring right of way for said drainage improvement in the first instance. [38 G. A., ch. 121, § 1; 40 Ex. G. A., H. F. 185, § 119.]

7571. Outlet for lateral drains—specifications. The owner of any premises assessed for the payment of the costs of location and construction of any ditch, drain, or watercourse as in this chapter provided, shall have the right to use the same as an outlet for lateral drains from his premises. The board of supervisors shall make specifications covering the manner in which such lateral drains shall be connected with the main ditches or other laterals and be maintained, and the owner shall follow such specifications in making and maintaining any such connection. [S., '13, § 1989-a22; 40 Ex. G. A., H. F. 185, § 120.]

7572. Subdistricts in intercounty districts. The board of supervisors of any county shall have jurisdiction to establish subdrainage districts of lands included within a district extending into two or more counties when the lands to compose such subdistricts lie wholly within such county, and to make improvements therein, repair and maintain the same, fix and levy assessments for the payment thereof, and the provisions of this section shall apply to all such drainage subdistricts, the lands of which lie wholly within one county. The proceedings for all such purposes shall be the same as for the establishment, construction, and maintenance of an original levee or drainage district the lands of which lie wholly within one county, so far as applicable, except that one or more persons may petition for a subdistrict as provided in section 7490. [S., '13, § 1989-a37; 37 G. A., ch. 344, § 8; 38 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 185, § 122.]

7573. District by mutual agreement—presumption. The owners of lands may provide by mutual agreement in writing duly signed, acknowledged, and filed with the auditor for combined drainage of their lands by the location and establishment of a drainage district for such purposes and the construction of drains, ditches, and watercourses upon and through their said lands. Such drainage district shall be presumed to be conducive to the public welfare, health, convenience, or utility. [S., '13, § 1989-a28; 40 Ex. G. A., H. F. 185, § 123.]

7574. What the agreement shall contain. Such agreement shall contain the following:

1. A description of the lands by congressional divisions, metes and bounds, or other intelligible manner, together with the names of the owners of all said lands.

2. The location of the drains and ditches to be constructed, describing their sources and outlets and the courses thereof.

3. The character and extent of drainage improvement to be constructed.

4. The assessment of damages if any.

5. The classification of the lands included in such district, the amount of drainage taxes or special assessments to be levied upon and against the several tracts, and when the same shall be levied and paid.

6. Such other provisions as may be mutually agreed upon relating to establishment and maintenance of such joint and mutual drainage district. [S., '13, § 1989-a28; 40 Ex. G. A., H. F. 185, § 124.]

7575. Board to establish. When such agreement is filed with the auditor he shall record it in the drainage record. The board shall at a regular, special, or adjourned session thereafter locate and establish a drainage district and locate the ditches, drains, and watercourses thereof as provided in said agreement, and enter of record an order accordingly. The board thereafter shall carry out the object, purpose, and intent of such agreement and cause to be completed and constructed the said improvement and shall retain jurisdiction of the same as fully as in districts established in any other manner. It shall cause to be levied upon and against the lands of such district, the drainage taxes and assessments according to said agreement and when collected said taxes and assessments shall constitute the drainage funds of said district to be applied upon order of the board as in said agreement provided. [S., '13, § 1989-a28; 40 Ex. G. A., H. F. 185, § 125.]

7576. Procedure. The board shall proceed to carry out the provisions of the agreement, advertising for and receiving bids, letting the work, making contracts, levying assessments, paying on estimates, issuing warrants, improvement certificates or drainage bonds as the case may be, in the same manner as in districts established on petition, except as in said mutual agreement otherwise provided. [S., '13, § 1989-a28; 40 Ex. G. A., H. F. 185, § 127.]

7577. Outlet in adjoining county. When a drainage district is established in any county in the state and no practicable outlet can be obtained except through lands in an adjoining county, the board of the county in which the district is located shall have power to purchase a right of way for such outlet in such adjoining county and pay for the same out of the funds of such district. In case the board and the owners of the land required for such outlet can not agree upon the price to be paid as compensation for the land taken, such board is hereby empowered to exercise the right of eminent domain in order to procure such necessary right of way. [S., '13, § 1989-a55; 40 Ex. G. A., H. F. 185, § 128.]

7578. Outlet in another state. When a district is established in any county in this state and no practicable outlet can be obtained except through lands in an adjoining state, the board of supervisors of such county shall have

power to purchase a right of way for such outlet in such adjoining state and pay for the same out of the funds of such district. [S., '13, § 1989-a39; 40 Ex. G. A., H. F. 185, § 129.]

7579. Injuring or diverting—damages. Any person who shall wilfully break down or through or injure any levee or who shall dam up, divert, obstruct, or wilfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person he shall be liable in treble the amount of such damages. [C., '73, § 1227; C., '97, § 1961; 40 Ex. G. A., H. F. 185, § 130.]

7580. Obstructing or damaging. Any person or persons wilfully diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse or breaking down or injuring any levee established, constructed, and maintained under any provision of law shall be deemed guilty of a misdemeanor and punished accordingly. [40 Ex. G. A., H. F. 185, § 131.]

7581. Nuisance—abatement. Any ditch, drain, or watercourse which is now or hereafter may be constructed so as to prevent the surface and overflow water from the adjacent lands from entering and draining into and through the same is hereby declared a nuisance and may be abated as such. [S., '13, § 1989-a15; 40 Ex. G. A., H. F. 185, § 132.]

7582. Waste banks—private use. The landowner may have any beneficial use of the land to which he has fee title and which is occupied by the waste banks of an open ditch when such use does not interfere in any way with the easement or rights of the drainage district as contemplated by this chapter. For the purpose of gaining such use the landowner may smooth said waste banks, but in doing so he must preserve the berms of such open ditch without depositing any additional dirt upon them. [40 Ex. G. A., H. F. 185, § 167-a1.]

7583. Preliminary expenses—how paid. If the proposed district is all in one county, the board of supervisors is authorized to pay all necessary preliminary expenses in connection therewith from the general fund of the county. If it extends into other counties, the boards of the respective counties are authorized to pay from the general fund thereof, such proportion of said expenses as the work done or expenses created in each county bears to the whole amount of work done or expenses created. Said amounts shall be ascertained and reported by the engineer in charge of the work and be approved by the respective boards which shall, as soon as paid, charge the amount to said district in favor of the general fund of the counties, as their interest may appear, as soon as the said district is established. If said dis-

trict shall not be established, the said amounts shall be collected upon the bond or bonds of the petitioners. [S., '13, § 1989-a48; 40 Ex. G. A., H. F. 185, § 134.]

7584. Additional help for auditor. If the work in the office of the auditor by reason of the existence of drainage districts is so increased that the regular officer is unable by diligence to do the same, the board of supervisors may employ such additional help as may be necessary to keep the records and transact the business of the drainage districts. The expense of such help shall be paid by the districts in proportion to the amount of work done therefor. [S., '13, § 1989-a42; 40 Ex. G. A., H. F. 185, § 135.]

7585. Employment of counsel. The board is authorized to employ counsel to advise and represent it and drainage districts in any matter in which they are interested. Attorney's fees and expenses shall be paid out of the drainage fund of the district for which the services are rendered, or may be apportioned equitably among two or more districts. Such attorneys shall be allowed reasonable compensation for their services, also necessary traveling expenses while engaged in such business. Attorneys rendering such services shall file with the auditor an itemized, verified account of all claims therefor, and statement of expenses, and the same shall be audited and allowed by the board in the amount found to be due. [S., '13, § 1989-a14; 40 Ex. G. A., H. F. 185, § 136.]

7586. Compensation of appraisers. Persons appointed to appraise and award damages and make classification of lands and assess benefits, other than the engineer, shall receive such compensation as the board may fix, not to exceed, however, five dollars per day each, and in addition thereto, the necessary expense of transportation of said persons while engaged upon their work. They shall file with the auditor an itemized, verified account of the amount of time employed upon said work and their expenses. [S., '13, § 1989-a41; 38 G. A., ch. 76, § 1; 40 Ex. G. A., H. F. 185, § 138.]

7587. Fees for publications. Fees for publication of all notices required to be published by the provisions of this chapter shall be fixed by the board not exceeding thirty-three and one-third cents for each insertion for each ten lines of brevier type or its equivalent. [S., '13, § 1989-a41; 39 G. A., ch. 130, § 1; 40 Ex. G. A., H. F. 185, § 139.]

7588. Payment. All compensation for services rendered, fees, costs, and expenses when properly shown by itemized and verified statement shall be filed with the auditor and allowed by the board in such amounts as shall be just and true, and when so allowed shall be paid on order of the board from the levee or drainage funds of the district for which such services were rendered or expenses incurred, by warrants drawn on the treasurer by the audi-

tor. [S., '13, § 1989-a41; 38 G. A., ch. 76, § 1; 39 G. A., ch. 130, § 1; 40 Ex. G. A., H. F. 185, § 140.]

7589. Purchase at tax sale. When land in a levee, drainage, or improvement district is being sold at a tax sale for delinquent taxes or assessment, the board of supervisors or the district trustees, as the case may be, shall have authority to bid in such land or any part of it, paying the amount of the bid from the funds of the district, and taking the certificate of sale in their names as trustees for such district, and may thereafter pay any assessments for taxes or benefits levied against said premises from the district funds. The amount paid for redemption which shall include such additional payment, shall be credited to the district. [40 Ex. G. A., H. F. 185, § 141.]

7590. Tax deed—sale or lease. If no redemption shall be made the board of supervisors or trustees, as the case may be, shall receive the tax deed as trustees for the district. They shall credit the district with all income from said property. They may lease or sell and convey said property as trustees for such district and shall deposit all money received therefrom to the credit of such district. [40 Ex. G. A., H. F. 185, § 141.]

7591. Voting power. In case any proposition arises in said district to be determined by the vote of parties owning land therein, notice of such hearing shall be given and the board of supervisors or trustees, as the case may be, while holding title in trust to any such land, shall have the same right to vote for or against such proposition as the former owner would have had if he had not been divested of the title to said land. [40 Ex. G. A., H. F. 185, § 141.]

7592. Inspection of improvements. The board of any county into which a levee or drainage improvement extends shall cause a competent engineer to inspect such levee or drainage improvement as often as it deems necessary for the proper maintenance and efficient service thereof. The engineer shall make report to the board of the condition of the improvement, together with such recommendations as he deems necessary. For any claim for services and expenses of inspection, the engineer shall file with the auditor an itemized and verified account of such service and expense to be allowed by the board in such amount as it shall find due and paid out of the drainage funds of the district. If the district extends into two or more counties, such action shall be had jointly by the several boards, and the expenses equitably apportioned among the lands in the different counties. [S., '13, § 1989-a44; 40 Ex. G. A., H. F. 185, § 142.]

7593. Watchmen. When a levee has been established and constructed in any county, the board shall be empowered to employ one or more watchmen, and fix their compensation, whose duty it shall be to watch such levee and

make repairs thereon in case of emergency. Such employee shall file with the auditor an itemized, verified account for services rendered, and cost and expense incurred in watching or repairing such levee, and the same shall be audited and allowed by the board as other claims and paid by the county from funds belonging to such district. [S., '13, § 1989-a40; 40 Ex. G. A., H. F. 185, § 143.]

7594. Construction of drainage laws. The provisions of this chapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands. [S., '13, § 1989-a46; 40 Ex. G. A., H. F. 185, § 144.]

7595. Technical defects. The collection of drainage taxes and assessments shall not be defeated where the board has acquired jurisdiction of the interested parties and the subject matter, on account of technical defects and irregularities in the proceedings occurring prior to the order of the board locating and establishing the district and the improvements therein. [S., '13, § 1989-a46; 40 Ex. G. A., H. F. 185, § 144.]

7596. Conclusive presumption of legality. The final order establishing such district when not appealed from, shall be conclusive that all prior proceedings were regular and according to law. [S., '13, § 1989-a46; 40 Ex. G. A., H. F. 185, § 144.]

7597. Drainage record. The board shall provide a drainage record book, which shall be in the custody of the auditor, who shall keep a full and complete record therein of all proceedings relating to drainage districts, so arranged and indexed as to enable any proceedings relative to any particular district to be examined readily. [S., '13, §§ 1989-a14, 1989-a42; 40 Ex. G. A., H. F. 185, § 133.]

7598. Records belong to district. All reports, maps, plats, profiles, field notes, and other documents pertaining to said matters, including all schedules, and memoranda relating to assessment of damages and benefits, shall belong to the district to which they relate, remain on file in the office of the county auditor, and be matters of permanent record of drainage proceedings. [38 G. A., ch. 141, § 1; 40 Ex. G. A., H. F. 185, § 32.]

CHAPTER 354

INTERCOUNTY LEVEE OR DRAINAGE DISTRICTS

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7599. Petition and bond. When the levee or drainage district embraces land in two or more counties, a duplicate of the petition of any owner of land to be affected or benefited by such improvement shall be filed with the county auditor of each county into which said levee or drainage district will extend, accompanied by a duplicate bond to be filed with the auditor of each of the said counties as provided when the district is wholly within one county, in an amount and with sureties approved by the auditor of the county in which the largest acreage of the district is situated, which bond shall run in favor of the several counties in which it is filed. [S., '13, § 1989-a29; 40 Ex. G. A., H. F. 185, § 146.]

the board of each of such counties shall appoint a commissioner and the commissioners of the several counties so appointed shall meet within thirty days thereafter and appoint a competent engineer who shall also act as a commissioner. [S., '13, § 1989-a29; 40 Ex. G. A., H. F. 185, § 147.]

7600. Commissioners. Upon the filing of such petition in each county and the approval of such duplicate bond by the proper auditor,

7601. Examination and report. The commissioners thus appointed shall examine the application and make an inspection of all the lands embraced in the proposed district and shall determine what improvements in the way of levees, ditches, drains, or change of natural watercourse are necessary for the drainage of the lands described in the petition. Such commissioners, including the engineer, shall file a detailed report of their examination and their findings and file a duplicate thereof in the office of the auditor of each of said counties. [S., '13, § 1989-a29; 40 Ex. G. A., H. F. 185, § 147.]

7602. Duty of engineer. In addition to the report of the commissioners as a whole, the engineer so appointed shall perform the same duties and in the same manner required of the engineer by chapter 353 when the proposed district is located wholly within one county, and his surveys, plats, profiles, field notes, and reports of his surveys shall be made and filed in duplicate in each county. [S., '13, § 1989-a29; 40 Ex. G. A., H. F. 185, § 148.]

7603. Notice. Immediately upon the filing of the report of the commissioners and the engineer, if the same recommends the establishment of such district, notice shall be given by the auditor of each county to the owners of all the lots and tracts of land in his own county respectively embraced within such district as recommended by the commissioners as shown by the transfer books in the office of the auditor of each of said counties, and also to the persons in actual occupancy of all the lots or tracts of land in such district, and also to each lienholder or incumbrancer of any of such lots or tracts as shown by the records of the respective counties. [S., '13, § 1989-a29; 39 G. A., ch. 150, § 1; 40 Ex. G. A., H. F. 185, § 149.]

7604. Contents of notice — service. Such notice shall state the time and place, when and where the boards of the several counties will meet in joint session for the consideration of said petition and the report of the commissioners and engineer thereon, and shall in other respects be the same and served in the same time and manner as required when the district is wholly within one county, except that the auditor of each county shall give notice only to the owners, occupants, incumbrancers, and lienholders of the lots and tracts of land embraced within the proposed district in his own county as shown by the records of such county. [S., '13, § 1989-a29; 40 Ex. G. A., H. F. 185, § 149.]

7605. Claims for damages—filing—waiver. Any person filing objections or claiming damages or compensation on account of the construction of such improvement shall file the same in writing in the office of the auditor of the county in which his land is situated, at or before the time set for hearing. He may, however, file it at the time and place of hearing. If he shall fail to file such claim at the time specified he shall be held to have waived his right thereto, but claims for land taken for right of way for any open ditch need not be filed. [S., '13, § 1989-a30; 40 Ex. G. A., H. F. 185, § 150.]

7606. Organizations — procedure—adjournments. At the time set for hearing such petition, the boards of the several counties shall meet at the place designated in said notice. They shall organize by electing a chairman and a secretary, and when deemed advisable may adjourn to meet at the call of such chairman at such time and place as he may designate, or may adjourn to a time and place fixed by said joint boards. They shall sit jointly in considering the petition, the report and the

recommendations of the engineer, in the same manner as if the district were wholly within one county. [S., '13, § 1989-a31; 40 Ex. G. A., H. F. 185, § 151.]

7607. Tentative adoption of plans. The said boards by their joint action may dismiss the petition and refuse to establish such district, or they may approve and tentatively adopt the plans and recommendations of the engineer for the said district. [40 Ex. G. A., H. F. 185, § 151.]

7608. Appraisers. If the said boards shall adopt a tentative plan for the district, the board of each county shall select an appraiser and the several boards by joint action shall employ an engineer, and the said appraisers and engineer shall constitute the appraisers to appraise the damages and value of all right of way required for open ditches. [S., '13, § 1989-a31; 40 Ex. G. A., H. F. 185, § 151.]

7609. Duty of appraisers—procedure. The appraisers shall proceed in the same manner and make return of their findings and appraisal the same as when the district is wholly within one county, except that a duplicate thereof shall be filed in the auditor's office of each of the several counties. After the filing of the report of the appraisers, all further proceedings shall be the same as where the district is wholly within one county, except as otherwise provided. [S., '13, § 1989-a31; 40 Ex. G. A., H. F. 185, § 151.]

7610. Meetings of joint boards. The board of supervisors of any county in which a petition for the establishment of a levee or drainage district to extend into or through two or more counties is on file, may meet with the board or boards of any other county or counties in which such petition is on file, for the purpose of acting jointly with such other board or boards in reference to said petition or any business relating to such district. Any such joint meetings held in either of the counties in which such petition is on file shall constitute a valid and legal meeting of said joint boards for the transaction of any business pertaining to said petition or to the business of such district. [S., '13, § 1989-a37; 40 Ex. G. A., H. F. 185, § 152.]

7611. Equalizing voting power. When the boards are of unequal membership, for the purpose of equalizing their voting power each member of the smallest board shall cast a full vote and each member of a larger board shall cast such fractional part of a vote as results from dividing the smallest number by such larger number. [S., '13, § 1989-a29; 40 Ex. G. A., H. F. 185, § 153.]

7612. Commissioners to classify and assess. If the boards of the several counties acting jointly shall establish the district, they shall appoint a commission consisting of one from each county, and in addition thereto a competent engineer who shall within twenty days begin to inspect the premises and classify the

lands in said district fixing the percentages and assessments of benefits and the apportionment of costs and expenses and shall complete said work within the time fixed by the boards. The qualifications of said commissioners, their classification of lands, fixing percentages and assessments of benefits and apportionment of costs and the report thereof in all details shall be governed in all respects by the provisions of chapter 353 for districts wholly within one county. [S., '13, § 1989-a32; 40 Ex. G. A., H. F. 185, § 154.]

7613. Notice and service thereof—objections. Upon the filing of the report of the commissioners to classify lands, fix and assess benefits and apportion costs and expenses, the auditors of the several counties, acting jointly, shall cause notice to be served upon all interested parties of the time when and the place where the boards will meet and consider such report and make a final assessment of benefits and apportionment of costs, which notice shall be the same and served for the time and in the manner and all proceedings thereon shall be the same as provided in chapter 353 in districts wholly within one county, except publication of notice as provided in section 7441 shall be in each of the counties into which the district extends, and also except that the objections not filed prior to the date of the hearing shall be filed with the boards at the time and place of such hearing. [S., '13, § 1989-a32; 37 G. A., ch. 344, § 7; 39 G. A., ch. 257, § 1; 40 Ex. G. A., H. F. 185, § 155.]

7614. Levies—certificates and bonds. After the amount to be assessed and levied against the several tracts of land shall have been finally determined, the several boards, acting separately, and within their own counties, shall levy and collect the taxes apportioned and levied in their respective counties. They may issue warrants, improvement certificates, or bonds for the payment of the cost of such improvement within their respective counties, with the same right of landowners to pay without interest or in installments all as provided where the district is wholly within one county. [S., '13, § 1989-a32; 40 Ex. G. A., H. F. 185, § 156.]

7615. Bonds or proceeds made available. When drainage bonds are to be issued under the provisions of the preceding section they shall be issued at such time that they or the proceeds thereof shall be available for the use of the district at a date not later than ninety days after the actual commencement of the work on the improvement as provided in relation to districts wholly within one county, and subject to the same exceptions in cases of appeals set forth in section 7507. [39 G. A., ch. 124, § 2; 40 Ex. G. A., H. F. 185, § 157.]

7616. Supervising engineer. At the time of finally establishing the district, the boards of the several counties, acting jointly, shall employ a competent engineer to have charge and supervision of the construction of the improve-

ment and they shall fix his compensation and he shall, before entering upon said work, give a bond running to the several counties for the use and benefit of the district in the same amounts and of like tenor and effect as is provided in districts wholly within one county. A duplicate of such bond shall be filed with the auditor of each of said counties. [S., '13, § 1989-a34; 40 Ex. G. A., H. F. 185, § 158.]

7617. Duty of engineer. The duties of the supervising engineer shall be the same in all respects as is provided by chapter 353 for districts wholly within one county. [S., '13, § 1989-a34; 40 Ex. G. A., H. F. 185, § 159.]

7618. Notice of letting work—applicable procedure. If the boards, acting jointly, shall establish such district, the auditors of the several counties shall immediately thereafter, acting jointly, cause notice to be given of the time and place of the meeting of the boards for letting contracts for the construction of the improvement. The notices, bids, bonds, and all other proceedings in relation to letting contracts shall be the same as provided where the district is wholly within one county, but duplicates of contractors' bonds shall be filed with the auditor of each county. [S., '13, § 1989-a33; 40 Ex. G. A., H. F. 185, § 160.]

7619. Contracts. All contracts made for engineering work and the work of constructing improvements of an intercounty district shall be made by written contract executed by the contractor and such person as may be authorized by the boards of the several counties and by joint resolution and shall specify the work to be done, the amount of compensation therefor and the times and manner of payment, all as provided in relation to districts wholly within one county. [S., '13, § 1989-a33; 40 Ex. G. A., H. F. 185, § 161.]

7620. Monthly estimate—payment. The engineer in charge of the work shall furnish the contractor monthly estimates of the amount of work done on each section and the amount thereof done in each county, a duplicate of which shall be filed with the auditor of each of the several counties. Upon the filing of such statement, each auditor shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, in favor of the contractor for eighty per cent of the amount due from his county. [S., '13, § 1989-a34; 39 G. A., ch. 116, § 2; 40 Ex. G. A., H. F. 185, § 162.]

7621. Final settlement. When the work to be done on any contract is completed to the satisfaction of the supervising engineer he shall so report and certify to the boards of the several counties, which by joint action shall fix a day to consider said report, and all the provisions shall apply in relation to objections to said report and the approval of the same and the completion of any unfinished or abandoned work as is provided in chapter 353 relating to completion of work and final settlement

in districts wholly within one county, except that, when the completed work is accepted by the joint action of the boards of supervisors of the several counties into which the district extends such acceptance shall be certified to the auditor of each county who shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for the balance due from the portion of the district in such county. [S., '13, § 1989-a34; 39 G. A., ch. 116, § 2; 40 Ex. G. A., H. F. 185, § 163.]

7622. Failure of board to act. When the establishment of a district, extending into two or more counties, is petitioned for as hereinbefore provided and one or more of such boards fails to take action thereon, the petitioners may cause notice in writing to be served upon the chairman of each board demanding that action be taken upon the petition within twenty days from and after the service of such notice. [S., '13, § 1989-a36; 40 Ex. G. A., H. F. 185, § 164.]

7623. Transfer to district court. If such boards shall fail to take action thereon within the time named, or fail to agree, the petitioners may cause such proceedings to be transferred to the district court of any of the counties into which such proposed district extends by serving notice upon the auditors of the several counties within ten days after the expiration of said twenty days' notice, or after the failure of such boards to agree. [S., '13, § 1989-a36; 40 Ex. G. A., H. F. 185, § 165.]

7624. Transcript, docket, and trial. Upon the giving of such notice the auditors shall, acting jointly, prepare and certify to the clerk of the district court a full and complete tran-

script of all proceedings had in such case, on or before the first day of the next succeeding term of said court. The clerk of the district court shall thereupon docket the case and the same shall be tried as in equity and the appearance term shall be the trial term. [S., '13, § 1989-a36; 40 Ex. G. A., H. F. 185, § 166.]

7625. Decree. The court shall enter judgment and decree dismissing the case or establishing such district and may by proper orders and writs enforce the same. [S., '13, § 1989-a36; 40 Ex. G. A., H. F. 185, § 166.]

7626. Law applicable. Except as otherwise stipulated in this chapter the provisions and procedure set forth in chapter 353 shall govern and apply to the formation, establishment, and conduct of every levee or drainage district extending into two or more counties, the petition therefor, the giving or publication or service of notice therein, the appointment and duties of all officers or appraisers or commissioners, the making or filing of waivers, reports, plats, profiles, recommendations, notices, contracts, and papers, the classification and apportionment and assessment of lands and all other property, the taking and hearing of appeals, the issuance and delivery of warrants, bonds and assessment certificates, the payment of taxes and assessments, the making of improvements, ditches, drains, changes, enlargements, extensions, and repairs, the inclusion of lands, and the making or performance of every other matter or thing whatsoever relevant to or in any wise connected with such joint drainage or levee district, and the rights, privileges, and duties of all persons, landowners, officers, appellants, and courts. [S., '13, § 1989-a37; 38 G. A., ch. 54, § 1; 40 Ex. G. A., H. F. 185, § 167.]

CHAPTER 355

DRAINAGE DISTRICTS EMBRACING PART OR WHOLE OF CITY OR TOWN

7627. Authority to include city.

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7633. Funding bonds.

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7627. Authority to include city. The board of any county shall have the same power to establish a drainage district that includes the whole or any part of any incorporated town or city, including cities under special charter, as they have to establish districts wholly outside of such cities and towns, including assessment of damages and benefits within such cities and towns, but no board of supervisors shall have power or authority to establish a drainage or levee district which lies wholly within the corporate limits of any city or town, nor in any case to establish any district for sewer purposes. [S., '13, § 1989-a38; 40 Ex. G. A., H. F. 185, § 168.]

7628. Inclusion of city—notice. Notice of the filing of the petition for such district and the time of hearing thereon, shall set forth the boundaries of the territory included within such city or town and directed to the town or city clerk and the owners and lienholders of the property within such boundaries without naming individuals, to be served in the same manner as notices where the district is wholly outside of such city or town. [S., '13, § 1989-a38; 40 Ex. G. A., H. F. 185, § 168.]

7629. Assessments—notice. When the streets, alleys, public ways, or parks or lots or parcels including railroad rights of way of any

incorporated town or city, or city under special charter, so included within a levee or drainage district, will be beneficially affected by the construction of any improvement in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to estimate and return in their report the percentage and assessment of benefits to such streets, alleys, public ways, and parks, or lots or parcels including railroad rights of way and notice thereof shall be served upon the clerk of such incorporated town or city, irrespective of the form of government, and upon owners of lots, parcels, and railroad rights of way so assessed. [S., '13, § 1989-a38; 40 Ex. G. A., H. F. 185, § 169.]

7630. Objections—appeal. The council or clerk of such town or city or individual owners may file objections to such percentage and assessment of benefits in the time and manner provided in case of landowners outside such city or town, and they shall have the same right to appeal from the finding of the board with reference to such assessment. [S., '13, § 1989-a38; 40 Ex. G. A., H. F. 185, § 170.]

7631. Assessments—interest. Such assessment as finally made shall draw interest at the same rate and from the same time as assessment against lands. [S., '13, § 1989-a38; 40 Ex. G. A., H. F. 185, § 170.]

7632. Bonds, certificates, and waivers. The board of supervisors and the town or city council shall have the same power in reference to issuing improvement certificates or drainage bonds and executing waivers on account of such assessment for benefits to streets, alleys, public ways, and parks as is herein conferred upon the board of supervisors and the township trustees in reference to assessment for benefits to highways. [S., '13, § 1989-a38; 40 Ex. G. A., H. F. 185, § 170.]

7633. Funding bonds. Such cities or towns may issue their funding bonds for the purpose of securing money to pay any assessment against it as provided by law. [37 G. A., ch. 28, § 1; 40 Ex. G. A., H. F. 185, § 170.]

7634. Jurisdiction relinquished. When the board of any county has heretofore established

any drainage district which is located wholly within the corporate limits of any city or town, including those the outlets of which are outside of such limits, and the drains thereof have been wholly or partially constructed of sewer tile, or when the ground that is used for said drains is needed by the city or town for storm sewer and drainage purposes, said board shall relinquish all authority or control of all of said drain that is included within such corporate limits, to the city or town upon request of the city or town council as provided in the next section. [37 G. A., ch. 224, § 1; 40 Ex. G. A., H. F. 185, § 172.]

7635. Request for relinquishment. It is hereby made the duty of any city or town council, if it deems the same for the best interest of the said city or town, to pass, by a majority vote, a resolution requesting the board of supervisors to permit the city or town to take over and control the drains within its corporate limits which resolution shall be certified to the board of supervisors of the county and filed by the auditor, who shall spread the same upon the records of the drainage district. [37 G. A., ch. 224, § 3; 40 Ex. G. A., H. F. 185, § 173.]

7636. Duty to relinquish. Upon the request of the city or town council, as provided in the preceding section, it shall be the duty of the board to pass a resolution and have the same made a part of its proceedings, relinquishing all authority and control of the drainage district which is within the corporate limits, to the said city or town. [37 G. A., ch. 224, § 2; 40 Ex. G. A., H. F. 185, § 174.]

7637. Jurisdiction of municipality. After the drainage district has been taken over by the city or town, it shall have complete control thereof, and may use the same for any purpose that said city or town through its city or town council deems proper and necessary for the advancement of the city or town or its health or welfare, and the city or town shall be responsible for the maintenance and upkeep of said drainage district only from and after its relinquishment by the board of supervisors to the city or town. [37 G. A., ch. 224, § 4; 40 Ex. G. A., H. F. 185, § 175.]

CHAPTER 356

HIGHWAY DRAINAGE DISTRICTS

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7638. Establishment. Whenever, in the opinion of the board of supervisors, it is necessary to drain any part of any public highway under its jurisdiction, and any land abutting upon or adjacent thereto, it may proceed without petition or bond to establish a highway drainage district by proceeding in all other respects as provided in chapter 353. When the board does not proceed on its own motion, it shall so proceed when petitioned by the board of township trustees as to any highway under the jurisdiction of said board of trustees. [S. S., '15, §§ 1989-b, 1989-b2-1989-b6, 1989-b8, 1989-b12, 1989-b13; 37 G. A., ch. 161, § 1; 38 G. A., ch. 135, § 1; 40 Ex. G. A., H. F. 185, § 175-a1.]

7639. Powers. Such district, when established, shall have the powers granted to drainage and levee districts, and all parties interested shall have the same rights so far as applicable. [S. S., '15, §§ 1989-b, 1989-b2-1989-b6, 1989-b8, 1989-b12, 1989-b13; 37 G. A., ch. 161, § 1; 38 G. A., ch. 135, § 1; 40 Ex. G. A., H. F. 185, § 175-a1.]

7640. Initiation without petition. When the board of supervisors determines on its own action to proceed to the establishment of a highway drainage district, it shall do so by the adoption of a resolution of necessity to be placed upon its records, in which it shall describe in a general way the portion of any highway or highways to be included in such district, together with the description of abutting or adjacent land and railroad rights of way to be included in such district and made subject to assessment for such improvement. [S. S., '15, § 1989-b; 40 Ex. G. A., H. F. 185, § 175-a2.]

7641. Engineer. The board shall appoint a competent engineer for the district. If the county engineer is appointed, he shall serve without additional compensation. In no case shall the county engineer act as a member of the assessment commission in a drainage district provided for in this chapter. [S. S., '15, §§ 1989-b, 1989-b11; 40 Ex. G. A., H. F. 185, § 175-a3.]

7642. Survey and report. The engineer shall make a survey of the proposed district and re-

port the same to the board, being governed in all respects as provided by sections 7437 and 7438 and designate particularly any portion of the county road system, the primary road system, or the township road system, or any portion of either and all of said systems, as well as all lands adjoining and adjacent thereto, including lands and rights of way of railway companies which in his judgment will be benefited by drainage of highways in such district, and which should be embraced within the boundaries of such district. [S. S., '15, § 1989-b1; 40 Ex. G. A., H. F. 185, § 175-a4.]

7643. Assessment—report. The commission for assessment of benefits and classifying the property assessed shall determine and report:

1. The separate amount which shall be paid by the county on account of the county road system and the primary road system.

2. The amounts which shall be paid by the township or townships on account of the township road system.

3. The amounts which shall be assessed against the right of way or other real estate of each railway company within such district.

4. The amounts which shall be assessed against each forty-acre tract or less within such district. [S. S., '15, § 1989-b5; 40 Ex. G. A., H. F. 185, § 175-a5.]

7644. Advanced payments. The board on construction of such improvement may advance out of the county road fund that portion to be collected by special assessment, the amount so advanced to be replaced in said county funds as the first special assessments are collected. The board may in lieu of making such advancements, issue warrants to be known as "Drainage Warrants", said warrants to draw not to exceed six per cent interest per annum payable annually from the date of issue and to be paid out of the special assessments levied therefor, when the same are collected. [S. S., '15, § 1989-b7; 38 G. A., ch. 30, § 1; 40 Ex. G. A., H. F. 185, § 175-a6.]

7645. Payment from road or drainage funds. The amount fixed by the final order of the board to be paid on account of the primary road system shall be payable out of the primary road fund. The amount fixed by the final order of the board to be paid on account of the county

road system may be payable out of the county road fund or out of the county drainage fund. The amount fixed by the final order of the board to be paid on account of the township road system shall be payable out of the township road fund or out of the township drainage fund. [S. S., '15, § 1989-b5; 40 Ex. G. A., H. F. 185, § 175-a7.]

7646. Dismissal—costs. If such proceedings are dismissed or said improvement abandoned, all costs of such proceedings shall be paid out of the road system for the benefit of which said proceeding was initiated. [S. S., '15, § 1989-b10; 40 Ex. G. A., H. F. 185, § 175-a8.]

7647. Condemnation of right of way. When in the judgment of the board of supervisors, it is inadvisable to establish a drainage district but necessary to acquire right of way through private lands for the construction of ditches or drains as outlets for the drainage of highways, the board of supervisors may cause such right of way to be condemned by proceedings in the manner required for the exercise of the right of eminent domain as for works of internal improvement, and apportion the costs and expenses thereof equitably among the several road systems benefited thereby, but no attorney's fees will be taxed. [S., '13, § 1989-a43; 40 Ex. G. A., H. F. 185, § 175-a9.]

7648. Laws applicable. All proceedings for the construction and maintenance of highway drainage districts except as provided for in this chapter shall be as provided for in the three preceding chapters. [40 Ex. G. A., H. F. 185, § 175-a10.]

7649. Removal of trees from highway. When the roots of trees located within a highway obstruct the ditches or tile drains of such highway, the board of supervisors or the board of township trustees shall remove such trees from highways under their respective jurisdictions, except shade or ornamental trees adjacent to a dwelling house or other farm buildings or feed lots. [40 Ex. G. A., H. F. 185, § 175-a11.]

7650. Trees outside of highways. When the roots of trees and hedges growing outside a highway obstruct the ditches or tile drains of any highway, the board of supervisors or the board of township trustees, as the case may be, may acquire the right to destroy such trees in the manner provided for taking private property for public use. Ornamental trees adjacent to any dwelling, orchard trees and trees used as windbreaks for a dwelling house, out-buildings, barn or feed lots, shall be exempt from the provisions of this section. [40 Ex. G. A., H. F. 185, § 175-a12.]

CHAPTER 357

DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

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7651. Authorization. The board of supervisors of any county or counties in which a drainage or levee district has been organized as by law provided, may establish and maintain a pumping station or stations, when and where the same may be necessary to secure a proper outlet for the drainage of the land comprising the district or any portion thereof, and the cost of construction and maintenance of said pumping station or stations shall be levied upon and collected from the lands in the district benefited by such pumping station or stations, in the same manner as provided for in the construction and maintenance of said districts. [S., '13, §§ 1989-a49, 1989-a52; 40 Ex. G. A., H. F. 185, § 176.]

7652. Petition — procedure. Such pumping station shall not be established or maintained unless a petition therefor shall be presented to

the board signed by not less than one-third of the owners of lands benefited thereby. The lands benefited by such pumping station shall be determined by the board on said petition and report of the engineer, and such other evidence as it may hear. No additional land shall be taken into any such drainage district after the improvements therein have been substantially completed, unless one-third of the owners of the land proposed to be annexed have petitioned therefor or consented in writing thereto. [S., '13, § 1989-a49; 40 Ex. G. A., H. F. 185, § 177.]

7653. Additional pumping station. After the establishment of a drainage district, including a pumping plant, and before the completion of the improvement therein, the board or boards may, if deemed necessary to fully accomplish the purposes of said improvement,

by resolution authorize the establishment and maintenance of such additional pumping station or stations as the engineer may recommend, and if a petition is filed by one-third of the owners of land within such district asking the establishment of such pumping plant or plants, the board or boards must direct the engineer to investigate the advisability of the establishment thereof and upon the report of said engineers the board or boards shall determine whether such additional pumping plant or plants shall be established. [38 G. A., ch. 283, § 1; 40 Ex. G. A., H. F. 185, § 178.]

7654. Transfer of pumps. If the board or boards determine that additional pumping plant or plants shall be established and maintained, a pump or pumps may be removed from any pumping station already established and may be installed in any such additional plant, if such removal can be made without injuring the efficient operation of the plant from which removed. [38 G. A., ch. 283, § 1; 40 Ex. G. A., H. F. 185, § 178.]

7655. Costs. The cost of the establishment of such additional pumping plant or plants shall be paid in the same manner and upon the same basis as is provided for the cost of the original improvement. [38 G. A., ch. 283, § 1; 40 Ex. G. A., H. F. 185, § 178.]

7656. Dividing districts. When a drainage district has been created and more than one pumping plant is established therein, the board or boards of supervisors may, and upon petition of one-third of the owners of land within said district shall, appoint an engineer to investigate the advisability of dividing said district into two or more districts so as to include at least one pumping plant in each of such districts. [38 G. A., ch. 283, § 2; 40 Ex. G. A., H. F. 185, § 179.]

7657. Notice—publication. If the engineer recommends such division the board of supervisors shall fix a time for hearing upon the question of such division and shall publish notice directed to all whom it may concern of the time and place of such hearing, for the time and in the manner as is required for the publication of notice of the establishment of said district, except that said notice need not name the owners and lienholders. [38 G. A., ch. 283, § 2; 40 Ex. G. A., H. F. 185, § 179.]

7658. Hearing—jurisdiction of divided districts. At the time fixed, the board shall determine the advisability of such division and shall make such order with reference thereto as shall be deemed proper, having consideration for the interests of all concerned. If such division is made, the board or boards having jurisdiction of the original district shall retain jurisdiction of the new districts created by such division for the purpose of collecting assessments theretofore made and making such additional assessments as are necessary to pay the obligations theretofore contracted. For all other purposes, each division shall be under the jurisdiction of the board or boards of

supervisors which would have had jurisdiction thereof if originally established as an independent district. [38 G. A., ch. 283, § 2; 40 Ex. G. A., H. F. 185, § 180.]

7659. Division in other cases. After a levee or drainage district operating a pumping plant shall have been established and the improvement constructed and accepted, if it shall become apparent that the lands can be more effectually drained, managed, or controlled by a division thereof, then the said board or boards, or trustees, may, and if the district is divided by a stream, they shall, divide the district. [38 G. A., ch. 283, § 3; 40 Ex. G. A., H. F. 185, § 181.]

7660. Assessments not affected — maintenance tax. Each district after the division shall be conducted as though established originally as a district. Nothing herein shall affect the legality or collection of any assessments levied before the division; but the maintenance tax, if any, shall be divided in proportion to the amount paid in by each district. [38 G. A., ch. 283, § 3; 40 Ex. G. A., H. F. 185, § 182.]

7661. Election and apportionment of trustees. If said district, before the division was made, was under the control and management of trustees, then each trustee shall continue to serve in the district in which he is situated, and other trustees shall be elected in each new district. The election for said new trustees shall be called by the old board of trustees in each district within ten days after said division is made and shall be conducted as provided for the election of trustees. [38 G. A., ch. 283, § 3; 40 Ex. G. A., H. F. 185, § 183.]

7662. Settling basin—condemnation. If, before a district operating a pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one or more streams running into, through, or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy, or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided for the exercise of the right of eminent domain. [38 G. A., ch. 283, § 4; 40 Ex. G. A., H. F. 185, § 184.]

7663. Funding bonds. When the owners of ten per cent of the land in a drainage or levee district having and operating a pumping station shall petition the board of supervisors to extend the time of payment of the taxes assessed against the lands within said district for a period not exceeding twenty years, under such rules and regulations as said board may direct, the interest on such assessments to be

paid annually the same as other taxes levied against the property, not less than one-twentieth of the principal of said extended tax to be paid each year until the entire tax is paid, and the lien of such tax to continue until fully paid, the board of supervisors may settle, adjust, renew, or extend the legal indebtedness of such district as shown by the assessments levied against the lands therein whether evidenced by certificates, warrants, bonds, or judgments by refunding all such indebtedness and issuing coupon bonds therefor when such indebtedness amounts to one thousand dollars or upwards, but for no other purpose. [40 G. A., ch. 159, §§ 1, 11; 40 Ex. G. A., H. F. 185, § 184-a1.]

7664. Form of bonds. Such bonds shall be issued in sums of not less than one hundred dollars or more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding six per cent per annum, payable annually or semiannually, and shall be substantially in the form provided by law for funding bonds issued for drainage purposes. [40 G. A., ch. 159, §§ 1, 11; 40 Ex. G. A., H. F. 185, § 184-a2.]

7665. Formal execution. Such bonds shall be numbered consecutively, signed by the chairman of the board of supervisors, attested by the county auditor. The interest coupons attached thereto shall be executed in the same manner. [40 G. A., ch. 159, § 3; 40 Ex. G. A., H. F. 185, § 184-a3.]

7666. Resolution — requisites — record. All bonds issued under the provisions of this chapter shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear and whether payable annually or semiannually, the place where the principal and interest shall be payable and when it becomes due, and such other provisions not inconsistent with law in reference thereto as the board of supervisors shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the said board and a complete copy thereof printed on the back of each bond, which resolution shall constitute a contract between the drainage district and the purchasers or holders of said bonds. [40 G. A., ch. 159, § 4; 40 Ex. G. A., H. F. 185, § 184-a4.]

7667. Registration. When bonds have been executed as aforesaid they shall be delivered to the county treasurer and his receipt taken therefor. He shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of debt were received therefor, which record shall at all times be open to the inspection of the owners of property within the district. The treasurer shall thereupon certify on the back of each bond as follows:

“This bond duly and properly registered in my office this day of 19.....

Treasurer of the County of

[40 G. A., ch. 159, § 5; 40 Ex. G. A., H. F. 185, § 184-a5.]

7668. Liability of treasurer—reports. The treasurer shall stand charged on his official bond with all bonds so delivered to him and the proceeds thereof. He shall report under oath to the board of supervisors, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged. [40 G. A., ch. 159, § 5; 40 Ex. G. A., H. F. 185, § 184-a5.]

7669. Sale — application of proceeds. He shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for a legal indebtedness of the said district evidenced by bonds, warrants, or judgments outstanding at the date of the passage of the resolution authorizing the issue thereof; and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued at the date of sale or exchange. After registration the treasurer shall deliver said bonds to the purchaser thereof and when exchanged for indebtedness of said district shall at once cancel all warrants or bonds or secure proper credits therefor on judgments. [40 G. A., ch. 159, § 6; 40 Ex. G. A., H. F. 185, § 184-a6.]

7670. Levy. Drainage districts issuing funding or refunding bonds under this chapter shall levy taxes for the payment of the principal and interest thereof, where there has not been a prior levy covering same, in accordance with the provisions of the law relating to taxation. [40 G. A., ch. 159, § 7; 40 Ex. G. A., H. F. 185, § 184-a7.]

7671. Scope of act. Refunding bonds for the purposes set out in this chapter may be issued to pay off and take up bonds issued in payment for drainage improvements under prior laws or to refund any part thereof. Bonds thus issued shall substantially conform to the provisions of the law relating to drainage bonds and the face amount thereof shall be limited to the amount of the unpaid assessments, with interest thereon, applicable to the payment of the bonds so taken up. [40 G. A., ch. 159, § 9; 40 Ex. G. A., H. F. 185, § 184-a8.]

7672. Funds available to pay bonds. When refunding bonds shall be issued to pay for drainage improvements under the provisions of this chapter, all special assessments, taxes, and sinking funds applicable to the payment of such bonds previously issued shall be ap-

plicable in the same manner and the same extent to the payment of the refunding bonds issued hereunder, and all the powers and duties to levy and collect special assessments and taxes or create liens upon property shall continue until all refunding bonds shall be paid.

The drainage district shall collect the special assessments out of which the said bonds are payable and hold the same separate and apart in trust for the payment of said refunding

bonds but the provisions of this chapter shall not apply to assessments or bonds adjudicated to be void. [40 G. A., ch. 159, § 10; 40 Ex. G. A., H. F. 185, § 184-a9.]

7673. Limitation of actions. No action shall be brought questioning the validity of any of the bonds authorized by this chapter from and after three months from the time the same are ordered issued by the proper authorities. [40 G. A., ch. 159, § 8; 40 Ex. G. A., H. F. 185, § 184-a10.]

CHAPTER 358

MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES

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7674. Trustees authorized. In the manner provided in this chapter, any drainage or levee district in which the original construction has been completed and paid for by bond issue or otherwise, may be placed under the control and management of a board of three trustees to be elected by the persons owning land in the district that has been assessed for benefits. [S. S., '15, §§ 1989-a52a, 1989-a61; 37 G. A., ch. 307, § 1; 40 Ex. G. A., H. F. 185, § 185.]

7675. Petition. A petition shall be filed in the office of the auditor signed by a majority of the persons including corporations owning land within the district assessed for benefits. [S., '13, § 1989-a52b; S. S., '15, § 1989-a52a; 37 G. A., ch. 307, § 1; 40 Ex. G. A., H. F. 185, § 186.]

7676. Election. The board, at the next regular, adjourned, or special session shall canvass the petition and if signed by the requisite number of landowners, it shall order an election to be held at some convenient place in the district not less than forty nor more than sixty days from the date of such order, for the election of three trustees of such district. It shall appoint from the freeholders of the district who reside in the county or counties, three judges and two clerks of election. [S., '13, §

1989-a52b; S. S., '15, § 1989-a63; 37 G. A., ch. 307, § 2; 40 Ex. G. A., H. F. 185, § 186.]

7677. Intercounty district. If the district extends into two or more counties, a duplicate of the petition shall be filed in the office of the auditor of each county. The boards of supervisors shall, within thirty days after the filing of such petition, meet in joint session and canvass the same, and if found to be signed by a majority of the owners of land in the district assessed for benefits, they shall by joint action order such election and appoint judges and clerks of election as provided in the preceding section. [S., '13, § 1989-a52b; S. S., '15, §§ 1989-a62, 1989-a63; 37 G. A., ch. 307, § 2; 40 Ex. G. A., H. F. 185, § 187.]

7678. Election districts. When a petition has been filed for the election of trustees to manage a district containing three thousand acres or more, the board, or, if the district extends into more than one county, the boards of such counties by joint action, shall, before the election, divide the district into three election districts for the purpose of securing a proper distribution of trustees in such district, and such division shall be so made that each election district will have substantially equal voting power and acreage, as nearly as may be. After

such division is made there shall be elected one trustee for each of said election districts, but at such election all the qualified voters for the entire district shall be entitled to vote for each trustee. The division here provided for shall be for the purposes only of a proper distribution of trustees in the district and shall not otherwise affect said district or its management and control. [40 Ex. G. A., H. F. 185, § 188.]

7679. Record and plat of election districts. At the time of making a division into election districts, as provided in the preceding section, the board or boards shall designate by congressional divisions, subdivisions, metes and bounds, or other intelligible description, the lands embraced in each election district, and the auditor, or auditors if more than one county, shall make a plat thereof in the drainage record of the district indicating thereon the boundary lines of each election district, numbering them, one, two, and three, respectively. [40 Ex. G. A., H. F. 185, § 189.]

7680. Eligibility of trustees. Each trustee shall be a citizen of the United States not less than twenty-one years of age, a resident of the county, and the owner of land in the election district for which he is elected. [40 Ex. G. A., H. F. 185, § 190.]

7681. Notice of election. The board, or, if in more than one county, the boards acting jointly, shall cause notice of said election to be given, setting forth the time and place of holding the same and the hours when the polls will open and close. Such notice shall be published for two consecutive weeks in a newspaper in which the official proceedings of the board are published in the county, or if the district extends into more than one county, then in such newspaper of each county. The last of such publications shall not be less than ten days before the date of said election. [S., '13, § 1989-a52b; S. S., '15, § 1989-a63; 37 G. A., ch. 307, § 2; 40 Ex. G. A., H. F. 185, § 191.]

7682. Assessment to determine right to vote. Before any election is held, the election board shall obtain from the county auditor or auditors a certified copy of so much of the record of the establishment of such district as will show the lands embraced therein, the assessment and classification of each tract, and the name of the person against whom the same was assessed for benefits, and the present record owner, and such certified record shall be kept by the trustees after they are elected, for use in subsequent elections. They shall, preceding each subsequent election, procure from the county auditor or auditors additional certificates showing changes of title of land assessed for benefits and the names of the new owners. [S. S., '15, § 1989-a75; 40 Ex. G. A., H. F. 185, § 192.]

7683. New owner entitled to vote. Anyone who has acquired ownership of assessed lands since the latest certificate from the auditor

shall be entitled to vote at any election if he presents to the election board for its inspection at the time he demands the right to vote evidence showing that he has title. [S. S., '15, § 1989-a75; 40 Ex. G. A., H. F. 185, § 193.]

7684. Qualifications of voters. Each landowner over twenty-one years of age without regard to sex and any railway or other corporation owning land in said district assessed for benefits shall be entitled to one vote only, except as provided in the next section. [S. S., '15, § 1989-a73; 37 G. A., ch. 307, § 2; 40 Ex. G. A., H. F. 185, § 194.]

7685. Votes determined by assessment. When a petition asking for the right to vote in proportion to assessment of benefits at all elections for any purpose thereafter to be held within said district, signed by a majority of the landowners owning land within said district assessed for benefits, is filed with the board of trustees, then, in all elections of trustees thereafter held within said district, any person whose land is assessed for benefits without regard to age, sex, or condition shall be entitled to one vote for each ten dollars or fraction thereof of the original assessment for benefits against the land actually owned by him in said district at the time of the election, but in order to have such ballot counted for more than one vote the voter shall write his name upon the ballot. The vote of any resident of a county in which the district is located in whole or in part must be cast in person. [S. S., '15, § 1989-a73; 37 G. A., ch. 307, § 3; 40 Ex. G. A., H. F. 185, § 195.]

7686. Vote by agent. Any nonresident of the county or any corporation owning land or right of way lying wholly or in part within the district and assessed for benefits may have his or its vote cast by some resident taxpayer of the district or agent of such corporation when authorized by a power of attorney signed and acknowledged by such nonresident landowner or duly authorized officer of such corporation. Such power of attorney shall be filed with the auditor of the county where such election is held at least five days prior to the election at which it is to be effective. Every such power of attorney shall specify the particular election for which it is to be used, indicating the day, month, and year of such election, and shall be void for all elections subsequently held. [S. S., '15, § 1989-a73; 37 G. A., ch. 307, § 3; 40 Ex. G. A., H. F. 185, § 196.]

7687. Vote of minor or insane. The vote of any person who is a minor, insane, or under other legal incompetency shall be cast by the parent, guardian, or other legal representative of such minor, insane, or other incompetent person and in order to be counted it shall be cast in person. The person casting such vote shall deliver to the judges and clerks of election a written sworn statement giving the name, age, and place of residence of such minor, insane, or other incompetent person, and any false statement knowingly made to

secure permission to cast such vote shall render the party so making it guilty of the crime of perjury. [37 G. A., ch. 307, § 3; 40 Ex. G. A., H. F. 185, § 197.]

7688. Ballots. Each ballot for election of trustees shall have the name of each person voted for printed or legibly written thereon, and the number of the election district for which he is a candidate. [40 Ex. G. A., H. F. 185, § 198.]

7689. Candidates voted for. Each qualified voter for the whole district shall be entitled to vote for one candidate for each district for which a trustee is to be elected. [40 Ex. G. A., H. F. 185, § 198.]

7690. Election—canvass of votes—returns. On the day designated for said election the polls shall open at eight o'clock a. m. and remain open until seven o'clock p. m. The judges of election shall canvass the vote and certify the result, and deposit with the auditor the ballots cast, together with the poll books showing the names of the voters; but if there is more than one county in the district, the returns shall be filed with the auditor of the county having the greatest acreage of said district. [S., '13, § 1989-a52c; S. S., '15, § 1989-a64; 37 G. A., ch. 307, § 3; 40 Ex. G. A., H. F. 185, § 199.]

7691. Canvass — certificates of election. The canvass of the returns by the board or boards of supervisors shall be on the next Monday following said election and it or they shall make a return of the results of such canvass to the auditor, who shall issue certificates to the trustees elected, and when the district extends into more than one county, then the auditor with whom the election returns were filed shall issue such certificates. [S., '13, § 1989-a52c; S. S., '15, § 1989-a64; 37 G. A., ch. 307, § 3; 40 Ex. G. A., H. F. 185, § 200.]

7692. Tenure of office. Except as provided in the next section, the trustees so elected shall hold office until the fourth Saturday in January next succeeding their election and until their successors are elected and qualify. On the third Saturday in the January next succeeding their original election, an election shall be held at which three trustees shall be chosen, one for one year, one for two years, and one for three years, and each shall qualify and enter upon the duties of his office on the fourth Saturday of the same January. On the third Saturday in each succeeding January, an election shall be held to choose a successor to the trustee whose term is about to expire, and the term of his office shall be for three years and until his successor has qualified. [S. S., '15, §§ 1989-a52d, 1989-a65-1989-a67; 40 Ex. G. A., H. F. 185, § 201.]

7693. Levee and pumping station districts. In a levee district or drainage district having a pumping station an election of trustees shall be held biennially on the third Saturday in January, at which election two trustees shall

be elected for a term of three years, but the term of one shall begin one year from the fourth Saturday in January after his election. Ballots shall indicate which of said trustees is for the term beginning on the first Saturday after his election and which for the term beginning one year from such period. For the purpose of carrying out the provisions of this section the terms of trustees in any such districts shall expire on the fourth Saturday of January, 1925, and on the third Saturday of January, 1925, an election of trustees shall be held at which there shall be two trustees elected for two years, and one for three years, and thereafter biennially two trustees shall be elected with terms of office as first above provided. [S., '13, § 1989-a52e; S. S., '15, § 1989-a52d; 37 G. A., ch. 307, § 4; 40 Ex. G. A., H. F. 185, § 201-a1.]

7694. Division of districts under trustee management. In all districts already under trustee management, the board of trustees shall, prior to the election of trustees in the year 1925, divide the district for which they are trustees, into election districts, and at the election for that and each succeeding year, when a trustee is to be elected, it shall be for a specified election district within such district. [40 Ex. G. A., H. F. 185, § 202.]

7695. Elections—how conducted. After the first election of trustees, the trustees shall act as judges of election; the clerk of the board shall act as one of the clerks; and some owner of land in the district shall be appointed by the board to act as another clerk. The trustees shall fill all vacancies in the election board. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county. [S. S., '15, § 1989-a69; 40 Ex. G. A., H. F. 185, § 203.]

7696. Change of time. The date on which said annual election shall be held may be changed by the choice of a majority of electors of such district expressed by ballot at any such annual election, and the return of such vote shall be certified in the same manner as the returns for election of trustees. [S., '13, § 1989-a52e; 37 G. A., ch. 307, § 4; 40 Ex. G. A., H. F. 185, § 204.]

7697. Vacancies. If any vacancy occurs in the membership of the board of trustees between the annual elections, the remaining members of the board shall have power to fill such vacancies by appointment of persons having the same qualifications as themselves. The persons so appointed shall qualify in the same manner and hold office until the next annual election when their successors shall be elected. In the event that all places on the board become vacant, then a new board shall be appointed by the auditor, or if more than one county, then by the auditor of the county in which the greater acreage of the district is located. The persons so appointed shall hold office until the next annual election and until their successors are elected and qualify.

[S. S., '15, § 1989-a68; 40 Ex. G. A., H. F. 185, § 205.]

7698. Bonds. The trustees shall qualify by giving a bond in the sum of not less than one thousand dollars or more than five thousand dollars each, conditioned for the faithful discharge of their duties, said bond to be fixed and approved by the auditor of the county, and if more than one, then of the county in which the greater acreage of the district is located. [S. S., '15, §§ 1989-a52f, 1989-a71; 37 G. A., ch. 307, § 5; 40 Ex. G. A., H. F. 185, § 206.]

7699. Organization. As soon as the trustees have qualified, they shall organize by electing one of their own number as chairman and may select some other taxpayer of the district as clerk of the board who shall serve during the pleasure of the board of trustees. [S. S., '15, § 1989-a70; 40 Ex. G. A., H. F. 185, § 207.]

7700. Power and duties of trustees. Trustees shall have control, supervision, and management of the district for which they are elected and shall be clothed with all of the powers now conferred on the board or boards of supervisors for the control, management, and supervision of drainage and levee districts under the laws of the state, unless otherwise specially provided. Such authority shall extend only to the district for which they are elected. [S. S., '15, §§ 1989-a52f, 1989-a71; 37 G. A., ch. 307, § 5; 40 Ex. G. A., H. F. 185, § 208.]

7701. Cost and expenses. All costs and expenses necessary to discharge the duties by this chapter conferred upon trustees shall be levied and collected as provided by law and such levy shall be upon certificate by the trustees to the board or boards of supervisors of the amount necessary for such levy. [S. S., '15, §§ 1989-a52f, 1989-a71; 37 G. A., ch. 307, § 5; 40 Ex. G. A., H. F. 185, § 209.]

7702. Disbursement of funds. Drainage and levee taxes when so levied and collected shall be kept by the treasurer of the county in a separate fund to the credit of the district for which it is collected, shall be expended only upon the orders of trustees, signed by the president of the board, upon which warrants shall be drawn by the auditor upon the treasurer. [S. S., '15, § 1989-a52f; 37 G. A., ch. 307, § 5; 40 Ex. G. A., H. F. 185, § 209.]

7703. Certificates and bonds. The board of trustees of any district shall have the same power to issue improvement certificates and levee and drainage bonds under the same conditions and with like tenor and effect as is provided by chapter 353 for such issuance by the board of supervisors, except that in case of the issue of levee or drainage bonds, the same shall be approved by a judge of the district court in and for the county or counties in which such district lies, which approval shall be printed upon such bonds before the same

are negotiated. [S. S., '15, § 1989-a52f; 37 G. A., ch. 307, § 5; 40 Ex. G. A., H. F. 185, § 210.]

7704. Reclassification and other changes. If a reclassification of lands or a readjustment of the assessments of property or any important change of the district shall be deemed advisable by the said trustees, they shall submit such questions to the vote of the owners of land of said district assessed for benefits, by ballot, at the next regular election of trustees, or they shall have the power to call a special election therefor, with like notice as for regular elections which shall state the proposition to be submitted. Should the proposition receive the sanction of the majority of the voters at said election, then the trustees shall proceed in the same manner in the reclassification and readjustment of the assessments as is now provided for governing the actions of the board or boards of supervisors. [S. S., '15, § 1989-a71; 37 G. A., ch. 307, § 5; 40 Ex. G. A., H. F. 185, § 211.]

7705. Form of ballot. For the purpose of any election under the preceding section, the trustees shall prepare the form of ballot to be used for such election and shall distinctly and separately state on each ballot the propositions to be submitted. If it is a question of reclassification and readjustment of assessments of the district, the ballot shall so state, and be arranged so that the voter may vote for or against said proposition. If the question is one of extensive improvements or important changes of the district, the form of ballot shall specify the extent and estimated cost of such improvements or changes, and be so arranged that each voter may vote for or against such proposition. [40 Ex. G. A., H. F. 185, § 212.]

7706. Ballots distinguished—record. Said ballot shall be separate from any ballot for the election of trustees and when voted, such ballot shall be deposited in a separate box and be kept separate; and the returns of election shall be certified by the judges and clerks of election to the auditor, or if more than one county, to each auditor, and the ballots deposited with the auditor of the county having the largest acreage of the district, and a record made thereof in the drainage record of said district. [40 Ex. G. A., H. F. 185, § 212.]

7707. Report to auditor. Such trustees shall, from time to time, and with reasonable promptness, furnish the auditor of each county in which any part of said district is situated, with a correct report of their acts and proceedings, which report shall be signed by the chairman and the clerk of the board and shall be recorded by the auditor in the drainage record, and shall be published in one official paper in the county having a general circulation in the district. [S., '13, § 1989-a52g; S. S., '15, § 1989-a72; 40 Ex. G. A., H. F. 185, § 213.]

7708. Compensation—statements required. The compensation of the trustees and the clerk

of the board is hereby fixed at three dollars per day and necessary expenses, to be paid out of the funds of the drainage or levee district for each day necessarily expended in the transaction of the business of the district, but no one shall draw compensation for services as trustee and as clerk at the same time. They shall file with the auditor or auditors, if more than one county, itemized, verified statements of their time devoted to the business of the district and of the expenses incurred. [S. S., '15, § 1989-a52f, 1989-a74; 37 G. A., ch. 307, § 5; 40 Ex. G. A., H. F. 185, § 214.]

7709. Change to supervisor management. Any district which has been placed under the management of trustees may be placed back under the management of the board or boards of supervisors in the manner provided in the next section. [40 Ex. G. A., H. F. 185, § 215.]

7710. Petition—canvass. For such purposes a petition signed by a majority of persons, including corporations, owning land within the district assessed for benefits and who in the aggregate own more than one-half the acreage of such lands, may be filed in the office of the auditor and if more than one county, then a duplicate shall be filed in the office of the auditor of each county.

The trustees shall fix a date not less than ten nor more than thirty days from the date such petition is filed for the canvass of such petition, and the trustees and auditor or auditors shall canvass said petition and certify and record in the drainage record the result. [40 Ex. G. A., H. F. 185, § 216.]

7711. Remonstrance. Remonstrances signed by the same persons who are qualified to sign the petition may be filed in the office of the auditor and if the same persons petition and remonstrate they shall be counted on the remonstrance only. Such remonstrances shall

be filed not less than five days before the time set for hearing. [40 Ex. G. A., H. F. 185, § 217.]

7712. When change effective. If the result of the canvass shows a majority in favor of such change, then it shall become effectual on the date at which the next annual election of trustees would be held, and on such date the trustees shall surrender and turn over to the board or boards of supervisors the full and complete management and control of such district, together with all books, contracts, and other documents relating thereto. [40 Ex. G. A., H. F. 185, § 218.]

7713. Final report of trustees. On or before the date such change becomes effective, the said trustees shall make and file with the auditor, or if more than one county, a duplicate with each auditor, a final report setting forth:

1. The amount of cash funds on hand or to the credit of the district.
2. The amount of outstanding indebtedness of the district, and the form thereof, whether in warrants, improvement certificates, or bonds and the amount of each.
3. Any outstanding contracts for repairs or other work to be done.
4. A statement showing the condition of the improvements of the district, and specifying any portion thereof in need of repair. [40 Ex. G. A., H. F. 185, § 219.]

7714. Management by supervisors. After such change is made it shall be the duty of the board or boards of supervisors to manage and control the affairs of said district as fully and to the same extent as if it had never been under trustee management. They shall carry out any pending contracts lawfully made by the trustees as fully as if made by the board. [40 Ex. G. A., H. F. 185, § 220.]

CHAPTER 359

INDIVIDUAL DRAINAGE RIGHTS

- 7715. Drainage through land of others—application.
- 7716. Notice of hearing—service.
- 7717. Service upon nonresident.
- 7718. Service on omitted parties—adjournment.
- 7719. Claims for damages—waiver.
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- 7738. Private drainage system—record.
- 7739. Drainage plat book.
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- 7741. Original plat filed.
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- 7743. Fees for record and copies.

7715. Drainage through land of others—application. When the owner of any land shall desire to construct any levee, open ditch, tile, or other underground drain, for agricultural, sanitary, or mining purposes, or for the purpose of securing more complete drainage or a better outlet, across the lands of others or across or through the right of way and roadbed of a railroad, and shall be unable to agree with the owner of any such lands or with any such railroad company upon the terms upon which such rights may be obtained, he may file with the township clerk of the township in which any such land or right of way is situated, an application in writing, setting forth a description of the land or other property through which he is desirous of constructing any such levee, ditch, or drain, the starting point, route, terminus, character, size, and depth thereof. [C., '73, § 1217; C., '97, § 1955; S., '13, § 1955; 40 Ex. G. A., H. F. 185, § 221.]

7716. Notice of hearing—service. Upon the filing of any such application, the clerk shall forthwith fix a time and place for hearing thereon before the township trustees of his township, which hearing shall be not more than ninety days nor less than thirty days from the time of the filing of such application, and cause notice in writing to be served upon the owner of each tract of land across which any such levee, ditch, or drain is proposed to be located, as shown by the transfer books in the office of the county auditor, and also upon the person in actual occupancy of any such lands, of the pendency and prayer of such application and the time and place set for hearing on the same before the township trustees, which notice, as to residents of the county and railroad companies, shall be served not less than ten days before the time set for such hearing, in the manner that original notices are required to be served. Notice to a railroad

company may be served upon any station agent. [C., '73, § 1218; C., '97, § 1955; S., '13, § 1955; 40 Ex. G. A., H. F. 185, § 222.]

7717. Service upon nonresident. In case any such owner is a nonresident of the county, such notice as to him shall be posted in three public places within the township where his land is situated at least fifteen days before the time set for such hearing, one of which places shall be upon the land of which he is the owner. [C., '73, § 1218; C., '97, § 1955; S., '13, § 1955; 40 Ex. G. A., H. F. 185, § 223.]

7718. Service on omitted parties—adjournment. If at the hearing it should appear that any person entitled to notice has not been served with notice, the trustees may postpone such hearing and fix a new time for the same, and notice of such new time of hearing may be served on such omitted persons in the manner and for the time provided by law and by fixing such new time for hearing and by adjournment to such time, the trustees shall not lose jurisdiction of the subject matter of such proceeding nor of any persons previously served with notice. [S., '13, § 1955; 40 Ex. G. A., H. F. 185, § 224.]

7719. Claims for damages—waiver. Any person or corporation claiming damages or compensation for or on account of the construction of any such improvement, shall file a claim in writing therefor with the township clerk at or before the time fixed for hearing on the application. A failure to file such claim at the time specified shall be deemed to be a waiver of the right to claim or recover such damage. [S., '13, § 1955; 40 Ex. G. A., H. F. 185, § 225.]

7720. Hearing—sufficiency of application—damages. At the time set for hearing on the application, if the trustees shall find that all necessary parties have been served with notice

as required, they shall proceed to hear and determine the sufficiency of the application as to form and substance, which application may be amended both as to form and substance before final action thereon. They shall also determine the merits of the application, all objections thereto, and all claims filed for damages or compensation, and may view the premises. The trustees may adjourn the proceedings from day to day, but no adjournment shall be for a longer period than ten days. [C., '73, § 1219; C., '97, § 1956; S., '13, § 1956; 40 Ex. G. A., H. F. 185, § 226.]

7721. Shall locate when—specifications. If the trustees find that the levee, ditch, or drain petitioned for will be beneficial for sanitary, agricultural, or mining purposes, they shall locate the same and fix the points of entrance and exit on such land or property, the course of the same through each tract of land, the size, character, and depth thereof, when and in what manner the same shall be constructed, how kept in repair, what connections may be made therewith, what compensation, if any, shall be made to the owners of such land or property or damages by reason of the construction of any such improvements, and any other question arising in connection therewith. [C., '73, § 1220; C., '97, § 1956; S., '13, § 1956; 40 Ex. G. A., H. F. 185, § 227.]

7722. Findings—record. The trustees shall reduce their findings, decision, and determination to writing, which shall be filed with the clerk of such township, who shall record it in the official record of the trustees' proceedings, together with the application and all other papers filed in connection therewith, and he shall cause the findings and decision of the trustees to be recorded in the office of the recorder of the county in which such land is situated and said decision shall be final unless appealed from as provided in the next section. [C., '73, § 1220; C., '97, § 1956; S., '13, § 1956; 40 Ex. G. A., H. F. 185, § 228.]

7723. Appeal—notice. Either party may appeal to the district court from any such decision by causing to be served, within ten days from the time it was filed with the clerk, a notice in writing upon the opposite party of the taking of such appeal, which notice shall be served in the same manner as is provided for the service of original notices. If the appellant is the party petitioning for the drain, he shall also file a bond, conditioned to pay all costs of appeal that may be assessed against him, which bond, if good and sufficient, shall be approved by the township clerk. [C., '73, § 1223; C., '97, § 1957; 40 Ex. G. A., H. F. 185, § 229.]

7724. Transcript. In case of appeal, the township clerk shall certify to the district court a transcript of the proceedings before the trustees, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal, as in other cases. [C., '97, § 1958; 40 Ex. G. A., H. F. 185, § 232.]

7725. Appeal—how tried—costs. The cause shall be tried in the district court by ordinary proceedings, upon such pleading as the court may direct, each party having the right to offer such testimony as shall be admissible under the rules of law. If the appellant does not recover a more favorable judgment in the district court than he received in the decision of the trustees, he shall pay all the costs of appeal. [C., '97, § 1957; 40 Ex. G. A., H. F. 185, § 230.]

7726. Parties — judgment — orders. The party claiming damages shall be the plaintiff and the applicant shall be the defendant; and the court shall render such judgment as shall be warranted by the verdict, the facts, and the law upon all the matters involved, and make such orders as will cause the same to be carried into effect. [C., '73, § 1224; C., '97, § 1958; 40 Ex. G. A., H. F. 185, § 231.]

7727. Costs and damages—payment. The applicant shall pay the costs of the trustees and clerk and for the serving of notices for hearing, the fees of witnesses summoned by the trustees on said hearing, and the recording of the finding of said trustees by the county recorder. [C., '73, § 1221; C., '97, § 1959; S., '13, § 1959; 40 Ex. G. A., H. F. 185, § 233.]

7728. Construction. Before entering on the construction of the drain, the party applying therefor shall pay to the party through whose land said drain is to be constructed the damages awarded to him, or shall pay the same to the trustees for his use. The applicant may proceed to construct said drain in accordance with the decision of the trustees, and the taking of an appeal shall not delay such work. [C., '97, § 1959; S., '13, § 1959; 40 Ex. G. A., H. F. 185, § 233.]

7729. Construction through railroad property. If any such ditch or drain shall be located through or across the right of way or other land of a railroad company, the trustees shall determine the cost of constructing the same and the railroad company shall have the privilege of constructing such improvement through its property in accordance with the specifications made by the trustees and recover the costs thereof as fixed by the trustees. Such railroad company before it may exercise such privilege shall file its election to that effect with the township clerk within five days after the decision of the trustees is filed. [S., '13, § 1959; 40 Ex. G. A., H. F. 185, § 234.]

7730. Deposit. In case such election is filed the applicant shall within ten days thereafter pay to the township clerk, for the use of the railroad company, the cost of constructing the drainage improvement through its property, in addition to the amount that may be allowed as damages, and when the railroad company shall have completed the improvement through its property in accordance with such specifications it shall be entitled to demand and receive from the township clerk such cost. [S., '13, § 1959; 40 Ex. G. A., H. F. 185, § 234.]

7731. Failure to construct. If the railroad company shall fail to so construct the improvement for a period of thirty days after filing its election so to do, the applicant may proceed to do so and may have returned to him the cost thereof deposited with the township clerk. [S., '13, § 1959; 40 Ex. G. A., H. F. 185, § 235.]

7732. Repairs. In case any dispute shall thereafter arise as to the repair of any such drain, the same shall be determined by said trustees upon application in substantially the same manner as in the original construction thereof. [C., '73, § 1226; C., '97, § 1960; 40 Ex. G. A., H. F. 185, § 236.]

7733. Obstruction. Any person who shall dam up, obstruct, or in any way injure any ditch or drain so constructed, shall be liable to pay to the person owning or possessing the swamp, marsh, or other low lands, for the draining of which such ditch or ditches have been opened, double the damages that shall be sustained by the owner, and, in case of a second or subsequent offense by the same person, treble such damages. [C., '73, § 1227; C., '97, § 1961; 40 Ex. G. A., H. F. 185, § 237.]

7734. Drains on abutting boundary lines. When any watercourse or natural drainage line crosses the boundary line between two adjoining landowners and both parties desire to drain their land along such watercourse or natural drainage line, but are unable to agree as to the junction of the lines of drainage at such boundary line, the township trustees of the township in which said land is located shall have full power and authority upon the application of either party to hear and determine all questions arising between such parties after giving due notice to each of the time and place of such hearing, and may render such decision thereon as to said trustees shall seem just and equitable. [C., '97, § 1962; 40 Ex. G. A., H. F. 185, § 238.]

7735. Boundary between two townships. If any controversy referred to in the preceding section relates to a boundary line between adjoining owners which is also the boundary line between two townships, then such controversy shall be determined by the joint action of the board of trustees in said two adjoining townships, and all the proceedings shall be the same as provided in the preceding section except that it shall be by the joint action of the boards of trustees of said two townships. [40 Ex. G. A., H. F. 185, § 239.]

7736. Drainage in course of natural drainage. Owners of land may drain the same in the general course of natural drainage by constructing open or covered drains, discharging the same in any natural watercourse or depression whereby the water will be carried into some other natural watercourse, and when such drainage is wholly upon the owner's land he shall not be liable in damages therefor. Nothing in this section shall in any manner be construed to affect the rights or

liabilities of proprietors in respect to running streams. [S., '13, § 1989-a53; 40 Ex. G. A., H. F. 185, § 240.]

7737. Drainage connection with highway. When the course of natural drainage of any land runs to a public highway, the owner of such land shall have the right to enter upon such highway for the purpose of connecting his drain or ditch with any drain or ditch constructed along or across the said highway, but in making such connections, he shall do so in accordance with specifications furnished by the highway authorities having jurisdiction thereof, which specifications shall be furnished to him on application. He shall leave the highway in as good condition in every way as it was before the said work was done. [C., '97, § 1963; 40 Ex. G. A., H. F. 185, § 241.]

7738. Private drainage system—record. Any person who has provided a system of drainage on land owned by him may have the same made a matter of record in the office of the county recorder of the county in which the drainage system is located as is hereinafter provided. [39 G. A., ch. 237, § 1; 40 Ex. G. A., H. F. 185, § 242.]

7739. Drainage plat book. The county recorder shall be provided with a loose leaf plat book, made to a scale not larger than sixteen inches to one mile, for each section of the land within the county in which such records shall be made. Such plat book shall consist of sheets of paper interbound by sheets of tracing cloth with proper heading, margin, and binding edge. Said plat book shall be used for keeping a record of drainage systems filed by any landowner. Plats shall be made or approved only by a registered engineer. Plats so offered for record shall be drawn to scale giving distances in feet, indicate the size of tile used, length of mains, submains, and laterals, and location with regard to boundary lines of tract or government corners and subdivisions. [39 G. A., ch. 237, § 2; 40 Ex. G. A., H. F. 185, § 243.]

7740. Record book and index. The county recorder shall also be provided with a record book and index referring to the plats provided for in the preceding section, and which may be used to give the owner's name, description of tracts of land drained, stating the time when drainage system was established, the kind, quality, and brand of tile used, the name and place of manufacturing plant, the name of contractors who laid the tile, the name of the engineer in charge of the survey and installation, the cost of tile, delivery, installation, and engineering expense, depths, grades, outlets, connections, contracts for agreements with adjoining landowners as to connections, and any other matters or information that may be considered of value, all of said information to be furnished by the landowner or the engineer having charge of the installation of the same and certified to under oath, and shall be certified under oath by a registered engineer as being a true and accurate record. [39

G. A., ch. 237, § 3; 40 Ex. G. A., H. F. 185, § 244.]

7741. Original plat filed. In lieu of making the record as herein provided any landowner may file with the county recorder the original plat used in the establishment of said drainage system, or a copy thereof, which shall be certified by the engineer having made the same. [39 G. A., ch. 237, § 3; 40 Ex. G. A., H. F. 185, § 244.]

7742. Record not part of title. The drainage records herein provided for shall not be

construed as an essential part of the title to said lands, but may upon request be set out by abstracters as a part of the record title of said lands. [39 G. A., ch. 237, § 4; 40 Ex. G. A., H. F. 185, § 245.]

7743. Fees for record and copies. The county recorder shall be entitled to collect fees for the filing and information heretofore provided for, and for the making of copies of such records the same as is provided for other work of a similar nature. [39 G. A., ch. 237, § 5; 40 Ex. G. A., H. F. 185, § 246.]

CHAPTER 360

DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES

7744. United States levees—cooperation of board.
7745. Manner of cooperation.
7746. Report of engineer—payment authorized.
7747. Costs assessed.

7744. United States levees—cooperation of board. In any case where the United States has built or shall build a levee along or near the bank of a navigable stream forming a part of the boundary of this state, the board of supervisors of any county through which the same may pass shall have the power to aid in procuring the right of way for and maintaining said levee, and providing a system of internal drainage made necessary or advisable by the construction thereof. Such improvement shall be presumed to be conducive to the public health, convenience, welfare, or utility. [C., '97, § 1975; 40 Ex. G. A., H. F. 185, § 247.]

7745. Manner of cooperation. Any United States government levee under the conditions mentioned in the preceding section may be taken into consideration by the board as a part of the plan of any levee or drainage district and improvements therein, and such board may, by agreement with the proper authorities of the United States government, provide for payment of such just and equitable portion of the costs of procuring the right of way and maintenance of such levee as shall be conducive to the public welfare, health, convenience, or utility. [C., '97, § 1975; 40 Ex. G. A., H. F. 185, § 248.]

7746. Report of engineer—payment authorized. In the proceedings to establish such a district the engineer shall set forth in his report, separately from other items, the amount of the cost for the right of way of such levee, of constructing and maintaining the same; and if the plan is approved and the district finally established in connection with such levee, the board shall make a record of any such cooperative arrangement and may use such part of the funds of the district as may be necessary to pay the amount so agreed upon toward the right of way and maintenance of such levee. [C., '97, § 1976; 40 Ex. G. A., H. F. 185, § 249.]

7747. Costs assessed. If said district is established, the entire costs and expenses in-

7748. Annual installments.
7749. Collection of tax.
7750. Cost of maintaining.
7751. Laws applicable.

curring under this chapter shall be assessed against and collected from the lands lying within such district, by the levy of a rate upon the assessable value of the land within such district, sufficient to raise the required sum; provided that where the proposed improvement is for drainage only, the board may, in their discretion, classify the land within such district and graduate the tax thereon, as provided in chapter 353. [C., '97, § 1982; S., '13, § 1982; 40 Ex. G. A., H. F. 185, § 249-a1.]

7748. Annual installments. If the proposed improvement is the maintenance of a levee, the amount collected in any one year shall not exceed fifty mills on the dollar of the assessment valuation, which said assessment shall be levied at a level rate on the assessable value of the said lands, easements, and railroads within the district. If the amount necessary to pay for the improvement exceed said sum, it shall be levied and collected in annual installments. For all other improvements, the board shall levy a rate sufficient to pay for the same, and may, at their discretion, make the same payable in annual installments of ten or less. [C., '97, § 1984; 40 Ex. G. A., H. F. 185, § 249-a2.]

7749. Collection of tax. The assessment required under the two preceding sections shall be made by the board of supervisors at the time of levying general taxes, after the work has been authorized, and the same shall be entered on the records of the board of supervisors, then entered on the tax books by the county auditor as drainage taxes, and shall be collected by the county treasurer at the same time, in the same manner, and with the same penalties, as general taxes; and if the same is not paid he shall sell all such lands upon which such assessment remains unpaid, at the same time, and in the same manner, as is now by law provided for the sale of lands for delinquent taxes, including all steps up to the execution and delivery of the tax deed for the same. The landowners shall take notice of

and pay such assessments without other or further notice than such as is provided for in this chapter. The funds realized from such assessments shall constitute the drainage fund, as contemplated in this chapter, and shall be disbursed on warrants drawn against that fund by the county auditor, on the order of the board of supervisors. [C., '97, § 1983; 40 Ex. G. A., H. F. 185, § 249-a3.]

7750. Cost of maintaining. The board of supervisors shall have the right and power to keep and maintain any such levee, ditches, drains, or system of drainage, either in whole or in part, established under the preceding sections of this chapter, as may in their judgment be required, and to levy the expense thereof upon the real estate within such drainage district as herein provided for, and collect and expend the same; provided, however, that no such work which shall impose a tax exceeding fifty mills on the dollar on the assessable value of the lands within the district shall be authorized by them, unless the same is first petitioned for and authorized in substantially the manner required by this chapter for the inauguration of new work. [C., '97, § 1986; 40 Ex. G. A., H. F. 185, § 249-a4.]

7751. Laws applicable. In the establishment and maintenance of levee and drainage districts in cooperation with the United States as in this chapter provided, all the proceedings for said purpose in the filing and the form and substance of the petition, assessment of damages, appointment of an engineer, his surveys, plats, profiles, and report, notice of hearings, filing of claims and objections, hearings thereon, appointment of commissioners to classify lands, assess benefits, and apportion costs and expenses, report, notice and hearing thereon, the appointment of a supervising engineer, his duties, the letting of work and making contracts, payment for work, levy and collection of drainage or levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof, and all other proceedings relating to such district shall be as provided in chapters 353 to 359, inclusive, except as otherwise in this chapter provided. [C., '97, §§ 1976-1989; S., '13, §§ 1976, 1977, 1979, 1981, 1982, 1984, 1985, 1985-a, 1986, 1989; 38 G. A., ch. 334, §§ 1-3; 40 G. A., ch. 158, § 1; 40 Ex. G. A., H. F. 185, § 250.]

CHAPTER 361

INTERSTATE DRAINAGE DISTRICTS

- 7752. Cooperation—procedure.
- 7753. Agreement as to costs.
- 7754. Contracts let by joint agreement.

7752. Cooperation—procedure. When proceedings for the drainage of lands bordering upon the state line are had and the total cost of constructing the improvement in this state, including all damage, has been ascertained, and the engineer in charge, before the final establishment of the district, reports that the establishment and construction of such improvement ought to be jointly done with like proceedings for the drainage of lands in the same drainage area in such an adjoining state and that drainage proceedings are pending in such state for the drainage of such lands, the said authorities of this state may enter an order continuing the hearing on the establishment of such district to a fixed date, of which all parties shall take notice. [S. S., '15, § 1989-a77; 40 Ex. G. A., H. F. 185, § 251.]

7753. Agreement as to costs. The board shall have power, when the total cost, including damages, of constructing the improvement in such other state has been ascertained by the authorities of such other state, to enter into an agreement as to the separate amounts which the property owners of each state should in equity pay toward the construction of the joint undertaking. When such amount is thus determined, the board or boards having jurisdiction in this state shall enter the same in the minutes of their proceedings and shall proceed

- 7755. Separate contracts.
- 7756. Conditions precedent.
- 7757. Assessments, bonds, and costs—limitation.

therewith as though such amount to be paid by the portion of the district in this state had been originally determined by them as the cost of constructing the improvement in this state. [S. S., '15, § 1989-a77; 40 Ex. G. A., H. F. 185, § 252.]

7754. Contracts let by joint agreement. When the bids for construction are opened, unless the construction work on each side of the line can go forward independently, no contract shall be let by the authorities in this state, unless the acceptance of a bid or bids for the construction of the whole project is first jointly agreed upon by the authorities of both states. [S. S., '15, § 1989-a77; 40 Ex. G. A., H. F. 185, § 253.]

7755. Separate contracts. The contract or contracts for the construction of that portion of the improvement within this state shall be entirely distinct and separate from the contract or contracts let by the authorities of the neighboring state; but the aggregate amount of the contract or contracts for the construction of the work within this state shall not exceed an amount equal to the amount of the benefits assessed in this state including damages and other expenses. [S. S., '15, § 1989-a77; 40 Ex. G. A., H. F. 185, § 254.]

7756. Conditions precedent. No contract shall be let until the improvement shall be

finally established in both states, and after the final adjustment in both states of damages and benefits. No bonds shall be issued until all litigation in both states arising out of said proceedings has been finally terminated by actual trial or agreements, or the expiration of all right of appeal. [S. S., '15, § 1989-a78; 40 Ex. G. A., H. F. 185, § 255.]

7757. Assessments, bonds, and costs—limitation. All proceedings except as provided in this chapter in relation to the establishment, construction, and management of interstate

drainage districts shall be as provided for the establishment and construction of districts wholly within this state as provided in chapter 353. All such proceedings shall relate only to the lands of such district which are located wholly within this state. Boards having jurisdiction in this state may make just and equitable agreements with like authorities in such adjoining state for the joint management, repair, and maintenance of the entire improvement, after the establishment and completed construction thereof. [S. S., '15, § 1989-a77; 40 Ex. G. A., H. F. 185, § 256.]

CHAPTER 362

DRAINAGE OF COAL AND MINERAL LANDS AND MINES

7758. Drainage through lands of another.
7759. Lead or zinc bearing lands.
7760. Setting apart compensation.
7761. Failure to pay compensation.
7762. Notice to smelters—effect.

7763. Right of way.
7764. Condemnation.
7765. Limitation of provisions.
7766. Interpretation of codification act.

7758. Drainage through lands of another. Any person or corporation owning or possessing any land underlaid with coal, who is unable to mine the same by reason of the accumulation of water in or upon it, may drain the same through, over, or under the surface of land belonging to another person, and if such person or corporation and the owner of the land cannot agree as to the amount of damages that will be sustained by such owner, the parties may proceed to have the necessary right of way condemned and the damages assessed in the manner provided in the chapter on eminent domain. [C., '73, § 1228; C., '97, § 1967; 40 Ex. G. A., H. F. 185, § 257.]

NOTE: For chapter relative to eminent domain, see ch. 366.

7759. Lead or zinc bearing lands. Any person or corporation who by machinery, or by making drains or adit levels, or in any other way, shall rid any lead or zinc bearing lands or lead or zinc mines of water, thereby enabling the owners of mineral interests in said lands to make them productive and available for mining purposes, shall receive one-tenth of all the lead and zinc taken from said lands as compensation for said drainage. [C., '73, § 1229; C., '97, § 1968; S., '13, § 1968; 40 Ex. G. A., H. F. 185, § 258.]

7760. Setting apart compensation. The owners of the mineral interests in said lands, and persons mining upon and taking lead or zinc from said lands, shall jointly and severally set apart and deliver from time to time, when demanded, the said one-tenth of the mineral taken from said lands to the person or corporation entitled thereto, and the owners of the mineral interests therein shall allow the party entitled to such compensation and his agent at all times to descend into and examine said mines, and to enter any building occupied for mining purposes upon any of said lands and examine and weigh the mineral taken there-

from. [C., '73, § 1230; C., '97, § 1969; S., '13, § 1969; 40 Ex. G. A., H. F. 185, § 259.]

7761. Failure to pay compensation. Upon the failure or refusal of any owner of the mineral interests in said lands, or of any person taking the mineral therefrom to comply with the provisions of the preceding section, the person or corporation entitled to said compensation may recover the value of said mineral. If it shall appear that the defendant obstructed the plaintiff in the exercise of the right to examine such mines and to weigh such mineral, or concealed or secretly carried away any mineral taken from them, the court shall render judgment for double the amount proved to be due from such defendant. [C., '73, § 1231; C., '97, § 1970; 40 Ex. G. A., H. F. 185, § 260.]

7762. Notice to smelters—effect. The person or corporation entitled to said drainage compensation may at any time leave with any smelter of lead or zinc mineral in this state a written notice, stating that said person or corporation claims of the persons named in said notice the amount to which said person or corporation may be entitled, which notice shall have the effect of notices in garnishment, and also require the said smelter to retain, for the use of the person entitled thereto, the one-tenth part of the mineral taken from said land and received from the person named in said notice. The payment or delivery of the one-tenth part of the mineral taken from any of said lands by any of the persons whose duty it is hereby made to pay or deliver the same, shall discharge the parties liable jointly with him, except liability to contribute among themselves. [C., '73, § 1232; C., '97, § 1971; S., '13, § 1971; 40 Ex. G. A., H. F. 185, § 261.]

7763. Right of way. Any person or corporation engaged as aforesaid in draining such

mines and lead or zinc bearing lands, when he or they shall find it necessary for the prosecution of their work, may procure the right of way upon, over, or under the surface of such mineral lands and the contiguous and neighboring lands, for the purpose of conveying the water from said mineral lands by troughs, pipes, ditches, water races, or tunnels, and the right to construct and use shafts and air holes in and upon the same, doing as little injury as possible in making said improvements. [C., '73, § 1233; C., '97, § 1972; S., '13, § 1972; 40 Ex. G. A., H. F. 185, § 262.]

7764. Condemnation. If the said person or corporation engaged in draining as aforesaid, and the owner of any land upon which said right of way may be deemed necessary, can not agree as to the amount of damages which will be sustained by the owner by reason thereof, the parties may proceed to have the same assessed in the manner provided for the exercise of the right of eminent domain as provided in chapter 366. [C., '73, § 1234; C., '97, § 1973; 40 Ex. G. A., H. F. 185, § 263.]

7765. Limitation of provisions. The foregoing provisions shall not be construed to require the owners of the mineral interest in any of said lands to take mineral therefrom, or to authorize any other person to take the mineral from said lands without the consent of the owners. [C., '73, § 1235; C., '97, § 1974; 40 Ex. G. A., H. F. 185, § 264.]

7766. Interpretation of codification act. The amendment, revision, and codification of existing law contained in this and the nine preceding chapters shall not affect litigation pending at the time said chapters go into effect, or the validity of the establishment, construction, or organization of any district then existing, the classification then existing of all lands, the assessment and levy of drainage taxes then made, existing contracts, and vested rights or any warrants, improvement certificates, or drainage bonds outstanding or already provided for under prior existing laws. [40 Ex. G. A., H. F. 185, § 265.]

CHAPTER 363

MILLDAMS AND RACES

7767. Prohibition—permit.

7768. Application for permit.

7769. Notice of hearing.

7770. Hearing.

7771. When permit granted.

7772. Certificate of approval.

7773. Application for certificate.

7774. Granting or refusing.

7775. Permit fee—annual license.

7776. Construction and operation.

7777. Access to works.

7778. Duty to enforce statutes.

7779. Violations.

7780. Action to collect fees.

7781. Unlawful combination—receivership.

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7783. Condemnation—petition.

7784. Precept for jury—service.

7785. Guardian appointed.

7786. Lands in different counties.

7787. Oath—assessment of damages—costs.

7788. Appeal.

7789. Protection of banks.

7790. Embankments—damages.

7791. Right to utilize fall.

7792. Revocation or forfeiture of permit.

7793. Legislative control.

7794. Pending applications.

7795. Permits for existing dams.

7796. State lands.

7767. Prohibition—permit. No dam shall be constructed, maintained, or operated in this state in any navigable or meandered stream for any purpose, or in any other stream for manufacturing or power purposes, nor shall any water be taken from such streams for industrial purposes, unless a permit has been granted by the executive council to the person, firm, corporation, or municipality constructing, maintaining, or operating the same. [R., '60, § 1264; C., '73, § 1188; C., '97, § 1921; 37 G. A., ch. 25, § 1; 40 Ex. G. A., S. F. 186, § 1.]

7768. Application for permit. Any person, firm, corporation, or municipality making application for a permit to construct, maintain, or operate a dam in any of the waters, including canals, raceways, and other constructions necessary or useful in connection with the development and utilization of the water or water power, shall file with the executive council a written application, which shall contain the following information:

1. The name of the navigable, meandered, or other stream in or across which a dam is maintained or it is proposed to construct a dam or other obstruction, and a description of the site for such dam, including the name or names of the riparian owners of the site.

2. The purpose for which the dam is maintained or for which it is proposed to maintain the same, including the use to which the water is to be put.

3. A general description of the dam, raceways, canals, and other constructions, including the specifications as to the material and plan of construction and a general description of all booms, piers, and other protection works which are constructed in connection therewith, or which it is proposed to erect in connection therewith.

4. The approximate amount of hydraulic power that the dam is capable of developing and the amount of power to be used.

5. A map or blue-print on a scale of not less than four inches to the mile, showing the lands

that are or may be affected by the construction, operation, or maintenance of the dam, and the ownership of each tract of land within the affected area.

6. Such additional information as may be required by the executive council. [R., '60, § 1265; C., '73, §§ 1188, 1189; C., '97, § 1921; 37 G. A., ch. 25, § 1; 40 Ex. G. A., S. F. 186, § 2.]

7769. Notice of hearing. When any application for a permit to construct, maintain, or operate a dam from and after the passage of this chapter is received, the executive council shall fix a time for hearing, and it shall give notice of the time and place of such hearing by publication once each week for two successive weeks in at least one newspaper in each county in which riparian lands will be affected by the dam. [R., '60, §§ 1266, 1270; C., '73, § 1190; C., '97, § 1922; 40 Ex. G. A., S. F. 186, § 3.]

7770. Hearing. At the time fixed for such hearing or at any adjournment thereof, the council shall take evidence offered by the applicant and any other person, either in support of or in opposition to the proposed construction. [R., '60, §§ 1267, 1268; C., '73, §§ 1192, 1193; C., '97, §§ 1924, 1925; 40 Ex. G. A., S. F. 186, § 3.]

7771. When permit granted. If it shall appear to the council that the construction, operation, or maintenance of the dam will not materially obstruct existing navigation, or materially affect other public rights, will not endanger life or public health, and any water taken from the stream in connection with the project is returned thereto at the nearest practicable place without being materially diminished in quantity or polluted or rendered deleterious to fish life, it shall grant the permit, upon such terms and conditions as it may prescribe. [R., '60, § 1269; C., '73, §§ 1193, 1198; C., '97, § 1930; 40 Ex. G. A., S. F. 186, § 3.]

7772. Certificate of approval. No permit shall be granted for the construction or operation of a dam where the water is to be used for manufacturing purposes, except to develop power, until a certificate of the state department of health has been filed with the council showing its approval of the use of the water for the purposes specified in the application. [40 Ex. G. A., S. F. 186, § 3.]

7773. Application for certificate. When it is proposed to use the water for manufacturing purposes, except to develop power, or for condensation purposes, application must be made to the department of health, accompanied by a description of the proposed use of the water and what, if any, substances are to be deposited in such water and chemical changes made in the same, and such other information as the department of health may require to enable it to determine the advisability of the issuance of such certificate. [40 Ex. G. A., S. F. 186, § 4.]

7774. Granting or refusing. If the department of health is satisfied that the use of the

water in any such project will not cause pollution of the same or render it materially unwholesome or impure, or deleterious to fish life, it may issue a certificate, and if it is not so satisfied, it shall refuse to issue same. [40 Ex. G. A., S. F. 186, § 4.]

7775. Permit fee—annual license. Every person, firm, or corporation, excepting a municipality, to whom a permit is granted to construct or to maintain and operate a dam already constructed in or across any stream for the purpose herein specified, shall pay to the executive council a permit fee of one hundred dollars and shall pay an annual inspection and license fee, to be fixed by the executive council, on or before the first day of January, 1925, and annually thereafter, but in no case shall the annual inspection and license fee be less than twenty-five dollars. All fees shall be paid into the general fund of the state treasury.

The provisions of this section shall not apply to dams already constructed having less than twenty-five horsepower capacity. [40 Ex. G. A., S. F. 186, § 5.]

7776. Construction and operation. The executive council shall investigate methods of construction, reconstruction, operation, maintenance, and equipment of dams, so as to determine the best methods to conserve and protect as far as possible all public and riparian rights in the waters of the state and so as to protect the life, health, and property of the general public; and the method of construction, operation, maintenance, and equipment of any and all dams in such waters shall be subject to the approval of the executive council. [40 Ex. G. A., S. F. 186, § 6.]

7777. Access to works. Such council or any member, agent, or employee thereof shall at all times be accorded full access to all parts of any dam and its appurtenances being constructed, operated, or maintained in such waters. [40 Ex. G. A., S. F. 186, § 6.]

7778. Duty to enforce statutes. It shall be the duty of the council to require that all existing statutes of the state, including the provisions of this chapter, with reference to the construction of dams, shall be enforced. [40 Ex. G. A., S. F. 186, § 6.]

7779. Violations. The construction, maintenance, or operation of a dam for the purpose specified herein without a permit first being issued, as in this chapter provided, shall constitute a misdemeanor, and shall be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars. [40 Ex. G. A., S. F. 186, § 7.]

7780. Action to collect fees. If any dam is constructed, operated, or maintained without the provisions of this chapter having been first complied with, including the payment of the permit fee and the annual inspection and license fee, the permit fee and the inspection and license fee may be recovered in an action brought in the name of the state, and in addi-

tion to the recovery of the amount due, there shall be collected a penalty of one thousand dollars. [40 Ex. G. A., S. F. 186, § 7.]

7781. Unlawful combination—receivership. If any dam for which a permit has been issued becomes owned, leased, trusteeed, possessed, or controlled in such manner as to be controlled by any unlawful combination or trust, or forms the subject or part of the subject of any contract or agreement to limit the output of any hydraulic or hydroelectric power derived therefrom for the purpose of price fixing as to such output, the state may take possession thereof by receivership proceedings instituted by the council, and such proceedings shall be conducted for the purpose of disposing of said property for lawful use and the proceeds shall be turned over to the persons found by the court to be entitled thereto, after the payment of all expenses of the receivership. [40 Ex. G. A., S. F. 186, § 8.]

7782. Nuisance. If any dam is constructed, maintained, or operated for any of the purposes specified herein, in waters of this state in violation of any of the provisions of this chapter or in violation of any provisions of the law, the state may, in addition to the remedies herein prescribed, have such dam abated as a nuisance. [40 Ex. G. A., S. F. 186, § 9.]

7783. Condemnation — petition. Any person, firm, corporation, or municipality owning land on one or both sides of a watercourse, desiring to construct or heighten any dam in such watercourse or to construct or enlarge a raceway, canal, or other construction necessary for the development or utilization of the water or waterpower for any of the purposes specified in this chapter therefrom for the purpose of propelling any mill or machinery or developing any power by the use of the water, and to whom a permit has been granted as in this chapter provided, may file in the office of the clerk of the district court of the county in which such dam is, or is to be erected or heightened, a petition designating himself as plaintiff and the owners of the lands affected, or that will be affected, as defendants, and describing with reasonable certainty the locality where such dam is to be erected or improved, and also of the lands that will be overflowed or otherwise affected thereby. [R., '60, §§ 1264, 1265, 1274; C., '73, §§ 1188, 1189; C., '97, § 1921; 37 G. A., ch. 25, § 1; 40 Ex. G. A., S. F. 186, § 10.]

7784. Precept for jury—service. The clerk shall thereupon issue an order, with a copy of the petition attached, directed to the sheriff, commanding him to summon a jury of twelve disinterested electors of his county to meet on a day fixed therein, and upon the lands described, which order, including the copy of the petition, shall be served on the defendants in the same manner and for the same length of time previous to the day fixed in the order as is required for the service of original notices.

Where the owner of any land affected is a non-resident of the state, service shall be made of the notice by publication in a newspaper in the county once each week for three successive weeks. [R., '60, § 1266; C., '73, § 1190; C., '97, § 1922; 40 Ex. G. A., S. F. 186, § 11.]

7785. Guardian appointed. When service is made upon a minor or insane person having no guardian, the clerk at the time of issuing the order shall, by indorsement made thereon, appoint a suitable person to make defense for him. [C., '73, § 1190; C., '97, § 1922; 40 Ex. G. A., S. F. 186, § 11.]

7786. Lands in different counties. If any of the lands are situated in a different county than that in which the petition is required to be filed, the proceedings shall apply thereto to the same extent as if such lands were situated in the county where it is filed. [R., '60, § 1270; C., '73, § 1191; C., '97, § 1923; 40 Ex. G. A., S. F. 186, § 12.]

7787. Oath—assessment of damages—costs. The jury shall be sworn, impartially and to the best of their skill and judgment, to view the lands described in the petition, and ascertain and appraise the damages each of the defendants will sustain by reason of such lands being overflowed or otherwise injuriously affected by the dam or raceway or heightening or enlarging the same. They may, in addition to examining the premises, examine witnesses, and shall determine the amount of damages to which each of the defendants are, in their judgment, entitled, by reason of the construction or improvement of the dam or raceway, and shall report their findings in writing, attaching the same to the order and returning it to the sheriff. All costs and fees in connection with the assessment of damages under this chapter shall be the same as in condemnation cases and shall be paid by the plaintiff. [R., '60, §§ 1267, 1273; C., '73, §§ 1192, 1193, 1203; C., '97, §§ 1924, 1925, 1935; 40 Ex. G. A., S. F. 186, § 13.]

7788. Appeal. Either party may appeal from such assessment to the district court within thirty days after the assessment is made and such appeal and all further proceedings in connection with such matter, whether as to an appeal or the payment of damages and costs, and all other matters connected with the proceedings, shall be the same as provided by law for assessment of damages in taking property for works of internal improvement. [C., '73, § 1194; C., '97, § 1926; 40 Ex. G. A., S. F. 186, § 14.]

7789. Protection of banks. Where the water backed up by any dam belonging to any mill or machinery is about to break through or over the banks of the stream or raceway, or to wash a channel, so as to turn the water of such stream or raceway, or any part thereof, out of its ordinary channel, whereby such mill or machinery will be materially injured or affected, the owner or occupant of such mill

or machinery, if he does not own such banks or the land lying contiguous thereto, may, if necessary, enter thereon and erect and keep in repair such embankments and other works as may be necessary to prevent such water from breaking through or over the banks, or washing a channel as aforesaid; such owner or occupier committing thereon no unnecessary waste or damage, and being liable to pay all damages which the owner of the lands may actually sustain by reason thereof. [R., '60, §§ 1275, 1276; C., '73, § 1204; C., '97, § 1936; 40 Ex. G. A., S. F. 186, § 15.]

7790. Embankments—damages. If any person shall injure, destroy, or remove any such embankment or other works, the owner or occupier of such mill or machinery may recover of such person all damages he may sustain by reason thereof. [R., '60, § 1277; C., '73, § 1205; C., '97, § 1937; 40 Ex. G. A., S. F. 186, § 16.]

7791. Right to utilize fall. Any person owning and using a water power for the purpose of propelling machinery shall have the right to acquire, maintain, and utilize the fall below such power for the purpose of improving the same, in like manner and to the same extent as provided in this chapter for the erection or heightening of milldams. After such right has been acquired, the fall shall be considered part and parcel of said water power or privilege, and the deepening or excavating of the stream, tail, or raceway, as herein contemplated, shall in no way affect any rights relating to such water power acquired by the owner thereof prior to such change. [C., '73, § 1206; C., '97, § 1938; 40 Ex. G. A., S. F. 186, § 17.]

7792. Revocation or forfeiture of permit. If the person to whom a permit is issued under the provisions of this chapter does not begin the construction or the improvement of the dam or raceway within one year from the date of the granting of the permit, his permit may be revoked by the executive council, and if any permit holder does not finish and have in operation the plant for which the dam is constructed within three years after the granting of the permit, unless for good cause shown the council has extended the time for completion, such permit shall be forfeited. [R., '60, §

1269; C., '73, § 1199; C., '97, § 1931; 40 Ex. G. A., S. F. 186, § 18.]

7793. Legislative control. No permit granted or rights acquired hereunder shall be perpetual, but they shall be subject to restriction, cancellation, and regulation by legislative action, and subject to all the provisions of this chapter. [37 G. A., ch. 25, § 1; 40 Ex. G. A., S. F. 186, § 19.]

7794. Pending applications. All applications for a permit to construct a dam pending in the district courts of this state at the time of the passage of this chapter shall be heard and determined by the district court of the county in which same is pending under the laws of Iowa at the time of the making of the application to the district court, and where a permit has, prior to the passage of this chapter, been granted by the district court of any county, the applicant shall, in addition to the making of the application in the form provided in section 7768, file a transcript of the proceedings of the district court granting the said permit with said application, and thereupon a permit shall be issued to the applicant without further proceedings, upon payment of the required fees. [40 Ex. G. A., S. F. 186, § 20.]

7795. Permits for existing dams. The owner of a dam existing at the time of the taking effect of this chapter shall make application for a permit, which application shall be accompanied by such proofs and data as may be required by the executive council. Upon receipt of such application with proofs and data and payment of fees as required, the executive council shall grant a permit for the maintenance and operation of said dam as a matter of course. The owner of such dam shall, however, be subject to all of the regulatory provisions of this chapter. [40 Ex. G. A., S. F. 186, § 21.]

7796. State lands. Whenever the erection of any such dam will affect state owned lands, the applicant shall as a condition precedent secure a permit from the board, commission, or other official body charged with jurisdiction over and control of said lands. [40 Ex. G. A., S. F. 186, § 22.]

CHAPTER 364

WATER POWER IMPROVEMENTS

7797. Eminent domain.
7798. Use of highways.
7799. Public lands.

7800. Powers generally.
7801. Completion of work.
7802. Legislative control.

7797. Eminent domain. Any person, or any corporation organized for the purpose of utilizing and improving any water power within this state, or in the streams lying upon the borders thereof, may take and hold so much

real estate as may be necessary for the location, construction, and convenient use of its canals, conduits, mains, and waterways, or other means employed in the utilization of such water power, and for the construction of such

buildings and their appurtenances as may be required for the purposes aforesaid. Such person or corporation may also take, remove and use, for the construction and repair of its said canals, waterways, buildings, and appurtenances, any earth, gravel, stone, timber or other materials on or from the land so taken. Compensation shall be made for the lands and materials so taken and used by such person or corporation, to the owner, in the manner provided for taking private property for works of internal improvement. [C., '73, § 1236; C., '97, § 1990.]

7798. Use of highways. Such person or corporation may use, raise or lower any road for the purpose of having its said canals, waterways, mains and pipes pass over, along or under the same, and in such case shall put such road, as soon as may be, in good repair and condition for the safe and convenient use of the public. Any such person or corporation may construct and carry its canals, conduits, waterways, mains or water pipes across, over or under any railway, canal, stream or watercourse, when it shall be necessary for the construction or operation of the same, but shall do so in such manner as not to impede the travel, transportation or navigation upon, or other proper use of, such railway, canal or stream. The powers conferred in this section can only be exercised in cities and towns with the consent and under the control of the council. [C., '73, § 1237; C., '97, § 1991.]

7799. Public lands. Such person or corporation is authorized to pass over, occupy and enjoy any of the school, university and saline or other lands of this state, whereof the fee or any use, easement or servitude therein is in the public, making compensation therefor. No more of such land shall be taken than is required for its necessary use and convenience. [C., '73, § 1238; C., '97, § 1992.]

7800. Powers generally. Such corporation, in addition to other powers, shall have the following: To borrow money for the purpose of

constructing, renewing or repairing its works; to make, execute and deliver contracts, bonds, notes, bills, mortgages, deeds of trust, and other conveyance charging or incumbering its property, including its franchises, or any part or parcel thereof; to erect, maintain and operate canals, conduits, mains, waterways, mills, factories, and other buildings and machinery, including waterways, sluices and conduits for the purpose of carrying waste water off from said premises to the stream from which the same was taken, or other convenient place; to let, lease, or sell and convey, any portion of their water supply, and any of the buildings, mills or factories, or machinery, for such sums, prices, rents, tolls and rates as shall be agreed upon between the parties; and to lay down, maintain and operate such water mains, conduits, leads and service pipes as shall be necessary to supply any building, village, town or city with water; and the grantee of any such person or corporation, or purchaser of said property, franchise, right and privileges under and by virtue of any judicial sale, shall take and hold the same as fully as the same were held and enjoyed by such person or corporation. [C., '73, § 1239; C., '97, § 1993.]

7801. Completion of work. Such person or corporation shall take, hold and enjoy the privilege of utilizing and improving the water power and the rights, powers and privileges aforesaid, and shall proceed in good faith to make the improvements and employ the powers above conferred, and shall, within two years from the date of acquiring such powers, provide the necessary capital, complete the preliminary surveys, and actually commence the work of improving and utilizing the water power and furnishing the supply of water as contemplated; and said waterworks and canals shall be completed within five years thereafter. [C., '73, § 1240; C., '97, § 1994.]

7802. Legislative control. The rights, powers, and privileges conferred by this chapter shall be at all times subject to legislative control. [C., '73, § 1240; C., '97, § 1994.]

CHAPTER 365

EMINENT DOMAIN

- 7803. Exercise of power by state.
- 7804. On behalf of federal government.
- 7805. Conveyance by state to federal government.
- 7806. Right conferred.
- 7807. Right to purchase.
- 7808. Railways.
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- 7810. Limitation on right of way.
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- 7817. Abandonment of right of way.
- 7818. Right to condemn abandoned right of way.
- 7819. Procedure to condemn.
- 7820. Parties entitled to damages.
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7803. Exercise of power by state. Proceedings may be instituted and maintained by the state of Iowa, or for the use and benefit thereof, for the condemnation of such private property as may be necessary for any public improve-

ment which the general assembly has authorized to be undertaken by the state, and for which an available appropriation has been made. The executive council shall institute and maintain such proceedings in case author-

ity to so do be not otherwise delegated. [C., '73, § 1271; C., '97, § 2024; S., '13, § 2024-d; 40 Ex. G. A., S. F. 187, § 1.]

NOTE: Condemnation by executive council for park and highway purposes, see §§ 1800 and 1801.

7804. On behalf of federal government. The executive council may institute and maintain such proceedings when private property is necessary for any use of the government of the United States. [S., '13, § 2024-a; 40 Ex. G. A., S. F. 187, § 2.]

NOTE: Condemnation by federal government, see § 4.

7805. Conveyance by state to federal government. When land or any easement therein is condemned by the state for the use and benefit of the United States, the governor, after the land has been finally acquired, shall have power to convey, to the United States, the easement or lands so acquired and all rights of the state therein. [S., '13, § 2024-b; 40 Ex. G. A., S. F. 187, § 3.]

7806. Right conferred. The right to take private property for public use is hereby conferred:

1. *Counties.* Upon all counties for such lands as are reasonable and necessary for the erection of courthouses or jails.

2. *Agricultural societies.* Upon all incorporated county fair societies, and county or district agricultural associations, when the property sought to be taken is necessary in order to enable such society or association to carry out the authorized purposes of its incorporation.

3. *Corporations or persons in certain cases.* Upon any corporation or person desiring to construct a canal, road, or bridge as a work of public utility, but the land taken shall not exceed one hundred feet in width.

4. *Owners of land without way thereto.* Upon the owner or lessee of lands, which have no public or private way thereto, for the purpose of providing a public way, not exceeding forty feet in width, which will connect with some existing public road. Such condemned roadway shall be located on a division, subdivision or "forty" line (or immediately adjacent thereto), and along the line which is the nearest feasible route to an existing public road. Such road shall not interfere with buildings, orchards, or cemeteries. When passing through inclosed lands, such roads shall be fenced on both sides thereof by the condemnor.

5. *Owners of mineral lands.* Upon all owners, lessees, or possessors of land, for a railway right of way thereto not exceeding one hundred feet in width and located wherever necessary or practical, when such lands have no railway thereto and contain coal, stone, gravel, lead, or other minerals and such railway is necessary in order to reach and operate any mine, quarry, or gravel bed on said land and transport the products thereof to market. Such right of way shall not interfere with buildings, orchards, or cemeteries, and when passing through inclosed lands, fences shall be built and maintained on both sides thereof by the

party condemning the land and by his assignees. The jury, in the assessment of damages, shall consider the fact that a railway is to be constructed thereon.

6. *Cemetery associations.* Upon any private cemetery or cemetery association which is incorporated under the laws of this state relating to corporations not for pecuniary profit, and having its cemetery located outside the limits of a city or town, for the purpose of acquiring necessary grounds for cemetery use or reasonable additions thereto. The right granted in this subsection shall not be exercised until the board of supervisors, of the county in which the land sought to be condemned is located, has, on written application and hearing, on such reasonable notice to all interested parties as it may fix, found that the land, describing it, sought to be condemned, is necessary for cemetery purposes. The association shall pay all costs attending such hearing. 1. [S., '13, § 2024-f; 40 Ex. G. A., S. F. 187, § 4.] 2. [38 G. A., ch. 292, § 1; 40 Ex. G. A., S. F. 187, § 4.] 3. [C., '51, § 759; R., '60, §§ 1278-1288; C., '73, § 1269; C., '97, § 2023; 40 Ex. G. A., S. F. 187, § 4.] 4. [C., '97, § 2028; S., '13, § 2028; 40 Ex. G. A., S. F. 187, § 4.] 5. [C., '97, §§ 2028, 2031; S., '13, § 2028; 40 Ex. G. A., S. F. 187, § 4.] 6. [S., '13, §§ 1644-a-1644-e; 40 Ex. G. A., S. F. 187, § 4.]

7807. Right to purchase. Whenever the power to condemn private property for a public use is granted to any officer, board, commission, or other official, or to any county, township, or municipality, such grant shall, unless otherwise declared, be construed as granting authority to the officer, board, or official body having jurisdiction over the matter, to acquire, at its fair market value, and from the parties having legal authority to convey, such right as would be acquired by condemnation. [R., '60, § 1317; C., '73, §§ 1244, 1247; C., '97, §§ 1999, 2002, 2014, 2029; S., '13, § 1644-a; 40 Ex. G. A., S. F. 187, § 5.]

7808. Railways. Any railway, incorporated under the laws of the United States or of any state thereof, may acquire by condemnation or otherwise so much real estate as may be necessary for the location, construction, and convenient use of its railway. Such acquisition shall carry the right to use for the construction and repair of said railway and its appurtenances any earth, gravel, stone, timber, or other material, on or from the land so taken. [R., '60, § 1314; C., '73, § 1241; C., '97, § 1995; S., '13, § 1995; 40 Ex. G. A., S. F. 187, § 6.]

7809. Cemetery lands. No lands actually platted, used, and devoted to cemetery purposes shall be taken for any railway purpose without the consent of the proper officers or owners thereof. [S., '13, § 1995; 40 Ex. G. A., S. F. 187, § 7.]

7810. Limitation on right of way. Land taken for railway right of way, otherwise than by consent of the owner, shall not exceed one hundred feet in width unless greater width is necessary for excavation, embankment, or de-

positing waste earth. [R., '60, § 1314; C., '73, § 1241; C., '97, § 1995; S., '13, § 1995; 40 Ex. G. A., S. F. 187, § 8.]

7811. Additional purposes. Any such corporation owning, operating, or constructing a railway may, by condemnation or otherwise, acquire lands for the following additional purposes:

1. For necessary additional depot grounds or yards.
2. For the purpose of constructing a track or tracks to any mine, quarry, gravel pit, manufactory, warehouse, or mercantile establishment.
3. For additional or new right of way for constructing double track, reducing or straightening curves, changing grades, shortening or relocating portions of the line, and for excavations, embankments, or places for depositing waste earth.
4. For the purpose of constructing water stations, dams or reservoirs for supplying its engines with water. [R., '60, § 1314; C., '73, §§ 1241, 1242; C., '97, §§ 1995, 1996, 1998; S., '13, §§ 1995, 1998; 37 G. A., ch. 407, § 1; 40 Ex. G. A., S. F. 187, § 9.]

7812. Finding by railway commission. The company, before instituting condemnation proceedings under the last preceding section, shall apply in writing to the board of railroad commissioners, for permission to so condemn. Said board shall give notice to the landowner, and examine into the matter, and report by certificate to the clerk of the district court in the county in which the land is situated, the amount and description of the additional lands necessary for such purposes, present and prospective, of such company; whereupon the company shall have power to condemn the lands so certified by the commissioners. [C., '97, § 1998; S., '13, § 1998; 40 Ex. G. A., S. F. 187, § 10.]

7813. Lands for water stations—how set aside. Lands which are sought to be condemned for water stations, dams or reservoirs, including all the overflowed lands, if any, shall, if requested by the owner, be set aside in a square or rectangular shape by the board of railroad commissioners. [C., '73, § 1242; C., '97, § 1996; 40 Ex. G. A., S. F. 187, § 11.]

7814. Access to water—overflow limited. An owner of land, which has in part been condemned for water stations, dams or reservoirs, shall not be deprived, without his consent, of access to the water, or the use thereof, in common with the company, on his own land, nor, without his consent, shall his dwelling, outhouses, or orchards be overflowed, or otherwise injuriously affected by such condemnation. [C., '73, § 1242; C., '97, § 1996; 40 Ex. G. A., S. F. 187, § 12.]

7815. Change in streams. When a railway company would have the right to excavate

a channel or ditch and thereby change and straighten the course of a stream or watercourse, which is too frequently crossed by such railway, and thereby protect the right of way and roadbed, or promote safety and convenience in the operation of the railway, it may, by condemnation or otherwise, acquire sufficient land on which to excavate such ditch or channel. [C., '97, § 2014; 40 Ex. G. A., S. F. 187, § 13.]

7816. Unlawful diversion prohibited. Nothing in the last preceding section shall give such corporation the right to change the course of any stream or watercourse where such right does not otherwise exist, nor, without the owner's consent, to divert such stream or watercourse from any cultivated meadow or pasture land, when it only touches such lands at one point. [C., '97, § 2014; 40 Ex. G. A., S. F. 187, § 14.]

7817. Abandonment of right of way. Where a railway constructed in whole or in part has ceased to be operated for more than five years; or where the construction of a railway has been commenced and work on the same has ceased and has not, in good faith, been resumed for more than five years, and remains unfinished; or where any portion of any such railway has not been operated for four consecutive years, and the rails and rolling stock have been wholly removed therefrom it shall be treated as abandoned. [C., '73, § 1260; C., '97, § 2015; 40 Ex. G. A., S. F. 187, § 15.]

7818. Right to condemn abandoned right of way. All rights of the person or corporation which constructed or operated any such railway, as is mentioned in the preceding section, over so much as remains unfinished or from which the rails and rolling stock have been wholly removed, may be entered upon and appropriated as provided in the next section. [C., '73, § 1260; C., '97, § 2015; 40 Ex. G. A., S. F. 187, § 16.]

7819. Procedure to condemn. In case of abandonment, as provided in the two preceding sections, any other corporation may enter upon such abandoned work, or any part thereof, and acquire the right of way over the same, and the right to any unfinished work or grading found thereon, and the title thereto, by proceeding as near as may be in the manner provided for an original condemnation. [C., '73, § 1261; C., '97, § 2016; 40 Ex. G. A., S. F. 187, § 17.]

7820. Parties entitled to damages. Parties who have previously received compensation in any form for the right of way on the line of such abandoned railway, which has not been refunded by them, shall not be permitted to recover the second time. The value of such roadbed and right of way, excluding the work done thereon, when taken for a new company, shall be assessed in the condemnation proceedings for the benefit of the former company or its legal representative. [C., '73,

§ 1261; C., '97, § 2016; 40 Ex. G. A., S. F. 187, § 18.]

7821. **Interpretive clause.** A grant in this chapter of right to take private property for a

public use shall not be construed as limiting a like grant elsewhere in the code for another and different use. [40 Ex. G. A., S. F. 187, § 18-a1.]

CHAPTER 366

PROCEDURE UNDER POWER OF EMINENT DOMAIN

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7822. **Procedure provided.** The procedure for the condemnation of private property for works of internal improvement, and for other public uses and purposes, unless and except as otherwise provided by law, shall be in accordance with the provisions of this chapter. [40 Ex. G. A., S. F. 187, § 19.]

7823. **By whom conducted.** Such proceedings shall be conducted:

1. By the attorney general when the damages are payable from the state treasury.

2. By the county attorney, when the damages are payable from funds disbursed by the county, or by any township, or school district.

3. By the city attorney, when the damages are payable from funds disbursed by the city or town.

This section shall not be construed as prohibiting any other authorized representative from conducting such proceedings. [C., '73, § 1271; C., '97, § 2024; S., '13, §§ 2024-a, 2024-d, 2024-f; 40 Ex. G. A., S. F. 187, § 20.]

7824. **Application for condemnation.** Such proceedings shall be instituted by a written application filed with the sheriff of the county in which the land sought to be condemned is located. Said application shall set forth:

1. A description of all the property in the county, affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots in a city or town, by the numbers of the lot and block, and plat designation.

2. A plat showing the location of the right of way or other property sought to be condemned with reference to such description.

3. The names of all record owners of the different tracts of land sought to be condemned, or otherwise affected by such proceedings, and of all record holders of liens and incumbrances on such lands; also the place of residence of all such persons so far as known to the applicant.

4. The purpose for which condemnation is sought.

5. A request for the appointment of a commission to appraise the damages. [R., '60, § 1230; C., '73, § 1247; C., '97, § 2002; 40 Ex. G. A., S. F. 187, § 21.]

7825. **Commission to assess damages.** The sheriff shall thereupon, except as otherwise provided, appoint six resident freeholders of his county, none of whom shall be interested in the same or a like question, who shall constitute a commission to assess the damages to all real estate desired by the applicant and located in the county. [R., '60, §§ 1317, 1318; C., '73, §§ 1244, 1245; C., '97, §§ 1999, 2029; 40 Ex. G. A., S. F. 187, § 22.]

7826. **Vacancies.** In case any appointee under the preceding section fails to act, the sheriff shall summon some other freeholder, possessing the required qualifications, to complete the membership. [R., '60, § 1319; C., '73, § 1251; C., '97, § 2006; 40 Ex. G. A., S. F. 187, § 23.]

7827. **Commission when state is applicant.** When the damages are payable out of the state treasury, the sheriff, immediately upon receipt of the application, shall notify the chief justice of the supreme court of the filing of such application. Thereupon the chief justice shall

appoint six resident freeholders of the state to assess all said damages. No commissioner, so appointed, shall be interested in the same or a like question. No two members of such commission shall be residents of the same county. The names and places of residence of such commissioners shall be returned by said chief justice to, and filed with, the sheriff. The chief justice shall fill all vacancies which may occur in the commission appointed under this section. [S., '13, § 2024-d; 40 Ex. G. A., S. F. 187, § 24.]

7828. Commissioners to qualify. Before proceeding with the assessment all commissioners shall qualify by filing with the sheriff a written oath that they will to the best of their ability faithfully and impartially assess said damages and make written report to the sheriff. [40 Ex. G. A., S. F. 187, § 25.]

7829. Notice of assessment. The applicant, or the owner or any lienholder or incumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, ten days' notice, in writing. Such notice shall specify the day and the hour when the commissioners will view the premises, and be served in the same manner as original notices. [R., '60, § 1318; C., '73, § 1245; C., '97, § 2000; 40 Ex. G. A., S. F. 187, § 26.]

7830. Form of notice. Said notice shall be in substantially the following form, with such changes therein as will render it applicable to the party giving and receiving the notice, and to the particular case pending, to wit:

"To (here name each person whose land is to be taken or affected and each record lienholder or incumbrancer thereof) and all other persons, companies, or corporations having any interest in or owning any of the following described real estate:

(Here describe the land as in the application.)

You are hereby notified that (here enter the name of the applicant) desires the condemnation of the following described land: (Here describe the particular land or portion thereof sought to be condemned, in such manner that it will be clearly identified.)

That such condemnation is sought for the following purpose: (Here clearly specify the purpose.)

That a commission has been appointed as provided by law for the purpose of appraising the damages which will be caused by said condemnation.

That said commissioners will, on the day of, 19...., at o'clock .. m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

.....
Applicant."

[R., '60, § 1320; C., '73, § 1247; C., '97, § 2002; 40 Ex. G. A., S. F. 187, § 27.]

7831. Signing of notice. The notice may be signed by the applicant, by his attorney, or by any other authorized representative. [R., '60, § 1320; C., '73, § 1247; C., '97, § 2002; 40 Ex. G. A., S. F. 187, § 28.]

7832. Filing of notices and return of service. Notices, immediately after the service thereof, shall, with proper return of service indorsed thereon or attached thereto, be filed with the sheriff. The sheriff shall at once cause the commissioners to be notified of the day and hour when they will be required to proceed with the appraisalment. [40 Ex. G. A., S. F. 187, § 29.]

7833. Notice to nonresidents. If the owner of such lands or any person interested therein is a nonresident of this state, or if his residence is unknown, no demand for the land for the purposes sought shall be necessary, but the notice aforesaid shall be published in some newspaper of the county and of general circulation therein, once each week for at least four successive weeks prior to the day fixed for the appraisalment, which day shall be at least thirty days after the first publication of the notice. [R., '60, § 1320; C., '73, §§ 1247, 1248; C., '97, §§ 2002, 2003; S., '13, § 2003; 40 Ex. G. A., S. F. 187, § 30.]

7834. Service outside state. Personal service outside the state on nonresidents in the time and manner provided for the service of original notices shall have the same force and effect as publication service within the state. [40 Ex. G. A., S. F. 187, § 31.]

7835. Appraisalment—report. The commissioners shall, at the time fixed in the aforesaid notices, view, if necessary, the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation, and file their written report with the sheriff. The appraisalment and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record. In case of such knowledge the appraisalment shall be made of the different portions as they are known to be owned. [C., '73, § 1249; C., '97, §§ 2004, 2029; 40 Ex. G. A., S. F. 187, § 32.]

7836. Guardianship. In all cases where any interest in lands sought to be condemned is owned by a person who is under legal disability and has no guardian of his property, the applicant shall, prior to the filing of the application with the sheriff, apply to the district court for the appointment of a guardian of the property of such person. [40 Ex. G. A., S. F. 187, § 33.]

7837. Power of guardian. If the owner of any lands is under guardianship, such guardian may, under the direction of the district court, or judge thereof, agree and settle with the

applicant for all damages resulting from the taking of such lands, and give valid conveyances thereof. [R., '60, § 1316; C., '73, § 1246; C., '97, § 2001; 40 Ex. G. A., S. F. 187, § 34.]

7838. When appraisal final. The appraisal of damages returned by the commissioners shall be final unless appealed from. [40 Ex. G. A., S. F. 187, § 35.]

7839. Appeal. Any party interested may, within thirty days after the assessment is made, appeal therefrom to the district court, by giving the adverse party, his agent or attorney, and the sheriff, written notice that such appeal has been taken. [R., '60, § 1317; C., '73, § 1254; C., '97, § 2009; S., '13, § 2009; 38 G. A., ch. 189, § 1; 40 Ex. G. A., S. F. 187, § 36.]

7840. Sheriff to file certified copy. The sheriff, when an appeal is taken, shall at once file with the clerk of the district court a certified copy of so much of the assessment as applies to the part appealed from. In case of such appeal the sheriff shall, as soon as all other unappealed assessments are disposed of, file with the clerk all papers pertaining to the proceedings and remaining in his hands. [R., '60, § 1317; C., '73, § 1254; C., '97, § 2009; S., '13, § 2009; 40 Ex. G. A., S. F. 187, § 37.]

7841. Appeals—how docketed and tried. The appeal shall be docketed in the name of the owner of the land, or of the party otherwise interested and appealing, as plaintiff, and in the name of the applicant for condemnation as defendant, and be tried as in an action by ordinary proceedings. [R., '60, § 1317; C., '73, § 1254; C., '97, § 2009; S., '13, §§ 2009, 2024-h; 40 Ex. G. A., S. F. 187, § 38.]

7842. Question determined. On the trial of the appeal, no judgment shall be rendered except for costs, but the amount of damages shall be ascertained and entered of record. [C., '73, § 1257; C., '97, § 2011; 40 Ex. G. A., S. F. 187, § 39.]

7843. Reduction of damages. If the amount of damages awarded by the commissioners is decreased on the trial of the appeal, the reduced amount only shall be paid to the landowner. [C., '73, § 1259; C., '97, § 2013; 40 Ex. G. A., S. F. 187, § 40.]

7844. Right to take possession of lands. Upon the filing of the commissioner's report with the sheriff, the applicant may deposit with the sheriff the amount assessed in favor of a claimant, and thereupon the applicant shall, except as otherwise provided, have the right to take possession of the land condemned and proceed with the improvement. No appeal from said assessment shall affect such right, except as otherwise provided. [R., '60, § 1317; C., '73, §§ 1244, 1272; C., '97, §§ 1999, 2010, 2025, 2029; S., '13, §§ 2024-e, 2024-g, 2024-h; 40 Ex. G. A., S. F. 187, § 41.]

7845. Dispossession of owner. A landowner shall not be dispossessed, under condemnation

proceedings, of his residence, dwelling house, outhouse, orchard, or garden, until the damages thereto have been finally determined and paid. This section shall not apply to condemnation proceedings for drainage or levee improvements. [40 Ex. G. A., S. F. 187, § 42.]

7846. Erection of dam—limitation. If it appears from the finding of the commissioners that the dwelling house, outhouse, orchard, or garden of the owner of any land taken will be overflowed or otherwise injuriously affected by any dam or reservoir to be constructed as authorized by this chapter, such dam shall not be erected until the question of such overflowing or other injury has been determined in favor of the corporation upon appeal. [C., '73, § 1250; C., '97, § 2005; 40 Ex. G. A., S. F. 187, § 42.]

7847. Deposit pending appeal. The sheriff shall not, after being served with notice of appeal by the applicant, pay to the claimant any deposit of damages held by the sheriff, but shall hold the same until the appeal is finally determined. [R., '60, § 1317; C., '73, § 1255; C., '97, § 2010; 40 Ex. G. A., S. F. 187, § 43.]

7848. Acceptance of deposit. An acceptance by the claimant of the damages awarded by the commissioners or of the warrant tendered by public authorities, shall bar his right to appeal. Such acceptance after an appeal has been taken by him shall abate such appeal. [R., '60, § 1317; C., '73, § 1256; C., '97, § 2010; 40 Ex. G. A., S. F. 187, § 44.]

7849. Additional deposit. If, on the trial of the appeal, the damages awarded by the commissioners are increased, the condemnor shall, if he is already in possession of the property, make such additional deposit with the sheriff, as will, with the deposit already made, equal the entire damages allowed. If the condemnor be not already in possession, he shall deposit with the sheriff the entire damages awarded, before entering on, using, or controlling the premises. [C., '73, § 1258; C., '97, § 2012; 40 Ex. G. A., S. F. 187, § 45.]

7850. Payment by public authorities. When damages, by reason of condemnation, are payable from public funds, the sheriff, or clerk of the district court, as the case may be, shall certify to the officer, board, or commission having power to audit claims for the purchase price of said lands, the amount legally payable to each claimant, and, separately, a detailed statement of the cost legally payable from such public funds. Said officer, board, or commission shall audit said claims, and the warrant issuing officer shall issue warrants therefor on any funds appropriated therefor, or otherwise legally available for the payment of the same. Warrants shall be drawn in favor of each claimant to whom damages are payable. The warrant in payment of costs shall be issued in favor of the officer certifying thereto. [C., '73, § 1272; C.,

'97, § 2025; S., '13, §§ 2024-b, 2024-e, 2024-g; 40 Ex. G. A., S. F. 187, § 46.]

7851. Removal of condemnor. The sheriff, upon being furnished with a copy of the assessment as determined on appeal, certified to by the clerk of the district court, may remove from said premises the condemnor and all persons acting for or under him, unless the amount of the assessment is forthwith paid or deposited as hereinbefore provided. [C., '73, § 1258; C., '97, § 2012; 40 Ex. G. A., S. F. 187, § 47.]

7852. Costs and attorney fees. The applicant shall pay all costs of the assessment made by the commissioners. The applicant shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial thereof the same or a less amount of damages is awarded than was allowed by the tribunal from which the appeal was taken. [R., '60, § 1317; C., '73, § 1252; C., '97, § 2007; 40 Ex. G. A., S. F. 187, § 48.]

7853. Refusal to pay final award. Should the applicant decline, on the final determination of the appeal, to take the property and pay the damages awarded, he shall pay, in addition to the costs and damages actually suffered by the landowner, reasonable attorney fees to be taxed by the court. [C., '97, § 2011; 40 Ex. G. A., S. F. 187, § 49.]

7854. Sheriff to file record. The sheriff, in case no appeal is taken, shall, immediately after the final determination of condemnation proceedings, and after the acquiring of the property by the condemnor, file, with the county recorder of the county in which the condemned land is situated, the following papers:

1. The application for condemnation.
2. All notices, together with all returns of service indorsed thereon or attached thereto.
3. The report of the commissioners.
4. All other papers filed in said proceedings.
5. A written statement by the sheriff of all money received in payment of damages, from whom received, to whom paid, and the amount paid to each claimant. [C., '73, § 1253; C., '97, § 2008; 40 Ex. G. A., S. F. 187, § 50.]

7855. Clerk to file record. The clerk of the district court, in case an appeal is taken in

condemnation proceedings, shall file with the county recorder the records which the sheriff is required to file in case no appeal is taken, and in addition thereto the following:

1. A copy of the record entry of the court showing the amount of damages determined on appeal.

2. A written statement by the clerk of all money received by him in payment of damages, from whom received, to whom paid, and the amount paid to each claimant. [40 Ex. G. A., S. F. 187, § 51.]

7856. Form of record—certificate. Said papers shall be securely fastened together, arranged in the order named above, and be accompanied by a certificate of the officer filing the same that said papers are the original files in the proceedings and that the statements accompanying the same are true. [40 Ex. G. A., S. F. 187, § 52.]

7857. Record of proceedings. The county recorder shall record said papers, statements, and certificate in the record of deeds, properly index the same, and carefully preserve the originals as files of his office. [C., '73, § 1253; C., '97, § 2008; 40 Ex. G. A., S. F. 187, § 53.]

7858. Fee for recording. The sheriff or clerk, as the case may be, shall collect from the condemnor such fee as the county recorder would have legal right to demand for making such record, and pay such fee to the recorder upon presenting the papers for record. [40 Ex. G. A., S. F. 187, § 54.]

7859. Failure to record—liability. Any sheriff, or clerk of the district court, as the case may be, who fails to present said papers, statements, and certificate for record, and any recorder who fails to record the same as above provided shall be liable for all damages caused by such failure. [40 Ex. G. A., S. F. 187, § 55.]

7860. Presumption. The said original papers, statements, and certificate, or the record thereof shall be presumptive evidence of title in the condemnor, and shall constitute constructive notice of the right of such condemnor to the lands condemned. [C., '73, § 1253; C., '97, § 2008; 40 Ex. G. A., S. F. 187, § 56.]

CHAPTER 367

REVERSION

7861. Relocation of railway.

7862. Failure to operate or construct railway.

7861. Relocation of railway. Such part of a railway right of way as is wholly abandoned for railway purposes by the relocation of the line of railway, shall revert to the persons who, at the time of the abandonment, are

7863. Quasi-public roads and right of ways.

7864. Lands for highway improvement.

owners of the tract from which such abandoned right of way was taken. [40 Ex. G. A., S. F. 187, § 57.]

7862. Failure to operate or construct railway. If a railway, or any part thereof, shall

not be used or operated for a period of eight years, or if, its construction having been commenced, work on the same has ceased and has not been in good faith resumed for eight years, the right of way, including the roadbed, shall revert to the persons who, at the time of the reversion, are owners of the tract from which such right of way was taken. [C., '73, § 1260; C., '97, § 2015; 40 Ex. G. A., S. F. 187, § 58.]

7863. Quasi-public roads and right of ways. Roads established for the purpose of providing a public road to lands which theretofore had no such road, shall, when not used or operated for said purpose for eight consecutive years,

revert to those persons who, at the time of the reversion, are owners of the tract from which such road was taken. [C., '97, § 2030; 40 Ex. G. A., S. F. 187, § 59.]

7864. Lands for highway improvement. Lands condemned by a county, city, or town for the purpose of obtaining gravel or other suitable material for highway improvement, and not used for such purpose for five consecutive years, shall revert to those persons who, at the time of the reversion are owners of the tract from which the condemned lands were taken. S., '13, § 2024-1; 40 Ex. G. A., S. F. 187, § 60.]

TITLE XVIII

PUBLIC UTILITIES

CHAPTER 368

BOARD OF RAILROAD COMMISSIONERS

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7865. Eligibility of commissioners and secretary. No person in the employ of any common carrier, or owning any bonds, stock, or property in any railroad company, or who is in any way or manner pecuniarily interested in any railroad corporation, shall be eligible to the office of railroad commissioner or secretary of the board; and the entering into the employ of any common carrier, or the acquiring of any stock or other interest in any common carrier by any officer under this chapter, after his election or appointment, shall disqualify him to hold the office and to perform the duties thereof. [C., '97, § 2111; 40 Ex. G. A., H. F. 188, § 1.]

7866. Election—organization. The board of railroad commissioners shall consist of three persons having the qualifications of electors. On the second Tuesday of January of each year, the board shall organize by electing one of its members as chairman, and appointing a secre-

tary, who shall take the same oath as the commissioners; but this or a part of this may be done at a subsequent meeting. The board shall have power to employ such additional clerical help as it may find necessary. [C., '97, § 2111; 40 Ex. G. A., H. F. 188, § 2.]

7867. Proceedings. The board may in all cases conduct its proceedings, when not otherwise prescribed by law, in such manner as will best conduce to the proper dispatch of business and the attainment of justice. [C., '97, § 2142.]

7868. Quorum—personal interest. A majority of the board shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. [C., '97, § 2142.]

7869. Rules, forms, and service. It may from time to time make or amend such general

rules or orders as may be necessary for the preservation of order and the regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as may be to those in use in the courts of the state. [C., '97, § 2142.]

7870. Appearances—record of votes—public hearings. Any party may appear before it and be heard in person or by attorney. Every vote and official action thereof shall be entered of record, and, upon the request of either party or person interested, its proceedings shall be public. [C., '97, § 2142.]

7871. Seal. It shall have a seal, of which courts shall take judicial notice. [C., '97, § 2142.]

7872. Office—time employed—expense. The board shall have an office at the seat of government and each member shall devote his whole time to the duties of the office, and the members and secretary and other employees shall receive their actual necessary traveling expenses while in the discharge of their official duties away from the general offices. [C., '97, § 2121; S. S., '15, § 2121; 37 G. A., ch. 315, § 2; 39 G. A., ch. 209, § 20; 40 Ex. G. A., H. F. 188, § 3.]

7873. Free transportation. The commissioners, their secretary, experts, or other agents while in the performance of their official duties shall be transported free of charge by all railroad or other transportation companies operating in the state. [C., '97, § 2151; 40 Ex. G. A., H. F. 188, § 4.]

7874. General jurisdiction. The board shall have general supervision of all railroads in the state, express companies, car companies, sleeping car companies, freight and freight line companies, interurban railway companies, motor carriers, and any common carrier engaged in the transportation of passengers or freight by railroads, except street railroads, and also all lines for the transmission, sale, and distribution of electrical current for light, heat, or power, except in cities and towns. It shall investigate any alleged neglect or violation of law by any such common carrier, its agents, officers, or employees. [C., '97, § 2112; S., '13, § 2120-n; 40 Ex. G. A., H. F. 188, § 5.]

7875. Inspection—notice to repair. It shall from time to time carefully examine into and inspect the condition of each railroad, its tracks, bridges, and equipment, and the manner of its conduct, operation, and management with regard to the public safety and convenience in the state. If found by it unsafe, it shall immediately notify the railroad company whose duty it is to put the same in repair, which shall be done by it within such time as the board shall fix. If any corporation fails to perform this duty the board may forbid and prevent it from running trains over the defective portion while unsafe. [C., '97, § 2113; S., '13, § 2113; 40 Ex. G. A., H. F. 188, § 6.]

7876. Connections and shelter. Should any railroad or transportation company in this state fail to provide proper shelter for its patrons at stations where two or more tracks are operated, or fail or refuse to connect by proper switches or tracks with the tracks or lines of other railroad or transportation companies, the board may require such railroad or transportation company to provide the same in such manner and upon such conditions as it may determine. [C., '97, § 2113; S., '13, § 2113; 40 Ex. G. A., H. F. 188, § 7.]

NOTE: See §§ 803 and 8016.

7877. Changes in operation and improvements. When, in the judgment of the board, any railway corporation fails in any respect to comply with the terms of its charter or articles of incorporation or the laws of the state; or when in its judgment any repairs are necessary upon its road; or any addition to its rolling stock, or addition to or change in its stations or station houses, or the equipment thereof, for the health and convenience of the public, or change in its rates of fare for transporting freight or passengers, or change in the mode of operating its road or conducting its business, is reasonable and expedient in order to promote the security, convenience, and accommodation of the public, the board may make an order prescribing such improvements and changes as it finds to be proper and shall serve a notice upon such corporation, in the manner provided for the service of an original notice in a civil action, which notice shall be signed by its secretary. A report of such proceedings shall be included in its annual report to the governor. Nothing in this or the two preceding sections shall be so construed as relieving any railroad company from its responsibility or liability for damage to person or property. [C., '97, § 2113; S., '13, § 2113; 40 Ex. G. A., H. F. 188, § 8.]

7878. Investigation and inquiry. The board shall investigate and inquire into the management of the business of all common carriers subject to this chapter and chapter 373 and keep itself well informed as to the manner and method in which the same is conducted. It shall have the right to obtain from them full and complete information necessary to enable the board to perform its duties. It shall have power to require the attendance and testimony of witnesses, the production of all books, papers, tariff schedules, contracts, agreements, and documents, relating to any matter under investigation, and to inspect the same and to examine under oath or otherwise any officer, director, agent, or employee of any common carrier; to issue subpoenas and to enforce obedience thereto. [C., '97, §§ 2115, 2133; 40 Ex. G. A., H. F. 188, § 9.]

7879. Aid from courts. The board may invoke the aid of any court of record in any county where the carrier extends, in requiring the attendance and testimony of witnesses and the production of books, papers, tariff schedules, agreements, and other documents. Any

court or judge thereof having jurisdiction where any inquiry is carried on shall, in case of the refusal of any person to obey a subpoena or other process, issue an order requiring any of the officers, agents, or employees of any carrier or other person to appear before the board and produce all books and papers required by such order and testify in relation to any matter under investigation. A failure to obey any such order of the court shall be punished as a contempt. [C., '97, § 2133; 40 Ex. G. A., H. F. 188, § 10.]

7880. Hindering or obstructing board. Any person who shall wilfully obstruct it or its members in the performance of their duties, or who shall refuse to give any information within his possession that may be required by it within the line of its duty, shall be fined not exceeding one thousand dollars, in the discretion of the court. [C., '97, § 2115; 40 Ex. G. A., H. F. 188, § 11.]

7881. Examination of rates. The board shall, upon the application of the mayor and council of any city or town, or the trustees of any township, make an examination of the rate of passenger fare or freight tariff charged by any railroad company, and of the condition or operation of any railroad, any part of whose location lies within the limits of such city, town, or township; and if twenty-five or more voters in any city, town, or township shall, by written petition, request the mayor and council of such city or town, or the trustees of such township, to make the said complaint and application, and they refuse, they shall state the reason therefor in writing upon the petition, and return the same to the petitioners, who may thereupon, within ten days from the date of such refusal and return, present the same to the board of commissioners, who shall, if it thinks the public good demands the examination, proceed to make it in the same manner as if called upon by the mayor and council of any city or town, or the trustees of any township. Before proceeding to make such examination, it shall give to the petitioners and the corporation reasonable notice, in writing, of the time and place of entering upon the same. If, upon such an examination, it shall appear to the board that the complaint is well founded, it shall, within ten days, inform the corporation operating such railroad of its finding, and shall report its doings to the governor. [C., '97, § 2117.]

7882. Cumulative remedies. Nothing in this or chapter 373 shall be construed to estop or hinder any persons or corporations from bringing action against any railway company for any violation of the laws of the state for the government of railroads. [C., '97, § 2118.]

7883. Jurisdiction of courts to enforce order. The district courts of this state shall have jurisdiction to enforce, by proper decrees, injunctions, and orders, the rulings, orders and regulations affecting public rights, made by the board as authorized by law for the direction and observance of railroads in this state.

The proceedings therefor shall be by equitable action in the name of the state, and shall be instituted by the commerce counsel, whenever advised by the board that any railway corporation, or person operating a line of road in this state, is violating and refusing to comply with any rule, order, or regulation made by the board, and applicable to such railroad or person. [C., '97, § 2119; S., '13, § 2119; 40 Ex. G. A., H. F. 188, § 12.]

7884. Mandatory injunction—contempt. It shall be the duty of the court in which any such cause shall be pending to require the issue to be made up at the first term of the court to which such cause is brought, which shall be the trial term, and to give the same precedence over other civil business. If the court shall find that such rule, regulation, or order is reasonable and just, and that in refusing compliance therewith said railway company is neglecting and omitting the performance of any public duty or obligation, the court shall decree a mandatory and perpetual injunction, compelling obedience to and compliance with such rule, order, or regulation by said railroad company or person, its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. All violations of such decree shall render the company, persons, officers, agents, servants, and employees who are in any manner instrumental in such violation, guilty of contempt of court, and the court may punish such contempt by a fine not exceeding one thousand dollars for each offense. Such decree shall continue and remain in effect and be enforced until the rule, order, or regulation shall be modified or vacated by the board. [C., '97, § 2119; S., '13, § 2119; 40 Ex. G. A., H. F. 188, § 13.]

7885. When order effective—violation. All rules, orders, and regulations affecting public rights, made by the board of railroad commissioners, as now or may hereafter be authorized for the direction and observance of railroads in this state, shall be in full force and effect from and after the date fixed by the board. If any railroad fails, neglects, or refuses to comply with any rule, order, or regulation made by the board within the time specified, it shall, for each day of such failure, pay a penalty of fifty dollars. [S., '13, § 2119; 40 Ex. G. A., H. F. 188, § 14.]

7886. Time may be extended to test legality. The time for the taking effect of any rule, order, or regulation affecting public rights, made by the board, may, in its discretion, be extended; and said extension of time may be granted for the purpose of testing the legality thereof, upon application by any such aggrieved railroad, showing reasonable grounds therefor, and that said application is made in good faith and not for the purpose of delay. [S., '13, § 2119; 40 Ex. G. A., H. F. 188, § 15.]

7887. Proceedings to vacate order. Any railroad aggrieved at any rule, order, or regulation made by the board may institute pro-

ceedings in any court of proper jurisdiction to have the same vacated. If found by the court, after due trial, not to be reasonable, equitable, or just, and if upon an appeal from any rule, order, or regulation of the board the complaining railroad is successful in having such rule, order, or regulation vacated, the aforesaid penalty shall be set aside. [S., '13, § 2119; 40 Ex. G. A., H. F. 188, § 16.]

7888. Remitting penalty. When any common carrier shall fail upon appeal to secure a vacation of the order appealed from, it may apply to the court in which the appeal is finally adjudicated for an order remitting the penalty which has accrued during the pendency of the appeal. Upon a satisfactory showing that the appeal was prosecuted in good faith and not for the purpose of delay, and that there were reasonable grounds to believe that the order appealed from was unreasonable or unjust or that the power of the board to make the same was doubtful, such court may remit the penalty that has accrued during the pendency of the appeal. [S., '13, § 2119; 40 Ex. G. A., H. F. 188, § 17.]

7889. Costs—attorney's fees. When a decree shall be entered against a railroad company or person under the six preceding sections, the court shall render judgment for costs, and attorney's fees for counsel representing the state. [C., '97, § 2120.]

7890. Interstate freight rates. The board shall exercise constant diligence to ascertain the rates, charges, rules, and practices of common carriers operating in this state, in relation to the transportation of freight in interstate business. When it shall ascertain from any source or have reasonable grounds to believe that the rates charged on such interstate business or the rules or practices in relation thereto discriminate unjustly against any of the citizens, industries, interests, or localities of the state, or place any of them at an unreasonable disadvantage as compared with those of other states, or are in violation of the laws of the United States regulating commerce, or in conflict with the rulings, orders, or regulations of the interstate commerce commission, the board shall take the necessary steps to prevent the continuance of such rates, rules, or practices. [S., '13, § 2120-a; 40 Ex. G. A., H. F. 188, § 18.]

7891. Application to interstate commerce commission. When any common carrier has put in force any rates, rules, or practices in relation to interstate freight business, in violation of the laws of the United States regulating commerce, or of the orders, rules, or regulations of the interstate commerce commission, or shall unjustly discriminate against any of the citizens, industries, interests, or localities of the state, the board shall present the material facts involved in such violations or discrimination to the interstate commerce commission and seek relief therefrom, and, if deemed necessary or expedient, the board shall prosecute any charge growing out of such vio-

lation or discrimination, at the expense of the state, before the interstate commerce commission. [S., '13, § 2120-b; 40 Ex. G. A., H. F. 188, § 19.]

7892. Choice of remedies. Any person claiming damages from a common carrier on account of any violation of the provisions of chapter 373 may either make complaint to the board of railroad commissioners, or may bring action on his own behalf for the recovery of such damages; but he shall not have the right to pursue both of said remedies at the same time. [C., '97, § 2131; 40 Ex. G. A., H. F. 188, § 19-a1.]

7893. Complaints. Any person, firm, corporation, association, mercantile, agricultural, or manufacturing society, body politic, or municipal organization, may file with the board a petition setting forth any particular in which any common carrier has violated the law to which it is subject and the amount of damages sustained by reason thereof. The board shall furnish to the carrier against which complaint is filed, a copy thereof, and a reasonable time shall be fixed within which such carrier shall answer the petition or satisfy the demand therein made. If such carrier fails to satisfy the complaint within the time fixed or there shall appear to be reasonable grounds for investigating the matters set forth in said petition, the board shall hear and determine the questions involved and make such orders as it shall find to be proper. No petition so filed shall be dismissed on the grounds that the petitioner has not suffered any direct damage. When the board ascertains or has reason to believe that any carrier is violating any of the laws to which it is subject, it may institute an investigation and cause a hearing to be made before it in relation to such matters in all respects as fully as if a petition had been filed. [C., '97, § 2134; 40 Ex. G. A., H. F. 188, § 20.]

7894. Investigation—report. When a hearing has been had before the board after notice, it shall make a report in writing setting forth the findings of fact and its conclusions together with its recommendations or orders as to what reparation, if any, the offending carrier shall make to any party who has suffered damage. Such finding of fact shall thereafter in all legal proceedings be prima facie evidence of every fact found. All reports of hearings and investigations made by the board shall be entered of record and a copy furnished to the carrier against which the complaint was filed, to the party complaining, and to any other person having a direct interest in the matter. [C., '97, § 2135; 40 Ex. G. A., H. F. 188, § 21.]

7895. Orders—compliance—release. When the board finds as the result of any investigation that a common carrier has violated or is violating any of the provisions of law to which it is subject, or that any complainant or other person has sustained damages by reason of such violation, the board shall notify such carrier to cease such violation at once

and shall fix a time within which it shall pay the amount of damage which has been found due to any person as a result of such violation. Upon a satisfactory showing to the board that the carrier has complied with the notice in the time and manner required, it shall thereupon be relieved from further liability or penalty for that particular violation of law, and the board shall enter of record such release. [C., '97, § 2136; 40 Ex. G. A., H. F. 188, § 22.]

7896. Violation of order—petition—notice. When any common carrier shall violate or fail to obey any lawful order or requirement of the board, the board shall apply in a summary way by petition in the name of the state, against such common carrier, to the district court of any county through which such carrier owns or operates a line of railroad or in which the failure or violation of such order occurred, alleging such violation or failure to obey; the court shall hear and determine the matter set forth in said petition on reasonable notice to the common carrier, to be fixed by the court and to be served in the same manner as original notices for the commencement of action. [C., '97, § 2137; 40 Ex. G. A., H. F. 188, § 23.]

7897. Interested party may begin proceedings. Any person, firm, or corporation interested in the matter of enforcing any order or requirement of the board, may file a petition against such carrier, alleging the failure to comply with such order or requirement and praying summary relief to the same extent and in the same manner as the board may do under the preceding section, and the proceedings after the filing of such petition shall be the same as in said section provided. [C., '97, § 2137; 40 Ex. G. A., H. F. 188, § 24.]

7898. Duty of commerce counsel and county attorney. When any proceeding has been instituted under the two preceding sections, the commerce counsel shall prosecute the same, and the county attorney of the county in which such proceeding is pending shall render such assistance as the commerce counsel may require of him. [C., '97, § 2137; 40 Ex. G. A., H. F. 188, § 25.]

7899. Hearing in equity—injunction. All such causes shall be in equity, and the order or report of the board in question shall be prima facie evidence of the matters contained therein. If the court shall find that the order or requirement in question is lawful and has been violated, it shall issue an injunction or other proper process, mandatory or otherwise, to compel obedience to such order or requirement. [C., '97, § 2137; 40 Ex. G. A., H. F. 188, § 26.]

7900. Violation of injunction. For a violation of any injunction or other process issued in such proceeding, any common carrier or any officer, agent, or employee thereof shall be fined for contempt in a sum not exceeding one thousand dollars. In addition to any other penalty the court may fix a sum not exceeding

one thousand dollars which each defaulting carrier, officer, or agent shall pay after a fixed date for each day such injunction or other process is disobeyed and render judgment for penalty which shall accrue from disobedience after the time fixed. One-half of such sums collected shall be paid into the treasury of the county where the judgment is rendered and one-half into the state treasury. [C., '97, § 2137; 40 Ex. G. A., H. F. 188, § 27.]

7901. Appeal—effect. An appeal to the supreme court shall not stay or supersede the order of the court or the execution of any writ or process thereon. When appeal is taken by the board, it shall not be required to give an appeal bond or security for costs. [C., '97, § 2137; 40 Ex. G. A., H. F. 188, § 28.]

7902. Suits by commissioners. When the board has reason to believe that any common carrier has been guilty of extortion or unjust discrimination, it shall immediately cause actions to be commenced and prosecuted against such carrier. Such action may be brought in any county through or into which any line of railway owned or operated by such carrier may extend. No actions thus commenced shall be dismissed unless the board and the commerce counsel consent thereto. The court in which any such action is pending may, in its discretion, give preference as to the time of trial of such action over other business, except criminal cases. [C., '97, §§ 2149, 2150; 40 Ex. G. A., H. F. 188, § 29.]

7903. Uniform gauge—inspection—order. As often as it deems it expedient, the board shall examine all the railroads in the state that are less than four feet eight and one-half inches gauge, and if in the judgment of the board, it is necessary and reasonable to change the gauge of any such railroad to four feet eight and one-half inches, it shall make an order in writing, fixing a reasonable time within which such gauge shall be changed, taking into consideration the life of the rolling stock of such narrow gauged road and all other facts and conditions bearing on the length of time required to make such change. [40 Ex. G. A., H. F. 188, § 30.]

7904. Rights and remedies not exclusive. Nothing in this chapter shall abridge any rights or remedies existing at common law or by statute, but shall be in addition to such remedies. [40 Ex. G. A., H. F. 188, § 31.]

7905. Accidents—investigation of—report. Upon the occurrence of any serious accident upon any railroad within this state, which shall result in personal injury, or loss of life, the corporation operating the road upon which the accident occurred shall give immediate notice thereof to the board of railroad commissioners whose duty it shall be, if they deem it necessary, to investigate the same, and promptly report to the governor the extent of the personal injuries, or loss of life, and whether the same was the result of mismanagement or

neglect of the corporation on whose line the injury or loss of life occurred; but such report shall not be evidence or referred to in any case in any court. [S., '13, § 2120-k.]

7906. Annual reports from companies. The board shall require annual reports from all common carriers subject to the provisions of chapter 373 to be made at the same time they make report to the executive council, to cover the same period, and prescribe the manner in which specific answers to all questions upon which it may need information shall be made. [C., '73, § 1280; C., '97, § 2143.]

7907. Details of report. Such report shall show in detail the amount of capital stock issued, the amounts paid therefor, and manner of payment; the dividends paid; surplus fund, if any; number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of locomotive engines and cars used in the state, and the number supplied with automatic safety couplers, and the kind and number of brakes used, and the number of each; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how and where expended and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balance of profit and loss, and a complete exhibit of the financial operations thereof each year, including an annual balance sheet. [C., '73, § 1280; C., '97, § 2143.]

7908. Additional details. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other carriers, and other statistics of the road and its transportation, as the board may require. [C., '97, § 2143.]

7909. Additional reports. The board may also require of any and all common carriers subject to the provisions of chapter 373 such other reports, and fix the time for filing the same, as in its judgment shall be necessary and reasonable, which reports shall be in such form, and concerning such subjects, and be from such sources as it shall direct, except as otherwise provided herein. [C., '97, § 2143.]

7910. Uniform accounts. The board may prescribe uniformity and methods of keeping accounts, as near as may be, and fix a time when such regulations shall take effect. [C., '97, § 2143.]

7911. Violations. Any corporation, company, or individual owning or operating a railway within the state, neglecting or refusing to make the required reports by the date fixed, or fixed by the board, shall be subject to a penalty of one hundred dollars for each and every day of delay in making the same after the date thus fixed. [C., '73, §§ 1281, 1282; C., '97, § 2143.]

7912. Report. The board shall annually, on or before the first Monday in December, make a report to the governor of its doings for the preceding year, containing such facts, statements, and explanations as will disclose the working of such systems of railroad transportation in the state, and their relation to the general business and prosperity of the citizens thereof, with such suggestions and recommendations in respect thereto as may to the board seem appropriate. Said report shall also contain, as to every railroad corporation doing business in this state:

1. The amount of its capital.
2. The amount of its preferred stock, if any, and the condition of its preferment.
3. The amount of its funded debt and the rate of interest.
4. The amount of its floating debt.
5. The cost and actual present cash value of its road equipment, including permanent way, buildings, and rolling stock, all real estate used exclusively in operating the road, and all fixtures and conveniences for transacting its business.
6. The estimated value of all other property owned by it, with a schedule of the same, not including lands granted in aid of its construction.
7. The number of acres originally granted it by the United States or this state in aid of the construction of its road.
8. The number of acres of such land remaining unsold.
9. A list of its officers and directors, with their respective places of residence.
10. Such statistics of the road and of its transportation business for the year as may, in the judgment of the commissioners, be necessary and proper for the information of the general assembly or as may be required by the governor.
11. The average amount of tonnage that can be carried over each road in the state with an engine of given power.

Said report shall exhibit and refer to the condition of such corporation on the first day of July of each year, and the details of its transportation business transacted during the year ending June thirtieth. [C., '97, § 2114.]

NOTE: For time of filing report, see § 253.

CHAPTER 369

COMMERCE COUNSEL

- 7913. Appointment—term.
- 7914. Vacancy.
- 7915. Disqualification.
- 7916. Political activity.

- 7917. Removal.
- 7918. Office—assistants—expenses.
- 7919. Duties.

7913. Appointment—term. Within sixty days after the general assembly convenes in 1927, and every four years thereafter, the board of railroad commissioners shall appoint a competent attorney to the office of commerce counsel, subject to the approval of two-thirds of the members of the senate. His term of office shall be for four years and till his successor is appointed, and shall begin on the first day of July of the year he is appointed. [S., '13, § 2121-h; 40 Ex. G. A., S. F. 189, § 1.]

7914. Vacancy. A vacancy in said office occurring while the general assembly is in session, shall be filled for the unexpired term in the same manner as original appointments. If the general assembly is not in session, a vacancy shall be filled by an appointment made by the board, which appointment shall expire thirty days from the time the next general assembly convenes. [S., '13, § 2121-h; 40 Ex. G. A., S. F. 189, § 2.]

7915. Disqualification. The existence of any fact which would disqualify a person from election or acting as a railroad commissioner shall disqualify such person from appointment or acting as commerce counsel. [S., '13, § 2121-i; 40 Ex. G. A., S. F. 189, § 3.]

7916. Political activity. The commerce counsel shall devote his entire time to the duties of his office; and during his term of office he shall not be a member of any political committee or contribute to any political campaign fund or take any part in political campaigns or be a candidate for any political office. [S., '13, § 2121-i; 40 Ex. G. A., S. F. 189, § 4.]

7917. Removal. The board may, with the approval of the senate, during a session of the general assembly, remove said counsel for malfeasance or nonfeasance in office, or for any cause which renders him ineligible for appointment, or incapable or unfit to discharge the duties of his office; and his removal, when so made, shall be final. [S., '13, § 2121-h; 40 Ex. G. A., S. F. 189, § 5.]

NOTE: General removal statutes, see ch. 56.

7918. Office—assistants—expenses. The office of commerce counsel shall be at the seat of government and he shall have free access to all the files, records, and documents in the office of the board. The commerce counsel, his assistants and office help shall be paid their actual necessary traveling expenses and other dis-

bursements incurred in the discharge of official duties; such expenditures are to be approved by the board of railroad commissioners. [S., '13, § 2121-j; 39 G. A., ch. 209, § 21; 40 Ex. G. A., S. F. 189, § 6.]

7919. Duties. The commerce counsel shall:
1. Act as attorney for, and legal adviser of, the board of railroad commissioners.

2. Investigate the legality of all rates, charges, tariffs, rules, regulations, and practices of all common carriers and persons under the jurisdiction of the board, and institute civil proceedings before the board or any proper court to correct any illegality on the part of any common carrier and prosecute the same to final determination.

3. Investigate the reasonableness of rates, tariffs, charges, rules, regulations, and practices of all such common carriers in interstate transportation when directed by the board, or when in his judgment they are unlawful, prejudicial, and discriminate against any city, town, community, business, industry, or citizen of the state, and institute before the interstate commerce commission or any other tribunal having jurisdiction and prosecute to final determination any proceeding growing out of such matters.

4. Appear on behalf of any person or persons who shall file any complaint against any common carrier before the board in any matter within its jurisdiction.

5. Appear for and represent the board, the state, and any citizen, community, city, or town or business or industry of the state in all proceedings brought by or against any common carrier before the interstate commerce commission in which any or all of such parties are interested.

6. Appear for the board or for the state and the citizens and industries thereof in all actions instituted in any state or federal court wherein is involved the validity of any rule, order, or regulation of said board, or the validity of any rule, order, or regulation of the interstate commerce commission affecting the interests of the citizens and industries of the state, and prosecute in any state or federal court in the name of the state, all actions necessary to enforce, or to restrain the violation of, any rule, order, or regulation made by the board or by the interstate commerce commission. [S., '13, § 2121-l; 40 Ex. G. A., S. F. 189, § 7.]

CHAPTER 370

GENERAL POWERS OF RAILWAY CORPORATIONS

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7920. Change of name. Any corporation organized under the laws of this state for the purpose of constructing and operating a railway may, with the consent of two-thirds of all the stockholders in interest, change the corporate name thereof, but no such change shall be complete until the president and secretary shall file in the office of the secretary of state a statement under oath showing the consent of the stockholders thereto and the new name adopted, with a certified copy of the proceedings in relation thereto as appears in the records thereof, and from that time the corporation by its new name shall be entitled to all the rights, powers, and franchises that it possessed under the old one, and by such new name shall be liable upon all contracts and obligations entered into by or binding upon such corporation under the old name to the same extent and in the same manner as if no change had been made. [C., '73, § 1273; C., '97, § 2034.]

7921. Effect of change. If any railway company is organized under a corporate name, and has made contracts for payments to it upon delivery of stock in such company, and shall subsequently thereto change its name, or if the real ownership in the property, rights, and franchises has passed legally or equitably into any other company, no such contract shall be enforced until tender or delivery of stock in such last named company or corporation is made. [C., '73, § 1302; C., '97, § 2068; 40 Ex. G. A., H. F. 190, § 1.]

7922. Where recorded. The secretary of state shall immediately record in the proper book in his office any document filed pertaining to said change in name, making references to the record of the articles of incorporation. [C., '73, § 1274; C., '97, § 2035; 40 Ex. G. A., H. F. 190, § 2.]

7923. Joinder at boundary line—consolidation. Any such corporation may join, inter-

sect, and unite its railway with that of any other corporation at such point upon the boundary line of this state as may be agreed upon, and, with the consent of three-fourths in interest of all the stockholders, by purchase, sale, or otherwise, may merge and consolidate the stock, property, franchises, and liabilities of such corporations, making the same one corporation, upon such terms as may be agreed upon, not in conflict with law. [R., '60, § 1332; C., '73, § 1275; C., '97, § 2036.]

7924. Connections with foreign carrier. Any such corporation which has constructed or may construct its railway so as to meet or connect with another railway in an adjoining state at the boundary line of this state, may make such contracts and agreements therewith for the transportation of freight and passengers, or the use of its railway, as the board of directors may see proper, and not inconsistent with law. [R., '60, § 1334; C., '73, § 1276; C., '97, § 2037.]

7925. Extension into foreign state. Any such corporation organized for the purpose of constructing a railway from a point within the state may construct or extend the same into or through any other state, under such regulations as may be prescribed by the laws of such state, and its rights and privileges over said extension in the construction and use thereof, and in controlling and applying the assets, shall be the same as if its railway was constructed wholly within the state. [R., '60, § 1333; C., '73, § 1277; C., '97, § 2038.]

7926. Powers in other states. Any railroad corporation organized under and by virtue of the laws of this state, and owning and operating a railroad therein, shall be authorized and empowered to exercise in any other state or territory of the United States, in which it may control or operate a connecting line or lines of railway, the powers and privileges conferred

upon it by its articles of incorporation and all powers, privileges, and franchises conferred upon railroad corporations under and by virtue of the laws of Iowa or of such other state or territory, for the purposes set forth in the next section. [S., '13, § 2038-a.]

7927. Acquisition of foreign line. Any railroad corporation so organized under the laws of Iowa and owning and operating a railroad therein may lease, purchase, or otherwise acquire and own, control, or operate any connecting extension of its said railroad not parallel or competing therewith, in any other state or territory of the United States, and to that end may purchase and control the stock, bonds, or securities of any such extension if not contrary to the laws of such other state or territory. [S., '13, § 2038-b.]

7928. Duties and liabilities of lessees. All the duties and liabilities imposed by law upon corporations owning or operating railways shall apply to all lessees or other persons owning or operating such railways as fully as if they were expressly named herein; and any action which might be brought or penalty enforced against any such corporation by virtue of any provisions of law may be brought or enforced against such lessees or other persons. [C., '73, § 1278; C., '97, § 2039.]

7929. Offices—location. The offices of secretary and treasurer or assistant treasurer and general superintendent of railway corporations organized under the laws of the state shall be where its principal place of business is or is to be, in which the original record, stock, and transfer books and all the original papers and vouchers thereof shall be kept. [C., '73, § 1279; C., '97, § 2040.]

7930. Financial record. Such treasurer or assistant treasurer shall keep a record of the financial condition of the corporation, which shall be open to inspection by any stockholder, or any committee appointed by the general assembly, at all reasonable times. [C., '73, § 1279; C., '97, § 2040.]

7931. Stock transfer office—residence required. Such corporations may keep a transfer office in any other state, with a duplicate transfer book, but no transfer of shares of stock shall be legal or binding until the same is entered in the one kept in the state. The secretary and treasurer or assistant treasurer and general superintendent shall reside in this state. [C., '73, § 1279; C., '97, § 2040.]

7932. Bonds—mortgages. Any such corporation may issue its bonds for the construction and equipment of its railway in sums of not less than fifty dollars, payable to bearer or otherwise, with interest not exceeding eight per cent per annum, and making them convertible into stock, and sell the same at such prices as is thought proper. If such bonds are sold below par they shall, nevertheless, be valid, and no plea of usury shall be allowed in any

action or proceeding brought to enforce the collection thereof. Such corporation may also secure the payment of the bonds by mortgages or deeds of trust upon the whole or any part of its property and franchises. [R., '60, § 1339; C., '73, § 1283; C., '97, § 2041.]

7933. After-acquired property. Such mortgages or deeds of trust may by their terms include and cover not only the property of the corporation making them, owned at the time of their date, but all property, real and personal, which may thereafter be acquired, and they shall be as valid and effectual for that purpose as if the property were in possession at the time of their execution. [R., '60, § 1340; C., '73, § 1284; C., '97, § 2042.]

7934. Execution of mortgages. They shall be executed in the manner the articles of incorporation or the by-laws of the corporation may provide, and be recorded in each county through which the railway of the company may be located, or in which any property mortgaged or conveyed may be situated, and when recorded shall be constructive notice of the rights of all parties thereunder; and for this purpose the rolling stock and personal property of the company belonging to the road shall be deemed a part thereof, and such mortgages and deeds so recorded shall protect the lien of the mortgagee or grantee upon the personal property to the same extent that it does upon real estate thus mortgaged or conveyed. [R., '60, § 1341; C., '73, § 1285; C., '97, § 2043.]

7935. Bonds secured by mortgage. Any railway corporation organized under the laws of the state may mortgage its property and franchises, in whole or in part, to secure bonds issued by it to pay or refund its indebtedness, to improve or develop its property, or for the purpose of effecting the object of its incorporation, to be issued in such amounts, run for such length of time, be payable within or without this state, and bear such rate of interest, not to exceed the legal rate in the state at the time of issue, as the company issuing the same shall determine. [C., '97, § 2049.]

7936. Mortgage to secure bonds of lessee. Any railway corporation organized under the laws of the state may mortgage its property and franchises, in whole or in part, to secure bonds issued by any other railway corporation of this or any other state, which, at the time, is operating the road of such mortgagor under lease thereof; such bonds to be issued to refund or to secure the means to pay the indebtedness of such lessor, or to improve or develop its property, for the purpose of effecting the object of its incorporation. Such bonds may be issued in such amounts, run for such length of time, be made payable within or without the state, and bear such rate of interest, not exceeding the legal rate in this state at the time they are issued, as may be determined by and be acceptable to such lessee. The lessee may secure the bonds issued by it for any of the purposes aforesaid by a mortgage of its lease-

hold interest in the property and franchises of the lessor. [C., '97, § 2050.]

7937. Preferred stock. Any railway corporation may increase its capital stock by the issuance of preferred stock in one or more classes entitled to such rate or rates of preferred dividends not exceeding eight per cent per annum, and to such other preferences including accumulation thereon for future payment of any dividends not earned or paid in any fiscal or corporate year, and with such other privileges and rights as may be authorized by the stockholders pursuant hereto, and may issue the same either in exchange for property upon compliance with the provisions of sections 8412 to 8415, inclusive, or for sale for cash at par or for the retirement of its indebtedness at the rate of par for par; no such stock increase shall be made, and no such preferred stock shall be issued, unless authorized by the vote of not less than seventy-five per cent of the total amount of the capital stock of such corporation at the time outstanding, expressed at a meeting called for the purpose, upon not less than thirty days' notice inserted in a newspaper published in the city or town wherein such corporation may have its principal place of business in this state, and mailed to each stockholder of record at his address appearing upon the stock books of such corporation, provided that the plan and purpose for the issuance of any preferred stock under the provisions of this section, shall first be submitted to and receive the approval of the board of railroad commissioners. [C., '73, § 1286; C., '97, § 2044; 37 G. A., ch. 82, § 2.]

7938. Conversion into common stock. Such preferred stock and any income or mortgage bond of the corporation shall, at the option of the holder, be convertible into common stock on such terms as the board of directors may prescribe; but the aggregate amount of the common and preferred stock shall not exceed the total amount of stock which the corporation may be authorized by law, or the articles of incorporation, to issue. [C., '73, § 1287; C., '97, § 2045.]

7939. Selection of directors by bondholders. Any railway corporation organized under any law of the state, including consolidated corporations created pursuant to the laws of this and any adjoining state, may in such manner, under such regulations, and to such an extent as may be prescribed by its board of directors, and consented to by at least two-thirds of the capital stock then outstanding, confer upon the holders of its bonds or other evidences of indebtedness, or upon the holders of any particular class of such bonds or evidences of indebtedness, the right to vote for directors thereof, one or more of whom may be chosen from among such bondholders. [C., '97, § 2046.]

7940. Corporation may own stock. Any railway corporation organized under the law

of the state, or operating a road therein under the authority of the laws thereof, may acquire, own, and hold either the whole or any part of the stock, bonds, or other securities of any other railroad company of this or any adjoining state. [C., '97, § 2047.]

7941. Foreign railway companies. Any railway corporation organized or created by or under the laws of any other state, owning and operating a line or lines of railroad in such state, may build its road or branches into this state, and shall possess all the powers and privileges, and be subject to the same liabilities, as like corporations organized and incorporated under the laws of this state, if it shall file with the secretary of state a copy of its articles of incorporation, if incorporated under a general law of such state, or a certified copy of the statute incorporating it where the charter thereof was granted by statute. [C., '97, § 2048.]

7942. Sale or lease of railroad property. Any railway corporation may sell or lease its property and franchises to, or make joint running arrangements not in conflict with law with, any corporation owning or operating any connecting railway, and any corporation operating the railway of another shall be liable in the same manner and extent as though such railway belonged to it. [C., '73, § 1300; C., '97, § 2066.]

7943. Mortgage of contract or lease. Any contract, lease, or benefit derived under the authority given in the preceding section may be mortgaged for the purpose of securing construction bonds in the same manner as other property of the corporation. [C., '73, § 1301; C., '97, § 2067.]

7944. Report to general assembly. When any railway has been completed and opened for use, the corporation owning, operating, or constructing it shall report under oath to the next general assembly the total cost thereof, specifying the amount expended for construction, engines, cars, depots, and other buildings, and the amount of all other expenses, together with the length of the railway, the number of planes with their inclination to the mile, the greatest curvature, the average width of roadbed, and the number of ties per mile. [C., '73, § 1303; C., '97, § 2069.]

7945. Rights reserved. All contracts, stipulations, and conditions regarding the right of controlling and regulating the charges for freight and passengers upon railways, heretofore made in granting land and other property or voting taxes to aid in the construction of or franchises to railway corporations, are expressly reserved, continued, and perpetuated in full force and effect, to be exercised by the general assembly whenever the public good or the public necessity requires such exercise thereof. [C., '73, § 1306; C., '97, § 2070.]

CHAPTER 371

CONSTRUCTION AND OPERATION OF RAILWAYS

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7946. Crossing railway, canal, or watercourse. Any railroad company may build its railway across, over, or under any other railway, canal, or watercourse, when necessary, but shall not thereby unnecessarily impede travel, transportation, or navigation. It shall be liable for all damages caused by such crossing. [R., '60, § 1325; C., '73, § 1265; C., '97, § 2020; 40 Ex. G. A., H. F. 190, § 26.]

7947. Maintenance of bridges—damages. Every railroad company shall build, maintain, and keep in good repair all bridges, abutments, or other construction necessary to enable it to cross over or under any canal, watercourse, other railway, public highway, or other way, except as otherwise provided by law, and shall be liable for all damages sustained by any person by reason of any neglect or violation of the provisions of this section. [R., '60, §§ 1326, 1327; C., '73, §§ 1266, 1267; C., '97, § 2021; 40 Ex. G. A., H. F. 190, § 27.]

7948. Rights of riparian owners. All owners or lessees of lands or lots situated upon the Iowa banks of the Mississippi or Missouri rivers upon which any business is carried on which is in any way connected with the navigation of either of said rivers, or to which such navigation is a proper or convenient adjunct, are authorized to construct and maintain in front

of their property, piers, cribs, booms, and other proper and convenient erections and devices for the use of their respective pursuits, and the protection and harbor of rafts, logs, floats, and water craft, in such manner as to create no material or unreasonable obstruction to the navigation of the stream, or to a similar use of adjoining property. [C., '97, § 2032; 40 Ex. G. A., H. F. 190, § 17.]

7949. Railroad on riparian land or lots. No person or corporation shall construct or operate any railroad or other obstruction between the lots or lands referred to in the preceding section and either of said rivers, or upon the shore or margin thereof, unless the injury and damage to owners or lessees occasioned thereby shall be first ascertained and paid in the manner provided for taking private property for works of internal improvement. [C., '97, § 2033; 40 Ex. G. A., H. F. 190, § 18.]

7950. Right to lay pipes. Such railway may lay, maintain, and repair pipes through any lands adjoining its tracks for a distance not to exceed three-fourths of a mile therefrom, in order to conduct water, for its engines, from any running stream. Said pipes shall not be laid to any spring, nor be so used as to injuriously withdraw the water from any farm. [C., '73, § 1243; C., '97, § 1997; 40 Ex. G. A., H. F. 190, § 30.]

7951. Duty to restore natural surface. It shall, without unnecessary delay after such laying or repairing, restore the surface of the land to its natural grade, and replace any fence or other improvement which it may have disturbed. [C., '73, § 1243; C., '97, § 1997; 40 Ex. G. A., H. F. 190, § 31.]

7952. Right of landowner. The owner of the land through which any such pipes may be laid shall have the right to use the land in any manner which will not interfere with such pipes. [C., '73, § 1243; C., '97, § 1997; 40 Ex. G. A., H. F. 190, § 32.]

7953. Liability to landowner. Said corporation shall be liable to the owner of the land for any damages occasioned by laying, maintaining, or repairing such pipes. [C., '73, § 1243; C., '97, § 1997; 40 Ex. G. A., H. F. 190, § 33.]

7954. Station telephones. It shall be the duty of all railway companies on all lines of railway operated by them to install a telephone in each passenger or freight depot in any city or town where a telephone exchange is maintained for public service, said telephone to be connected with and for the use of the patrons of said exchange. [S., '13, § 2077-a.]

7955. Train bulletins required. It shall be the duty of all railway companies on all lines operated by them to keep posted in the waiting room of each passenger station a bulletin plainly showing the time of arrival and departure at such station of all trains carrying passengers, and at all stations where a telegraph or telephone operator is maintained, such bulletin shall indicate whether said trains are late or on time, and if late, the approximate number of minutes late. If the train is less than ten minutes late, the same shall be considered on time for the purpose of this section. [S., '13, § 2077-a.]

7956. Violations. Any railway company violating the provisions of the two preceding sections, and any agent, telephone or telegraph operator of such railroad company violating the provisions of the preceding section in relation to posting bulletins in the waiting room indicating when the trains are late or on time, shall be punished by a fine of not less than five dollars nor more than fifty dollars. [S., '13, § 2077-a1; 40 Ex. G. A., H. F. 190, § 40.]

7957. Automatic couplers. No corporation, company, or person operating a railroad and no car manufacturing or transportation company using or leasing cars shall operate upon any railroad in this state any car that is not equipped with safety automatic couplers, so constructed as to enable a person to couple and uncouple them without going between cars. [C., '97, §§ 2079, 2080; S., '13, § 2080; 40 Ex. G. A., H. F. 190, § 41.]

7958. Driver brake on engines. No corporation, company, or person operating any line of railroad in the state shall use any loco-

motive engine upon any railroad or in any railroad yard in the state that is not equipped with a proper and efficient power brake, commonly called a driver brake. [C., '97, § 2081.]

7959. Power brake on cars. No corporation, company, or person operating a line of railroad in the state shall run any train of cars that shall not have therein a sufficient number of cars with some kind of efficient automatic or power brake to enable the engineer to control the train without requiring brakemen to go between the ends or on the top of the cars to use the hand brake. [C., '97, § 2082.]

7960. Violations. Any corporation, company, or person operating a railroad in this state and using a locomotive engine, or running a train of cars, or using any freight, way, or other car contrary to the provisions of the three preceding sections, shall be guilty of a misdemeanor, and shall be subject to a fine of not less than five hundred nor more than one thousand dollars for each and every offense; but such penalties shall not apply to companies hauling cars belonging to railroads other than those of this state which are engaged in interstate traffic. [C., '97, § 2083.]

7961. Nonassumption of risk. Any railway employee who may be injured by the running of such engine, train, or car contrary to the provisions of sections 7957 to 7959, inclusive, shall not be considered as waiving his right to recover damage by continuing in the employ of the corporation, company, or person operating such engine, train, or cars. [C., '97, § 2083.]

7962. Switch engines—safety devices. It shall be unlawful for any railway or terminal transfer company, or any corporation operating locomotives in switching or yard service, to operate, or permit the same to be operated, unless said locomotives are equipped with headlight on both front and rear of engine, when operated between sunset and sunrise, and all such engines shall be equipped with a footboard of substantially uniform height, width, and length, securely fastened and firmly braced to the pilot beam in front of engine, and a similar footboard on rear of tank or tender of engines, upon which employees may stand or ride when their duties require them so to do, and that a substantial grab rail or rod be securely fastened upon said pilot beam at each end and in the center, at a convenient height for employees to reach and hold on to with their hands, said rod to extend across the full length of the said pilot beam, and also across the rear end beam of said tank or tender. [S., '13, § 2083-c.]

7963. Exceptions. The provisions of the preceding section shall not apply to switching or yard service at stations or places where regular switch engines are not employed exclusively as switch engines, or during a period of not exceeding twelve hours, when a switch engine is being cleaned or washed out, and also

switching by work trains; and where regular switch engines are disabled by accident, or in need of repairs, or there is an unusual or unexpected amount of work, switching, under such conditions, with ordinary engines, for a period of not to exceed forty-eight hours, shall not be considered a violation of this statute. [S., '13, § 2083-c.]

7964. Violations. Any person, railway company, terminal transfer, or other corporation or company who violates any of the provisions of the second preceding section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars or more than five hundred dollars for any such violation, and each day that every such engine is operated shall constitute a separate and distinct violation of said section. [S., '13, § 2083-d.]

7965. Frost glass in cab windows. Every person, partnership, company, or corporation owning or operating a railway in the state, between November first and April first of each year, shall equip the cab of all locomotive engines in use, with frost glass, of not less than eight inches in width and eighteen inches in length on either side of the cab of said engine in front of the seats of the engineer and fireman; but when a frost glass is broken or becomes out of repair, a period of not to exceed seventy-two hours is allowed to repair or replace the same. [S., '13, § 2083-e.]

7966. Violations. Any violation of the preceding section shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars for each day any locomotive engine is operated in violation thereof. [S., '13, § 2083-f.]

7967. Headlights. It shall be the duty of every person, firm, or corporation owning or operating any line of railway within the state, except lines under twenty miles in length operated wholly within this state, to equip all locomotives, power vehicles, power cars, or other equipment used as the equivalent of or in place of a locomotive, when used in the transportation of passengers or freight, with a headlight of sufficient candle power, measured with a reflector, to throw a light in clear weather that will enable the operator of same to plainly discern an object the size of a man lying prone on the track at a distance of eleven hundred feet from the headlight, and thereafter to maintain and use such headlights upon every such locomotive, vehicle, car, or other equipment. [S., '13, § 2083-g.]

7968. Exceptions. The preceding section shall not be construed to apply to power cars used by street railways and operated wholly within the corporate limits of any city or town, nor to engines or other equipment used exclusively for switching purposes, nor to engines or other equipment running after sunrise and before sunset. [S., '13, § 2083-g.]

7969. Violations. Any person, firm, or corporation owning such line of railway or the

equipment operated thereon, who shall cause or permit any locomotive, power vehicle, power car, or other equipment used as the equivalent thereof, to be operated without being equipped with the headlight required by the provisions of the second preceding section shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each offense. [S., '13, § 2083-h.]

7970. Exceptions. No punishment shall be imposed for the operation of any such locomotive or the equivalent thereof without such headlight, when such locomotive was properly equipped with such headlight at the commencement of the trip, providing it is shown that such headlight was in good and sufficient working condition when the trip was begun and became disabled during the trip. [S., '13, § 2083-h.]

7971. Standard caboose cars. The provisions of the next two sections shall apply to any corporation or to any person or persons while engaged as common carriers in the transportation by railroads of passengers or property within this state except interurban, to which the regulative power of this state extends. [S., '13, § 2083-i.]

7972. Minimum length—construction—equipment. It shall be unlawful, except as otherwise provided in this chapter, for any such common carrier by railroad to use on its lines any caboose car or other car used for like purposes, unless such caboose or other car shall be at least twenty-four feet in length, exclusive of the platform, and equipped with two four-wheel trucks, and shall be provided with a door in each end thereof and an outside platform across each end of said car; each platform shall not be less than eighteen inches in width and shall be equipped with proper guard rails, and with grab irons and hand brakes, and steps for the safety of persons getting on and off said car; said steps shall be equipped with a suitable rod, board, or other guard at each end and at the back thereof, properly designed to prevent slipping from said step. Such caboose or other car used for like purposes shall be provided with cupola, and necessary closets and windows. Each caboose car shall be equipped with an emergency air valve, and air gauge, which shall be placed on inside of said car; but the provisions hereof shall not apply to work trains, transfer service, or emergencies not exceeding thirty-six hours. [S., '13, § 2083-j; 39 G. A., ch. 195.]

7973. Violations. Any common carrier as provided in section 7971 violating any of the provisions of the preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense. [S., '13, § 2083-m.]

7974. Adequate stockyards required. Any person, firm, or corporation operating a railroad

within the state shall provide at each of its stations where live stock is received for shipment, adequate stockyards, which shall be substantially provided with good gates, suitable chutes for loading live stock, suitable sheds for the protection of live stock from the inclemency of the weather, suitable troughs from which live stock may be watered and an ample water supply conveniently located and supplied by pipes from wells or other water supply, the amount of such water supply to be at all time sufficient for all live stock in said yards and also for the wetting down of cars in hot weather. [37 G. A., ch. 211, § 1.]

7975. Duty to enforce. It shall be the duty of the said board of railroad commissioners to enforce the provisions of the preceding section, and, upon a complaint signed by five or more shippers of live stock, it shall be their duty to investigate the stockyards and loading facilities at any such station and determine their adequacy and shall have power to make such order for the improvement of said yards as shall, in their judgment, seem necessary. [37 G. A., ch. 211, § 2.]

7976. Depots — closets — sanitation. At all railway stations in this state, where a depot and waiting rooms for passengers are maintained, there shall be within the same, or connected therewith, sanitary closets, including separate closets for women which, in cities or towns having a system of sewerage so located that the same can be reasonably used by the railroad property, shall be thoroughly drained, constructed, and plumbed according to approved sanitary principles and said depots and closets shall be kept in a clean and sanitary condition, free from any offensive odors. Depots in cities or towns not provided with a sewerage system, shall be provided with privies or closets properly screened and separated for the use of males and females, which shall be cleaned and disinfected as often as necessary to keep and maintain them in an approved sanitary condition. [S., '13, § 2514-y.]

7977. Enforcement. It shall be the duty of the department of agriculture to see that the provisions of the preceding section are fully complied with and, on complaint being filed by an employee or patron of the railway company, shall inspect the same. [S., '13, § 2514-y1; 40 Ex. G. A., H. F. 330, § 1.]

7978. Delinquency—notice to station agent. It shall be the duty of the department upon ascertaining by inspection or otherwise that any railroad company has not complied with the provisions of the second preceding section at any of its depots, to notify the station agent of such depot, in writing, stating in what respect it is delinquent and requiring it in a reasonable time, to be fixed by the department, to do or cause to be done the things necessary to make it comply with the law. [S., '13, § 2514-y2; 40 Ex. G. A., H. F. 330, § 2.]

7979. Violations. Any railroad company which after receiving said notice fails to com-

ply, within the time fixed, with the provisions of the third preceding section, shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding one hundred dollars for each offense and the inspector shall file information in such a case. [S., '13, § 2514-y3.]

7980. Fee. Such railroad companies shall pay a fee of five dollars to the person making the inspection. If there is no cause of complaint, the person complaining shall be liable for such fee. All fees shall forthwith be paid over to the state treasurer. [S., '13, § 2514-y4; 40 Ex. G. A., H. F. 330, § 3.]

7981. Freight, passenger, express, and telegraph offices. All railroads terminating in the state shall establish and maintain at such terminus general freight and passenger offices, and express or telegraph offices when operating an independent express or telegraph company, at localities accessible and convenient to the public, and there keep for sale tickets over their respective roads, and, in advertising, correctly set forth their true connections, starting or terminal points, time-tables, and freight tariffs. [C., '97, § 2108.]

7982. Sleeping car tickets. All railroad and sleeping car companies, running or operating sleepers or sleeping cars within the state upon railroads terminating therein, shall establish, maintain, and keep open to the public, at such termini, ticket offices at accessible and convenient places, in which they shall keep a diagram of the berths and staterooms in such sleepers or sleeping cars, and shall at all times during the daytime keep them open for the sale of tickets for such berths and staterooms. [C., '97, § 2109.]

7983. Violations. If any officer, agent, or employee of any such company, or any lessee, engaged in operating any sleeper or sleeping car line terminating or operated within the state, shall neglect or refuse to comply with any of the provisions of the two preceding sections, he shall be guilty of a misdemeanor, and, upon conviction thereof, fined in a sum not exceeding five hundred dollars, and imprisoned not more than six months. [C., '97, § 2110.]

7984. Employees' hours of service. It shall be unlawful for any railway company within the state, or any of its officers or agents, to require or permit any employee engaged in or connected with the movement of any rolling stock, engine, or train, to remain on duty more than sixteen consecutive hours, or to require or permit any such employee who has been on duty sixteen consecutive hours to perform any further service without having at least ten hours for rest, or to require or permit any such employee to be on duty at any time to exceed sixteen hours in any consecutive twenty-four hours. [S., '13, § 2110-a.]

7985. Exceptions. The preceding section shall not apply to work performed in the protection of life or property in cases of accident, wreck, or other unavoidable casualty, or pre-

vent train crews from taking a passenger train, or freight train loaded exclusively with live stock or perishable freight, to the next nearest division point upon such railroad; and it shall not apply to that time necessary for the trainmen to reach a resting place when an accident, wreck, washout, snow blockade, or other unavoidable cause has delayed their train; and provided further that said section shall not apply to employees of sleeping car companies. [S., '13, § 2110-a.]

7986. Violations — investigation — prosecutions. Any superintendent, trainmaster, train dispatcher, yardmaster, or other official of any railroad in the state, violating any of the provisions of the second preceding section, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars for each offense. [S., '13, § 2110-b.]

7987. Investigation by commissioners. It shall be the duty of the board of railroad commissioners to receive written statements of violations of section 7984, and when so requested to hold the same without disclosure of the name of the person making such statement, and to investigate each and every complaint filed alleging such violation. [S., '13, § 2110-b.]

7988. Hearing—report. The board in making such investigation shall have the power to administer oaths, interrogate witnesses, take testimony, and require the production of books and papers, and must file a report of such investigation in writing with a full statement of its finding to the governor. [S., '13, § 2110-b.]

7989. Prosecutions. In all cases of violation of said provisions, the board of railroad commissioners, through the attorney general, must at once begin the prosecution of all parties against whom evidence of violation is found; but said provisions shall not be construed to prevent any other person from beginning prosecution for violation thereof. [S., '13, § 2110-b.]

7990. Semimonthly payment of wages. Every railway corporation operating or doing business in the state shall as often as semimonthly pay to every employee engaged in its business all wages or salaries earned by such employee to a day not more than eighteen days prior to the date of such payment. Any employee who is absent at the time fixed for payment, or who for any other reason is not paid at that time, shall be paid thereafter at any time upon six days' demand, and any employee leaving his or her employment or discharged therefrom shall be paid in full following his or her dismissal or voluntary leaving his or her employment at any time upon six days' demand. No corporation coming within the meaning of this section shall by special contract with the employees or by any other means

secure exemption from the provisions of this section. Each and every employee of any corporation coming within the meaning hereof shall have his or her right of action against any such corporation for the full amount of his or her wages due on each regular pay day as herein provided in any court of competent jurisdiction of this state. [S. S., '15, § 2110-b1.]

7991. Violations. Any corporation violating the preceding section shall be deemed guilty of a misdemeanor and fined in a sum not less than twenty-five dollars, nor more than one hundred dollars, for each separate offense, and each and every failure or refusal to pay each employee the amount of wages due him or her at the time, or under the conditions required in the preceding section, shall constitute a separate offense. [S. S., '15, § 2110-b2.]

7992. Destruction of weeds. It shall be the duty of every corporation owning or operating a railroad in this state on written notice from the owner, lessee or occupant of any land abutting upon its right of way to cut and burn, or otherwise destroy once each year during the month of July, all cockleburs, burdock weeds, quack grass, and thistles on its right of way adjacent to said land. [S., '13, § 2110-i.]

7993. Violations. Any failure to comply with the provisions of the preceding section shall be deemed a misdemeanor and shall be punished accordingly. [S., '13, § 2110-j.]

7994. Enforcement. It shall be the duty of the county attorneys in the respective counties to enforce the provisions of the two preceding sections. [S., '13, § 2110-k.]

7995. Profane language on trains. Any person who shall use profane or indecent language on any passenger railway car, or on any street car, or interurban car, in service, shall be guilty of a misdemeanor. [S., '13, § 2461-f; 40 Ex. G. A., S. F. 265, § 1.]

7996. Power to eject passenger. Any conductor of a railway train, or street car, or interurban car carrying passengers shall have the right to refuse to permit any person, not in the custody of an officer, to enter any passenger car on his train, or street car, or interurban car in his charge, who shall be in a state of intoxication; and shall have the further right to eject from his train at any station, or from his street car, or interurban car at any regular stop, any person found in a state of intoxication or drinking intoxicating liquors as a beverage, or using profane or indecent language, and for that purpose may call to his aid any employee of the railway or street car or interurban company. [S., '13, § 2461-g; 40 Ex. G. A., S. F. 265, § 2.]

7997. Changing names of stations. In all cases where any railway company shall fail or refuse to make the name of the railway

station conform to the name of the village, incorporated town, or city within the limits of which it is situated, it shall be the duty of the railroad commissioners of the state to order a change of the name of said railway station to effect such uniformity, within sixty days after a petition in writing by the town council of said incorporated town or city, or, in the case of a village, by the township trustees, asking for such order, is filed with said railroad commissioners. [C., '97, § 2105.]

7998. Notice. When the commissioners shall order a change in the name of a railway station, they shall give the company owning or operating the same notice of such order, and if it is

not complied with within thirty days from the date of service of such notice, the commissioners shall notify the attorney general thereof, who shall begin proceedings in the proper court to compel the enforcement of said order. [C., '97, § 2106.]

7999. Violations. A failure to comply with the order of the commissioners within thirty days from service of such notice shall also be a misdemeanor, for which said company shall be subject to a fine of one thousand dollars, and noncompliance for each thirty days thereafter shall constitute a separate and distinct offense, subject to a fine of one thousand dollars. [C., '97, § 2107.]

CHAPTER 372

CATTLE GUARDS, FENCES, CROSSINGS, AND INTERLOCKING SWITCHES

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8000. Cattle guards — crossings — signs. Every corporation constructing or operating a railway shall make proper cattle guards where the same enters or leaves any improved or fenced land, and construct at all points where such railway crosses any public road good, sufficient, and safe crossings and cattle guards, and erect at such points, at a sufficient elevation from such road as to admit of free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railway, and warn persons of the necessity of looking out for trains. Any railway company neglecting or refusing to comply with the provisions of this section shall be liable for all damages sustained by reason of such refusal or neglect, and it shall only be necessary, in order to recover, for the injured party to prove such neglect or refusal. [R., '60, § 1331; C., '73, § 1288; C., '97, § 2054.]

8001. Railway fences required. All railway corporations owning or operating a line of railway within the state, shall construct, maintain, and keep in repair a fence on each side of the right of way, so connected with

cattle guards at all public road crossings as to prevent live stock getting upon the tracks. All such rights of way shall be fenced within six months after the completion of the track or any part thereof. [C., '97, § 2057; S., '13, § 2057; 40 Ex. G. A., H. F. 190, § 5.]

8002. Exception. The preceding section shall not apply to a class C line of railway through the lands of any owner who by written agreement with the company owning or operating such line waives the fencing thereof. [C., '97, § 2057; S., '13, § 2057; 40 Ex. G. A., H. F. 190, § 5.]

8003. Specifications. All fences shall be not less than fifty-four inches high and may be of any of the following types:

1. Not less than five barbed wires, properly spaced.
2. Not less than three barbed wires above and not less than twenty-four inches of woven wire below.
3. Entirely of woven wire.
4. Five boards properly spaced.
5. Any other type which the fence viewers of any township through which it passes may determine as efficient as any of the above types.

Each of the above types shall be securely nailed to posts firmly set, not more than twenty feet apart for the first three types, nor more than eight feet apart for the fourth. [C., '97, § 2057; S., '13, § 2057; 40 Ex. G. A., H. F. 190, § 6.]

8004. Hog-tight fences. When any person owning land abutting on the right of way is maintaining a hog-tight fence on all sides thereof or any division of such land except along such right of way, the railway company owning such right of way shall, on written request of the landowner, make such right of way fence along such enclosed land hog-tight by the addition of barbed or woven wire or other equally efficient means. [S., '13, § 2057; 40 Ex. G. A., H. F. 190, § 7.]

8005. Failure to fence. Any corporation operating a railway and failing to fence its right of way against live stock running at large or to maintain proper and sufficient cattle guards at all points where the right to fence or maintain cattle guards exists, shall be liable to the owner of any stock killed or injured by reason of the want of such fence or cattle guards for the full amount of the damages sustained by the owner, unless it was occasioned by the wilful act of such owner or his agent; and to recover the same it shall only be necessary for him to prove the loss of or injury to his property. [C., '73, § 1289; C., '97, § 2055; 40 Ex. G. A., H. F. 190, § 8.]

8006. Double damages. If such corporation fails or neglects to pay such damages within thirty days after notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, served upon any officer or station or ticket agent employed by said corporation in the county where such loss or injury occurred, such owner shall be entitled to recover from the corporation double the amount of damages actually sustained by him. [C., '73, § 1289; C., '97, § 2055; 40 Ex. G. A., H. F. 190, § 9.]

8007. Laws and local regulations not applicable. No law of the state or any local or police regulations of any county, township, city, or town, relating to the restraint of domestic animals, or in relation to the fences of farmers or landowners, shall be applicable to railway rights of way, unless specifically so stated in such law and regulation. [C., '73, § 1289; C., '97, § 2055; 40 Ex. G. A., H. F. 190, § 10.]

8008. Depot grounds—speed limit. Upon depot grounds necessarily used by the public and the corporation, the operating of trains at a greater rate of speed than eight miles an hour where no fence is built, shall be negligence, and shall render such corporation liable for all damages occasioned thereby, in the same manner and to the same extent, except as to double damages, as in cases where the right to fence exists. [C., '73, § 1289; C., '97, § 2055; 40 Ex. G. A., H. F. 190, § 11.]

8009. Penalty—killing of stock. If the corporation, officer thereof or lessee owning or

engaged in the operation of any railroad in the state refuses or neglects to comply with any provision of this chapter relating to the fencing of the tracks, such corporation, officer, or lessee shall be guilty of a misdemeanor, and upon conviction fined in a sum not exceeding five hundred dollars for each offense, and every thirty days' continuance of such refusal or neglect shall constitute a separate and distinct offense. [C., '97, § 2058.]

8010. Killing of stock—interpretative clause. Nothing herein contained shall be construed to relieve the corporation from liability arising from the killing or maiming of live stock on said track or right of way by its negligence or that of its employees, nor shall anything in this chapter interfere with the right of open or private crossings, or with the right of persons to such crossings, nor in any way limit or qualify the liability of any corporation or person owning or operating a railway that fails to fence the same against live stock running at large for any stock injured or killed by reason of the want of such fence. [C., '97, § 2058.]

8011. Private crossings. When any person owns land on both sides of any railway, or when a railway runs parallel with a public highway thereby separating a farm from such highway, the corporation owning or operating such railway, on request of the owner of such land or farm, shall construct and maintain a safe and adequate farm crossing or roadway across such railway and right of way at such reasonable place as the owner of the land may designate, and shall construct and maintain a cattle guard on each side of such roadway where it crosses the track, connected by wing or cross fences to the fences on each side of the right of way. [R., '60, § 1329; C., '73, § 1268; C., '97, § 2022; S., '13, § 2022; 40 Ex. G. A., H. F. 190, § 28.]

8012. Overhead, underground, or more than one crossing. Such owner of land may serve upon such railroad company a request in writing for more than one such farm or private crossing, or for an overhead or underground crossing, accompanied by a plat of his land designating thereon the location and character of crossing desired. If the railroad company refuses or neglects for thirty days after such service to comply with such request, the owner of the land may make written application to the board of railroad commissioners to hear and determine his rights in said respect. Such board, after reasonable notice to the railroad company, shall hear said application and all objections thereto, and make such order as shall be reasonable and just, and if it requires the railroad company to construct any crossing or roadway, fix the time for compliance with such order. The matter of costs shall be in the discretion of the board. [S., '13, § 2022; 40 Ex. G. A., H. F. 190, § 29.]

8013. Station houses at crossings. All railway corporations shall, at all points of con-

nection, crossings, or intersection with the roads of other corporations, unite therewith in establishing and maintaining suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other, and for the transfer of passengers, baggage, or freight, whenever the same shall be ordered by the railroad commission; and shall, when ordered by it, keep such depot or passenger house warmed, lighted, and opened a reasonable time before the arrival, and until after the departure of all trains carrying passengers. [C., '97, § 2103.]

NOTE: See § 7876.

8014. Expense. The expense of constructing and maintaining such station houses and platforms shall be paid by such corporations in such proportions as may be fixed by the commission. [C., '97, § 2103.]

8015. Stopping of trains. Said railway companies shall stop all trains at said depots for the transfer of passengers, baggage, and freight when so ordered by the commission. [C., '97, § 2103.]

8016. Connecting tracks. Such corporations whose roads so connect or intersect shall, when ordered by the commission, so unite and connect the tracks of the several roads as to permit the transfer of cars from the track of one to that of the other. [C., '73, §§ 1292-1295; C., '97, § 2103.]

NOTE: See § 7876.

8017. Violations. Any railway corporation or company which, after having received ninety days' notice from the commissioners, shall neglect or refuse to comply with the provisions of the four preceding sections shall, for every day it fails, neglects, or refuses to comply therewith, forfeit and pay the sum of twenty-five dollars, which may be recovered in the name of the state for the use of the school fund of the county wherein such crossing or intersection is situated, and the county attorney of such county shall prosecute the same. [C., '97, § 2104.]

8018. Signals at road crossings. A bell and a steam whistle shall be placed on each locomotive engine operated on any railway, which whistle shall be twice sharply sounded at least sixty rods before a road crossing is reached, and after the sounding of the whistle the bell shall be rung continuously until the crossing is passed; but at street crossings within the limits of cities or towns the sounding of the whistle may be omitted, unless required by ordinance or resolution of the council thereof; and the company shall be liable for all damages which shall be sustained by any person by reason of such neglect. [C., '97, § 2072.]

8019. Violations. Any officer or employee of any railway company violating any of the provisions of the preceding section shall be punished by fine not exceeding one hundred dollars for each offense. [C., '97, § 2072.]

8020. Railway and highway crossing at grade. Wherever a railway crosses or shall hereafter cross a highway at grade, the railway company and the board of supervisors of the county in which such crossing is located, if a primary or secondary highway, or such railway company and the trustees of the township in which such crossing is located, if a township highway, may agree upon any change, alteration, vacation, or relocation of such highway so as to carry such highway over or under such railway or eliminate such crossing entirely, and upon the expense each party shall pay for making such changes. [R., '60, § 1321; C., '73, § 1262; C., '97, § 2017; S. S., '15, § 2017; 40 Ex. G. A., H. F. 190, § 19.]

8021. Disagreement — application — notice. If the railway company and said highway authorities can not agree upon the changes to be made, either party may make written application to the board of railroad commissioners, setting forth the changes and alterations desired, and said board shall fix a date for hearing and give the other party ten days' written notice by mail of such date. [S. S., '15, § 2017; 40 Ex. G. A., H. F. 190, § 20.]

8022. Hearing—order. The board of railroad commissioners shall hear and determine such application, taking into consideration the necessity of such changes and the expense thereof, the location of any crossing and the manner in which it shall be constructed and maintained, or whether a crossing is to be eliminated and the provisions therefor, and may make such order in relation thereto as shall be equitable, including authority to condemn and take additional land for such purposes when necessary, and shall determine what portion of the expense shall be paid by any party to such controversy. [S. S., '15, § 2017; 40 Ex. G. A., H. F. 190, § 21.]

8023. Railway company to hold in trust. Any portion of the expense of making such crossing changes and alterations borne by any municipal corporation or township, the state or any person, shall forever be held in trust by such railroad corporation or its successors, and no part of such funds shall constitute any part of the value of its property on which it is entitled to receive a return. [S. S., '15, § 2017; 40 Ex. G. A., H. F. 190, § 22.]

8024. Repairs—aid by court. If the board of supervisors, township trustees, city or town council, or any official having jurisdiction over such highway, shall determine that such crossing is unsafe or is in need of further repairs or alterations, and can not agree with the railroad company as to such repairs or additional alterations, the proper board, council, or officer shall file a petition in the district court of the county in which the crossing is located, setting forth the facts and conditions on which relief is sought and serve the railroad company with written notice thereof in the time and manner required for original notices. [R., '60, § 1322; C., '73, § 1263; C., '97, § 2018; 40 Ex. G. A., H. F. 190, § 23.]

8025. Issues — hearing — order. The railroad company may join issue by answer. The court or a judge thereof shall hear the controversy in a summary manner in equity in term time or vacation and make such order or decree as may be found equitable and fix a reasonable time for compliance therewith and, on default of the railroad company, it may enjoin the operation of trains over that portion of the railway during the continuance of such default. The court may award costs against either party in its discretion. [R., '60, § 1322; C., '73, § 1263; C., '97, § 2018; 40 Ex. G. A., H. F. 190, § 24.]

8026. Condition after change — temporary ways. When a railroad company changes, alters, or repairs a highway crossing, it shall upon completion of the work leave it free from obstructions to travel and in good condition. If travel will be obstructed while any alterations or repairs are being made, the railroad company shall provide safe and convenient temporary ways for the public to avoid or pass such obstructions. [R., '60, §§ 1321, 1324; C., '73, §§ 1262, 1264; C., '97, §§ 2017, 2019; S. S., '15, § 2017; 40 Ex. G. A., H. F. 190, § 25.]

8027. Railway crossings near Mississippi river. When in the construction of a railway it becomes necessary to cross another railway near the shore of the Mississippi River, each shall be so constructed and maintained at the point of crossing that the respective roadbeds thereof shall be above high water mark in such river; but where the crossing occurs within the limits of any city or town containing six thousand or more inhabitants, the council or other governing authorities thereof may establish the crossing grade. [C., '73, § 1290; C., '97, § 2059; 40 Ex. G. A., H. F. 190, § 12.]

8028. Grade crossings. The board of railroad commissioners of the state shall have jurisdiction over all crossings at grade of steam and interurban railways within the state. Upon the application of any interurban railway or upon its own motion, the said board may require the trains of any steam railway to stop at any crossing of such railway tracks at grade or said board may make such rules and regulations in relation to speed or other methods of operation at such grade crossings as in its judgment are necessary to protect the public safety. This section shall be construed as an exception to the general rule as provided by law, with reference to interurban railways being street railways within cities and towns. [39 G. A., ch. 34, §§ 2, 3; 40 Ex. G. A., S. F. 195, § 1.]

8029. Duties of employees. Wherever the tracks of an interurban railway cross the tracks of any steam railway at grade, the steam railway shall, except where required to stop by order of the railroad commissioners, have the right of way and not be compelled to stop its trains and the interurban company operating its line shall cause its cars to come to a full stop not nearer than ten feet nor more than fifty feet from such crossing. Before proceed-

ing to cross said steam railway tracks some employee of the interurban company shall first cross said track ahead of its car or cars and ascertain if the way is clear and free from danger for the passage of such interurban cars. The interurban car or cars shall not proceed to cross until signaled to do so by such person employed as aforesaid. No steam railway in the operation of its engine and cars shall obstruct the free passage of cars of an intersecting interurban railway at such crossing except in the exercise of its right of way as provided in this section. [S., '13, § 2033-e; 39 G. A., ch. 34, § 1; 40 Ex. G. A., S. F. 195, § 2.]

8030. Stopping at crossings — exceptions. Except as otherwise in this chapter provided in relation to interlocking switches at railway grade crossings and except as otherwise provided in the preceding section, all trains run upon any steam railroad in this state which intersects and crosses any other railroad upon the same level, shall be brought to a full stop at a distance of not less than two hundred nor more than eight hundred feet from the point of intersection or crossing, before such intersection or crossing is passed. [C., '97, § 2073; 40 Ex. G. A., S. F. 195, § 3.]

8031. Violations. Any person in charge of an interurban car or cars, who shall violate the provisions of the second preceding section and any engineer or person in charge of an engine, who shall violate the provisions of the preceding section shall be fined for each offense not exceeding one hundred dollars; and the corporation or company on whose road such offense is committed, shall be fined not exceeding two hundred dollars for each offense. [C., '97, § 2073; S., '13, § 2033-e; 40 Ex. G. A., S. F. 195, § 4.]

8032. Interlocking switches. When in any case two or more railroads cross each other at a common grade, or a railroad crosses a stream by swing or drawbridge, they may be equipped thereat with an interlocking switch system, or other suitable safety device rendering it safe for engines or trains to pass thereover without stopping. The plans for such proposed interlocking system or other safety device shall be first submitted to the board of railroad commissioners for approval, and after the same has been installed no engines or trains shall pass over such crossings or bridges without stopping until the board of railroad commissioners shall have inspected and issued a certificate of approval of such interlocking system or safety device. [C., '97, § 2060; 39 G. A., ch. 247, § 2.]

8033. Changing plan. In the event any railroad company desires to make a change in the mechanical construction, arrangement, or location of any interlocking system or other safety device, or in any of the parts of such system or device, the plans showing specifically the nature of the changes proposed shall be filed with the board of railroad commissioners, and such system or device as changed shall not be

operated until a certificate of approval thereof has been issued by the board. [39 G. A., ch. 247, § 3.]

8034. Condemnation—reconstruction. Any interlocking system or other safety device now or hereafter constructed or operated, which may be found by the board of railroad commissioners, after inspection, to be unsafe or dangerous, may be condemned by the said board, and the railroad company or companies required to reconstruct the same in accordance

with the rules governing the construction, operation, and maintenance of interlocking plants adopted by said board of railroad commissioners. [39 G. A., ch. 247, § 4.]

8035. Compulsory establishment. Whenever in the judgment of the board of railroad commissioners it is necessary for the public safety, said board may require the establishment of an interlocking system or other safety device at any railroad crossing, junction, or drawbridge. [39 G. A., ch. 247, § 5.]

CHAPTER 373

REGULATION OF CARRIERS

GENERAL PROVISIONS

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8036. Applicability of chapter. The provisions of this chapter shall apply to the transportation of passengers and property, and to the receiving, delivering, storing, and handling of property wholly within this state, and shall apply to all railroad corporations, express companies, car companies, sleeping car companies, freight or freight line companies, and to any common carrier engaged in this state in the transportation of passengers or property by railroad therein, and to shipments of property made from any point within the state to any point within the state, whether the transportation of the same shall be wholly within this state or partly within this state and partly within an adjoining state. [C., '97, § 2122; 40 Ex. G. A., H. F. 196, § 1.]

8037. Definition of terms. The terms "railroad" and "railway" as used in this chapter shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, receiver, trustee, or other person operating a railroad, whether owned or operated under contract, agreement, lease, or otherwise.

The term "transportation" shall include all instrumentalities of shipment or carriage.

The term "railway corporation" shall mean all corporations, companies, or individuals owning or operating any railroad or carrier in whole or in part in this state, except street railways.

The term "switching service" is hereby defined to be shifting of a car or of cars between two points, both of which points are within the industrial vicinity of an industry, a group of industries, a station, a village, or a city, as such industrial vicinity may be defined by the board of railroad commissioners. [C., '97, § 2122; S. S., '15, § 2125; 40 Ex. G. A., H. F. 196, § 5.]

8038. Duty to furnish cars and transport freight. Every railway corporation shall upon reasonable notice, and within a reasonable time, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight, and receive and transport such freight with all reasonable dispatch, and provide and keep suitable facilities for the receiving and handling thereof at any depot on the line of its road. [C., '97, § 2116; S., '13, § 2116; 40 Ex. G. A., H. F. 196, § 2.]

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8040. Passenger service — frequency — presumption. Every railway corporation owning or operating lines of railroad of more than seventeen miles in length within the limits of the state, shall maintain a service of not less than two passenger trains each way every twenty-four hours, over the entire length of each division of such line or lines, when so ordered by the board of railroad commissioners. Passenger service of less than the number of trains provided herein shall be presumed to be unreasonable. [S., '13, § 2116; 39 G. A., ch. 153, § 1; 40 Ex. G. A., H. F. 196, § 3.]

8041. Burden of proof. In any action in court, or before the board, brought against a railroad corporation for the purpose of enforcing rights arising under the provisions of this and the three preceding sections, the burden of proving that the provisions thereof have been complied with by such railroad corporation, shall be upon such railroad corporation. [S., '13, § 2116; 40 Ex. G. A., H. F. 196, § 4.]

8042. Limitation on liability. No contract, receipt, rule, or regulation shall exempt any railway corporation engaged in transporting persons or property from the liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation been made or entered into. [C., '73, § 1308; C., '97, § 2074.]

8043. Limitation on liability. No contract, receipt, rule, or regulation shall exempt any corporation or person engaged in transporting persons for hire from the liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation been made. [C., '73, § 2184; C., '97, § 3136.]

8044. Preference prohibited—exception. It shall be unlawful for any common carrier to

give any preference or advantage to, or entail any prejudice or disadvantage upon any particular person, company, firm, corporation, locality, or any class of business or traffic, by any rate, rule, regulation, or practice whatsoever. This provision shall not prevent any common carrier from giving preference as to time of shipping live stock, live poultry, uncured meats, fruits, vegetables, or other perishable property. [C., '97, § 2125; S. S., '15, § 2125; 40 Ex. G. A., H. F. 196, § 6.]

8045. Interchange of traffic—switching and forwarding. All common carriers shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and switching of cars, passengers, and property to and from their several lines, and to and from other lines and places connected therewith; and shall not discriminate in their accommodations, rates, and charges between such connecting lines. Any common carrier may be required to switch and transfer cars for another, for the purpose of being loaded or unloaded, upon such terms and conditions as may be prescribed by the board of railroad commissioners. [C., '97, § 2125; S. S., '15, § 2125; 40 Ex. G. A., H. F. 196, § 7.]

8046. Unjust discrimination—exceptions. If any common carrier subject to the provisions of this chapter shall directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic, such common carrier shall be guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful; but this section shall not be construed as prohibiting a less rate per one hundred pounds in a carload lot than is charged, collected, or received for the same kind of freight in less than a carload lot. [C., '97, § 2124.]

8047. Reconsignment without charge. Upon request of the consignee it shall be the duty of any common carrier of freight to reconsign, rebill, and reship from any place of destination within the state to any other place within the state any property in carload lots, whether accompanied by any person or not, brought to said place of destination over its own or other line and treat the same in all respects as an original shipment between such places, provided the charges to first place of destination are paid or secured to the satisfaction of such company. [S., '13, § 2157-r.]

8048. Charges to be reasonable. All charges made for any service rendered or to be rendered in the transportation of passengers or

property in this state, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. [C., '97, § 2123.]

'8049. Long and short haul—fair rate. No common carrier, subject to the provisions of this chapter, shall charge more for the transportation of persons or property to or from any point on its railroad than a fair and just rate or charge.

No such common carrier, or carriers, shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance, over the same line or route in the same direction within this state, the shorter being included within the longer distance, or charge any greater compensation as a through rate than the aggregate of the intermediate rates; but this shall not be construed as authorizing any such common carrier or carriers to charge or receive as great a compensation for a shorter as for a longer distance or haul; provided that upon application to the board of railroad commissioners such common carrier or carriers may, in special cases, after investigation, be authorized by the board of railroad commissioners to charge less for a longer than for a shorter distance for the transportation of persons or property; and the board of railroad commissioners may from time to time prescribe the extent to which such designated common carrier or carriers may be relieved from the operation and requirement of this section; but, in exercising the authority conferred upon it in this proviso, the board of railroad commissioners shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and, if a circuitous rail line or route is, because of such circuitry, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points. [C., '97, § 2126; 40 G. A., ch. 161.]

8050. Pooling contracts. It shall be unlawful for any common carrier subject to the provisions of this chapter to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freight of different and competing railroads, or divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be a separate offense. [C., '73, §§ 1297-1299; C., '97, § 2127.]

8051. Continuous shipments. It shall be unlawful for any common carrier subject to the provisions of this chapter to enter into any

combination, contract or agreement, expressed or implied, to prevent, by change of time schedules, carriage in different cars, or, by other means or device, the carriage of freights from being continuous from place of shipment to the place of destination in the state; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage, or to evade any of the provisions of this chapter. [C., '97, § 2129.]

8052. Violations—treble damages. In case any common carrier subject to the provisions of this chapter shall do, cause, or permit to be done anything herein prohibited or declared to be unlawful, or shall omit to do anything in this chapter required to be done, it shall be liable to the person or persons injured thereby for three times the amount of damages sustained in consequence, together with costs of suit, and a reasonable attorney's fee to be fixed by the court, on appeal or otherwise, which shall be taxed and collected as part of the costs in the case; but in all cases demand in writing shall be made for the money damages sustained before action is brought for a recovery under this section, and no action shall be brought until the expiration of fifteen days after such demand. [C., '97, § 2130.]

8053. Criminal liability. Except as otherwise specially provided for in this chapter, and unless relieved from the consequences of a violation of the law as provided herein, any common carrier subject to the provisions hereof, or, when such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party shall wilfully do or cause to be done, or shall wilfully suffer or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter, or thing in this chapter required to be done, or shall cause or willingly suffer or permit any act, matter, or thing, so directed or required by the provisions of this chapter to be done, not to be so done; or shall aid or abet any such omission or failure, or shall be guilty of any infraction of the provisions of this chapter, or shall aid or abet therein, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than five thousand nor less than five hundred dollars for each offense. [C., '97, § 2132.]

8054. "Extortion" defined—penalty. If any railway corporation or carrier subject to the provisions of this chapter shall charge, collect, demand, or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transporta-

tion of any railway car upon its track or any of the branches thereof, or upon any railroad within the state which it has the right, license or permission to use, operate, or control; or shall make any unjust and unreasonable charge prohibited in this chapter, it shall be deemed guilty of extortion, and be dealt with as hereinafter provided; and if any such railroad corporation or common carrier shall be found guilty of any unjust discrimination as defined in this chapter, it shall, upon conviction thereof, be dealt with as hereinafter provided. [C., '97, § 2144.]

8055. Discrimination—prima facie evidence. If any such railway corporation shall:

1. Charge, collect or receive for the transportation of any passenger or freight of any description upon its railroad, for any distance within the state, a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation in the same direction of any passenger or like quantity of freight of the same class, over a greater distance of the same railway; or

2. Charge, collect or receive at any point upon its road a higher rate of toll or compensation for receiving, handling or delivering freight of the same class and quantity than it shall at the same time charge, collect or receive at any other point upon the same railway; or

3. Charge, collect or receive for the transportation of any passenger or freight of any description over its railway a greater amount as toll or compensation than shall at the same time be charged, collected or received by it for the transportation of any passenger or like quantity of freight of the same class being transported in the same direction over any portion of the same railway of equal distance; or

4. Charge, collect or receive from any person a higher or greater amount of toll or compensation than it shall at the same time charge, collect or receive from any other person for receiving, handling or delivering freight of the same class and like quantity at the same point upon its railway; or

5. Charge, collect or receive from any person for the transportation of any freight upon its railway a higher or greater rate of toll or compensation than it shall at the same time charge, collect or receive from any other person or persons for the transportation of the like quantity of freight of the same class being transported from the same point in the same direction over equal distances of the same railway; or

6. Charge, collect or receive from any person for the use and transportation of any railway car or cars upon its railroad for any distance, a greater amount of toll or compensation than is at the same time charged, collected or received from any other person for the use and transportation of any railway car of the same class or number, for a like purpose, being transported in the same direction over a greater distance of the same railway; or

7. Charge, collect or receive from any person for the use and transportation of any railway car or cars upon its railway a higher or

greater compensation in the aggregate than it shall, at the same time, charge, collect or receive from any other person for the use and transportation of any railway car or cars of the same class for a like purpose, being transported from the same original point in the same direction, over an equal distance of the same railway—

all such discriminating rates, charges, collections or receipts, whether made directly or by means of any rebate, drawback, or other shift or evasion, shall be received as prima facie evidence of the unjust discriminations prohibited by this chapter. [C., '97, § 2145.]

8056. "Competition" no defense. It shall not be a sufficient excuse or justification thereof on the part of said railway corporation that the station or point at which it shall charge, collect or receive less compensation in the aggregate for the transportation of such passenger or freight, or for the use and transportation of such railway car the greater distance than for the shorter distance, is a station or point at which there exists competition with another railway or other transportation line. [C., '97, § 2145.]

8057. Other evidence. The two preceding sections shall not be construed so as to exclude other evidence tending to show any unjust discrimination in freight or passenger rates. [C., '97, § 2145.]

8058. Railways included. The provisions of the three preceding sections shall apply to any railway, the branches thereof, and any road or roads which any railway corporation has the right, license or permission to use, operate or control, wholly or in part, within this state. [C., '97, § 2145.]

8059. Exceptions. The provisions of the four preceding sections shall not be so construed as to prevent railway corporations from issuing commutation, excursion, or thousand-mile tickets, if the same are issued alike to all applying therefor. [C., '97, § 2145.]

8060. Switching charges. Nothing in the five preceding sections shall be so construed as to prevent railroad companies or the board of railroad commissioners from establishing schedules of reasonable charges applicable to switching services only, and which shall be independent of any schedule of charges which may be provided for the regular line haul freight service of common carriers. [S., '13, § 2145.]

8061. Discrimination as to quantity. For transporting freight over the same railway for the same distance in the same direction, no common carrier shall charge, collect, demand or receive more for transporting a car of freight than it at the same time charges, collects, demands or receives per car for more than one car of a like class of freight; nor more for transporting a ton of freight than it charges, collects, demands or receives per ton for more than one ton of freight but less

than a carload of a like class; nor more for transporting one hundred pounds of freight than it charges, collects, demands or receives per hundred for more than one hundred pounds of freight, but less than a ton of a like class. [C., '97, § 2146; 40 Ex. G. A., S. F. 197, § 1.]

8062. New industries—limitation. For the protection and development of any new industry in the state, any common carrier may grant concessions or special rates for any agreed number of carloads or for a specified period of time, which rates and period of time shall be fixed and approved by the board of railroad commissioners, and a copy thereof filed in its office. [C., '97, § 2146; 40 Ex. G. A., S. F. 197, § 2.]

8063. Prima facie evidence of violation. Any such discriminating rates, charges, collections, or receipts whether made directly or indirectly by means of any rebate, drawback, or other method or means, shall be prima facie evidence of a violation of the provisions of the second preceding section. [C., '97, § 2146; 40 Ex. G. A., S. F. 197, § 3.]

8064. Penalty for discrimination. Any such corporation guilty of extortion, or of making any unjust discrimination as to passenger or freight rates, or the rates for the use and transportation of railway cars, or in receiving, handling or delivering freights, shall, upon conviction thereof, be fined in any sum not less than one thousand nor more than five thousand dollars for the first offense, and for each subsequent offense not less than five thousand nor more than ten thousand dollars,—such fine to be imposed in a criminal prosecution by indictment; or shall be subject to the liability prescribed in the next succeeding section, to be recovered as therein provided. [C., '97, § 2147.]

8065. Civil forfeiture. Any such railway corporation guilty of extortion, or of making any unjust discrimination as to passenger or freight rates, or the rates for the use and transportation of railway cars, or in receiving, handling, or delivering freights, shall forfeit and pay to the state not less than one thousand nor more than five thousand dollars for the first offense, and not less than five thousand nor more than ten thousand dollars for each subsequent offense, to be recovered in a civil action in the name of the state; and the release from liability or penalty provided for in this chapter shall not apply to a criminal prosecution under the last preceding section, or to a civil action under this section. [C., '97, § 2148.]

8066. Free or reduced freight rates permitted. Nothing in this chapter shall apply to free or reduced rates for the transportation, storage, or handling of:

1. Property for the United States, this state, or municipal governments.

2. Materials to be used by public authorities in constructing or maintaining public high-

ways outside of the corporate limits of cities and towns.

3. Property for charitable purposes.

4. Property for exhibition at fairs or expositions.

5. Private property or goods for the family use of such employees as are entitled to free passenger transportation. [C., '97, § 2150; 37 G. A., ch. 390, § 1; 40 Ex. G. A., S. F. 197, § 4.]

JOINT RATES

8067. Authorization. The preceding sections of this chapter shall not be construed to prohibit the making of rates by two or more railway companies for the transportation of property over two or more of their respective lines within the state; and a less charge by each of said companies for its portion of such joint shipment than it charges for a shipment for the same distance wholly over its own line within the state shall not be considered a violation of said chapter, and shall not render such company liable to any of the penalties thereof. [C., '97, § 2152.]

8068. Discrimination against stations. The provisions of the preceding section shall not be construed to permit railway companies establishing joint rates to make thereby any unjust discrimination between the different shipping points or stations upon their respective lines between which joint rates are established, and any such unjust discrimination shall be punished in the manner and by the penalties provided by this chapter. [C., '97, § 2152.]

8069. Connecting lines. Every owner or consignor of freight to be transported by railway from any point within this state to any other point within this state shall have the right to require that the same shall be transported over two or more connecting lines of railway, to be transferred at the connecting point or points without change of car or cars if in carload lots, and with or without change of car or cars if in less than carload lots, whenever the distance from the place of shipment to destination, both being within this state, is less over two or more connecting lines of railway than it is over a single line of railway, or where the initial line does not reach the place of destination; and it shall be the duty, upon the request of any such owner or consignor of freight, made to the initial company, of such railway companies whose lines so connect, to transport the freight without change of car or cars if the shipment be in a carload lot or lots, and with change of car or cars if it be in less than carload lots, from the place of shipment to destination, whenever the distance from the place of shipment to destination, both being within this state, is less than the distance over a single line, or when the initial line does not reach the point of destination, for a reasonable joint through rate. This section shall apply to interurban railways and their connection with ordinary steam railways. [C., '97, § 2153; S., '13, § 2153.]

8070. Reasonable through rates. When shipments of freight to be transported between different points within the state are required to be carried by two or more railway companies operating connecting lines, such railway companies shall transport the same at reasonable through rates, and shall at all times give the same facilities and accommodations to local or state traffic as they give to interstate traffic over their lines of road. [C., '97, § 2154.]

8071. Schedules of joint rates. The board of railroad commissioners shall make and publish a schedule of joint through railway rates for such traffic and on such routes as in its judgment the fair and reasonable conduct of business requires shall be done by carriage over two or more lines of railway, and will promote the interests of the people of this state. [C., '97, § 2155; S., '13, § 2155.]

8072. Matters considered. In the making thereof, and in changing, revising or adding to the same, the board shall be governed as nearly as may be by the preceding sections of this chapter, and shall take into consideration, among other things, the rates established for shipments within this state for like distances over single lines, the rates charged by the railway companies operating such connecting lines for joint interstate shipments, and the increased cost, if any, of a joint through shipment as compared with a shipment over a single line for like distances. [C., '97, § 2155; S., '13, § 2155.]

8073. Transfer at stations. In establishing such rates for shipments in less than carload lots, in cases where at the connecting point or points in the line of shipment the connecting railways have not and are not required to have a common station or stopping place for loading or unloading freight, the board shall make such lawful regulations as in its judgment will be fair and just respecting the transportation of such freight from the usual unloading place of one railway to the usual loading place of the other. [S., '13, § 2155.]

8074. When effective—presumption. The joint through rates thus established shall be promulgated by mailing a printed copy thereof to each railway company affected thereby, and shall go into effect within ten days after they are so promulgated; and from and after that time an official printed schedule thereof shall be prima facie evidence, in all the courts of this state, that the rates therein fixed are just and reasonable for the joint transportation of such freight between the points and over the lines described therein. [C., '97, § 2155; S., '13, § 2155.]

8075. Copies. The said board shall deliver a printed copy of said schedule to any person making application therefor. [S., '13, § 2155.]

8076. Share of each company—effect. The share of any railway company of any joint through rate shall not be construed to fix the

charge that it may make for transportation for a similar distance over any part of its line for any single rate shipment or the share of any other joint rate. [S., '13, § 2155.]

8077. Revision of joint rates. The board, upon such reasonable notice as it may prescribe, may, upon its own motion or upon the application of any person, firm or corporation interested therein, revise, change or add to any joint through rates fixed or promulgated hereunder; and any such revised, changed or added joint rates shall have the same force and effect as the rate or rates originally established. [S., '13, § 2155.]

8078. Permissible rate for long haul. The said board is empowered to authorize, upon proper hearing, any railway company whose line connects the point of shipment with the point of destination but requires a longer haul than the joint haul over which a joint rate has been established, to charge the joint rate without affecting the charge upon any other part of its line, except that the charge for a like kind of property must not be greater for a shorter than for a longer distance over its railroad, all of the shorter haul being included within the longer. [S., '13, § 2155.]

8079. Interurban railways included. The eight preceding sections shall apply to interurban railways and their connection with ordinary steam railways. [S., '13, § 2155.]

8080. Division of joint rates. Before the promulgation of such rates, the board shall notify the railroad companies interested of the schedule of joint rates fixed, and give them a reasonable time thereafter to agree upon a division of the charges provided for therein. If such companies fail to agree upon a division, and to notify the board thereof, it shall, after a hearing of the companies interested, decide the same, taking into consideration the value of terminal facilities and all the circumstances of the haul, and the division so determined by it shall, in all controversies or actions between the railway companies interested, be prima facie evidence of a just and reasonable division thereof. [C., '97, § 2156.]

8081. Unreasonable charges. Every unjust and unreasonable charge for the transportation of freight and cars over two or more railroads in this state is prohibited, and every company making such unreasonable and unlawful charges, or otherwise violating the provisions of this chapter, shall be punished as provided in this chapter for the making of unreasonable charges for the transportation of freight and cars over a single line of railroad by a single railway company. [C., '97, § 2157.]

RATE SCHEDULES

8082. Definitions. The term "board" as employed in this chapter means the board of railroad commissioners.

The term "rates" embraces fares, tariffs, tolls, charges, and all classifications, contracts, practices, rules, and regulations of common carriers relating to such rates.

The term "joint tariffs" embraces joint rates, tolls, contracts, classifications, and charges. [40 Ex. G. A., H. F. 198, § 1.]

8083. Rate schedules—filing and publication. Every common carrier, subject to the provisions of this chapter shall file with the board and shall print and keep open to public inspection schedules showing the rates for the transportation within this state of persons and property from each point upon its route to all other points thereon and from all points upon its route to all points upon every other route leased, operated, or controlled by it; and from each point on its route or upon any route leased, operated, or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, applicable to the through transportation. [C., '73, § 1304; C., '97, § 2128; 40 G. A., ch. 162, § 2; 40 Ex. G. A., H. F. 198, § 2.]

8084. Detailed requirements. The schedules aforesaid shall plainly state the places between which such property and persons will be carried, and, separately, all terminal charges, storage charges, icing charges, and all other charges which the board may require to be stated, all privileges or facilities granted or allowed, and all rules or regulations which may in any wise change, affect, or determine any part or the aggregate of such rates, or the value of the various services rendered to the passenger, shipper, or consignee. [C., '73, § 1304; C., '97, § 2128; 40 G. A., ch. 162, § 3; 40 Ex. G. A., H. F. 198, § 3.]

8085. Printing—accessible to public. Subject to such rules and regulations as the board may prescribe, such schedules shall be plainly printed in large type and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation when such station or office is in charge of an agent, and in every station or office of such carrier where passenger tickets or tickets for sleeping car, parlor car, or other train accommodations are sold, or bills of lading or waybills or receipts for property are issued. [C., '73, § 1304; C., '97, § 2128; 40 G. A., ch. 162, § 3; 40 Ex. G. A., H. F. 198, § 4.]

8086. Right to inspect. Any or all of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. [40 G. A., ch. 162, § 3; 40 Ex. G. A., H. F. 198, § 5.]

8087. Notice as to schedules. A notice printed in bold type and stating that such

schedules are on file with the agent and open to inspection by any person, and that the agent will assist any person to determine from such schedules any rate, shall be kept posted by the carrier in two public and conspicuous places in every such station or office. [C., '97, § 2128; 40 G. A., ch. 162, § 4; 40 Ex. G. A., H. F. 198, § 6.]

8088. Form of schedules. The form of every such schedule shall be prescribed by the board and shall conform, in the case of common carriers subject to an act of congress entitled "An Act to Regulate Commerce", approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, as nearly as may be to the form of schedule prescribed by the interstate commerce commission under said act. [40 G. A., ch. 162, § 5; 40 Ex. G. A., H. F. 198, § 7.]

8089. Interstate commerce schedules. When schedules and classifications required by the interstate commerce commission contain in whole or in part the information required by the provisions of this chapter, the posting, publishing, and filing of a copy or copies of such schedules and classifications shall be deemed a compliance with the requirements of this chapter in so far as such schedules and classifications contain the information required by this chapter, and any additional or different information may be posted, published, and filed in a supplementary schedule. [40 G. A., ch. 162, § 5; 40 Ex. G. A., H. F. 198, § 8.]

8090. Partial schedules. In lieu of filing its entire schedule in each station or office, any common carrier may, subject to the regulations of the board, file or keep posted at such stations or offices, schedules of such rates as are applicable at, to and from the places where such stations or offices are located. [C., '97, § 2128; 40 G. A., ch. 162, § 6; 40 Ex. G. A., H. F. 198, § 9.]

8091. Changes in schedules. The board shall have power from time to time, in its discretion, to determine and prescribe by order such changes in the form of the schedules referred to in this chapter as it may find expedient, and to modify the requirements of any of its orders, rules, or regulations in respect thereto. [C., '97, § 2128; 40 G. A., ch. 162, § 7; 40 Ex. G. A., H. F. 198, § 10.]

8092. Joint tariff schedules. The names of the several common carriers which are parties to any joint tariff, shall be specified in the schedule or schedules showing the same. Unless otherwise ordered by the board, a schedule showing such joint tariff need be filed with the board by only one of the parties if there is also filed with the board, in such form as the board may require, a concurrence in such joint tariff by each of the other parties thereto. [C., '97, § 2128; 40 G. A., ch. 162, § 8; 40 Ex. G. A., H. F. 198, § 11.]

8093. Contracts affecting rate. Every common carrier shall file with the board, copies of

all contracts, agreements, or arrangements with other common carriers in relation to any service, affected by the provisions of this chapter, to which it may be a party, and copies of all other contracts, agreements, or arrangements with any other person or corporation affecting in the judgment of the board the cost to such common carrier of any service. [C., '97, § 2128; 40 G. A., ch. 162, § 9; 40 Ex. G. A., H. F. 198, § 12.]

8094. Transportation prohibited. No common carrier shall undertake to perform any service nor engage or participate in the transportation of persons or property between points within this state, until its schedule of rates shall have been filed and published as herein provided. [40 G. A., ch. 162, § 10; 40 Ex. G. A., H. F. 198, § 13.]

8095. Change in rate. Unless the board otherwise orders, no change shall be made by any common carrier in any rate, except after thirty days' notice to the board and to the public as herein provided. [C., '97, § 2128; 40 G. A., ch. 162, § 11; 40 Ex. G. A., H. F. 198, § 14.]

8096. Notice of change. Such notice shall be given by filing with the board and by keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in effect, and the time when the change or changes will go into effect. [C., '97, § 2128; 40 G. A., ch. 162, § 11; 40 Ex. G. A., H. F. 198, § 15.]

8097. Changes without notice. The board, for good cause shown, may allow changes without requiring said thirty days' notice by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. [C., '97, § 2128; 40 G. A., ch. 162, § 11; 40 Ex. G. A., H. F. 198, § 16.]

8098. Indicating change. When any change is proposed in any rate, such proposed change shall be plainly indicated on the new schedule filed with the board, by some character immediately preceding or following the item. [C., '97, § 2128; 40 G. A., ch. 162, § 11; 40 Ex. G. A., H. F. 198, § 17.]

8099. Schedule charge mandatory—refunds and discrimination. No common carrier, except as otherwise provided, shall charge, demand, collect, or receive a greater or less or different compensation for the transportation of persons or property or for any service in connection therewith than the rates, fares, and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified except upon order of the courts or of the board as may be now or hereafter by law provided, nor extend to any shipper or person any privilege or facility in the transportation

of passengers or property except such as are specified in such schedules. [C., '97, § 2128; 40 G. A., ch. 162, § 12; 40 Ex. G. A., H. F. 198, § 18.]

8100. Power to revise rates. Whenever there shall be filed with the board any schedule, stating an individual or joint rate, the board shall have power, either upon complaint or upon its own motion, at once, and, if it so orders, without answer or formal pleadings by the interested common carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate. [40 G. A., ch. 162, § 13; 40 Ex. G. A., H. F. 198, § 19.]

8101. Suspension of rates. Pending the hearing and the decision thereon, such rate shall not go into effect; but the period of suspension of such rate shall not extend more than one hundred twenty days beyond the time when such rate would otherwise go into effect, unless the board, in its discretion, extends the period of suspension for a further period of not exceeding thirty days. [40 G. A., ch. 162, § 13; 40 Ex. G. A., H. F. 198, § 20.]

8102. Decision. On such hearing the board shall establish the rates, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. [40 G. A., ch. 162, § 14; 40 Ex. G. A., H. F. 198, § 21.]

8103. When rates effective. All such rates not so suspended shall, on the expiration of thirty days from the time of filing the same with the board or of such less time as the said board may grant, go into effect and be the established and effective rates, subject to the power of the board after a hearing had upon its own motion or upon complaint, as herein provided, to alter or modify the same. [40 G. A., ch. 162, § 14; 40 Ex. G. A., H. F. 198, § 22.]

8104. Posting and filing of revised schedules. After such changes have been authorized by the board, copies of the new or revised schedules shall be posted or filed as provided in this chapter within such reasonable time as may be fixed by the board. [40 G. A., ch. 162, § 14; 40 Ex. G. A., H. F. 198, § 23.]

8105. Commissioners' schedules of rates—effect. The schedules of reasonable maximum rates of charges for the transportation of freight and cars, together with the classification of such freights now in effect, shall remain in force until changed by the board according to law, which, in all actions brought against railway corporations, wherein there are involved the charges thereof for the transportation of any freight or cars, or any unjust discrimination in relation thereto, shall be taken as prima facie evidence in all courts that the rates fixed therein are reasonable and just maximum rates of charge for which said schedules have been prepared. The board shall from time to time, and as often as circumstances may require, change and revise such schedules, but the rates fixed shall not be

higher than established by law. The board shall give notice of its intention to revise or change such schedules, by publishing a notice thereof in two weekly newspapers published at the seat of government, for two consecutive weeks, and the last publication of such notice shall be at least ten days before the time fixed for considering the matter, and such notice shall contain, in general terms, a statement of the matters the board proposes to consider, and the date when and the place where the matter will be taken up, and shall be addressed to all persons interested therein. When any schedule is thus revised the board must cause notice thereof to be published for two successive weeks in some public newspaper printed at the seat of government, which shall state the date of the taking effect thereof, and it shall take effect at the time so stated. A printed copy of such revised schedule shall be conspicuously posted by said common carrier in each freight office and passenger depot upon all lines affected thereby, and, when certified by the board that the same is a true copy prepared by it for the railway company or corporation therein named, and that notice thereof had been published as required by law, shall be received in evidence in all actions as prima facie the schedule of such board. [C., '97, § 2138.]

8106. Complaint of violation. When any person in his own behalf, or in behalf of a class of persons similarly situated, or a firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, shall make complaint to the board of railroad commissioners that the rate charged or published by any railway company, or the maximum rates fixed by the board in the schedule of rates made by it, or the maximum rate fixed by law, is unreasonably high or discriminating, the board shall investigate the matter, and, if the charge appears to be well founded, fix a day for hearing the same, giving the railway company notice of the time and place thereof by mail, directed to any division superintendent, general or assistant superintendent, general manager, president or secretary of such company, which notice shall contain the substance of the complaint, also the person or persons complaining. [C., '97, § 2139.]

8107. Hearing—evidence. Upon the hearing the board shall receive any evidence and listen to any arguments offered or presented by either party relevant to the matter under investigation, and the burden of proof shall not be upon the person or persons making the complaint; but it shall add to the showing made at such hearing whatever information it may then have, or can obtain from any source, including schedules of rates actually charged by any railway company for substantially the same kind of service, in this or any other state. The lowest rates published or charged by any railway company for substantially the same kind of service whether in this or another state, shall, at the instance of the person or

persons complaining, be accepted as prima facie evidence of a reasonable rate for the services under investigation; and if the railway company complained of is operating a line of railroad beyond the state, or has a traffic arrangement with any such railway company, the same shall be taken into consideration in determining what is a reasonable rate; if it be operating a line of railway beyond the state, the rate charged or established for substantially a similar or greater service by it in another state shall also be considered. [C., '97, § 2140.]

8108. Determination. After such hearing and investigation, the board shall fix and determine the maximum charges to be thereafter made by the railroad company or common carrier complained of, which charge shall in no event exceed the one now or hereafter fixed by law; and the board shall render their decision in writing, and shall spread the same at length in the record to be kept for that purpose; such decision shall specifically set out the sums or rate which the railroad company or common carrier so complained of may thereafter charge or receive for the service therein named, and including a classification of such freight; and the board shall not be limited in their said decision and the schedule to be contained therein to the specific case or cases complained of, but it shall be extended to all such rates between points in this state, and whatever part of the line of railway of such company or common carrier within this state may have been fairly within the scope of such investigation; and any such decisions so made and entered on record of the board, including any such schedules and classifications, shall, when duly authenticated, be received and held in all suits brought against any such railroad corporation or common carrier, wherein is in any way involved the charges of any such corporation or carrier mentioned in said decisions, in any of the courts of this state, as prima facie evidence that the rates therein fixed are reasonable maximum rates, the same as the schedule made by the board as provided in section 8105; and the rates and classifications so established, after such hearing and investigation, shall, from time to time thereafter, upon complaint duly made, be subject to revision by the board, the same as any other rates and classifications. [C., '97, § 2141.]

LIVE STOCK

8109. Shipment—free transportation. Common carriers of live stock, in carload lots, upon receiving, in this state, for shipment one or more carloads of horses or mules or two or more carloads of other live stock, shall upon demand of the owner of such animals offered for shipment, issue to such owner, or the actual agent or employee of such owner, without other consideration, transportation from the place of receiving such shipment to the place of destination, and return; such transportation to be limited to one person for each shipment, as is above set out. When a single ship-

ment aggregates six cars or more, such owner shall be entitled, on demand, as is above provided, to transportation for one additional person, such additional person to be an actual agent or employee of such owner, and such common carrier shall in like manner and under similar conditions issue transportation for one person to destination of shipment only to the shipper of one carload of cattle, hogs, or sheep. The return transportation herein provided for is to be delivered, upon demand, at the office of the carrier at the place of destination, upon proper identification of the person so entitled to same, and shall be good for transportation if presented within forty-eight hours from the time of the delivery of such shipment at place of destination. [S., '13, § 2157-a.]

8110. Violations. Any common carrier violating the above provisions shall forfeit and pay to the owner of any shipment, as is above provided, three times the amount of the regular fare expended by such owner for himself, or his agent, in going from point of shipment to point of destination, and return, of a shipment of stock as herein provided. [S., '13, § 2157-b.]

8111. Misuse of transportation. Any person other than the owner, his agent, or employees, as is described in the two preceding sections, attempting to use, or using, the transportation therein provided for, shall be considered a trespasser upon the trains or premises of such common carrier. [S., '13, § 2157-c.]

8112. Water-closets in cabooses. The cabooses or cars attached to such stock trains, and in which the holders of such transportation are required to ride when accompanying such live stock to market, shall be provided with suitable water-closets for the use of such persons while in transit. [S., '13, § 2157-d.]

8113. Violations. Any railroad in this state engaged in the transportation of live stock, and failing or refusing to comply with the requirements of the foregoing section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars for each day's negligence or refusal to comply therewith; and all moneys so collected as fines shall be paid into the public school funds of the state. [S., '13, § 2157-e.]

8114. Movement of live stock—burden of proof. It is hereby made the duty of all common carriers of freight within this state to move cars of live stock at the highest practicable speed consistent with reasonable safety, and the reasonable movement of its general traffic. The burden of proof that cars of live stock are so moved shall be upon the carrier, and proof that such cars were moved according to schedule or time-table shall not be prima facie evidence that they were moved at the highest practicable speed consistent with reasonable safety. [S., '13, § 2157-s.]

8115. Power to prescribe speed. The power to prescribe speed and determine conditions for the movement of cars of live stock within this state is hereby expressly conferred upon the said board of railroad commissioners. [S., '13, § 2157-t.]

8116. Commissioners to prescribe speed. In order to enforce the duty prescribed in the second preceding section, the board of railroad commissioners shall from time to time investigate the practice of the common carriers with respect to the movement of live stock; and if it ascertains at any time that the common carriers or any of them are not moving cars of live stock with the proper speed, then upon notice to any such common carrier or carriers, the said board shall prescribe the speed at which and the conditions under which cars of live stock shall be moved within this state by any such carrier or carriers. [S., '13, § 2157-t.]

8117. Order—when effective. The order shall specify the time at which it shall go into effect, which shall be as soon as, in the judgment of the board, the carrier or carriers affected can, with reasonable diligence, readjust its or their time-tables. [S., '13, § 2157-t.]

8118. Enforcement. Any order, ruling or regulation made by the board under the four preceding sections shall be enforceable as provided in sections 7883 to 7888, inclusive. [S., '13, § 2157-u.]

8119. Unloading live stock. No railway company in this state, in the carrying or transportation of cattle, sheep, swine, or other animals, shall confine the same in cars for a longer period than twenty-eight consecutive hours, unless delayed by storm or other accidental cause, without unloading for rest, water, and feeding for a period of at least five consecutive hours; provided that upon the written request of the owner or person in custody of that particular shipment, which written request shall be separate and apart from any printed bill of lading, or other railroad form, the time of confinement may be extended to thirty-six hours. [C., '73, § 4032; C., '97, § 4970; 38 G. A., ch. 108, § 1.]

8120. Estimating time. In estimating such confinement, the time the animals have been confined without such rest on connecting railways from which they are received shall be computed, it being the intention of this section to prevent their continuous confinement beyond twenty-eight hours, except upon the contingencies before stated. [C., '73, § 4032; C., '97, § 4970.]

8121. Care of unloaded animals—lien. Animals unloaded for rest, water and feeding shall be properly fed, watered and sheltered during such rest by the owners or persons in custody thereof, or, in case of their default in so doing, then by the railway company transporting them, at the expense of said owners or persons in custody thereof, and said company shall have a lien upon such animals for food, care

and custody furnished, and shall not be liable for any detention of such animals authorized by this section. [C., '73, § 4032; C., '97, § 4970.]

8122. When unloading not required—violations. When such animals shall be carried in cars in which they shall and do have proper food, water, space and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply. Any railway company, owner or custodian of such animals, who shall fail to comply with the provisions of the three preceding sections, shall, for each and every such offense, be liable for and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars. [C., '73, § 4032; C., '97, § 4970.]

CLASSIFICATION AND PASSENGER RATES

8123. Classification of railroads. All railroads of the state shall be classified in accordance with the gross amount of their several annual earnings within the state, per mile, for the preceding year, as follows:

1. Class A shall include those whose gross annual earnings per mile shall be four thousand dollars or more.

2. Class B shall include those whose gross annual earnings per mile shall be three thousand dollars or any sum in excess thereof less than four thousand dollars.

3. Class C shall include those whose gross annual earnings per mile shall be less than three thousand dollars. All steam railroads operating wholly within this state, and not to exceed twenty-five miles in length, shall be included in and classified as class C railroads. [C., '97, §§ 2076, 2077; S., '13, §§ 2076, 2077; 37 G. A., ch. 327, § 1; 40 Ex. G. A., H. F. 190, § 36.]

8124. Basis of classification. In determining the classification of any railroad, the entire railroad property owned or operated by any company shall be considered as a single railroad, and the aggregate gross earnings of the entire railroad within the state shall be divided by the entire mileage owned or operated within the state, to ascertain the gross earnings per mile of such railroad. [S., '13, § 2076; 40 Ex. G. A., H. F. 190, § 37.]

8125. Classification by executive council. The executive council shall at its regular meeting on the second Monday in July in each year classify the different railways, as provided by the two preceding sections, from information as to gross earnings obtained from the annual reports of railways made to the executive council for assessment and taxation, if it shall be satisfied of the correctness of same, or from information obtained by said executive council from any other source, and, when there shall be any change in classification, shall issue a certificate to any corporation or corporations affected by such change, certifying the class to which they are respectively assigned. Any change of rates by any corporation pursuant to any change of classification shall take effect and be in force from and after the date of such

certificate. [C., '97, § 2078; S., '13, § 2078; 40 Ex. G. A., H. F. 190, § 38.]

8126. Passenger rates—limitation. All railroad corporations according to their classifications as herein prescribed shall be limited to compensation per mile for the transportation of any person with ordinary baggage not exceeding one hundred fifty pounds in weight, as follows:

1. Class A, two cents.
2. Class B, two and one-half cents.
3. Class C, three cents.
4. For children twelve years of age or under, one-half the rate above prescribed.
5. Every railroad corporation shall be entitled to charge a fare of not to exceed ten cents for the transportation of each passenger with ordinary baggage for any distance not exceeding five miles.
6. A charge of ten cents may be added to the fare of any passenger when the same is paid upon the cars, if a ticket might have been procured within a reasonable time before the departure of the train, except in those cases where a minimum of ten cents is charged for a distance of less than five miles as above provided. [C., '73, § 1305; C., '97, § 2077; S., '13, § 2077; 40 Ex. G. A., H. F. 190, § 39.]

8127. Free passes and reduced passenger rates prohibited. No common carrier of passengers shall, directly or indirectly, issue, furnish or give free or at reduced rate, any ticket, pass, or other evidence of the right or privilege of transportation to any person, except as provided in the next section; nor shall any person accept or use any free ticket, pass, or other evidence of the right or privilege of transportation, except as in said section provided. The words "free ticket", "free pass", or other evidence of the right or privilege of transportation as used in this section shall include any ticket, pass, contract, permit, or transportation issued, furnished, or given to any person, by any common carrier of passengers, for carriage or passage, for any other consideration than money paid in the usual way at the rate, fare, or charge open to all who desire to purchase. [S., '13, § 2157-f; 40 Ex. G. A., S. F. 197, § 5.]

8128. Exceptions. The persons to whom tickets, free passes, free transportation, or discriminating reduced rates may be issued, furnished, or given, shall be as follows:

1. The railroad commissioners, their secretary and experts or other agents, and the commerce counsel, while engaged in the performance of their respective duties.
2. The general officers of such common carrier.
3. The officers, agents, employees, attorneys, physicians, and surgeons of such common carriers, whose chief and principal occupation is to render service to common carriers of passengers, and to the families of such persons.
4. Sleeping car and express company employees, linemen of telegraph and telephone companies operated in connection with such carriers, railway mail service employees, post-

office inspectors, customs inspectors, immigration inspectors, newsboys on trains, and baggage agents.

5. Persons injured in wrecks and physicians and nurses attending such persons.

6. Persons traveling for the purpose of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation.

7. The necessary caretakers of live stock, vegetables and fruit, including return transportation to forwarding station.

8. The officers, agents or regularly accredited representatives of labor organizations composed wholly of employees of railway companies.

9. Inmates of homes for the reform or rescue of the vicious or unfortunate, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents of such homes.

10. Superannuated and pensioned employees and members of their families, widows of employees who die while in the service of such common carrier, and widows of pensioned employees.

11. Employees crippled and disabled in the service of such common carrier.

12. Mail carriers and firemen and all peace officers (except state policemen and agents of the department of justice) of any city, within the limits of such city, while wearing the insignia of their office.

13. Ministers of religion, traveling secretaries of railroad young men's christian associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work.

14. Indigent, homeless, and destitute persons, while being transported by charitable societies or hospitals, and the necessary agents or employees accompanying such persons.

15. School children to and from public, private, or parochial schools.

16. The state game warden, his car and necessary assistants accompanying the same, when engaged in the performance of official duties.

17. The adjutant general of Iowa for the transportation of officers or enlisted men of the Iowa national guard or other military organization of the state, when traveling under the order of the commander in chief. [C., '97, § 2150; S., '13, § 2157-g; 38 G. A., ch. 174, § 1; 40 Ex. G. A., S. F. 197, § 6.]

8129. Interchange of passes. The provisions of the preceding section shall not prohibit the officers of any railway from interchanging passes and tickets with other railway companies for their officers and employees, or the interchange of passes by railway companies for the persons to whom free tickets, passes, or transportation may lawfully be given or furnished, nor to invalidate any existing contract between a street railway company and a city where a condition of any franchise granted

requires the furnishing of transportation to policemen, firemen, and city officers, while in the performance of their duties. [C., '97, § 2150; S., '13, § 2157-g; 40 Ex. G. A., S. F. 197, § 7.]

8130. Burden of proof. In any prosecution wherein it is charged that a free ticket, pass, or transportation was wrongfully issued or given to or accepted by a physician, surgeon, attorney, agent or employee of a common carrier, the burden of proof shall be upon the defendant to prove the amount and character of the service rendered or to be rendered. [S., '13, § 2157-g; 40 Ex. G. A., S. F. 197, § 8.]

8131. Violations. Any common carrier, its officer, agent or representative, violating any of the provisions of the four preceding sections shall be fined in a sum not less than one hundred dollars and not more than ten hundred dollars for each offense, or in the discretion of the court shall be imprisoned in the county jail for not less than thirty and not more than ninety days; and any person other than the persons excepted in sections 8128 and 8129 who accepts or uses any free ticket, free pass, or free transportation for carriage or passage within this state shall be subject to a like penalty. [S., '13, § 2157-i.]

8132. Names of free pass beneficiaries reported. Every common carrier of passengers within the provisions of the five preceding sections shall on or before the first day of February of each year, file with the executive council a sworn statement showing the names of all persons within this state to whom, during the preceding calendar year, it issued, furnished, or gave a free ticket, free pass, free transportation, or a discriminating reduced rate, except wage earners of common carriers in their ordinary employment and families of such wage earners, and disclosing such further information as will enable the council to determine whether the person to whom it was issued was within the exception of said provisions. [S., '13, § 2157-j.]

8133. Passenger tickets—redemption—time limit. It shall be the duty of every railroad company, corporation, person, or persons acting as common carriers of passengers in the state to provide for the redemption, at the place of purchase and at the general passenger agent's office of said carrier, of the whole or any integral part of any passenger ticket or tickets that such carrier may have sold, as the purchaser or owner has not used for passage or received transportation for which such ticket should have been surrendered; and said carrier shall there redeem the same at a rate which shall equal the difference between the price paid for the whole ticket and the cost of a ticket between the points for which said ticket has been actually used, and no carrier shall limit the time in which redemption shall be made to less than ten days from date of sale at the place of purchase and six months from date of sale at general passenger agent's office. [S., '13, § 2128-a.]

8134. Notice as to limitation and transferability. No railroad company, corporation, person, or persons doing business in the state, as common carrier of passengers, whose rate of fare is regulated by statute of this state, shall sell or issue to any person, at the maximum rate allowed by law, any ticket or tickets bearing any condition of limitation as to the time of use, or as to transferability, without first providing for the redemption of said ticket, as directed by the preceding section, and also having notice of such provision and privilege of redemption conspicuously posted at each place where sales of tickets are made by such common carriers in this state. A failure to provide for the redemption of such ticket or to give notice as above provided shall make all conditions and limitations as to time of use or transferability of no force or effect. [S., '13, § 2128-b.]

8135. Violations. Any railroad company, corporation, person, or persons, who as common carriers shall sell or issue tickets as set forth in the preceding sections, and shall refuse or neglect to redeem the same, as by said sections provided, within ten days of date of demand, shall forfeit and pay to the owner of such ticket the purchase price of said ticket, and the further sum of one hundred dollars. [S., '13, § 2128-c.]

8136. Mileage books. Nothing in the three preceding sections shall prohibit the sale of mileage books or tickets, at less than the maximum rates allowed by law, bearing reasonable conditions of limitation, as to the right of use for passage. [S., '13, § 2128-d.]

WEIGHING OF COAL

8137. Coal in car lots. Every person, firm, or corporation engaged in operating any railroad within the state shall equip the line of its track and thereafter maintain thereon in good order, track scales of sufficient capacity to weigh all carloads of coal that may be transported over the said railroad, and shall weigh the same at the request of any owner, consignor or consignee of such commodities, and furnish written certificates of such weights to such owner, consignor or consignee as hereinafter provided. Such track scales shall be so installed and maintained at all division stations along the line of such railroads within the state, and at such other stations as the board of railroad commissioners shall from time to time direct. [S., '13, § 2157-l.]

8138. Where weighed—bills of lading. Every person, firm, or corporation engaged in operating any railroad within the state over which coal in carload lots shall be transported for hire, shall weigh such coal at point where such shipment originates unless covered by weight agreement between consignor and railway company, provided such point is equipped with track scales. If not so equipped, it shall be weighed at first practicable point en route where track scales are provided. Said person, firm, or corporation shall furnish to said ship-

per a bill of lading showing date and place weighed, also the gross, tare and net weights for each carload of coal so weighed. The tare weight shall be determined by using actual weight of empty car at loading station, provided track scales are maintained at such point. [S., '13, § 2157-m.]

8139. Weight at destination—fee. Such coal shall be weighed at destination upon request of consignee when there are track scales at such point. If not equipped with track scales at such point, then at nearest practicable point en route where such scales are maintained, and certificate of weight, showing actual gross, tare and net weights, shall be furnished to consignee and settlement of freight charges based on these weights. A reasonable charge of not more than one dollar per car may be made for such weighing on request. [S., '13, § 2157-n.]

8140. How weighed. Cars when weighed on track scales shall be uncoupled, clear and unhampered at both ends, carefully weighed by competent weighmen and certificates issued upon request of consignees, showing gross, tare and net weights. [S., '13, § 2157-o.]

8141. Prima facie evidence. Certificates mentioned in the preceding sections shall be prima facie evidence of the facts therein recited in any action arising between consignors and consignees and common carriers. [S., '13, § 2157-p.]

8142. Violation—penalty. Any common carrier operating in this state violating any of the provisions of the five preceding sections by neglecting or refusing to weigh cars or to furnish certificates of weights as therein provided shall be guilty of a misdemeanor and shall be, upon conviction thereof, fined in the sum of not more than one hundred twenty-five dollars for each and every violation. [S., '13, § 2157-q.]

APPROPRIATION OF FUEL

8143. Fuel in transit. It shall be unlawful for any common carrier doing business in this state, or any director, officer, receiver, trustee, agent or employee, acting for or employed by such common carrier, to take, use, divert or appropriate, any coal, coke, or oil received for shipment, without having obtained written consent of the state railroad commission as hereinafter provided. [39 G. A., ch. 285, § 1.]

8144. Application for permission. Whenever it appears to a corporation operating a common carrier that it does not have a sufficient supply of fuel to adequately operate its motive power for thirty days next ensuing, an application in writing, duly verified by its proper officer or employee in charge of motive power, setting forth the amount of fuel on hand, and the amount of fuel needed for that specific purpose, for the next thirty days, and that said corporation does not have sufficient fuel in transit, or is unable to obtain a sufficient supply of fuel, and that unless permitted to

take fuel in transit, the operation of its motive power will be materially lessened, and to be supplemented by such other facts and showing as may be required by said railroad commission, may in the discretion of such commission be permitted by written order to take and use such fuel in transit for the period, and in such amount as shall by such commission be deemed reasonable or adequate. [39 G. A., ch. 285, § 2.]

8145. Modification of orders. The railroad commission in its discretion may modify or annul any order or orders made, without notice or additional showings. [39 G. A., ch. 285, § 3.]

8146. State or public utility as consignee. Fuel consigned to the state, or to a person, firm, or corporation operating a public utility, shall not be included in any order made by the railroad commission. [39 G. A., ch. 285, § 4.]

8147. Notice of application. The commission in its discretion may require notice to be served upon the owner of fuel sought to be taken by virtue hereof, the manner and form of such notice, and the time and place of the hearing, to be fixed by said commission. [39 G. A., ch. 285, § 5.]

8148. Notification of owner—payment. Whenever a common carrier is permitted to take fuel in transit by order of the railroad commission, it shall be the duty of the common carrier to promptly notify the owner of such taking and the owner thereof may, at his option, accept as payment therefor, the full value of such fuel, plus twenty per cent of such value, to be promptly paid by such carrier; but if the owner does not so elect, nothing herein shall be construed to affect any other right or remedy. [39 G. A., ch. 285, § 6.]

8149. Violations. Any common carrier subject to the provisions of the six preceding sections, or any director or officer thereof, or any receiver, trustee, lessee, agent or employee, who alone, or with any other director, officer, receiver, trustee, lessee, agent or employee, shall wilfully take, use, divert, or appropriate, any coal, coke, or oil, or suffer or permit the same to be taken, shall be guilty of a misdemeanor, and upon conviction thereof, be fined not more than five thousand dollars, nor less than five hundred dollars for each offense. [39 G. A., ch. 285, § 7.]

ADJUSTMENT OF CLAIMS

8150. Time limit for adjustment. Every claim for loss of or damage to property while in the possession of any common carrier, or for delay in delivering freight or baggage or express, or for a charge in excess of the legal and regular charge for the service rendered, shall be adjusted and paid within forty days in case of shipments wholly within this state, and within ninety days in case of shipments from without the state after the filing of such

claim with the agent or agent's carrier at the point of origin or of destination of each shipment; but no such claim shall be filed until after the arrival of the shipment or of some part thereof at the point of destination or until after the lapse of a reasonable time for the arrival thereof; and if such claim is not filed within sixty days from the time it accrues, the penalty provided in the following section shall not apply. [S., '13, § 2074-c; 37 G. A., ch. 399, § 1.]

8151. Failure to adjust. Failure to adjust and pay such claim, within the period herein prescribed shall subject the common carrier, so failing, to the penalty of a sum which in amount shall be equal to the amount of the claim originally filed; but it shall in no case be less than twenty-five dollars or more than one hundred dollars for each and every failure, to be recovered by the party aggrieved in any court of competent jurisdiction; and said claim shall be filed in proper form, including such information possessed by the claimant as will aid in establishing his claim. The penalty shall not apply unless the claimant shall recover the full amount claimed by him, nor when the claim exceeds five hundred dollars. [S., '13, § 2074-d.]

8152. No division of claims. The claimant shall not be permitted under this chapter to divide his claims arising from loss, damage, or injury to one shipment or consignment of goods, but only one claim within the meaning of this and the two preceding sections shall be filed for one shipment. [S., '13, § 2074-e.]

TERMINATING CARRIER'S LIABILITY

8153. Notice of arrival of shipment. All companies, corporations, or individuals that now, or hereafter, may own or operate any railroads, in whole or in part, in the state, and all persons, firms, or companies, and all associations of persons, whether incorporated or not, that shall do business as a common carrier upon any of the lines of railway in this state, shall be and remain liable as a common carrier upon all less than carload shipments until the consignee shall be notified of the arrival of the shipment and has reasonable time and opportunity to receive same. [S. S., '15, § 2074-f.]

8154. Notice prescribed. A deposit in the United States postoffice or public mailing box of a written notice addressed to the consignee at the address given upon the bill of lading will constitute service of the notice required by the preceding section, and forty-eight hours from the date of the mailing of such notice shall be a reasonable time in which to receive said shipment. [S. S., '15, § 2074-f.]

8155. Exceptions. The provisions of the two preceding sections shall not apply to shipments to stations or platforms where no agent is regularly employed. [S. S., '15, § 2074-f.]

NEGLIGENCE OF EMPLOYEES

8156. Liability for negligence of employees. Every corporation operating a railway shall be liable for all damages sustained by any person, including employees of such corporation, in consequence of the neglect of the agents, or by any mismanagement of the engineers, or other employees thereof, and in consequence of the wilful wrongs, whether of commission or omission, of such agents, engineers, or other employees, when such wrongs are in any manner connected with the use and operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding. [C., '73, § 1307; C., '97, § 2071; S., '13, § 2071; 40 Ex. G. A., H. F. 194, § 1.]

8157. Relief or indemnity contract. No contract of insurance, relief, benefit, or indemnity in case of injury or death, entered into prior to the injury, between the person so injured and such corporation, or any other person or association acting for such corporation, and no acceptance of any such insurance, relief, benefit, or indemnity by the person injured, his widow, heirs, or legal representatives after the injury, from such corporation, person, or association, shall constitute any bar or defense to any cause of action brought under the provisions of the preceding section; but nothing contained herein shall be construed to prevent or invalidate any settlement for damages between the parties subsequent to injuries received. [S., '13, § 2071; 40 Ex. G. A., H. F. 194, § 2.]

8158. Contributory and comparative negligence. In all actions brought against any railway corporation to recover damages for the personal injury or death of any employee under or by virtue of any of the provisions of the second preceding section, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery; but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. [S., '13, § 2071; 40 Ex. G. A., H. F. 194, § 3.]

8159. Unallowable pleas. No such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier or corporation of any statute enacted for the safety of employees contributed to the injury or death of such employee; nor shall it be any defense to such action that the employee who was injured or killed assumed the risks of his employment. [S., '13, § 2071; 40 Ex. G. A., H. F. 194, § 3.]

8160. Damages by fire. Any corporation operating a railway shall be liable for all damages sustained by any person on account of loss of or injury to his property occasioned by fire set out or caused by the operation of such railway. Such damages may be recovered by the party injured in the manner set out in section 8005, and to the same extent. [C., '73, § 1289; C., '97, § 2056.]

8161. Baggage—liability. Omnibus and transfer companies or other common carriers, and their agents, shall be liable for damages occasioned to baggage or other property belonging to travelers through careless or negligent handling while in the possession of said

companies or carriers, and, in addition to the damages, the plaintiff shall be entitled to a allowance of not less than five dollars for every day's detention caused thereby, or by action brought to recover the same. [C., '73, § 2183; C., '97, § 3135.]

CHAPTER 374

RELOCATION OF LINE

8162. Petition.
8163. Notice.
8164. Conditions.
8165. Order of court.

8166. Effect.
8167. Notice to township trustees—vested rights.
8168. Cuts and banks.

8162. Petition. Any railroad desiring to change or remove the line of its road, after the same has been permanently located and constructed, may file a petition in the district court in any county wherein the change or removal is proposed to be made, describing with reasonable accuracy that portion of its line which it seeks to have changed or removed, and asking the court to grant authority to make such change or removal. All trustees, mortgagees, and other lienholders, and all townships, cities, and counties which have aided by taxation to build the road, must be made defendants and served with notice as in other actions. [C., '97, § 2092.]

8163. Notice. A public notice to all whom it may concern of the time of filing such petition, the object thereof, and the term of court at which the application will be made for authority to make the change, and requiring all persons desiring the repayment of money or return of property, as in this chapter provided, to appear and present their claims therefor, must be published in a newspaper printed in each county in which the change is to be made, once each week, for a period of ten successive weeks before the term of court at which the application is to be heard. The court may order any additional notice or publication that it may think proper. [C., '97, § 2093; S., '13, § 2093.]

8164. Conditions. No railway company shall be allowed to change or remove its line of road, after a permanent location and construction, without repaying all moneys, and restoring all property, or its value, which were donated to the company building the same exclusively in consideration of said railroads being located and constructed on such line, to the parties donating the same, their heirs, or assigns, nor without first procuring the consent of all parties having liens upon the railroad, and of any township, city, or county that by taxation or by the issuing of bonds has contributed money to aid in the construction thereof; but the consent of such township, city,

or county shall be necessary only with reference to the change to be made within its own territorial limits. [C., '97, § 2094.]

8165. Order of court. If the court finds that notice has been given, and the consent of the proper parties has been obtained, it shall ascertain the amount of money or property contributed to the company by any person or party thereto or appearing therein that was so contributed exclusively in consideration that the road should be located on the line from which it is proposed to remove it, which shall be repaid in case of money, and returned if property, or its value fixed, and in either case shall render judgment therefor, and may also enter a decree authorizing, if the public interest demands it, the removal of or change in the line of said road upon condition that all judgments above provided for be first paid or satisfied, and foreclosing all persons or parties not appearing in the action, and forever barring them from asserting any claim against such company on account of the contributions or donations herein mentioned. [C., '97, § 2095.]

8166. Effect. All mortgage liens or other incumbrances on the line of road which the company is authorized by the court to change shall attach to the line to which said road is removed, and have the same priority over other liens that they held on the original line. [C., '97, § 2096.]

8167. Notice to township trustees—vested rights. For the purpose of this chapter, the trustees of each township shall be served with notice and shall represent and act for it. No vested right of any person or persons living on and along the line of any railroad thus removed shall be defeated or affected by the removal. [C., '97, § 2097.]

8168. Cuts and banks. When any railway company shall take up its track and relocate the same under the provisions of this chapter, it shall within two years therefrom fill up the cuts and level down the banks, or cause the same to be done. [C., '97, § 2098.]

CHAPTER 375

PRIVATE BUILDINGS AND SPUR TRACKS

8169. Buildings on railroad lands.
 8170. Destruction of buildings.
 8171. Spur tracks.
 8172. Cost of construction.

8173. Bond for construction.
 8174. Costs in excess of deposit.
 8175. Failure of company to act.
 8176. Connections with original spurs.

8169. Buildings on railroad lands. When a disagreement arises between a railroad company and the owner of any building used for receiving, storing, or manufacturing any article of commerce transported or to be transported, situated on the railroad right of way or any land owned or controlled by the railroad company for railroad purposes, as to the terms and conditions on which the same is to be continued thereon or removed therefrom, or when application is made by any person, firm, or corporation for a site on such lands for the erection and maintenance of such improvements, and the railway company and the applicant can not agree as to whether such improvement shall be placed on such lands, or as to the character and location of the buildings to be erected and maintained thereon, or as to the terms and conditions under which the same may be placed or operated, such railway company, person, firm, or corporation may make written application to the board of railroad commissioners and such board shall, as speedily as possible after the filing of such application, hear and determine such controversy and make such order in relation thereto as shall be just and equitable between the parties, which order shall be enforced in the same manner as other orders of the board. [S., '13, § 2110-; 40 Ex. G. A., H. F. 190, § 42.]

8170. Destruction of buildings. In the event that any building referred to in the preceding section, situated on the right of way or other land of a railroad company used for railway purposes, shall be injured or destroyed by the negligence of the railroad company, or the servants or agents thereof in the conduct of the business of such company, the railroad company causing such injury or destruction shall be liable therefor to the same extent as if such building used for said purposes was not situated on the right of way or other land of such railroad company used for railway purposes, any provision in any lease or contract to the contrary notwithstanding. [S., '13, § 2110-m; 40 Ex. G. A., H. F. 190, § 43.]

8171. Spur tracks. Every railroad, whether operated by steam or electricity, shall acquire the necessary rights of way for, by condemnation or purchase, and shall construct, connect, and operate and maintain a reasonably ade-

quate and suitable spur track, whenever such spur track does not necessarily exceed three miles in length, and is required for the successful operation of any existing or proposed mill, elevator, storehouse, warehouse, dock, wharf, pier, manufacturing establishment, lumber yard, coal dock, or other industry or enterprise, and its construction and operation is not unusually unsafe and dangerous, and is not unreasonably harmful to public interest. No such track is required to be constructed until, or if hereafter constructed need not be maintained unless, the board of railroad commissioners, after hearing, shall have declared the same to be necessary. [39 G. A., ch. 86, § 1; 40 Ex. G. A., H. F. 190, § 44.]

8172. Cost of construction. Such railroad company may require the person or persons, firm, corporation, or association primarily to be served thereby to pay the legitimate cost and expense of acquiring, by condemnation or purchase, the necessary right of way for such spur track and of constructing the same as shall be determined in separate items by the board of railroad commissioners. Except as in the next section provided, the total estimated cost thereof as ascertained by said board shall be deposited with the railroad company before it shall be required to incur any expense whatsoever therefor. [39 G. A., ch. 86, § 2; 40 Ex. G. A., H. F. 190, § 45.]

8173. Bond for construction. When the total estimated cost has been ascertained by the board such person, firm, corporation, or association shall have the option to either deposit said amount with the railroad company or to file with such company its written election to build and construct such spur track accompanied by a good and sufficient surety company bond running to such railroad company and conditioned upon the construction of such spur track in a good and workmanlike manner according to plans and specifications furnished by such railroad company and approved by the commission. If such person, firm, corporation, or association so elects to build such spur track it shall only be required to deposit with such railroad company the estimated cost of the necessary right of way for such spur track as ascertained by the commission, and the total amount stated in such written election. [39 G. A., ch. 86, § 2; 40 Ex. G. A., H. F. 190, § 46.]

8174. Costs in excess of deposit. In any event before the railroad company shall be required to incur any expense whatever in the construction of such spur track the person, firm, corporation, or association primarily to be served thereby shall give the railroad company a bond to be approved by the commissioners as to form, amount, and surety, securing the railroad company against loss on account of any expense incurred beyond the amount so deposited with the railroad company. [39 G. A., ch. 86, § 2; 40 Ex. G. A., H. F. 190, § 47.]

8175. Failure of company to act. In case of failure, neglect, or refusal of any railroad company to comply with any of the provisions of the three preceding sections, the person, firm, corporation, or association primarily to be served thereby may file a complaint with the board of railroad commissioners setting forth the facts upon which such grievance is based. The said commissioners after reasonable notice to the railroad company shall investigate and determine all matters in controversy and make such order as the facts in relation thereto will warrant. Any such order shall have the same force and effect as other orders made by said board in other proceedings within

its jurisdiction and shall be enforced in the same manner. [39 G. A., ch. 86, § 4; 40 Ex. G. A., H. F. 190, § 48.]

8176. Connections with original spurs. Whenever such spur track is so connected with the main line, as provided in this chapter, at the expense of the owner of such proposed or existing mill, elevator, storehouse, dock, wharf, pier, manufacturing establishment, and any person, firm, corporation, or association shall desire a connection with such spur track, application therefor shall be made to the commission, and such person, firm, corporation, or association shall be required to pay to the person, firm, corporation, or association that shall have paid or contributed to the primary cost and expense of acquiring the right of way for such original spur track, and of constructing the same, an equitable proportion thereof, to be determined by the commission, upon such application and notice, to the persons, firms, corporations, or associations that have paid or contributed towards the original cost and expense of acquiring the right of way and constructing the same. [39 G. A., ch. 86, § 3; 40 Ex. G. A., H. F. 190, § 49.]

CHAPTER 376

UNION DEPOTS

8177. Corporations authorized.
8178. Eminent domain.

8177. Corporations authorized. Any number of persons or railway corporations, or both persons and railway corporations, may form a body corporate under the laws of this state relating to corporations for pecuniary profit, for the purpose of acquiring, establishing, constructing, and maintaining at any place in the state union station houses or depots for freight or passengers, or both, with necessary offices for express, baggage, or postal rooms in the same or separate buildings, and railroad tracks and other appurtenances of such depots. Any railroad company operating a road in the state, or interested therein, whether organized under its laws or elsewhere, may become a stockholder in such corporation. A copy of the by-laws, if any are adopted, shall be posted in the passenger or waiting rooms of the depot and in the office of the company. [C., '97, § 2099.]

8178. Eminent domain. Every corporation formed under the provisions of the preceding section shall have power to take and hold, for the purposes therein mentioned, such real estate as may be found necessary by the railroad commissioners for the location of its depot and approaches, which it may acquire by purchase or condemnation as provided for the taking of private property for works of internal improvement. [C., '97, § 2100.]

8179. Connecting tracks.
8180. Liability for damages.

8179. Connecting tracks. Such corporations, with the consent of the council of any city or town in which any such depot is located, shall have the right to lay its tracks to make necessary connection with all railways desiring to use such depot, upon the streets or alleys of such city or town, and, by and with the consent of the council, may erect such depot upon or across any street or alley; but no railway track can thus be located, nor can any such depot be so erected, until after the injury to property abutting upon the streets or alleys thus appropriated has been ascertained and paid in the manner provided for taking private property for works of internal improvement. [C., '97, § 2101.]

8180. Liability for damages. Nothing in this chapter contained, or in the articles of incorporation or by-laws of such corporation, shall release the railroad companies using such union depots, tracks, or appurtenances from the same liability for all damages on account of injuries to persons, stock, baggage, or freight, or for the loss of baggage or freight in or about such union depot grounds, as they would be under if said depot tracks and appurtenances belonged to and were operated by the railway companies using the same. [C., '97, § 2102.]

CHAPTER 377

TAX AID

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| <p>8181. Tax aid authorized.
 8182. Requisites for petition.
 8183. Exception—approval by board.
 8184. Filing of petition.
 8185. Proceedings on petition.
 8186. Form of notice.
 8187. Manner of giving notice.
 8188. Form of ballot.
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 8195. Money paid out—certificate.
 8196. Certificates exchangeable for stock or bonds
 —exception.
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 8198. Forfeiture of tax.
 8199. Taxes paid in labor or supplies.
 8200. Trolley or electric railways.</p> |
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8181. Tax aid authorized. The qualified voters of the following named districts may file a petition under the conditions hereinafter specified to vote taxes not exceeding five per cent on the assessed value of the real property within the district for any of the following purposes:

1. To aid any railway incorporated under the laws of this state in constructing a projected steam railway into, through, or along a district composed of a township, a town, or a city.

2. To aid in the construction of a projected electric railroad or in electrifying an existing steam railroad into, through, or along a district contiguous to and within five miles of such railroad.

3. To aid in the construction of a proposed railroad or in reconstruction, improvement, repair, or maintenance of a railroad heretofore constructed, the operation of which has been abandoned, into, through, or along a district contiguous to and within a distance not to exceed two and one-half miles from the center line of the right of way thereof measured at right angles thereto. [C., '97, §§ 2084, 2086; S., '13, §§ 2084, 2086, 2091-b; 38 G. A., ch. 328, § 1; 40 Ex. G. A., H. F. 192, § 1.]

8182. Requisites for petition. The petition shall show:

1. The name and the location of the principal office of the company to be aided.

2. For which of the purposes stated in the preceding section it is proposed to vote the taxes.

3. The rate of tax proposed and the number of years not exceeding five in which it shall be levied and paid in equal installments.

4. The location of the line of railway for which it is proposed to vote the tax.

5. The limits of the proposed district and the county or counties in which the same is located.

6. The amount of work required to be done and when and where the same shall be done before any of the tax shall be payable.

7. Any other conditions which shall be performed before any part of the tax shall be payable.

8. The signatures of a majority of the resident freehold taxpayers of the proposed district; except that in cities of any form of government having a population of twenty-five thousand or over, not more than two thousand such signatures shall be required. [C., '97, § 2085; S., '13, §§ 2085, 2091-c; 38 G. A., ch. 328, § 2; 40 Ex. G. A., H. F. 192, § 2.]

8183. Exception—approval by board. No tax shall be levied to aid in the electrification of any steam railway for the benefit of any person, firm, or individual, who is not the owner in fee simple of said steam railway, unless with or prior to the presentation of the petition to the board of supervisors asking for said election, the agreement between the person, firm, or corporation proposing to electrify said steam railway and the owner of said steam railway, for its electrification and use, has been presented to the board of railroad commissioners, and its duration, terms, and conditions found suitable by said board, and said approval made a matter of record in the proceedings of said board, and certified to such board of supervisors. [S., '13, § 2091-e; 40 Ex. G. A., H. F. 192, § 3.]

8184. Filing of petition. Said petition shall be filed in the office of the auditor of the county in which the district is wholly located or of the county in which the greater acreage of the proposed district is located. [C., '97, § 2085; S., '13, §§ 2085, 2091-c; 38 G. A., ch. 328, § 2; 40 Ex. G. A., H. F. 192, § 4.]

8185. Proceedings on petition. At its next regular adjourned or special session after such petition is filed, the board of supervisors shall canvass the petition, and if found to meet the requirements of law, it shall fix a time and place for holding a special election in the proposed district, appoint judges and clerks of such election, fix the hours when the polls shall open and close and cause notice to be given as

hereinafter provided. The date of such election shall be at least ten days after completed service of such notice.

The railroad company for whose benefit such election is held shall pay the expense thereof, including publication of notice and printing of ballots. [C., '97, § 2085; S., '13, §§ 2085, 2091-c; 38 G. A., ch. 328, § 2; 40 Ex. G. A., H. F. 192, § 5.]

8186. Form of notice. The notice shall be addressed to the qualified electors of the township, city, town, district, or territory in which the election is to be held and shall state:

1. The time and place of holding such election and the hours at which the polls will open and close.

2. The name and location of the principal office of the corporation to which it is proposed to vote the tax.

3. The purpose for which it is proposed to vote such tax.

4. The rate of such tax, the installments into which it shall be divided, the years in which it is payable, and the rate of interest on deferred payments.

5. The amount of work to be done, or any other conditions to be performed before the tax is payable.

6. From what point to what point the improvement shall extend and within what time it is to be completed.

7. Any other special conditions set forth in the petition. [C., '97, § 2085; S., '13, §§ 2085, 2091-c; 38 G. A., ch. 328, § 2; 40 Ex. G. A., H. F. 192, § 6.]

8187. Manner of giving notice. The auditor shall cause such notice to be published for three consecutive weeks in the official newspapers of each county in which the election is to be held, and if in a district or territory extending into more than one county, then the official newspapers of each of such counties, and the last publication shall be not less than ten days before such election. Proof of such publication, by affidavit of the publisher, shall be filed with the auditor on completion of the publication.

The auditor shall also cause such notice to be posted in five public places in the proposed district, not less than ten days before the date of the election, and proof of such posting by affidavit of the parties who did or saw it done, shall be filed in the office of the auditor. [C., '97, § 2085; S., '13, §§ 2085, 2091-c; 38 G. A., ch. 328, § 2; 40 Ex. G. A., H. F. 192, § 7.]

8188. Form of ballot. The auditor shall cause to be prepared and printed the ballots for such election on which shall be plainly stated the proposition to be voted upon, placed in interrogatory form with the words "yes" and "no" so arranged as to enable the voter to clearly indicate his vote for or against such proposition, which ballots shall be delivered to the judges of election by the time the polls are open. [C., '97, § 2085; S., '13, §§ 2085, 2091-c; 38 G. A., ch. 328, § 2; 40 Ex. G. A., H. F. 192, § 8.]

8189. Election returns. The judges and clerks shall count the ballots cast as soon as the polls close and certify and file the returns, with all the ballots cast, in the office of the auditor. [C., '97, § 2085; S., '13, §§ 2085, 2091-c; 38 G. A., ch. 328, § 2; 40 Ex. G. A., H. F. 192, § 9.]

8190. Canvass of returns. On the filing of the returns, the board shall convene and canvass the same and certify the result to the auditor. If a majority of the votes cast are in favor of such taxes, the board shall, at the time of levying the ordinary taxes next following, levy such taxes as are voted and cause the same to be placed on the tax lists of the proper township, city, town, or district as the case may be. [C., '97, § 2085; S., '13, §§ 2085, 2091-c; 38 G. A., ch. 328, § 2; 40 Ex. G. A., H. F. 192, § 10.]

8191. District in more than one county. If the district or territory in which taxes are voted extends into more than one county, the auditor in whose office the returns are filed shall make and certify a copy of such returns and file the same in the office of the auditor of every other county into which the district extends. The board of supervisors of such other counties shall levy the tax upon the real estate in the portion of the district located in such county and cause such tax to be entered upon the tax list of such county. [C., '97, § 2085; S., '13, § 2085; 38 G. A., ch. 328, § 2; 40 Ex. G. A., H. F. 192, § 11.]

8192. Terms and conditions entered. In all cases where a tax has been voted and levied in aid of a railroad there shall be entered upon the tax lists of the county all the terms and conditions upon which such taxes are payable. [C., '97, § 2085; S., '13, §§ 2085, 2091-c; 40 Ex. G. A., H. F. 192, § 12.]

8193. Collection of special tax. Special taxes voted for any of the purposes aforesaid, shall be collected at the same time and in the same manner as other taxes, with the same penalties for delinquency and the same manner of enforcing collection by sale as ordinary taxes. When collected they shall be kept in a separate fund and paid out only for the purposes for which and on the terms and conditions upon which they were voted, all of which shall be shown by the records and files of the auditor's office relating thereto. [C., '97, § 2085; S., '13, §§ 2085, 2091-c; 38 G. A., ch. 328, § 2; 40 Ex. G. A., H. F. 192, § 13.]

8194. Limitation. The aggregate amount of taxes on property in aid of railroads shall not during any ten years exceed five per cent on the value thereof. [C., '97, § 2086; S., '13, §§ 2086, 2091-f; 38 G. A., ch. 328, § 4; 40 Ex. G. A., H. F. 192, § 14.]

8195. Money paid out—certificate. The moneys collected under the provisions of this chapter shall be paid out by the county treasurer to the treasurer of the railway company for whom the same was voted, upon the orders

of the president or managing director thereof, at any time after the trustees of such township or council of such town or city voting the same, or a majority thereof, shall have certified to the county treasurer that the conditions required of the railway company and set forth in the notice for the special election have been complied with, which certificate said township trustees or council of such town or city shall make when conditions have been sufficiently complied with to entitle the railway company thereto, or when the conditions are fully complied with on the part of the railway company; but if the costs and expenses of holding the election and of recording the certificates have not been paid, then the treasurer shall first deduct from the moneys collected the amount thereof, and pay same to the parties entitled thereto. [C., '97, § 2087.]

8196. Certificates exchangeable for stock or bonds — exception. The county treasurer, when required, shall, in addition to a tax receipt, issue to each taxpayer, on the payment of any taxes voted under the provisions of this chapter, a certificate showing the amount of tax paid, the name of the railway company entitled thereto, and when the same was paid; and he may charge twenty-five cents for each certificate issued. Said certificates shall be assignable, and, when presented by any person holding the legal title thereto to the president, managing director, treasurer, or secretary of the railroad company receiving the taxes paid, as shown by such certificates, in sums of one hundred dollars or more of taxes, it shall issue or cause to be issued to said person the amount of stock of the company desiring the benefit from said taxes, to the amount of said certificate or certificates, and if the taxes paid as shown by said certificate or certificates amount in the aggregate to more or less than any certain number of shares of stock, then the holder thereof shall be entitled to receive the full number of shares of stock covered by said certificates, and may make up in money the balance of any share when the certificates held by him are not equal to one full share of such stock, which stock for such purpose shall be estimated at par. When it shall be proposed in the petition and notice calling an election to issue first mortgage bonds not exceeding the sum of eight thousand dollars per mile for a railroad of three feet gauge, and not exceeding the sum of eighteen thousand five hundred dollars per mile for the ordinary four feet eight and one-half inch gauge in lieu of stock, it shall be lawful to issue bonds of the denomination of one hundred dollars in the same manner as is provided for the issue of stock, and in such case the petition and notice shall state the amount of bonds per mile to be issued, the rate of interest, and the time of payment of the interest and principal thereof; but the provisions of this section shall not be applicable to taxes that are voted and paid in aid of the construction of railroads that are interurban in character. [C., '97, § 2088; S., '13, § 2088.]

8197. Liability of directors. The board of directors of any railway company receiving taxes voted in aid thereof under the provisions of this chapter, or any member thereof, who shall vote to bond, mortgage, or in any manner incumber said road to an amount exceeding the sum of eight thousand dollars per mile for a railroad of three feet gauge, or exceeding the sum of eighteen thousand five hundred dollars per mile for the ordinary four feet eight and one-half inch gauge, not including in either case any debt for ordinary operating expenses, shall be liable to the stockholders or either of them for double the amount, estimated at its par value, of the stock by him held, if the same should be rendered of less value or lost thereby. [C., '97, § 2089.]

8198. Forfeiture of tax. Should the taxes voted in aid of any railroad under the provisions of this chapter remain in the county treasury for more than one year after the same have been collected, the right to them by the railroad company shall be forfeited, and the persons who paid the same entitled to receive back from the county treasurer their pro rata shares thereof remaining; and in all cases where any taxes have been voted or levied upon the real or personal property in any township, town, or city to aid in the construction of any railroad, and the road in aid of which they were voted or levied has not been built, completed, or operated into or through such township, town, or city, it shall be the duty of the board of supervisors of the county where said taxes have been voted and levied and still remain on the tax books to give the railway company in aid of which the tax was voted at least thirty days' notice in writing, to be served like original notices, of their intention to cancel such taxes, and thereupon to cause the same to be canceled and stricken from the tax books of the county, which cancellation shall remove all liens created by the levy thereof.

In all cases where the railway company to whom taxes have been voted neglects or refuses to receive such taxes, or to require or permit the same to be collected and certificates therefor to be issued, for the period of one year after they become due and collectible, and in all cases where taxes have been voted in aid of any railroad, and the conditions upon which the same were voted have not in fact been complied with, and the time in which said conditions were to be fulfilled has expired, the same shall be forfeited, and the county officers of the county in which they have been levied and entered upon the tax books shall enter cancellation thereof upon the proper records.

In all cases where any taxes to aid in the construction of any railroad may be voted upon the inducement or promise offered on the part of said railroad company, or any duly authorized agent thereof, for any rebates or exemptions from said tax or any part thereof, or any agreed price to be paid for the stock that may be issued in lieu of said tax, or a division of said tax, or any portion or percentage thereof, with any of the voters or tax-

payers as an inducement to procure said tax to be voted, all taxes so procured to be voted shall be void. [C., '97, § 2090.]

8199. Taxes paid in labor or supplies. Nothing contained in this chapter shall preclude any taxpayer who may contract with a railroad company for which taxes may be voted to pay his tax, or any part thereof, in labor upon the line of said railroad, or in material for its construction, or supplies furnished or money paid for the construction thereof, in pursuance of the terms and conditions stipulated in the notices of election, in lieu of a payment to the county treasurer. Upon presenting to the county treasurer a receipt from such railroad company or its duly authorized agent, specifying the amount of such payment, the same shall be credited by the treasurer on his tax, with the same effect as though paid to him in money, and when such receipts have been presented and credited they shall have the same

validity in his settlement with the board of supervisors as the orders from the railroad company provided for in this chapter. Laborers shall have a lien upon any tax voted in aid of a railroad company for the amount due them for labor performed in the construction of said railroad. [C., '97, § 2091.]

8200. Trolley or electric railways. All of the provisions of this chapter relating to tax in aid of railways are hereby made applicable to trolley or electric railways. And wherever the word "railroad" appears in any of said provisions the same shall be held to include trolley or electric railroad; and wherever the words "railroad company" or "railway company" appear in said provisions the same shall be held to include trolley railway company, and electric railway company; no stock shall be issued by any such company except upon payment therefor of the full par value thereof in cash or its equivalent. [S., '13, § 2091-a.]

CHAPTER 378

INTERURBAN RAILWAYS

- 8201. Definition.
- 8202. When deemed a street railway.
- 8203. Applicable statutes.
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- 8205. Narrow highways.
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- 8207. Waiver—condemnation.
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8201. Definition. Any railway operated upon the streets of a city or town by electric or other power than steam, which extends beyond the corporate limits of such city or town to another city, town, or village, or any railway operated by electric or other power than steam, extending from one city, town, or village to another city, town, or village, shall be known as an interurban railway, and shall be a work of internal improvement. [S., '13, § 2033-a.]

8202. When deemed a street railway. Any interurban railway shall, within the corporate limits of any city or town, or of any city acting under a special charter, upon such streets as it shall use for transporting passengers, mail, baggage, and such parcels, packages, and freight as it may carry in its passenger or combination baggage cars only, be deemed a street railway, and be subject to the laws governing street railways. [S., '13, § 2033-c.]

8203. Applicable statutes. The words railway, railway company, railway corporation, railroad, railroad company, and railroad corpo-

- 8216. Compensation—disagreement—proceedings.
- 8217. Appeal—notice—transcript.
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- 8219. Trackage acquired.
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ration, as used in the code and acts of the general assembly, now in force or hereafter enacted, are hereby declared to apply to and include all interurban railways, and all companies or corporations constructing, owning, or operating such interurban street railways, and all provisions of the code and acts of the general assembly, now in force or hereafter enacted, affecting railways, railway companies, railway corporations, railroads, railroad companies, and railroad corporations, are hereby declared to affect and apply in full force and effect to all interurban railways, and to all interurban railway companies or railway corporations constructing, owning, or operating such interurban railways. [S., '13, § 2033-b.]

8204. On highway. Any interurban or street railway operated by any motive power other than steam, may build and operate its line over, along, and upon any public highway which is not less than one hundred feet wide, outside the limits of any city or town. The board of supervisors may, without expense to the county, accept conveyances of real estate abutting on any highway, or any part thereof,

for the purpose of increasing such highway or part thereof to the width of one hundred feet or more for said purposes. [C., '97, § 2026; S., '13, § 2026; 40 Ex. G. A., H. F. 200, § 1.]

8205. Narrow highways. When the board of supervisors shall find that it is not practicable or expedient to widen a highway to one hundred feet or more for the purpose aforesaid and when there is filed with the county auditor the written consent of two-thirds of the residents of the county owning real estate abutting upon the portion of the highway upon and along which it is proposed to build and operate such railway, the board may grant the right to build and operate such line upon and along the portion of such highway to which such written consent applies. [C., '97, § 2026; S., '13, § 2026; 40 Ex. G. A., H. F. 200, § 2.]

8206. Damages. The signing of written consent as provided in the preceding section shall not be a waiver of any damages which may accrue to any owner of abutting land on account of the building and operation of such railway upon and along such highway, or resulting from the negligence of any officer, agent, or servant of such railway company in the building or operation of such railway. [S., '13, § 2026; 40 Ex. G. A., H. F. 200, § 3.]

8207. Waiver — condemnation. Unless the owners of land abutting each side of said road shall make written waiver of any damages, the railway company shall pay all damages sustained by such abutting owners caused by building said road. If the parties cannot agree, the amount of such damages shall be ascertained and paid in the same manner as is provided for taking private property for works of internal improvement. [C., '97, § 2027; 40 Ex. G. A., H. F. 200, § 3.]

8208. Sixty-foot highways. The board of supervisors may without such written consent grant the right to such interurban or street railway company to build and operate its line for a distance not exceeding two miles outside the limits of any city or town upon and along any highway not less than sixty feet wide. [C., '97, § 2026; S., '13, § 2026; 40 Ex. G. A., H. F. 200, § 4.]

8209. Regulations. All rights to build and operate any such railway upon and along any public highway shall be subject to such restrictions and regulations as shall be prescribed from time to time by the board of supervisors. The construction and operation of such railway shall be so conducted as to cause the least interference with the convenient use of such highway by the public, and such highway shall, as soon as practicable, be placed in as good condition as it was before the location of such railway thereon. [C., '97, § 2026; S., '13, § 2026; 40 Ex. G. A., H. F. 200, § 5.]

8210. Eminent domain. All questions as to damages sustained by owners of land abutting

on a highway along and upon which has been constructed such railway, shall be subject to proceedings relating to eminent domain. [S., '13, § 2026; 40 Ex. G. A., H. F. 200, § 6.]

8211. Franchises. Cities and towns under any form of government may, as provided by law, authorize or forbid the construction and operation of such railways upon, over, or along the streets, alleys, and public grounds within their limits and prescribe the conditions and regulations for such construction and operation. The right to operate as a street railway shall not be granted for a period exceeding twenty-five years. [S., '13, § 2033-d; 40 Ex. G. A., H. F. 200, § 7.]

8212. Contracts and rates. Nothing in the preceding section shall impair the obligation of contracts of any city under any form of government or town entered into prior to April 8, 1902, nor affect any provisions of law relating to free or reduced or discriminating rates of transportation. [S., '13, § 2033-d; 40 Ex. G. A., H. F. 200, § 8.]

8213. Terminal facilities. Any person or corporation owning or operating an electric street railway in any city or town, shall permit the use of its tracks, poles, wires, and terminal facilities within such city or town by any interurban railway entering such city or town for interurban business only in the transportation of passengers, mail, express, and baggage in passenger or in combination baggage cars, but shall not be required to permit the use of its car houses or barns by such interurban railway. [S., '13, § 2110-c; 40 Ex. G. A., H. F. 200, § 9.]

8214. Electric power. When the power plant of a street railway is sufficient therefor and during the hours its street cars are in operation, and to the extent it can do so without interference with its own traffic, it shall furnish power for the operation of interurban passenger and combination baggage cars on such portions of such street railway tracks as such interurban railway has the right to use. It shall have preference in the use of its own power and tracks so that its cars shall not be delayed in transit. [S., '13, § 2110-c; 40 Ex. G. A., H. F. 200, § 10.]

8215. Interurban to furnish facilities and power. Any interurban electric railway company carrying on a street railway business in a city or town shall furnish to any other interurban electric railway company entering said city or town, for interurban purposes only, the same privileges and facilities which an electric street railway is required to furnish under the two preceding sections. [S., '13, § 2110-f; 40 Ex. G. A., H. F. 200, § 11.]

8216. Compensation—disagreement—proceedings. Any interurban railway company shall pay a reasonable compensation for the privileges and facilities furnished to it by a street railway company and in case of disagreement

as to the facilities to be furnished or the conditions for their use or the compensation therefor, the question shall be submitted to and heard and determined by the board of railroad commissioners, on petition of either party, and on ten days' written notice of such hearing served on the opposite party. Any order made by the board or the court on appeal shall be subject to review and modification from time to time on ten days' written notice by either party setting forth the grounds of the application. [S., '13, § 2110-c; 40 Ex. G. A., H. F. 200, § 12.]

8217. Appeal — notice — transcript. Either party shall have the right to appeal from any order or decision of the board to the district court of the county in which the street railway is located, within twenty days from the date of the order or decision, by serving written notice of appeal on the other party and filing the same with proof of service with the secretary of the board. Such secretary shall forthwith make and file in the office of the clerk of said court a transcript of the petition and such other documents as are on file in said cause, including the order or decision and notice of appeal. [S., '13, § 2110-d; 40 Ex. G. A., H. F. 200, § 13.]

8218. Trial — bond. The appeal shall be tried in equity and have precedence over all other civil causes. The first term after the transcript is filed shall be the trial term. No appeal shall suspend the order or decision appealed from, if the interurban company on whose behalf the order or decision is made shall file with the secretary of the board a bond with sureties approved by the board, conditioned for the payment of any judgment for costs and compensation and for obedience to any order or decree of the court. [S., '13, § 2110-d; 40 Ex. G. A., H. F. 200, § 14.]

8219. Trackage acquired. Any interurban railway company doing a street railway business on its own tracks in a city or town, may, for the purpose of completing a terminal loop for its interurban cars only, acquire under the foregoing provisions the use of so much of the track, poles, and wire of a street railway as shall be necessary for said purposes. [S., '13, § 2110-f; 40 Ex. G. A., H. F. 200, § 15.]

8220. Right to furnish power. Street railroad companies desiring so to do shall be authorized to furnish to interurban railway companies, power for the operation of the cars of interurban railway companies outside of cities and towns, but no street railroad company shall be required to furnish such power. [S., '13, § 2110-e.]

8221. Water supply. Any interurban railway company requiring an electric generating plant for its operation, shall have the power of eminent domain to acquire, by condemnation, the right of access to all necessary streams or other sources for the purpose of supplying its power house with water, and of

making the necessary changes and improvements, and to repair or renew the same from time to time, in such streams, or upon the lands from which it is to obtain said water supply, in the same manner provided by law for the taking of private property for works of internal improvement. Such company shall pay to the owner of any lands or water rights all damages arising out of the exercises of such right. [S. S., '15, § 2033-1; 40 Ex. G. A., H. F. 200, § 16.]

8222. Limitations. In exercising such right, the owner of any water right or supply shall not be deprived of access thereto or the use thereof in common with such railway corporation, and no dwelling house or other buildings, orchard, or garden shall be overflowed or injuriously affected. [S. S., '15, § 2033-1; 40 Ex. G. A., H. F. 200, § 17.]

8223. Proceedings to acquire. Before proceeding to condemn any property rights to acquire or reach a water supply, such railway company shall make written application to the board of railroad commissioners, accompanied by a drawing showing in detail the land required, the water supply to be obtained and the changes and improvements to be made, and giving the names and addresses of all persons whose rights will be affected thereby. [S. S., '15, § 2033-1; 40 Ex. G. A., H. F. 200, § 18.]

8224. Notice of application—expense. Such board shall forthwith give written notice to all persons whose rights will be affected by the proposed changes of the date on which a hearing will be had on said application. If upon examination into the matter the board finds that any rights of the public will be affected by such improvements, it shall give such notice as it deems sufficient to advise the public thereof. Any person having any interest may file objections to the application. The expenses of all such notices shall be paid by the company or person making the application. [S. S., '15, § 2033-1; 40 Ex. G. A., H. F. 200, § 19.]

8225. Findings—certificate. If the board finds that such proposed changes or improvements are necessary and proper and the exercise of the power of eminent domain is reasonable, it shall grant the application as made, or with such modifications as shall be proper and just, and file in the office of the clerk of the district court of the county in which the improvements are to be made a certified transcript of the proceedings and order accompanied by plans and specifications showing in reasonable detail the land and water rights to be acquired for present and prospective use of such company, whereupon such company may proceed to acquire the same by condemnation, but shall not take possession of such property and water rights till the damages awarded by the condemnation commission have been deposited with the sheriff. [S. S., '15, § 2033-1; 40 Ex. G. A., H. F. 200, § 20.]

8226. Applicable statutes. Except as in this chapter otherwise provided, all provisions

relating to eminent domain conferring upon railway companies the right to condemn land for reservoirs and to enable them to reach and acquire sources of water supply and access thereto, shall apply to interurban railway companies for reaching and acquiring water supplies for their power plants. [S. S., '15, §§ 2033-l, 2033-m; 40 Ex. G. A., H. F. 200, § 21.]

8227. Heating of passenger cars. Every person, partnership, company, or corporation owning or operating an interurban line or a street railway in a city of more than twenty thousand population in this state shall, from November fifteenth of each year to April first following, heat all cars, used for the transportation of passengers, while in service, to at least forty degrees Fahrenheit; provided that open cars may be operated during the month of November for special trips to transport heavy traffic. [37 G. A., ch. 320, § 1.]

8228. Violations. Every person, partnership, company, or corporation owning or operating a street railway in this state who shall fail to comply with the provisions of the preceding section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five

dollars, nor more than one hundred dollars for each offense. Any failure to comply with the provisions of the preceding section shall be deemed a separate offense. [37 G. A., ch. 320, § 2.]

8229. Automobile railway—statutes applicable. Any system of railway operating cars within the state over or upon any track other than steel or iron shall be known as an automobile railway, and shall be a work of internal improvement. The words "railway", "railway company", "railway corporation", "railroad", "railroad company" or "railroad corporation", as used in the code and acts of the general assembly now in force or hereafter enacted, are hereby declared to apply to, and include, automobile railways, and all companies or corporations owning or operating such automobile railways, and all provisions of the code and acts of the general assembly now in force or hereafter enacted affecting railways, railway companies, railway corporations, railroads, railroad companies, or railroad corporations, are hereby declared to affect and apply in full force and effect to all automobile railways and to all automobile railway companies owning or operating such automobile railways. [S., '13, § 2033-f.]

CHAPTER 379

INTERURBAN RAILWAYS IN CERTAIN CITIES

- 8230. Use of other tracks—relocation—compensation.
- 8231. Disputes—notice — hearing — procedure — modification of orders.

- 8232. Appeal—trial.
- 8233. Order not suspended by appeal—bond.
- 8234. Appliances—specifications for construction.
- 8235. Rules—enforcement of orders.

8230. Use of other tracks—relocation—compensation. When any corporation has heretofore, or hereafter shall be authorized by any city of this state having not less than thirty thousand nor more than thirty-five thousand inhabitants according to the federal census of 1910, to construct and operate an interurban railway upon any of the streets of such city, and shall desire to extend, construct and operate its said interurban railway upon other streets of said city upon which railroad track or tracks are located, and shall be authorized by the city council of said city by resolution so to do, and such streets are so occupied by railroad tracks that it is not practicable to construct and operate said interurban railway thereon, the owners, lessees and operators of said railroad tracks are authorized and required, if practicable, to relocate such of their tracks on said streets as are necessary to permit of the construction and operation of said interurban railway, and if it is not practicable to relocate said railroad tracks, then the owners, lessees and operators are authorized and required to permit said interurban railway to use such of their said tracks as are necessary for the operation and carrying on of the business of said interurban railway, and to permit

to be made such alterations in, attachments to and connections with said railroad tracks and to be installed and maintained such trolley system or other construction or equipment as will permit the use in common of said railroad tracks by said interurban railway for railway purposes and by the owners, lessees or other operators thereof for ordinary steam railway purposes.

Where it is practicable to relocate said railroad tracks, and it is also practicable to operate said interurban railway over said tracks without relocating the same, the owners, lessees and operators of such railroad tracks may elect to grant the use thereof to said interurban railway and permit to be made such alterations in, attachments to and connections with the same and to the installation and maintenance of such trolley system or other construction or equipment as will permit the use in common of said railroad tracks by said interurban railway and the said owners, lessees and operators thereof, and signify such election in writing, filed in the proceeding before the commencement of the hearing of said proceeding on appeal in the district court as hereinafter provided, then said tracks may be so used in place of being relocated.

The owner of said interurban railway shall pay just compensation to the owners, lessees or operators of any railroad tracks for the relocation or use and alteration of said railroad tracks, and for the exercise of such other privileges as are granted such interurban railway under the provisions of this chapter. [S. S., '15, § 2033-g.]

8231. Disputes — notice — hearing — procedure—modification of orders. If an agreement can not be made between the said owner of said interurban railway and the owners, lessees and operators of such railroad tracks for the relocation or use of such railroad tracks, or as to the alterations, attachments, and connections that shall be made therein or thereto, or as to the manner of the installation and maintenance of the trolley system or other construction or equipment such as will permit such common use of such tracks, or the terms and conditions of or the compensation to be paid for such relocation or use and the alterations or attachments to said railroad tracks and the exercise of such other privileges as are granted to such interurban railway under the provisions of this chapter, then all said matters shall be heard and determined by the board of railroad commissioners upon petition to said board by the owner of said interurban railway or other party to the controversy.

Upon filing of said petition said board shall fix a time for the hearing thereof, and twenty days' notice of the filing of said petition and of the time fixed for the hearing thereof shall be given by the petitioner to the opposite parties. Said notice shall be served in the manner provided by law for the service of notices of the commencement of a civil action in the district court.

The commission shall have the power and, upon the demand of any party appearing in said proceeding, shall appoint a shorthand reporter who shall take the evidence offered or introduced upon the hearing, and the commission shall have power to require any party to said hearing to produce books, records, papers, or other documents material to said inquiry, and shall have the power to subpoena and require the attendance of witnesses.

All orders of the commission or revisions or modifications of said orders shall be subject to revision or modification by the commission upon application of any party to the original proceeding, made in the same manner and under the same procedure as is provided for applications for original orders, provided that there shall be no revisions or modification of any order for the relocation of railroad tracks or of compensation if the total compensation was fixed at one definite sum; provided, further, that in the event of additional cost of construction or additional cost of maintenance occasioned by viaducts, track elevation or depression, crossing gates, or other safety appliances or the installation of more expensive types of track construction, the compensation shall be subject to revision and modification in the manner and by the method as in this chapter provided. [S. S., '15, § 2033-h.]

8232. Appeal—trial. Any party to said proceeding may appeal to the district court of the county where said city is located from any order made by the board of railroad commissioners under this chapter within twenty days from the date of the order appealed from.

Such appeal shall be taken and perfected by the party appealing by serving a notice in writing upon the other parties to said proceeding, specifying the order or part thereof appealed from, and by filing in the office of the clerk of the district court of the county to which said appeal is taken, a petition stating the general nature of the proceeding before said board of railroad commissioners and of the order or part thereof appealed from, and that an appeal has been taken and asking the court to determine the matter in controversy.

Such notice of appeal shall be served and proof of service thereof made in the same manner as an original notice in a civil action, and shall be filed with the secretary of the board of railroad commissioners. Service of such notice of appeal may be made upon any attorney appearing for any party in the proceedings before the board of railroad commissioners with the same force and effect as if served upon such party.

Such petition filed in the office of the clerk of the district court to which an appeal is taken shall be entitled in the name of the interurban railway company as plaintiff and the other parties to the appeal as defendants.

Immediately after twenty days from the date of any order appealed from, said board of railroad commissioners shall certify to the clerk of the district court to which an appeal or appeals have been taken, a transcript of the papers and proceedings before said board and its order thereon and all notices of appeal therefrom with proofs of service thereof.

All appeals growing out of a single order of said board of railroad commissioners shall be consolidated and tried together, provided that if the owners, lessees, and operators of said railroad tracks have filed their election to permit the use of said tracks by said interurban railway after an appeal has been taken by any party to the proceedings as herein provided, each and all of the matters and things heard and determined by the board of railroad commissioners shall, subject to such election, be heard and determined by the district court the same as if each of the parties to said proceeding had appealed from the entire order of said board.

The proceedings upon appeal shall be in equity and subject to all of the rules of equity practice, except that the court shall require the issues to be made up at the first term after the petition is filed and give the proceedings precedence over other civil business and try the same thereat, if possible. The action shall be triable de novo upon said appeal; provided, however, that the question of the amount of compensation for the relocation or use of any tracks and for the other privileges granted shall be tried in the same manner and with the same effect as trials upon appeal from assess-

ments for the taking of private property for works of internal improvement.

Upon trial to determine the amount of compensation, the court shall first determine the basis, whether as rental or otherwise, upon which compensation shall be paid, and the terms and conditions of such payment, and all questions of the amount of compensation shall, upon such appeal, be tried before the same jury, who shall return a separate verdict fixing the amount of compensation to which each party to the proceedings is entitled, and in the event of appeal to the supreme court, the proceedings tried before a jury shall be heard and determined the same as in a law action. [S. S., '15, § 2033-i.]

8233. Order not suspended by appeal—bond. The appeal shall not suspend any order appealed from, if the interurban railway company in whose behalf any order is made by the board of railroad commissioners shall file in the office of the clerk of the district court of the county to which such appeal is taken, a bond in such amount and upon such conditions as the district court to which such appeal is taken, or a judge thereof, may, upon application of said interurban railway, require. [S. S., '15, § 2033-j.]

8234. Applicances—specifications for construction. The railroad commission is hereby authorized, directed and empowered to inspect any and all wires and appliances authorized by this section and to condemn and order removed, or placed in safe condition, all wires and appliances erected or maintained in violation of the terms and conditions hereof.

1. No wire or cable used to conduct electricity for light and power shall be erected or maintained on any pole or appliance attached to such pole, within a less distance than thirteen inches from the center line of such pole; nor shall any wire or cable be erected or maintained in the vicinity of any pole, and unattached thereto, within the distance of thirteen inches from the center line of such pole.

2. Nor shall any wire or cable carrying less than six hundred volts of electricity be erected or maintained within a distance of forty inches from any wire or cable which carries at any time more than six hundred volts of electricity.

3. Nor shall any wire or cable which carries at any time more than six hundred volts of electricity be erected or maintained within a distance of forty inches from any wire or cable carrying less than six hundred volts of electricity.

4. Nor shall any wire be erected or maintained running parallel, crossing, or attached to same pole at a less distance than seven feet from any wire carrying thirteen thousand volts or more.

5. No wire or cable carrying more than thirteen thousand volts of electricity shall be erected or maintained across or above any wire or cable carrying less than thirteen thousand volts at point of crossing without at all times maintaining approved methods of con-

struction to prevent falling and coming in contact with wires of lesser voltage.

6. No guy wire or guy cable attached to any pole or appliance to which is attached any wire or cable used to conduct electricity for light and power shall be erected or maintained without causing such guy wire or guy cable to be kept effectively insulated by approved insulators placed in such wire or cable not less than nine feet, nor more than eleven feet, from each end thereof; provided, however, that the lower insulator shall not be less than eight feet, perpendicularly, from the ground.

7. No wire or cable shall be erected or maintained vertically on any wooden pole, without causing such wire or cable to be at all times incased in a casing of wooden material not less than three-quarters of an inch in thickness, or of other insulating material approved by the railroad commission; provided, however, that the provisions of this section shall not apply to any vertical wire which is more than thirteen inches from center line of pole.

8. Trolley span wires shall be insulated by not less than two approved insulators between such trolley wire and the pole or other support; such insulators shall be placed not less than two or more than four feet from point of attachment to wire or pole.

9. No pole or other structure used for the support of wires shall be erected or maintained at a less distance than six feet from the nearest rail of any steam, electric, or other railway track over which freight cars may be operated.

10. All poles must be distinctly and permanently marked with owner's name, at a point not less than five nor more than seven feet above the ground. All wooden poles of any lead must be as nearly as practicable uniformly spaced, of uniform height, and not less than forty poles to the mile.

11. Wires or cables carrying electric current for light and power must not be erected or maintained on any bracket or knob attached directly to any pole or cross arm.

12. No trolley wire authorized by this chapter shall be erected or maintained at a less distance than twenty-two feet above any track.

13. All devices and materials, insulators, and other methods of insulation of wires shall conform to specifications approved by the railroad commission. No wire shall be stretched within four feet of any building without being attached to and insulated therefrom. No wires shall hang within a less distance than twenty-two feet of the ground at the lowest point of sag. In case of leads crossing each other, each lead must pass above or below the other, and under no circumstances shall any wire of one lead run through the other lead.

14. Primary or high potential wire must be provided with approved line cut-outs on all branches, and at all transformers; and mains shall be divided into sections by approved cut-outs located as directed by the railroad commission. All wires and cut-outs on same

crossarm must be at least fourteen inches apart, except pole wires, which must be twenty-six inches apart. [S. S., '15, § 2033-k.]

8235. Rules—enforcement of orders. In any case where it is found impracticable to comply with the foregoing requirements or when to the satisfaction of the railroad commission it is found that in the advancement of the art or trade, improved methods, appliances, fixtures, and requirements will the better conserve persons and property, including the operation of such property, the railroad commission is hereby empowered, upon application made in writing, to allow such reasonable deviation therefrom as may be deemed reasonably safe and necessary.

It shall be unlawful for any person, firm, association, or corporation including a municipal corporation to place, construct, keep, or maintain any fixture, appliance, or other thing contrary to the terms and provisions of this and the preceding section, and the railroad

commission is hereby empowered to enforce the provisions of this and the preceding section with reference to such matter.

The railroad commission is hereby authorized and empowered to make such other rules and regulations and fix standards of and for appliances and fixtures as may be deemed reasonably necessary from time to time for the purpose of protecting persons and property; and such order made by the commission shall be deemed reasonable and necessary and the burden of proof shall rest upon any complainant to prove the contrary.

The railroad commission shall give reasonable notice of any order or requirement within the contemplation of this chapter and cause the same to be enforced by an action in equity.

The terms, conditions, and provisions of this and the preceding section shall only apply to such interurban railway construction and conditions contemplated by section 8230. [S. S., '15, § 2033-k.]

CHAPTER 380

EXPRESS COMPANIES

8236. Regulation—statutes applicable.
8237. Supervision—joint rates.
8238. Schedule of rates.
8239. Presumption.
8240. Posting of schedules.

8241. Excessive charges.
8242. Violations.
8243. Duty to transport.
8244. Damages and penalty.

8236. Regulation—statutes applicable. All express companies operating and doing business in this state are declared to be common carriers, and it shall be the duty of every such express company or common carrier to transport all property, parcels, money, merchandise, packages, and other things of value which may be offered to them for transportation, at a reasonable charge or rate therefor; and all laws so far as applicable, now in force or hereafter enacted, regulating the transportation of property by railroad companies, shall apply with equal force and effect to express companies. [C., '97, § 2165; S., '13, § 2165-a.]

8237. Supervision—joint rates. The railroad commissioners of this state shall have general supervision of all express companies operating and doing business in this state; and shall inquire into any unjust discrimination, neglect, or violation of the laws of this state governing common carriers, by any express company doing business therein, or by the officers, agents, or employees thereof, and they shall have power, and it shall be their duty, to fix and establish reasonable, fair, and just rates of charges including a schedule of maximum joint rates for each kind or class of property, money, parcels, merchandise, packages, and other things to be charged for and received by each express company or carriers by express, separately or conjointly, on all such property, money, parcels, merchandise,

packages, and other things which by the contract of carriage are to be transported separately or conjointly by such express companies, or carriers by express, doing business over the line of any railroad or other carrier between points wholly within the state, which rates or charges shall be made to apply to all such express companies or express carriers, and may be changed or modified by said commissioners from time to time in such manner as may become necessary. [C., '97, § 2166; S., '13, § 2165-b.]

8238. Schedule of rates. It shall be the duty of said railroad commissioners, and they are hereby directed, to prepare and make for each express company doing business in this state a schedule of reasonable maximum charges of rates for transporting property, money, parcels, merchandise, packages, and other things carried by such express company or companies between points wholly within the state. [C., '97, § 2166; S., '13, § 2165-c.]

8239. Presumption. In all actions brought against such common carriers wherein there are involved the charges thereof for the transportation of any property, or any unjust discrimination in relation thereto, the schedules or reasonable maximum rates of charges so made by the railroad commissioners shall be taken as prima facie evidence in all courts that the rates fixed therein are reasonable and

just maximum rates of charges for which said schedules have been prepared. [C., '97, § 2166; S., '13, § 2165-c.]

8240. Posting of schedules. It shall be the duty of every such company or common carrier engaged in transporting property, money, parcels, merchandise, packages and other things, to print in clear and legible type the schedules of rates for transportation of such property, money, parcels, merchandise, packages, and other things, so made by such railroad commissioners, and shall post in each of its offices or places of business where patrons visit for the purpose of making and receiving shipments, and keep displayed in each office or place of business within convenient access, and for the inspection and use of the public during customary business hours such printed schedule of rates of charges and any amendments thereto, and shall also post and display in similar manner any special rules and regulations which may be promulgated by them or said railroad commissioners for the information of their patrons. [S., '13, § 2165-d.]

8241. Excessive charges. It shall be unlawful for any express company or common carrier to charge, demand, collect, or receive a greater compensation for such transportation of property, or for any service in connection therewith, between the points named in such schedules than the rates and charges which are specified in the schedules made by said railroad commissioners and in effect at the time. [S., '13, § 2165-e.]

8242. Violations. Any such express company or common carrier, any officer, representative, or agent of any express company, or carrier, who knowingly violates the provisions of this chapter shall forfeit to the state the sum of five hundred dollars for each offense, to be recovered as by law provided. [S., '13, § 2165-e.]

8243. Duty to transport. Each and every express company or carrier by express, as herein defined, doing business within the state, shall at all convenient times during the hours of business accept and receive for prompt transportation and shipment destined to points on their own line, or to points on the lines of other express companies operating within the state, or for points beyond said state, all property, parcels, money, merchandise, packages, and other things of value which may be offered to them, or either of them, for transportation by the public. [S., '13, § 2165-f.]

8244. Damages and penalty. Any express company or other common carrier refusing to transport goods as above provided taking the same in the order presented, shall be liable to the party injured for damages sustained by reason of its refusal, and in addition thereto shall be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered in each case by the owner of the goods in any court having jurisdiction in the county where the wrong is done, or where the common carrier resides or has an agent, and each case of refusal shall be construed as a separate offense under this section. [S., '13, § 2165-f.]

CHAPTER 381

UNIFORM BILLS OF LADING LAW

NOTE: The number in brackets following each section number in this chapter indicates the number of the corresponding section of the uniform bills of lading act.

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PART I

THE ISSUE OF BILLS OF LADING

8245.[§ 1.] Bills governed. Bills of lading issued by any common carrier shall be governed by this chapter. [S., '13, § 3138-b.]

8246.[§ 2.] Essential terms. Every bill must embody within its written or printed terms:

1. The date of its issue,
2. The name of the person from whom the goods have been received,
3. The place where the goods have been received,
4. The place to which the goods are to be transported,
5. A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,
6. A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in section 8267, and
7. The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section. [S., '13, § 3138-b1.]

8247.[§ 3.] What terms may be inserted. A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

1. Be contrary to law or public policy, or
2. In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. [S., '13, § 3138-b2.]

8248.[§ 4.] Nonnegotiable or straight bill. A bill in which it is stated that the goods are consigned or destined to a specified person, is a nonnegotiable or straight bill. [S., '13, § 3138-b3.]

8249.[§ 5.] Negotiable or order bill. A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill. Any provision in such a bill that it is nonnegotiable shall not affect its negotiability within the meaning of this chapter. [S., '13, § 3138-b4.]

8250.[§ 6.] Negotiable bills must not be issued in sets. Negotiable bills issued in this state for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets. If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone

who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts. [S., '13, § 3138-b5.]

8251.[§ 7.] Duplicate negotiable bills must be so marked. When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. [S., '13, § 3138-b6.]

8252.[§ 8.] Nonnegotiable bill shall be so marked. A nonnegotiable bill shall have placed plainly upon its face by the carrier issuing it "nonnegotiable" or "not negotiable". This section shall not apply, however, to memoranda or acknowledgments of an informal character. [S., '13, § 3138-b7.]

8253.[§ 9.] Insertion of name of person to be notified. The insertion in a negotiable bill of the name of a person to be notified of the arrival of goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. [S., '13, § 3138-b8.]

8254.[§10.] Acceptance of bill indicates assent to its terms. Except as otherwise provided in this chapter, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy. [S., '13, § 3138-b9.]

PART II

OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR BILLS OF LADING

8255.[§11.] Obligation of carrier to deliver. A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by:

1. An offer in good faith to satisfy the carrier's lawful lien upon the goods,
2. An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and
3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. [S., '13, § 3138-b10.]

8256.[§12.] Justification of carrier in delivering. A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is:

1. A person lawfully entitled to the possession of the goods, or

2. The consignee named in a nonnegotiable bill for the goods, or

3. A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee. [S., '13, § 3138-b11.]

8257.[§13.] Carrier's liability for misdelivery. Where a carrier delivers goods to one who is not lawfully entitled to the possession of them the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions 2 and 3 of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he:

1. Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

2. Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. [S., '13, § 3138-b12.]

8258.[§14.] Negotiable bill must be canceled when goods delivered. Except as provided in section 8271, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto. [S., '13, § 3138-b13.]

8259.[§15.] Negotiable bills must be canceled or marked when part of goods delivered. Except as provided in section 8271, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either:

1. To take up and cancel the bill, or

2. To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. [S., '13, § 3138-b14.]

8260.[§16.] Altered bills. Any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. [S., '13, § 3138-b15.]

8261.[§17.] Lost or destroyed bill. Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [S., '13, § 3138-b16.]

8262.[§18.] Effect of duplicate bills. A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. [S., '13, § 3138-b17.]

8263.[§19.] Carrier can not set up title in himself. No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. [S., '13, § 3138-b18.]

8264.[§20.] Interpleader of adverse claimants. If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a

defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate. [S., '13, § 3138-b19.]

8265.[§21.] Carrier has reasonable time to determine validity of claims. If some one other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [S., '13, § 3138-b20.]

8266.[§22.] Adverse title is no defense, except as above provided. Except as provided in the two preceding sections and in section 8256, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a nonnegotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand. [S., '13, § 3138-b21.]

8267.[§23.] Liability for nonreceipt or misdescription of goods. If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to:

1. The consignee named in a nonnegotiable bill, or
2. The holder of a negotiable bill, who has given value in good faith relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

If, however, the goods are described in the bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or the condition of contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport, indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the

goods described in the bill. [S., '13, § 3138-b22.]

8268.[§24.] Attachment or levy upon goods for which a negotiable bill has been issued. If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they can not thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. [S., '13, § 3138-b23.]

8269.[§25.] Creditor's remedies to reach negotiable bills. A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process. [S., '13, § 3138-b24.]

8270.[§26.] Negotiable bill must state charges for which lien is claimed. If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage, and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. [S., '13, § 3138-b25.]

8271.[§27.] Effect of sale. After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable. [S., '13, § 3138-b26.]

PART III

NEGOTIATION AND TRANSFER OF BILLS

8272.[§28.] Negotiation of negotiable bills by delivery. A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank. [S., '13, § 3138-b27.]

8273.[§29.] Negotiation of negotiable bills by indorsement. A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. [S., '13, § 3138-b28.]

8274.[§30.] Transfer of bills. A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A nonnegotiable bill can not be negotiated, and the indorsement of such a bill gives the transferee no additional right. [S., '13, § 3138-b29.]

8275.[§31.] Who may negotiate a bill. A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. [S., '13, § 3138-b30.]

8276.[§32.] Rights of person to whom a bill has been negotiated. A person to whom a negotiable bill has been duly negotiated acquires thereby:

1. Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and
2. The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. [S., '13, § 3138-b31.]

8277.[§33.] Rights of person to whom a bill has been transferred. A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is nonnegotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a nonnegotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods. [S., '13, § 3138-b32.]

8278.[§34.] Transfer of negotiable bill without indorsement. Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. [S., '13, § 3138-b33.]

8279.[§35.] Warranties on sale of bill. A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants:

1. That the bill is genuine,
2. That he has a legal right to transfer it.
3. That he has knowledge of no fact which would impair the validity or worth of the bill, and
4. That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim. [S., '13, § 3138-b34.]

8280.[§36.] Indorser not a guarantor. The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. [S., '13, § 3138-b35.]

8281.[§37.] No warranty implied from accepting payment of a debt. A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described. [S., '13, § 3138-b36.]

8282.[§38.] When negotiation not impaired by fraud, accident, mistake, duress, or conversion. The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the

person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, or conversion. [S., '13, § 3138-b37.]

8283.[§39.] Subsequent negotiation. Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. [S., '13, § 3138-b38.]

8284.[§40.] Form of the bill as indicating rights of buyer and seller. Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

1. Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

2. Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligation under the contract.

3. Where by the bill the goods are deliverable to the order of the buyer or his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

4. Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if

such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. [S., '13, § 3138-b39.]

8285.[§41.] Sight draft—assumptions of buyer. Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

1. If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter, whether such three days be termed days of grace or not, that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

2. If the draft is by its terms payable on time, extending beyond three days after demand, presentation, or sight, whether such three days be termed days of grace or not, that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order. [S., '13, § 3138-b40.]

8286.[§42.] Negotiation defeats vendor's lien. Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. [S., '13, § 3138-b41.]

8287.[§43.] When rights and remedies under mortgages and liens are not limited. Except as provided in the preceding section, nothing in this chapter shall limit the rights and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this chapter, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. [S., '13, § 3138-b42.]

PART IV

CRIMINAL OFFENSES

8288[§44.] Issue of bill for goods not received. Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an

agent of such carrier, or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S., '13, § 3138-b43.]

8289.[§45.] Issue of bill containing false statement. Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S., '13, § 3138-b44.]

8290.[§46.] Issue of duplicate bills not so marked. Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 8251 knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S., '13, § 3138-b45.]

8291.[§47.] Negotiation of bill for mortgaged goods. Any person who ships goods to which he has not a title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S., '13, § 3138-b46.]

8292.[§48.] Negotiation of bill when goods are not in carrier's possession. Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S., '13, § 3138-b47.]

8293.[§49.]—Inducing carrier to issue bill when goods have not been received. Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier, or a connecting

carrier, or are not under the carrier's control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S., '13, § 3138-b48.]

8294.[§50.] Issue of nonnegotiable bill not so marked. Any person who with intent to defraud issues or aids in issuing a nonnegotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. [S., '13, § 3138-b49.]

PART V

INTERPRETATION

8295.[§51.] Rule for cases not provided for in this chapter. In any case not provided for in this chapter, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators, and trustees, and to the effect of fraud, misrepresentation, duress, or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern. [S., '13, § 3138-b50.]

8296.[§52.] Interpretation shall give effect to purpose of uniformity. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [S., '13, § 3138-b51.]

8297.[§53.] Definitions.

1. In this chapter, unless the context or subject matter otherwise requires:

"Action" includes counterclaim, set-off, and suit in equity.

"Bill" means bill of lading.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

“Purchaser” includes mortgagee and pledgee. “Value” is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

2. A thing is done “in good faith”, within the meaning of this chapter, when it is in fact done honestly, whether it be done negligently or not. [S., '13, § 3138-b52.]

8298.[§54.] Chapter does not apply to existing bills. The provisions of this chapter do not apply to bills made and delivered prior to the taking effect thereof. [S., '13, § 3138-b53.]

8299.[§57.] Name of chapter. This chapter may be cited as the “Uniform Bills of Lading Law”. [S., '13, § 3138-b56.]

CHAPTER 382

TELEGRAPH AND TELEPHONE LINES AND COMPANIES

- 8300. Right of way.
- 8301. Removal of lines.
- 8302. Construction—damages.
- 8303. Condemnation.
- 8304. Equal facilities—delay.

8300. Right of way. Any person or firm, and any corporation organized for such purpose, within or without the state, may construct a telegraph or telephone line along the public roads of the state, or across the rivers or over any lands belonging to the state or any private individual, and may erect the necessary fixtures therefor. [C., '51, § 780; R., '60, § 1348; C., '73, § 1324; C., '97, § 2158.]

8301. Removal of lines. When any road along which said line has been constructed shall be changed, the person, firm or corporation shall, upon ninety days' notice in writing, remove said lines to said road as established. The notice may be served upon any agent or operator in the employ of such person, firm or corporation. [C., '73, § 1324; C., '97, § 2158.]

8302. Construction—damages. Such fixtures shall not be so constructed as to inconvenience the public in the use of any road or the navigation of any stream; nor shall they be set up on the private grounds of any individual without paying him a just equivalent for the damage he thereby sustains. [C., '51, § 781; R., '60, § 1349; C., '73, § 1325; C., '97, § 2159.]

8303. Condemnation. If the person over whose lands such telegraph or telephone line passes claims more damages therefor than the proprietor of such line is willing to pay, the amount thereof may be determined in the same manner as provided for taking private property for works of internal improvement. [C., '51, § 782; R., '60, § 1350; C., '73, § 1326; C., '97, § 2160.]

8304. Equal facilities—delay. If the proprietor of any telegraph or telephone line within the state, or the person having the control and management thereof, refuses to furnish equal facilities to the public and to all connecting lines for the transmission of communications in accordance with the nature of the business

- 8305. Delay—wilful error—revealing contents.
- 8306. Mistakes and delays.
- 8307. Negligence presumed.
- 8308. Presentation of claim.

which it undertakes to carry on, or to transmit the same with fidelity and without unreasonable delay, the law in relation to limited partnerships, corporations, and to the taking of private property for works of internal improvement, shall not longer apply to them, and property taken for the use thereof without the consent of the owner may be recovered by him. [C., '51, § 783; R., '60, § 1351; C., '73, § 1327; C., '97, § 2161.]

8305. Delay—wilful error—revealing contents. Any person employed in transmitting messages by telegraph or telephone must do so with fidelity and without unreasonable delay, and if anyone wilfully fails thus to transmit them, or intentionally transmits a message erroneously, or makes known the contents of any message sent or received to any person except him to whom it is addressed, or his agent or attorney, or wilfully and wrongfully takes or receives any telegraph or telephone message, he is guilty of a misdemeanor. [C., '51, § 784; R., '60, § 1352; C., '73, § 1328; C., '97, § 2162.]

8306. Mistakes and delays. The proprietor of a telegraph or telephone line is liable for all mistakes in transmitting or receiving messages made by any person in his employment, or for any unreasonable delay in their transmission or delivery, and for all damages resulting from failure to perform the foregoing or any other duty required by law, the provisions of any contract to the contrary notwithstanding. [C., '51, § 785; R., '60, § 1353; C., '73, § 1329; C., '97, § 2163.]

8307. Negligence presumed. In any action against any telegraph or telephone company for damages caused by erroneous transmission of a message, or by unreasonable delay in delivery of a message, negligence on the part of the telegraph or telephone company shall be presumed upon proof of erroneous transmission or of unreasonable delay in delivery, and the burden of proof that such error or delay was not due

to negligence upon its part shall rest upon such company. [C., '97, § 2164.]

8308. Presentation of claim. No action for the recovery of such damages shall be main-

tained unless a claim therefor is presented in writing to such company, officer or agent thereof within sixty days from time cause of action accrues. [C., '97, § 2164.]

CHAPTER 383

ELECTRIC TRANSMISSION LINES

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8309. Franchise. No individual, company, or corporation shall erect, maintain or operate any transmission line, wire, or cable along, over or across any public highway or grounds outside of cities and towns for the transmission, distribution, or sale of electric current, without first procuring from the board of railroad commissioners, or from the board of supervisors in the county or each of the respective counties in which such transmission line is to be constructed or operated, a franchise granting authority so to do as in this chapter provided. [S., '13, §§ 1527-c, 2120-n; 38 G. A., ch. 267, § 1; 39 G. A., ch. 262, § 1; 40 Ex. G. A., ch. 13, § 1.]

8310. Petition for franchise. Any person, corporation, or company authorized to transact business in the state including cities and towns may file a verified petition asking for a franchise to erect, maintain, and operate a line or lines for the transmission, distribution, use and sale of electric current outside cities and towns and for such purpose to erect, use and maintain poles, wires, guy wires, towers, cables, conduits, and other fixtures and appliances necessary for conducting electric current for light, heat, or power over, along, and across any public lands, highways, streams, or the lands of any person, company, or corporation, and to acquire necessary interests in real estate for such purposes.

Where the application is made to a board of supervisors the applicant shall file a copy of such petition with the board of railroad commissioners at least ten days before the time of the hearing thereon. The board of railroad commissioners must furnish the applicant with a certificate showing the fact with reference to the filing of such copy. [S., '13, § 2120-n; 40 Ex. G. A., ch. 13, § 2.]

8311. Petition—requirements. The petition shall set forth:

1. The name of the individual, company, or corporation asking for the franchise.
2. The principal office or place of business.
3. The starting points, routes, and termini of the proposed lines, accompanied with a map or plat showing such details.
4. A general description of the public or private lands, highways, and streams over, across, or along which any proposed line will pass.
5. General specifications as to materials and manner of construction.
6. The maximum voltage to be carried over each line. [S., '13, § 2120-n; 40 Ex. G. A., ch. 13, § 3.]

8312. Notice of hearing. Upon the filing of such petition, the board shall fix a date for hearing thereon and cause a notice, addressed to the citizens of each county through which the proposed line or lines will extend, to be published in one of the official newspapers of each such county for two consecutive weeks. Said notice shall contain a general statement of the contents and purpose of the petition, a general description of the lands and highways to be traversed by the proposed line or lines, the date and place fixed for hearing thereon, and that all objections thereto must be filed at least five days before said date. Said hearing shall be not less than ten days from the date of the last publication and at the offices of the board before which said matter is pending, unless a different place in such notice is specified. [S., '13, § 2120-n; 40 Ex. G. A., ch. 13, § 4.]

8313. Objections—hearing. Any person, company, city, town, or corporation whose rights

or interests may be affected, shall have the right to file written objections to the proposed improvement or to the granting of such franchise; but all such objections shall be on file with the board at least five days before the date fixed for said hearing. The board may allow objections to be filed later in which event the applicant must be given reasonable time to meet such late objections. The board may examine the proposed route or cause any engineer selected by it to do so. It shall consider said petition and any objections filed thereto, and may hear such testimony as may aid it in determining the propriety of granting such franchise. It may grant such franchise in whole or in part upon such terms, conditions, and restrictions, and with such modifications as to location and route as may seem to it just and proper. The petitioners shall pay all costs and expenses of said proceeding, including cost of publishing notice, before such franchise shall become effective. [S., '13, § 2120-n; 40 Ex. G. A., ch. 13, § 5.]

8314. Form of franchise. The commerce counsel shall prepare a blank form of franchise for such purposes, which shall provide space for a general description of the improvement authorized thereby, the name and address of the person or corporation to whom granted, the general terms and conditions upon which it is granted, and such other things as may be necessary. This blank form shall be filled out and signed by the chairman of the board which grants the franchise, and the official seal shall be attached. Such franchise shall be subject to such regulations and restrictions as the general assembly from time to time may prescribe, and to such rules, not inconsistent with statutes, as the board of railroad commissioners may establish from time to time. [S., '13, § 2120-n; 40 Ex. G. A., ch. 13, § 6.]

8315. Valuation of franchise. No financial consideration shall be charged for such franchise. In fixing the value for rate making purposes of the property of any person, company, or corporation owning it or operating under it no account shall be taken of, and no increased value shall be allowed for, any such franchise, except that the reasonable cost to the petitioners of obtaining said franchise may be included in the cost of constructing said line. [40 Ex. G. A., ch. 13, § 6-a1.]

8316. Exclusive rights—duration of franchise. No exclusive right shall ever be given by franchise or otherwise to any person, company, corporation, town, or city to conduct electrical energy, or to place electric wires, along or over or across any public highway or public place or ground; and no franchise or privilege shall ever be granted for any such purpose for a longer period than twenty-five years. [40 Ex. G. A., ch. 13, § 6-a2.]

8317. Franchise transferable—notice. When any such electric transmission line or lines are sold and transferred either by voluntary or

judicial sale, such transfer shall carry with it the franchise under which the said improvement is owned, maintained, or operated. If a transfer of such franchise is made before the improvement for which it was issued is constructed, in whole or in part, such transfer shall not be effective till the person, company, or corporation to whom it was issued shall file in the office of the board granting the franchise a notice in writing stating the date of such transfer and the name and address of the transferee. [40 Ex. G. A., ch. 13, § 7.]

8318. Record of franchises. The board granting the franchise shall keep a record of all such franchises granted and issued by it, when and to whom issued, with a general statement of the location, route, and termini of the transmission line or lines covered thereby. When any transfer of such franchise has been made as provided in this chapter, the board shall also make note upon its record of the date of such transfer and the name and address of the transferee.

Every person, company, or corporation which secures a franchise for transmission lines from any board of supervisors must file with the board of railroad commissioners a copy of the order or resolution granting the franchise, certified by the county auditor. The franchise shall be effective when such copy is filed. When so filed the board of railroad commissioners shall issue a statement showing that fact. [40 Ex. G. A., ch. 13, § 8.]

8319. Acceptance of franchise. Any person, company, or corporation obtaining a franchise as in this chapter provided, or owning or operating under one, shall be conclusively held to an acceptance of the provisions thereof and of all laws relating to the regulation, supervision, or control thereof which are now in force or which may be hereafter enacted, and to have consented to such reasonable regulation as the commission may, from time to time, prescribe. The provisions of this chapter shall apply equally to assignees as well as to original owners. [S., '13, § 2120-p; 40 Ex. G. A., ch. 13, § 9.]

8320. Extension of franchise. Any person, firm, or corporation owning a franchise granted under this chapter or previously existing law, desiring to acquire extensions of such franchise, may petition the board in the manner provided for the granting of a franchise, and the same proceeding shall be had as on an original application. Such petition shall be accompanied by the written consent of the applicant that the provisions of all laws relating to public utilities, franchises, and transmission lines, or to the regulation, supervision, or control thereof which are then in force or which may be thereafter enacted shall apply to its existing line or lines, franchises and rights with the same force and effect as if such franchise had been granted or such lines had been constructed or rights had been obtained under the provisions of this chapter. [S., '13, § 2120-o; 40 Ex. G. A., ch. 13, § 10.]

8321. Service furnished. Any city or town which owns or operates a system for the distribution of electric light or power, and which has obtained electric energy for such distribution from any person or firm or corporation owning or operating an electric light and power plant or transmission line, shall be entitled to have the service reasonably needed by such municipality and its patrons continued at and for a reasonable rate and charge and under reasonable rules of service.

It shall be unlawful for the owner or operator of such light and power plant or transmission line to disconnect or discontinue such service (except during nonpayment of reasonable charges) so long as such operator holds or enjoys any franchise to go upon or use any public streets, highways, or grounds.

Until the municipality and the operator shall agree upon a rate or charge for such service the municipality shall pay and the operator shall accept the rate provided in the expired contract if any existed, and if none existed then the rate before paid. This shall be without prejudice, however, to the right of either party to test in court or before any lawfully constituted rate-making tribunal the reasonableness of such rate.

This section shall not apply if the original service to the municipality was given in case of emergency or for any other temporary purpose. [40 Ex. G. A., ch. 13, § 10-a.1.]

8322. Eminent domain—procedure. Any person, company, or corporation having secured a franchise as provided in this chapter, shall thereupon be vested with the right of eminent domain to such extent as may be necessary and as prescribed and approved by the board, not exceeding one hundred feet in width for right of way and not exceeding one acre in any one location, in addition to right of way, for the location of transformer or other stations to carry out the purposes of said franchise. If agreement can not be made with the private owner of lands as to damages caused by the construction of said transmission line, the same proceedings shall be taken as provided for taking private property for works of internal improvement. [S., '13, § 2120-q; 40 Ex. G. A., ch. 13, § 11.]

8323. Injury to person or property. In case of injury to any person or property by any such transmission line, negligence will be presumed on the part of the person or corporation operating said line in causing said injury, but this presumption may be rebutted by proof. Such presumption shall not exist in favor of employees of the person or corporation operating said transmission line who are charged with or engaged in the construction, reconstruction, repair, or maintenance thereof, unless otherwise provided by the employers' liability and workmen's compensation laws of the state. [S., '13, § 2120-s; 40 Ex. G. A., ch. 13, § 12.]

8324. Access to lines—damages. Individuals or corporations operating such transmission

lines shall have reasonable access to the same for the purpose of constructing, reconstructing, enlarging, repairing, or locating the poles, wires, or construction and other devices used in or upon such line, but shall pay to the owner of such lands and of crops thereon all damages to said lands or crops caused by entering, using, and occupying said lands for said purposes. Nothing herein contained shall prevent the execution of an agreement between the person or company owning or operating such line and the owner of said land or crops with reference to the use thereof. [S., '13, § 2120-t; 40 Ex. G. A., ch. 13, § 13.]

8325. Supervision of construction—location. The board of railroad commissioners shall have power of supervision over the construction of said transmission line and over its future operation and maintenance. Said transmission line shall be constructed near and parallel to the right of way of the railroads of the state or along the division lines of the lands, according to the government survey thereof, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant thereof. [S., '13, § 2120-r; 40 Ex. G. A., ch. 13, § 14.]

8326. Manner of construction. Such lines shall be built of strong and proper wires attached to strong and sufficient supports properly insulated at all points of attachment; all wires, poles, and other devices which by ordinary wear or other causes are no longer safe shall be removed and replaced by new wires, poles, or other devices, as the case may be, and all abandoned wires, poles, or other devices shall be at once removed. Where wires carrying current are carried across, either above or below wires used for other service, the said transmission line shall be constructed in such manner as to eliminate, so far as practicable, damages to persons or property by reason of said crossing. There shall also be installed sufficient devices to automatically shut off electric current through said transmission line whenever connection is made whereby current is transmitted from the wires of said transmission line to the ground, and there shall also be provided a safe and modern improved device for the protection of said line against lightning. [S., '13, § 2120-r; 40 Ex. G. A., ch. 13, § 15.]

8327. Distance from buildings. No transmission line shall be constructed, except by agreement, within one hundred feet of any dwelling house or other building, except where said line crosses or passes along a public highway or is located alongside or parallel with the right of way of any railway company. In addition to the foregoing, each person, company, or corporation shall conform to any other rules, regulations, or specifications established by the board of railroad commissioners, in the construction, operation, or

maintenance of such lines. [S., '13, § 2120-r; 40 Ex. G. A., ch. 13, § 16.]

8328. Lines along or crossing highway—danger label. At any crossing of any highway by such transmission line, the poles or towers next to the highway shall be labeled with the following words: "Danger volts electricity", filling in the voltage. The stroke of said letters and numbers shall be at least four inches in length and not less than five-eighths of an inch in width, and the color of the letters and numbers shall be in contrast with the color of the background. The said labels shall show the maximum number of volts of electricity transmitted over said line, and shall face toward the highway. Where said poles or towers are extended along said highway and within the limits thereof or immediately adjacent thereto, the sign herein prescribed shall be placed at least every quarter of a mile. The board of railroad commissioners shall have power to make and enforce such further and additional rules relating to location, construction, operation, and maintenance of said transmission line as may be reasonable. [S., '13, § 2120-r; 40 Ex. G. A., ch. 13, § 17.]

8329. Nonuser. Unless the improvement for which a franchise is granted is constructed in whole or in part within two years from the granting thereof, it shall be forfeited and the board which granted the franchise shall cancel and revoke the same and make record thereof. [40 Ex. G. A., ch. 13, § 18.]

8330. Forfeiture for violations. If any person, company, or corporation shall violate the provisions of this chapter or any rule established for the construction, maintenance, or operation of such electric transmission line, and shall fail for ninety days after notice from the board to comply therewith, such board shall have power to cancel and annul such franchise and order the removal of such line.

Provided, however, that if proceedings are commenced within said ninety days in any court of competent jurisdiction to determine whether the provisions of this chapter, or whether any rule established for the construction or maintenance or operation of an electrical transmission line, have been violated, or are legal and enforceable rules or provisions, no forfeiture shall be declared or become effective if within sixty days from the date of the final decree or judgment in such proceedings the said rule or provisions have been fully complied with and the cause of forfeiture removed. [40 Ex. G. A., ch. 13, § 19.]

8331. Prior franchises—legislative control. Any such franchise heretofore granted under previously existing law shall not be abrogated by the provisions of this chapter, but all such franchises and all franchises granted under the provisions of this chapter shall be subject to further legislative control. [40 Ex. G. A., ch. 13, § 21.]

8332. Violations. Any person, company, or corporation constructing or undertaking to construct or maintain any electric transmission line, without first procuring a franchise for such purpose in accordance with the provisions of this chapter, shall be fined in the sum of not less than one hundred dollars nor more than one thousand dollars; and for violating any of the other provisions of this chapter relating to electric transmission lines or disobeying any order or rule made by the board of railroad commissioners in relation thereto, shall be fined not exceeding one hundred dollars. [S., '13, § 1527-d; 38 G. A., ch. 399, § 1; 40 Ex. G. A., ch. 13, § 22.]

8333. Wire crossing railroads—supervision. The board of railroad commissioners shall have general supervision over any and all wires whatsoever crossing under or over any railway track and shall make rules prescribing the manner in which such wires shall cross such track; but in no case shall the board of railroad commissioners prescribe a less height for any wire than twenty-two feet above the top of the rails of any railroad track. [S., '13, §§ 2120-d, 2120-e, 2120-h; 40 Ex. G. A., ch. 13, § 23.]

8334. Wires across railroad right of way at highways. The board of railroad commissioners shall prescribe the manner for the crossing of wires over and across railroad right of ways at highways and other places within the state. [S., '13, § 2120-i; 40 Ex. G. A., ch. 13, § 24.]

8335. Wires—how strung. No corporation or person shall place or string any such wire for transmitting electric current or any wire whatsoever across any track of a railroad except in the manner prescribed by the board of railroad commissioners. [S., '13, § 2120-f; 40 Ex. G. A., ch. 13, § 25.]

8336. Examination of existing wires. The board of railroad commissioners shall, either by personal examination or otherwise, obtain information where railroad tracks are crossed by wires contrary to, or not in compliance with, the rules prescribed by it. It shall order such change or changes to be made by the persons or corporations owning or operating such wires as may be necessary to make the same comply with said rules and within such reasonable time as it may prescribe. [S., '13, § 2120-g; 40 Ex. G. A., ch. 13, § 26.]

8337. Penalty—enforcement. Any person or corporation who shall string or maintain any wire across any railroad track in this state at a different height or in a different manner from that prescribed by the board of railroad commissioners shall forfeit and pay to the state the sum of one hundred dollars for each separate period of ten days during which such wire is so maintained. Such forfeiture shall be recovered in a civil action in the name of the state by the commerce counsel, or by the county attorney of the county in which such wire is situated, at the request of the board

of railroad commissioners. [S., '13, § 2120-j; 40 Ex. G. A., ch. 13, § 27.]

8338. Crossing highway. Nothing in this chapter shall prevent any such individual or corporation having its high tension line on its own private right of way on both sides of any

highway, from crossing such public highway under such rules and regulations as the board of railroad commissioners may prescribe, and subject from time to time to legislative control as to duration and use. [40 Ex. G. A., ch. 13, § 28.]

TITLE XIX

CORPORATIONS

CHAPTER 384

CORPORATIONS FOR PECUNIARY PROFIT

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8339. Who may incorporate. Any number of persons may become incorporated for the transaction of any lawful business, but such incorporation confers no power or privilege not possessed by natural persons, except as herein-after provided. [C., '51, § 673; R., '60, § 1150; C., '73, § 1058; C., '97, § 1607.]

8340. Single person. Except as otherwise provided by law, a single person may incorporate under the provisions of this chapter, thereby entitling himself to all the privileges and immunities provided herein, but if he

adopts the name of an individual or individuals as that of the corporation, he must add thereto the word "incorporated." [C., '51, § 702; R., '60, § 1179; C., '73, § 1088; C., '97, § 1608.]

8341. Powers. Among the powers of such corporations are the following:

1. To have perpetual succession.
2. To sue and be sued by its corporate name.
3. To have a common seal, which it may alter at pleasure.
4. To render the interests of the stockholders transferable.

5. To exempt the private property of its members from liability for corporate debts, except as otherwise declared.

6. To make contracts, acquire and transfer property,—possessing the same powers in such respects as natural persons.

7. To establish by-laws, and make all rules and regulations necessary for the management of its affairs. [C., '51, § 674; R., '60, § 1151; C., '73, § 1059; C., '97, § 1609.]

8342. Index book. The county recorder shall keep in his office an index book for articles of incorporation, which shall be ruled and headed substantially after the following form, and shall make entries therein in the order in which they are filed in his office.

INDEX TO ARTICLES OF INCORPORATION.	Name	Place of Business	Date of Filing		Date of Inst.			Where Recorded		Capital Stock	Remarks
			Mo.	Day	Yr.	Mo.	Day	Yr.	Bk.		

[S., '13, § 1610.]

8343. Articles adopted and recorded. Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators, recorded in the office of the recorder of deeds of the county where the principal place of business is to be, in a book kept therefor; and the recorder must, within five days thereafter, indorse thereon the time when the same were filed and the book and page where the record will be found. Said articles thus indorsed shall then be forwarded to the secretary of

state, and be by him recorded in a book kept for that purpose. [C., '51, § 675; R., '60, § 1152; C., '73, § 1060; C., '97, § 1610; S., '13, § 1610.]

8344. Filing or refusal to file. When articles of incorporation are presented to the secretary of state for the purpose of being filed, if he is satisfied that they are in proper form to meet the requirements of law, that their object is a lawful one and not against public policy, that their plan for doing business, if any be provided for, is honest and lawful, he shall file them; but if he is of the opinion that they are not in proper form to meet the requirements of the law, or that their object is an unlawful one, or against public policy, or that their plan for doing business is dishonest or unlawful, he shall refuse to file them. [S., '13, § 1610.]

8345. Question of legality submitted. Should a question of doubt arise as to the legality of the articles, he shall submit them to the attorney general whose duty it shall be to forthwith examine and return them with an opinion in writing touching the point or points concerning which inquiry has been made of him. [S., '13, § 1610.]

8346. Action on opinion. If such opinion is in favor of the legality of the articles, and no other objections are apparent, they shall then, upon payment of the proper fee, be filed and otherwise dealt with as the law provides. If, however, such opinion be against their legality they shall not be filed. [S., '13, § 1610.]

8347. Submission to executive council. Upon the rejection of any articles of incorporation by the secretary of state, except for the reason that they have been held by the attorney general to be illegal, they shall, if the person or persons presenting them so request, be submitted to the executive council, which shall, as soon as practicable, consider the said articles and if the council determines that the articles are in proper form, of honest purpose, not against public policy, nor otherwise objectionable, it shall so advise the secretary of state in writing, whereupon he shall, upon the payment of the proper fees, file the same and proceed otherwise as the law directs; but if the council sustains the previous action of the secretary of state in rejecting said articles, such decision by the council shall be reported to the secretary of state in writing, and he shall then return said articles to the person or persons presenting them with such explanation as shall be proper in the case. [S., '13, § 1610.]

8348. Interpretative clause. Nothing in the five preceding sections shall be construed as repealing or modifying any statute now in force in respect to the approval of articles of incorporation relating to insurance companies, building and loan associations or investment companies. [S., '13, § 1610.]

8349. Incorporation fee. Such corporation shall pay to the secretary of state, before a cer-

tificate of incorporation is issued, a fee of twenty-five dollars, and, for all authorized stock in excess of ten thousand dollars, an additional fee of one dollar per thousand. Should any corporation increase its capital stock, it shall pay a fee to the secretary of state of one dollar for each one thousand dollars of such increase, and a recording fee of ten cents per one hundred words, no recording fee to be less than fifty cents. [C., '97, § 1610; S., '13, § 1610.]

8350. Exemption from fee. Farmers' mutual cooperative creamery associations, whose articles of incorporation provide that the business of the association be conducted on a purely mutual and cooperative plan, without capital stock, and whose patrons shall share equally in expense and profits, domestic and domestic local building and loan associations and incorporations organized for the manufacture of sugar from beets grown in the state, shall be exempt from the payment of the incorporation filing fee provided herein in excess of twenty-five dollars. [C., '97, § 1610; S., '13, § 1610.]

8351. Limit of indebtedness. Such articles must fix the highest amount of indebtedness or liability to which the corporation is at any one time to be subject, which in no case, except risks of insurance companies, and liabilities of banks not in excess of their available assets, not including their capital, shall exceed two-thirds of its capital stock. [C., '51, § 676; R., '60, § 1153; C., '73, § 1061; C., '97, § 1611; S. S., '15, § 1611; 40 Ex. G. A., ch. 6, § 4.]

8352. Exceptions. The provisions of the last preceding section shall not apply:

1. To the bonds or other railway or street railway securities, issued or guaranteed by railway or street railway companies of the state, in aid of the location, construction, and equipment of railways or street railways, to an amount not exceeding sixteen thousand dollars per mile of single track, standard gauge, or eight thousand dollars per mile of single track, narrow gauge, lines of road for each mile of railway or street railway actually constructed and equipped.

2. To the debentures or bonds of any company incorporated under the provisions of this chapter, the payment of which shall be secured by an actual transfer of real estate securities for the benefit and protection of purchasers thereof; such securities to be at least equal in amount to the par value of such bonds or debentures, and to be first liens upon unincumbered real estate worth at least twice the amount loaned thereon; nor to debentures or bonds issued by any corporation organized under this chapter for the purpose of manufacturing or selling gas, heat, steam, or electricity, or constructing or operating interurban or street railways, or waterworks, or for any one or more of said purposes, when such debentures or bonds are not issued in an amount exceeding twice the amount of the paid-up capital stock of such corporation.

3. To the debentures or bonds of any company organized under the provisions of this chapter, provided said company shall have not less than one million dollars paid-in and outstanding capital stock, the payment of which debentures and bonds shall be secured by the actual transfer of the obligations of individuals, partnerships, associations, or corporations, for the benefit and protection of purchasers thereof; provided that where such obligations are secured by actual transfer of warehouse receipts of bonded warehouses as security collateral thereto, said obligation to represent not exceeding seventy-five per cent of market value of the commodity represented by such warehouse receipt, debentures or bonds may be issued to an amount not in excess of one hundred per cent of the actual value of said obligations; provided, further, that the said debentures shall be first liens upon the said obligations and upon the warehouse receipts collateral thereto; and provided further, that where such debentures or bonds shall be issued upon the security of obligations indorsed by a bank permitted to do banking business in the state, or obligations secured by collateral other than warehouse receipts of bonded warehouses, said collateral to consist of chattel loans on live stock up to eighty per cent of its value, or investments authorized by law for Iowa savings banks, they shall not be issued for an amount in excess of ninety per cent of the actual value of such obligations, and such debentures or bonds shall be first liens upon said obligations, and the collateral thereto.

4. To liabilities incurred through federal intermediate credit banks organized under the provisions of the act of Congress of March 4, 1923, known as the Agricultural Credit Act of 1923, relating to agricultural credits, when such liabilities are secured by warehouse receipts for agricultural products or chattel mortgages of live stock. [C., '97, § 1611; S. S., '15, § 1611; 40 Ex. G. A., Ch. 6, § 5.]

8353. Place of business. Any corporation organized under the laws of this state shall fix upon and designate in its articles of incorporation its principal place of business which must be in this state, and if outside the limits of a city or town then its postoffice address must be given. The place of business so designated shall not be changed except through an amendment to its articles of incorporation. [C., '97, § 1612; S., '13, § 1612.]

8354. Custody of office-business maintained. Its place of business shall be in charge of an agent of the corporation and shall be the place where it shall hold its meetings, keep a record of its proceedings and its stock and transfer books. [C., '97, § 1612; S., '13, § 1612.]

8355. Secretary of state as process agent. Any corporation organized under the laws of this state that does not maintain an office in the county of its organization, or transact business in this state, shall file with the secretary of state a written instrument duly signed and

sealed, authorizing the secretary of state to acknowledge service of notice or process for and in behalf of such corporation in this state, and consenting that service of notice or process may be made upon the secretary of state, and when so made shall be taken and held as valid as if served according to the laws of this state, and waiving all claim or right or error by reason of such acknowledgment of service. [S., '13, § 1612.]

8356. Acknowledgment of service. Such notice or process, with a copy thereof, may be mailed to the secretary of state at Des Moines, Iowa, in a registered letter addressed to him by his official title, and he shall immediately upon its receipt acknowledge service thereon in behalf of the defendant corporation by writing thereon, giving the date thereof, and shall immediately return such notice or process in a registered letter to the clerk of the court in which the suit is pending, addressed by his official title, and shall also forthwith mail such copy, with a copy of his acknowledgment of service written thereon, in a registered letter addressed to the corporation or person who shall be named or designated by the corporation in such written instrument. [C., '97, § 1612; S., '13, § 1612.]

8357. Notice of incorporation. A notice must be published once each week for four weeks in succession in some newspaper as convenient as practicable to the principal place of business, which must contain:

1. The name of the corporation and its principal place of business.

2. The general nature of the business to be transacted.

3. The amount of capital stock authorized, and the times and conditions on which it is to be paid in.

4. The time of the commencement and termination of the corporation.

5. By what officers or persons its affairs are to be conducted, and the times when and manner in which they will be elected.

6. The highest amount of indebtedness to which it is at any time to subject itself.

7. Whether private property is to be exempt from corporate debts. [C., '51, §§ 677, 678; R., '60, §§ 1154, 1155; C., '73, §§ 1062, 1063; C., '97, § 1613; S., '13, § 1613.]

NOTE: For legalizing acts, see ch. 465.

8358. Proof of publication—filing. Proof of such publication, by affidavit of the publisher of the newspaper in which it is made, shall be filed with the secretary of state, and shall be evidence of the fact. [C., '97, § 1613; S., '13, § 1613.]

8359. Commencement of business. The corporation may commence business as soon as the certificate is issued by the secretary of state, and its acts shall be valid if the publication in a newspaper is made within three months from the date of such certificate; providing that when the notice is not published within the time herein prescribed, but is sub-

sequently published for the required time, and proof of the publication thereof filed with the secretary of state, the acts of such corporation after such publication shall be valid. [C., '51, § 679; R., '60, § 1156; C., '73, § 1064; C., '97, § 1614; 40 G. A., ch. 164, § 1.]

8360. Amendments—fees. Amendments to articles of incorporation making changes in any of the provisions of the articles may be made at any annual meeting of the stockholders or special meeting called for that purpose, and they shall be valid only when recorded, approved and published as the original articles are required to be. If no increase is made in the amount of capital stock, a certificate fee of one dollar and a recording fee of ten cents per one hundred words must be paid; no recording fee less than fifty cents. Where capital stock is increased the certificate fee shall be omitted but a filing fee of one dollar per thousand dollars of such increase together with a recording fee of ten cents per one hundred words shall be paid. [C., '51, § 680; R., '60, § 1157; C., '73, § 1065; C., '97, § 1615; S., '13, § 1615.]

8361. Signing and acknowledging of amendments. Such amendments need only be signed and acknowledged by such officers of the corporation as may be designated by the stockholders to perform such act. [C., '97, § 1615; S., '13, § 1615.]

8362. Individual property liable. A failure to substantially comply with the foregoing requirements in relation to organization and publicity shall render the individual property of the stockholders liable for the corporate debts; but corporators and stockholders in railway and street railway companies shall be liable only for the amount of stock held by them therein. [C., '51, § 689; R., '60, §§ 1166, 1338; C., '73, § 1068; C., '97, § 1616.]

8363. Dissolution—notice of. A corporation may be dissolved prior to the period fixed in the articles of incorporation, by unanimous consent, or in accordance with the provisions of its articles, and notice thereof must be given in the same manner and for the same time as is required for its organization; provided, however, that the notice of such dissolution shall be deemed sufficient if signed by the officers of such corporation and published as required by law. [C., '51, §§ 682, 683; R., '60, §§ 1159, 1160; C., '73, §§ 1066, 1067; C., '97, § 1617; 37 G. A., ch. 128, § 1; 40 G. A., ch. 165.]

8364. Duration. Corporations for the construction and operation, or the operation alone, of steam railways, interurban railways, and street railways, for the establishment and conduct of savings banks, or for the transaction of the business of life insurance, may be formed to endure fifty years; those for other purposes, not to exceed twenty years. [C., '51, § 681; R., '60, § 1158; C., '73, § 1069; C., '97, § 1618; S., '13, § 1618.]

8365. Renewal—conditions. In either case they may be renewed from time to time for

the same or shorter periods, within three months before or after the time for the termination thereof, if a majority of the votes cast at any regular election, or special election called for that purpose, be in favor of such renewal, and if those voting for such renewal will purchase at its real value the stock voted against such renewal. [C., '51, § 681; R., '60, § 1158; C., '73, § 1069; C., '97, § 1618; S., '13, § 1618.]

8366. Computation and duration. Such renewals shall date from the expiration of the corporate period which it succeeds and shall be limited in duration to a period not exceeding the time allowed by law to the same class of corporations. [S., '13 § 1618.]

8367. Execution of renewal—record required. Within five days after the said action of the stockholders for the renewal of any corporation, a certificate, showing the proceedings resulting in such renewal, sworn to by the president and secretary of the corporation, or by such other officers as may be designated by the stockholders, together with the articles of incorporation, which may be the original articles of incorporation or amended and substituted articles, shall be filed for record in the office of the recorder of the county in which the principal place of business of said corporation is situated, and the same shall be recorded. [S., '13, § 1618.]

8368. Filing with secretary of state—record—fee—certificate of renewal. Upon filing with the secretary of state the said certificate and articles of incorporation, within ten days after they are filed with the recorder, and upon the payment to the secretary of state of a fee of twenty-five dollars, together with a recording fee of ten cents per one hundred words and an additional fee of one dollar per thousand for all authorized stock in excess of ten thousand dollars, the secretary of state shall record the said certificate and the said articles of incorporation in a book to be kept by him for that purpose, and shall issue a proper certificate for the renewal of the corporation. [S., '13, § 1618.]

8369. Exemption from fee. Farmers' mutual cooperative creamery associations, domestic and domestic local building and loan associations, and corporations organized for the manufacture of sugar from beets grown in the state of Iowa, shall be exempt from the payment of the incorporation fee, provided in the preceding section. [S., '13, § 1618.]

8370. Notice of renewal—publication. Within three months after the filing of the certificate and articles of incorporation with the secretary of state, the corporation so renewed shall publish a notice of renewal. Said notice shall be published once each week for four weeks in succession in a newspaper as convenient as practicable to the principal place of business of the corporation, and proof of publication filed in the office of the secretary

of state, and shall contain the matters and things required to be published by section 8357, relating to original incorporations. [S., '13, § 1618.]

8371. Renewal of banks—conditions. The corporate existence of any state or savings bank may be renewed or extended, from time to time, for a period not longer than the time for which such banks may organize, by an affirmative vote of two-thirds of the shareholders thereof, at a stockholders' meeting held for that purpose, within three months before or after the time of the expiration of its charter as shown by its certificate of incorporation issued by the secretary of state. [S., '13, § 1618-a.]

8372. Meeting and notice thereof. Such meeting shall be called upon a notice signed by at least two of the officers of the bank and by a majority of its directors, specifying the object of the meeting, and the time and place thereof, published once a week for four consecutive weeks before the time at which the same is to be held, in some newspaper in the county wherein the bank is located. [S., '13, § 1618-a.]

8373. Execution of renewal—record and fees. If at such meeting the required vote is given, a certificate of the proceedings showing compliance with the foregoing provisions and the time to which the corporate period is to be continued, shall be signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the board of directors, and together with the articles of incorporation, as they exist at the date of the meeting, shall be recorded in the office of the recorder of deeds of the proper county and filed, recorded, and fees paid, as provided in section 8368, and shall be by the secretary of state certified to the superintendent of banking. [S., '13, § 1618-a.]

8374. Amendments to articles. When the meeting is held previous to the expiration of the charter of the bank, such amendments may be made to the articles of incorporation, subject to the provisions thereof, as may be deemed necessary and whether held before or after the extension of the corporate period, such changes may be made in the articles as are necessary to show the time to which the corporate period is extended and the names of the officers and directors at the time of the renewal or extension. [S., '13, § 1618-a.]

8375. Certificate of renewal—notice. When the above has been complied with, the superintendent of banking shall issue to such bank a certificate as provided in section 9161, notice of which shall be published as required by the provisions of said section. [S., '13, § 1618-a.]

8376. Legislative control. The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization

may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good. [C., '73, § 1090; C., '97, § 1619.]

8377. Fraud—penalty for. Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall be a misdemeanor, and shall subject those guilty thereof to fine and imprisonment, or both, at the discretion of the court. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud. [C., '51, § 686; R., '60, § 1163; C., '73, § 1071; C., '97, § 1620.]

8378. Diversion of funds—unlawful dividends. The diversion of the funds of the corporation to other objects than those mentioned in its articles and in the notice published, if any person be injured thereby, and the payment of dividends which leaves insufficient funds to meet the liabilities thereof, shall be such fraud as will subject those guilty thereof to the penalties of the preceding section; and such dividends, or their equivalent, in the hands of stockholders, shall be subject to such liabilities. If the directors or other officers or agents of any corporation shall declare and pay any dividend when such corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers or agents knowingly consenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, but dividends made in good faith before knowledge of the occurring of losses shall not come within the provisions of this section. [C., '51, §§ 687, 688; R., '60, §§ 1164, 1165; C., '73, §§ 1072, 1073; C., '97, § 1621.]

8379. Forfeiture. Any intentional violation by the board of directors or the managing officers of the corporation of the provisions of the two preceding sections shall work a forfeiture of the corporate privileges, to be enforced as provided by law. [C., '51, § 690; R., '60, § 1167; C., '73, § 1074; C., '97, § 1622.]

8380. Liability on excessive indebtedness. If the indebtedness of any corporation shall exceed the amount of indebtedness permitted by law, the directors and officers of such corporation knowingly consenting thereto shall be personally and individually liable to the creditors of such corporation for such excess. [C., '97, § 1622.]

8381. Keeping false accounts. The intentional keeping of false books or accounts shall be a misdemeanor on the part of any officer,

agent or employee of the corporation guilty thereof, or of anyone whose duty it is to see that such books or accounts are correctly kept. [C., '51, § 691; R., '60, § 1168; C., '73, § 1075; C., '97, § 1623.]

8382. By-laws posted. A copy of the by-laws of the corporation, with the names of all of its officers, must be posted in the principal places of business subject to public inspection. [C., '51, § 684; R., '60, § 1161; C., '73, § 1076; C., '97, § 1624.]

8383. Statement of stock and indebtedness. A statement of the amount of capital stock subscribed, the amount of capital actually paid in, and the amount of the indebtedness in a general way, must also be kept posted in like manner, which shall be corrected as often as any material change takes place in relation to any part of the subject matter thereof. [C., '51, § 685; R., '60, § 1162; C., '73, § 1077; C., '97, § 1625.]

8384. Stockholders entitled to names of stockholders. The secretary of each corporation shall, upon a written request, furnish to the stockholders of said corporation a printed or typewritten list, giving the names of the stockholders and their postoffice address, and the number of shares owned by each stockholder. Said list shall be prepared and ready for delivery upon said request not later than thirty days prior to the annual meeting of the stockholders and not more than sixty days prior to said annual meeting. Said written request must be made at least forty days prior to said annual meeting. [39 G. A., ch. 208.]

8385. Stock book and transfers. The books of the corporation must be so kept as to show the original stockholders, their interests, the amount paid on their shares, and all transfers thereof; which books, or a copy thereof, so far as the items mentioned in this and the following section are concerned, shall be subject to the inspection of any person desiring the same. [C., '51, § 692; R., '60, § 1169; C., '73, § 1078; C., '97, § 1626.]

8386. Transfer of shares. The transfer of shares is not valid, except as between the parties thereto, until regularly entered upon the books of the company, showing the name of the person by and to whom transferred, the numbers or other designation of the shares, and the date of the transfer; but such transfer shall not exempt the person making it from any liability of said corporation created prior thereto. [C., '51, § 692; R., '60, § 1169; C., '73, § 1078; C., '97, § 1626.]

8387. Transfer of shares as collateral. When any shares of stock shall be transferred to any person, firm, or corporation as collateral security, such person, firm, or corporation may notify in writing the secretary of the corporation whose stock is transferred as aforesaid, and from the time of such notice, and until written notice that said stock shall have ceased to

be held as collateral security, said stock so transferred and noticed as aforesaid shall be considered in law as transferred on the books of the corporation which issued said stock, without any actual transfer on the books of such corporation of such stock. [C., '97, § 1626.]

8388. Release of shares held as collateral. In such case, it shall be the duty of the secretary or cashier of the corporation or of the person or firm to which such stock shall have been transferred as collateral security, at once upon its ceasing to be so held, to inform the secretary of the corporation issuing such stock of such fact. [C., '97, § 1626.]

8389. Record of transfers as collateral. The secretary of the company whose stock is transferred as collateral shall keep a record showing such notice of transfer as collateral, and notice of discharge as collateral, subject to public inspection. [C., '97, § 1626.]

8390. Liability of collateral holder. No holder of stock as collateral security shall be liable for assessments on the same. [C., '97, § 1626.]

8391. Right to vote stock—attachment. Every executor, administrator, guardian, or trustee shall represent the stock in his hands at all corporate meetings, and may vote the same as a stockholder.

Every person who shall pledge his stock, in the absence of a written agreement to the contrary, may represent the same at all such meetings and vote accordingly.

The owner of corporate stock levied upon by attachment or other proceeding shall have the right to vote the same at all corporate meetings, until such time as he shall have been divested of his title thereto by execution sale.

Nothing contained in this section shall in any manner conflict with any provision in the articles of incorporation, or the by-laws of the corporation issuing the stock. [S., '13, § 1641-a.]

8392. Expiration and closing of business. Corporations whose charters expire by limitation or the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their affairs. [C., '51, § 694; R., '60, § 1171; C., '73, § 1080; C., '97, § 1629.]

8393. Sinking fund and loaning thereof. For the purpose of repairs, rebuilding, enlarging, or to meet contingencies, or for the purpose of creating a sinking fund, the corporation may set apart a sum which it may loan, and take proper securities therefor. [C., '51, § 699; R., '60, § 1176; C., '73, § 1081; C., '97, § 1630.]

8394. Liability of stockholders. Neither anything in this chapter contained, nor any provisions in the articles of corporation, shall exempt the stockholders from individual lia-

bility to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors; and execution against the company may, to that extent, be levied upon the private property of any such individual. [C., '51, § 695; R., '60, § 1172; C., '73, § 1082; C., '97, § 1631.]

8395. Levy on private property. In none of the cases contemplated in this chapter can the private property of the stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and he neglects to point out any such property. [C., '97, § 1631.]

8396. Suit by creditor—measure of recovery. In suits by creditors to recover unpaid installments upon shares of stock against any person who has in any manner obtained such stock of the corporation, the stockholder shall be liable for the difference between the amount paid by him to the corporation for said stock and the face value thereof. [C., '97, § 1631.]

8397. Corporate property exhausted. Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against him, in any stage of which he may point out corporate property subject to levy; and, upon his satisfying the court of the existence of such property, by affidavit or otherwise, the cause may be continued, or execution against him stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but if a demand of property has been made as contemplated in section 8395, the costs of said action shall, in any event, be paid by the company or the defendant therein, but he shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion. [C., '51, §§ 696, 697; R., '60, §§ 1173, 1174; C., '73, §§ 1083, 1084; C., '97, § 1632.]

8398. Indemnity—contribution. When the property of a stockholder is taken for a corporate debt, he may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution. [C., '51, § 698; R., '60, § 1175; C., '73, § 1085; C., '97, § 1633.]

8399. Franchise sold on execution. The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraise-

ment. [C., '51, § 700; R., '60, § 1177; C., '73, § 1086; C., '97, § 1634.]

8400. Production of books. In proceedings by or against a corporation or a stockholder to charge his private property, or the dividends received by him, the court may, upon motion of either party, upon cause shown for that purpose, compel the officers or agents of the corporation to produce the books and records of the corporation. [C., '51, § 701; R., '60, § 1178; C., '73, § 1087; C., '97, § 1635.]

8401. Estoppel. No person or persons acting as a corporation shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with such an acting corporation, or sued for an injury to its property, or a wrong done to its interests, be permitted to set up a want of such legal organization in his defense. [C., '51, § 704; R., '60, § 1181; C., '73, § 1089; C., '97, § 1636.]

8402. Dissolution — receivership. Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the state of Iowa. An action therefor may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them. [C., '97, § 1640.]

8403. Ownership of alien property. Corporations organized in any foreign country or corporations organized in this country, the stock of which is owned in whole or in part by nonresident aliens, shall have the same rights, powers and privileges with regard to the purchase and ownership of real estate in this state as are granted to nonresident aliens in section 10215. [C., '97, § 1641; S., '13, § 1641.]

8404. False statements or pretenses. Every director, officer or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing or posting, either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or wilfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any

other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not to exceed one year, or by imprisonment in the county jail not to exceed six months or a fine not exceeding five hundred dollars. [S., '13, § 1641-g.]

8405. Political contributions prohibited. It shall be unlawful for any corporation doing business within the state, or any officer, agent or representative thereof acting for such corporation, to give or contribute any money, property, labor or thing of value, directly or indirectly, to any member of any political committee, political party, or employee or representative thereof, or to any candidate for any public office or candidate for nomination to any public office or to the representative of such candidate, for campaign expenses or for any political purpose whatsoever, or to any person, partnership or corporation for the purpose of influencing or causing such person, partnership or corporation to influence any elector of the state to vote for or against any candidate for public office or for nomination for public office or to any public officer for the purpose of influencing his official action, but nothing in this section shall be construed to restrain or abridge the liberty of the press or prohibit the consideration and discussion therein of candidacies, nominations, public officers, or political questions. [S., '13, § 1641-h.]

8406. Solicitation from corporations. It shall be unlawful for any member of any political committee, political party, or employee or representative thereof, or candidate for any office or the representative of such candidate, to solicit, request or knowingly receive from any corporation or any officer, agent or representative thereof, any money, property or thing of value belonging to such corporation, for campaign expenses or for any political purpose whatsoever. [S., '13, § 1641-i.]

8407. Violations. Any person convicted of a violation of any of the provisions of the two preceding sections shall be punished by imprisonment in the county jail not less than six months or more than one year and, in the discretion of the court, by fine not exceeding ten hundred dollars. [S., '13, § 1641-k.]

CHAPTER 385

CAPITAL STOCK

8408. Indorsement of amount paid.

8409. Effect of violation.

8410. Penalties.

8411. Certain corporations excepted.

8412. Par value required.

8413. Payment in property other than cash.

8414. Executive council to fix amount.

8415. Elements considered in fixing amount.

8416. Certificate of issuance of stock.

8417. Cancellation of stock—reimbursement.

8418. Dissolution—distribution of assets.

8419. Violations.

8408. Indorsement of amount paid. No certificate or shares of stock shall be issued, delivered or transferred by any corporation, officer or agent thereof, or by the owner of such certificate or shares without having indorsed on the face thereof what amount or portion of the par value has been paid to the corporation issuing the same, and whether such payment has been in money or property. [C., '97, § 1627; S., '13, § 1627; 40 Ex. G. A., H. F. 202, § 1.]

8409. Effect of violation. Any certificate of stock issued, delivered or transferred in violation of the preceding section when the corporation has not received payment therefor at par in money or property at a valuation approved by the executive council, shall be void, and the issuance, delivery or transfer of each certificate shall be considered a separate transaction. [40 Ex. G. A., H. F. 202, § 1.]

8410. Penalties. Any person violating the provisions of the two preceding sections, or knowingly making a false statement on such certificate, shall be fined not less than one hundred dollars nor more than five hundred dollars, and shall stand committed to the county jail until such fine and costs are paid. [C., '97, § 1627; S., '13, § 1627; 40 Ex. G. A., H. F. 202, § 1.]

8411. Certain corporations excepted. The three preceding sections shall not apply to railway or quasi-public corporations organized before October 1, 1897. [S., '13, § 1627; 40 Ex. G. A., H. F. 202, § 2.]

8412. Par value required. No corporation organized under the laws of this state, except building and loan associations, shall issue any certificate of a share of capital stock, or any substitute therefor, until the corporation has received the par value thereof. [S., '13, § 1641-b; 40 Ex. G. A., H. F. 202, § 3.]

8413. Payment in property other than cash. If it is proposed to pay for said capital stock in property or in any other thing than money, the corporation proposing the same must, before issuing capital stock in any form, apply

to the executive council of the state for leave so to do. Such application shall state the amount of capital stock proposed to be issued for a consideration other than money, and set forth specifically the property or other thing to be received in payment for such stock. [S., '13, § 1641-b; 40 Ex. G. A., H. F. 202, § 4.]

8414. Executive council to fix amount. The executive council shall make investigation, under such rules as it may prescribe, and ascertain the real value of the property or other thing which the corporation is to receive for the stock. It shall enter its finding, fixing the value at which the corporation may receive the same in payment for capital stock; and no corporation shall issue capital stock for the said property or thing in a greater amount than the value so fixed. [S., '13, § 1641-b; 40 Ex. G. A., H. F. 202, § 5.]

8415. Elements considered in fixing amount. For the purpose of encouraging the construction of new steam or electric railways, and manufacturing industries within this state, the labor performed in effecting the organization and promotion of such corporation, and the reasonable discount allowed or reasonable commission paid in negotiating and effecting the sale of bonds for the construction and equipment of such railroad or manufacturing plant, shall be taken into consideration by said council as elements of value in fixing the amount of capital stock that may be issued. [S., '13, § 1641-b; 40 Ex. G. A., H. F. 202, § 6.]

8416. Certificate of issuance of stock. It shall be the duty of every corporation to file a certificate under oath with the secretary of state, within ten days after the issuance of any capital stock, stating the date of issue, the amount issued, the sum received therefor, if payment be made in money, or the property or thing taken, if such be the method of payment. [S., '13, § 1641-c.]

8417. Cancellation of stock—reimbursement. The capital stock of any corporation issued in violation of the terms and provisions of the five preceding sections shall be void, and in a suit brought by the attorney general on behalf of the state in any court having

jurisdiction, a decree of cancellation shall be entered; and if the corporation has received any money or thing of value for the said stock, such money or thing of value shall be returned to the individual, firm, company or corporation from whom it was received, and if represented by labor or other service of intangible nature, the value thereof shall constitute a claim against the corporation issuing stock in exchange therefor. [S., '13, § 1641-d.]

8418. Dissolution—distribution of assets. Any corporation violating the provisions of sections 8412 to 8416, inclusive, shall, upon the application of the attorney general, in behalf

of the state, made to any court of competent jurisdiction, be dissolved, its affairs wound up, and its assets distributed among the stockholders other than those who have received the stock so unlawfully issued. [S., '13, § 1641-e.]

8419. Violations. Any officer, agent or representative of a corporation who violates any of the provisions of sections 8412 to 8416, inclusive, shall, upon conviction, be fined not less than two hundred dollars nor more than ten hundred dollars, and be imprisoned in the county jail for not less than thirty days nor more than six months. [S., '13, § 1641-f.]

CHAPTER 386

PERMITS TO FOREIGN CORPORATIONS

- 8420. Application for permit.
- 8421. Details of application.
- 8422. Secretary of state to determine values.
- 8423. Fees.
- 8424. Increase of capital—blanks.
- 8425. Exemption.
- 8426. Issuance of permit—effect.

- 8427. Denial of right to sue.
- 8428. Alphabetical records required.
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- 8430. Violations by corporation.
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- 8432. Status of corporation and officers.

8420. Application for permit. Any corporation for pecuniary profit organized under the laws of another state, or of any territory of the United States, or of any foreign country, which has transacted business in the state of Iowa since September 1, 1886, or desires hereafter to transact business in this state, and which has not a permit to do such business, shall file with the secretary of state a certified copy of its articles of incorporation, duly attested by the secretary of state or other state officer in whose office the original articles were filed, accompanied by a resolution of its board of directors or stockholders authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this state; said application to contain a stipulation that such permit shall be subject to the provisions of this chapter. [C., '97, § 1637; S., '13, § 1637; 40 Ex. G. A., ch. 6, § 6.]

8421. Details of application. Said application shall also contain a statement subscribed and sworn to by at least two of the principal officers of the corporation, setting forth the following facts, to wit:

1. The total authorized capital of the corporation.

2. The total paid up capital of the corporation.

3. The total value of all assets of the corporation, including money and property other than money represented by capital, surplus, undivided profits, bonds, promissory notes, certificates of indebtedness or other designation, whether carried as money on hand or in bank,

real estate or personal property of any description.

4. The total value of money and all other property the corporation has in use or held as investment in the state, at the time the statement is made (if any).

5. The total value of money and all other property the corporation proposes or expects to make use of in the state, during the ensuing year.

6. Certified copy of the resolution of the board of directors of said corporation giving name and address in Iowa of a resident agent on whom the service of original notice of civil suit in the courts of this state may be served. Failing which, or in the event such agent may not be found within the state, service of such process may then be made upon said corporation through the secretary of state by sending the original and two copies thereof to him, and on the original of which he shall accept service on behalf of said corporation, retain one copy for his files and send the other by registered mail to the corporation at the address of its home office as shown by the records in his office, which service shall have the same force and effect as if lawfully made upon said corporation within the county where such civil suit could be maintained against it under the laws of this state. [S., '13, § 1637; 40 Ex. G. A., ch. 6, § 6.]

8422. Secretary of state to determine values. The secretary of state can make such independent and further investigation as to the property within this state owned by any such corporation as he may desire, and upon the true facts determine the value thereof, and fix the fee to be paid by such company. [S., '13, § 1637; 40 Ex. G. A., ch. 6, § 6.]

8423. Fees. Before a permit is issued authorizing such corporation to transact business in the state, said corporation shall file with the secretary of state a certified copy of the articles of incorporation, with resolution and statement as previously set forth, and pay a filing fee of twenty-five dollars upon ten thousand dollars or less of money and property of such company actually within the state, and of one dollar for each one thousand dollars of such money or property within this state in excess of ten thousand dollars. [C., '97, § 1637; S., '13, § 1637; 40 Ex. G. A., ch. 6, § 6.]

8424. Increase of capital—blanks. If from time to time the amount of money or other property in use in the state by said foreign corporation is increased, said corporation shall at the time of said increase, or at the time of making annual report to the secretary of state, in July of each year, file with the secretary of state a sworn statement showing the amount of such increase, and shall pay a filing fee thereon of one dollar for each one thousand dollars or fraction thereof of such increase. The secretary of state shall upon request furnish a blank upon which to make report of such increase of capital in use within the state. [C., '97, § 1637; S., '13, § 1637; 40 Ex. G. A., ch. 6, § 6.]

8425. Exemption. Any corporation transacting business in this state prior to September 1, 1886, shall be exempt from the payment of the fees required under the provisions of the two preceding sections. [C., '97, § 1637; S., '13, § 1637; 40 Ex. G. A., ch. 6, § 6.]

8426. Issuance of permit—effect. The secretary of state shall thereupon issue to such corporation, a permit, in such form as he may prescribe, for the transaction of the business of such corporation, and upon the receipt of such permit said corporation shall be permitted and authorized to conduct and carry on its business in this state. [C., '97, § 1637; S., '13, § 1637; 40 Ex. G. A., ch. 6, § 6.]

8427. Denial of right to sue. No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state unless prior to the making of such contract it shall have procured such permit. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee of such foreign corporation or under either of them. [40 Ex. G. A., ch. 6, § 6.]

8428. Alphabetical records required. The secretary of state shall number consecutively all such certified copies heretofore and hereafter filed in his office and shall maintain a card index thereof alphabetically arranged and shall preserve the same and the originals of said certified copies as permanent records of his office. [40 Ex. G. A., ch. 6, § 6.]

8429. Powers denied. No foreign corporation which has not in good faith complied with the provisions of this chapter and taken out a permit shall possess the right to exercise the power of eminent domain, or exercise any of the rights and privileges conferred upon corporations, until it has so complied herewith and taken out such permit. [C., '97, § 1638.]

8430. Violations by corporation. Any foreign corporation that shall carry on its business in violation of the provisions of this chapter in the state of Iowa, by its officers, agents or otherwise, without having complied with the preceding sections of this chapter and taken out and having a valid permit, shall forfeit and pay to the state, for each and every day in which such business is transacted and carried on, the sum of one hundred dollars, to be recovered by suit in any court having jurisdiction. [C., '97, § 1639.]

8431. Violations by officers. Any agent, officer or employee who shall knowingly act or transact such business for such corporation, when it has no valid permit as provided herein, shall be guilty of a misdemeanor, and for such offense shall be fined not to exceed one hundred dollars, or be imprisoned in the county jail not to exceed thirty days, or be punished by both such fine and imprisonment, and pay all costs of prosecution. [C., '97, § 1639.]

8432. Status of corporation and officers. Nothing contained in this chapter shall relieve any person, company, corporation, association or partnership from the performance of any duty or obligation now enjoined upon or required of it, or from the payment of any penalty or liability created by the statutes heretofore in force, and all foreign corporations, and the officers and agents thereof, doing business in this state shall be subject to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers. [C., '97, § 1639.]

CHAPTER 387

FOREIGN PUBLIC UTILITY CORPORATIONS

8433. Capital stock and permit.
 8434. Holding companies.
 8435. Annual report—fee.

8436. Sale of capital stock.
 8437. Violations—stock void.
 8438. Dissolution—receiver.

8433. Capital stock and permit. Sections 8412 to 8416, inclusive, and 8420 to 8428, inclusive, are hereby made applicable to any foreign corporation which directly or indirectly owns, uses, operates, controls or is concerned in the operation of any public gasworks, electric light plant, heating plant, waterworks, interurban or street railway located within the state, or the carrying on of any gas, electric light, electric power, heating business, waterworks, interurban or street railway business within the state, or that owns or controls, directly or indirectly, any of the capital stock of any corporation which owns, uses, operates or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located within the state, or any foreign corporation that exercises any control in any way or in any manner over any of said works, plants, interurban or street railways or the business carried on by said works, plants, interurban or street railways by or through the ownership of the capital stock of any corporation or corporations or in any other manner whatsoever, and the ownership, operation or control of any such works, plants, interurban or street railways or the business carried on by any of such works or plants or the ownership or control of the capital stock in any corporation owning or operating any of such works, plants, interurban or street railways by any foreign corporation in violation of the provisions of this chapter is hereby declared to be unlawful. [S., '13, § 1641-l.]

8434. Holding companies. The provisions of this chapter are hereby made applicable to all corporations, including so-called "holding companies" which by or through the ownership of the capital stock in any other corporation or corporations or a series of corporations owning or controlling the capital stock of each other can or may exercise control over the capital stock of any corporation which owns, uses, operates or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located in the state, or the business carried on by such works or plants. [S., '13, § 1641-m.]

8435. Annual report—fee. All corporations subject to the provisions of this chapter are hereby required to pay the annual fee and to

make the annual report in the form and manner and at the time as specified in chapter 388. [S., '13, § 1641-n.]

8436. Sale of capital stock. The provisions of this chapter are hereby made applicable to the sale of its own capital stock by any corporation subject to the provisions of this chapter, whether said capital stock has been heretofore issued by said corporation or not, including the sale of so-called "treasury stock" or stock of the corporation in the hands of a trustee or where the corporation participates in any way or manner in the benefits of said sales, and also to the sale of any of the obligations of any corporation subject to the provisions of this chapter, the payment of which is secured by the deposit or pledge of any of the capital stock of said corporation. [S., '13, § 1641-o.]

8437. Violations—stock void. Shares of capital stock of any corporation owned or controlled in violation of the provisions of this chapter shall be void and the holder thereof shall not be entitled to exercise the powers of a shareholder of said corporation or permitted to participate in or be entitled to any of the benefits accruing to shareholders of said corporation, and sections 8430 to 8432, inclusive, are hereby made applicable to violations of the provisions of this chapter; and courts and juries shall construe this chapter so as to prevent evasion and to accomplish the intents and purposes thereof. [S., '13, § 1641-p.]

8438. Dissolution—receiver. Courts of equity shall have full power to dissolve, close up or dispose of any business or property owned, operated or controlled in violation of the provisions of this chapter; to dissolve any corporation owning or controlling the capital stock of any other corporation in violation of the provisions of this chapter and to close up or dispose of the business or property of said corporation; and if the court finds that, in order to carry out the purposes of this chapter it is necessary so to do, it may dissolve the corporation issuing the stock which is owned in violation of the provisions of this chapter, close up the business of said corporation and dispose of its property, and the court may also appoint a receiver who shall be a resident of Iowa for any business or for any corporation

which has violated the provisions thereof or of the corporation issuing the stock which is held in violation thereof. Any action to enforce the provisions of this chapter may be instituted by the attorney general in the name of the state of Iowa or by a citizen in the name

of the state of Iowa at his own proper cost and expense, reserving, however, to the stockholders owning capital stock not held in violation of this chapter all rights possessed by them. [S., '13, § 1641-q.]

CHAPTER 388

ANNUAL REPORTS OF CORPORATIONS

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8439. Time of report—requirements. Any corporation, organized under the laws of this state or under the laws of any other state, territory or any foreign country, which has complied with the laws of this state relating to the organization of corporations and secured a certificate of incorporation or permit to transact business in this state, and any corporation that may hereafter organize and become incorporated under the laws of this state, and shall secure a certificate of incorporation or permit to transact business in this state, and any foreign corporation that may hereafter comply with the laws of this state relating to foreign corporations and secure a permit to transact business within this state, shall, between the first day of July and the first day of August of each year, make an annual report to the secretary of state, said report to be in such form as he may prescribe, upon a blank to be prepared by him for that purpose, and such report shall contain the following information:

1. Name and postoffice address of the corporation.
2. The amount of capital stock authorized.
3. The amount of capital stock actually issued and outstanding.
4. Par value of such stock, designating whether preferred or common stock, and the amount of each kind.
5. The names and postoffice addresses of its officers and directors and whether any change of place of business has been made during the year previous to making said report. [S., '13, § 1614-c.]

8440. Signature and oath—permit. The report required by the preceding section shall be signed and sworn to by an officer of the corporation and when filed with the secretary of state shall be accompanied by the fee required in section 8442, and also by an application for a permit to be issued to said corporation under the provisions of this chap-

ter; said permit to be in such form as the secretary of state may prescribe and which shall be in force and effect for one year from and after the first day of July of the year in which it is issued, except that where the term of a corporate existence shall expire in less than a year from the first day of July aforesaid, then said permit shall be issued for such unexpired term only. [S., '13, § 1614-d.]

8441. Exemption. Any corporation organized under the laws of this state, and any foreign corporation filing a certified copy of its articles of incorporation after the first day of April of any year, shall be exempt from the provisions of this chapter, for the period ending one year from the first day of July following, after which it shall be subject to all the provisions of this chapter. [S., '13, § 1614-d.]

8442. Annual fee. Every corporation whose corporate period has not expired, which has heretofore obtained, or may hereafter obtain, a certificate of incorporation or permit under the provisions of chapters 384 or 386, to transact business in this state as a corporation, whether the same be a domestic or a foreign corporation, shall pay to the secretary of state an annual fee in the sum of one dollar. [S., '13, § 1614-e.]

8443. Schedule of penalties. Any corporation organized under the laws of this state, and any foreign corporation authorized to do business in this state, which shall fail to make the report and pay the annual fee provided for in this chapter, and within the time required in section 8439, shall, in addition to the annual fee of one dollar required, incur the following penalties beginning with the month of September and dating from the first day thereof, to wit: For the month of September the sum of one dollar, for the month of October the sum of two dollars, for the month of November the

sum of three dollars, for the month of December the sum of four dollars, and for each month thereafter the sum of five dollars. [S., '13, § 1614-f; 38 G. A., ch. 205, § 1.]

8444. Collection. If on the first day of January following, such corporation shall not have filed the annual report and paid the annual fee, together with all monthly penalties due at the time of filing said report and paying said fee, the secretary of state shall furnish to the attorney general a list of delinquent domestic corporations and he may direct the county attorney of the county in which the corporation has its principal place of business to bring suit for the collection of the fee and penalties then due, or may bring such action himself. [S., '13, § 1614-f; 38 G. A., ch. 205, § 1.]

8445. Dissolution—effect. Any domestic corporation may, prior to the first day of February of any subsequent year, escape the payment of fee and penalty by dissolving the corporation in the manner provided by section 8363 and filing with the secretary of state a proof of publication of notice of dissolution. [S., '13, § 1614-f; 38 G. A., ch. 205, § 1.]

8446. Forfeiture of right to do business. Any foreign corporation that shall fail to make the annual report and pay the annual fee and penalties that may be due shall thereby forfeit its right to do business within this state. [S., '13, § 1614-f.]

8447. Notice of delinquency—recommendation of attorney general. During the month of August of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in his office, and on or before the first day of September he shall send by registered mail to each delinquent a notice of such delinquency and of the penalties provided in section 8443 and if the annual report required is not filed and the annual fee paid, together with penalties due, on or before the last day of January, on the first day of February following, notice of such delinquency will be filed with the attorney general, who may cause action to be brought for the collection of the fee and penalties due the state; or, at his discretion, the attorney general may recommend that the secretary of state cancel the name of any delinquent corporation from the list of live corporations in his office, and enter such cancellation on the proper records, and when so canceled by the secretary of state the corporate rights of any such corporation shall be forfeited and its corporate period terminated on the date such cancellation shall have been entered on the records of his office. [S., '13, § 1614-g; 38 G. A., ch. 205, § 2.]

8448. Notice of recommendations. The secretary of state shall forward to such corporation, a written notice of the recommendations of the attorney general, such notice to state that unless said corporation shall within sixty days of the date of such notice fully

comply with the provisions of the preceding section by filing in the office of the secretary of state any report that may be due and pay all fees and penalties that have accrued, or, in lieu thereof file a proof of publication of notice of dissolution as required by section 8363, a declaration of forfeiture and cancellation will be entered on the records of his office. [38 G. A., ch. 205, § 2.]

8449. Service of notice. The notice herein provided for, when inclosed in a sealed envelope with legal postage affixed thereon, and addressed to the corporation, shall constitute a legal notice for the purpose of the preceding section. [38 G. A., ch. 205, § 2.]

8450. Forfeiture of right to do business. After such declaration and forfeiture shall have been entered by the secretary of state on the records of his office such corporation shall not be entitled to exercise the rights of a corporate body, except, it may be allowed a reasonable time to close up its business and wind up its affairs, but no new business shall be transacted. [38 G. A., ch. 205, § 2.]

8451. Compromise. Any corporation whose corporate rights shall have been canceled and forfeited in the manner provided herein, or any stockholders or creditor of such corporation may, however, make an application to the executive council in the manner provided in section 288 for a compromise of the claim of the state for the fee and penalties that may have accrued under the provisions of this chapter, and upon payment to the secretary of state the fee or fees that may have accrued, and such amount in addition thereto as penalties as may be fixed by the executive council, and also, upon filing such annual reports as may be delinquent, the secretary of state shall reinstate said corporation and the decree of cancellation and forfeiture previously entered shall be annulled and the corporation shall be entitled to continue to act as a corporation for the unexpired portion of its corporate period, as fixed by its articles of incorporation and the limitations prescribed by law, with the right of renewal under sections 8371 to 8375, inclusive. [38 G. A., ch. 205, § 2.]

8452. Effect of forfeiture. No corporation shall be permitted to waive any duty or obligation required of corporations or the payment of any just claim or claims by reason of such cancellation, forfeiture, and reinstatement as herein provided. [38 G. A., ch. 205, § 2.]

8453. Corporate rights canceled. On the first day of February following the date of the notice provided for in section 8447, all foreign corporations that have not complied with the provisions of this chapter shall forfeit the right to transact business in this state and a declaration of forfeiture and cancellation shall be entered upon the margin of the record of the certified copy of the articles of incorporation of such company in the office of the secretary of state or in such other record as the secretary of

state may provide. [S., '13, § 1614-h; 38 G. A., ch. 205, § 3.]

8454. Lien. The fees and penalty provided for in this chapter shall be a prior lien on any property of the corporation against all persons, whether said property is in the possession of said corporation or otherwise. [38 G. A., ch. 205, § 5.]

8455. Annual notice of requirements. It shall be the duty of the secretary of state between the first day of May and the first day of July of each year to notify all corporations whose corporate period has not expired, or that have not dissolved according to law, that are subject to the provisions of this chapter, of the requirements therein made, inclosing therewith a blank form of report and application as provided. [S., '13, § 1614-k.]

8456. Service of notice. The mailing of said notice at Des Moines, Iowa, addressed to the corporation at its postoffice address as shown by the records of his office shall be deemed a full, complete and legal notice for the purpose of this chapter. [S., '13, § 1614-k.]

8457. List of complying corporations. After the first day of November and not later than the first day of January of each year, the secretary of state shall compile an alphabetical list of the domestic and foreign corporations that have complied with the provisions of this chapter, together with postoffice address, and mail a copy thereof to each county recorder in this state, who shall file the same in his office. [S., '13, § 1614-j.]

8458. Corporations exempted. Nothing in this chapter shall be construed as imposing an annual fee or requiring a report from any corporation organized for religious, educational, scientific, or charitable purposes or other corporations not organized for pecuniary profit, or from any corporation engaged in the banking or loan and trust business, nor from insurance companies or associations who have paid or have been exempted from the taxes provided in sections 7021 to 7025, inclusive, and received a certificate of authority from the commissioner of insurance. [S., '13, § 1614-i; S. S., '15, § 1920-u4; 38 G. A., ch. 205, § 4; 40 Ex. G. A., ch. 6, § 1.]

CHAPTER 389

COOPERATIVE ASSOCIATIONS

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8459. Plan authorized. Any number of persons, not less than five, may associate themselves as a cooperative association, society, company or exchange, for the purpose of conducting any agricultural, dairy, mercantile, mining, manufacturing or mechanical business on the cooperative plan. For the purposes of this chapter, the words “association”, “company”, “corporation”, “exchange”, “society”, or “union”, shall be construed to mean the same. [S. S., '15, § 1641-r1.]

8460. Articles of incorporation. They shall sign and acknowledge written articles which shall contain the name of said association and the names and residences of the persons forming the same. Such articles shall also contain a statement of the purposes of the association, and shall designate the city, town or village where its principal place of business shall be located. Such articles shall also state the

amount of capital stock, the number of shares, and the par value of each. [S. S., '15, § 1641-r2.]

8461. Filing—certificate of incorporation. The original articles of incorporation of associations organized under this chapter, or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be filed with the secretary of state. A like verified copy of such articles and certificates of the secretary of state, showing the date when such articles were filed with and accepted by the secretary of state, shall, within thirty days of such filing and acceptance, be filed and recorded with the recorder of deeds of the county in which the principal place of business of the corporation is to be located, and no corporation shall have legal existence until such articles be left for record. The recorder shall forthwith transmit to the secretary of state a certificate

stating the time when such copy was recorded. Upon receipt of such certificate, the secretary of state shall issue a certificate of incorporation. [S. S., '15, § 1641-r3.]

8462. Fee. For filing the articles of incorporation of associations organized under this chapter, there shall be paid to the secretary of state ten dollars, and for the filing of an amendment to such articles, five dollars; provided that when the capital stock of such corporation shall be less than five hundred dollars, such fee for filing either the articles of incorporation or amendments thereto shall be one dollar. For recording copy of such articles, the recorder of deeds shall receive the usual fee for recording. [S. S., '15, § 1641-r4.]

8463. Board of directors. Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the stockholders at such time and for such term of office as the by-laws may prescribe, and shall hold office for the time for which elected and until their successors are elected and qualify. [S. S., '15, § 1641-r5.]

8464. Removal. A majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director or officer so removed, shall cease to be a director or officer of said corporation. [S. S., '15, § 1641-r5.]

8465. Officers. The officers of every such association shall be a president, one or more vice presidents, a secretary, and a treasurer, who shall be elected annually by the directors, and each of said officers must be a director of the association. The offices of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer. [S. S., '15, § 1641-r5.]

8466. Amending articles. The association may amend its articles of incorporation by a majority vote of its stockholders at any regular stockholders' meeting, or at any special stockholders' meeting called for that purpose, on ten days' notice to all stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares; provided the amount of the capital stock shall not be diminished below the amount of paid-up capital at the time the amendment is adopted. [S. S., '15, § 1641-r6.]

8467. Record of amendments. Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state and of the recorder of deeds of the county where its principal place of business is located. [S. S., '15, § 1641-r6.]

8468. Powers. An association created under this chapter shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the cooperative plan, and may buy, sell, and deal in the products of any other cooperative company heretofore or hereafter organized under the provisions hereof. [S. S., '15, § 1641-r7.]

8469. Ownership of shares and voting power limited. No stockholder in any such association shall own shares of a greater aggregate par value than five thousand dollars, except as hereinafter provided, nor shall he be entitled to more than one vote. [S. S., '15, § 1641-r8; 39 G. A., ch. 251.]

8470. Stock holding. At any regular meeting, or any regularly called special meeting, at which at least a majority of all its stockholders shall be present, or represented, an association organized under this chapter, may by a majority vote of the stockholders present or represented, subscribe for shares and invest its reserve fund, not to exceed twenty-five per cent of its capital, in the capital stock of any other cooperative association. [S. S., '15, § 1641-r9.]

8471. Issue of shares as payment. Whenever an association created under this chapter shall purchase the business of another association, person, or persons, it may pay for the same in whole or in part by issuing to the selling association or person shares of its capital stock to an amount, which at fair market value as determined by the executive council, would equal the fair market value of the business so purchased as determined by the executive council as in cases of other corporations. [S. S., '15, § 1641-r10; 40 Ex. G. A., ch. 11, § 1.]

8472. May act as trustee. In case the cash value of such purchased business exceeds one thousand dollars, the directors of the association are authorized to hold the shares in excess of one thousand dollars in trust for the vendor, and dispose of the same to such persons, and within such times, as may be mutually satisfactory to the parties in interest, and to pay the proceeds thereof as currently received to the former owner of said business. [S. S., '15, § 1641-r11; 40 Ex. G. A., S. F. 312, § 1.]

8473. Paid-up stock—right to vote. Certificates of stock shall not be issued to any subscriber until fully paid, but the by-laws of the association may allow subscribers to vote as stockholders; provided part of the stock subscribed for has been paid in cash. [S. S., '15, § 1641-r11; 40 Ex. G. A., S. F. 312, § 1.]

8474. Voting by mail. At any regularly called general or special meeting of the stockholders, a written vote received by mail from any absent stockholder, and signed by him, may be read in such meeting, and shall be equivalent to a vote of each of the stockholders so signing; provided he has been previously

notified in writing by the secretary of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by him. [S. S., '15, § 1641-r12.]

8475. Reserve fund. The board of directors, subject to revision by the association at any general or special meeting, shall each year set aside not less than ten per cent of the net profits for a reserve fund, until an amount has accumulated therein equal to fifty per cent of the paid-up capital stock. [S. S., '15, § 1641-r13; 40 Ex. G. A., ch. 11, § 2.]

8476. Educational fund — dividends. The board may each year, out of remaining net profits, subject to the approval of the association at any general or special meeting:

1. Provide an educational fund to be used in teaching cooperation, not exceeding five per cent of the net profits.

2. Declare and pay a dividend on the stock, not exceeding ten per cent. [S. S., '15, § 1641-r13; 40 Ex. G. A., ch. 11, § 3.]

8477. Additional dividends. The remainder of said net profits shall be distributed by uniform dividends upon the amount of purchases of shareholders, and upon the wages and salaries of employees. In producing associations, such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a producing concern, the dividends may be on both raw material delivered and goods purchased by patrons. [S. S., '15, § 1641-r13; 40 Ex. G. A., ch. 11, § 4.]

8478. When dividends distributed. The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the by-laws shall prescribe, which shall be as often as once in twelve months. [S. S., '15, § 1641-r14.]

8479. Dissolution. If such associations, for five consecutive years, shall fail to declare a dividend upon the shares of its paid-up capital, five or more stockholders, by petition, setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association. [S. S., '15, § 1641-r14.]

8480. Annual report. Every association organized under the terms of this chapter shall annually, on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, amount of capital stock subscribed for and paid in, number of stockholders, total expense of operation, amount of indebtedness for liabilities, and its profits and losses. [S. S., '15, § 1641-r15.]

8481. Chapter extended to former companies. All cooperative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all the provisions of this chapter and be bound thereby, on filing with the secretary of state a written declaration, signed and sworn to by the president and secretary, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions hereof. [S. S., '15, § 1641-r16.]

8482. Use of term "cooperative" restricted. No corporation or association organized after July 4, 1915, shall be entitled to use the term "cooperative" as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter, and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this chapter. [S. S., '15, § 1641-r17.]

8483. Use of funds. None of the funds of any association organized under the provisions of this chapter shall be used in the payment of any promotion, as commissions, salaries, or expenses of any kind, character, or nature whatsoever. [S. S., '15, § 1641-r18.]

8484. Private property exempt. The private property of the stockholders shall be exempt from execution for the debts of the corporation. [S. S., '15, § 1641-r19.]

8485. Limit of indebtedness. The highest amount of indebtedness the corporation may contract shall not exceed two-thirds of its capital stock. [S. S., '15, § 1641-r20.]

CHAPTER 390

NONPROFIT-SHARING COOPERATIVE ASSOCIATIONS

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8486. Organization. Any number of persons, not less than five, may associate themselves as a cooperative association, without capital stock, for the purpose of conducting any agricultural, live stock, horticultural, dairy, mercantile, mining, manufacturing or mechanical business, or the constructing and operating of telephone and high tension electric transmission lines on the cooperative plan and of acting as a cooperative selling agency for its members. [39 G. A., ch. 122, § 1; 40 Ex. G. A., ch. 11, § 5.]

8487. Terms defined—products of nonmember. For the purpose of this chapter, the words “association”, “exchange”, “society”, or “union”, shall be construed to mean the same and are defined to mean a corporate body composed of actual producers or consumers of the given commodity handled by the association, whose business is conducted for the mutual benefit of its members and not for the profit of stockholders, and control of which is vested in its members upon the basis of one vote to each member. No association shall handle the products of any nonmember. [39 G. A., ch. 122, § 2.]

8488. Articles—personal liability. They shall sign and acknowledge written articles, which shall contain the name of the association and the names and residences of the incorporators. Such articles shall also contain a statement of the purposes of the association, the amount of the membership fee, and shall designate the city, town or village where its principal place of business shall be located, and the manner in which such articles may be amended, and any limitation which the members propose to place upon their personal liability for the debts of the association. [39 G. A., ch. 122, § 3.]

8489. Filing—certificate of incorporation. The original articles of incorporation shall be

filed for record with the secretary of state. Upon approval of such articles, the secretary of state shall issue a certificate of incorporation. [39 G. A., ch. 122, § 4.]

8490. Fees. For filing the articles of incorporation of associations organized under this chapter, there shall be paid to the secretary of state five dollars, and for the filing of an amendment to such articles, two dollars. [39 G. A., ch. 122, § 5.]

8491. Amendments. Within thirty days after the adoption of any amendment to its articles of incorporation, the association shall cause a copy of such amendment to be recorded in the office of the secretary of state. [39 G. A., ch. 122, § 8.]

8492. Board of directors—removals. Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the members at such time and for such term of office as the articles may prescribe. They shall hold office until their successors are elected and qualify; but a majority of the members shall have the power at any regular or special meeting of the association legally called, to remove any director or officer for cause, and fill the vacancy. [39 G. A., ch. 122, § 6.]

8493. Officers. The officers of every such association shall be a president, one or more vice presidents, a secretary, and treasurer, who shall be elected annually by the directors, from amongst their own number. The offices of secretary and treasurer may be held by the same person. [39 G. A., ch. 122, § 7.]

8494. Admission of members. Under the terms and conditions prescribed in its by-laws, an association may admit as members persons engaged in the production of the products, or

in the use or consumption of the supplies, to be handled by or through the association, including the lessors and landlords of lands used for the production of such products, who receive as rent part of the crop raised on the leased premises. [39 G. A., ch. 122, § 9.]

8495. Membership certificates. Membership certificates in due form shall be issued to all charter members and to such others as shall subsequently be admitted by the association in accordance with its articles and by-laws. [39 G. A., ch. 122, § 9.]

8496. Certificates nontransferable—surrender. No such certificate shall be transferable by the member to any other person, but shall be surrendered to the association in case of his voluntary withdrawal. [39 G. A., ch. 122, § 9.]

8497. Automatic cancellation — revocation. It shall become void upon his death, or may be revoked by the directors upon proof duly made that he has ceased to be a producer of products handled by or through the association, in the case of producing or selling associations or has ceased to be the user of products handled by or through the association in case of stores and supply associations, or for failure to observe its by-laws or his contractual obligations to it. [39 G. A., ch. 122, § 9.]

8498. Conditions printed on certificates. The conditions of membership specified in the two preceding sections shall be printed upon the face of every membership certificate. [39 G. A., ch. 122, § 9.]

8499. Combinations of local associations. Likewise, associations may be formed under this chapter whose membership shall consist of other associations formed under the provisions of this chapter, the purpose being to federate local associations into central cooperative associations for the more economical and efficient performance of their marketing or other operations. [39 G. A., ch. 122, § 9.]

8500. Powers of central associations. Such central associations may enter into contracts, agreements, and arrangements with their member associations. Each member association in such federated associations shall have an official representative chosen by its own board of directors, who shall cast one vote and no more at all business meetings of the federated association. [39 G. A., ch. 122, § 9.]

8501. Voting power. Each member of an association shall be entitled to one vote and no more upon all questions affecting the control and management of the affairs of the association and in the selection of its board of directors. [39 G. A., ch. 122, § 10.]

8502. Proxies—voting by mail. No vote by proxy shall be permitted, but a written vote received by mail from any absent member, and signed by him, may be read and counted at any regular or special meeting of the associa-

tion, provided that the secretary shall notify all members in writing of the exact motion or resolution upon which such vote is to be taken, and a copy of same shall be forwarded with and attached to the vote so mailed by the member. [39 G. A., ch. 122, § 10.]

8503. Power to compel sales and purchases—liquidated damages. The association may require members to sell all or a stipulated part of their specifically enumerated products exclusively through the association or to buy specifically enumerated supplies exclusively through the association, but in such case, a reasonable period during each year shall be specified during which any member, by giving notice in prescribed form, may be released from such obligation thereafter. Where it is desired to enter into the exclusive arrangement provided in this section, the association shall execute a contract with each such member setting forth what goods or wares are to be handled and upon what terms. In order to protect itself in the necessary outlay, which it may make for the maintenance of its services, the association may stipulate that some regular charge shall be paid by the member for each unit of goods covered by such contract whether actually handled by the association or not, and in order to reimburse the association for any loss or damage which it or its members may sustain through the member's failure to deliver his products to or to procure his supplies from the association.

In case it is difficult or impracticable to determine the actual amount of damage suffered by the association or its members through such failure to comply with the terms of such a contract, the association and the member may agree upon a sum to be paid as liquidated damages for the breach of his contract, said amount to be stated in the contract. [39 G. A., ch. 122, § 11.]

8504. Financial power. Every association may borrow money necessary for the conduct of its business, and may issue notes, bonds, or debentures therefor, and may give security in the form of mortgage or otherwise for the repayment thereof. [39 G. A., ch. 122, § 12.]

8505. Personal liability. Members of such association may limit their personal liability to the amount of their membership fee as provided in their articles of incorporation. [39 G. A., ch. 122, § 13.]

8506. Cost of service—dues, etc. Associations formed under this chapter shall perform services for their members on a basis of the lowest practicable cost, and may provide for meeting the cost thereof through dues, assessments, or service charges, which shall be prescribed in the by-laws. Such charges shall be set high enough to provide a margin of safety above current operating costs and fixed charges upon borrowed capital. [39 G. A., ch. 122, § 14.]

8507. Reserve and educational funds—patronage dividends. Out of any surplus re-

maining in any given year, the directors shall each year set aside not less than ten per cent of such savings for the accumulation of a reserve fund until such reserve shall equal at least forty per cent of the invested capital of the association, not less than one per cent nor more than five per cent for a permanent educational fund from which expenditures shall be made annually at the discretion of the directors for the purpose of teaching cooperation, and the remainder to be returned to the members as a patronage dividend prorated on a uniform basis to each member upon the value of business done by him through the association. [39 G. A., ch. 122, § 14.]

8508. Annual report—penalty. Every association organized under the terms of this chapter shall annually, on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, number of members, total expense of operation, amount of indebtedness, and its profits or losses. Such reports shall be for the calendar or fiscal year immediately preceding the said first day of March, provided that a calendar or fiscal year has been completed upon said date.

Failure to comply with this section shall subject the delinquent association to a penalty of ten dollars. [39 G. A., ch. 122, § 15; 40 G. A., ch. 166.]

8509. Chapter extended to former associations. All corporations, or associations heretofore organized and doing business under prior statutes, or which have attempted so to organize and do business cooperatively, shall have the benefit of all the provisions of this chapter and be bound thereby, on filing with the secretary of state a written declaration signed and sworn to by the president and

secretary, to the effect that said company or association has, by a majority vote of its stockholders, decided to accept the benefits of and to be bound by the provisions of this chapter. [39 G. A., ch. 122, § 16.]

8510. Use of term “cooperative”—injunction. No corporation or association hereafter organized shall be entitled to use the term “cooperative” as part of its corporate or other business name or title, unless it has complied with the provisions of this chapter or of chapter 389, and any corporation or association violating the provisions of this chapter may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this chapter. [39 G. A., ch. 122, § 17.]

8511. Use of funds—promotion expenses. None of the funds of any association shall be used for purposes of any promotion as commissions, salaries, or expenses of any kind, character, or nature whatsoever, except that in the case of associations operating in more than one county, if the par value of securities to be sold is in excess of one hundred thousand dollars, a sum not to exceed five per cent of the par value of bonds or debentures sold may be used by committees elected by the members for selling or soliciting for the sale of such securities or for hiring responsible salaried solicitors for that purpose. [39 G. A., ch. 122, § 18.]

8512. Duration of incorporation—renewal. Associations formed under the provisions of this chapter shall continue for a period of twenty-five years, unless earlier dissolved by order of its members or by other processes as by law provided, and the term of its existence may be renewed by the filing of new articles of association, as by law provided. [39 G. A., ch. 122, § 19.]

CHAPTER 391

COLLECTIVE BARGAINING

8513. Authorization.

8514. Liquidated damages.

8513. Authorization. Persons engaged in the conduct of any agricultural, horticultural, dairy, live stock, mercantile, mining, or manufacturing business in the manner provided in section 8515 may act together in associations, corporate or otherwise, for the purpose of collectively producing, processing, preparing for market, handling and marketing the products of their members. Such persons may organize and operate such associations, and such associations may make the necessary contracts and agreements to effect that purpose, any law to the contrary notwithstanding. [39 G. A., ch. 176, § 1.]

8515. Applicability of chapter.

8516. Rule of interpretation.

8514. Liquidated damages. Contracts and agreements entered into between associations and the members thereof may, where damages that may be sustained for the breach thereof are difficult of ascertainment, provide for such penalties as may be agreed upon, which penalties, if the parties thereto so agree, shall be construed as liquidated damages and be enforceable in the full amount thereof both at law and in equity. [39 G. A., ch. 176, § 2.]

8515. Applicability of chapter. The provisions of this chapter shall apply:

1. To corporations organized under the provisions of chapter 389.

2. To other incorporated associations or companies organized without capital stock, not for pecuniary profit and for the mutual benefit of their members. [39 G. A., ch. 176, § 3.]

8516. Rule of interpretation. Should any section of this chapter or any part thereof be held by any court of competent jurisdiction

to be unconstitutional, such section or part thereof shall be deemed to be independent of and unrelated to any other section or part of this chapter, and such decision shall affect only the specific provision which it is held offends against the constitution, and shall not be held to be an inducement to the passage of any other section or provision of this chapter. [39 G. A., ch. 176, § 4.]

CHAPTER 392

SALE OF STOCK ON INSTALLMENT PLAN

- 8517. Terms defined.
- 8518. Certificate—how obtained.
- 8519. Council to approve.
- 8520. Annual report.

8517. Terms defined. The term "association" when used in this chapter shall mean any person, firm, company, partnership, association or corporation, other than building and loan associations and insurance companies and associations, which issue stocks on the partial payment or installment plan. The term "issue" shall mean issue, sell, place, engage in or otherwise dispose of or handle. The term "stock" shall mean certificates, memberships, shares, bonds, contracts, debentures, stocks, tontine contracts, or other investment securities or agreements of any kind or character issued upon the partial payment or installment plan. [S., '13, § 1920-k.]

8518. Certificate—how obtained. No association contemplated by this chapter shall issue any stock until it shall have procured from the auditor of state a certificate of authority authorizing it to engage in such business. To procure such certificate of authority it shall be necessary for such association to file with the auditor of state a statement, under oath, showing the name and location of such association, the name and postoffice address of its officers, the date of organization, and if incorporated a copy of its articles of incorporation, also, a copy of its by-laws or rules by which it is to be governed, the form of its certificates, stocks or contracts, all printed matter issued by it, together with a detailed statement of its financial condition and such other information concerning its affairs or plan of business as the auditor of state may require. The same shall be, by the auditor of state laid before the executive council for consideration. [S., '13, § 1920-l.]

8519. Council to approve. If the executive council is satisfied that the business is not in violation of law or of public policy, and is safe, reliable and entitled to public confidence, and if it shall approve the form of certificate of stock or contract, it shall direct the auditor of state to issue to such association a certificate of authority authorizing it to transact business within this state until the first day

- 8521. Bonds or securities deposited.
- 8522. Unauthorized companies—penalty.
- 8523. Fee.
- 8524. Examination.

of March next succeeding the date of such authorization. [S., '13, § 1920-m.]

8520. Annual report. During the month of January of each year, every association transacting the business contemplated by this chapter, shall file with the auditor of state a statement showing its condition on the thirty-first day of December preceding. Said statement shall be in such form as shall be prescribed by the auditor of state. If it appears from such statement that such association is doing a safe business and is solvent, the auditor of state may renew its certificate of authority authorizing it to transact business within the state until the first day of March of the following year. If at any time it shall appear that such association is doing an unsafe business or is insolvent the auditor of state may revoke its certificate of authority authorizing it to transact business within the state until the first day of March of the following year. If at any time it shall appear that such association is doing an unsafe business or is insolvent the auditor of state may revoke its certificate of authority to transact business and having revoked the certificate of authority of an association organized under the laws of this state, he shall report his action to the attorney general who shall at once apply to the district court or a judge thereof for the appointment of a receiver to close up the affairs of such association, and an injunction may issue in the same proceeding enjoining and restraining the association from transacting business in this state. [S., '13, § 1920-o.]

8521. Bonds or securities deposited. Before any association shall be authorized to transact business contemplated by this chapter, it shall deposit with the auditor of state a bond approved by the executive council, guaranteeing the faithful performance of all contracts entered into by such association or securities of the kind designated in subdivisions 1, 2, 3, 4, and 5 of section 8737, or such other securities as shall be approved by the executive council in the amount of twenty-five

thousand dollars, which amount shall remain in possession of the auditor of state until the end of the calendar year in which the association shall first be authorized to transact business. At the end of such calendar year, such association shall deposit with the auditor of state securities of the kind above provided in an amount equal to all its liabilities to persons residing within this state and shall keep such deposit at all times equal to such liability; provided that at no time shall such deposit be reduced below twenty-five thousand dollars except at such time as such association shall be by law closing out its business and its liabilities shall have been reduced below twenty-five thousand dollars. [S., '13, § 1920-p.]

8522. Unauthorized companies—penalty. Any member or representative of any association who shall attempt to issue or sell any stock as contemplated by this chapter or to transact any business whatsoever in the name of or on behalf of such association, not authorized to do business within this state, or which has failed or refused to comply with the provisions of this chapter, or has violated any of its provisions shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in the county jail not to exceed one year, or by a fine of not less than one hundred nor more than ten hundred dollars or by both such fine and imprisonment in the discretion of the court. [S., '13, § 1920-q.]

8523. Fee. Such association shall pay to the auditor of state for its certificate of authority to transact business, a fee of twenty-five dollars, and for each annual renewal thereof at the time of filing the annual statement ten dollars, which fee shall be by the auditor of state turned into the state treasury as other fees of his office. [S., '13, § 1920-r.]

8524. Examination. Every such association doing business within this state, shall be subject to examination in the same manner as is provided for the examination of insurance companies and shall pay the same fees and costs therefor, and shall so far as is consistent with the plan of business, be subject to the same restrictions and regulations. Such examinations shall be full and complete and in making the same the auditor of state or examiner shall have full access to and may demand the production of all books, securities, papers, moneys, etc., of the association under examination, and may administer oaths, summon and compel the attendance and testimony of any persons connected with such association. If upon such examination, it shall appear that such association does not conduct its business in accordance with law, or if it permits forfeiture of payments by persons holding its stock, after three years from the issuance of said stock or provides for the payment of its expenses other than from earnings, or that any profits, advantage or compensation of any form or description is given to any member or investor over any other member or investor of the same class, or if beneficiaries are selected or determined or advantages given one over another by any form of chance, lottery, or hazard, or if certificates of stock are by their terms or by any other provision to be redeemed in numerical order or by any arbitrary order or precedence, without reference to the amount previously paid thereon by the holder thereof, or that the affairs are in an unsound condition, or if such association refuses such examination to be made, the auditor of state may revoke its certificate of authority to do business in this state, and having revoked the certificate of authority of an association organized under the laws of this state, he shall report the same to the attorney general, who shall proceed as provided in section 8520. [S., '13, § 1920-s.]

CHAPTER 393

INVESTMENT COMPANIES

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8525. Permit to sell stock. Every person, firm, association, company, or corporation that shall, either directly or through representatives or agents, sell, offer, or negotiate for sale, within this state, any stocks, certificates, bonds, debentures, certificates of participation, certificates of shares or interest, preorganization certificates and subscriptions, memberships, profit sharing certificates, investments, contracts, unit interests in property, estates, shares of participation, common law trust agreements or real estate, oil, gas or mineral leases, provided, however, that this shall not apply in whole or in part to mineral leases in Iowa lands; and notes or other evidences of indebtedness, and evidence of, title to, interest in or liens upon any or all of the property or profits of an individual or company, hereinafter referred to as "stocks, bonds, or other securities", shall be subject to the provisions of this chapter, except as herein otherwise provided; and shall, before selling or offering for sale any such securities in this state, be required to secure a permit from the secretary of state. [S. S., '15, § 1920-u; 39 G. A., ch. 189, § 1; 40 G. A., ch. 167.]

8526. Exceptions. The provisions of this chapter shall not apply to:

1. Securities of this state, or of the United States, or of any state or territory thereof, or of any foreign government, or of any district, county, township, city, town, or other public taxing subdivision of any state or territory of the United States, including all drainage, county, school, or other municipal bonds of this state.

2. Conveyance of real estate located in Iowa; also conveyance of real estate located elsewhere when the transaction does not involve an agreement to develop on said real estate or in connection therewith mines, oil wells, fruit trees, nut producing trees or other projects of a speculative nature which the parties contemplate as a substantial element of value in the transaction.

3. Evidences of indebtedness executed by a corporation and secured by a mortgage on real estate, which mortgage may also cover tangible property connected therewith, when the total amount of such indebtedness does not exceed the fair value of the property pledged; also evidences of indebtedness (not issued by a corporation) secured by bona fide mortgage on personal property in this state; also commercial paper or acceptances or negotiable promissory notes.

4. The stock, obligations and other securities issued by any national bank, or of any bank, trust company or building and loan association organized under the laws of any state, subject to examination and supervision of the proper authorities thereof; and the stock and obligations of any insurance company when such insurance company is legally authorized to transact business in this state by the insurance department thereof.

5. Securities of any corporation organized under the laws of this state whose authorized capital stock, when not sold above par, added to its other outstanding securities, shall not exceed fifty thousand dollars; but this exemption shall apply only to the securities issued by such company.

6. Securities sold or offered for sale, at any judicial, executor's or administrator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy, whether at a public or private sale; also the securities of one acting in a judiciary capacity under an order of court or of a trustee of a trust created by or declared in a will or judicial writ, or order, decree or judgment, who lawfully disposes of securities embraced within such trust.

7. Securities issued by any corporation organized not for pecuniary profit or organized exclusively for educational, benevolent, fraternal, charitable, or reformatory purposes.

8. Securities issued as a stock dividend when such issue has been approved by the executive council; also securities authorized by the executive council under the provisions of chapter 392.

9. Securities of corporations operating railroads, public or quasi-public utilities, the issue of whose securities is regulated by the interstate commerce commission or by a railroad or public service commission, board or similar body of any state or territory of the United States or of any province of the dominion of Canada, and securities of all other corporations operating public utilities in this state.

10. Bonds, debentures, collateral trust certificates or other similar instruments evidencing title to, interest in, or lien upon property, issued or executed in good faith by any company where the debt secured does not exceed sixty per cent of the value of the property pledged as security.

11. Securities of an issuer, organized under the laws of this state, where the disposal, in good faith and not for the purpose of avoiding the provisions of this chapter, is made for the sole account of the issuer, without commission and at a total organization therefrom, plus five hundred dollars; provided that the president and secretary, or the incorporators if done before organization, of the issuer shall, prior to such disposal, file with the secretary a written statement setting forth the existence of all facts and that such issuer is formed for the purpose of transacting business within the state. The secretary, however, shall be given the right at any time to inquire into the affairs of companies claiming such exemption, and to examine their books to ascertain whether the

securities named have been disposed of in the manner stated. Also the securities of a syndicate unincorporated, formed by residents of this state, whose members shall not exceed twenty-five in number, and whose interest or units are not divided into greater number than twenty-five provided no solicitation is made to the public for the disposal of said interest or units. [S. S., '15, § 1920-u1; 39 G. A., ch. 189, §§ 2, 7.]

8527. Permit—fee—papers and documents filed. Before any person, firm, association, company or corporation, subject to the provisions of this chapter, shall secure a permit from the secretary of state to sell, offer or negotiate for sale any stocks, bonds or other securities, in this state, such person, firm, association, company or corporation shall pay to the secretary of state a filing fee of two dollars and an annual inspection fee of twenty dollars and file in the office of said secretary of state the following papers and documents, to wit:

1. A copy of its constitution and by-laws, or articles of copartnership or association.

2. An itemized statement of its actual financial condition and the amount of its properties and liabilities.

3. A statement showing in full detail the plan upon which it proposes to transact business.

4. A copy of all bonds or other securities which it proposes to make with or sell to its contributors, including the price at which such stocks, bonds or other securities are to be sold or offered for sale.

5. Sample copies of all literature or advertising matter used or to be used by such person, firm, association, company or corporation.

6. A statement showing the name and location of its principal office of business and the names and addresses of its officers and directors.

7. If said person, firm, association, company or corporation is chartered to do business under the laws of any other state or territory than the state of Iowa, it shall file a copy of its charter or other instrument or documents authorizing it to do business in said state or territory, which copy shall bear the certificate of the secretary of state or other officer of such state having custody of such records to the effect that the same is a correct, true and complete copy of said charter or other instrument, together with the seal of such officer attached thereto, if such officer is possessed of a seal. [S. S., '15, § 1920-u2.]

8528. Verification. All of the above described papers shall be verified by the oath of the person receiving the permit, if the business is carried on by an individual, or by the oath of a member of a copartnership or association, or by the president and secretary of a corporation, if the concern be incorporated. [S. S., '15, § 1920-u2.]

8529. Additional information. The secretary of state may, if in his judgment it becomes

necessary in order to prevent fraud in the sale of any stocks, bonds or other securities in this state, require of such person, firm, association or corporation, or any of the officers, agents or representatives thereof, additional information in the form of reports or otherwise, duly verified. [S. S., '15, § 1920-u2.]

8530. Part payment of fee. If any person, firm, association, company or corporation, subject to the provisions of this chapter, desires to transact business in this state and does not desire to pay the annual inspection fee of twenty dollars by reason of the limited amount of business to be transacted, or otherwise, said person, firm, association, company or corporation shall have the option of paying to the secretary of state the filing fee of two dollars incident to the cost of filing and recording said papers and documents and an inspection fee of one-tenth of one per cent upon the face value of the securities for the sale of which application is made to the secretary of state. [S. S., '15, § 1920-u3.]

8531. Limitation on fee. Any person, firm, association, company or corporation, paying the inspection fee of one-tenth of one per cent upon the face value of the securities which it is proposed to sell within the state shall not be required to pay in the aggregate more than twenty dollars inspection fees to the said secretary of state in any one year. [S. S., '15, § 1920-u3.]

8532. Annual report. The secretary of state shall keep an accurate account of all moneys received from each person, firm, association, company or corporation as filing and inspection fees under the provisions of this chapter, and a record of all money expended in the enforcement of the provisions thereof, and at the end of the biennial period a report shall be made to the governor and legislature showing the amount of fees received and the amount of the money expended in the administration of this chapter. [S. S., '15, § 1920-u4.]

8533. Reduction of fees. If from said report it shall appear that the inspection fees are in substantial excess of the cost of inspection and all expenses incidental thereto, the succeeding legislature shall then reduce the amount of said inspection fees in proportion to the amount of such excess collected hereunder. [S. S., '15, § 1920-u4.]

8534. Secretary of state as process agent. Every nonresident person, firm, association, company or corporation subject to the provisions of this chapter shall, before receiving a certificate as provided for in section 8525, file in the office of the secretary of state an agreement in writing signed by the person receiving the permit, if the business is to be carried on by an individual, and by the signature of a member of a copartnership or company, if it be a copartnership or company, and by the signatures of the president and secretary of the incorporated or unincorporated company

or association, if it be a company or association, authenticated by the seal of said company, if possessed of a seal, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers of the corporation, authorizing the said president and secretary to execute the same; that thereafter service of notice of any action or process of any kind against such nonresident person, firm, association, company or corporation, growing out of the transaction of any business of said person, firm, association, company or corporation in this state may be made on the secretary of state of the state of Iowa, and when so made, such service of notice or process of any kind shall be valid, binding and effective for all purposes as if served upon said nonresident person, firm, association, company or corporation according to the laws of this or any other state, and waiving all claims or right to claim error by reason of such acknowledgment of service. [S. S., '15, § 1920-u5.]

8535. Service on said secretary. Such notice or process, with a copy thereof, shall be mailed to the secretary of state at Des Moines, Iowa, in a registered letter addressed to him by his official title, and he shall immediately upon its receipt acknowledge service thereon on behalf of the nonresident person, firm, association, company or corporation to which the same is directed by writing thereon, giving the date thereof, and shall immediately return such notice or process in a registered letter to the clerk of the court in which the suit is pending, addressed to him by his official title, and shall also forthwith mail such copy, with a copy of his acknowledgment of service written thereon, in a registered letter addressed to each person, firm, association or corporation who shall be named or designated as defendant in such written instrument. [S. S., '15, § 1920-u5.]

8536. Examination—refusing or granting permit. It shall be the duty of the secretary of state to examine the statements and documents so filed in his office and secure such further information as he deems necessary, if any, and if from such examination of all papers and documents submitted to him and from such other information as he may obtain, he finds that the sale within this state of stocks, bonds or other securities by any such person, firm, company, association or corporation would work a fraud upon the purchasers thereof, then and in that event he shall refuse to grant such permit; otherwise he shall grant such permit. [S. S., '15, § 1920-u6.]

8537. Change in business plan. Every person, firm, association, company or corporation having submitted to said secretary of state a detailed plan of its business, together with such other information required by sections 8527 to 8529, inclusive, and thereafter desiring to change its articles of association or incorporation or its proposed plan of busi-

ness, or its proposed contract, the character of its securities or method of advertisement, shall, before such change is made, submit the same to the secretary of state, in writing, showing in full detail the new plan of transacting business, together with all changes made either in articles of association or corporation, by-laws, plan of business, proposed contract, or in the character of securities. [S. S., '15, § 1920-u7.]

8538. Approval or disapproval. If the secretary of state after examination shall find that the proposed change will not work a fraud upon the purchasers of its stocks, bonds or other securities in this state, then he shall approve the same; otherwise he shall refuse to approve such change or amendment and require such a modification thereof as may be necessary to protect the people of this state against fraud. [S. S., '15, § 1920-u7.]

8539. Cancellation of permit. If and in the event such person, firm, association, company or corporation submitting such proposed change shall refuse to so modify the plan of his business, including the character of securities sold, as to conform to the requirements of the secretary of state and to the end that no fraud may be perpetrated upon the purchasers of the stocks, bonds or other securities sold in this state, then said secretary of state shall be required and he is hereby directed to cancel the permit of said person, firm, association, company or corporation, and said person, firm, association, company or corporation shall be denied the right to transact business in this state, unless and until said person, firm, association, company or corporation shall so modify and change its business that the transaction of business in this state will not work a fraud upon the purchasers thereof. [S. S., '15, § 1920-u7.]

8540. General power to refuse or cancel. The secretary of state under sections 8536 to 8539, inclusive, 8552, and 8567 to 8572, inclusive, shall have the right to refuse or cancel a permit where he finds from his examination that the applicant is not of good business repute, or that the proposed plan of business, or of selling the security is unfair, unjust, or inequitable, or finds that the securities the dealer, issuer, agent or broker proposes to sell are likely to work a fraud upon the purchaser thereof, such refusal, or cancellation, to be subject to the same right of appeal as herein provided in other cases. [39 G. A., ch. 189, § 6].

8541. Annual financial statement. Every person, firm, association, company or corporation doing business within this state pursuant to the provisions of this chapter shall, on or before December thirty-first of each year, or at such time as they make their annual statement to their directors, but not less than once each year, file with the secretary of state a statement properly verified by the officers of said company, if a company or corporation, or by a

member of a partnership, if a firm or copartnership, or by the owner of said business, if the same is transacted by an individual, which statement shall set forth its financial condition, the amount of its assets and liabilities and such other information concerning its financial affairs or its plan of business, including the character of securities sold, as the secretary of state may require in order to determine whether said person, firm, association, company or corporation is doing a legitimate and honest business within this state. [S. S., '15, § 1920-u8.]

8542. Confidential nature of report. Said statement shall be for the information of the secretary of state, the attorney general or any public officer who may be interested in an official way in receiving said information and shall not be open to public inspection, nor shall it be published or used for private purposes, but may be used in an official, legitimate way if need be. [S. S., '15, § 1920-u8.]

8543. Annual fee. Said annual statement shall be accompanied by an annual inspection fee of twenty dollars for the year next succeeding; provided, however, that any person not desiring to pay the annual inspection fee of twenty dollars may pay the inspection fee of one-tenth of one per cent on the amount of securities proposed to be sold as provided under the terms and conditions set forth in sections 8527, 8530, and 8531. [S. S., '15, § 1920-u8.]

8544. Violations—penalty. Any person, firm, association, company or corporation failing to file said statement for the preceding year, or failing to pay the inspection fee as provided by this chapter, shall, in addition to the criminal punishment otherwise imposed in this chapter, be liable to a penalty of ten dollars per day for each and every day which said person, firm, association, company or corporation transacts business in this state in violation of the provisions hereof. [S. S., '15, § 1920-u9.]

8545. Collection of penalty—accounting. Said penalty may be collected by a suit in the name of the state of Iowa upon the relation of the attorney general, instituted in any court of competent jurisdiction, and when collected shall be paid over to the secretary of state who shall cover the same into the general revenues of the state. [S. S., '15, § 1920-u9.]

8546. Accounts. The general accounts of every person, firm, association, company or corporation doing business in this state pursuant to the provisions of this chapter shall be kept in a businesslike and intelligent manner and in sufficient detail that the secretary of state can ascertain at any time upon inspection and examination its financial condition. [S. S., '15, § 1920-u10.]

8547. Opportunity to inspect. Any person, firm, association, company or corporation engaged in the business of buying or selling

stocks, bonds or other securities and subject to the provisions of this chapter, shall keep its books of account during business hours, except Sundays and legal holidays, open to its members, stockholders, and investors and to the secretary of state or his duly authorized agents or representatives. [S. S., '15, § 1920-u10.]

8548. Right to inspect. The said secretary of state shall have the right to make an examination and inspection of the books, accounts and financial condition of any such person, firm, association, company or corporation engaged in the business of dealing in stocks, bonds and other securities pursuant to the provisions of this chapter. [S. S., '15, § 1920-u10.]

8549. Extent of right. The right, powers, and privileges of the secretary of state in connection with such examination shall be the same as is now provided with reference to examination of state and savings banks. [S. S., '15, § 1920-u10.]

8550. Inspection fee and expenses. Such person, firm, association, company or corporation so examined shall pay a fee to the secretary of state for each of such examinations not to exceed ten dollars per day, or fraction thereof, spent by said secretary of state or his duly authorized representative while absent from the seat of government in making such examination, and shall further pay the actual traveling and hotel expenses of said examiner. [S. S., '15, § 1920-u10; 39 G. A., ch. 189, § 3.]

8551. Refusal to pay. Upon failure or refusal of any person, firm, association, company or corporation to pay the fees herein required, upon the demand of the secretary of state or his duly authorized representative, the secretary of state may suspend its right to sell, offer or negotiate for sale any of its stocks, bonds or other securities in this state until such fee or fees are paid. [S. S., '15, § 1920-u10.]

8552. Fraud—cancellation of permit. If from such examination it shall appear that said person, firm, association, company or corporation is doing an illegitimate and fraudulent business in this state, that its plan of business is fraudulent or that the sale of its stocks, bonds, or other securities would work a fraud upon the purchasers in this state, said secretary of state shall have the right to cancel the certificate of such person, firm, association, company or corporation, and deny it the right to further transact business in this state until it changes its plan of business, including the character of its securities, so that the citizens and residents of this state or others dealing with it therein shall not be defrauded thereby. [S. S., '15, § 1920-u11.]

8553. Fees—account kept. All fees herein provided for shall be collected by the secretary of state and by him covered into the state treasury on the first secular day of each month; and the secretary of state shall keep a record of the receipts and expenditures incurred in

carrying out the provisions of this chapter. [S. S., '15, § 1920-u12; 39 G. A., ch. 209, § 3.]

8554. Stocks held by bona fide owners. Nothing in this chapter shall be construed as to prohibit a bona fide owner of any stocks, bonds or other securities from selling, exchanging or otherwise disposing of the same when not made in the course of continuing or repeated transactions of a similar nature, or when said securities, including negotiable promissory notes, have been issued or given for goods, wares or merchandise purchased or dealt in by the issuer in the ordinary course of his business, or when sold, exchanged or otherwise disposed of to a bank subject to governmental supervision, trust company, insurance company, building and loan association, or to a person who has duly received a permit to transact business within this state pursuant to the provisions of this chapter, provided that the same are sold by said owner in good faith and not for the purpose of evading the provisions of this chapter. [S. S., '15, § 1920-u13.]

8555. Other securities—permit to sell. The secretary of state may authorize in writing any such bona fide owner of any stocks, bonds, or other securities to sell in this state any other securities not included in the provisions set forth in the preceding section; provided said securities were acquired and held by the owner in good faith and not for the purpose of evading the provisions of this chapter. [S. S., '15, § 1920-u13.]

8556. Registration of securities. Before such authorization shall issue for the sale of such additional securities, the owner of such securities shall register in a book kept for such purpose by the secretary of state a list of the stocks, bonds and other securities desired to be sold giving the character of the security, the par value thereof, the price at which such securities are to be sold, the date of issue, and any other data concerning the same which the secretary of state may require in order to determine whether or not the sale thereof will work a fraud upon the purchaser. [S. S., '15, § 1920-u13.]

8557. Bond—inspection fee. The said secretary of state may, if he have reason to believe said securities will work a fraud upon the purchasers thereof, require the owner to file in his office a bond in the penal sum of not to exceed five thousand dollars running to the state of Iowa, conditioned that said owner thereof will not in the sale and disposition of said securities, knowingly make any false or fraudulent representations concerning the nature and character of such securities. Such owner shall pay to the secretary of state an inspection fee as is provided for in sections 8530 and 8531. [S. S., '15, § 1920-u13.]

8558. Permit—form of. Each and every certificate granted by the secretary of state under the provisions of this chapter shall be in substantially the following form:

"This is to certify that the has this date been given permission to sell \$. of its within the state of Iowa.
(stocks, bonds or securities)

THE SECRETARY OF STATE DOES NOT RECOMMEND THE PURCHASE OF THIS OR ANY OTHER SECURITY.

Dated at Des Moines, Iowa, this day of

IN WITNESS WHEREOF, I have hereunto affixed the corporate seal of the Secretary of State.

.....
Secretary of State."

(SEAL)

[S. S., '15, § 1920-u14.]

8559. Prominence to printing. The words "THE SECRETARY OF STATE DOES NOT RECOMMEND THE PURCHASE OF THIS OR ANY OTHER SECURITY" shall be printed in larger, bolder faced type than the other part of the said certificate. [S. S., '15, § 1920-u14.]

8560. Warning to public. Any person, firm, association, company or corporation that makes any reference in any statement, advertisement or printed matter to the fact that a permit has been received from the secretary of state to transact business in this state shall, with equal prominence, state in the same circular, advertisement or printed matter that "THE SECRETARY OF STATE DOES NOT RECOMMEND THE PURCHASE OF THE SECURITY OF THIS OR ANY OTHER COMPANY". [S. S., '15, § 1920-u14.]

8561. Registration of agents—certificates. Every person, firm, association, company or corporation that has received a permit to transact business in this state and desires to appoint agents or representatives shall cause said agent or representative to register with the secretary of state and file with said officer his written appointment and authority to represent said person, firm, association, company or corporation as its agent in this state, and such further information as the secretary may require, and receive from said secretary a certificate showing that the principal represented by said agent or representative has complied with the provisions of this chapter and received a certificate to do business. [S. S., '15, § 1920-u15; 39 G. A., ch. 189, § 8.]

8562. Revocation of certificate. All such certificates shall be subject to revocation by the secretary of state if upon examination or investigation the secretary finds that the agent is misrepresenting the kind and character of securities, the nature of the business or is thereby, or otherwise defrauding the people of this state, in the sale of stocks, bonds or other securities. [S. S., '15, § 1920-u15.]

8563. Tenure of certificate—fee. All such certificates, unless sooner revoked, shall expire on the first day of July of each year. A charge of three dollars shall be made by the secretary of state for each certificate issued to such

agent. [S. S., '15, § 1920-u15; 39 G. A., ch. 189, § 9.]

8564. Secret agents—failure to disclose interest. Any individual, not licensed as an agent, who, with intent to secure financial gain for himself, advises and procures or assists in procuring any person to purchase any securities contemplated by this chapter and who received for such service any commission or reward, without disclosing to the purchaser the fact of his interest shall, in addition to any other penalty, be guilty of a misdemeanor. [39 G. A., ch. 189, § 5.]

8565. Promotion expense—agent's commission. No person, firm, association, company or corporation shall offer for sale, sell or otherwise dispose of, within this state, any securities coming within the provisions of this chapter on which the total promotion expense, including all commissions, discount on paper or other expense in marketing such securities exceeds ten per cent of the selling price thereof; provided that any such company organized for the purpose of carrying on an industrial business within this state may expend for such purposes not to exceed fifteen per cent of such selling price; and provided that in addition there may be paid all charter fees, franchise taxes, permit and certificate fees, attorney fees, and necessary expenditures for stationery and supplies. The agent's commission shall be paid to the agent only out of the purchase price of the stock and then only when and as such purchase price is paid by the purchaser. [39 G. A., ch. 189, § 5.]

8566. Resale contracts. No resale contract shall be entered into in the state of Iowa in connection with the sale of any stock, bonds or other security contemplated by this chapter, unless such resale contract is in writing signed by the parties and is accompanied by a performance bond in the penal sum of at least twice the amount in such resale contract, which bond shall be signed by himself and a responsible surety company authorized to do business in Iowa. [39 G. A., ch. 189, § 5.]

8567. Broker's annual permit. The secretary of state may issue to any broker, or dealer in stocks, bonds or other securities, an annual permit, which permit shall entitle such stockbroker or dealer to sell, offer or negotiate for sale any stocks, bonds or other securities within this state, except those stocks, bonds or other securities, the sale of which would work a fraud upon the purchaser; provided that such stockbroker or dealer shall file on the first and fifteenth day of each month a detailed list of the stocks, bonds or other securities on hand for sale or listed for sale by him, and also those sold by him during the preceding one-half month and not previously reported. [S. S., '15, § 1920-u16.]

8568. Refusal to grant permit—cancellation. The secretary of state shall refuse to grant a permit, or shall cancel a permit previously granted, to any such stockbroker or dealer

when he finds by investigation or otherwise that such stockbroker or dealer is selling or offering for sale within this state any stocks, bonds or other securities which would work a fraud upon the purchasers thereof. [S. S., '15, § 1920-u16.]

8569. Investigations by secretary. In order that the secretary of state may determine the nature and kind of securities to be sold and the character of the applicant, he is authorized to make investigation as otherwise provided herein, the expenses incurred thereby to be paid as provided in section 8550. [S. S., '15, § 1920-u16.]

8570. Fee—tenure of permit. The applicant shall also pay a fee of fifty dollars to the secretary of state for each of said annual permits, which permit, unless sooner revoked by the secretary of state, shall expire on the first secular day of July of each year. If said permit is issued after the first of January of any year, the fee shall be reduced one-half. [S. S., '15, § 1920-u16.]

8571. Bond. Before being granted such permit by the secretary of state, the stockbroker or dealer shall give a bond in the penal sum of five thousand dollars to the state of Iowa, for the use and benefit of any interested person, conditioned upon a strict compliance with this chapter and the honest and faithful application of all funds received by said broker, which bond shall be approved by the executive council and filed with the secretary of state. Said bond shall be further conditioned for the payment of all damages suffered by any person damaged or defrauded by reason of the violation of any of the provisions of this chapter, or by reason of any fraud connected with or growing out of any transaction contemplated by the provisions of this chapter. [S. S., '15, § 1920-u16; 40 G. A., ch. 168.]

8572. Action on bond. Action may be brought upon said bond in the county where the plaintiff resides, or in any county in which any of the defendants may be sued, or in any county of the state wherein any of the transactions relating to the subject matter of the action transpired. [S. S., '15, § 1920-u16; 40 G. A., ch. 168.]

8573. Appeal to executive council. Any person, firm, association, company or corporation that is denied a certificate to transact business in this state, or whose certificate is canceled pursuant to the provisions of this chapter shall have the right to appeal to the executive council from any decision of the secretary of state affecting a substantial right under the provisions of this chapter within twenty days from the entry or the pronouncement of the decision of said secretary by serving notice of such appeal upon the secretary of the executive council. [S. S., '15, § 1920-u17.]

8574. Procedure. Such appeal shall be heard and determined by the executive coun-

cil under such rules and regulations as they may prescribe giving full notice and opportunity to be heard by all persons interested therein. [S. S., '15, § 1920-u17.]

8575. Appeal to court. Any person, firm, association, company or corporation perfecting said appeal to said executive council, may upon receiving an adverse decision by said executive council, appeal to the district court at the seat of government, by the service of a written notice of appeal on the attorney general, and thereupon the cause may be docketed and the case may be tried in the district court as a special equitable action by the filing of such transcript and such pleadings as the court may prescribe in order that an intelligent hearing may be had and a just decision rendered thereon free from any technical objections or irregularities in the matter of procedure or the introduction of evidence. [S. S., '15, § 1920-u17.]

8576. Supersedeas bond—conditions. A supersedeas may be had by any person denied a permit to do business in this state and who has thereafter perfected an appeal by the execution and filing of a penal bond to the state for the use and benefit of the state for any costs or damages incurred by reason of said appeal and for the use and benefit of any purchaser of any stocks, bonds or other securities from the appellant during the pendency of said appeal; said bond shall be in the sum fixed by the judge of the district court to which said appeal is taken and approved by the clerk of said court, and shall provide that if the order appealed from is affirmed, the party appealing shall pay to the state all costs and damages by reason of said appeal, and shall pay to the secretary of state for the use and benefit of any purchaser who has suffered damage by reason of the purchase of any security during the pendency of such appeal the amount fixed in said bond or so much thereof as may be necessary. It shall be the duty of the clerk of the district court to transmit a certified copy of said bond to the secretary of state immediately upon the filing and approval of said bond in the office of said clerk. [S. S., '15, § 1920-u18.]

8577. False statements, entries, and representations. Any person, firm, association, company or corporation subject to the provisions of this chapter that shall subscribe or cause to be made any false statement or false entry in any book required to be kept or relating to any business to be transacted in this state pursuant to the provisions of this chapter, or make or subscribe to any false statement, exhibit or paper filed with the secretary of state or shall make to the secretary of state, his deputy, agent or representative any false or fraudulent statement concerning the proposed plan of business to be transacted, or the nature, value or character of securities to be sold in this state, or shall make to said secretary of state, his deputy, agent or representative any false statement as to the financial condition of such person, firm, association, company or corporation shall

be deemed guilty of a felony, and upon conviction shall be fined in the sum of not more than five thousand dollars, or imprisoned not to exceed five years in the penitentiary or reformatory, or by both such fine and imprisonment in the discretion of the court. [S. S., '15, § 1920-u19.]

8578. General violations. Any person, firm, association, company or corporation subject to the provisions of this chapter that shall sell or negotiate for the sale of any stocks, bonds or other securities within this state without first paying the inspection fee and otherwise complying with the provisions of this chapter, or that continues to sell, offers for sale, or negotiates for the sale of stocks, bonds or other securities in this state after his certificate or permit to do business has been canceled by the secretary of state, unless a supersedeas bond has been filed as and according to the provisions of section 8576, or that shall otherwise neglect or refuse to comply with any of the provisions of this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed five thousand dollars or by imprisonment in the county jail not to exceed six months or by both such fine and imprisonment. [S. S., '15, § 1920-u20.]

8579. False representations. Any person, firm, association, company or corporation, or any agent or representative thereof, whether subject to the provisions of this chapter or otherwise, that sells, offers for sale or negotiates for the sale of any stocks, bonds, or other securities within this state, and knowingly makes any false representations or statement as to the nature, character or value of such security, or the amount of the earning power of such security whether in the nature of interest, dividends or otherwise, or knowingly makes any false or fraudulent representation concerning the financial condition, the assets or the property of the company, firm or corpora-

tion issuing said security, or knowingly makes any other false or fraudulent representation to any person for the purpose of inducing said person to purchase said security, or conceals any material fact in the advertisement or prospectus of such security for the purpose of defrauding the purchaser, or knowingly violates any of the provisions of this chapter with intent to defraud, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in the penitentiary or reformatory for not more than five years or by both such fine and imprisonment. [S. S., '15, § 1920-u21; 39 G. A., ch. 189, § 4.]

8580. Promotion by state officials and employees. No state official or employee of the state shall use his name in his official capacity in connection with the indorsement or recommendation of the organization or the promotion of any company or in the disposal to the public of its securities, nor shall anyone use the stationery of the state or of any official thereof in connection with any such transaction. Whoever violates the aforesaid provision shall, upon conviction, by any court of competent jurisdiction, be deemed guilty of a misdemeanor and fined in any sum not to exceed five hundred dollars or be punished by confinement in a county jail for not more than ninety days, or by both such fine and imprisonment. [39 G. A., ch. 189, § 5.]

8581. Interpretation. Should any section of this chapter or any part thereof be held by any court of competent jurisdiction to be unconstitutional, such decision shall affect the specific provision only which it is held offends against the constitution and said unconstitutional part shall not be held to be an inducement to the passage of any other section or provision of this chapter. [S. S., '15, § 1920-u22.]

CHAPTER 394

CORPORATIONS NOT FOR PECUNIARY PROFIT

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GENERAL PROVISIONS

8582. Articles. Any three or more persons of full age, a majority of whom shall be citizens of the state, may incorporate themselves for the establishment of churches, colleges, seminaries, lyceums, libraries, fraternal lodges or societies, temperance societies, trades' unions or other labor organizations, commercial clubs, associations of business men, agricultural societies, farmers' granges, or organizations of a benevolent, charitable, scientific, political, athletic, military or religious character, by signing, acknowledging, and filing for record with the county recorder of the county where the principal place of business is to be located, articles of incorporation, stating the name by which the corporation or association shall be known, which shall not be the same as that of any such organization previously existing, its business or objects, the number of trustees, directors, managers or other officers to conduct the same, and the names thereof for the first year. [C., '51, §§ 708, 709; R., '60, §§ 1187, 1188, 1190, 1191, 1193, 1197; C., '73, §§ 1091, 1092, 1095, 1100; C., '97, § 1642; 37 G. A., ch. 143, § 1.]

8583. Powers—duration. Upon filing such articles, the persons signing and acknowledging the same, and their associates and successors, shall become a body corporate, with the name therein stated, and may sue and be sued. It may have a corporate seal, alterable at its pleasure, and may take by gift, purchase, devise or bequest real and personal property for purposes appropriate to its creation, and may make by-laws. Corporations so organized shall endure for fifty years, unless a shorter period is fixed in the articles, or they are sooner dissolved by three-fourths vote of all the members thereof, or by act of the general assembly, or by operation of law. [R., '60, §§ 1185, 1194, 1198; C., '73, §§ 1070, 1096, 1101; C., '97, § 1643; S., '13, § 1643.]

8584. Property of extinct religious society—rules. State, diocesan or district religious organizations incorporated under this chapter, or those existing by voluntary association and having permanent funds, shall have the power to adopt and enforce rules as to the property of extinct local societies which at any time have been or which may be connected therewith and defining when such a local society shall be considered extinct, and to take charge of and to control the real and personal property of such extinct society. [S., '13, § 1643.]

8585. For agricultural, horticultural, and cemetery purposes. Corporations organized for agricultural or horticultural purposes, and cemetery associations, shall not own to exceed nine sections of land, and the improvements and necessary personal property for the proper management thereof; and the articles of incorporation shall provide a mode by which any member may at any time withdraw therefrom, and also the mode of determining the amount to be received by such member upon withdrawal, and for the payment thereof to him, subject to the right of creditors of the corporation; and their duration shall be without limit, unless terminated by act of the general assembly. [R., '60, § 1185; C., '73, § 1070; C., '97, § 1644.]

8586. Dividend. No dividend or distribution of property among the stockholders shall be made until the dissolution of the corporation. [C., '51, § 710; R., '60, § 1188; C., '73, § 1093; C., '97, § 1645; S., '13, § 1645.]

8587. When society deemed extinct. When a local religious society shall have ceased to support a minister or leader or regular services and work for two years or more, or as defined by the rules of any incorporated state, diocesan or district society with which it has been connected, it shall be deemed extinct, and its property may be taken charge of and con-

trolled by such state or similar society of that denomination with which it had been connected. [S., '13, § 1645.]

8588. Power to confer degree. Any corporation of an academical character may confer the degrees usually conferred by such an institution. [C., '51, § 711; R., '60, § 1189; C., '73, § 1094; C., '97, § 1646; 40 Ex. G. A., Ch. 6, § 2.]

8589. Trustees or managers. Such corporation may, annually or oftener, elect from its members its trustees, directors or managers, at such time and place and in such manner as may be specified in its by-laws, who shall have the control and management of its affairs and funds, a majority of whom shall constitute a quorum for the transaction of business. When a vacancy occurs in its governing body, it shall be filled in such manner as shall be provided by the by-laws. When the corporation consists of the trustees, directors or managers of any benevolent, charitable, scientific, or religious institution which is or may be established in the state, and which is or may be under the patronage, control, direction or supervision of any synod, conference, association or other ecclesiastical body in any state established agreeably to the laws thereof, such ecclesiastical body may nominate and appoint such trustees, directors or managers, according to the usages of the appointing body, and may fill any vacancy which may occur among them; and when any such institution may be under the patronage, control, direction or supervision of two or more of such synods, conferences, associations or other ecclesiastical bodies, they may severally nominate and appoint such proportion of such trustees, directors or managers as shall be agreed upon by the bodies immediately concerned, and any vacancy occurring among such appointees last named shall be filled by the synod, conference, association or body having appointed the last incumbent. [R., '60, § 1195; C., '73, § 1097; C., '97, § 1647.]

8590. Academical — meetings. Any corporation of an academical character, the membership of which shall consist of lay members and pastors of churches, delegates to any synod, conference or council holding its annual meetings alternately in this and one or more adjoining states, may hold its annual meetings for the elections of officers and the transaction of business in any adjoining state, at the place where such synod, conference or council holds its annual meeting; and the election and business transacted shall be of the same effect as if held and transacted at its place of business in this state. [C., '73, § 1098; C., '97, § 1648.]

8591. Election of officers. If an election of trustees, directors or managers shall not be made on the day designated by the by-laws, the society for that cause shall not be dissolved, but such election may take place on any other day directed in the by-laws. [R., '60, § 1196; C., '73, § 1099; C., '97, § 1649.]

8592. Reincorporation — cemetery associations. The trustees, directors, or members of any corporation organized under this chapter may reincorporate the same, and all the property and rights thereof shall vest in the corporation as reincorporated. The trustees acting at the time of reincorporation of any cemetery association organized as a corporation under the laws of the state of Iowa, whose incorporation may have expired by operation of law or by the terms of its articles of incorporation, may reincorporate the same and all of the property and rights thereof shall vest in the corporation as reincorporated, for the use and benefit of all of the shareholders in the original corporation. [R., '60, § 1199; C., '73, § 1102; C., '97, § 1650; S., '13, § 1650.]

8593. Amendment of articles. Any corporation organized under this chapter may change its name or amend its articles of incorporation by a vote of a majority of the members, in such manner as may be provided in its articles; but if no such provision is made in the articles the same may be amended at any regular meeting or special meeting called for that purpose by the president or secretary or a majority of the board of directors. Notice of any meeting at which it is proposed to amend the articles of incorporation, shall be given by mailing to each member at his last known post office address at least ten days prior to such meeting, a notice signed by the secretary setting forth the proposed amendments in substance, or by two publications of said notice in some daily or weekly newspaper in general circulation in the county wherein said corporation has its principal place of business. The last publication of said notice shall be not less than ten days prior to the date of said meeting. If the trustees, directors, or managers of such corporation are appointed by two or more synods, conferences, associations, or other ecclesiastical bodies, such change or amendment shall not be made without the concurrence of a majority of those appointed by each such body. [C., '97, § 1651; 40 Ex. G. A., ch. 6, § 3.]

8594. Record—effect. The change or amendment provided for in the preceding section shall be recorded as the original articles are recorded. From the date of filing such change or amendment for record, the provisions of the previous section having been complied with, the change or amendment shall take effect as a part of the original articles, and the corporation thus constituted shall have the same rights, powers and franchises, be entitled to the same immunities, and liable upon all contracts to the same extent, as before such change or amendment. [C., '97, § 1652.]

8595. Endowment fund—trustees. Any presbytery, synod, conference, state or diocesan convention, or other state or district representative body of any religious denomination in this state, now or hereafter incorporated under this chapter, or any assembly, synod, conference, convention or other general ecclesiastical

body of any religious denomination in the United States having local societies in this state and wherever incorporated, may in its articles of incorporation or by amendment thereto create a board, committee or commission of three or more members for any endowment fund or other fund or property of the denomination represented by such body, and at any regular meeting of such presbytery, synod, conference, state or diocesan convention or other representative assembly of such denomination in this state, or of such assembly, synod, conference, convention or other general ecclesiastical body in the United States, may elect not less than three members of such denomination, one of whom shall be a resident freeholder in this state, to serve as trustees of such fund or property; and a copy of such articles of incorporation and amendment, duly certified to by the officer with whom the same have been filed for record, shall be evidence in the courts of this state of the existence of such trust and of the powers of such trustees. [S., '13, § 1652-a.]

8596. Powers of trustees. Such trustees, if chosen to take charge of any endowment or other like fund, may invest, manage and dispose of the same in accordance with the purpose for which it was created, subject to such regulations as the body by which they were elected may from time to time prescribe; and shall have power to make contracts regarding, and to collect and sue for, and in all ways to control and protect, any property belonging or which should belong to any such funds. [S., '13, § 1652-b.]

8597. Extinct religious societies—disposition of property. When any local religious society shall have become extinct, such trustees of the denomination with which it shall have been at any time connected shall take charge of its property, whether real or personal, and control, dispose of and use the same in trust, as part of the endowment or other like funds of such denomination within the territorial limits represented by such trustees and the corporation by which they were elected and especially for the work of such denomination at the place where such extinct local society shall have been situated. A transfer of such property by resolution or act of the remaining member or members, representative or representatives, of such extinct local society to such trustees shall operate to pass complete title. If on demand therefor there is a failure or refusal to transfer such property to such trustees, or if such trustees think proper so to do, they may commence action in equity in the district court of the county where such extinct local society was situated, making parties defendant thereto all persons known to have any interest in or claim upon such property; notice shall be given as in other equitable actions, and said court shall have jurisdiction to enter a decree whereby the title to all the property of such extinct society shall be transferred to such trustees, or for the sale thereof and transfer of the proceeds of such sale to such trustees.

Such decree or sale thereunder shall pass good title to such property. Provisions shall be made for the protection of all having claims against such local society or its property. [S., '13, § 1652-c.]

8598. Property in trust—use of principal. The property of any such extinct religious society shall be held and disposed of by such trustees in trust for the work of the denomination in the territorial limits represented by such trustees, and especially in trust for such work at the place where such extinct society was situated or its immediate vicinity within the judgment of the religious body by which such trustees were elected. Only income therefrom shall be used for the general work of such denomination in such territorial limits, but the principal shall be kept as a permanent fund for not less than five years, except that it may be used in the locality where such extinct local society was situated or its immediate vicinity if thought best by such body. No local society of such denomination at such place shall be allowed to demand the use of such principal for its benefit until it has been recognized and approved by and has complied with the reasonable requirements of the body so electing such trustees. If the principal or income in the hands of such trustees is not used in the locality where the extinct local society was situated within the term of five years from the time of the sale or disposition of its property, then the said principal and income, if any, may be used for building or improving other property of the denomination within the territorial limits in which such extinct society was located. [S., '13, § 1652-d; 38 G. A., ch. 102, § 1.]

8599. Contract and rights not affected. Existing contract and property rights arising under the organization, rules, laws or canons heretofore adopted by any corporation or organization of a religious character, shall not be affected by the provisions of sections 8584, 8587, and 8595 to 8598, inclusive, except by consent of the interested parties. [S., '13, § 1652-e.]

NOTE: The above section, and the sections enumerated therein, except an amendment by 38 G. A., ch. 102, took effect July 4, 1911.

FOREIGN NONPECUNIARY CORPORATIONS

8600. Permits. Any corporation organized under the laws of another state, or of any territory of the United States, for any of the purposes mentioned in section 8582, desiring a permit to do business in the state, shall file with the secretary of state a certified copy of its articles of incorporation duly attested by the secretary of state, or other state officer in whose office the original articles were filed, accompanied by a resolution of its board of directors or stockholders authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such

corporation of a permit to transact business in the state. [37 G. A., ch. 354, § 1.]

8601. Record and permit. If it appears that said foreign corporation is, in fact, organized not for pecuniary profit, the secretary of state shall, upon the payment of ten cents per hundred words, record said articles of incorporation and issue a permit to such corporation to do business in the state, for which permit the secretary of state shall charge, and receive, a fee of five dollars. Upon the issuance of such permit the corporation shall be entitled to carry on its business in the state. [37 G. A., ch. 354, § 1.]

8602. Annual reports. Any corporation, organized as provided in the two preceding sections shall, between the first day of July and the

first day of August of each year, make an annual report to the secretary of state, said report to be in such form as he may prescribe and upon a blank to be prepared by him for that purpose. [37 G. A., ch. 354, § 3.]

8603. Forfeiture. Should any corporation referred to in sections 8600 and 8601 fail to comply with the provisions of this chapter, notice of such failure shall be called to its attention by the secretary of state by registered letter and, if such delinquent corporation fails or neglects to comply with this chapter within sixty days from the receipt of such letter from the secretary of state, then and in such case said corporation shall forfeit its right to do business in this state. [37 G. A., ch. 354, § 4.]

TITLE XX

INSURANCE

CHAPTER 395

INSURANCE DEPARTMENT

8604. Location.
8605. Appointment and term.
8606. Confirmation.
8607. Vacancies.
8608. Deputy—assistants—bond.
8609. Payment of salaries.

8610. Expenses.
8611. Documents and records.
8612. Fees.
8613. General powers and duties.
8614. Life insurance—annual report.
8615. Other insurance—annual report.

8604. Location. The insurance department of Iowa, as heretofore created and established, with the commissioner of insurance as head thereof, shall be located at the seat of government. [S., '13, §§ 1683-r, 1683-r1; 39 G. A., ch. 209, § 15; 40 G. A., ch. 169, § 1; 40 Ex. G. A., S. F. 205, § 1.]

8605. Appointment and term. The governor shall, within sixty days following the organization of the regular session of the general assembly in 1927, and each four years thereafter, appoint, with the approval of two-thirds of the members of the senate in executive session, a commissioner of insurance, who shall be selected solely with regard to his qualifications and fitness to discharge the duties of this position, devote his entire time to such duties, and serve for four years from July first of the year of appointment. [S., '13, § 1683-r; 40 G. A., ch. 169, § 1; 40 Ex. G. A., S. F. 205, § 2.]

8606. Confirmation. No nomination shall be considered by the senate until the same has been referred to a committee of five, not more than three of whom shall belong to the same political party. Said committee shall be appointed by the president of the senate, without motion, and shall report to the senate in executive session. The consideration of nominations by the senate shall not be had on the same legislative day that nominations are so referred. [S., '13, § 1683-r; 40 G. A., ch. 169, § 1; 40 Ex. G. A., S. F. 205, § 3.]

8607. Vacancies. Vacancies that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes. Prior to the expiration

of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term. Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [S., '13, § 1683-r; 40 G. A., ch. 169, § 1; 40 Ex. G. A., S. F. 205, § 4.]

8608. Deputy—assistants—bond. The commissioner shall appoint a deputy commissioner and such other clerks and assistants as shall be needed to assist him in the performance of his duties, all of whom shall serve during the pleasure of the commissioner. Before entering upon the duties of his office, the deputy commissioner shall give a bond in the penal sum of ten thousand dollars. [S., '13, § 1683-r2; 39 G. A., ch. 209, § 16; 40 Ex. G. A., S. F. 205, § 5.]

8609. Payment of salaries. All salaries of deputy, assistants and clerks herein provided for shall be paid in the same manner as are the salaries of other state officers out of the general revenues of the state; and on the first day of each month all such salaries as are indicated herein shall be paid by warrant drawn by the auditor upon the treasurer of state. [40 Ex. G. A., S. F. 205, § 6.]

8610. Expenses. The commissioner shall be entitled to reimbursement of his actual necessary expenses in attending meetings of insurance commissioners of other states, and in the performance of the duties of his office, not exceeding one thousand dollars annually. He may incur such other and additional expenses as may be authorized by the executive council, not exceeding one thousand dollars

annually. [S., '13, § 1683-r2; 39 G. A., ch. 209, § 16; 40 Ex. G. A., S. F. 205, § 7.]

8611. Documents and records. All books, records, files, documents, reports, and securities, and all papers of every kind and character relating to the business of insurance shall be delivered to, and filed or deposited with, the said commissioner of insurance. [S., '13, § 1683-r4.]

8612. Fees. All fees and charges of every character whatsoever which are now required by law to be paid to the auditor of state by insurance companies and associations shall, from and after July 4, 1914, be payable to the commissioner of insurance whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner as now provided for by law for the auditor of state. [S., '13, § 1683-r5.]

8613. General powers and duties. The commissioner of insurance shall be the head of the insurance department, and shall have general control, supervision, and direction over all insurance business transacted in the state, and shall enforce all the laws of the state relating to such insurance.

He shall supervise all transactions relating to the organization, reorganization, liquidation, and dissolution of domestic insurance corpora-

tions, and all transactions leading up to the organization of such corporations.

He shall also supervise the sale in the state of all stock, certificates, or other evidences of interest, either by domestic or foreign insurance companies or organizations proposing to engage in any insurance business. [S., '13, § 1683-r3; 39 G. A., ch. 224, § 1; 40 Ex. G. A. ch. 9, § 1.]

8614. Life insurance—annual report. Before the first day of May the commissioner of insurance shall make an annual report to the governor of the general conduct and condition of the life insurance companies doing business in the state, and include therein an aggregate of the estimated value of all outstanding policies in each of the companies; and in connection therewith prepare a separate abstract thereof as to each company, and of all the returns and statements made to him by them. [C., '73, § 1176; C., '97, § 1781.]

NOTE: For period covered by report, see § 247.

8615. Other insurance—annual report. The commissioner shall cause the information contained in the statements required of the companies, other than life insurance, organized or doing business in the state to be arranged in detail, and prepare the same for printing, which report shall be made to the governor on or before the first day of May of each year. [C., '73, § 1158; C., '97, § 1720; S., '13, § 1720-a.]

CHAPTER 396

ORGANIZATION AND SALE OF STOCK OF DOMESTIC INSURANCE COMPANIES

8616. Sale of stock or membership—conditions.
8617. Power over organization—certificate.
8618. Promotion expense—unallowable dividends.
8619. General regulation by commissioner.
8620. Unallowable contracts.

8621. Violations.
8622. Liability for illegal sale of stock.
8623. Appeal.
8624. Sale of stock as inducement to insurance.

8616. Sale of stock or membership—conditions. Neither the stock in an insurance company nor the membership in an insurance association in process of organization shall be sold or solicited until such company or association, and the promoters thereof, shall have first complied with all of the statutory provisions regulating the organization of such companies and associations, and also have secured from the commissioner of insurance a certificate indicating full compliance with the provisions of this section. [S., '13, § 1683-r3; 39 G. A., ch. 224, § 1; 40 Ex. G. A., ch. 9, § 2.]

1683-r3; 39 G. A., ch. 224, § 1; 40 Ex. G. A., ch. 9, § 3.]

8618. Promotion expense—unallowable dividends. The maximum promotion expense which may be incurred shall in no case exceed twelve and one-half per cent of the par value of said stock, and no portion of such amount shall be used in the payment of salaries for officers and directors before the issuance, by the commissioner of insurance, of authority to transact an insurance business. Any amount paid to the company for stock above the par value of the stock shall constitute a contributed surplus and shall not be used in the payment of dividends. [39 G. A., ch. 224, § 1; 40 Ex. G. A., ch. 9, § 4.]

8617. Power over organization—certificate. Before the commissioner of insurance shall issue such certificate of compliance, he shall first be satisfied with the general plan of such organization and the character of the advertising to be used; he shall also fix the time within which such organization shall be completed; he shall also prescribe the method of keeping books and accounts of such corporation and those of fiscal agents. [S., '13, §

8619. General regulation by commissioner. The commissioner of insurance shall have power to regulate all other matters in connection with the organization of such domestic corporations, and the sale of stock or the issuing of certificates by all insurance corpo-

rations within the state, to the end that fraud may be prevented in the organization of such companies and the sale of their stocks and securities. [S., '13, § 1683-r3; 39 G. A., ch. 224, § 1; 40 Ex. G. A., ch. 9, § 5.]

8620. Unallowable contracts. No company shall enter into any contract with any promoter, officer, director, or agent of the company or any other person to pay his expenses or to pay him any commission or any compensation for his services in promoting or organizing such company, or in selling its stock in excess of the amount authorized in section 8618; nor shall it contract with any such person to pay him any part of the premiums arising from the insurance it has written or may write as compensation, directly or indirectly, for aiding in the promotion or for aiding or effecting any consolidation of such company with any other company, without the approval of the commissioner of insurance. [39 G. A., ch. 224, § 1; 40 Ex. G. A., ch. 9, § 6.]

8621. Violations. Any person who violates any of the provisions of the preceding sections of this chapter, or who violates any order of the commissioner of insurance made by authority thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not to exceed one thousand dollars, and by imprisonment in the county jail not to exceed six months. [39 G. A., ch. 224, § 2; 40 Ex. G. A., ch. 9, § 8.]

8622. Liability for illegal sale of stock. Any person, association, or corporation who sells or aids in selling or causes to be sold any stock, certificate of membership, or evidence of interest in any such corporation or association, in violation of law, shall be personally liable to any person to whom he may have sold any stock or certificate of membership or evidence of interest, in an amount equal to the price paid therefor by such person with legal interest, and suit to recover the same may be brought by such purchasers, jointly or severally, in any court of competent jurisdiction. [39 G. A., ch. 224, § 2; 40 Ex. G. A., ch. 9, § 9.]

8623. Appeal. Any person, corporation, or association aggrieved by any order made by

the commissioner of insurance under the provisions of this chapter, may appeal to the district court at the seat of government, by the service of a written notice of such appeal on the commissioner of insurance and attorney general. If such appeal is taken, the commissioner of insurance shall transmit the transcript of the proceedings had before him to such court, and the cause shall be docketed and tried as an equitable action. [39 G. A., ch. 224, § 3; 40 Ex. G. A., ch. 9, § 10.]

8624. Sale of stock as inducement to insurance. No insurance company shall issue in this state, or permit its agents, officers, or employees to issue in this state its own stock, agency company stock or other stock or securities, or any special or advisory board or other contract of any kind promising returns and profits as an inducement to insurance.

No insurance company shall be authorized to do business in this state which issues or permits its agents, officers, or employees to issue in this state or in any other state or territory, agency company stock or other stock or securities, or any special advisory board or other contract of any kind promising returns and profits as an inducement to insurance.

No corporation or stock company, acting as an agent of an insurance company, or any of its agents, officers, or employees, shall be permitted to agree to sell, offer to sell, or give, or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds or agreement of any form or nature, promising returns and profits as an inducement to insurance, or in connection therewith.

Nothing herein contained shall impair or affect in any manner any such contracts issued or made as an inducement to insurance prior to the enactment of this section, or prevent the payment of the dividends or returns therein stipulated to be paid.

It shall be the duty of the commissioner upon being satisfied that any insurance company, or any agent thereof, has violated any of the provisions of this section, to revoke the certificate of authority of the company or agent so offending. [39 G. A., ch. 181, § 1.]

CHAPTER 397

EXAMINATION OF INSURANCE COMPANIES

8625. "Company" defined.
 8626. Examination required.
 8627. Companies to assist—oaths.
 8628. Examiner—assistants.
 8629. Bond.
 8630. Employment of experts.
 8631. Expenses.
 8632. Payment by company.
 8633. Fees—accounting.

8625. "Company" defined. The word "company" as used in this chapter shall mean all companies or associations organized under the provisions of chapters 398, 400, 401, 404, and 406, except county mutuals, and all companies or associations admitted or seeking to be admitted to this state under the provisions of any of the chapters herein referred to. [S., '13, § 1821-i.]

8626. Examination required. The commissioner of insurance may, at any time he may deem it advisable, make an examination of, or inquire into the affairs of any insurance company authorized or seeking to be authorized to transact business within this state, provided that such examination shall not be less frequent than once during each biennial period. [S., '13, § 1821-a.]

8627. Companies to assist—oaths. When any company is being examined, the officers, employees, or agents thereof, shall produce for inspection all books, documents, papers, or other information concerning the affairs of such company, and shall otherwise assist in such examination so far as they can do. The commissioner of insurance, or his legally authorized representative in charge of the examination, shall have authority to administer oaths and take testimony bearing upon the affairs of any company under examination. [S., '13, § 1821-b.]

8628. Examiner—assistants. The commissioner of insurance is hereby authorized to appoint two insurance examiners, one of whom shall be an experienced actuary, the other of whom shall be an experienced and competent fire insurance accountant, and who, while conducting examinations, shall possess all the powers conferred upon the commissioner of insurance for such purposes. The entire time of the examiners shall be under the control of the said commissioner, and shall be employed as he may direct.

The said commissioner may, when in his judgment it is advisable, appoint assistants to

8634. Suspension or revocation of certificate—receivership.
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 8636. Procedure against life companies.
 8637. Notice of application.
 8638. Publication of examination.
 8639. Transfer pending examination.
 8640. Unlawful solicitation of business.
 8641. Refusing to be examined.
 8642. Examination of nonresident companies.

aid in making examinations. [S., '13, § 1821-c; 39 G. A., ch. 209, § 17.]

8629. Bond. Said examiners shall give bond to the state conditioned upon the faithful performance of their duties, in the sum of five thousand dollars, which bond shall be filed with and approved by said commissioner. [S., '13, § 1821-c.]

8630. Employment of experts. If in making any examination a situation develops which, in the judgment of the commissioner, requires the services of an expert examiner having special training and knowledge not possessed by the regular examiners of the department, he may also employ such an expert assistant examiner, who shall receive as full compensation for such services the sum of not to exceed twenty-five dollars per day. [38 G. A., ch. 348, § 14.]

8631. Expenses. Said examiners and assistants and the said commissioner shall receive actual and necessary traveling, hotel, and other expenses while engaged in conducting examinations away from their respective places of residence. [S., '13, § 1821-c; 39 G. A., ch. 209, § 17.]

8632. Payment by company. All bills for expenses of any examination, together with the compensation of the assistants, shall be charged to and paid by the companies examined, and upon failure or refusal of any company examined to pay such bill or bills, the same may be recovered in an action brought in the name of the state under the direction of the executive council, and the commissioner may also revoke the certificate of authority of such company to transact business within this state. [S., '13, § 1821-c.]

8633. Fees—accounting. All fees collected under the provisions of this chapter shall be paid to the commissioner of insurance and shall be by him turned into the state treasury as are other fees of his office. [S., '13, § 1821-c.]

8634. Suspension or revocation of certificate—receivership. If upon investigation or examination, it shall appear that any company is insolvent or in an unsound condition, or is doing an illegal or unauthorized business, or that it has refused or neglected for more than thirty days to pay final judgment rendered against it in the courts of this state, the commissioner of insurance may suspend its authority to transact business within this state until it shall have complied in all respects with the laws applicable to such company or has paid such judgment, or he may revoke its certificate of authority to transact business within this state and having revoked the certificate of any company organized under the laws of this state, he shall at once report the same to the attorney general, who shall apply to the district court or any judge thereof for the appointment of a receiver to close up the affairs of said company. [S., '13, § 1821-d.]

8635. Procedure against nonlife companies. In the case of companies organized on the stock plan under the provisions of chapter 404, the above named officers shall proceed as provided in sections 8964 and 8965. [S., '13, § 1821-d.]

8636. Procedure against life companies. In case of companies organized under the provisions of chapter 398, said officers shall proceed as provided in sections 8661 to 8663, inclusive. [S., '13, § 1821-d.]

8637. Notice of application. No receiver shall be appointed for any company contemplated by this chapter except upon application of the attorney general, unless five days' notice shall have been served upon the commissioner and attorney general, stating the time and place of the hearing of such application, at which time and place said officers shall have the right to appear and be heard as to such application and appointment. [S., '13, § 1821-d.]

8638. Publication of examination. The results of any examination shall be published in

one or more newspapers of the state or in pamphlet form, when in the opinion of the commissioner of insurance the interests of the public require it. [S., '13, § 1821-d.]

8639. Transfer pending examination. Any transfer of stock of any company, pending an investigation, shall not release the party making the transfer from any liability for losses that may have occurred previous to such transfer. [S., '13, § 1821-e.]

8640. Unlawful solicitation of business. Any officer, manager, agent, or representative of any insurance company contemplated by this chapter, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, solicits insurance for said company, or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said company, shall be deemed guilty of a misdemeanor and shall be subject to the penalties provided in sections 8755 and 8756, and the provisions of said sections are hereby extended to all companies contemplated by this chapter. [S., '13, § 1821-f.]

8641. Refusing to be examined. Should any company decline or refuse to submit to an examination as in this chapter provided, the commissioner of insurance shall at once revoke its certificate of authority, and if such company is organized under the laws of this state, he shall report his action to the attorney general, who shall at once apply to the district court or a judge thereof for the appointment of a receiver to wind up the affairs of the company. [S., '13, § 1821-g.]

8642. Examination of nonresident companies. Examination of insurance companies not located within this state shall only be made by order of the executive council, and at such time as it may direct. [S., '13, § 1821-h.]

CHAPTER 398

LIFE INSURANCE COMPANIES

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8643. Level premium plan companies. Every life insurance company upon the level premium or the natural premium plan, created under the laws of this or any other state or country, shall, before issuing policies in the state, comply with the provisions of this chapter applicable to such companies. [C., '73, § 1161; C., '97, § 1768; S., '13, § 1768.]

8644. Approval of articles. Before any such company shall be permitted to incorporate under the laws of this state, it shall present its articles of incorporation to the commissioner of insurance and the attorney general and have the same by them approved. [S., '13, § 1768.]

8645. Requirements of articles. Such articles shall show the name, location of principal place of business, object, amount of capital, if a stock company, and shall contain such other provisions as may be necessary to a full understanding of the nature of the business to be transacted and the plan upon which the same is to be conducted. [S., '13, § 1768.]

8646. Approval of amendments. All amendments to such articles and amendments hereafter made to the articles of incorporation of companies already organized under the laws of this state shall be approved in like manner. [C., '97, § 1768.]

8647. Capital and surplus required. Stock companies organized to transact business under the provisions of this chapter shall have not less than one hundred thousand dollars of capital stock paid up in cash, and when first authorized to write insurance shall have a cash surplus in an amount equal to twenty-five per cent of the paid-up capital stock, which

capital stock shall be invested as provided by sections 8737 to 8740, inclusive. [C., '73, § 1162; C., '97, § 1769; 39 G. A., ch. 261, § 2; 40 G. A., ch. 263.]

8648. Deposit of securities—certificate. Such securities shall be deposited with the commissioner of insurance and when such deposit is made and evidence furnished, by affidavit or otherwise, satisfactory to the commissioner, that the capital stock is all fully paid and the company possessed of the surplus required and that the company is the actual and unqualified owner of the securities representing the paid-up capital stock or other funds of the company, and all laws have been complied with, he shall issue to such company the certificate hereinafter provided for. [C., '73, § 1162; C., '97, § 1769; 39 G. A., ch. 261, § 2; 40 G. A., ch. 263.]

8649. Loans to officers. No part of the capital or other funds shall be loaned directly or indirectly to any officer, director, stockholder, or employee of the company or directly or indirectly to any relative of any officer or director of such company. [C., '73, § 1162; C., '97, § 1769; 39 G. A., ch. 261, § 2; 40 G. A., ch. 263.]

8650. Loan on stock or to prohibited companies. No such company shall make any loan upon its own stock as collateral, or directly or indirectly make any loan to or invest any of its funds in the property of any corporation, firm, association, or trustees of which any officer or director of the insurance company is also an officer, director, stockholder, member, or trustee of such other corporation, firm, association, or trustees. [40 G. A., ch. 263.]

8651. Mutual companies—conditions. Level premium and natural premium life insurance

companies organized under the laws of this state upon the mutual plan shall, before issuing any policies, have actual applications on at least two hundred and fifty lives for an average amount of one thousand dollars each, a list of which, giving the name, age, residence, amount of insurance, and annual premium of each applicant shall be filed with the commissioner of insurance, and a deposit made with him of an amount equal to three-fifths of the whole annual premium on said applications, in cash or the securities required by section 8647; and on compliance with the provisions of this section, the commissioner shall issue to such mutual company the certificate hereinafter prescribed. [C., '73, § 1163; C., '97, § 1770.]

8652. Foreign companies—capital or surplus—investments. No company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of the actual amount of capital required of any company organized by the laws of this state, or, if it be a mutual company, of surplus equal in amount thereto, and the same is invested in bonds of the United States or of this state, or in interest-paying bonds, when they are at or above par, of the state in which the company is located, or of some other state, or in notes or bonds secured by mortgages on unincumbered real estate within this or the state where such company is located, worth double the amount loaned thereon, which securities shall, at the time, be on deposit with the superintendent of insurance, auditor, comptroller, or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the commissioner of insurance is furnished with a certificate of such officer, under his official seal, that he as such officer holds in trust and on deposit for the benefit of all the policy holders of such company, the securities above mentioned. This certificate shall embrace the items of security so held, and show that such officer is satisfied that such securities are worth one hundred thousand dollars. Nothing herein contained shall invalidate the agency of any company incorporated in another state by reason of its having exchanged the bonds or securities so deposited with such officer for other bonds or securities authorized by this chapter, or by reason of its having drawn its interest and dividends on the same. [C., '73, § 1164; C., '97, § 1772.]

8653. Annual statement. The president or vice president and secretary or actuary, or a majority of the directors of each company organized under this chapter, shall annually, by the first day of March, prepare under oath and file in the office of the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, showing:

1. The name of the company and where located.
2. The names of officers.

3. The amount of capital, if a stock company.

4. The amount of capital paid in, if a stock company.

5. The value of real estate owned by the company.

6. The amount of cash on hand.

7. The amount of cash deposited in banks, giving the name of the bank or banks.

8. The amount of cash in the hands of agents, and in the course of transmission.

9. The amount of bank stock, with the name of each bank, giving par and market value of the same.

10. The amount of bonds of the United States, and all other bonds and securities, giving names and amounts, with the par and market value of each kind.

11. The amount of loans secured by first mortgage on real estate, and where such real estate is situated.

12. The amount of all other bonds, loans, how secured, and the rate of interest.

13. The amount of premium notes and their value on policies in force, if a mutual company.

14. The amount of notes given for unpaid stock, and their value in detail, if a stock company.

15. The amount of assessments unpaid on stock or premium notes.

16. The amount of interest due and unpaid.

17. The amount of all other securities.

18. The amount of losses due and unpaid.

19. The amount of losses adjusted but not due.

20. The amount of losses unadjusted.

21. The amount of claims for losses resisted.

22. The amount of money borrowed and evidences thereof.

23. The amount of dividends unpaid on stock.

24. The amount of dividends unpaid on policies.

25. The amount required to safely reinsure all outstanding risks.

26. The amount of all other claims against the company.

27. The amount of net cash premiums received.

28. The amount of notes received for premiums.

29. The amount of interest received from all sources.

30. The amount received from all other sources.

31. The amount paid for losses.

32. The amount of dividends paid to policy holders, and the amount to stockholders, if a stock company.

33. The amount of commissions and salaries paid to agents.

34. The amount paid to officers for salaries and other compensation.

35. The amount paid for taxes.

36. The amount of all other payments and expenditures.

37. The greatest amount insured on any one life.

38. The amount deposited in other states or territories as security for policy holders therein, stating the amount in each state or territory.

39. The amount of premiums received in this state during the year.

40. The amount paid for losses in this state during the year.

41. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk.

42. All other items of information necessary to enable the commissioner of insurance to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof. [C., '73, § 1167; C., '97, § 1773.]

8654. Valuation of policies. As soon as practicable after the filing of such statement, the commissioner of insurance shall ascertain the net cash value of every policy in force upon the basis of the American table of mortality and four and one-half per cent interest, or actuaries' combined experience table of mortality and four per cent interest, in all companies organized under the laws of this state. For the purpose of making such valuation he may employ a competent actuary, who shall be paid by the company for which the service is rendered; but the company may make such valuation and it shall be received by the commissioner upon satisfactory proof of its correctness. [C., '73, § 1169; C., '97, § 1774.]

8655. Deposit to cover valuation. The net cash value of all policies in force in any such company being ascertained, the commissioner shall notify it of the amount, and within thirty days thereafter the officers thereof shall deposit with the commissioner the amount of the ascertained valuation in the securities specified in section 8737. [C., '73, § 1169; C., '97, § 1774.]

8656. Deposit by stock company. No stock company organized under the laws of this state shall be required to make such deposit until the cash value of the policies in force, as ascertained by the commissioner, exceeds the amount deposited by it as capital. [C., '73, § 1169; C., '97, § 1774.]

8657. Annual certificate of authority. On receipt of such deposit and statement, and the statement and evidence of investment of foreign companies, all of which shall be renewed annually, by the first day of March, the commissioner of insurance shall issue a certificate setting forth the corporate name of the company, its home office, that it has fully complied with the laws of the state and is authorized to transact the business of life insurance for the ensuing year, which certificate shall expire on the first day of April of the ensuing year, or sooner upon thirty days' notice given by the commissioner, of the next annual valuation of its policies. Such certificate shall be renewed annually, upon the renewal of the deposit and statement by a

domestic company, or of the statement and evidence of investment by a foreign company, and compliance with the conditions above required, and be subject to revocation as the original certificate. [C., '73, § 1170; C., '97, § 1775.]

8658. Violation by domestic company. Upon a failure of any company organized under the laws of this state to make the deposit or file the statement in the time herein stated, the commissioner of insurance shall notify the attorney general of the default, who shall at once apply to the district court of the county where the home office of such company is located, if the court is in session, if not, to any judge thereof, for an order requiring the company to show cause upon reasonable notice, to be fixed by the court or judge, as the case may be, why its business shall not be discontinued. If, upon the hearing, no sufficient cause is shown, the court shall decree its dissolution. [C., '73, § 1171; C., '97, § 1776.]

8659. Violation by foreign company. Companies organized and chartered by the laws of a foreign state or country, failing to file the evidence of deposit and statement within the time fixed, shall forfeit and pay the sum of three hundred dollars, to be collected in an action in the name of the state for the use of the school fund, and their right to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with. [C., '73, § 1171; C., '97, § 1776.]

8660. Examination. The commissioner of insurance at any time may make a personal examination of the books, papers, securities, and business of any life insurance company doing business in this state, or authorize any other suitable person to make the same, and he or the person so authorized may examine under oath any officer or agent of the company, or others, relative to its business and management. [C., '73, § 1172; C., '97, § 1777.]

8661. Injunction—receivership—dissolution. If upon such examination the commissioner is of the opinion that the company is insolvent, or that its condition is such as to render its further continuance in business hazardous to the public or holders of its policies, he shall advise and communicate the facts to the attorney general, who shall at once apply to the district court of the county or any judge thereof, where the home office of a domestic company or an agency of a foreign company is located, for an injunction to restrain the company from transacting further business except the payment of losses already ascertained and due, until further hearing, and for the appointment of a receiver, and, if a domestic company, for the dissolution of the corporation. The judge of such court may grant a preliminary injunction with or without notice, as he may direct. [C., '73, § 1172; C., '97, § 1777.]

8662. Decree. The court, on the final hearing, may make decree subject to the provisions

of the following section as to the appointment of a receiver, the disposition of the deposits of the company in the hands of the commissioner, and its dissolution, if a domestic company. [C., '73, § 1172; C., '97, § 1777.]

8663. Securities. The securities of a defaulting or insolvent company, or a company against which proceedings are pending under the two preceding sections, on deposit shall vest in the state for the benefit of the policies on which such deposits were made, and the proceeds of the same shall, by the order of the court upon final hearing, be divided among the holders thereof in the proportion of the last annual valuation of the same, or at any time be applied to the purchase of reinsurance for their benefit. [C., '73, § 1173; C., '97, § 1778.]

8664. Change of securities. Companies shall have the right at any time to change the securities on deposit by substituting a like amount of the character required in the first instance. If the annual valuation of the policies in force shows them to be less than the amount of security deposited, then the company may withdraw such excess, but twenty-five thousand dollars must always remain on deposit. [C., '73, § 1174; C., '97, § 1779.]

8665. Interest on securities. Companies having on deposit with the commissioner of insurance bonds or other securities may collect the dividends or interest thereon, delivering to their authorized agents the coupons or other evidence of interest as the same become due, but if any company fails to deposit additional security when and as called for by the commissioner, or pending any proceedings to close up or enjoin it, the commissioner shall collect such dividends or interest and add the same to such securities. [C., '73, § 1175; C., '97, § 1780.]

8666. Discriminations. No life or casualty, health or accident insurance company or association shall make or permit any distinction or discrimination between persons insured of the same class and equal expectancy of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms or conditions of the contract it makes; nor shall any such company or association or agent thereof make any contract of insurance agreement, other than as plainly expressed in the policy issued; nor shall any such company or association or agent pay or allow, directly or indirectly, as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance. [C., '97, § 1782; S., '13, § 1782.]

8667. Violations. Every corporation, officer, or agent thereof who shall knowingly violate any of the provisions of the preceding section

shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered by an action in the name of the state for the benefit of the school fund, and the license may be revoked for three years, in the discretion of the court. [C., '97, § 1783.]

8668. Policy forms—approval. It shall be unlawful for any insurance company transacting business within this state, under the provisions of this chapter, to write or use any form of policy or contract of insurance, on the life of any individual in this state, until a copy of such form of policy or contract has been filed with and approved by the commissioner of insurance. [S., '13, § 1783-a; 38 G. A., ch. 348, § 7.]

8669. Failure to file copy. Should any company decline to file a copy of its form of policies or contracts, the commissioner of insurance shall suspend its authority to transact business within the state until such form of policies or contracts have been so filed and approved. [S., '13, § 1783-c.]

8670. Violations. Any company violating any of the provisions of the second preceding section shall, upon conviction thereof, be fined in a sum not less than one hundred nor more than one thousand dollars for each such offense, and the court may also revoke its authority to do business within this state. [S., '13, § 1783-c.]

8671. Policy provision for medical examination. The commissioner of insurance shall decline to approve any such form of policy or contract of insurance unless the same shall, in all respects, conform to the laws of this state applicable thereto, and unless the issuance of the same is based upon a satisfactory medical examination of the applicant by a physician duly authorized to practice medicine or by an osteopathic physician duly authorized to practice osteopathy in the state of Iowa or the state where examined, and no policy or contract of insurance shall be issued by any insurance company to any individual in this state until such examination shall have been passed and duly approved by the medical examiner or medical board of such company.

Provided, that no medical examination of any person to be insured under an industrial policy shall be required or be necessary when the amount of the policy of insurance is five hundred dollars or less. [S. S., '15, § 1783-b; 39 G. A., ch. 223, § 1.]

8672. Authority to write other insurance. Any life insurance company organized on the stock or mutual plan and authorized by its charter or articles of incorporation so to do, may in addition to such life insurance, insure, either individually or on the group plan, the health of persons and against personal injuries, disablement or death, resulting from traveling or general accidents by land or water, and insure employers against loss in consequence of accidents or casualties of any kind to employees or other persons, or to property re-

sulting from any act of the employee or any accident or casualty to persons or property, or both, occurring in or connected with the transaction of their business, or from the operation of any machinery connected therewith, but nothing herein contained shall be construed to authorize any life insurance company to insure against loss or injury to person, or property, or both, growing out of explosion or rupture of steam boilers. [S., '13, § 1783-d; 39 G. A., ch. 133.]

8673. Liability. Every life insurance company issuing a separate policy, or maintaining a separate department, for the purpose of writing any of the classes of insurance authorized by the preceding section shall also be subject to all of the provisions applicable to companies authorized to write a similar kind of insurance under the provisions of chapter 404. [38 G. A., ch. 348, § 8.]

8674. Proceeds of policy held in trust. Any life insurance company organized under the provisions of this chapter and doing business in this state, shall have the power to hold in trust the proceeds of any life insurance policy issued by it, upon such terms and subject to such limitations as to revocation by the policy holder and control by the beneficiary thereunder, as shall have been agreed to in writing by such company and the policy holder; provided that the trust provisions herein contemplated shall in no manner subject said corporation to any of the provisions of the laws of Iowa relating to banks or trust companies; and provided further, that the forms of such trust agreements shall be first submitted to and approved by the commissioner of insurance. [38 G. A., ch. 304, § 1.]

CHAPTER 399

GROUP LIFE INSURANCE

8675. "Group insurance" defined.
 8676. Terms defined.
 8677. Authority to issue.
 8678. Policy—required provisions.
 8679. Policy in foreign state by domestic company.

8680. Policy by foreign company.
 8681. More favorable clauses.
 8682. Employer deemed policy holder.
 8683. Exemption of proceeds of policy.
 8684. Medical examination.

8675. "Group insurance" defined. Group insurance is hereby declared to be that form of either life, health, or accident insurance covering not less than fifty employees, with or without medical examination, written under a policy issued to the employer, the premium on which is to be paid by the employer or by the employer and employees jointly, and insuring only all of his employees, or all of any class or classes thereof determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer; provided, however, that when the premium is to be paid by the employer and employees jointly and the benefits of the policy are offered to all eligible employees, not less than seventy-five per cent of such employees may be so insured. [38 G. A., ch. 197, § 1; 40 Ex. G. A., ch. 9, § 12.]

8676. Terms defined. The word "employer" as used in the preceding section shall include the advisory, supervising, or governing body or bodies, of all regularly organized religious denominations. The word "employee" shall include clergymen, priests, and ministers of the gospel in good standing in any of such denominations. [40 Ex. G. A., ch. 9, § 12.]

8677. Authority to issue. Any level premium life insurance company, organized on the stock or mutual plan and authorized to transact insurance business under the provisions of

chapter 398, may, by complying with the provisions of said chapter and of this chapter, issue contracts providing for group life insurance as defined in the two preceding sections. [38 G. A., ch. 197, § 2.]

Note: For additional provisions as to "group insurance", see §§ 8672 and 8673.

8678. Policy—required provisions. No policy of group insurance shall be issued or delivered in this state unless and until a copy of the form thereof has been filed with the commissioner of insurance and approved by him; nor shall such policy be so issued or delivered unless it contains in substance the following provisions:

1. A provision that the policy shall be incontestable after two years from its date of issue, except for nonpayment of premiums and except for violation of the conditions of the policy relating to military or naval service in time of war.

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

3. A provision for the equitable adjustment of the premium or the amount of insurance payable in the event of a misstatement of the age of an employee.

4. A provision that the company will issue to the employer for delivery to the employee, whose life is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom payable, together with provision to the effect that in case of the termination of the employment for any reason whatsoever the employee shall be entitled to have issued to him by the company, without further evidence of insurability, and upon application made to the company within thirty-one days after such termination and upon the payment of the premium applicable to the class of risk to which he belongs and to the form and amount of the policy at his then attained age, a policy of life insurance in any one of the forms customarily issued by the company, except term insurance, in an amount equal to the amount of his protection under such group insurance policy at the time of such termination.

5. A provision that to the group or class thereof originally insured shall be added from time to time all new employees of the employer eligible to insurance in such group or class. [38 G. A., ch. 197, § 3.]

8679. Policy in foreign state by domestic company. Policies of group insurance issued in other states or countries by companies organized in this state, may contain any provision required by the laws of the state, territory, district, or country, in which the same are issued, anything in the preceding section to the contrary notwithstanding. [38 G. A., ch. 197, § 3.]

8680. Policy by foreign company. Policies of group insurance, when issued in this state by any company not organized under the laws of this state, may contain, when issued, any

provision required by the law of the state, or territory, or district of the United States under which the company is organized. [38 G. A., ch. 197, § 3.]

8681. More favorable clauses. Any such policy may be issued or delivered in this state which in the opinion of the commissioner of insurance contains provisions on any one or more of the several foregoing requirements more favorable to the employer or to the employee than hereinbefore required. [38 G. A., ch. 197, § 3.]

8682. Employer deemed policy holder. In every group policy issued by a domestic life insurance company, the employer shall be deemed to be the policy holder for all purposes within the meaning of this chapter, and, if entitled to vote at meetings of the company, shall be entitled to one vote thereat. [38 G. A., ch. 197, § 3.]

8683. Exemption of proceeds of policy. No policy of group insurance, nor the proceeds thereof, when paid to any employee or employees thereunder, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the employee for the payment of his debts. [38 G. A., ch. 197, § 4.]

NOTE: For similar provisions, see §§ 8776, 8796, and 11919.

8684. Medical examination. The provisions of section 8671, relating to medical examination of applicants, shall not apply to insurance written under this chapter. [38 G. A., ch. 197, § 5.]

CHAPTER 400

ASSESSMENT LIFE INSURANCE

8685. "Association" defined.
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8685. "Association" defined. Every corporation organized upon the assessment plan, for the purpose of insuring the lives of individuals or furnishing benefits to the widows, heirs, orphans or legatees of deceased members, or insuring the health of persons, or furnishing accident indemnity, shall be styled an association. [C., '97, § 1784; S., '13, § 1784.]

8686. "Assessment plan" of life insurance defined. Any corporation doing business under this chapter which provides for the payment of policy claims, accumulation of a reserve or emergency fund, the expense of management and prosecution of the business, by payment of assessments as provided in its contracts, and wherein the liability of the insured to contribute to the payment of policy claims is not limited to a fixed amount, shall be deemed to be engaged in the business of life insurance upon the assessment plan, and shall be subject to the provisions of this chapter, and chapter 401. [C., '97, § 1784; S., '13, § 1784.]

8687. "Certificate" defined. "Certificates of membership" or "certificate", when used in this chapter with respect to the insurance of the members, shall be taken to mean and include policy of insurance. [C., '97, § 1785.]

8688. Articles—approval. The articles of incorporation and by-laws of any such association shall show its plan of business, and be submitted to the commissioner of insurance and the attorney general, and if they are

found by those officers to comply with the provisions of this title, chapter and of law, they shall approve the same. [C., '97, § 1785; 39 G. A., ch. 58, § 1.]

8689. Record and publication. When the articles are thus approved, they shall be recorded in the office of the secretary of state, and a notice published within ninety days in the manner and for the time provided in the general incorporation laws. [C., '97, § 1785.]

8690. Right of member to vote. Every member of any association organized under the provisions of this chapter shall be entitled to vote, either in person or by proxy, at every regular and special meeting of such association. No such association shall limit the right of any member to so vote, unless the proposal to limit shall have first been submitted to the entire membership for vote and shall have been approved by a majority of those voting. [40 Ex. G. A., ch. 9, § 17.]

8691. Name. No such association shall take any name in use by another organization, or one so closely resembling it as to mislead the public as to its identity. [C., '97, § 1786.]

8692. Conditions for commencing business—approval of policy forms. Before issuing any policy or certificate of membership, if the association at the time has not a membership sufficient to pay the full amount of its certifi-

cate or policy on an assessment, it shall cause all applications for insurance to have printed in red ink, in a conspicuous manner along the margin thereof, the words: "It is understood that the amount of insurance to be paid under this application, and certificate or policy issued thereon, shall depend upon the amount collected from an assessment therefor." It must have actual applications upon at least two hundred fifty lives for at least one thousand dollars each; and it shall file with the commissioner of insurance satisfactory proof that the president, secretary, and treasurer have each given a good and sufficient bond for five thousand dollars for the faithful discharge of their duties as such officers, sworn copies of which shall be filed with him. It shall also file with him a list, verified by the president and secretary, of the applications, giving the name, age and residence of each applicant, the amount of insurance applied for by each, together with the annual dues and the proposed assessments thereon. Its policy forms shall be approved, as provided by section 8668. [C., '97, § 1787; S., '13, § 1787.]

8693. Assessments—diversion of funds. The articles and by-laws of each such association shall state the objects to which the money to be collected is to be devoted, and no part of the proceeds thereof shall be applied to any other purpose than as stated, and the excess, if any, beyond payment of the benefit, shall be set aside and applied only to like purposes, except that all sums collected for expenses and not used for that purpose may be transferred to the benefit, emergency, or reserve fund. [C., '97, § 1788; S., '13, § 1788; 40 G. A., ch. 171, § 1.]

8694. Insurable age—beneficiary and change thereof—assignment. No association organized or operating under this chapter shall issue a certificate of membership to any person under fifteen or over sixty-five years of age, or unless the beneficiary named in the certificate is the husband, wife, relative, legal representative, heir, creditor or legatee of the insured member, nor shall any such certificate be assigned. Any certificate issued or assignment made in violation of this section shall be void.

The beneficiary named in the certificate may be changed at any time at the pleasure of the assured, as may be provided for in the articles or by-laws, but no certificate issued for the benefit of a wife or children shall be thus changed so as to become payable to the creditors; provided that the foregoing provisions of this section shall not be applicable except as to certificates issued prior to July 4, 1923, to life associations organized and operating under this chapter issuing life insurance policies or certificates of membership, and any member or policy holder in any such life association shall have the right to designate his beneficiary, and unless the policy is issued without the right of revocation, shall have the right to change the beneficiary in the manner

authorized by the rules, laws and regulations of the association, or as may be provided in the policy contract; and no beneficiary under any policy shall have or obtain any vested right or interest in the death benefits to be payable under said policy, until such benefits shall become due and payable after the death of the insured. [C., '97, § 1789; 40 G. A., ch. 171, § 2.]

8695. Business year—annual report—fees. The annual business of such association organized under the laws of this state shall close on the thirty-first day of December of each year, and it shall within sixty days thereafter prepare and file in the office of the commissioner of insurance a detailed statement, verified by its president and secretary, giving its assets, liabilities, receipts from each assessment and all other sources, expenditures, salaries of officers, number of contributing members, death losses paid and amount paid on each, death losses reported but not paid, and furnish such other information as the commissioner, who shall provide blanks for that purpose, may require, so that its true financial condition may be shown, and shall pay, upon filing each annual statement, the sum of three dollars, and such other fees as are required by the provisions of sections 8763 to 8765, inclusive. [C., '97, § 1790; 38 G. A., ch. 348, § 9.]

8696. Publication of report—examination and expense. The commissioner of insurance shall publish such annual statement in detail in his report, and for the purpose of verifying it he may make or cause to be made an examination of the affairs of any such association at its expense, which shall be, if done by him or his clerk, necessary hotel and traveling expenses only, if by a person not regularly employed in his office, the actual cost thereof, not exceeding ten dollars per day for the time required and actual expenses; but the examination herein provided for shall be in addition to those authorized by the provisions of section 8626. [C., '97, § 1790; 38 G. A., ch. 348, § 10.]

8697. Bonds—supplemental reports. If the commissioner regards it necessary for the safety of the funds of the association, he may require the bonds of the officers to be increased to an amount not exceeding double the sum for which they are accountable, and he may also require supplemental reports from such association at such time and in such form as he may direct, and it shall be the duty of its officers to furnish the bonds and reports when thus required. [C., '97, § 1790.]

8698. Investments. Any association accumulating any moneys to be held in trust for the purpose of the fulfillment of its policy or certificate, contract, or otherwise, shall invest such accumulations in the securities provided in section 8737 and deposit the same with the commissioner of insurance as provided in section 8741. [C., '97, § 1791.]

8699. Investment for office building. Such association may invest in real estate in Iowa such a portion of said accumulation as is necessary for its accommodation in the transaction of its business to be owned by said association, and in the erection of any building for such purpose may add thereto rooms for rental. [C., '97, § 1791.]

NOTE: For similar provisions, see §§ 8735, 8737, par. 6, and 8747.

8700. Change of securities. Such association may at any time change its securities on deposit by substituting a like amount in other securities of the same character, and the commissioner of insurance shall permit a withdrawal of the same, upon satisfactory proof in writing filed with him that they are to be used for the purpose for which they were originally deposited. [C., '97, § 1792.]

8701. Interest on securities. The commissioner of insurance shall permit the associations owning the bonds or other securities to collect and retain the interest accruing thereon, delivering to them the evidences of interest as the same become due; but on default of any association to make or enforce such collection, he may collect the same and add it to the securities in his possession, less the expense thereof. [C., '97, § 1793.]

8702. Certificate of authority. Upon compliance with the provisions of this chapter by an association, the commissioner of insurance shall issue to it a certificate, setting forth that it has fully complied with the provisions of this chapter, and is authorized to transact business for a period of one year from April first of the year of its issue. [C., '97, § 1796; 37 G. A., ch. 227, § 1.]

8703. Foreign companies. Any association organized under the laws of any other state to carry on the business of insuring the lives of persons, or of furnishing benefits to the widows, orphans, heirs, or legatees of deceased members, or of paying accident indemnity, or surrender value of certificates of insurance, upon the stipulated premium plan or assessment plan, may be permitted to do business in the state by complying with the requirements hereinafter made, but not otherwise. [C., '97, § 1794; S., '13, § 1794.]

8704. Articles — by-laws — applications and policy. It shall file with the commissioner of insurance a copy of its charter or articles of incorporation, duly certified by the proper officers of the state wherein it was organized, together with a copy of its by-laws, application and policy or certificate of membership. [C., '97, § 1794; S., '13, § 1794.]

8705. Location—officers—financial showing. It shall also file with the commissioner a statement, signed and verified by its president and secretary, which shall show the name and location of the association, its principal place of business, the names of its president, secre-

tary, and other principal officers, the number of certificates or policies in force, the aggregate amount insured thereby, the amount paid to beneficiaries in the event of death or accident, the amount paid on the last death loss and the date thereof, the amount of cash or other assets owned by the association and how invested, and any other information which the commissioner may require. [C., '97, § 1794; S., '13, § 1794.]

8706. Adequacy of assessments and management. The statement, papers, and proofs thus filed shall show that the death loss or surrender value of the certificate of insurance or accident indemnity is in the main provided for by assessments upon or contributions by surviving members of such association, and that it is legally organized, honestly managed, and that an ordinary assessment upon its members or other regular contributions to its mortuary fund are sufficient to pay its maximum certificate to the full limit named therein. [C., '97, § 1794; S., '13, § 1794.]

8707. Certificate of authority—fee. Upon its complying with the provisions of the three preceding sections, and of section 8766, and the payment of twenty-five dollars, the commissioner shall issue to it a certificate of authority to do business in this state, provided the same right is extended by the state in which said association is organized to associations of the same class in this state. [C., '97, § 1794; S., '13, § 1794.]

8708. Examinations. When the commissioner doubts the solvency of any foreign association, and the failure to pay the full limit named in its certificate or policy shall be such evidence of its insolvency as to require the commissioner to investigate it, he shall for this or other good cause, at the expense of such association, cause an examination of its books, papers, and business to be made. [C., '97, § 1794; S., '13, § 1794.]

8709. Examiner's fee—payment. If the commissioner appoints someone not receiving a regular salary in his office to make this examination, such examiner shall receive ten dollars per day for his services in addition to his actual traveling and hotel expenses, to be paid by the association examined, or by the state on the approval of the executive council, if the association fails to pay the same. [C., '97, § 1794; S., '13, § 1794; 39 G. A., ch. 58, § 2.]

8710. Revocation of certificate. If upon such examination he finds that the association is not financially sound, or is not paying its policies or certificates in full, or is conducting its business fraudulently, or if it shall fail to make the statement required by law, he may revoke its authority and prohibit it from doing business until it shall again comply with the provisions of this chapter. [C., '97, § 1794; S., '13, § 1794.]

8711. Applicability of sections. The provisions of the eight preceding sections shall

apply to fraternal beneficiary associations doing exclusively an accident insurance business, and upon compliance with the provisions of this chapter, and the provisions of chapter 401, so far as the same are applicable, such associations may be authorized to transact business within this state. [S., '13, § 1794.]

8712. Proceedings to control or wind up. When any association organized under this title and chapter fails to make its annual statement on or before the first day of March, or is conducting its business fraudulently or not in compliance with law, or is not carrying out its contracts with its members in good faith, the commissioner of insurance shall promptly communicate the fact to the attorney general, who shall at once commence action before the district court of the county in which such association has its principal place of business, giving it reasonable notice thereof. [C., '97, § 1795.]

8713. Removal of officers. If upon a hearing it is found to be advantageous to the holders of certificates of membership therein, said court or judge may remove any officer or officers, and appoint others in their place until the next annual election. [C., '97, § 1795.]

8714. Receiver. If it is advantageous to the holders of certificates that the affairs of said corporation be wound up, the court or judge shall so direct, and for that purpose may appoint a receiver who shall treat all legal claims for death benefits as preferred. [C., '97, § 1795.]

8715. Transfer of membership—division of surplus. The receiver may also, with the approval of the court or judge, transfer the members of such association who consent thereto to some like solvent association of the state, or divide the surplus accumulated in proportion to the share due each certificate at the time. [C., '97, § 1795.]

8716. Distribution of surplus. Any association which provides in the main for the payment of death losses or accident indemnity by assessments upon its members, or stipulated premium plan, may provide for the equitable distribution of any surplus or advance insurance fund accumulated in the course of its business, which may be paid in cash, or applied in the reduction or payment of future premiums, paid-up or extended insurance, as its rules or contracts may provide, and for an equitable surrender value upon the cancellation of a certificate or policy, provided the terms and conditions thereof are set forth in such policy or certificate of membership, and such surrender value shall in the main be accumulated during the term of such policy or certificate. [C., '97, § 1797.]

8717. Benevolent societies—process. Nothing in this chapter shall be construed to apply to any association organized solely for benevolent purposes and composed wholly of members

of any one occupation, guild, profession, or religious denomination, but any such society may, by complying with the provisions hereof, become entitled to all the privileges thereof, in which event it shall be amenable to the provisions of this chapter so far as they are applicable; provided that if organized under the laws of another state or country, they shall file with the commissioner of insurance an agreement in writing authorizing service or notice of process to be made upon the said commissioner, and when so made shall be as valid and binding as if served upon the association within this state. [C., '97, § 1798; S., '13, § 1798.]

8718. Assessment associations prohibited. No life, health, or accident insurance company or association, other than fraternal beneficiary associations, which issues contracts, the performance of which is contingent upon the payment of assessments of call made upon its members, shall do business within this state except such companies or associations as are now authorized to do business within this state and which, if a life insurance company or association, shall value their assessment policies or certificates of membership as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state. [S., '13, § 1798-a.]

NOTE: For time of taking effect of above section, see 32 G. A., ch. 83; 34 G. A., ch. 18.

8719. Exceptions. The provisions of the preceding section shall not apply to unincorporated assessment associations now existing in this state, and having policy holders or certificates of membership numbering not less than two hundred fifty, and which were organized or in existence in this state as such unincorporated assessment associations prior to March 23, 1907; but any such unincorporated assessment association now existing in this state, having policy holders or certificates of membership numbering not less than two hundred fifty and which were organized or in existence in this state prior to March 23, 1907, may, by becoming hereafter incorporated in this state, and complying with the provisions of this chapter, become entitled to all of the privileges hereof, in which event it shall become amenable to the provisions of this chapter as far as they are applicable. [37 G. A., ch. 413, § 1.]

8720. Reciprocal authorization. The commissioner of insurance of this state may authorize any health or accident insurance company or association organized under the laws of any other state or territory, to do business in this state, if, under the laws of such state or territory health and accident insurance companies or associations organized under the laws of this state are permitted to do business in such state. [37 G. A., ch. 234, § 1.]

8721. Separate classes of policy holders. Any life insurance association, other than fraternal beneficiary associations, incorporated and doing business under the provisions of this

chapter, may establish a separate class of members or policy holders to whom it may issue certificates or policies of insurance on the legal reserve or level premium plan, provided that all such policies on the legal reserve or level premium plan shall be valued on a basis not lower than the valuations required for insurance companies operating on the level premium or the natural premium plan under the provisions of chapter 398. [40 G. A., ch. 171, § 3.]

8722. Cash value of policies. The net cash value of all policies in force on the legal reserve or level premium plan in any such association shall be ascertained in accordance with the basis of valuations which shall be adopted for said policies, and the amount of such ascertained valuation, and all other amounts which shall be accumulated and held in trust for the benefit of members or policy holders of any class or held for the purpose of fulfilling any contract in its policies or certificates, shall be invested in the securities provided in section 8737, and deposited with the commissioner of insurance as provided in section 8741. [40 G. A., ch. 171, § 3.]

8723. Trust funds. An amount of the funds herein provided for, not less than the reserve valuation required to be maintained on all such policies on the legal reserve or level premium plan, shall be held at all times for the exclusive use and benefit of the class of policy holders having policies on said legal reserve or level premium plan. [40 G. A., ch. 171, § 3.]

8724. Reincorporation. Any existing domestic assessment company or association, or fraternal beneficiary society may, with the written consent of the commissioner of insurance, upon a majority vote of its trustees or directors, amend its articles of incorporation and by-laws in such manner as to transform itself into a

legal reserve or level premium company, and upon so doing and upon procuring from the commissioner a certificate of authority, as prescribed by law, to transact business in this state as a legal reserve or level premium company, shall incur the obligations and enjoy the benefits thereof, the same as though originally thus incorporated, and such corporation, under its charter as thus amended, shall be a continuation of such original corporation. The officers thereof shall serve through their respective terms as provided in the original charter, but their successors shall be elected and serve as in such amended articles provided; but such amendment or reincorporation shall not affect existing suits, rights, or contracts. [S. S., '15, § 1798-b.]

8725. Valuation of policies. Any assessment company or fraternal beneficiary society reincorporated to transact life insurance business, shall value its assessment policies or certificates or benefit certificates as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state. [S. S., '15, § 1798-b.]

8726. Reinsurance reserve required. No such company or association shall reorganize under the provisions of the two preceding sections unless it shall have accumulated sufficient surplus to constitute a reinsurance reserve equal to the unearned premium on all outstanding policies or certificates, as prescribed by the statutes of this state relating thereto. [S. S., '15, § 1798-b.]

8727. Accident or health associations. Accident or health associations may take advantage of all the provisions of the three preceding sections in so far as applicable, and may thereupon transform themselves into stock companies. [S. S., '15, § 1798-b.]

CHAPTER 401

PROVISIONS APPLYING TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

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8728. Annual statement of foreign companies. Every company or association organized under the laws of any other state or country and doing business in this state shall annually, by the first day of March, file with the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, in the same manner and form provided for similar companies or associations organized in this state. [C., '73, § 1166; C., '97, § 1799.]

8729. Amended forms of statement. The commissioner may amend the form of the annual statement required to be made by companies or associations doing business in this state, and propose and require such additional matter to be covered therein as he may think necessary to elicit a full exhibit of the standing of any such company or association. [C., '73, § 1168; C., '97, § 1799.]

8730. Blanks for reports. All reports contemplated under sections 8653, 8695, 8697, 8728, 8729, 8822, 8945, and 8946 may be upon forms furnished by the commissioner of insurance, and who may, at his option upon authority of the executive council, purchase such forms as are approved by the national convention of insurance commissioners, known as convention edition. [S., '13, § 1820-d.]

8731. Advertisements—who deemed agent. The provisions of sections 9001 to 9005, inclusive, shall apply to life insurance companies and associations. [C., '97, § 1815.]

8732. Agent's certificate to act. No person shall, directly or indirectly, act within this state as agent, or otherwise, in receiving or procuring applications for insurance, or in doing or transacting any kind of life insurance business, for any company or association contemplated in chapters 398 and 400, except for the purpose of taking applications for organizations, unless the company or association for which he is acting has received a certificate from the commissioner of insurance authorizing it to transact business therein, and unless he shall have received from said commissioner a certificate showing that such company or association has complied with the provisions of law, and that such person is authorized to act for it. [C., '73, § 1166; C., '97, § 1800.]

8733. Violations. Any such company or association that does or solicits new business without the certificates required by the said chapters shall forfeit five hundred dollars for every day's neglect to procure the same. Any person knowingly soliciting applications or making insurance for any company or association having no such certificate from the commis-

sioner of insurance as required, shall forfeit and pay the sum of three hundred dollars, and any person acting for any company or association authorized to transact business without having the agent's certificate prescribed in the preceding section in his possession, shall be liable to pay twenty-five dollars for each day's neglect to procure the same during the time he thus acts. [C., '73, § 1177; C., '97, § 1801.]

8734. Recovery of penalties. Actions brought to recover any of the penalties provided for in this chapter shall be instituted in the name of the state by the county attorney of the county, under the direction and authority of the commissioner of insurance, and may be brought in the district court of any county in which the company or association proceeded against is engaged in the transaction of business, or in which the offending person resides, if it is against him. The penalties, when recovered, shall be paid into the state treasury for the use of the school fund. [C., '73, § 1178; C., '97, § 1802.]

8735. Acquisition of real estate. No such company or association organized under the laws of this state shall purchase, hold or convey real estate, except for the purposes and in the manner herein set forth:

1. Such as is required for its use in the transaction of its business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted in the course of its dealings.

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

4. Such as shall have been purchased at sales under execution issued upon judgments and decrees based upon debts due it, or obtained by redemption as junior judgment creditor or mortgagee. [C., '73, § 1180; C., '97, § 1803.]

NOTE: For similar provisions, see §§ 8699, 8737, par. 6, and 8747.

8736. When to be sold. All real estate acquired which is not necessary for such company or association in the convenient transaction of its business shall be sold within five years after it acquired title thereto, unless it procures a certificate from the commissioner of insurance that its interests will suffer by a forced sale thereof, in which event the time may be extended as the commissioner shall direct in said certificate. [C., '73, § 1181; C., '97, § 1804.]

8737. Investment of funds. The funds required by law to be deposited with the commissioner of insurance by any company or association contemplated in chapters 398 and 400, and the funds or accumulations of any such company or association organized under the laws of this state held in trust for the purpose of fulfilling any contract in its policies or certificates, shall be invested in the following described securities and no other:

1. *Federal bonds.* The bonds of the United States.

2. *State bonds.* The bonds of this state or of any other state when such bonds are at or above par.

3. *Municipal bonds.* Bonds or other evidences of indebtedness of any county, city, town, or school district within this state or any other state, drainage district bonds of this state, improvement certificates issued by any municipal corporation of this state, such certificates being a first lien upon real estate within the corporate limits of the municipality issuing the same, where such bonds or other evidences of indebtedness are issued by authority of and according to law and bearing interest, and are approved by the commissioner of insurance.

4. *Real estate bonds and mortgages.* Bonds and mortgages and other interest-bearing securities being first liens upon real estate within this state or any other state worth at least double the amount loaned thereon and secured thereby exclusive of improvements, or two and one-half times such amount including the improvements thereon, if such improvements are constructed of brick or stone.

No such improvements shall be considered in estimating the value unless the owner shall contract to keep the same insured in some reliable fire insurance company or companies authorized to do business in the state, during the life of the loan, in a sum at least equal to the excess of the loan above one-half the value of the ground exclusive of the improvements, the insurance to be made payable in case of loss to the company or association investing its funds, as its interests may appear at the time of loss.

Before a company or association may invest any of its funds in such securities as are specified in this subdivision of this section in any state other than the state of Iowa it shall first obtain consent of the commissioner of insurance so to do.

Any mortgage lien upon real estate shall not, for the purposes of this section, be held or construed to be other than a first lien by reason of the fact that drainage or other improvement assessments may have been levied against the real estate covered by said mortgage, whether the installments of said assessment be matured or not, provided that in determining the value of said real estate for loan purposes, the amount of the drainage or other assessment tax unpaid, shall be deducted.

5. *Policy loans.* Loans upon its own policies, where the same have been in force at least two full years, in an amount not exceeding the net terminal reserve. If such loan is made, the company must describe in the note or contract taken, the amount of the loan, the name of the borrower, the number of the policy, and the terms of such note or contract shall make the amount loaned a lien against such policy and such note or contract shall be numbered, dated, and signed, giving the postoffice address of the insured.

6. *Real estate.* Any such real estate in this state as is necessary for its accommodation as a

home office; and in the erection of any building for such purposes, it may add thereto rooms for rent.

Before any company or association shall invest any of its funds, in accordance with the provisions of this subdivision, it shall first obtain the consent of the executive council. [C., '73, § 1179; C., '97, § 1806; S. S., '15, § 1806; 37 G. A., ch. 404, § 1.]

NOTE: For similar provisions as to home office building, see §§ 8699, 8785, and 8747.

8738. Home office—limitation. The maximum amount which any such company or association shall be permitted to invest in accordance with the provisions of subdivision 6 of the preceding section shall not exceed ten per cent of the lawful reserve on its policies or certificates of insurance, provided, however, that a stock company may invest such portion of its paid-up capital, in addition to said ten per cent of the lawful reserve on its policies, as is not held to constitute a part of its legal reserve deposit under sections 8654 and 8655; provided, further, that the total legal reserve of such company shall be equal to or exceed the amount of its paid-up capital stock. [37 G. A., ch. 404, § 1.]

8739. Real estate as deposit of legal reserve. Any company or association so investing its funds may use the value of any such real estate and home office building as a part of the deposit of legal reserve in which case it shall convey the same to the commissioner of insurance by trust deed, such property to be held by him in trust for the benefit of the policy holders or members of the company or association. [S. S., '15, § 1806; 37 G. A., ch. 404, § 1.]

8740. Reconveyance of real estate—valuation. The commissioner of insurance shall execute and deliver to the company or association a quitclaim deed to the property held by him in trust whenever the full legal reserve of said company or association shall be invested in other securities and deposited with the commissioner of insurance. The value of said property whether deeded in trust or otherwise shall be determined from time to time by the commissioner of insurance. [37 G. A., ch. 404, § 1.]

8741. Securities deposited. All such securities shall be deposited with the commissioner, subject to his approval, and shall remain with him until withdrawn in accordance with law. [C., '97, § 1806; S. S., '15, § 1806.]

8742. Payments to be reported—penalty. Any company or association receiving payments or partial payments on any securities deposited with the commissioner shall notify him of such fact, giving the amount and date of payment, within thirty days after such payment shall have been made. The officers of any company or association which fails to report the receipt of payments or partial payments as above

provided, shall be liable to a fine in double the amount collected and not reported within the time and in the manner above specified. [S. S., '15, § 1806.]

8743. Withdrawals on lapsed policies. It shall be the duty of the company or association and of the officers thereof to withdraw from deposit any loans made in accordance with the provisions of subdivision 5 of section 8737 within fifteen days after the date of the lapsing or termination of any policy of insurance upon which any such loan is made. [S. S., '15, § 1806.]

8744. Purpose of withdrawal. Any association making deposit with the commissioner as herein contemplated, shall at the time of making request for the withdrawal of any securities designate for what purpose the same are desired to be withdrawn. [S. S., '15, § 1806.]

8745. Violations. The commissioner shall have authority to suspend or revoke the certificate of authority of any company or association failing to comply with any of the provisions of the eight preceding sections or for violating the same. [S. S., '15, § 1806.]

8746. Rule of valuation. All bonds or other evidences of debt having a fixed term and rate, held by any life insurance company, assessment life association, or fraternal beneficiary association authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows:

1. If purchased at par, at the par value.
2. If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

Provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rule. [39 G. A., ch. 198.]

8747. Investment in land and buildings. Such organization may purchase such real estate in the state with a portion of its accumulations as may be necessary for its use in the transaction of its business, and in the erection of a building thereon for such purpose, to which rooms for rent may be added. [C., '97, § 1807.]

NOTE: For similar provisions, see §§ 8699, 8785, and 8737, par. 6.

8748. Prohibited loans. No insurance company or association organized under the statutes of this state to transact an insurance business, shall invest its capital, surplus funds, or other assets, in or loan the same on property owned by any officer or director of such company or by any of the immediate members of the family of any such officer or director. [38 G. A., ch. 348, § 13.]

8749. Officers not to profit by investments. No such officer or director shall gain through the investment of funds of any such company. [38 G. A., ch. 348, § 13.]

8750. Disbursements — vouchers— affidavit. No domestic life insurance company shall make any disbursement of one hundred dollars or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements the voucher shall set forth the services rendered and an itemized statement of the disbursements made. When such voucher can not be obtained the expenditure shall be evidenced by an affidavit of some officer or agent of said company describing the character and object of the expenditure and stating the reason for not obtaining such voucher. [S., '13, § 1820-a.]

8751. Taxes—from what funds payable. In case this or any other state shall impose or levy any tax on any company or association, the same may be paid from any surplus or emergency fund of such company or association. [C., '97, § 1821.]

8752. Discrimination in foreign states. If by the laws of any state, or the rulings or decisions of the appropriate officers thereof, any burden, obligation, requirement, disqualification, or disability is put upon any company or association of any class organized in this state affecting its freedom to do business in that state, then the same or like burden, obligations, requirement, disqualification, or disability shall be put upon every such company or association of the same class from that state doing or seeking to do business in this state. [C., '97, § 1810.]

8753. Enforcement. The commissioner of insurance shall enforce the provisions of the preceding section, and in doing so may refuse or revoke the certificate of such company or association of such other state. [C., '97 § 1810.]

8754. Discrimination against domestic company. It shall be unlawful for the commissioner of insurance to impose upon companies or associations organized under chapter 400 any rules or regulations, requirements or limitations, that shall not be imposed with equal force upon like companies or associations from other states doing a like business in this state. [C., '97, § 1810.]

8755. Illegal business. Any officer, manager, or agent of any life insurance company or association who, with knowledge that it is doing business in an unlawful manner or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such company or association, shall be guilty of a

misdemeanor, and for every such act, on conviction thereof, shall be adjudged to pay a fine of not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not exceeding one year, or be punished by both such fine and imprisonment. [C., '97, § 1814.]

8756. Contracts void—recovery—damages— attorney fees. All contracts, promises, and agreements made by any person to or with any such company or association concerning any premium, policy, or certificate of new business, after the revocation of its certificates or denial of authority to do business, shall be null and void, and all payments of premium or assessments advanced or made by any person on account of any such policy, certificate of new business, or upon any arrangement therefor, may be recovered from such company or association, or its agent to whom payment was advanced or made, or from both of them, and in addition thereto plaintiff may recover an equal amount as liquidated damages, together with a reasonable fee to plaintiff's attorney for services in the case. [C., '97, § 1814.]

8757. Fraud in procuring insurance. Any agent, physician, or other person who shall knowingly, by means of concealment of facts or false statements, procure or assist in procuring from any life insurance organization any policy or certificate of insurance, shall be punished by a fine of not to exceed one thousand dollars or by imprisonment in the county jail not to exceed one year, or by both, in the discretion of the court. [C., '97, § 1816.]

8758. Conspiracy to defraud. If two or more persons conspire to defraud or obtain any money from any life insurance company or association by means of false statements as to the death of any person insured, or the false appearance of the death of any such person, each shall be punished by imprisonment in the penitentiary not to exceed ten years. Any person who by such means obtains any money or property on the policy or certificate of the person so insured shall be punished by imprisonment in the penitentiary not to exceed fifteen years. Any person who thus attempts to obtain money from any such company or association shall be punished by like imprisonment not to exceed seven years. [C., '97, § 1817.]

8759. Misrepresentations. No life insurance corporation doing business in this state and no officer, director, or agent thereof shall issue, circulate, or use, or cause or permit to be issued, circulated, or used, any estimate, illustration, circular, or statement of any sort misrepresenting the terms of any policy issued by it or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or shall use any title of any policy or class of policies misrepresenting the true nature thereof. [S., '13, § 1820-b.]

8760. Violations. Any person violating the provisions of the preceding section shall be

deemed guilty of a misdemeanor and shall be punished accordingly. [S., '13, § 1820-c.]

8761. May not advertise authorized capital. No insurance company shall be permitted to advertise or publish an authorized capital, or to represent in any manner itself as possessed of any greater capital than that actually paid up and invested. [S., '13, § 1783-g.]

8762. Penalties. Any person, firm or corporation violating any of the provisions of the preceding section, or sections 8903 to 8905, inclusive, or failing to comply with any of the provisions therein, shall be subjected to the penalties provided in sections 8634 to 8637, inclusive. [S., '13, § 1783-h.]

8763. Fees from foreign companies. When not otherwise provided, each life insurance company doing business in this state, except those organized under the laws thereof, shall pay to the commissioner of insurance the following fees:

1. Upon filing declaration or certified copy of the charter or articles of incorporation, twenty-five dollars.
2. Upon filing the annual statement, twenty dollars.
3. For each certificate of authority and certified copy thereof, two dollars.
4. For each agent's certificate, two dollars.
5. For every copy of any paper filed, the sum of twenty cents per folio, and for certifying and affixing the official seal thereto, one dollar.
6. For valuing policies, ten dollars for each million dollars of insurance or fraction thereof. [C., '73, § 1183; C., '97, § 1818.]

8764. Fees from domestic companies. Companies organized under the laws of the state shall pay the following fees:

1. For filing and examination of the first application and the issuance of certificate thereon, ten dollars.
2. For filing each annual statement and issuance of renewal certificate, three dollars.
3. For each agent's certificate, fifty cents. [C., '73, § 1183; C., '97, § 1818.]

8765. Fee statute—applicability. The provisions of the chapter on insurance other than life shall apply as to fees under this chapter and chapters 398 and 400, except as modified by the two preceding sections. [C., '97, § 1818.]

8766. Commissioner as process agent. Every life insurance company and association organized under the laws of another state or country shall, before receiving a certificate to do business in this state or any renewal thereof, file in the office of the commissioner of insurance an agreement in writing that thereafter service of notice or process of any kind may be made on the commissioner, and when so made shall be as valid, binding, and effective for all purposes as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error

by reason of such acknowledgment of service. [C., '73, § 1165; C., '97, § 1808.]

8767. Service of process. Such notice or process, with a copy thereof, may be mailed to the commissioner at Des Moines, Iowa, in a registered letter addressed to him by his official title, and he shall immediately upon its receipt acknowledge service thereon on behalf of the defendant foreign insurance company by writing thereon, giving the date thereof, and shall immediately return such notice or process in a registered letter to the clerk of the court in which the suit is pending, addressed to him by his official title, and shall also forthwith mail such copy, with a copy of his acknowledgment of service written thereon, in a registered letter addressed to the person or corporation who shall be named or designated by such company in such written instrument. [C., '73, § 1165; C., '97, § 1808.]

8768. Interpretation. The provisions of the two preceding sections are merely additions to the general provisions of law on the subjects therein referred to, and are not to be construed to be exclusive. [C., '97, § 1809.]

8769. Intoxication as defense. In any action pending in any court of the state on any policy or certificate of life insurance, wherein the defendant seeks to avoid liability upon the alleged ground of the intemperate habits or habitual intoxication of the assured, it shall be a sufficient defense for the plaintiff to show that such habits or habitual intoxication of the assured were generally known in the community or neighborhood where the agent of the defendant resided or did business, if thereafter the company continued to receive the premiums falling due thereon. [C., '97, § 1811.]

8770. Physician's certificate—conclusiveness. In any case where the medical examiner, or physician acting as such, of any life insurance company or association doing business in the state shall issue a certificate of health or declare the applicant a fit subject for insurance, or so report to the company or association or its agent under the rules and regulations of such company or association, it shall be thereby estopped from setting up in defense of the action on such policy or certificate that the assured was not in the condition of health required by the policy at the time of the issuance or delivery thereof, unless the same was procured by or through the fraud or deceit of the assured. [C., '97, § 1812.]

8771. Misrepresentation of age. In all cases where it shall appear that the age of the person insured has been understated in the proposal, declaration or other instrument upon which a policy of life insurance has been founded or issued, then the amount payable under the policy shall be such as the premium paid would have purchased at the correct age; provided, however, that one who, by misstating his age, obtains life insurance not otherwise obtainable shall be entitled to recover from the

insurer on account of such policy only the aggregate premiums paid. [C., '97, § 1813; 38 G. A., ch. 348, § 11.]

8772. Application for insurance—duty to attach to policy. All life insurance companies or associations organized or doing business in this state under the provisions of the preceding chapters shall, upon the issue of any policy, attach to such policy, or indorse thereon, a true copy of any application or representation of the assured which by the terms of such policy are made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy, or, upon reinstatement of a lapsed policy, shall attach to the renewal receipt a true copy of all representations made by the assured upon which the renewal or reinstatement is made. [C., '97, § 1819.]

NOTE: For similar provisions, see §§ 8798 and 8974.

8773. Failure to attach—defenses—estoppel. The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of the preceding section, it shall forever be precluded from pleading, alleging or proving such application or representations, or any part thereof, or the falsity thereof, or any part thereof, in any action upon such policy, and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at his option. [C., '97, § 1819.]

NOTE: For similar provisions, see §§ 8794 and 8975.

8774. Limitation on proofs of loss. No stipulation or condition in any policy or contract of insurance or beneficiary certificate issued by any company or association mentioned or referred to in this chapter, limiting the time to a period of less than one year after

knowledge by the beneficiary within which notice or proofs of death or the occurrence of other contingency insured against must be given, shall be valid. [C., '97, § 1820; S., '13, § 1820.]

NOTE: For similar provisions, see §§ 8775, 8978, 8979, 8986, and 9045.

8775. Limitation under health and accident. In case of accident or health insurance it shall be valid for any company or association to limit by contract the time when notice or proofs of death, cause of disability or other contingency insured against shall be given; but in no case shall said notice be limited to a period of less than sixty days after knowledge by the beneficiary within which such notice or proofs must be given. [S., '13, § 1820.]

NOTE: For similar provisions, see §§ 8774, 8978, 8979, 8986, and 9045.

8776. Policy exempt from execution. A policy of insurance on the life of an individual, in the absence of an agreement or assignment to the contrary, shall inure to the separate use of the husband or wife and children of said individual, independently of his creditors.

The proceeds of an endowment policy payable to the assured on attaining a certain age shall be exempt from liability for any of his debts.

Any benefit or indemnity paid under an accident policy shall be exempt to the assured, or in case of his death to the husband or wife and children of the assured, from his debts.

The avails of all policies of life or accident insurance payable to the surviving widow shall be exempt from liability for all debts of such beneficiary contracted prior to the death of the assured, but the amount thus exempted shall not exceed five thousand dollars. [C., '51, § 1330; R., '60, § 2362; C., '73, §§ 1182, 2372; C., '97, § 1805.]

NOTE: For similar provisions, see §§ 8688, 8796, and 11919.

CHAPTER 402

FRATERNAL BENEFICIARY SOCIETIES, ORDERS, OR ASSOCIATIONS

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GENERAL PROVISIONS

8777. **Definition.** A fraternal beneficiary association is hereby declared to be a corporation, society, or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, and having a lodge system, with ritualistic form of work and representative form of government. [C., '97, § 1822; S., '13, § 1822.]

8778. **Death, sick, and disability benefits.** Such association shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident or old age, provided the period of life at which payment of physical disability benefits on account of old age commences shall not be under seventy years, subject to the compliance by members with its constitution and laws. [C., '97, § 1822; S., '13, § 1822.]

8779. **Exclusive religious orders.** Beneficiary societies or associations, whose membership is confined to the members of any one religious denomination, shall only be required to have a branch system and a representative form of government. Such beneficiary societies or associations shall be governed by the provisions of this chapter, and shall be exempt from the provisions of the statutes of this state, relating to life insurance companies, to the same extent as fraternal beneficiary associations. [S., '13, § 1822.]

8780. **Sick and funeral benefits only.** The provisions of this chapter shall not be construed to include fraternal orders which only provide for sick and funeral benefits. [C., '97, § 1822; S., '13, § 1822.]

8781. **Certificates permitted.** Any fraternal beneficiary society issuing certificates, based upon rates not lower than those required by the mortality table set forth in section 8823, may issue certificates providing for death benefits upon the term, whole life, or limited payment plan, in which event it shall maintain the required legal reserve on all such certificates, based on the standard adopted for the issuing of such certificates, which said reserve shall be set aside and held as a special reserve fund for the exclusive benefit of the members contributing thereto. [38 G. A., ch. 343, § 1.]

8782. **Benefits.** Any such society may grant to its members extended and paid-up protection or such withdrawal equities as its constitution and laws may permit, provided that such grants

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shall in no case exceed in value the portion of the reserve to the credit of the members to whom they are made. [38 G. A., ch. 343, § 1.]

8783. **Exclusive membership in religious order.** Any corporation heretofore organized under the laws of this or any other state, whose membership is confined to the members of any one religious denomination, and whose plan of business permits, may take advantage of the preceding sections of this chapter by amendment to its articles of incorporation, and by complying with the provisions of sections 8806 to 8811, inclusive; provided that such corporations as on March 15, 1907, were and have since continuously been doing business under chapter 400, may take advantage of said sections without raising their mortuary assessment rates or showing that their said rates are such as are required by section 8823. [S. S., '15, § 1822-a.]

8784. **Assessments.** The fund from which the payment of such benefits shall be made and the expenses of such association defrayed shall be derived from beneficiary calls, assessments, or dues collected from its members. [C., '97, § 1823.]

8785. **Insurable age—beneficiary.** No fraternal association created or organized under the provisions of this chapter shall issue any certificate of membership to any person under the age of fifteen years, or over the age of sixty-five years, or unless the beneficiary under said certificate shall be the wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, step-father, step-mother, step-children, children by legal adoption, legal representative, or to a person or persons dependent upon the member. [C., '97, § 1824; 38 G. A., ch. 240, § 1.]

8786. **Charitable institution as beneficiary.** If, after the issuance of the original certificate, the member shall become dependent upon an incorporated charitable institution, he shall have the privilege, with the consent of the governing body or board of the society, to make such institution his beneficiary. [38 G. A., ch. 240, § 1.]

8787. **Change in beneficiary.** Within the above restrictions each member shall have the right to designate his beneficiary and from time to time have the same changed in accordance with the laws, rules, or regulations of the society. [38 G. A., ch. 240, § 1.]

8788. **Vested interest.** No beneficiary shall have or obtain any vested interest in said bene-

fit until the same has become due and payable upon the death of said member. [38 G. A., ch. 240, § 1.]

8789. Additional limitation. Any society may, by its laws, limit the scope of beneficiaries within the above classes. [38 G. A., ch. 240, § 1.]

8790. Association as beneficiary. Any association or society, whose articles of incorporation, or constitution, or rules, or by-laws, provide that at the time of the admission to membership into such society, every member, when joining shall belong to one occupation or guild, may become a beneficiary as may be provided in its articles of incorporation, or constitution, or rules, or by-laws. [39 G. A., ch. 240.]

8791. Statutes applicable. Such associations shall be governed by this chapter, and shall be exempt from the provisions of the statutes of this state relating to life insurance companies, except as hereinafter provided. [C., '97, § 1825.]

8792. Change in beneficiary notwithstanding contract. No contract between a member and his beneficiary that the beneficiary or any person for him shall pay such member's assessments and dues, or either of them, shall deprive the member of the right to change the name of the beneficiary. [C., '97, § 1834.]

8793. Duty to attach copy of application. All such associations shall, upon the issue or renewal of any beneficiary certificate, attach to such certificate or indorse thereon a true copy of any application or representation of the member which by the terms of such certificate are made a part thereof. [C., '97, § 1826.]

NOTE: For similar provisions, see §§ 8772 and 8974.

8794. Failure to attach. The omission so to do shall not render the certificate invalid, but if any such association neglects to comply with the requirements of the preceding section it shall not plead or prove the falsity of any such certificate or representation or any part thereof in any action upon such certificate, and the plaintiff in any such action, in order to recover against such association, shall not be required to either plead or prove such application or representation. [C., '97, § 1826.]

NOTE: For similar provisions, see §§ 8773 and 8975.

8795. Where suable. Such associations may be sued in any county in which is kept their principal place of business, or in which the beneficiary contract was made, or in which the death of the member occurred; but actions to recover old age, sick, or accident benefits may, at the option of the beneficiary, be brought in the county of his residence. [C., '97, § 1827.]

8796. Exemption of proceeds. The proceeds of any beneficiary certificate issued by any such association, and of any claims for benefits, shall be exempt from execution and attachment, to the same extent as the proceeds of any

policy of life or endowment insurance, as is now or may hereafter be provided by the laws of this state. [C., '97, § 1828.]

NOTE: For similar provisions, see §§ 8683, 8776 and 11919.

8797. Permit to foreign companies—conditions. Any such association organized under the laws of any other state shall be permitted to do business in this state, when it shall have filed with the commissioner of insurance a duly certified copy of its charter and articles of association, and a copy of its constitution or laws, certified to by its secretary or corresponding officer, together with an appointment of the commissioner as a person upon whom process may be served as hereinafter provided, if such association shall be shown to be authorized to do business in the state in which it is incorporated or organized. [C., '97, § 1829.]

8798. Examination. The commissioner may personally, or by some person to be designated by him, examine into the conditions, affairs, character and business methods, accounts, books, and investments of such association at its home office, which examination shall be at the expense of such association, and shall be made within thirty days after demand therefor. [C., '97, § 1829.]

8799. Expense. The expense of such examination shall be limited to five dollars per day and the necessary expenses of travel and for hotel bills. [C., '97, § 1829.]

8800. Refusal of permit. If the commissioner, after such examination, is of the opinion that no permit should be granted to such association, he may refuse to issue the same. [C., '97, § 1829.]

8801. Commissioner as process agent. Any such association permitted to do business within this state, and not having its principal office within this state, and not organized under the laws of this state, shall appoint, in writing, the commissioner of insurance to be attorney in fact, on whom all process in any action or proceeding against it shall be served, and in such writing shall agree that any process against it which is served on said attorney in fact shall be of the same validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this state. [C., '97, § 1831.]

8802. Copies. Copies of such certificate, certified by said commissioner, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original. [C., '97, § 1831.]

8803. Service—notice to association. When legal process against any such association is served upon said commissioner, he shall immediately notify the association of such service by letter, postage prepaid, directed and mailed to its secretary or corresponding officer, and shall within two days after such service

forward in the same manner a copy of the process served on him to such officer. [C., '97, § 1831.]

8804. Service deemed sufficient. Service upon such attorney shall be deemed sufficient service upon such association. [C., '97, § 1831.]

8805. Record of service of process. The commissioner shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made. [C., '97, § 1831.]

8806. Commencement of business—conditions. Before any beneficiary society, order, or association shall be authorized to commence business within this state, it shall submit to the commissioner of insurance its by-laws or rules by which it is to be governed, and also its articles of incorporation, if a corporation, which shall include its plan of business. [S., '13, § 1832; 39 G. A., ch. 270.]

8807. Opinion of attorney general. The commissioner shall thereupon submit its articles of incorporation to the attorney general for examination, and if found by him to be in harmony with this title, chapter, and with law, he shall so certify upon said articles and return them to the commissioner. [S., '13, § 1832.]

8808. Permit—fees. If the commissioner shall approve the articles and also the by-laws or rules, he shall issue to the society, order, or association a permit in writing, authorizing it to transact business within this state for a period of one year from the first day of April of the year of its issue, for which certificate and all proceedings in connection therewith, there shall be paid to the commissioner a fee of twenty-five dollars, and for each annual renewal thereof a like fee shall be paid. [C., '97, § 1832; S., '13, § 1832.]

8809. Insurance required. Before such certificate shall be issued, the fraternal society, order, or association shall have actual bona fide applications upon the lives of at least five hundred persons, residents of this state, for at least one thousand dollars of insurance each, and the commissioner may require the presentation of such applications, signed by the applicants themselves. [S., '13, § 1832.]

8810. Renewal of permit conditional. No renewal of certificate of authority shall be made to any society, order, or association whose membership, in good standing, or the amount of whose insurance in force shall be reduced below the above requirements. [S., '13, § 1832.]

8811. Foreign societies—conditions. Societies, orders, or associations not organized under the laws of this state, in addition to the requirements of the provisions of section 8797, must also comply with all of the provisions of this chapter, except as to the residence of mem-

bership; provided that no such society, order, or association shall be authorized to transact business within this state unless it shall be shown to have actual members, in good standing, of at least one thousand, and at least one million dollars of insurance in force. [S., '13, § 1832.]

8812. Employment of agents. Such association shall not employ paid agents in soliciting or procuring members, except in the organization or building up of subordinate bodies, or granting members inducements to procure new members. [C., '97, § 1833.]

8813. Meetings in foreign states. Any such association organized under the laws of this state may provide for the meetings of its legislative or governing body in any other state, territory, or province wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be valid, in all respects, as if such meetings were held within this state. [C., '97, § 1835.]

8814. Voting in foreign state. Where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any other state, territory, or province shall be valid, as if cast within this state. [C., '97, § 1835.]

8815. Violations of statute. Any such association refusing or neglecting to make the report as provided in this chapter shall be excluded from doing business within this state. [C., '97, § 1836.]

8816. Delinquency reported—injunction. The commissioner of insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this chapter, give notice in writing to the attorney general, who shall immediately commence an action against such association to enjoin the same from carrying on any business. [C., '97, § 1836.]

8817. Business prohibited—reinstatement. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violation complained of shall have been corrected, or until the costs of such action be paid by it, provided the court shall find that such association was in default, as charged; whereupon the commissioner shall reinstate such association, and not until then shall such association be allowed to again do business in this state. [C., '97, § 1836.]

8818. Violations. Any officer, agent, or person acting for any such association or subordinate body thereof within this state, while such association shall be so enjoined or prohibited from doing business pursuant to this chapter, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be

punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court. [C., '97, § 1836.]

8819. Illegal business—agents. Any person who shall act within this state as an officer, agent, or otherwise for any such association which has failed, neglected, or refused to comply with, or which has violated any of the provisions of this chapter, or shall have failed or neglected to procure from the commissioner of insurance proper certificate of authority to transact business as provided for by this chapter, shall be subject to the penalty provided in the preceding section for the misdemeanor therein specified. [C., '97, § 1837.]

8820. False representations. Any officer, agent, or member of such association, who shall obtain any money or property belonging thereto by any false or fraudulent representation, shall be fined not more than five hundred dollars and costs, and stand committed until such fine and costs are paid, or may be imprisoned in the county jail not more than six months. [C., '97, § 1838.]

8821. Physician's certificate. Every applicant for membership in any association organized in this state shall first be examined by a physician holding a certificate from the state department of health. [C., '97, § 1839.]

8822. Report. Every such association doing business in this state shall, on or before the first day of March of each year, make, and file with the commissioner of insurance, a report for the year ending on the thirty-first day of December immediately preceding. All reports shall be upon blank forms to be provided by the commissioner, or may be printed in pamphlet form, and shall be verified under oath by the authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the commissioner under the separate title "Fraternal Beneficiary Associations", and shall contain answers to the following questions:

1. Number of certificates issued during the year, or members admitted.
2. Amount of indemnity effected thereby.
3. Number of losses or benefit liabilities incurred.
4. Number of losses or benefit liabilities paid.
5. The amount received from each assessment for the year.
6. Total amount paid members, beneficiaries, legal representatives, or heirs.
7. Number and kind of claims for which assessments have been made.

8. Number and kind of claims compromised or resisted, and brief statement of reason.

9. Does association charge annual or other periodical dues or admission fees.

10. How much on each one thousand dollars annually, or per capita, as the case may be.

11. Total amount received, from what source, and the disposition thereof.

12. Total amount of salaries, fees, per diem, mileage, expenses paid to officers, showing amount paid to each.

13. Does the association guarantee, in its certificates, fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees, and donations.

14. If so, state amount guaranteed, and the security of such guarantee.

15. Has the association a reserve or emergency fund.

16. If so, how is it created, and for what purpose, the amount thereof, and how invested.

17. Has the association more than one class.

18. If so, how many, and amount of indemnity in each.

19. Number of members in each class.

20. If voluntary, so state, and give date of organization.

21. If organized under the laws of this state, under what law and at what time, giving chapter and year, and date of passage of the act.

22. If organized under the laws of any other state, territory, or province, state such fact and the date of organization, giving chapter and year, and date of passage of the act.

23. Number of certificates of beneficiary membership lapsed during the year.

24. Number in force at beginning and end of year; if more than one class, number in each class.

25. Names and addresses of its presidents, secretary, and treasurer, or corresponding officers.

The commissioner is empowered to make any additional inquiries of any such association relative to the business contemplated by this chapter, and such officer of such association as the commissioner may require shall promptly reply in writing, under oath, to all such inquiries. [C., '97, § 1830.]

RATES

8823. Mortuary assessment rates. No fraternal beneficiary society not admitted to transact business in this state prior to July 4, 1907, shall be incorporated, or given a permit or certificate of authority to transact business within this state, unless it shall first show that the mortuary assessment rates provided for in whatever plan of business it has adopted, including the issuance of term, whole life, or limited payment certificates with withdrawal options, are not lower than is indicated as necessary by the following mortality table:

NATIONAL FRATERNAL CONGRESS MORTALITY TABLE

Age	Number Living	Number Dying	Probability of Dying	Age	Number Living	Number Dying	Probability of Dying
20....	100,000	500	.0050000	60....	69,801	1,588	.0227504
21....	99,500	501	.0050352	61....	68,213	1,681	.0246434
22....	98,999	502	.0050708	62....	66,532	1,778	.0267240
23....	98,497	503	.0051068	63....	64,754	1,880	.0290330
24....	97,994	505	.0051535	64....	62,874	1,985	.0315701
25....	97,489	507	.0052006	65....	60,889	2,094	.0343904
26....	96,982	510	.0052587	66....	58,795	2,206	.0375202
27....	96,472	513	.0053176	67....	56,589	2,308	.0409820
28....	95,957	517	.0053877	68....	54,271	2,430	.0447753
29....	95,442	522	.0054693	69....	51,841	2,539	.0489767
30....	94,920	527	.0055520	70....	49,302	2,645	.0536489
31....	94,393	533	.0056466	71....	46,657	2,744	.0588122
32....	93,860	540	.0057532	72....	43,913	2,832	.0644912
33....	93,320	548	.0058723	73....	41,081	2,909	.0708113
34....	92,772	557	.0060040	74....	38,172	2,969	.0777795
35....	92,215	567	.0061487	75....	35,203	3,009	.0854957
36....	91,648	578	.0063067	76....	32,194	3,026	.0939927
37....	91,070	591	.0064895	77....	29,163	3,016	.1031010
38....	90,479	606	.0066977	78....	26,152	2,977	.1133345
39....	89,873	622	.0069209	79....	23,175	2,905	.1253506
40....	89,251	640	.0071708	80....	20,270	2,799	.1380858
41....	88,611	660	.0074483	81....	17,471	2,659	.1521951
42....	87,951	683	.0077657	82....	14,812	2,485	.1677694
43....	87,268	708	.0081129	83....	12,327	2,280	.1849599
44....	86,568	734	.0084797	84....	10,047	2,050	.2040410
45....	85,826	761	.0088668	85....	7,997	1,800	.2260844
46....	85,065	790	.0092870	86....	6,197	1,539	.2483460
47....	84,275	822	.0097538	87....	4,653	1,277	.2741520
48....	83,453	857	.0102693	88....	3,331	1,023	.3025732
49....	82,596	894	.0108238	89....	2,353	788	.3341315
50....	81,702	935	.0114440	90....	1,570	579	.3687398
51....	80,767	981	.0121460	91....	991	404	.4076690
52....	79,786	1,029	.0128970	92....	587	264	.4497445
53....	78,757	1,083	.0137512	93....	323	161	.4984520
54....	77,674	1,140	.0146767	94....	162	89	.5498827
55....	76,534	1,202	.0157054	95....	73	44	.6027397
56....	75,332	1,270	.0168587	96....	29	19	.6551724
57....	74,062	1,342	.0181200	97....	10	7	.7000000
58....	72,720	1,418	.0194994	98....	3	3	1.0000000
59....	71,302	1,501	.0210513				

[S., '13, § 1839-j; 38 G. A., ch. 227, § 1.]

8824. Exceptions. The preceding section shall not be construed so as to apply to or affect any association organized solely for benevolent purposes and whose articles of incorporation, constitution, rules or by-laws provide, that, at the time of the admission to membership, each member, when joining, shall belong to one certain occupation or guild. [S., '13, § 1839-j; 37 G. A., ch. 193, § 1.]

8825. Valuation of certificates. The certificate written by any domestic fraternal beneficiary association operating under the provisions of the foregoing mortality table shall be valued in the same manner as provided in section 8654, except that such valuation shall be based upon the foregoing mortality table and four per cent interest.

If the society makes loans on its certificates, the valuation shall be based upon a mortality table not lower than the American table of mortality and four and one-half per cent interest. [S., '13, § 1839-j; 37 G. A., ch. 113, § 1.]

INVESTMENTS

8826. Real estate for home office. Any fraternal beneficiary society, order, or association organized under the laws of this state, accumulating money to be held in trust for the purpose of the fulfillment of its certificates or contracts, shall be permitted to invest not to exceed ten per cent of the aggregate amount of such accumulation in such real estate in this state as is necessary for its accommodation as a home office, and in the purchase or erection of any building for such purpose it may add thereto rooms for rent; provided that before any association shall invest any of its funds in accordance with the provisions of this section it shall first obtain the consent of the executive council. [S., '13, § 1839-k.]

8827. Society to authorize. Nothing in the preceding section shall be construed to permit the officials or board of directors of such society, order, or association to make such investment without authority specifically

granted by the said society, order, or association through its grand or supreme lodge or convention. [S., '13, § 1839-k.]

8828. Conveyance to commissioner—valuation. Any company or association so investing its funds shall convey the real estate thus acquired to the commissioner of insurance by deed, such property to be held by him in trust for the benefit of the members of such association, the value thereof to be determined from time to time by the commissioner. [S., '13, § 1839-k; 37 G. A., ch. 379, § 1.]

8829. Schedule of investments. Any fraternal beneficiary society, order, or association organized under the laws of this state, accumulating money to be held in trust for the purpose of the fulfillment of its certificates or contracts, shall invest such accumulations in the following securities and no other:

1. *Federal bonds.* Bonds of the United States.
2. *State bonds.* Bonds of this or of any other state, when such bonds are at or above par.
3. *Municipal bonds.* Bonds or other evidences of indebtedness of any county, city, town, or school district within the state, or any other state, or drainage bonds of any drainage district in the state where such bonds or other evidences of indebtedness are issued by authority of and according to law, and bearing interest, and are approved by the executive council.

4. *Real estate bonds and mortgages.* Bonds, mortgages, and other interest-bearing securities being first liens upon real estate within this state or any other state, worth at least double the amount loaned thereon and secured thereby exclusive of improvements, or two and one-half times such amount including the improvements thereon, if such improvements are constructed of brick or stone; but no such improvements shall be considered in estimating the value unless the owner shall contract to keep the same insured in some reliable fire insurance company or companies authorized to do business in the state, during the life of the loan, in a sum at least double the excess of the loan above one-half the value of the ground exclusive of the improvements, the insurance to be made payable in case of loss to the company or association investing its funds, as its interest may appear at the time of loss.

5. *Loans on certificates.* Loans on certificates of members, provided that the valuation of the society shows a maintenance of reserve not lower than the usual reserve computed upon the American table of mortality and four and one-half per cent interest. [S., '13, § 1839-l; 37 G. A., ch. 193, § 2.]

8830. Deposit with commissioner. All such securities shall be deposited with the commissioner of insurance subject to his approval, and shall remain with him until withdrawn in accordance with the provisions of section 8834. [S., '13, § 1839-l.]

8831. Payment of securities. Any fraternal beneficiary society, order, or association receiv-

ing payments, or partial payments on any securities deposited with the commissioner, shall notify him of such fact giving the amount and date of payment within fifteen days after such payment shall have been made. [S., '13, § 1839-l.]

8832. Failure to report payments. The officers of any society, order, or association which fails to report the receipt of payments or partial payments as above provided shall be liable to a fine in double the amount collected and not reported within the time and in the manner above specified. [S., '13, § 1839-l.]

8833. Authority for fund—purpose of withdrawal. Any society, order, or association required to make a deposit with the commissioner as herein contemplated, shall at the time of making such deposit, designate by what provisions of its articles of incorporation or laws such fund is accumulated and upon making request for withdrawal of any funds shall designate for what purpose such withdrawal is desired. [S., '13, § 1839-l.]

8834. Change of securities. Any society, order, or association, may at any time change its securities on deposit by depositing a like amount in other securities of the same character and the commissioner shall permit a withdrawal of the same upon satisfactory proof in writing filed with him that they are to be used for the purpose for which they were originally deposited. [S., '13, § 1839-l.]

8835. Violations—associations excepted. The commissioner shall have authority to suspend or revoke the certificate of authority of any society, order, or association failing to comply with any of the provisions of the six preceding sections or for violating the same. Nothing in the six preceding sections shall be construed to apply to any association organized solely for benevolent purposes and whose articles of incorporation, constitution, rules or by-laws provide that, at the time of the admission to membership, each member, when joining, shall belong to one certain occupation, guild, profession, or religious denomination. [S., '13, § 1839-l; 37 G. A., ch. 193, § 2.]

8836. Applicability—exceptions. The provisions of this chapter shall not be construed to apply to organizations, societies, or associations, the membership of which consists of female members of the families of members of any one occupation, guild, profession, or religious denomination, nor shall the provisions of this chapter be construed to apply to auxiliary societies or associations, the membership of which consists of female members of the families of members of any one occupation, guild, profession, or religious denomination. [S., '13, § 1839-l; 37 G. A., ch. 193, § 2.]

BENEFITS ON LIVES OF CHILDREN

8837. Authorization. Any fraternal benefit society authorized to do business in this state

and operating on the lodge plan, may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of two and eighteen years at next birthday, for whose support and maintenance a member of such society is responsible. [37 G. A., ch. 431, § 1.]

8838. Branch organizations. Any such society may at its option organize and operate branches for such children, and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. [37 G. A., ch. 431, § 1.]

8839. Maximum benefits. The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively, as follows: Two, thirty-four dollars; three, forty dollars; four, forty-eight dollars; five, fifty-eight dollars; six, one hundred forty dollars; seven, one hundred sixty-eight dollars; eight, two hundred dollars; nine, two hundred forty dollars; ten, three hundred dollars; eleven, three hundred eighty dollars; twelve, four hundred sixty dollars; thirteen to fifteen, five hundred twenty dollars, and sixteen to eighteen years, where not otherwise authorized by law, six hundred dollars. [37 G. A., ch. 431, § 1.]

8840. Certificates—conditions. No benefit certificate as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner, in accordance with the laws of the society, nor shall the first benefit certificate be so issued unless the society shall simultaneously put in force at least five hundred such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by such certificate falls below five hundred. [37 G. A., ch. 431, § 2.]

8841. Death benefit contributions. The death benefit contributions to be made upon such certificate shall be based upon the standard mortality table of the English life table number six and a rate of interest not greater than four per cent per annum, or upon a higher standard; provided that contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws, and provided, further, that extra contributions shall be made if the reserves hereafter provided for become impaired. [37 G. A., ch. 431, § 2.]

8842. Reserve required. Any society entering into such insurance agreements shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions, as provided in the preceding section. [37 G. A., ch. 431, § 3.]

8843. Segregation of fund. The funds representing the benefit contributions and all

accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obligations of the society other than the benefits herein authorized. [37 G. A., ch. 431, § 3.]

8844. Cancellation and exchange of certificate. A society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued under section 8837 may be surrendered for cancellation and exchanged for any other form of certificate issued by the society, provided that such surrender will not reduce the number of lives insured in the branch below five hundred, and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. [37 G. A., ch. 431, § 3.]

8845. No vested interest in new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contributions, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. [37 G. A., ch. 431, § 3.]

8846. Annual financial statement. An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the commissioner of insurance by any society availing itself of the provisions of sections 8837 to 8839, inclusive. [37 G. A., ch. 431, § 4.]

8847. Integrity of fund. The separation of assets, funds, and liabilities required hereby shall not be terminated, rescinded, or modified nor shall the funds be diverted for any use other than as specified in sections 8842 to 8844, inclusive, as long as any certificates issued under section 8837 remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger, or other change in the condition of the status of the society. [37 G. A., ch. 431, § 4.]

8848. Specified payments. Any society shall have the right to provide in its laws and the certificate issued under section 8837 for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide. [37 G. A., ch. 431, § 5.]

8849. Lapse of membership of parent. In the event of the termination of membership in the society by a person responsible for the support of any child, on whose account a certificate may have been issued, the certificate may be continued for the benefit of the estate of the child, provided the contributions are

continued, or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions. [37 G. A., ch. 431, § 6.]

FRATERNAL CHARITABLE INSTITUTIONS

8850. General power granted. It shall be lawful for any fraternal beneficiary society, order, or association now organized and existing, or hereafter organized under and by virtue of the laws of this state, or any such society, order, or association organized and existing under and by virtue of the laws of any other state, province, or territory, and now or hereafter admitted to do business within this state, to create, maintain, and operate, for the benefit of its sick, disabled, or distressed members and their families and dependents, out of any general, special, or expense fund, and from any voluntary contributions it may receive therefor, hospitals, asylums, sanatoriums, schools, or homes. [40 G. A., ch. 172, § 1.]

8851. Financial powers. For such purpose any such society, order, or association may own, hold, lease, mortgage, sell, and convey personal property and real property located within or without this state, with necessary buildings thereon; provided that the amount of the general, special, or expense fund to be expended, as herein provided, shall not exceed such amounts as shall have been or shall be, from time to time, authorized by the legislative or supreme governing body of such society, order, or association. [40 G. A., ch. 172, § 1.]

8852. Charges. Maintenance, treatment, training and proper attendance in any such hospital, asylum, sanatorium, school, or home may be furnished free, or a reasonable charge may be made therefor. [40 G. A., ch. 172, § 1.]

8853. Profit prohibited. No such hospital, asylum, sanatorium, school, or home shall be operated for profit. [40 G. A., ch. 172, § 1.]

8854. General funds protected. No part of the cost or expense of creating, maintaining, or operating any such hospital, asylum, sanatorium, school, or home shall be defrayed or paid out of the mortuary, sick, disability, or benefit funds of any such society. [40 G. A., ch. 172, § 1.]

8855. Management. The management of such institutions shall be in such officers as the supreme governing body may designate, and such officers may or may not be members of the society, order, or association. [40 G. A., ch. 172, § 1.]

8856. Legal standing. Any such hospital, asylum, sanatorium, school, or home, when established in the manner provided by section 8850, is hereby declared to be a charitable institution, with all the rights, benefits, and privileges given to charitable institutions under

and by the constitution and laws of this state. [40 G. A., ch. 172, § 2.]

8857. May be beneficiary. Such hospital, asylum, sanatorium, school, or home is hereby declared to be competent to be named and to take as beneficiary in and by the benefit certificate of any member of such society, order, or association. [40 G. A., ch. 172, § 2.]

8858. General powers of commissioner. The commissioner of insurance shall have the same powers, supervision, and control over such hospitals, asylums, sanatoriums, schools, and homes erected by any such society incorporated in this state, as he now has, or may hereafter legally exercise over fraternal beneficiary societies organized or transacting business in this state. [40 G. A., ch. 172, § 3.]

8859. Mismanagement—delinquency reported. Whenever the commissioner of insurance finds that any such hospital, asylum, sanatorium, school, or home erected by such domestic society is being mismanaged or that the interest of the society or public requires it, the commissioner may direct an order to the officers responsible for such mismanagement or in control of such institution with reference to such mismanagement, and if such officers refuse, neglect, or fail to comply with such order within the time fixed by the commissioner of insurance, the commissioner shall communicate the fact to the attorney general. [40 G. A., ch. 172, § 3.]

8860. Duty of attorney general—decree. The attorney general shall proceed in the manner provided for in section 8888, or the court may remove such officers guilty of mismanagement and appoint others until the society may regularly elect or select other officers to succeed those deposed. [40 G. A., ch. 172, § 3.]

CONSOLIDATION OR REINSURANCE

8861. Presenting proposed plan. When any fraternal beneficiary association shall propose to consolidate or enter into any reinsurance contract with any other association or organization, it shall present its proposed plan of consolidation or reinsurance, together with a statement of the condition of its affairs to the commissioner of insurance for his approval. [S., '13, § 1839-g.]

8862. Submission of plan—notice. Should the commissioner approve the plan, the same shall be submitted by any association proposing to reinsure its risks or transfer its business, to its local lodges or organizations or to a regular or special meeting of its supreme lodge or governing body to be voted upon, such notice being given as the commissioner may direct. [S., '13, § 1839-g.]

8863. Submission to reinsuring association. If, in the judgment of the commissioner, it is deemed advisable he may also require the plan to be in like manner submitted to the associa-

tion proposing to accept or reinsure the risks of any other association. [S., '13, § 1839-g.]

8864. Multiple consolidation. In case two or more associations propose to consolidate, the proposed plan of consolidation shall be submitted, as above provided, to all of the associations interested in such consolidation. [S., '13, § 1839-g.]

8865. Approval—proxies. In any of the above cases, a two-thirds vote of all of the members of each association present and voting shall be necessary to an approval of any plan of consolidation or reinsurance, and in no case shall proxies be voted. [S., '13, § 1839-g.]

8866. Official order of approval. On presenting to the commissioner satisfactory proof that the foregoing provisions have been complied with and that the required number of votes have been cast in favor of the proposed plan, he shall issue to the association an order to the effect that the plan has been approved, and the same shall be in force and effect from and after the date of such order, and the commissioner shall direct such distribution of the assets of any such association or associations as shall be just and equitable. [S., '13, § 1839-g.]

8867. Expenses. All expenses or costs incident to proceedings under the provisions of the six preceding sections shall be paid by the associations interested. [S., '13, § 1839-h.]

8868. Violations. Any officer, director, or manager of any association violating or consenting to the violation of any of the provisions of sections 8861 to 8866, inclusive, shall be punished by a fine of not less than ten hundred dollars, or by imprisonment in the county jail not less than one year, or by both such fine and imprisonment in the discretion of the court. [S., '13, § 1839-i.]

REORGANIZATION

8869. Authorization. Any existing fraternal beneficiary society may amend its articles of incorporation and by-laws in such a manner as to transform itself into a legal reserve level premium company doing business either as a mutual or stock company, but only after complying with the provisions of the fourteen following sections. [38 G. A., ch. 302, § 1.]

8870. Submission of plan. Whenever any such society shall propose to transform itself into a legal reserve level premium company as herein provided, it shall file with the commissioner of insurance, its proposed articles and by-laws, its plan of transformation, setting forth in detail the terms and conditions of such transformation and also the method by which it proposes to protect the interests of its membership. [38 G. A., ch. 302, § 1.]

8871. Notice. The commissioner may proceed to hear and determine such petition with-

out notice, or, if he deems it necessary that such notice should be given in order to conserve the interests of the membership, he shall require the society to first notify, by mail, all of the members of such society of the pendency of such petition, the contents of such notice to be determined by the commissioner. [38 G. A., ch. 302, § 1.]

8872. Appearance. When notice shall have been given, as above provided, any member of said society shall have the right to appear before said commissioner and be heard with reference to said petition. [38 G. A., ch. 302, § 1.]

8873. Examination. The commissioner may also make such examination into the affairs and conditions of the society as he deems proper, and shall have power to summon and compel the attendance and testimony of witnesses, and the production of books and papers, and may administer oaths. [38 G. A., ch. 302, § 1.]

8874. Authorization order. If satisfied that the interests of the membership of said society are properly protected and that no reasonable objection to said petition exists, the commissioner may authorize in writing, such transformation, or may first require such modification thereof as may seem to him necessary for the best interests of such membership. [38 G. A., ch. 302, § 1.]

8875. Disposition of assets. The said commissioner shall make such order and disposition of the assets of any such society as in his judgment may be just and equitable. [38 G. A., ch. 302, § 1.]

8876. Submission to supreme governing body. The commissioner shall require the plan of transformation to be submitted to the supreme governing body of such society, to be voted upon. When submitted, it shall be either at a regular meeting of said supreme governing body or at a special meeting of same called for that purpose. [38 G. A., ch. 302, § 2.]

8877. Notice — vote required — proxies. A notice of said special meeting, in the form approved by the commissioner of insurance, shall be given in accordance with the requirement of the by-laws of such society. When so submitted, a majority vote of the said supreme governing body present and voting, as authorized by its articles of incorporation and by-laws, shall be necessary to an approval of such plan of transformation; and no proxies shall in any case be voted. [38 G. A., ch. 302, § 2.]

8878. Referendum. If the supreme governing body approves the plan of transformation, the board of directors or other managing body of such society shall submit the plan to a referendum vote of the members of such society under such regulations as may be pre-

scribed by the commissioner of insurance, and if the result of such vote shall show that the majority of the members of such society has voted to repeal the action of the supreme governing body, then the same shall be considered as repealed by such society and shall be null and of no effect. [38 G. A., ch. 302, § 2.]

8879. Approval by commissioner—vote filed. Any such plan of transformation submitted to the supreme governing body as herein contemplated, must first have been approved by the commissioner of insurance; and the result of said vote must be filed with such commissioner and be by him determined before any transformation shall be so effective. [38 G. A., ch. 302, § 2.]

8880. Conditions precedent. No such transformation shall take place until after its plan has been approved by the commissioner, either with or without a hearing as herein provided, and until such approved plan has been adopted by a majority vote of the board of directors or board of trustees of such society; and, if submitted to the supreme governing body, until such approved plan has also been adopted by a majority vote of the said supreme governing body present and voting. [38 G. A., ch. 302, § 2.]

8881. Effect of reorganization—officers. Any such society so transformed, shall incur the obligations and enjoy the benefits thereof the same as though originally thus incorporated, and such corporation, under its charter as thus amended, shall be a continuation of such original corporation, and the officers thereof shall serve through their respective terms as provided in the original charter, but their successors shall be elected and serve as in such amended articles provided. [38 G. A., ch. 302, § 3.]

8882. Pending suits. Such amendment or reincorporation shall not affect existing suits, claims, or contracts. [38 G. A., ch. 302, § 3.]

8883. Purchase of stock. Any such fraternal beneficiary society taking advantage of the second preceding section, to reorganize into a stock company shall offer to each member of said society the privilege of subscribing for and purchasing his or her proportionate amount of capital stock. [38 G. A., ch. 302, § 3.]

8884. Valuation of existing certificates. The existing certificates of membership of any fraternal beneficiary society which shall have transformed itself into a legal reserve level premium life insurance company, in conformity with the provisions of sections 8869 to 8875, inclusive, shall be valued as follows:

1. Certificates on which rates of contribution are not on the basis of any table of mortality, valued as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state.

2. Certificates on which the rates of contribution are based upon a standard table of mortality and specified rate of interest, valued in accordance with such standard.

The reserve so ascertained shall be held as a liability by the company in its annual statement rendered to the insurance department. [38 G. A., ch. 302, § 4.]

EXAMINATION AND RECEIVERSHIP

8885. Association defined. The term "association" when used in this chapter shall mean any society, order, or association organized or authorized under the provisions of this chapter. [S., '13, § 1839-a.]

8886. Examination. The commissioner of insurance may, at any time he may deem it advisable, either in person or by his legally appointed representative, make an examination of, or inquire into the affairs of any fraternal beneficiary association authorized or seeking to be authorized to transact business within this state, provided the examination of associations organized under the laws of this state shall not be less frequent than once during each biennial period. [S., '13, § 1839-b; 38 G. A., ch. 348, § 12; 39 G. A., ch. 209, § 18.]

8887. Officers to assist—oaths. When an association is being examined, the officers, agents, or employees thereof shall produce for inspection all books, papers, documents, or other information concerning the affairs of the association and shall otherwise assist in the examination. The commissioner of insurance or examiner shall have authority to administer oaths, and may summon and may examine under oath any officer, employee, representative, or agent of any association concerning its affairs or condition. [S., '13, § 1839-c.]

8888. Revocation or suspension of authority—action by attorney general. If upon investigation or examination, it shall appear to the satisfaction of the commissioner of insurance that any association is doing an illegal or unauthorized business, or is failing to fulfill its contracts with its members, or is conducting its business fraudulently, or if its membership or the amount of its insurance in force has been reduced below the legal requirement, or should any association decline or refuse to submit to an examination, the commissioner may suspend or revoke its certificate of authority to transact business within this state, and having revoked the certificate of authority of any association organized under the laws of this state, he shall at once report the same to the attorney general who shall apply to the district court or any judge thereof for the appointment of a receiver to wind up the affairs of such association. [S., '13, § 1839-d.]

8889. Expenses—how paid. In addition to the compensation of the assistants, the commissioner of insurance or examiner and assistants shall be entitled to actual and necessary traveling, hotel, and other expenses while con-

ducting examinations away from their respective places of residence, the same to be paid by the treasurer of state upon warrants drawn by the auditor of state, bills therefor having been filed under oath and approved by the state board of audit. Such expense and compensation shall, by the commissioner, be charged to and collected from the associations examined and should any association neglect or refuse to pay the same, the commissioner shall at once revoke its certificate of authority to transact business within this state. [S., '13, § 1839-e; 39 G. A., ch. 209, § 19.]

8890. Illegal business. Any officer, manager, agent, or representative of any association who with knowledge that its certificate of authority has been suspended or revoked, or that it is doing an illegal, unauthorized, or fraudulent business solicits insurance for said association, or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said association, shall be deemed guilty of a misdemeanor and for every such act, on conviction thereof, shall pay a fine of not less than one hundred nor more than ten hundred dollars, or be imprisoned in the county jail not more than one year, or be punished by both such fine and imprisonment. [S., '13, § 1839-f.]

8891. Application for receiver. No application for the appointment of a receiver for any fraternal beneficiary society, or branch

thereof, shall be entertained by any court in this state, unless same is made by the attorney general. [S. S., '15, § 1839-m.]

8892. When commenced. No such proceedings shall be commenced by the attorney general against any fraternal beneficiary society until the commissioner of insurance has first made an examination of such fraternal beneficiary society, and completed a report upon its affairs, and not until after notice has been duly served on the chief executive officers of the society, and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced. [S. S., '15, § 1839-n.]

8893. Examinations confidential. Pending, during, or after an examination or investigation of such fraternal beneficiary society, the commissioner of insurance shall make public no financial statement, report, or finding, nor shall he permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any such society until a copy of such examination and investigation shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer such financial statement, investigation, report, or finding, and to make such showing in connection therewith, as it may desire. [S. S., '15, § 1839-o.]

CHAPTER 403

MUTUAL BENEFIT SOCIETIES

8894. Exemption.

8894. Exemption. Unless specific reference is made thereto, no provision of this title shall include or apply to domestic societies which limit their membership to the employees of:

1. A particular city or town, or
2. A designated firm, business house, or corporation. [40 G. A., ch. 170, § 1.]

8895. Power of commissioner.

8895. Power of commissioner. The commissioner of insurance may require from any society such information as will enable him to determine whether such society is exempt from the provisions of the laws relating to insurance or to fraternal benefit societies. [40 G. A., ch. 170, § 2.]

CHAPTER 404

INSURANCE OTHER THAN LIFE

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9015. Incrimination.
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8896. Incorporation. Corporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chapter 384, except as modified by the provisions of this chapter. [C., '73, § 1122; C., '97, § 1684.]

8897. Articles—approval. Each such organization shall present to the commissioner of insurance its articles of incorporation, which shall show its name, objects, location of its principal place of business, and amount of its capital stock, who shall submit it to the attorney general for examination, and if found by him to be in accordance with the provisions of this title, the laws of the United States, and the constitution and laws of the state, he shall certify such fact thereon and return the same to said commissioner, and no articles shall be approved by him or recorded unless accompanied with such certificate. [C., '73, § 1122; C., '97, § 1685.]

8898. Certificate—recording. If the commissioner of insurance approves them, he shall so certify, and the articles with the certificates of approval shall be recorded in the office of the secretary of state as articles of other corporations are, who shall indorse thereon his certificate thereof, as is required in case of other corporations for pecuniary profit. [C., '73, § 1123; C., '97, § 1686.]

8899. Name. If the commissioner of insurance finds the name of the company to be so similar to one already appropriated by a corporation of the same character as to be likely to mislead the public or to cause inconvenience, he shall refuse his certificate to its articles on that ground. [C., '73, § 1122; C., '97, § 1687.]

8900. Filing with commissioner. The articles, when thus certified by the secretary of state as recorded in his office, or a copy thereof certified by him as such, shall be filed in the office of the commissioner of insurance and remain therein. [C., '73, § 1123; C., '97, § 1688.]

8901. Nature of organization entered on policy. Every domestic and foreign insurance company organized and doing business under this chapter shall indicate upon the first page of every policy and renewal receipt that the policy is issued by a mutual company in case of a mutual company, and by a stock company in case of a stock company. [C., '73, § 1140; C., '97, § 1689; S., '13, § 1689; 37 G. A., ch. 423, § 1.]

8902. Stock and mutual plan distinguished. No company shall be organized to do business

9020. Existing statutes—waiver.
 9021. Policy—formal execution.
 9022. Misleading statements.
 9023. Violations.
 9024. Advertisements by agents.

upon both stock and mutual plans; nor shall a company organized as a stock company do business upon the plan of a mutual company; nor shall a company organized upon the mutual plan do business or take risks upon the stock plan. [C., '73, § 1159; C., '97, § 1690.]

8903. Paid-up capital required. No insurance company other than life shall be incorporated to transact business upon the stock plan with less than two hundred thousand dollars capital, the entire amount of which shall be fully paid up in cash and invested as provided by law. No increase of the capital stock of any company shall be made unless the amount of such increase is fully paid up in cash. The stock shall be divided into shares of one hundred dollars each. [C., '73, § 1124; C., '97, § 1691; S., '13, § 1783-e; 40 Ex. G. A., ch. 9, § 11.]

8904. Surplus required. Such company shall be possessed of a surplus in cash or invested in securities authorized by law, equal to twenty-five per cent of such paid-up and outstanding capital at the time certificate of authority is first applied for and issued. [C., '73, § 1124; C., '97, § 1691; 40 Ex. G. A., ch. 9, § 11.]

8905. Prohibited loans. No part of the capital referred to shall be loaned to any officer or stockholder of the company. [S., '13, § 1783-e; 40 Ex. G. A., ch. 9, § 11.]

8906. Mutual companies—conditions. No mutual company shall issue policies or transact any business of insurance unless it shall hold a certificate of authority from the commissioner of insurance authorizing the transaction of such business, which certificate of authority shall not be issued until and unless the company shall comply with the following conditions:

1. It shall hold bona fide applications for insurance upon which it shall issue simultaneously, or it shall have in force, at least two hundred policies issued to at least two hundred members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk described herein; provided that not more than one hundred members shall be required for employer's liability and workmen's compensation insurance.

2. The maximum single risk shall not exceed twenty per cent of the admitted assets, or three times the average risk, or one per cent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

3. It shall have collected a premium upon each application, which premium shall be held

in cash or securities in which insurance companies are authorized to invest, which shall be equal, in case of fire insurance, to not less than twice the maximum single risk assumed subject to one fire nor less than ten thousand dollars; and in any other kind of insurance, to not less than five times the maximum single risk assumed; and, in case of employer's liability and workmen's compensation insurance, to not less than fifty thousand dollars.

4. For the purpose of transacting employer's liability and workmen's compensation insurance, the applications shall cover not less than one thousand five hundred employees, each such employee being considered a separate risk for determining the maximum single risk. [C., '73, § 1124; C., '97, § 1692; 37 G. A., ch. 429, § 2.]

8907. Membership in mutuals. Any public or private corporation, board, or association in this state, or elsewhere, may make applications, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or local representative of any such corporation, board, association, or estate may be recognized as acting for, or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this state to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred. [C., '73, § 1124; C., '97, § 1693; 37 G. A., ch. 429, § 3.]

8908. Voting power. Every policy holder of such mutual company shall be a member of the company and shall be entitled to one vote, and such member may vote in person or by proxy as may be provided in the by-laws. [37 G. A., ch. 429, § 4.]

8909. Maximum premium. The maximum premium payable by any member of a mutual company shall be expressed in the policy and in the application for the insurance. Such maximum may be a cash premium and an additional contingent premium not less than the cash premium, or may be solely a cash premium, which premium may be made payable in installments or regular assessments. No policy shall be issued for a cash premium without an additional contingent premium unless the company has a surplus which is not less in amount than the capital stock required, at the time of the organization of such mutual insurance company, of domestic stock insurance companies writing the same kind of insurance; but said surplus shall not be less than one hundred thousand dollars. [37 G. A., ch. 429, § 5; 40 Ex. G. A., ch. 9, § 13.]

8910. Unearned premiums. Such mutual company shall maintain unearned premium

and other reserves separately for each kind of insurance, upon the same basis as that required of domestic insurance companies transacting the same kind of insurance; provided that any reserve for losses or claims based upon the premium income shall be computed upon the net premium income, after deducting any so-called dividend or premium returned or credited to the member. [37 G. A., ch. 429, § 6.]

8911. Assessments. Any such mutual company not possessed of assets at least equal to the unearned premium reserve and other liabilities shall make an assessment upon its members liable to assessment to provide for such deficiency, such assessment to be against each member in proportion to such liability as expressed in his policy; provided the commissioner may by written order, relieve the company from an assessment or other proceedings to restore such assets during the time fixed in such order. [37 G. A., ch. 429, § 7.]

8912. Advancement of funds. Any director, officer, or member of any such mutual company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose of its business, or to enable it to comply with any of the requirements of the law, and such moneys and such interest thereon as may have been agreed upon, not exceeding the maximum statutory rate of interest, shall not be a liability or claim against the company or any of its assets, except as herein provided, and upon approval of the commissioner of insurance may be repaid, but only out of the surplus earnings of such company. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company. The amount of such advance shall be reported in each annual statement. [37 G. A., ch. 429, § 8.]

8913. Additional policy provisions. Such mutual company may insert in any form of policy prescribed by the law of this state any additional provisions or conditions required by its plan of insurance if not inconsistent or in conflict with any law of this state. [37 G. A., ch. 429, § 9.]

8914. Countersigning policies. Such mutual company shall comply with the provisions of any law applicable to stock insurance companies effecting the same kind of insurance requiring that policies be countersigned and delivered through a resident agent, provided that this requirement shall not apply to any policy of such mutual company on which no commission shall be paid to any local agent. [37 G. A., ch. 429, § 10.]

8915. Existing companies. The provisions of this chapter [37 G. A., ch. 429] shall not apply to any company or association of this state now doing business whether organized under chapter 4 or chapter 5, title 9 of the code, as amended [code of 1897], unless such

company or association shall so elect by resolution of its board of directors duly certified to by the president and secretary and filed with and approved by the commissioner, and shall further amend its articles, if necessary, to permit full compliance with this chapter [37 G. A., ch. 429] and to include such additional kind or kinds of insurance as such company or association intends to transact. On the filing and approval of such resolution and on making such amendment if required, such company may be authorized to transact such kinds of insurance under this chapter. [37 G. A., ch. 429, § 11.]

8916. Tax—computation. For the purpose of determining the basis of any tax upon the “gross amount of premiums”, or “gross receipts from premiums, assessments, fees, and promissory obligations”, now or hereafter imposed upon any mutual fire or casualty insurance company under any law of this state, such gross amount or gross receipts shall consist of the gross premiums or receipts for direct insurance, without including or deducting any amounts received or paid for reinsurance, but with such other deductions as provided by law, and in addition deducting any so-called dividend or return of savings or gains to policy holders; provided that as to any deposits or deposit premiums received by any such company, the taxable premiums shall be the portion of such deposits or deposit premiums earned during the year with such deductions therefrom as provided by law. [37 G. A., ch. 429, § 20.]

8917. Subscriptions of stock—applications. After compliance by the incorporators with sections 8896 and 8897, the secretary of state shall certify the articles of incorporation to the commissioner of insurance. When the commissioner of insurance is satisfied that all provisions of law in relation to the promotion and organization of said corporation, including sections 8618 to 8620, inclusive, have been complied with, he shall issue a certificate to that effect, and thereupon such corporation may open books for subscriptions to the stock of stock companies or if a mutual company take applications and receive premiums for insurance at such times and places as it may find convenient, and may keep such books open until the full amount required is subscribed or taken, or the time granted therefor has expired, or until an order is issued by the commissioner of insurance to desist for failure to comply with the provisions of law in reference thereto. [C., '73, § 1125; C., '97, § 1694; 37 G. A., ch. 429, § 12; 40 Ex. G. A., ch. 9, § 14.]

8918. Directors. The affairs of a company organized as provided by this chapter shall be managed by a number of directors to be stated in the articles of not less than five nor more than twenty-one, all of whom, in case of a stock company, shall be stockholders, or, in case of a mutual company, be policy holders, or before the company shall effect insurance, be subscribers for stock or for insurance as

the case may be. When the paid-up capital for a stock company, or the subscriptions for insurance for a mutual company, shall have been obtained, the incorporators or directors in charge of the business shall give at least ten days' written notice by mail to stockholders or subscribers, as the case may be, of a meeting of the stockholders or subscribers, for the election of directors, and such meeting shall be held within thirty days after the paid-up capital or subscriptions have been secured. The directors then elected shall continue in office until their successors have been elected and qualified. [C., '73, § 1126; C., '97, § 1695; 37 G. A., ch. 429, § 13; 40 Ex. G. A., ch. 9, § 15.]

8919. Election. The annual meetings for the election of directors shall be held during the month of January, at such time as the by-laws of the company may direct; but if for any cause no election is held, or there is a failure to elect at any annual meeting, then a special meeting for that purpose shall be held on the call of a majority of the directors, or of those persons holding a majority of the stock, or of a majority of policy holders if a mutual company, by giving thirty days' notice thereof in some newspaper of general circulation in the county in which the principal office of the company is located. [C., '73, § 1127; C., '97, § 1696.]

8920. Term of office. The directors chosen at any such annual or special meeting shall continue in office until the next annual meeting, and until their successors are elected and have accepted. [C., '73, § 1127; C., '97, § 1696.]

8921. Classification of directors. A company may in its articles of incorporation provide that the board of directors be divided into classes holding for a term of not to exceed three years and providing for the election of the members of one class at each annual meeting. [40 G. A., ch. 174.]

8922. Powers of directors—president. The directors shall elect by ballot from their own number a president, and fill all vacancies occurring in the board or presidency thereof; and the board of directors thus constituted, or a majority of them, when convened at the office of the company, shall be competent to exercise all the powers vested in them by this chapter. [C., '73, § 1128; C., '97, § 1697.]

8923. Secretary and other officers. The board of directors shall have power to appoint a secretary and any other officers or agents necessary for transacting the business of the company, paying such salaries and taking such security of them as is reasonable. [C., '73, § 1129; C., '97, § 1698.]

8924. By-laws. It may adopt such by-laws and regulations not inconsistent with law as shall appear to them necessary for the regulation and conduct of the business. [C., '73, § 1129; C., '97, § 1698.]

8925. Record and inspection. The directors shall keep full and correct entries of their

transactions, which shall at all times be open to the inspection of the stockholders if a stock company, or policy holders if a mutual company, and to the inspection of persons invested by law with the right thereof. [C., '73, § 1129; C., '97, § 1698.]

8926. Right to own real estate. No company organized under this chapter shall purchase, hold, or convey any real estate, save for the purpose and in the manner herein set forth:

1. Such as shall be required for the transaction of its business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for money due.

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company, or for money due.

4. Such as shall have been purchased at sales upon judgments, decrees, or mortgages obtained or made for such debt, or obtained by redemption as junior judgment creditor or mortgagee; but it may convey real estate which shall be found in the course of its business not necessary therefor, and all such last mentioned real estate shall be sold and conveyed within three years after the same has been determined, by the commissioner of insurance, unnecessary, unless the company shall procure a certificate from him that the interest of the company will materially suffer by a forced sale, in which event the sale may be postponed for such a period as he may direct in such certificate. [C., '73, § 1137; C., '97, § 1703.]

8927. Investments. Any company organized under this chapter shall invest its capital and funds in the following described securities and no other:

1. *Federal bonds.* The bonds of the United States or federal farm loan bonds issued under the provisions of the act of congress approved July 17, 1916.

2. *State bonds.* The bonds of this state or any other state when such bonds are at or above par.

3. *Municipal bonds.* Bonds or other evidences of indebtedness of any county, city, town, or school district within the state or any other state, drainage district bonds of this state, improvement certificates issued by any municipal corporation of this state, such certificates being a first lien upon real estate within the corporate limits of the municipality issuing the same, where such bonds or other evidences of indebtedness are issued by authority of and according to law and bearing interest.

4. *Real estate bonds and mortgages.* Bonds and mortgages and other interest-bearing securities being first liens upon real estate within this state or any other state, worth at least double the amount loaned thereon and secured thereby exclusive of improvements, or two and one-half times such amount including the improvements thereon, but no such im-

provement shall be considered in estimating the value unless the owner shall contract to keep the same insured during the life of the loan, in some reliable fire insurance company or companies authorized to do business in the state, other than the company making the investment, in a sum at least double the excess of the loan above one-half the value of the ground exclusive of the improvements, the insurance to be made payable in case of loss to the company or association investing its funds, as its interest may appear at the time of loss; except that the surplus funds may be invested in stocks other than bank stock or in bonds or other evidences of indebtedness of any solvent dividend-paying corporation organized under the laws of any of the states, or of the United States, or may be loaned thereon upon pledge thereof, at not exceeding eighty per cent of their current market value, but no investment shall be made in the company's own stock. [C., '73, § 1130; C., '97, § 1699; S., '13, § 1699; 40 G. A., ch. 175.]

8928. Financial statements. After complying with the requirements of the preceding sections of this chapter, the company shall file with the commissioner of insurance a satisfactory detailed statement showing the financial condition of the company, including all transactions had during its organization, together with a record of all moneys received and disbursed, a list of the stockholders, the amount of stock purchased by each, and the price paid. [C., '97, § 1700; 37 G. A., ch. 429, § 14.]

8929. Mutual companies. The incorporators or officers of such mutual company shall file the statement under oath required of stock companies. [C., '73, § 1131; C., '97, § 1700; 37 G. A., ch. 429, § 14.]

8930. Examination—certificate of compliance. Such commissioner may appoint in writing some disinterested person to make an examination and if it shall be found that the capital or assets herein required of the company named, according to the nature of the business proposed to be transacted by such company, have been paid in, and are now possessed by it in money or such stock, bonds, and mortgages as are required by the preceding sections of this chapter, he shall so certify; but if the examination is made by another than the commissioner, the certificate shall be by him, and under his oath. [C., '73, § 1131; C., '97, § 1700; 37 G. A., ch. 429, § 14.]

8931. Ownership of assets—oath. The incorporators or officers of any such company, or proposed company, shall be required to state to the commissioner of insurance under oath that the capital or assets exhibited to the person making the examination are actually and in good faith the property of the company examined, and free and clear of any lien or claim on the part of any other person. [C., '73, § 1131; C., '97, § 1700; 37 G. A., ch. 429, § 14.]

8932. Form of certificate. The certificate of examination of a mutual company shall be

to the effect that it has received and has in its actual possession:

1. The cash premiums.
2. Actual contracts of insurance upon property, belonging to the signers thereof, and upon which the insurance applied for can properly be issued.
3. Other securities, as the case may be, to the extent and value hereinbefore required. [C., '97, § 1700; 37 G. A., ch. 429, § 1.]

8933. Certificate of authority. The certificate and statements above contemplated shall be filed in the insurance department and the commissioner of insurance shall deliver to the company a copy of the report of the examination, in the event one is made, together with his written permission for it to commence the business proposed in its articles of incorporation, which permission shall be its authority to commence business and issue policies. [C., '73, § 1131; C., '97, § 1700; 37 G. A., ch. 429, § 14.]

8934. Tenure of certificate—renewal—evidence. Such certificate of authority shall expire on the first day of April next succeeding its issue, and shall be renewed annually so long as such company shall transact business in accordance with the requirements of law; a copy of which certificate, when certified to by the commissioner of insurance, shall be admissible in evidence for or against a company with the same effect as the original. [C., '73, § 1131; C., '97, § 1700; 37 G. A., ch. 429, § 14; 40 G. A., ch. 176, § 3.]

8935. Capital increased. When the directors of a stock company with less than the maximum capital allowed in this chapter desire to increase the amount, they shall, if authorized by the holders of a majority of the stock to do so, file with the commissioner of insurance an amendment of its articles authorizing such increase, not exceeding the maximum authorized capital, and thereupon shall be entitled to have the increased amount of capital fixed by such amendment, and the examination of securities constituting the increased capital stock shall be made in the same manner as provided for the original capital stock. [C., '73, § 1135; C., '97, § 1701.]

8936. Dividends. The directors or managers of a stock company incorporated under the laws of this state shall make no dividends except from the profits arising from their business. [C., '73, § 1136; C., '97, § 1702; 39 G. A., ch. 190, § 1.]

8937. Reserve fund required. In estimating the profits, a reserve for unearned premiums as set out in section 8939, also a reserve for unpaid losses, expenses, and taxes which have been incurred shall be set up; and there shall also be held as nonadmitted assets all sums due the corporation on bonds and mortgages, bonds, stocks and book account, of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosure or collection has not been com-

menced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and on which interest has not been paid; and such judgment with the interest due or accrued thereon and remaining unpaid, shall also be so held. [C., '73, § 1136; C., '97, § 1702; 39 G. A., ch. 190, § 1.]

8938. Forfeiture of franchise. Any dividend made contrary to the provisions of the two preceding sections shall subject the company making it to forfeiture of its franchise. [C., '73, § 1136; C., '97, § 1702; 39 G. A., ch. 190, § 1.]

8939. Unearned premium reserve—computation. The policy liability of any company or association, transacting business under the provisions of this chapter, and the amount such company or association shall hold as a reserve for unearned premiums, shall be computed in the following manner:

1. On all policies written or renewed prior to January 1, 1922, there shall be held as such unearned premium reserve an amount equal to forty per cent of the aggregate gross premiums written in all policies in force, less deductions for reinsurance in authorized companies or associations.

2. On all policies written or renewed on and after January 1, 1922, and running one year or less from date of policy or last renewal thereof, shall be held as such unearned premium reserve an amount equal to fifty per cent of the aggregate gross premiums written in all policies in force, less deductions for reinsurance in authorized companies or associations.

3. On all policies written or renewed on and after January 1, 1922, and running for more than one year, and not exceeding five years, from date of policy or last renewal thereof there shall be held as such unearned premium reserve an amount of the aggregate gross premiums written in all policies in force, less deductions for reinsurance in authorized companies or associations, computed in accordance with the following table:

Term for which Policy was written	Reserve for Unearned Premium	
Two years	1st year	3-4
	2nd year	1-4
Three years	1st year	5-6
	2nd year	1-2
	3rd year	1-6
Four years	1st year	7-8
	2nd year	5-8
	3rd year	3-8
	4th year	1-8
Five years	1st year	9-10
	2nd year	7-10
	3rd year	1-2
	4th year	3-10
	5th year	1-10

4. On all policies written or renewed on and after January 1, 1922, and running for more than five years from date of policy or last renewal thereof, there shall be held as such unearned premium reserve an amount of the aggregate gross premiums, less deductions for reinsurance in authorized companies or associations equal to the pro rata unearned premium on all policies in force. The term pro rata used herein shall be such proportion of the gross premiums on policies in force as the number of months unexpired bears to the total number of months for which the policy was written.

5. On all policies written or renewed and for which any premium has been received which would continue a policy in force for a period beyond the term for which it was written, or term covered by last renewal thereof, there shall be held as such unearned premium reserve an amount equal to one hundred per cent of such premium on all policies in force.

6. Mutual companies or associations, organized, or doing business under this chapter, shall hold as a reserve for unearned premiums an amount equal to at least forty per cent of the aggregate gross premiums written in all policies in force less deductions for reinsurance in authorized companies or associations. [C., '73, § 1136; C., '97, § 1702; 39 G. A., ch. 190, § 1.]

8940. Kinds of insurance. Any company organized under this chapter or authorized to do business in this state may:

1. Insure dwelling houses, stores, and all kinds of buildings and household furniture, and other property against loss or damage, including loss of use or occupancy, by fire, lightning, rain, windstorm, tornado, cyclone, earthquake, hail, frost or snow, weather or climatic conditions including excess or deficiency of moisture, flood, rain or drought, rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, and by explosion whether fire ensues or not, except explosion on risks specified in subdivision 6 of this section, and also against loss or damage by insects or disease to farm crops or products, and loss of rental value of land used in producing such crops or products, and also against loss or damage by water or other fluid to any goods or premises arising from sprinkler leakage or from the breakage of sprinkler, pumps or other apparatus erected for extinguishing fires, or all other conduits or containers, or by water entering through leaks or openings in buildings and of water pipes, and against accidental injury to such sprinklers, pumps, apparatus, conduits, containers, or water pipes; and may also insure glass against breakage.

2. Insure the fidelity of persons holding places of private or public trust, or execute as surety any bond or other obligation required or permitted by law to be made, given or filed, except bonds required in criminal causes. None but stock companies shall engage in fidelity and surety business; and insure the

maker, drawer, drawee or indorser of checks, drafts, bills of exchange, or other commercial paper against loss by reason of any alteration of such instruments.

3. Insure the safe-keeping of books, papers, moneys, stocks, bonds, and all kinds of personal property, and receive them on deposit.

4. Insure against loss or damage by theft, injury, sickness or death of animals and to furnish veterinary service.

5. *a.* Insure the health of persons and against personal injuries, disablement or death resulting from traveling or general accidents by land or water.

b. Insure against liability for loss, damage or expense resulting from personal injury or death caused by error or negligence of the insured in the practice of medicine, surgery or dentistry, including the performance of surgical operations, or in the prescribing or dispensing of drugs or medicines, or for loss by reason of damages in other respects, for which loss, damage or expense the insured is legally liable; provided, however, that any policy issued by any such company shall contain a provision so that said policy shall inure to the benefit of any person obtaining a judgment against the insured to the extent of the insurance carried and for the purpose for which the insurance was issued.

c. Insure against loss or damage to property caused by the accidental discharge or leakage of water from automatic sprinkler system.

d. Insure employers against loss in consequence of accidents or casualties of any kind to employees, including workmen's compensation, or other persons, or to property resulting from any act of an employee, or any accident or casualty to persons or property, or both, occurring in or connected with the transaction of their business, or from the operation of any machinery connected therewith.

e. Insure against liability for loss or expense arising or resulting from accidents occurring by reason of the ownership, maintenance, or use of automobiles or other conveyances, resulting in personal injuries or death, or damage to property belonging to others, or both, and for damages to assured's own automobile when sustained through collision with another object; provided that should an execution on a judgment against the insured be returned unsatisfied in an action by a person who is injured or whose property is damaged, when such owner or operator has insured his liability for such personal injury or damage, the judgment creditor shall have a right of action against the insurer to the same extent that such owner or operator could have enforced his claim against such insurer had such owner or operator paid such judgment.

6. Insure against loss or injury to person or property, or both, and against loss of rents or use of buildings and other property, growing out of explosion or rupture of boilers, pipes, flywheels, engines, and machinery.

7. Insure against loss or damage resulting from burglary or robbery, or attempt thereat, or larceny.

8. Insure or guarantee and indemnify merchants, traders, and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them, which business shall be known as credit insurance. Such insurance may cover losses, less a deduction of an agreed percentage, not to exceed ten per cent, representing anticipated profits, and a further deduction not to exceed thirty-three and one-third per cent, on losses on credits extended to risks who have inferior ratings, and less an agreed deduction for normal loss.

9. Insure vessels, boats, cargoes, goods, merchandise, freights, specie, bullion, jewels, profits, commissions, bank notes, bills of exchange, and other evidences of debt, bottomry and respondentia interest and every insurance appertaining to or connected with marine risks of transportation and navigation, and insure automobiles, airplanes, seaplanes, dirigibles, or other aircraft, whether stationary or being operated under their own power, which include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, airplanes, seaplanes, dirigibles, or other aircraft, and loss by burglary or theft, vandalism, malicious mischief, or the wrongful conversion, disposal, or concealment of automobiles whether held under conditional sale, contract, or subject to chattel mortgages, or any one or more of such hazards, but not including insurance against loss by reason of bodily injury to the person. [C., '73, § 1132; C., '97, § 1709; S., '13, § 1709; 37 G. A., ch. 428, §§ 1-4; 37 G. A., ch. 429, § 16; 38 G. A., ch. 330, §§ 1, 2; 38 G. A., ch. 348, §§ 1, 2; 38 G. A., ch. 372; 40 G. A., ch. 177, §§ 1-4; 40 Ex. G. A., ch. 9, § 16.]

8941. Limitation on risks. No company authorized to transact business in this state as provided in this chapter, shall issue policies of insurance for more than one of the nine purposes or subdivisions enumerated in the preceding section, except as herein provided, as follows:

1. Any domestic or foreign insurance company authorized in this state to do the business specified in subdivision 1 of the preceding section may, in addition to the business specified in subdivision 1 insure against the casualties specified in subdivision 9 of the preceding section.

2. Any domestic or foreign insurance company authorized in this state to do the business contemplated by either subdivisions 2 or 5 may in addition to such business insure against the casualties specified in subdivision 6 of the preceding section, and also to insure against theft, larceny, burglary and robbery, or attempt thereat.

3. Any domestic or foreign company authorized in this state to transact the business specified in subdivision 5 of the preceding section, if it is possessed of a paid-up capital of five hundred thousand dollars, may, in addition to

insuring against the casualties specified in subdivision 5 transact the business specified in subdivisions 2 and 6 of the preceding section, and insure glass against breakage.

4. Any domestic insurance company authorized in this state to transact the business specified in subdivision 5 of the preceding section, and possessed of two hundred fifty thousand dollars paid-up capital stock, may, in addition to insuring against the casualties specified in subdivision 5, insure against injury or loss to persons or property, or both, contemplated by subdivision 6, and may also insure glass against breakage.

5. Any foreign insurance company authorized in this state to transact the business specified in subdivision 5 of the preceding section, if possessed of a paid-up capital of three hundred thousand dollars, may, in addition to insuring against the casualties specified in said subdivision 5, insure against the casualties specified in subdivision 6 of the preceding section, and also insure glass against breakage.

6. Any domestic or foreign insurance company authorized in their state to transact the business specified in subdivision 2 of the preceding section, if possessed of paid-up capital stock of five hundred thousand dollars, may, in addition to transacting the business authorized by said subdivision 2, transact the business of credit insurance as authorized by subdivision 8 of the preceding section.

Providing always, that the charter or articles of incorporation of any such company authorizes the writing of such additional insurance.

No company shall expose itself to loss on any one risk or hazard, to an amount exceeding ten per cent of its paid-up capital, except that fidelity and surety companies may be exposed on any one risk or hazard to an amount not exceeding ten per cent of their paid-up capital and surplus, unless the excess shall be reinsured in some other good and reliable company licensed to do an insurance business in this state. But in no case shall such excess reinsurance exceed ten per cent of the capital of the reinsuring company, and that a certificate of such reinsurance shall be furnished to the insured.

The restrictions as to the amount of risk a company may assume shall not be applicable to a company that receives on deposit and guarantees the safe-keeping of books, papers, and moneys and other personal property. [C., '73, § 1132; C., '97, § 1710; S., '13, § 1710; 37 G. A., ch. 428, § 5; 38 G. A., ch. 348, § 3; 39 G. A., ch. 261, § 1; 40 G. A., ch. 179, §§ 1, 2.]

8942. Loans—reinsurance. Such company may lend money on bottomry or respondentia, and cause itself to be insured in companies only authorized to do business in this state, against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property on account of any such loan, and generally to do and perform all other matters and things proper to promote these objects. [C., '73, § 1132; C., '97, § 1711; S., '13, § 1711.]

8943. Execution of policies. All policies or contracts of insurance made or entered into by the company may be made either with or without the seal of said company, but shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and be attested by the secretary thereof. [C., '73, § 1133; C., '97, § 1712.]

8944. Transfer of stock. Transfers of stock made by any stockholder or his legal representative shall be subject to the provisions of chapters 384 and 385 relative to transfer of shares, and to such restrictions as the directors shall establish in their by-laws, except as hereinafter provided. [C., '73, § 1134; C., '97, § 1713.]

8945. Annual statement. The president or the vice president and secretary of each company organized or authorized to do business in the state shall annually before the first day of March of each year prepare under oath and file with the commissioner of insurance a full, true, and complete statement of the condition of such company on the last day of the preceding year, which shall exhibit the following items and facts:

First—The amount of capital stock of the company.

Second—The names of the officers.

Third—The name of the company and where located.

Fourth—The amount of its capital stock paid up.

Fifth—The property or assets held by the company, specifying:

1. The value of real estate owned by the company.

2. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank deposited.

3. The amount of cash in the hands of agents and in the course of transmission.

4. The amount of loans secured by first mortgage on real estate, with the rate of interest thereon.

5. The amount of all other bonds and loans and how secured, with the rate of interest thereon.

6. The amount due the company on which judgment has been obtained.

7. The amount of bonds of the state, of the United States, of any county or municipal corporation of the state, and of any other bonds owned by the company, specifying the amount and number thereof, and par and market value of each kind.

8. The amount of bonds, stock, and other evidences of indebtedness held by such company as collateral security for loans, with amount loaned on each kind, and its par and market value.

9. The amount of assessments on stock and premium notes, paid and unpaid.

10. The amount of interest actually due and unpaid.

11. All other securities and their value.

12. The amount for which premium notes have been given on which policies have been issued.

Sixth—Liabilities of such company, specifying:

1. Losses adjusted and due.

2. Losses adjusted and not due.

3. Losses unadjusted.

4. Losses in suspense and the cause thereof.

5. Losses resisted and in litigation.

6. Dividends in scrip or cash, specifying the amount of each, declared but not due.

7. Dividends declared and due.

8. The amount required to reinsure all outstanding risks on the basis of the unearned premium reserve as required by law.

9. The amount due banks or other creditors.

10. The amount of money borrowed and the security therefor.

11. All other claims against the company.

Seventh—The income of the company during the previous year, specifying:

1. The amount received for premiums, exclusive of premium notes.

2. The amount of premium notes received.

3. The amount received for interest.

4. The amount received for assessments or calls on stock notes, or premium notes.

5. The amount received from all other sources.

Eighth—The expenditures during the preceding year, specifying:

1. The amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which such losses were estimated in such statement.

2. The amount paid for dividends.

3. The amount paid for commissions, salaries, expenses, and other charges of agents, clerks, and other employees.

4. The amount paid for salaries, fees, and other charges of officers and directors.

5. The amount paid for local, state, national, and other taxes and duties.

6. The amount paid for all other expenses, including printing, stationery, rents, furniture, or otherwise.

Ninth—The largest amount insured in any one risk.

Tenth—The amount of risks written during the year then ending.

Eleventh—The amount of risks in force having less than one year to run.

Twelfth—The amount of risks in force having more than one and not over three years to run.

Thirteenth—The amount of risks having more than three years to run.

Fourteenth—The dividends, if any, declared on premiums received for risks not terminated. [C., '73, § 1141; C., '97, § 1714; 39 G. A., ch. 190, § 2; 40 G. A., ch. 176, § 1.]

8946. Accident insurance—record. Each accident insurance company, or company insuring against accidents, shall keep a register of tickets sold or policies issued by its officers or agents, which register shall show the name and residence of the person insured, the amount of insurance, the date of issue of such

ticket or policy, and the time the same will remain in force; and the annual statement of each such company shall show the number of tickets sold and policies issued by it during the year, and the aggregate amount of insurance evidenced by such tickets and policies, classified as to the length of time for which such insurance is given. [C., '73, § 1141; C., '97, § 1714.]

8947. Certificate refused. The commissioner of insurance shall withhold his certificate or permission of authority to do business from any company neglecting or failing to comply with the provisions of this chapter. [C., '97, § 1715.]

8948. Annual statement of foreign company. The annual statement of foreign companies doing business in this state shall also show, in addition to the foregoing matters, the amount of losses incurred and premiums received in the state during the preceding period, so long as such company continues to do business in this state. [C., '73, § 1146; C., '97, § 1716.]

8949. Inquiry by commissioner. The commissioner of insurance shall address any inquiries to any insurance company in relation to its doings and condition, or any other matter connected with its transactions, which he may deem necessary for the public good, or for a proper discharge of his duties, and any company so addressed shall promptly reply in writing thereto. [C., '73, § 1142; C., '97, § 1718.]

8950. Forms for statements. He shall cause to be prepared and furnished to each company organized under the laws of this state, and to the attorney or agent of each company incorporated in other states and foreign governments, who may apply therefor, printed forms of statements required by this chapter, and may from time to time make such changes in the forms as shall seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore enumerated. [C., '73, § 1157; C., '97, § 1719.]

8951. Foreign companies—capital required. No stock insurance company organized under or by the laws of any other state or foreign government for the purpose specified in this chapter, shall, directly or indirectly, take risks or transact any business of insurance in this state unless possessed of two hundred thousand dollars of actual paid-up capital, exclusive of any assets deposited in any state, territory, district, or country for the special benefit or security of those insured therein, but companies organized to insure plate glass, or live stock exclusively, are not required to have a greater capital than one hundred thousand dollars; and such companies organized to insure the health of persons and against personal injuries, disablement or death resulting from traveling or general accidents by land or water, having an actual paid-up capital of one hundred thousand dollars and surplus in an amount

to be approved by the commissioner of insurance, exclusive of any assets deposited in other states and territories for the special benefit or security of the insured therein, shall be deemed sufficient within the meaning of this section. [C., '73, § 1144; C., '97, § 1721; S. S., '15, § 1721; 37 G. A., ch. 429, § 18; 38 G. A., ch. 346, § 1.]

8952. Commissioner as process agent. Any foreign company desiring to transact the business of insurance under this chapter, by an agent or agents in the state, shall file with the commissioner of insurance a written instrument, duly signed and sealed, authorizing such commissioner to acknowledge service of notice or process for and in behalf of such company in this state, and consenting that service of notice or process may be made upon the said commissioner, and when so made shall be taken and held as valid as if served upon the company according to the laws of this or any other state, and waiving all claim, or right, or error, by reason of such acknowledgment of service. [C., '73, § 1144; C., '97, § 1722.]

8953. Manner of service. Such notice or process with a copy thereof may be mailed to the commissioner of insurance at Des Moines, Iowa, in a registered letter addressed to him by his official title, and he shall immediately upon its receipt acknowledge service thereon on behalf of the defendant foreign insurance company by writing thereon, giving the date thereof, and shall immediately return such notice or process in a registered letter to the clerk of the court in which the suit is pending, addressed to him by his official title, and shall also forthwith mail such copy, with a copy of his acknowledgment of service written thereon, in a registered letter addressed to the person or corporation who shall be named or designated by such company in such written instrument. [C., '97, § 1722.]

8954. Additional statements—impaired capital. Such company shall also file with the commissioner a certified copy of its charter or deed of settlement, together with a statement under oath of the president or vice president or other chief officer and the secretary of the company for which they may act, stating the name of the company, the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this state, and a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by liabilities as specified in this chapter to the extent of twenty per cent thereof, while such deficiency shall continue. [C., '73, § 1144; C., '97, § 1722.]

8955. Foreign mutual companies—surplus. Any mutual insurance company organized outside of this state and authorized to transact the business of insurance on the mutual plan in any other state of the United States or in

the District of Columbia, may be admitted to this state and authorized to transact herein any of the kinds of insurance authorized by its charter or articles of incorporation, when so permitted by the provisions of this chapter, with the powers and privileges and subject to the conditions and limitations specified in said chapter; provided, however, such company has complied with all the statutory provisions which require stock companies to file papers and to furnish information and to submit to examination, and is also solvent according to the requirements of this chapter and is possessed of a surplus safely invested as follows:

1. In case any such mutual company issuing policies for a cash premium without an additional contingent liability equal to or greater than the cash premium, the surplus shall be at least two hundred thousand dollars.

2. In case of any other such mutual company issuing policies for a cash premium or payment with an additional contingent liability equal to or greater than the cash premium or payment, the surplus shall be such an amount as the commissioner of insurance of Iowa may require, but in no case less than fifty thousand dollars, provided that the provisions of this section fixing a minimum surplus of fifty thousand dollars shall not apply to companies now admitted to do business in Iowa; provided, further, that no such mutual company shall be authorized to transact compensation insurance without a surplus of at least two hundred thousand dollars unless all liability for each adjusted claim in this state, the payment of any part of which is deferred for more than one year, shall be provided for by a special deposit, in a trust company of this state, which shall be a trust fund applicable solely and exclusively to the payment of the compensation benefits for which such deposit is made, or shall be reinsured in an authorized stock company, or in an authorized mutual company with a surplus of at least two hundred thousand dollars. [C., '73, § 1144; C., '97, § 1723; 37 G. A., ch. 429, § 19.]

8956. Certificate to foreign company. When any foreign company has fully complied with the requirements of law and become entitled to do business, the commissioner of insurance shall issue to such company a certificate of that fact, which certificate shall be renewed annually on the first day of April, if the commissioner is satisfied that the capital, securities, and investments of such company remain unimpaired, and the company has complied with the provisions of law applicable thereto. [C., '73, § 1146; C., '97, § 1724; 40 G. A., ch. 176, § 2.]

8957. Agent's certificate of authority. No agent shall directly or indirectly act for any insurance company referred to in this chapter, in taking risks or transacting business of insurance in the state, without procuring from the commissioner of insurance a certificate of authority to the effect that such company has complied with all the requirements of this chapter. [C., '73, § 1145; C., '97, § 1725.]

8958. Notes taken for insurance. All notes taken for policies of insurance in any company doing business in the state shall state upon their face that they have been taken for insurance, and shall not be collectible unless the company and its agents have fully complied with the laws of the state relative to insurance. [C., '73, § 1146; C., '97, § 1726.]

8959. Forfeiture of policies — notice. No policy or contract of insurance provided for in this chapter shall be forfeited or suspended for nonpayment of any premium, assessment or installment provided for in the policy, or in any note or contract for the payment thereof, unless within thirty days prior to, or on or after the maturity thereof, the company shall serve notice in writing upon the insured that such premium, assessment, or installment is due or to become due, stating the amount, and the amount necessary to pay the customary short rates, up to the time fixed in the notice when the insurance will be suspended, forfeited, or canceled, which shall not be less than thirty days after service of such notice, which may be made in person, or by mailing in a registered letter addressed to the insured at his postoffice as given in or upon the policy, and no suspension, forfeiture, or cancellation shall take effect until the time thus fixed and except as herein provided, anything in the policy, application or a separate agreement to the contrary notwithstanding. [C., '97, § 1727.]

8960. Cancellation of policy. At any time after the maturity of a premium, assessment, or installment provided for in the policy, or any note or contract for the payment thereof, or after the suspension, forfeiture, or cancellation of any policy or contract of insurance, the insured may pay to the company the customary short rates and costs of action, if one has been commenced or judgment rendered thereon, and may then, if he so elect, have his policy and all contracts or obligations connected therewith, whether in judgment or otherwise, canceled, and they and each of them thereafter shall be void; and in case of suspension, forfeiture, or cancellation of any policy or contract of insurance, the assured shall not be liable for any greater amount than the short rates earned at the date of such suspension, forfeiture, or cancellation and the costs herein provided. The policy may be canceled by the insurance company by giving five days' notice of such cancellation, in which event it may retain only the pro rata premium. [C., '97, § 1728; S., '13, § 1728.]

8961. Short rates. The commissioner of insurance shall prepare and publish a table of the short rates provided for in the two preceding sections, which, when published, shall be for the guidance of all companies covered in this chapter, and the rate to be given in the notice therein provided, and no greater sum than thus fixed shall be demanded or collected. A copy of said short rates shall be printed on or attached to each policy. [C., '97, § 1729.]

8962. Policy restored. At any time before cancellation of the policy for nonpayment of any premium, assessment, or installment provided for therein, or in any note or contract for the payment thereof, or after action commenced or judgment rendered thereon, the insured may pay to the insurer the full amount due, including court costs if any, and from the date of such payment, or the collection of the judgment, the policy shall revive and be in full force and effect, provided such payment is made during the term of the policy and before a loss occurs. [C., '97, § 1730.]

8963. Right of insured to cancel. No provision, stipulation or agreement to the contrary in or independent of the policy or contract of insurance shall avoid or defeat the right of any insured to pay short rates and costs of action, if any, and have the policy and all contracts connected therewith, including judgments rendered thereon, canceled. [C., '97, § 1730.]

8964. Examination—dissolution. The commissioner of insurance shall, when he finds it expedient, appoint one or more persons, not officers, agents, or stockholders of any insurance company doing business in the state, to examine into the affairs and condition of any such company incorporated or doing business therein, or make such examination himself, and the officers or agents thereof shall produce their books for the inspection of the examiners and otherwise assist therein, so far as they can do so; and in conducting the investigation they may examine under oath the officers or agents of any company, or others, relative to the business and condition of the company, and the result thereof shall be published in one or more papers in the state, when the commissioner believes the public interest requires it. When it appears to the commissioner from such examination that the assets and funds of any company incorporated in this state are reduced or impaired by its liabilities, as defined under the head of liabilities in the statement required by this chapter, more than twenty per cent below the paid-up capital stock required, he shall direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney general, who shall apply to the district court, or if in vacation to one of the judges thereof, for an order requiring the company to show cause why its business shall not be dissolved. The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, it or he shall decree a dissolution of said company and a distribution of its effects, and appoint a receiver therefor. The application of the attorney general may be by the court or judge sent to a referee to inquire

into and report upon the facts stated therein, which report shall be made to the court or judge. [C., '73, § 1149; C., '97, § 1731.]

8965. Requisition on stockholders—personal liability. Any company receiving such a requisition from the commissioner of insurance shall forthwith call upon its stockholders for such amounts as will make its paid-up capital equal to the amount fixed by this chapter or the articles of incorporation of said company; and in case any stockholder shall refuse or neglect to pay the amount called for after notice personally given, or by advertisement in such time and manner as the commissioner shall approve, it shall be lawful for the company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of the said company may be found to bear to its original capital, the value of such shares for which new certificates shall be issued to be ascertained under the direction of the commissioner, the company paying for the fractional parts of shares, and the directors of such company may issue new stock and dispose of the same, and issue new certificates therefor, to an amount sufficient to make up the original capital of the company. In the event of additional losses accruing upon new risks, taken after the expiration of the period limited by the commissioner in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof. [C., '73, § 1150; C., '97, § 1732.]

8966. Mutual companies—dissolution—personal liability. If, upon such examination, it shall appear to the commissioner of insurance that the assets of any company organized or operating upon the plan of mutual insurance under this chapter are insufficient to justify the continuance of such company in business, he shall proceed in relation to such company in the same manner as herein required in regard to stock companies; and the trustees or directors of such company are made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by the commissioner for filling up the deficiency in the assets or premium notes, and before such deficiency shall have been made up. [C., '73, § 1151; C., '97, § 1733.]

8967. Transfers pending investigation. Any transfer of the stock of any company organized under this chapter, made pending any investigation above required, shall not release the party making the transfer from any liability for losses which may have accrued previous to such transfer. [C., '73, § 1151; C., '97, § 1734.]

8968. Revocation of certificate of foreign company. The commissioner of insurance shall

be authorized to examine into the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under its laws, or cause such examination to be made by some person or persons appointed by him having no interest in any insurance company; and when it shall appear to his satisfaction that the affairs of any such company are in an unsound condition, he shall revoke the certificates granted in its behalf, and cause a notification thereof to be published in some newspaper of general circulation, published at the seat of government, and no agent or agents of such company after such notice shall issue policies or renew any previously issued. [C., '73, § 1152; C., '97, § 1735.]

8969. Laws of other states—reciprocity. When, by the laws of any other state, any taxes, fines, penalties, licenses, fees, deposits of money, securities, or other obligations or prohibitions are imposed, or would be imposed, on insurance companies of this state, doing, or that might seek to do business in such other state, or upon their agents therein, so long as such laws continue in force the same obligations and prohibitions of whatever kind shall be imposed upon all insurance companies of such other state doing business in this state, or upon their agents here. [C., '73, § 1154; C., '97, § 1736.]

8970. Certificates of compliance—how published. The commissioner of insurance shall annually, as soon as practicable after the first of March, publish in two newspapers of general circulation, a statement made up from the annual report of every insurance company of the character provided for in this chapter and doing business in this state whether organized under the laws of this or any other state, which statements shall contain a synopsis of the company's annual report and shall show that the company has in all respects complied with the laws of the state relating to insurance and is authorized to transact business in the state. One publication as above contemplated, shall be made at the seat of government, and in case of companies organized in this state and located elsewhere than in the city of Des Moines, the other shall be made in the county in which the home office of the company is located. The fee for each publication shall be six dollars, which shall be paid to the commissioner at the time and in the manner provided for in section 9007, and shall be by him paid to the papers making the publication upon receipt of a bill for same, together with an affidavit by the publisher or foreman showing that such publication has been properly made, the same to be filed within thirty days from the date of such publication. [C., '73, § 1155; C., '97, § 1737; S., '13, § 1737.]

8971. False statement of assets. No company transacting the business of fire insurance within the state shall state or represent by advertisement in any newspaper, magazine, or

periodical, or by any sign, circular, card, policy of insurance, or renewal certificate thereof or otherwise, any funds or assets to be in its possession and held available for the protection of holders of its policies unless so held, except the policy of insurance or certificate of renewal thereof may state, as a single item, the amount of capital set forth in the charter, or articles of incorporation, or association, or deed of settlement under which it is authorized to transact business. [C., '97, § 1738.]

8972. Statement of capital and surplus. Every advertisement or public announcement, and every sign, circular, or card issued or published by any foreign company transacting the business of fire insurance in the state, or by any officer, agent, or representative thereof, which shall purport to make known its financial standing, shall exhibit the capital actually paid in in cash, and the amount of net surplus of assets over all its liabilities actually held and available for the payment of losses by fire and for the protection of holders of fire policies, and shall also exhibit the amount of net surplus of assets over all liabilities in the United States actually available for the payment of losses by fire and held in the United States for the protection of holders of fire policies in the United States, including in such liabilities the fund reserved for reinsurance of outstanding risks, and the same shall correspond with the latest verified statement made by the company or association to the commissioner of insurance. No such company shall write, place, or cause to be written or placed, any policy or contract for insurance upon property situated or located in this state except through its resident agent or agents. [C., '97, § 1739.]

8973. Violations. Any violation of the provisions of the two preceding sections shall for the first offense subject the company, association, or individual guilty thereof to a penalty of five hundred dollars, to be recovered in the name of the state, with costs, in an action instituted by the county attorney, either in the county in which the company, association, or individual is located or transacts business, or in the county where the offense is committed, and such penalty, when recovered, shall be paid into the school fund of the county in which action is brought. Every subsequent violation of said sections shall subject the company, association, or individual to a penalty of one thousand dollars, to be sued for, recovered, and disposed of in like manner. [C., '97, § 1740.]

8974. Copy of application—duty to attach. All insurance companies or associations shall, upon the issue or renewal of any policy, attach to such policy, or indorse thereon, a true copy of any application or representation of the assured which, by the terms of such policy, are made a part thereof, or of the contract of insurance, or referred to therein, or which may

in any manner affect the validity of such policy. [C., '97, § 1741.]

NOTE: For similar provisions, see §§ 8772 and 8798.

8975. Failure to attach—effect. The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of the preceding section it shall forever be precluded from pleading, alleging, or proving any such application or representations, or any part thereof, or falsity thereof, or any parts thereof, in any action upon such policy, and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at his option. [C., '97, § 1741.]

NOTE: For similar provisions, see §§ 8773 and 8794.

8976. Presumption as to value. In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as prima facie evidence of the insurable value of the property at the date of the policy. [C., '97, § 1742.]

NOTE: For similar provisions, see § 9049.

8977. Value of building—liability. The insurance company or association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said insurance company or association shall be liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount stated in the policy. [C., '97, § 1742.]

NOTE: For similar provisions, see § 9050.

8978. Prima facie right of recovery. In an action on such policy it shall only be necessary for the assured to prove the loss of the building insured, and that he has given the company or association notice in writing of such loss, accompanied by an affidavit stating the facts as to how the loss occurred, so far as they are within his knowledge, and the extent of his loss. [C., '97, § 1742.]

NOTE: For similar provisions, see §§ 8774, 8775, 8979, 8986, and 9045.

8979. Proofs of loss of personal property. In furnishing proofs of loss, under any contract of insurance for damages or loss of personal property it shall only be necessary for the assured, within sixty days from the time the loss occurs, to give notice in writing to the company issuing such contract of insurance accompanied by an affidavit, stating the facts as to how the loss occurred, so far as same are within his knowledge, and the extent of the loss, any agreement or contract to the contrary notwithstanding. [S., '13, § 1742-a.]

NOTE: For similar provisions, see §§ 8774, 8775, 8978, 8986, and 9045.

8980. Invalidating stipulations—avoidance. Any condition or stipulation in an application, policy, or contract of insurance, making the policy void before the loss occurs, shall not prevent recovery thereon by the insured, if it shall be shown by the plaintiff that the failure to observe such provision or the violation thereof did not contribute to the loss. [C., '97, § 1743; S., '13, § 1743.]

8981. Conditions invalidating policy. Any condition or stipulation referring:

1. To any other insurance, valid or invalid, or
2. To vacancy of the insured premises, or
3. To the title or ownership of the property insured, or
4. To lien, or incumbrances thereon created by voluntary act of the insured and within his control, or
5. To the suspension or forfeiture of the policy during default or failure to pay any written obligation given to the insurance company for the premium, or
6. To the assignment or transfer of such policy of insurance before loss without the consent of the insurance company, or
7. To the removal of the property insured, or
8. To a change in the occupancy or use of the property insured, if such change or use makes the risk more hazardous, or
9. To the fraud of the insured in the procurement of the contract of insurance—

shall not be changed or affected by the provision of the preceding section. [C., '97, § 1743; S., '13, § 1743.]

8982. Arbitration agreements. No recovery on a policy or contract of insurance shall be defeated for failure of the insured to comply, after a loss occurs, with any arbitration or appraisal stipulation as to fixing value of property. No arbitration shall take place except where the property was situated at the time of loss. [C., '97, § 1743; S., '13, § 1743.]

8983. Right to rebuild. Any agreement, stipulation, or condition in any policy or contract of insurance by which any insurance company reserves or has the right to rebuild shall be void and of no effect in case of total loss, or where the amount of loss, upon the request of the insurance company, has been submitted to arbitration. [C., '97, § 1743; S., '13, § 1743.]

8984. Pleadings. Nothing in the four preceding sections shall be construed to change the limitations or restrictions respecting the pleading or proving of any defense by any insurance company to which it is subject by law. [C., '97, § 1743; S., '13, § 1743.]

8985. Applicability of statute. The provisions of the five preceding sections shall apply to all contracts of insurance on real and personal property. [C., '97, § 1743; S., '13, § 1743.]

8986. Notice and proof of loss—limitation of actions. The notice of loss and proof thereof

required in section 8978, and the notice and proof of loss under oath in case of insurance on personal property, shall be given within sixty days from the time loss occurred, and no action for such loss shall be begun within forty days after such notice and proofs have been given to the company, nor shall the time within which action shall be brought be limited to less than one year from the time when a cause of action for the loss accrues. No provisions of any policy or contract to the contrary shall affect the provisions of this and the ten preceding sections. [C., '97, § 1744; S., '13, § 1744.]

NOTE: For similar provisions, see §§ 8774, 8775, 8978, 8979, 9045, and 9048.

8987. More favorable conditions. Nothing contained in the preceding section or in section 8979 shall be so construed as to prohibit any insurance company not required by the statutes of Iowa to issue a standard form of policy, from embodying, with the approval of the commissioner of insurance, in any insurance contract issued by it, provisions or conditions which are more favorable to the insured than those authorized in said statutes. [38 G. A., ch. 348, § 5.]

8988. Forms of policies — approval. The form of all policies or permits issued or proposed to be issued by any insurance company doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance. [C., '97, § 1745; S., '13, § 1745; 38 G. A., ch. 348, § 6.]

8989. Special policy requirements. Such commissioner shall refuse to authorize it to do business or to renew its permission to do business when the form of policy issued or proposed to be issued does not provide for the cancellation of the same at the request of the insured upon equitable terms, and the return to the insured of any premium paid in excess of the customary short rates for the insurance up to the time of cancellation, or the release of the insured from any liability beyond such short rates, or for losses after the cancellation of the policy if the insurance be in a mutual company; and in case any company or association shall issue any policies not containing such provision, it shall be the duty of the commissioner to revoke the authority of such company or association to do business. [C., '97, § 1745; S., '13, § 1745; 38 G. A., ch. 348, § 6.]

8990. Coinsurance—void stipulations. Any provisions, contract, or stipulation contained in any policy of insurance, issued by any insurance company doing business in the state under the provisions of this chapter, providing or stipulating that the insured shall maintain insurance on any property covered by such policy to any extent, or shall to any extent be an insurer of the property insured in such policy, or shall bear any portion of the loss

on the property insured, shall be void; and the commissioner of insurance shall refuse to authorize any such company to do business or to renew the authority or the certificate of any such company when the form of policy issued or proposed to be issued contains any such provision, contract, or stipulation. [C., '97, § 1746; S., '13, § 1746; 40 G. A., ch. 180, § 1.]

8991. Coinsurance riders—exceptions. Upon the written request of any person desiring insurance, a rider providing for coinsurance may be attached to and become a part of the policy, but in no case shall such rider apply to dwellings or farm property. [S., '13, § 1746; 37 G. A., ch. 185, § 1; 40 G. A., ch. 180, § 1.]

8992. Request for coinsurance rider—signing. The request for the application of the coinsurance clause or rider to any policy of insurance shall be written or printed on a single sheet of paper which shall contain nothing but the request hereinafter set out, and said request must be signed by the insured and a copy thereof be left with him by the agent at the time the insurance is applied for. [S., '13, § 1746; 40 G. A., ch. 180, § 1.]

8993. Form of request. No form of request for coinsurance except the following shall be used by any company doing business within this state:

REQUEST FOR THE APPLICATION OF THE COINSURANCE CLAUSE

In consideration of a reduction from the established rate of per cent to per cent in premiums to be paid to the..... insurance company for insurance upon the following described property

I hereby request that a coinsurance rider be attached to the policy to be issued by said company, and hereby agree that during the life of the policy I will maintain insurance of the character mentioned in said policy upon said property, to the extent of at least per cent of the actual cash value thereof at the time of loss, and that failing to do so, I shall become a coinsurer to the extent of such deficit.

Before signing this request or the coinsurance rider to be attached to the policy to be issued, I carefully read each of them and fully understand that in case I shall fail to maintain insurance of the character mentioned in the policy on the previously described property to the extent above provided, then in the event of loss or damage this company shall not be liable for a greater per cent of the loss or damage to said property than the total amount of insurance maintained bears to per cent of the actual cash value of the property insured at the time of loss.

Date Insured. [S., '13, § 1746; 37 G. A., ch. 185, § 1; 40 G. A., ch. 180, § 1.]

8994. Signing of rider. The coinsurance rider to be used shall be signed by both the agent and the insured, and a copy thereof shall be left with the insured at the time the application is made for insurance. [S., '13, § 1746; 40 G. A., ch. 180, § 1.]

8995. Form of rider. The rider shall be in form and restrictions as follows:

IOWA COINSURANCE AND REDUCED RATE CLAUSE

(This clause must be signed by both the insured and the agent).

In consideration of the acceptance by the insured of a reduction in premiums from the established rate of per cent to per cent, it is hereby agreed that the insured shall maintain insurance during the life of this policy upon the property insured, to the extent of at least per cent of the actual cash value thereof at the time of loss, and, that failing to do so, the insured shall be a coinsurer to the extent of such deficit.

This clause, at the request of the insured, is attached to and forms part of policy number of the insurance company of and shall in no case apply to dwellings or farm property.

..... Insured
Date Agent
[S., '13, § 1746; 40 G. A., ch. 180, § 1.]

8996. Stipulation as to prorating. No condition or stipulation in a policy of insurance fixing the amount of liability or recovery under such policy with reference to prorating with other insurance on property insured shall be valid except as to other valid and collectible insurance, any agreement to the contrary notwithstanding. [C., '97, § 1746; S., '13, § 1746; 40 G. A., ch. 180, § 1.]

8997. Limitation on coinsurance riders. The request and the rider hereinbefore referred to shall only be permitted to be used in connection with insurance contracts issued in this state against the hazards of fire, lightning, tornadoes, cyclones, windstorms, and sprinkler leakage. [S., '13, § 1746; 40 G. A., ch. 180.]

8998. Compliance with law — change of articles. Every insurance company organized under the laws of or doing business in this state shall conform to all the provisions of this chapter and to other laws of this state, whether now existing or hereafter enacted, applicable thereto, and when necessary any existing company shall change its charter and by-laws so as to conform thereto, by a vote of a majority of its board of directors. [C., '73, § 1147; C., '97, § 1747.]

8999. Violations. Any officer, manager, or agent of any insurance company or association who, with knowledge that it is doing business in an unlawful manner, or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such

company or association, shall be guilty of a misdemeanor, and for every such act, on conviction thereof, shall be adjudged to pay a fine of not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not exceeding one year, or be punished by both such fine and imprisonment. [C., '73, § 1147; C., '97, § 1747.]

9000. Officers punished. Any president, secretary, or other officer of any company organized under the laws of this state, or any officer or person doing or attempting to do business in this state for any insurance company organized either within or without this state, failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail for a period not less than thirty days nor more than six months. [C., '73, § 1147; C., '97, § 1748.]

9001. Advertisements. Every agent of any insurance company shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town, or village in which it is located, and the state or government under the laws of which it is organized. [C., '73, § 1148; C., '97, § 1749.]

NOTE: For applicability of above section and the four following sections to life insurance companies and associations, see § 8731.

9002. "Soliciting agent" defined. Any person who shall hereafter solicit insurance or procure application therefor shall be held to be the soliciting agent of the insurance company or association issuing a policy on such application or on a renewal thereof, anything in the application, policy, or contract to the contrary notwithstanding. [C., '73, § 1148; C., '97, § 1749.]

9003. Agent—general definition. The term "agent" used in the foregoing sections of this chapter shall include any other person who shall in any manner directly or indirectly transact the insurance business for any insurance company complying with the laws of this state. [C., '97, § 1750.]

9004. Agent—specific definition. Any officer, agent, or representative of an insurance company doing business in this state who may solicit insurance, procure applications, issue policies, adjust losses, or transact the business generally of such companies, shall be held to be the agent of such insurance company with authority to transact all business within the scope of his employment, anything in the application, policy, contract, by-laws, or articles of incorporation of such company to the contrary notwithstanding. [C., '97, § 1750.]

9005. Exceptions. Members of mutual assessment associations which pay no commission, reward or gratuity for the procuring of applications for membership, the income of

which associations is derived solely from assessments, dues and fees collected from its members for the sole purpose of meeting loss and expenses, shall not be deemed to be agents under any section of this chapter. [39 G. A., ch. 123, § 1.]

9006. Applicability to organizations and individuals. The provisions of the foregoing sections relative to insurance companies shall apply to all such companies, partnerships, associations, or individuals, whether incorporated or not. [C., '73, § 1148; C., '97, § 1751.]

9007. Fees. There shall be paid to the commissioner of insurance for services required under the provisions of this chapter the following fees, which shall be accounted for by him in the same manner as other fees received in the discharge of the duties of his office:

1. For filing and examination of the first application of any company and accompanying articles of incorporation for organization in this state, and the issuing of the permission to do business, ten dollars.

2. For filing application of any foreign company for certificate to do business in this state, and the accompanying certified copy of charter or articles of incorporation, twenty-five dollars.

3. For permission to foreign company to do business in this state, or certified copy thereof, two dollars.

4. For filing annual statement of a domestic company, and issuing the renewal of the permission required by law to authorize continuance in business, three dollars.

5. For filing annual statement of a foreign company, twenty dollars, and issuing renewal of permission, two dollars.

6. For certificate of authority to agent of foreign company, two dollars.

7. For each certificate of authority to agent of domestic company, fifty cents.

8. For every copy of any paper filed, the sum of twenty cents per folio, and for affixing the official seal to such copy and certifying the same, one dollar.

9. For each certificate for publication of foreign companies, two dollars, and for each certificate for publication of Iowa companies, fifty cents. [C., '73, § 1153; C., '97, § 1752; S., '13, § 1752.]

9008. Expenses of examination. The necessary expenses of any examination of any insurance company made or ordered to be made by the commissioner of insurance under this chapter shall be certified to by him, and paid on his requisition by the company so examined; and in case of failure of the company to make such payment, the commissioner shall suspend such company from doing business in this state until such expenses are paid. If such expenses are not paid by the company, they shall be audited by the state board of audit and paid out of the state treasury. [C., '73, § 1156; C., '97, § 1753.]

9009. Examination of foreign companies. In no case shall any foreign insurance company be examined except by order of executive council. [C., '97, § 1753.]

9010. Unlawful combinations. It shall be unlawful for two or more insurance companies doing business in this state, or for the officers, agents, or employees of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the insurance business within this state. [C., '97, § 1754; 38 G. A., ch. 318, § 1.]

9011. Violations. Any such company, officer, agent, or employee violating the above provision shall be guilty of a misdemeanor, and on conviction thereof shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered in the name of the state for the use of the permanent school fund. [C., '97, § 1754.]

9012. Examination of officers and employees. The commissioner of insurance is authorized to summon before him, for examination under oath, any officer, agent, or employee of any such company suspected of violating any of the provisions of the second preceding section, and, on complaint to him in writing by two or more residents of this state charging such company under oath upon their knowledge or belief with violating the provisions of the said second preceding section, he shall summon any officer, agent, or employee of said company before him for examination under oath. [C., '97, § 1755.]

9013. Revocation of authority. If upon such examination, and that of any other witness produced and examined, he shall determine that such company is guilty of a violation of any of the provisions of the said section, or if any such officer, agent, or employee after being duly summoned shall fail to appear or submit to examination, the commissioner shall forthwith issue an order revoking the authority of such company to transact business within this state, and it shall not thereafter be permitted to do the business of fire insurance in this state at any time within one year therefrom. [C., '97, § 1755.]

9014. Appeal. Either party may appeal from the decision of the commissioner of insurance, made pursuant to the preceding section, to the district court of the county where the same was made, within twenty days from the time of the rendition of such decision, by serving a written notice of such appeal on the opposite party and on the commissioner, and filing with the clerk of said court a good and sufficient bond for the payment of all costs on the appeal in case the decision shall be affirmed. On such appeal said court shall try the case de novo, as equitable causes are tried, and on

such evidence as either party may produce, and may reverse, modify, or affirm the decision of the commissioner. [C., '97, § 1756.]

9015. Incrimination. The statements and declarations made or testimony given by any such officer, agent, or employee in the investigation before the commissioner of insurance, or upon the hearing and trial before the district court, as provided in the three preceding sections, shall not be used against the person making the same in any criminal prosecution against him. [C., '97, § 1757.]

9016. Insurance in unauthorized companies. No action shall be maintained in any court in the state upon any policy or contract of fire insurance issued upon any property situated in the state by any company, association, partnership, individual, or individuals that have not been authorized by the commissioner of insurance to transact such insurance business, unless it shall be shown that the insurer or insured, within six months after the issuing of such policy or contract of insurance, has paid into the state treasury two and one-half per cent of the gross premium paid or agreed to be paid for such policy or contract of insurance. [C., '97, § 1758.]

9017. Standard policy — additions, riders, and clauses. It shall be unlawful for any insurance company to issue any policy of fire insurance upon any property in this state except upon automobiles and marine risks other or different from the standard form of fire insurance policy herein set forth except:

I. It may print in its policy its name, location, date of incorporation, amount of its paid-up capital stock (if a stock company), names of its officers and agents, the number and date of the policy, the amount (under dollar mark) for which it is issued, and if issued through an agent the words: "This policy shall not be valid until countersigned by the duly authorized agent of this company at

II. It may use in or upon its policy forms or slips of the description, location, and specifications of the property insured, together with permits upon such conditions not in conflict with the provisions of law, as may be agreed upon, for the use or storage of electricity, gasoline, explosives, or other extra hazardous products or materials; for repairs or improvements; for the operation or ceasing to operate; and for the vacancy of the premises; and permits for hazards other than those specifically mentioned above; also a mortgagee's or loss payable clause, and other permits or riders, not in conflict with law.

III. It may also by written or printed clause upon such conditions not in conflict with the provisions of law as may be agreed upon, provide that a policy shall cover any loss or damage caused by lightning, tornadoes, cyclones, hail, or windstorms not exceeding the sum insured or the interest of the insured in the property; provided if there shall be other valid insurance on such property, whereby the same is insured against loss by lightning, tornadoes,

cyclones, hail, or windstorms, said company shall be liable only pro rata with such other valid and collectible insurance for any such loss by lightning, tornadoes, cyclones, hail, or windstorms.

IV. Any company incorporated in this state, or authorized to do business herein, shall print in its policy or attach thereto any provision which such company is required by law to insert in its policies or attach thereto, not included in the provisions of this policy, but such provisions shall be printed apart from the other conditions and agreements of this policy and under a separate title as follows: "Provisions required by law to be stated in the policy of insurance".

V. It shall print upon its policy issued in compliance with the preceding provisions of this section, the words: IOWA STANDARD FIRE INSURANCE POLICY. [S., '13, § 1758-a.]

9018. Form of standard policy. The policy shall be plainly printed, and no part thereof shall be in type smaller than brevier; the conditions thereof shall be printed in uniform numbered lines, as adopted and approved by the commissioner of insurance, and such policy shall be in terms and conditions as follows:

I. In consideration of the stipulations herein named and of dollars,.... does insure....
..... for the term of from the day of 19.... at noon (standard time), to the day of 19.... at noon (standard time), against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding dollars, to the following described property, while located and contained as described herein, and not elsewhere, to wit:

.....
.....

It is hereby agreed that the insured may obtain \$. additional insurance in companies authorized to do business in the state of Iowa.

II. This company shall not be liable beyond the actual cash value of the property covered by this policy at the time any loss or damage occurs, and said liability shall in no event exceed what it would cost the insured to repair or replace the property lost or damaged with material of like kind and quality. The sum for which this company is liable pursuant to this policy, shall be payable forty days after due notice and proofs of loss have been received by this company in accordance with law.

III. This policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof.

IV. Unless otherwise provided by agreement of this company this policy shall be void:

a. If the insured now has or shall hereafter procure any other contract of insurance valid or invalid on the property covered in whole or in part by this policy; or

b. If the subject of insurance be a manufacturing establishment, and it cease to be operated for more than ten consecutive days; or

c. If the building herein described, whether intended for occupancy by the owner or tenant be or become vacant or unoccupied and so remain for ten consecutive days; or

d. If the interest of the insured be other than unconditional and sole ownership; or

e. If the subject of insurance be a building on ground not owned by the insured; or

f. If any change other than by death of the insured whether by legal proceedings, judgment, voluntary act of the insured or otherwise, take place in the interest, title, possession, or use of the subject of insurance, if such change in the possession or use makes the risk more hazardous; or

g. If the subject of insurance or a part thereof (as to the part so encumbered) be or become encumbered by lien, mortgage, or otherwise created by voluntary act of the insured or within his control; or

h. If the property insured or any part thereof (as to the part so removed) be removed to any other building or location than that specified in the policy; or

i. If this policy be assigned before loss.

V. Unless otherwise provided by agreement of this company, this policy shall be void:

a. If the subject of insurance be a manufacturing establishment, and it be operated in whole or in part at night later than 10 o'clock; or

b. If the hazard be increased by any means within the knowledge of the insured; or

c. If mechanics be employed in building, altering, or repairing the within described premises for more than fifteen days at any one time; or

d. If illuminating gas or vapor be generated in any building covered hereby, or on any premises adjacent thereto for use upon the insured premises; or

e. If there be kept, used, or allowed on the within described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitroglycerine, or other explosives, phosphorus, calcium carbide, petroleum or any of its products of greater inflammability than kerosene of lawful standard, which last named article may be used for lights and kept for sale according to law, in quantities not exceeding five barrels; or

f. If the insured permits the property which is the subject of insurance, or any part thereof, to be used for any unlawful purpose.

Provided that nothing contained in paragraph V herein shall operate to avoid this policy in any case, if the insured shall establish that the failure to observe and comply with such provisions and conditions did not contribute to the loss.

VI. This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war, or military or usurped power, or by theft, or by neglect of the insured to use all reasonable means to save and preserve the property during and after a fire, or when the property is endangered by fire in neighboring premises; or (unless fire ensues,

and, in that event, for damage by fire only) by explosion of any kind or by lightning; but liability for direct damage by lightning may be assumed by specific agreement.

VII. This company shall not be liable for loss or damage to any property covered by this policy if the insured shall fail to pay any written obligation given to the company for the premium or any assessment or installment of premium when due; provided the company shall have given the insured notice as required by law. Upon payment and acceptance by the company of the delinquent premium, assessment, or installment of premium, before loss occurs, or after loss, if the company shall have had notice thereof and accepts such payment, this policy shall be revived and in full force according to its terms.

VIII. If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building, or its contents, shall immediately cease.

IX. This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes or securities; nor, unless liability is specifically assumed thereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, plate glass, frescoes or decorations; nor property held in storage nor for repairs; nor, beyond the actual value destroyed by fire for loss occasioned by ordinance or law regulating construction or repairs of buildings, or by interruption of business, manufacturing processes or otherwise.

X. Any application, survey, plan, or description of property signed by the insured and referred to in this policy shall, when a copy is attached hereto, be a part of this contract, and shall be held to be a representation and not a warranty.

XI. This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation either by registered letter directed to the insured at his last known address, or by personal written notice. If this policy shall be canceled as hereinbefore provided, or becomes void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rates; except that when this policy is canceled by this company by giving notice it shall retain only the pro rate premium.

XII. If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee, or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the provisions and conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest, as shall be agreed upon by the company.

XIII. If property covered by this insurance is so endangered by fire as to require removal

to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one new location bears to the value in all such new locations; but this company shall not in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total valid and collectible insurance on the whole property at the time of fire, whether the same cover in new location or not.

XIV. If loss occur the insured shall as soon as practicable after he ascertains the fact of such loss, give notice in writing thereof to the company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, and put it in the best possible order, and shall, within sixty days from date of loss, furnish this company with notice thereof in writing accompanied by affidavit stating the facts as to how the loss occurred and the extent thereof, so far as such facts are within his knowledge.

XV. The insured, as often as reasonably required, shall exhibit to any person designated by this company, all that remains of any property herein described as to which a claim for loss or damage is made, and submit to examination under oath by any person named by this company, and subscribe the same, and, as often as reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof, if originals be lost, at such reasonable place as may be designated by this company or its representatives, and shall permit extracts and copies thereof to be made; provided, however, that this company shall not be held to have waived any of the provisions or conditions of this policy or any forfeiture thereof by any examination or investigation herein provided for.

XVI. This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole amount of valid and collectible insurance covering such property.

XVII. No suit or action on this policy, for the recovery of any claim thereon, shall be sustainable in any court of law or equity, unless commenced within twelve months next after the right of action for the loss accrues.

XVIII. Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage".

XIX. This policy is issued and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements, or conditions now or hereafter specifically authorized by law as may be indorsed hereon or added hereto.

In witness whereof, this company has executed and attested these presents.

..... Secretary.
 President.
 Countersigned at this day of
 19.....
 Agent.
 [S., '13, § 1758-b.]

9019. Violations—status of policy. Any insurance company, its officers or agents, or either of them, violating any of the provisions of the two preceding sections, by issuing, delivering, or offering to issue or deliver any policy of fire insurance on property in this state other or different from the standard form, herein provided for, shall be guilty of a misdemeanor, and upon complaint made by the commissioner of insurance, or by any citizen of this state, shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than one hundred dollars for the first offense, and not less than one hundred dollars nor more than two hundred dollars for each subsequent offense, but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same, and such company shall, until the payment of such fine, be disqualified from doing any insurance business in this state; but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same. [S., '13, § 1758-c.]

9020. Existing statutes — waiver. Nothing contained in the three preceding sections nor any provisions or conditions in the standard form of policy provided for in section 9018, shall be deemed to repeal or in any way modify any existing statutes or to prevent any insurance company issuing such policy, from waiving any of the provisions or conditions contained therein, if the waiver of such provisions or conditions shall be in the interest of the insured. [S., '13, § 1758-d.]

9021. Policy—formal execution. Every fire insurance company and association authorized to transact business in this state shall conduct its business in the name under which it is incorporated, and the policies issued by it shall be headed or entitled only by such name. There shall not appear on the face of the policy or on its filing back, anything that would indicate that it is the obligation of any other than the company responsible for the payment of losses under the policy, though it will be permissible to stamp or print on the bottom of the filing back, the name or names of the department or general agency issuing the same. [S. S., '15, § 1758-e.]

9022. Misleading statements. No insurance company, or department or general agency of an insurance company, doing business in this state, or its officers or agents, shall issue any false or misleading advertisements through newspapers or other periodicals, or any false or misleading representations by signs, cards, letterheads, tending to conceal or misrepresent the true identity of the insurer or insurance

company, which is carrying the liability under any policy issued in this state.

Nor shall any insurance company, or department or general agency of an insurance company, doing business in this state issue any advertisement or representation of any character, giving the appearance of a separate or independent insuring organization on the part of any department or general agency, and the type or lettering used in any advertisement or representation shall set forth the name of the company or organization assuming the risk more conspicuously than that of any department or general agency. [S. S., '15, § 1758-f.]

9023. Violations. Any violation of the two preceding sections shall be punished by a fine of not exceeding five hundred dollars. [S. S., '15, § 1758-g.]

9024. Advertisements by agents. Nothing contained in sections 9021 and 9022 shall be construed to prevent any representative of an insurance company from advertising his own individual business without specific mention of the name of the company or companies which he may represent. [S. S., '15, § 1758-h.]

CHAPTER 405

EMPLOYERS' LIABILITY INSURANCE

9025. Reserve required.
9026. Terms defined.

9025. Reserve required. Every corporation, association, company, or reciprocal exchange writing any of the several classes of insurance authorized by paragraph *d* of subsection 5 of section 8940 shall maintain reserves for outstanding losses under insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable computed as follows:

1. For all liability suits being defended under policies written more than

a. Ten years prior to the date as of which the statement is made, one thousand five hundred dollars for each suit.

b. Five and less than ten years prior to the date as of which the statement is made, one thousand dollars for each suit.

c. Three and less than five years prior to the date as of which the statement is made, eight hundred fifty dollars for each suit.

2. For all liability policies written during the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty per cent of the earned liability premiums of each of such three years less all loss and loss expense payments made under liability policies written in the corresponding years; but in any event, such reserve shall, for the first of such three years, be not less than seven hundred and fifty dollars for each outstanding liability suit on said year's policies.

3. For all compensation claims under policies written more than three years prior to the date as of which the statement is made, the present values at four per cent interest of the determined and the estimated future payments.

4. For all compensation claims under policies written in the three years immediately preceding the date as of which the statement is made, such reserve shall be sixty-five per cent of the earned compensation premiums of each of such three years, less all loss and loss expense payments in connection with such claims under

9027. Distribution of unallocated payments.
9028. Reports required.

policies written in the corresponding years; but in any event, in the case of the first year of any of such three-year period such reserve shall be not less than the present value at four per cent interest of the determined and the estimated unpaid compensation claims under policies written during such year. [40 G. A., ch. 178, § 1.]

9026. Terms defined. The term "earned premiums" as used herein shall include gross premiums charged on all policies written, including all determined excess and additional premiums, less return premiums, other than premiums returned to policy holders as dividends, and less reinsurance premiums and premiums on policies canceled, and less unearned premiums on policies in force.

Any participating company which has charged in its premiums a loading solely for dividends shall not be required to include such loading in its earned premiums, provided a statement of the amount of such loading has been filed with and approved by the commissioner of insurance.

The term "compensation" as used in this chapter shall relate to all insurances affected by virtue of statutes providing compensation to employees for personal injuries irrespective of fault of the employer.

The term "liability" shall relate to all insurance, except compensation insurance, against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable.

The terms "loss payments" and "loss expense payments" as used herein shall include all payments to claimants, including payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, and field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses, and all other payments made on account of claims, whether

such payments shall be allocated to specific claims or unallocated. [40 G. A., ch. 178, § 2.]

9027. Distribution of unallocated payments. All unallocated liability loss expense payments made in a given calendar year subsequent to the first four years in which an insurer has been issuing liability policies shall be distributed as follows: Thirty-five per cent shall be charged to the policies written in that year, forty per cent to the policies written in the preceding year, ten per cent to the policies written in the second year preceding, ten per cent to the policies written in the third year preceding, and five per cent to the policies written in the fourth year preceding, and such payments made in each of the first four calendar years in which an insurer issues liability policies shall be distributed as follows: In the first calendar year one hundred per cent shall be charged to the policies written in that year, in the second calendar year fifty per cent shall be charged to the policies written in that year and fifty per cent to the policies written in the preceding year, in the third calendar year forty per cent shall be charged to the policies written in that year, forty per cent to the policies written in the preceding year, and twenty per cent to the policies written in the second year preceding, and in the fourth calendar year thirty-five per cent shall be charged to the policies written in that year, forty per cent to the policies written in the preceding year, fifteen per cent to the policies written in the second year preceding, and ten per cent to the policies written in the third year preceding, and a schedule showing such distribution shall be included in the annual statement.

All unallocated compensation loss expense payments made in a given calendar year sub-

sequent to the first three years in which an insurer has been issuing compensation policies shall be distributed as follows:

Forty per cent shall be charged to the policies written in that year, forty-five per cent to the policies written in the preceding year, ten per cent to the policies written in the second year preceding and five per cent to the policies written in the third year preceding, and such payments made in each of the first three calendar years in which an insurer issues compensation policies shall be distributed as follows: In the first calendar year one hundred per cent shall be charged to the policies written in that year, in the second calendar year fifty per cent shall be charged to the policies written in that year and fifty per cent to the policies written in the preceding year, in the third calendar year forty-five per cent shall be charged to the policies written in that year, forty-five per cent to the policies written in the preceding year and ten per cent to the policies written in the second year preceding, and a schedule showing such distribution shall be included in the annual statement.

Whenever, in the judgment of the commissioner of insurance, the liability or compensation loss reserves of any insurer under his supervision, calculated in accordance with the foregoing provisions, are inadequate, he may, in his discretion, require such insurer to maintain additional reserves based upon estimated individual claims or otherwise. [40 G. A., ch. 178, § 3.]

9028. Reports required. Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the commissioner of insurance may prescribe. [40 G. A., ch. 178, § 4.]

CHAPTER 406

MUTUAL FIRE, TORNADO, HAILSTORM AND OTHER ASSESSMENT INSURANCE ASSOCIATIONS

- 9029. Organization—purpose and powers.
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- 9066. Agents to be licensed.
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9029. Organization—purpose and powers. Any number of persons may by incorporating under chapter 384, enter into contracts with each other for the following kinds of insurance from loss or damage by:

1. Fire and lightning.
2. Tornado, cyclone, and windstorm.
3. Against any or all loss, expense and liability resulting from the ownership, maintenance, or use of any automobile or other vehicle; but shall not include, by county mutuals, insurance against bodily injury to the person.
4. Plate glass, against breakage of glass, local or in transit.
5. Hailstorms.
6. Theft of personal property.

For the purpose of this protection these contracts of insurance shall be subject only to such provisions as are contained in this chapter and shall consist of:

1. An application on blanks furnished by the association and signed by the insured or his representative, which may contain in addition to other provisions; the value of the property, the proper description thereof, the amount of other insurance and the incumbrance thereon, and agreement to be governed by the articles of incorporation and by-laws in force at the time the policy is issued, a representation that the foregoing statements are true as far as the same are known to the insured or material to the risk, and that the insurance shall take effect when approved by the secretary.

2. A policy issued by the association in accordance with its rules, and approved by the commissioner of insurance.

Such associations may insure risks of their members or may reinsure risks of other associations or companies; or may organize reinsurance associations for the reinsurance of risks.

The words "persons" and "members" as used in this chapter shall be construed to mean trustees, administrators, and all other individuals, public or private corporations or associations. [C., '73, § 1160; C., '97, § 1759; S., '13, § 1759-a; 37 G. A., ch. 42, § 1; 37 G. A., ch. 412, § 1; 39 G. A., ch. 120, § 1; 40 G. A., ch. 182.]

9030. County and state mutual associations. Any association incorporated under the laws of this state for the purpose of furnishing insurance as provided for in this chapter, doing business only within the county in which is situated the town or city named in its articles of incorporation as its principal place of business, or the counties contiguous thereto, shall for the purpose of this chapter, be deemed a county mutual assessment association; all other associations operating hereunder shall, for the purposes of this chapter, be deemed state mutual assessment associations, and such associations may do business throughout the state and in other states where they are legalized and authorized to do business. The words "mutual" and "association" shall be incorporated in and become a part of their name. [C., '97, § 1760; S., '13, § 1759-b; 39 G. A., ch. 120, § 2.]

9031. Meetings. Unless the time and place of holding the annual meeting of the members of any association transacting business under

the provisions of this chapter are plainly stated in their articles of incorporation or by-laws, twenty days' notice of the time and place of holding of said meetings shall be given to all members of the association. Annual meetings may adjourn from time to time. [S., '13, § 1759-o; 39 G. A., ch. 120, § 11.]

9032. Amendments to articles. Members of the association at such annual meetings shall have power to make or amend articles of incorporation or by-laws as they in their judgment may deem necessary. [S., '13, § 1759-o; 39 G. A., ch. 120, § 11.]

9033. Articles and by-laws part of policy. When such articles of incorporation and by-laws are printed on the policy they become a part thereof and are binding upon the association and the insured alike. [39 G. A., ch. 120, § 11.]

9034. Officers — éléction. Officers or directors shall be elected in the manner and for the length of time prescribed in the articles of incorporation or by-laws. [39 G. A., ch. 120, § 11; 40 G. A., ch. 183, § 2.]

9035. Policies — issuance — conditions. No state mutual assessment association shall issue policies until at least one hundred twenty-five applications have been received in any class as shown by section 9029, representing the following amount of insurance: Classes one, two, three, and five, two hundred fifty thousand dollars each; class four, one hundred thousand dollars, and no county mutual assessment association shall issue policies until applications for insurance to the amount of fifty thousand dollars representing at least fifty applicants have been received, and no application for insurance during the period of organization shall exceed two per cent of the amount required for organization, or after one year of organization, one per cent of the total insurance in force, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk. [C., '97, § 1761; S., '13, § 1759-c; 39 G. A., ch. 120, § 3.]

9036. Approval by commissioner. Neither shall any association issue policies of insurance until its articles of incorporation, by-laws and form of policy shall have been submitted to the commissioner of insurance and if upon examination of same he finds them to conform to the provisions of this chapter he shall at once issue to the association a certificate authorizing it to transact an insurance business. [C., '97, § 1761; S., '13, § 1759-c; 39 G. A., ch. 120, § 3.]

9037. Allowable assessments and fees. Such associations may collect a policy and contingent fee, and such assessments, provided for in their articles of incorporation and by-laws, as are required to pay losses and necessary expenses, and for the creation and maintenance of an emergency fund for the payment of excess losses and no part of such emergency

fund can be claimed by any member whose policy expires or is surrendered for cancellation. [C., '97, § 1765; S., '13, § 1759-h; 39 G. A., ch. 120, § 4.]

9038. Advance assessments. Any association may collect assessments for losses and expenses for one year in advance; or for more than one year in advance where such advance assessment does not exceed five mills on each dollar of insurance in force. [S., '13, § 1759-h; 39 G. A. ch. 120, § 4.]

9039. Borrowing money. In case the funds of any association are not sufficient to pay losses that have been reported or adjusted the association may borrow money for payment of losses until such time as it is practical to make an assessment or until the regular assessment period. [39 G. A., ch. 120, § 4.]

9040. Emergency fund. Funds raised by such associations which because of temporarily low rate of losses are not needed to pay losses and expenses in any year, may be passed to an emergency fund to be held for payment of excess losses in a subsequent year or years; such fund may be deposited in banks, or at the option of the board of directors may be invested in the classes of securities permitted by section 8927; but under the direction of the board of directors and with the consent of the commissioner of insurance a part of such fund may be invested in a home office building. [39 G. A., ch. 120, § 4.]

9041. Policies with fixed premiums. When the emergency fund of any association reaches an amount equal to one hundred per cent of the average cost per thousand on all policies in force for the full term for which assessment is collected and not less than one hundred thousand dollars or such amount of capital stock as is required of domestic companies, such associations may issue policies of fixed premiums. [C., '73, § 1160; 39 G. A., ch. 120, § 4.]

9042. Net assets required—liability of members. Associations using a basis rate whose risks consist principally of store buildings and their contents, manufacturing establishments, public garages, lumber yards, office buildings, hotels, theaters, moving picture houses, stocks of implements or automobiles, shall maintain at all times net assets equal to forty per cent of one annual assessment at the basis rate charged for such insurance on all policies in force, less deductions for reinsurance in authorized companies or associations; and may provide in its by-laws and specify in its policies the maximum liability of its members to the association; such liability shall not be less than a sum equal to the basis rate charged by the association for insurance nor greater than a sum equal to three times such basis rate. [S., '13, § 1759-i; 39 G. A., ch. 120, § 4; 40 G. A., ch. 183, § 1.]

9043. Hail associations — limited assessments. Hail associations may provide in their

by-laws and policies for a limited assessment in any one year; and if the proceeds of such assessment, and other funds on hand, do not equal the losses and expenses for the year, such total funds, after payment of expenses, shall be prorated among the holders of loss claims payable in such year which shall be in full payment for such loss. [39 G. A., ch. 120, § 4; 40 G. A., ch. 183, § 1.]

9044. Annual report. Each association doing business under the provisions of this chapter shall, annually, in the month of January report to the commissioner of insurance, upon blanks furnished by him, such facts as are required of domestic insurance companies organizing under chapter 404, as are applicable to this chapter. These reports shall be tabulated and published by the commissioner of insurance in the annual report of insurance, one copy of which shall be sent to each association. The county associations, the state associations, and those doing an exclusive tornado, an exclusive hailstorm, or an exclusive automobile insurance business shall be separately classified in said report. [C., '73, § 1160; C., '97, § 1762, 1763; S., '13, §§ 1759-d, 1759-e; 39 G. A., ch. 120, § 5.]

9045. Proof of loss—sixty day limit. In furnishing proofs of loss under any contract of insurance under this chapter for loss or damage it shall be necessary for the insured within sixty days from the time loss or damage occurs, to give notice in writing to the association issuing such contracts of insurance accompanied by an affidavit stating the facts as to how the loss occurred so far as the same are within the knowledge of the insured, the property destroyed or damaged, and the extent of the loss. [39 G. A., ch. 120, § 6.]

NOTE: For similar provisions, see §§ 8774, 8775, 8978, 8979, and 8986.

9046. Five day limit. In case of damage or loss to live stock by fire or lightning or loss or damage to automobiles by theft or fire, notice of such loss must be given the association by mailing written notice within five days from the time such loss or damage occurred. [39 G. A., ch. 120, § 6.]

9047. Ten day limit. In case of loss to growing crops by hail, notice of such loss must be given the association by mailing a registered letter within ten days from the time such loss or damage occurred. [39 G. A., ch. 120, § 6.]

9048. Limitation of action. No action on any loss shall be begun until the date when such loss becomes due in accordance with the articles of incorporation or by-laws of such association and in no event sooner than forty days after such proof has been given to the association and no action can be started after one year from the date such cause of action accrues. [39 G. A., ch. 120, § 6.]

NOTE: For similar provision, see § 8986.

9049. Presumption as to value. In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as prima facie evidence of the insurable value of the building at the date of the policy. [39 G. A., ch. 120, § 7.]

NOTE: For similar provision, see § 8976.

9050. Value of building—liability. The association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said association shall be liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount of insurance stated in the policy. [39 G. A., ch. 120, § 7.]

NOTE: For similar provision, see § 8977.

9051. Value of personal property—value of crops. In any action on a policy to recover loss or damage on personal property, the association shall not be liable in excess of the amount of damage or loss at the time the loss or damage occurs; provided that the value of growing crops may be stated in the policy or contract. [39 G. A., ch. 120, § 7.]

9052. Reinsurance—quo warranto. The commissioner of insurance may address inquiries to any association in relation to its doings and condition and any association so addressed shall promptly reply thereto in writing. If the commissioner of insurance is then satisfied that the association has failed to comply with any provisions of this law, or is exceeding its powers, or is not carrying out its contracts in good faith; or is transacting business fraudulently or soliciting insurance in territories where it is not legally admitted to do business, or is in such condition as to render the further transaction of business by it hazardous to the public or its policy holders, the business under his supervision and with the consent of the association may be reinsured in some mutual association, or he may present the facts relating thereto to the attorney general and if the circumstances warrant he may commence an action in quo warranto in a court of competent jurisdiction. [C., '97, § 1766; S., '13, § 1759-g; 39 G. A., ch. 120, § 8.]

9053. Decree — receivership. Such court shall thereupon notify the officers of such association of a hearing, and unless it shall then appear that some special and good reason exists why such association should not be closed, said association shall be enjoined from carrying on any further business, and some person shall be appointed receiver of such association and shall proceed at once to take possession of the books, papers, moneys, and other assets of the association and shall forthwith, under the direction of the court proceed to close the affairs of the association and to distribute its funds to those entitled thereto, or he may make an assessment pro rata on the membership liable to an assessment to pay

the legitimate debts of the association. [C., '97, § 1766; S., '13, § 1759-g; 39 G. A., ch. 120, § 8.]

9054. Cancellation by association—notice. Any policy of insurance issued by any association operating under the provisions of this chapter may be canceled by the association giving five days' written notice thereof to the insured. [S., '13, § 1759-m; 39 G. A., ch. 120, § 9.]

9055. Cancellation by insured—conditions. If the insured shall demand in writing or in person of the association the cancellation of policy, the association shall immediately advise him by letter to last known address, the amount, if any, due, as his pro rata share of losses and in addition actual expenses incurred on said policy. Upon surrender of his policy and payment of all sums due, his membership shall cease, provided that during the months of June, July, and August, hail insurance policies may be canceled only at the option of the officers of the association carrying the risk. [S., '13, § 1759-m; 39 G. A., ch. 120, § 9.]

9056. Unearned assessments—return. Upon the cancellation of any policy of insurance issued under the provisions of this chapter all obligations to the association having been paid, the unearned portion of any advance assessment paid, other than the emergency fund, shall be returned to the insured upon the surrender of his policy, the association retaining a pro rata share for losses and in addition actual expenses incurred on said policy. [S., '13, § 1759-m; 39 G. A., ch. 120, § 9.]

9057. When pro rata assessment retained. When the policy is canceled by the association by giving notice thereof it shall retain only the pro rata assessment. [S., '13, § 1759-m; 39 G. A., ch. 120, § 9.]

9058. Bonds of officers. Any state mutual assessment association contemplated by this chapter, before being authorized to do business in this state, shall require its secretary and treasurer to give bond, personal or surety, to the association in such sums as the directors shall deem sufficient, no less, however, than ten thousand dollars for each office, which bond after being approved by the president of the association shall be deposited with the commissioner of insurance as security for the faithful performance of the duties of the secretary and treasurer in handling the funds of the association. [C., '97, § 1767; S., '13, § 1759-n; 39 G. A., ch. 120, § 10.]

9059. Additional security—noncompliance. Should the commissioner of insurance find the surety on said bonds, or the amount thereof, insufficient, he may require additional security, or an increase in the amount of the bond. If such additional security or increase be not furnished within thirty days after notice thereof, the commissioner of insurance shall refer the matter to the attorney general the same as

under sections 9052 and 9053, and it shall be taken care of by him in accordance therewith. [C., '97, § 1767; S., '13, § 1759-n; 39 G. A., ch. 120, § 10.]

9060. Annual tax. Every state mutual association doing business under this chapter shall on or before the first day of March, each year, pay to the treasurer of state a sum equivalent to one per cent of the gross receipts from premiums, assessments, fees and promissory obligations for business done within the state, including all insurance upon property situated in the state after deducting the amount actually paid for losses on property located within this state, and the amount returned upon canceled policies and rejected applications covering property situated within the state, and the amount paid for reinsurance on property situated within the state, and dividends returned to policy holders on property situated within the state. [39 G. A., ch. 120, § 12; 40 G. A., ch. 183, § 3.]

9061. Examination—expense. The commissioner of insurance shall at least once in each biennial period cause the books of each state mutual association doing business under this chapter to be examined and shall furnish a report of such examination to the association so examined. The expense of such examination shall be paid by the association as provided for in section 8632. [39 G. A., ch. 120, § 12.]

9062. Exemption of county mutuals. County mutual associations shall be exempt from the examination and the payment of tax provided for in the two preceding sections. [39 G. A., ch. 120, § 12.]

9063. Moneys and credits. In assessing for taxation the moneys and credits of such mutual insurance corporations, the assessor shall ascertain the debts or liabilities, if any, of the corporation to its policy holders or other persons which liabilities shall be deducted as provided in section 6988. [39 G. A., ch. 120, § 13.]

9064. "Debt" defined. In ascertaining such corporate indebtedness, a debt shall be deemed to exist, on account of its liabilities on the policy certificates or contracts of insurance issued, by its equal to the amount of surplus or other funds accumulated by such corporation for the purpose of fulfilling its policy contracts of insurance and which can be used for no other purpose. [39 G. A., ch. 120, § 13.]

9065. Annual fees. Such associations shall pay the same fees for annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under chapter 404, which certificates shall expire March first of the year following the date of issue. [C., '73, § 1160; C., '97, § 1764; S., '13, § 1759-f; 39 G. A., ch. 120, § 14.]

9066. Agents to be licensed. No person or corporation shall solicit any application for

insurance for any association, other than county mutuals, in this state without having procured from the commissioner of insurance a license authorizing him to act as agent. Violation of this provision shall be punished by a fine not exceeding twenty-five dollars per day. [39 G. A., ch. 120, § 15.]

9067. License—fee. The commissioner of insurance shall upon the receipt of payment of fifty cents issue license to act as agent to

any person for whom a license is requested by any association doing business under the provisions of this chapter. [39 G. A., ch. 120, § 15.]

9068. Cancellation of license. The commissioner of insurance may, for a just and reasonable cause, cancel the license of such agent after due notice and hearing. [39 G. A., ch. 120, § 15.]

CHAPTER 407

LIABILITY INSURANCE—CERTAIN PROFESSIONS

- 9069. Authorization.
- 9070. Incorporation—powers.
- 9071. Policy requirements.
- 9072. Approval of articles.
- 9073. Approval of policy—certificate of authority.
- 9074. Conditions.
- 9075. Reports.

9069. Authorization. Any number of physicians, druggists, dentists, and graduate nurses, licensed to practice their profession in this state, may, by complying with the provisions of this chapter and without regard to other statutory provisions, enter into contracts with each other for the purpose of protecting themselves by insurance against loss by reason of actions at law on account of their alleged error, mistake, negligence, or carelessness in the treatment and care of patients, including the performance of surgical operations, or in the prescribing and dispensing of drugs and medicines, or for loss by reason of damages in other respects, and to reimburse any member in case of such loss. [38 G. A., ch. 286, § 1.]

9070. Incorporation — powers. All corporations, organized for the purpose of transacting such insurance business under the provisions of this chapter, shall incorporate under the provisions of chapter 384, and be known as mutual corporations; and are hereby empowered to collect such assessments, or premium payments, provided for in their articles of incorporation or by-laws, as are required to pay losses and expenses incurred in the conduct of their business. Such mutual insurance corporations may issue certificates of membership, or policies; and may provide that all assessments, or premium payments, payable thereunder, be made in cash, or on the installment, or assessment plan. [38 G. A., ch. 286, § 1.]

9071. Policy requirements. Any policy issued by any such company shall contain a provision so that said policy shall inure to the benefit of any person obtaining a judgment against the insured to the extent of the insurance carried and for the purpose for which the insurance was issued. [38 G. A., ch. 286, § 1.]

- 9076. Reinsurance reserve.
- 9077. Cancellation of policy.
- 9078. Fees.
- 9079. Powers of commissioner.
- 9080. Liability to assessments.
- 9081. Foreign companies.
- 9082. Construction.

9072. Approval of articles. The articles of such mutual insurance corporations shall be submitted to, and approved by, the attorney general and the commissioner of insurance before being filed with the secretary of state. [38 G. A., ch. 286, § 2.]

9073. Approval of policy—certificate of authority. No such mutual insurance corporation shall issue membership certificates, or policies, until its form of certificate, or policy, shall have been submitted to, and approved by, the commissioner of insurance and until it has secured from such commissioner of insurance a certificate authorizing it to transact such an insurance business. [38 G. A., ch. 286, § 2.]

9074. Conditions. No such certificate shall be issued by the commissioner of insurance until two hundred fifty applications have been received, representing, in the aggregate, one million dollars of insurance, and until the commissioner of insurance has satisfied himself that such mutual insurance corporation has bona fide applications representing the number of applicants and the amount of insurance herein required, and that there is in the possession of such mutual insurance corporation cash assets amounting to not less than ten thousand dollars. [38 G. A., ch. 286, § 2.]

9075. Reports. Such mutual insurance corporations doing business under the provisions of this chapter shall, annually, in the month of January, report to the commissioner of insurance, upon blanks furnished by him, the same facts, so far as applicable, as are required to be furnished by mutual insurance associations under the statutes of Iowa, which report shall be tabulated by the commissioner of insurance and published by him in the annual report on insurance. [38 G. A., ch. 286, § 3.]

9076. Reinsurance reserve. Such mutual insurance corporations shall, annually, set aside and maintain as a reinsurance reserve, an amount equal to ten per cent of the receipts from assessments, or premium payments, during the year until the total amount thus accumulated shall equal forty per cent, but not to exceed fifty per cent of the amount of the annual assessment, or premium payment, at the rate charged for such insurance on all policies in force. The reserve thus accumulated may be used for the payment of losses and expenses, and when so used shall be restored and maintained in like manner as originally accumulated. [38 G. A., ch. 286, § 4.]

9077. Cancellation of policy. Any certificate of membership, or policy, issued by such a mutual insurance corporation may be canceled by the corporation by giving five days' written notice thereof to the insured; or such cancellation may be upon demand of the insured; and such cancellation, when so made, either by the corporation or by the insured, shall be upon a pro rata basis, and the cancellation of such certificate or policy shall release the member from all other future obligations to such corporation. [38 G. A., ch. 286, § 5.]

9078. Fees. Such a mutual insurance corporation shall pay the same fees for admission into the state, for annual reports, and for annual certificates of authority as are required to be paid by domestic mutual companies organized and doing business under chapter 404; such certificate shall expire March first of the year following the date of its issue. [38 G. A., ch. 286, § 6.]

9079. Powers of commissioner. The commissioner of insurance shall have and exercise the same control over such corporations as he now has over mutual assessment insurance associations organized and doing business under the provisions of chapter 406. [38 G. A., ch. 286, § 6.]

9080. Liability to assessments. The provisions as to maximum liability of members to assessments when assets are insufficient and to assessments when the corporation is insolvent, found in sections 9037, 9038, 9042, and 9053, shall apply to all mutual insurance corporations organized under the provisions of this chapter. [38 G. A., ch. 286, § 6.]

9081. Foreign companies. Any mutual insurance association organized under the laws of any other state, for the purpose of transacting the kind of business described in this chapter, and which has been in business not less than one year, and has on hand cash assets in an amount of not less than ten thousand dollars, and has not less than three hundred members, shall upon application, be admitted to do business in this state; and shall thereafter make all reports and be subject to taxation, examination and supervision by the commissioner of insurance to the same extent and in the same manner as are domestic corporations organized under the provisions of this chapter. [38 G. A., ch. 286, § 7.]

9082. Construction. All laws, or parts of laws, in conflict herewith shall be so construed as not to include corporations regulated by this chapter. [38 G. A., ch. 286, § 8.]

CHAPTER 408

RECIPROCAL OR INTERINSURANCE CONTRACTS

9083. Authorization.
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9083. Authorization. Individuals, partnerships, and corporations, including independent school districts and municipal corporations, of this state, hereby designated subscribers, are hereby authorized to exchange reciprocal or interinsurance contracts with each other, and with individuals, partnerships, and corporations of other states, territories, districts, and countries, providing insurance among themselves from any loss which may be insured against under the law, except life insurance. [37 G. A., ch. 180, § 1.]

9084. Execution of contract. Such contracts may be executed by an attorney, agent or other representative herein designated attorney, duly authorized and acting for such subscribers under powers of attorney, and such attorney may be a corporation. [37 G. A., ch. 180, § 2.]

9085. Office of attorney—foreign office. The principal office of such attorney shall be maintained at such place as is designated by the subscribers in the power of attorney; provided that, where the principal office of such attorney

is located in another state, the commissioner of insurance shall not issue a certificate of authority, or license, as provided in this chapter unless such attorney shall hold a license or certificate of authority from the insurance department of such other state. [37 G. A., ch. 180, § 2.]

9086. Preliminary declaration. Such subscribers so contracting among themselves, shall, through their attorney, file with the commissioner of insurance a declaration verified by the oath of such attorney, or, where such attorney is a corporation, by the oath of the duly authorized officers thereof, setting forth:

1. The name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so similar to any name or designation adopted by any attorney or by any insurance organization in the United States prior to the adoption of such name or designation by the attorney, as to confuse or deceive.

2. The location of the principal office.

3. The kind or kinds of insurance to be effected.

4. A copy of each form of policy, contract, or agreement under or by which insurance is to be effected.

5. A copy of the form of power of attorney under which such insurance is to be effected.

6. That applications have been made for indemnity or insurance upon at least one hundred separate risks aggregating not less than one and one-half million dollars represented by executed contracts or bona fide applications to become concurrently effective; or, in case of employers' liability or workmen's compensation insurance, covering a total pay roll of not less than two and one-half million dollars.

7. That there is in the possession of such attorney and available for the payment of losses, assets amounting to not less than fifty thousand dollars, and, in case of employers' liability or workmen's compensation insurance, that such assets shall amount to not less than one hundred thousand dollars.

8. A financial statement under oath in form prescribed for the annual statement.

9. The instrument authorizing service of process as provided for in this chapter.

10. Certificate showing deposit of funds. [37 G. A., ch. 180, § 3.]

9087. Actions — venue — commissioner as process agent. Concurrently with the filing of the declaration provided for by the terms of the preceding section, the attorney shall file with the commissioner of insurance an instrument in writing executed by him for said subscribers, conditioned that, upon the issuance of certificate of authority provided for in this chapter, action may be brought in the county in which the property or person insured thereunder is located, and that service of process may be had upon the commissioner of insurance in all suits in this state arising out of such policies, contracts, or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or inter-

insurance contracts through such attorney. [37 G. A., ch. 180, § 4.]

9088. Manner of service. Three copies of such process shall be served and the commissioner of insurance shall file one copy, forward one copy to said attorney, and return one copy with his admission of service. [37 G. A., ch. 180, § 4.]

9089. Judgment—satisfaction. A judgment rendered in any such case where service of process has been so had upon the commissioner of insurance, shall be valid and binding against any and all such subscribers as their interests appear and such judgment may be satisfied out of the funds in the possession of the attorney belonging to such subscribers. [37 G. A., ch. 180, § 4.]

9090. Reports—limitations on risks. There shall be filed with the commissioner of insurance by such attorney whenever the commissioner of insurance shall so require, a statement under oath of such attorney showing the maximum amount of indemnity upon a single risk, and, except as to workmen's compensation insurance, no subscriber shall assume on any single risk an amount greater than ten per cent of the net worth of such subscriber. [37 G. A., ch. 180, § 5.]

9091. Standard of solvency. There shall at all times be maintained as assets a sum in cash, or in securities of the kind designated by the laws of the state where the principal office is located for the investment of funds of insurance companies, equal to one hundred per cent of the net unearned premiums or deposits collected and credited to the accounts of subscribers, or assets equal to fifty per cent of the net annual deposits collected and credited to the accounts of subscribers on policies having one year or less to run and pro rata on those for longer periods; in addition to which there shall be maintained in cash, or in such securities, assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks; provided that where the assets on hand available for the payment of losses other than determined losses, shall not equal two hundred thousand dollars, all liability for each determined loss or claim deferred for more than one year, shall be provided for by a special deposit in a trust company of the state in which the principal office is located, to be used in payment of compensation benefits for disability; such deposit to be a trust fund and applicable only to the purposes stated, or such liability may be reinsured in authorized companies with a surplus of at least two hundred thousand dollars. For the purpose of said reserves, net deposits shall be construed to mean the advance payments of subscribers after deducting therefrom the amount specifically provided in the subscribers' agreements for expenses. If at any time the assets so held

in cash or such securities shall be less than required above, or less than one hundred thousand dollars as to employers' liability or workmen's compensation insurance, or less than fifty thousand dollars as to other classes of insurance, the subscribers or their attorney for them shall make up the deficiency within thirty days after notice from the commissioner of insurance so to do. In computing the assets required by this section, the amount specified in subdivision 7, section 9086, shall be included. [37 G. A., ch. 180, § 6.]

9092. Annual report—examination. Such attorney shall, within the time limited for filing the annual statement by insurance companies transacting the same kind of business, make a report, under oath, to the commissioner of insurance for each calendar year, showing the financial condition of affairs at the office where such contracts are issued and shall, at any and all times, furnish such additional information and reports as may be required; provided, however, that the attorney shall not be required to furnish the names and addresses of any subscribers except in case of an unpaid final judgment. The business affairs, records, and assets of any such organization shall be subject to examination by the commissioner of insurance at any reasonable time, and such examination shall be at the expense of the organization examined. [37 G. A., ch. 180, § 7.]

9093. Implied powers of corporations. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as fully granted as the rights and powers expressly conferred. [37 G. A., ch. 180, § 8.]

9094. Certificate of authority. Upon compliance with the requirements of this chapter, the commissioner of insurance shall issue a certificate of authority or a license to the attorney, authorizing him to make such contracts of insurance, which license shall specify the kind or kinds of insurance and shall contain the name of the attorney, the location of the principal office and the name or designation under which such contracts of insurance are issued. Such license shall be renewed annually upon a showing that the standard of solvency required herein has been maintained, and that all fees and taxes required have been paid. [37 G. A., ch. 180, § 9.]

9095. Violations—exceptions. Any attorney who shall exchange any contracts of insurance of the kind and character specified in this chapter, or any attorney or representative of such attorney, who shall solicit or negotiate any applications for the same without the attorney having first complied with the foregoing provisions, shall be deemed guilty of a misde-

meanor and, upon conviction, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars. For the purpose of organization and upon issuance of permit by the commissioner of insurance, powers of attorney and applications for such contracts may be solicited without compliance with the provisions of this chapter, but no attorney, agent, or other person shall make any such contracts of indemnity until all of the provisions of this chapter shall have been complied with. [37 G. A., ch. 180, § 10.]

9096. Refusal or revocation of certificate. In addition to the foregoing penalties and where not otherwise provided, the penalty for failure or refusal to comply with any of the terms and provisions of this chapter, upon the part of the attorney, shall be the refusal, suspension, or revocation of certificate of authority or license by the commissioner of insurance and the public announcement of his act, after due notice and opportunity for hearing has been given such attorney so that he may appear and show cause why such action should not be taken. [37 G. A., ch. 180, § 11.]

9097. Bonds. Where the principal office of the attorney in fact is located in this state, he shall give bond to the subscribers in such sum as the advisory committee of the exchange shall deem sufficient, not less, however, than in the sum of ten thousand dollars, which bond, after being approved by the advisory committee and by the commissioner of insurance, shall be deposited with the commissioner of insurance as security for the faithful performance of the duties of the attorney in handling the funds of the subscribers. [37 G. A., ch. 180, § 12.]

9098. Additional security—refusal. Should the commissioner of insurance consider the surety on said bond, or the amount thereof, insufficient, he may require additional security or an increase in the amount of the bond. If such additional security or increase be not furnished within thirty days after notice to furnish the same, the commissioner of insurance may revoke the certificate of authority. [37 G. A., ch. 180, § 12.]

9099. Foreign attorney—bonds. Where the principal office of the attorney is located in another state, there shall be filed with the commissioner of insurance, in connection with the declaration, provided for by section 9086, certified copies of all such bonds given by such attorney as security for the funds of subscribers. [37 G. A., ch. 180, § 12.]

9100. Annual tax—fees. In lieu of all other taxes, licenses, charges, and fees whatsoever, such attorney shall pay annually on account of the transaction of such business in this state, the same fees as are paid by mutual companies transacting the same kind of business, and an annual tax of one per cent, if a domestic reciprocal organization, and two and one-half per cent, if a foreign reciprocal organ-

ization, calculated upon the gross premiums or deposits collected from subscribers in this state during the preceding calendar year, after deducting therefrom returns, or cancellations, considerations for reinsurances, and all amounts returned to subscribers or credited to their accounts as savings, and after deducting the amount actually paid for losses on property located within this state, or on claims arising within this state, and the amount returned upon canceled policies and rejected applications covering property situated or on business done within this state. [37 G. A., ch. 180, § 13; 40 G. A., ch. 184, §§ 1, 2.]

9101. Form of policy—construction. The attorney may insert in any form of policy prescribed by the laws of this state any provisions or conditions required by the plan of reciprocal or interinsurance, provided the same shall not be inconsistent with or in conflict with any law of this state. Such policy, in lieu of conforming

to the language and form prescribed by such law, shall be held to conform thereto in substance if such policy includes a provision or indorsement reciting that the policy shall be construed as if in the language and form prescribed by such law. Any such policy or indorsement shall first be filed with and approved by the commissioner of insurance. [37 G. A., ch. 180, § 14.]

9102. Reinsurance. Such attorney shall not effect any reinsurance on risks in this state unless the insurance carrier granting such reinsurance shall be licensed in this state. [37 G. A., ch. 180, § 15.]

9103. Laws applicable. Except as provided in this chapter, the making of contracts as herein provided for and such other matters as are properly incident thereto, shall not be subject to the laws of this state relating to insurance, unless they are therein specifically mentioned. [37 G. A., ch. 180, § 16.]

CHAPTER 409

CONSOLIDATION AND REINSURANCE

- 9104. "Company" defined.
- 9105. Life companies—consolidation and reinsurance.
- 9106. Submission of plan.
- 9107. Procedure—notice.
- 9108. Commission to hear petition.
- 9109. Examination.
- 9110. Appearance by policy holders.
- 9111. Authorization.

9104. "Company" defined. The word "company" or "companies" when used in this chapter shall mean any company or association organized under the provisions of chapters 398, 400, 401, 404, or 406, except county mutuals. [S., '13, § 1821-m.]

9105. Life companies — consolidation and reinsurance. No company organized under the laws of this state to do the business of life insurance, either on the stock, mutual, stipulated premium, or assessment plan, shall consolidate with any other company or reinsure its risks, or any part thereof, with any other company, or assume or reinsure the whole or any part of the risks of any other company, except as hereinafter provided; provided that nothing contained in this chapter shall prevent any company, as defined in the preceding section, from reinsuring a fractional part of any single risk. [S., '13, § 1821-n.]

9106. Submission of plan. When any such company shall propose to consolidate or enter into any reinsurance contract with any other company, it shall present its plan to the commissioner of insurance, setting forth the terms of its proposed contract of consolidation or reinsurance, asking for the approval or any modification thereof, which the commission hereinafter provided for may approve. The

- 9112. Unanimous decision required.
- 9113. Election called.
- 9114. Approval and filing with commissioner.
- 9115. Companies other than life — approval of plan.
- 9116. Consolidation prohibited.
- 9117. Expenses—how paid.
- 9118. Violations.

company must also file a statement of its assets and if a legal reserve company, of the reserve value of its policies or contracts. [S., '13, § 1821-o.]

9107. Procedure — notice. The commission shall proceed to hear and determine such petition, without notice. If the commission shall deem it necessary in order to conserve the interests of the policy holders, that notice shall be given, it shall require the company or companies to notify, by mail, all of the members or policy holders of the said company or companies of the pendency of such petition, and the time and place at which the same will be heard, the length of time of such notice to be determined by the commission. [S., '13, § 1821-p.]

9108. Commission to hear petition. For the purpose of hearing and determining such petition, a commission consisting of the governor, commissioner of insurance, and attorney general is hereby created. In the inability of the governor to act, the secretary of state may act in his stead. [S., '13, § 1821-q.]

9109. Examination. The commission may make such examination into the affairs and condition of any company or companies as it may deem proper, and shall have power to summon

and compel the attendance and testimony of witnesses, and the production of books and papers before said commission and may administer oaths. [S., '13, § 1821-q.]

9110. Appearance by policy holders. When notice shall have been given as above provided, any policy holder, or stockholder of said company or companies shall have the right to appear before said commission and be heard with reference to said petition. [S., '13, § 1821-q.]

9111. Authorization. Said commission, if satisfied that the interests of the policy holders of said company or companies are properly protected and no reasonable objection to said petition exists, may authorize the proposed consolidation or reinsurance or may direct such modification thereof as may seem to it best for the interests of the policy holders; and said commission may make such order and disposition of the assets of any such company thereafter remaining as shall be just and equitable. [S., '13, § 1821-q.]

9112. Unanimous decision required. Such consolidation or reinsurance shall only be approved by the consent of all of the members of said commission, and it shall be the duty of said commission to guard the interests of the policy holders of any such company or companies proposing consolidation or reinsurance. [S., '13, § 1821-q.]

9113. Election called. In case of companies organized on the assessment plan, the commission may require the plan of consolidation or reinsurance to be submitted to the membership of such company or companies to be voted upon. When submitted, it shall be at a meeting called for that purpose, thirty days' notice being given, and a two-thirds vote of all the members present and voting shall be necessary for an approval of any plan of consolidation or

reinsurance, and no proxies shall, in any case, be voted. [S., '13, § 1821-q.]

9114. Approval and filing with commissioner. Any plan of consolidation or reinsurance submitted as herein contemplated, must first have been approved by the commission, and the result of said vote must be filed with the commissioner of insurance and be by him determined before any consolidation or reinsurance shall be effected. [S., '13, § 1821-q.]

9115. Companies other than life—approval of plan. When any company or companies not named in section 9105 desire to consolidate or reinsure, it shall only be necessary for such company or companies to submit the plan of consolidation or reinsurance with any other information that may be required, to the commissioner of insurance and the attorney general and have the same by them approved. [S., '13, § 1821-r.]

9116. Consolidation prohibited. No company or companies as defined by section 9104 shall consolidate or reinsure with any other company or companies not authorized to transact business in this state. [S., '13, § 1821-s.]

9117. Expenses—how paid. All expenses and costs incident to proceedings under the provisions of this chapter, shall be paid by the company or companies bringing the petition. [S., '13, § 1821-t.]

9118. Violations. Any officer, director or stockholder of any company or companies, as defined in section 9104, violating or consenting to the violation of any of the provisions of sections 9105 to 9116, inclusive, shall be punished by a fine of not less than one thousand dollars, or by imprisonment in the county jail for not less than one year, or by both such fine and imprisonment in the discretion of the court. [S., '13, § 1821-u.]

CHAPTER 410

LICENSING OF AGENTS

9119. License required.

9120. Term of license.

9121. Issuance and revocation.

9122. Fee.

9123. Violations.

9119. License required. No person shall directly or indirectly, act within this state as agent, or otherwise, in receiving or procuring applications for insurance, or in doing or transacting any kind of insurance business for any company or association, other than county mutuals or fraternal beneficiary associations, until he has procured from the commissioner of insurance a license authorizing him to act for such company or association as agent. [S., '13, § 1821-k.]

9120. Term of license. Said license shall terminate at the end of the insurance year for which such company or association is authorized to transact business. [S., '13, § 1821-k.]

9121. Issuance and revocation. The commissioner may, for good cause, decline to issue such license or may, for like cause, revoke the same. [S., '13, § 1821-k.]

9122. Fee. The fee charged for such agent's license shall be, for domestic companies, fifty cents, and for companies located outside the state, two dollars. [S., '13, § 1821-k.]

9123. Violations. Any person acting as agent or otherwise representing any insurance company or association, in violation of the provisions of section 9119, shall be liable to a fine of twenty-five dollars for each day he shall so act. [S., '13, § 1821-l.]

CHAPTER 411

ELECTIONS AND PROPORTIONATE REPRESENTATION

9124. Proxies authorized.
 9125. Conditions—revocation.
 9126. Filing proxy.

9127. Solicitation by agents—use of funds.
 9128. Proportionate representation.
 9129. Amendment of articles.

9124. Proxies authorized. Any insurance company or association organized under the laws of this state, may provide in its articles of incorporation, that its members or stockholders may vote by proxies, voluntarily given, upon all matters of business coming before the stated or called meetings of the stockholders or members, including the election of directors. [S., '13, § 1821-x.]

9125. Conditions—revocation. No proxy shall be valid unless signed and executed within two months prior to such meeting or election for which said proxy was given, and such proxy shall be limited to thirty days subsequent to the date of such meeting or election, and may be revoked at any time by the policy holder or stockholder who executed the said proxy. [S., '13, § 1821-x.]

9126. Filing proxy. All proxies shall be filed with the company at least one day prior to an election at which they are to be used. [S., '13, § 1821-x.]

9127. Solicitation by agents—use of funds. Soliciting of proxies by an agent of the company either for personal use, or for the use of officers of the company or association, or for any other persons, is forbidden. Nor shall any of the funds of a company or association be expended in procuring proxies. Any violation of this or the three preceding sections shall be deemed a misdemeanor and punishable accordingly. [S., '13, §§ 1821-y, 1821-z.]

9128. Proportionate representation. The holder or holders, jointly or severally, of not less than one-fifth but less than a majority of the shares of the capital stock of corporations organized on the stock plan under the laws of

this state for transacting the business of life or fire insurance, shall be entitled to nominate, to be elected, or appointed, as the case may be, directors or other persons performing the functions of directors by whom, according to the articles of incorporation of such corporations, its affairs are to be conducted. In the event such nomination shall be made, there shall be elected or appointed to the extent that the total number to be elected or appointed is divisible, such proportionate number from the persons so nominated as the shares of stock held by persons making such nominations bear to the whole number of shares issued; provided the holder or holders of the minority shares of stock shall only be entitled to one-fifth (disregarding fractions) of the total number of directors to be elected for each one-fifth of the entire capital stock of such corporation so held by them; and provided, further, that this section shall not be construed to prevent the holders of a majority of the stock of any such corporation from electing the majority of its directors. Vacancies occurring from time to time shall be filled so as to preserve and secure to such minority and majority stockholders proportionate representation as above provided. [S., '13, § 1821-v.]

9129. Amendment of articles. All such existing corporations shall by amendment to their articles of incorporation, approved by the commissioner of insurance, provide for the nomination, election, or appointment of the directors or other persons by whom its affairs are to be conducted, in conformity with the provisions of the preceding section, and the articles of incorporation of all such corporations hereafter organized shall contain like provisions. [S., '13, § 1821-w.]

TITLE XXI

BANKS

CHAPTER 412

BANKING DEPARTMENT

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| 9130. Superintendent of banking—term. | 9142. Time of appeal—decision. |
| 9131. Appointment—qualifications. | 9143. Fees for examination. |
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9130. Superintendent of banking—term. The superintendent of banking shall have his office at the seat of government. His regular term of office shall be four years from the first day of July of the year of his appointment. [37 G. A., ch. 40, §§ 1, 2, 6; 40 Ex. G. A., ch. 10, § 1.]

9131. Appointment—qualifications. The governor shall, within sixty days following the organization of the regular session of the general assembly in 1925, and each four years thereafter, appoint, with the approval of two-thirds of the members of the senate in executive session, a superintendent of banking. Such appointee shall be selected solely with regard to his qualification and fitness to discharge the duties of his office, and no person shall be appointed who has not had at least five years' executive experience in a state or savings bank in the state. [37 G. A., ch. 40, § 2; 40 Ex. G. A., ch. 10, § 2.]

9132. Confirmation. No nomination shall be considered by the senate until the same has been referred to a committee of five, not more than three of whom shall belong to the same political party. Said committee shall be appointed by the president of the senate, without motion, and shall report to the senate in executive session. The consideration of nominations by the senate shall not be had on the same legislative day that appointments are so referred. [37 G. A., ch. 40, § 2; 40 Ex. G. A., ch. 10, § 3.]

9133. Vacancies. Vacancies that may occur while the general assembly is not in session

shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term. Vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term. [37 G. A., ch. 40, § 2; 40 Ex. G. A., ch. 10, § 4.]

9134. Removal of superintendent. The governor may, by and with the consent of a majority of the senate during a session of the general assembly, remove the superintendent of banking for malfeasance in office or for any cause that renders him ineligible to appointment, or incapable or unfit to discharge the duties of his office, and his removal, when so made, shall be final. [37 G. A., ch. 40, § 3.]

9135. Suspension of superintendent. When the general assembly is not in session the governor may suspend the superintendent of banking so disqualified, and shall appoint another to fill the vacancy thus created, subject, however, to the approval or disapproval of a majority of the senate when next in session; and if the senate shall concur therein he shall be removed from the office. But if the senate shall at the same session fail to concur or to act on the same, said suspension shall thereupon cease. [37 G. A., ch. 40, § 3.]

9136. Deputy superintendent—bank examiners—employees. The superintendent of banking may appoint examiners, to hold office for a term of two years, but not to exceed one examiner for each one hundred banks, or major fraction thereof, under his supervision; and may also appoint a deputy superintendent of banking, who shall perform the duties attached to the office of the superintendent of banking during the absence or the inability of the superintendent, and as directed by him; and may also appoint such clerks, stenographers, and special assistants as he may need to discharge in a proper manner the duties imposed upon him by law; but the total number, including the deputy superintendent, shall not exceed one for each two hundred banks and trust companies, or major fraction thereof, under his supervision.

Provided that whenever the proper conduct of the affairs of the office demands, he may, with the approval of the executive council, appoint for a term not to exceed one year such additional bank examiners and employees as may be necessary, any provision of the law for said department to the contrary notwithstanding. Such additional examiners or employees shall be paid out of current or accumulated earnings of the banking department, their salaries to be not greater than those of other similar employees authorized by law. All such appointees shall be removable at the pleasure of the said superintendent. [37 G. A., ch. 40, § 5; 38 G. A., ch. 335, § 1; 40 Ex. G. A., ch. 10, § 5.]

9137. Salaries. The deputy superintendent of banking and all bank examiners shall receive a salary to be fixed by the superintendent of banking, which salaries shall be commensurate with the work done. In no case shall the salary of anyone exceed the sum of thirty-eight hundred dollars per annum, except that the salaries of the deputy superintendent and of not more than three examiners may be increased by the executive council in an amount in each instance not in excess of six hundred dollars in any one year upon the request of the superintendent of banking and a showing by him of the need of such action, but under this provision no salary shall exceed a maximum of forty-eight hundred dollars. [37 G. A., ch. 40, § 5; 38 G. A., ch. 335, § 1; 39 G. A., ch. 209, § 61; 40 Ex. G. A., ch. 15, § 3.]

9138. Bond of examiners—qualifications. Each examiner shall give a corporate surety bond to the state, conditioned for the faithful discharge of his duties, for the sum of three thousand dollars, which shall be filed with said superintendent and approved by him. Said examiners shall have had at least three years' experience in practical bank work or as bank examiners. [37 G. A., ch. 40, § 5; 38 G. A., ch. 335, § 1; 39 G. A., ch. 209, § 61.]

9139. Bond of deputy and assistants. The deputy superintendent and all such clerks, stenographers, special assistants and other em-

ployees shall give bond to the state in such sum as shall be fixed by the executive council. [37 G. A., ch. 40, § 5; 38 G. A., ch. 335, § 1; 39 G. A., ch. 209, § 61.]

9140. Duties and powers. The superintendent of banking shall be the head of the banking department of Iowa and shall have general control, supervision, and direction of all banks and trust companies incorporated under the laws of Iowa, and shall be charged with the execution of the laws of this state relating to banks and banking. The organization and reorganization of state and savings banks and trust companies shall be subject to the approval of the superintendent of banking. [37 G. A., ch. 40, § 7; 38 G. A., ch. 236, § 1; 40 Ex. G. A., ch. 15, § 1.]

9141. Appeal. Any person aggrieved by the action of the superintendent of banking in granting or refusing to grant a certificate of authority to engage in banking may appeal to the executive council of the state by filing with the secretary of the council a notice of appeal, in writing, and serving the same upon the superintendent of banking or some employee of the office. [38 G. A., ch. 236, § 1; 40 Ex. G. A., ch. 15, § 1.]

9142. Time of appeal—decision. Such appeal shall be taken within ten days after the action of the superintendent of banking. When notified of such appeal the executive council shall fix a time and place for the hearing and its findings in the matter shall be final. [38 G. A., ch. 236, § 1; 40 Ex. G. A., ch. 15, § 1.]

9143. Fees for examination. Every bank and trust company shall pay to the superintendent of banking within ten days after the date of each examination a fee based on the assets of said bank or trust company as of the date for the close of business for which such examination is made, as follows: At the rate of one dollar per one thousand dollars of assets on the first twenty-five thousand dollars of assets, and at the rate of three cents per one thousand dollars of assets on all assets over and above twenty-five thousand dollars of assets, provided that no examination shall be made for less than twenty dollars. [C., '97, § 1876; S. S., '15, § 1875; 38 G. A., ch. 335, § 2; 40 G. A., ch. 185; 40 Ex. G. A., ch. 15, § 2.]

9144. Expenses. The superintendent of banking and examiners shall be entitled to actual and necessary expenses incurred in the examination of banks and trust companies, and the actual and necessary expenses within the state of special assistants and other employees, who may be designated by the superintendent to aid in the official work of this department, shall be allowed. The superintendent of banking shall also be entitled to actual and necessary expenses incurred in attending the district or group meetings and state convention of the Iowa bankers association; the annual convention of the American bankers association, any meetings that may be called by the

federal reserve bank of Chicago, and the annual session, if any, or any conference of state supervisors of banking or banking commissioners, that may be called by said state supervisors of banking, or banking commissioners, or their organization, if any, not to exceed five hundred dollars in any one year, as shall be approved by the state board of audit, as provided in section 393, and such expenses shall be paid by the treasurer of state on warrants drawn by the auditor of state, but the total amount of expense and salaries shall not, in any one year, exceed the amount of fees collected from banks and trust companies. [37 G. A., ch. 40, § 5; 38 G. A., ch. 335, § 1.]

9145. Payment. No payments of any kind shall be made by the treasurer of state to cover expenses and salaries of the banking department or any part thereof, unless there shall be on hand in the office of the treasurer of state sufficient funds, received as income from said department to pay the same, and such salaries and expenses shall be paid from such funds. The superintendent shall furnish to the auditor of state from time to time a list of the salaries as fixed by him or as authorized by the executive council and all salaries shall be paid monthly by the treasurer of state on warrants drawn by the auditor of state in conformity with such salary list so furnished. [38 G. A., ch. 335, §§ 1, 3; 39 G. A., ch. 209, § 61; 40 Ex. G. A., ch. 15, § 4.]

9146. When examiner disqualified. No bank examiner shall be assigned by the superintendent of banking to examine a bank or trust company in a county in which he is interested in the business of a bank or trust company. [C., '97, §§ 1875, 1876; S. S., '15, § 1875; 38 G. A., ch. 335, § 2.]

9147. Records. All books, records, files, documents, reports, and securities, and all papers of every kind and character relating to the business of banking shall be delivered to and filed or deposited with the said superintendent of banking. [37 G. A., ch. 40, § 8.]

9148. Annual report. The superintendent of banking shall, at the time provided by law, make an annual report as to the condition of every bank from which reports have been received, and may embrace in said report such observations and recommendations as he may deem of value. [C., '97, § 1881; 40 Ex. G. A., ch. 10, § 6.]

NOTE: For time of filing report, see § 251.

9149. Accounting. All fees and charges of every character whatsoever which are required by law to be paid by banks and trust companies shall be payable to the superintendent of banking, whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner as now provided for by law. [37 G. A., ch. 40, § 9.]

9150. Cost bill—penalty. Upon the completion of each examination the bank examiner

in charge of said examination shall render a bill for such fee, in triplicate, and shall deliver one copy thereof to the bank, and shall forward one copy to the treasurer of state, and one copy to the superintendent of banking at his office in Des Moines. Failure to place the amount of said fee in the hands of the superintendent of banking within ten days, as hereinbefore provided, shall subject the bank to an additional fee equal to five per cent of the amount of such fee for each day same shall be delinquent. The superintendent shall account for and pay over said fees to the treasurer of state at the time and in the manner as now provided for by law. [C., '97, §§ 1875, 1876; S. S., '15, § 1875; 38 G. A., ch. 335, § 2.]

9151. Use of banking terms prohibited. It shall be unlawful for any individual, partnership, or unincorporated association, or corporation, other than national banking associations, not subject to the supervision or examination of the banking department, to make use of any office sign bearing thereon the word "bank", "banking", "banker", or any derivative, plural or compound, of the word "banking", or word or words in a foreign language having the same or similar meaning, or to make use of any exterior or interior sign bearing thereon such word or words whatsoever to indicate to the general public, or to any individual, that such place or office is the place or office of a bank, nor shall such person or persons, partnership, unincorporated association, or corporation, make any use of or circulate any letterheads, billheads, bank notes, bank receipts, certificates, circulars, or any written or printed, or partly written, or partly printed, papers whatever having thereon any other word or words indicating that such business is the business of a bank. [38 G. A., ch. 236, § 2.]

9152. Violations. Any person or persons violating any of the provisions of the preceding section, either individually or as an interested party in any such copartnership or corporation, shall be guilty of a misdemeanor and on conviction thereof shall be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not less than sixty days nor more than one year, or be punished by both such fine and imprisonment. [38 G. A., ch. 236, § 2.]

9153. Exceptions. Nothing in the two preceding sections shall be construed as affecting or in any wise interfering with any private bank or private banker that may be engaged in lawful business previous to April 16, 1919. [38 G. A., ch. 236, § 3.]

9154. Construction. If any part of the three preceding sections shall be declared unconstitutional, it shall not affect any other part of said sections. [38 G. A., ch. 236, § 4.]

CHAPTER 413

SAVINGS BANKS

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9155. **Organization.** Corporations designated savings banks may be formed by not less than five persons of lawful age, a majority of whom shall be citizens of the state, and must be organized as provided in this chapter. [C., '97, § 1840.]

9156. **Banking powers.** Savings banks may receive on deposit the savings and funds of others, preserve and invest the same, pay interest or dividends thereon, and transact the usual business of such institutions, but shall not have power to issue bank notes, bills, or other evidences of debt for circulation as money. [C., '97, § 1841.]

9157. **Articles of incorporation.** The articles of incorporation of a savings bank shall be signed and acknowledged by the incorporators before some officer authorized to take acknowledgment of deeds, and give:

1. The corporate name,
2. The object for which it is formed,
3. The amount of capital,
4. The time of its existence, which shall not exceed fifty years,
5. The number of its directors,
6. The name and postoffice address of each person or officer who shall manage its affairs until the first election, and
7. The name of the city, town, or village, and the county, in which the principal place of business is to be located. [C., '97, § 1842; S., '13, § 1842.]

9158. **Record required.** Such articles shall be filed and recorded in the office of the recorder of deeds of the county of the principal place of business, and in the office of the secretary of state. [C., '97, § 1842; S., '13, § 1842.]

9159. **Notice of incorporation.** Notice of its incorporation shall be given by publication in some newspaper published in the county wherein the bank is located, once each week, for four consecutive weeks, which notice shall state, in substance, the matters required to be given in the articles of incorporation. [C., '97, § 1842; S., '13, § 1842.]

9160. **Paid-up capital required.** The paid-up capital of any savings bank shall not be less than ten thousand dollars in towns or villages having a population of one thousand or less, nor less than fifteen thousand dollars in towns having a population of more than one thousand and less than two thousand, nor less than twenty-five thousand dollars in cities of more than two thousand and less than ten thousand population, nor less than fifty thousand dollars in cities having a greater population. [C., '97, § 1843; S., '13, § 1843; 37 G. A., ch. 357, § 1.]

9161. **Commencement of business—conditions.** The corporation may commence business when its first directors or officers named in its recorded articles of incorporation shall

have furnished the superintendent of banking proof, under oath, that the required capital has been paid in and is held in good faith by said bank, and he has satisfied himself of such fact, for which purpose he may make a personal examination, or cause it to be made, at the expense of such bank, and he is also satisfied that the preceding sections of this chapter have been complied with, and has issued a certificate to that effect, naming therein its first board of directors, notice of which certificate shall be given by the publication thereof once each week for four consecutive weeks in some newspaper printed in the county where its articles are recorded, at the expense of such bank, and proof of such publication by the oath of the publisher or his foreman filed with said superintendent. [C., '97, § 1843; S., '13, § 1843.]

9162. Powers. The incorporators and their successors shall be a body corporate with the right of succession for the period limited, and shall have power:

1. To sue and be sued.
2. To have a corporate seal and alter it at pleasure.
3. To purchase, hold, sell, convey, and release from trust or mortgage such real and personal estate as provided for in this chapter.
4. To appoint such officers, agents, employees, and servants as the business of the corporation shall require, to define their powers, prescribe their duties, fix their compensation, and to require of them such security as may be proper for the performance of their duties.
5. To loan and invest the funds of the corporation, to receive deposits of money, to loan and invest the same as provided in this chapter, and to repay such deposits without interest, or with such interest as the by-laws or articles may provide.
6. To make by-laws for the management and regulation of the corporation, its property and affairs, prescribing the condition on which the deposits will be received and interest paid thereon, and the time and manner of dividing the profits, and for carrying on all business within its power. [C., '97, § 1844.]

9163. Directors—citizenship. The business and property of such banks shall be managed by a board of directors of not less than five, all of whom shall be shareholders, and at least three-fourths of the directors must be citizens of the state. [C., '97, § 1845; 37 G. A., ch. 238, § 1.]

9164. Articles to designate number—changes. The articles of incorporation shall designate the maximum number of directors, and the stockholders by a majority of all of the votes of the stockholders of such bank may change at any annual meeting by resolution, the number of its directors, as said stockholders may decide, to any number not less than five nor more than the maximum designated in the articles of incorporation or certificate of authorization, provided that said resolution of the stockholders shall after being duly adopted as aforesaid be filed in the office of the super-

intendent of banking within thirty days after such adoption. [38 G. A., ch. 60, § 1.]

9165. Amendment of articles. The maximum number of directors as fixed by the articles of incorporation may be changed in the manner prescribed by law for changing the said articles of incorporation. [38 G. A., ch. 60, § 1.]

9166. Eligibility—stock holdings. No person shall be eligible as director of any savings bank, nor can he qualify or serve as such, unless he owns in his own right shares of stock in such bank, as follows:

1. In those having a capital of less than twenty thousand dollars, one share.
2. In those having a capital of twenty thousand dollars or over, but less than thirty thousand dollars, two shares.
3. In those having a capital of thirty thousand dollars or over, but less than forty thousand dollars, three shares.
4. In those having a capital of forty thousand dollars or over, but less than fifty thousand dollars, four shares.
5. In those having a capital of fifty thousand dollars or over, five shares. [C., '97, § 1845.]

9167. Oath of director—filing. Each director, before acting as such, shall take an oath that he will diligently, faithfully and impartially perform the duties imposed upon him by law, that he will not knowingly violate or willingly permit to be violated any of its provisions, that he is the bona fide owner in his own right of the number of shares of stock required to be owned by him as provided in this chapter; that the same is not hypothecated nor in any manner pledged as security for any loan obtained or debt owing by him, which oath shall be signed by each director and certified by the officer before whom it is taken, and filed with and preserved in the office of the superintendent of banking. [C., '97, § 1845.]

9168. First meeting—notice. The call for the first meeting of the directors or trustees shall be signed by one or more persons named in said superintendent's certificate, stating the time and place of meeting, and shall be delivered personally to each director or published at least ten days in some newspaper in the county wherein the principal place of business of the incorporation is located. [C., '97, § 1845.]

9169. Officers and employees—bonds. At their first meeting, and as often thereafter as the by-laws require, they shall elect from their number a president and one or more vice presidents for the ensuing year, and appoint a treasurer or cashier, and such other officers and employees as may be required, who shall hold their office during the pleasure of the board, and give such security for the faithful performance of their duties as may be required of them by the by-laws. [C., '97, § 1845.]

9170. Vacancies on board. All vacancies in the board of directors shall be filled at its next

regular meeting after such vacancy shall arise from among the stockholders, and the person receiving a majority of the votes of the whole number of directors shall be duly elected to fill such vacancy. [C., '97, § 1846.]

9171. First regular board — tenure. The directors to succeed those named in the certificate of the superintendent of banking shall be elected at the first annual meeting thereafter, at such time and place, in such manner and upon such notice as shall be provided by the by-laws, and shall hold office until their successors are elected and qualify, which shall be annually thereafter. [C., '97, § 1846.]

9172. Manner of elections. All such elections shall be by ballot, and the persons receiving the greater number of votes cast shall be directors. [C., '97, § 1846.]

9173. Postponement. If an election of directors shall not be held on the day designated, it may be held on any other day, after giving the notice required by the by-laws. [C., '97, § 1846.]

9174. Quorum. A majority of directors shall constitute a quorum for the transaction of business, but in no case shall a measure be declared carried unless receiving three affirmative votes. [C., '97, § 1846.]

9175. Voting of stock—when stockholder disqualified. At all stockholders' meetings, and all elections held thereat, each share of stock shall be entitled to one vote. Any stockholder may vote upon his shares in person, or by proxy in writing. Shares belonging to an estate may in like manner be voted by the administrator thereof, and shares belonging to a corporation, association, or society may be voted by any person authorized by its board of directors to do so, but no stockholder shall be entitled to vote who owes the bank any past due indebtedness. [C., '97, § 1847.]

9176. Deposits. Any savings bank organized under this chapter may receive on deposit money equal to twenty times the aggregate amount of its paid-up capital and surplus, and no greater amount of deposits shall be received without a corresponding increase of the aggregate paid-up capital and surplus, which capital and surplus shall be a guaranty fund for the better security of depositors, and invested in safe and available securities. [C., '97, § 1848; S., '13, § 1848.]

9177. Payment. The deposits so received shall be paid to such depositor or his representative, when requested, with such interest and under such regulations as the board of directors shall, from time to time, prescribe, not inconsistent with the provisions of this chapter. [C., '97, § 1848; S., '13, § 1848.]

9178. Regulations—posting. Said regulations shall be printed and conspicuously exposed in the business office of the bank, in some place accessible and visible to all; and no alteration

which may at any time be made in such rules and regulations shall affect the rights of depositors acquired previously thereto in respect to deposits or interest thereon. [C., '97, § 1848; S., '13, § 1848.]

9179. Notice of withdrawal. Savings banks may require sixty days' written notice of the withdrawal of savings deposits, but when there are sufficient funds on hand the officers thereof may, in their discretion, waive this requirement. [C., '97, § 1848; S., '13, § 1848.]

9180. Closing of accounts. They may close any account, upon such written notice as may be provided for in the by-laws, directing a depositor to withdraw his deposits, after which it shall cease to draw interest. [C., '97, § 1848; S., '13, § 1848.]

9181. Demand certificates. Nothing in this chapter shall prevent such banks, in their discretion, issuing certificates of deposit payable upon demand. [C., '97, § 1848; S., '13, § 1848.]

9182. Limitation as to interest. All accounts upon which no deposit or drafts shall be made for a period of ten years in succession shall be so far closed that neither the sum deposited, nor the interest that shall have accrued thereon, shall be entitled to any interest after the expiration of the ten years from the date of the last deposit or draft. This provision, however, shall not apply to endowments for children, to trust estates, nor to other cases where special provision is made therefor at the time of the deposit thereof. [C., '97, § 1849.]

9183. Investment of funds. Each savings bank shall invest its funds or capital, all moneys deposited therein, and all its gains and profits, only as follows:

1. *Federal securities.* In bonds or interest-bearing notes or certificates of the United States.

2. *State securities.* In bonds or evidences of debt of this state, bearing interest.

3. *Municipal securities.* In bonds or warrants of any city, town, county, school district, or drainage district of this state, issued pursuant to the authority of law; but not exceeding twenty-five per cent of the assets of the bank shall consist of such bonds or warrants.

4. *Real estate bonds and mortgages.* In notes or bonds secured by mortgage or deed of trust upon unincumbered real estate located in Iowa or upon unincumbered farm land in adjoining states, worth at least twice the amount loaned thereon; provided, however, that no such loan shall be made upon any real estate located west of the one-hundredth meridian line.

5. *Federal reserve and land bank stock.* An amount not exceeding ten per cent of their capital stock and surplus in the capital stock of corporations chartered or incorporated under the provisions of section 25-a of the federal reserve act, approved December 24, 1919, and a like amount in the capital stock of corporations organized under the laws of this state for the purpose of extending credit to

those engaged in agriculture and to agricultural organizations, subject, however, to the approval of the superintendent of banking; provided that said investments by savings banks shall in no event exceed in the aggregate twenty per cent of the capital stock and surplus of said bank. [C., '97, § 1850; S., '13, § 1850; 37 G. A., ch. 364, § 1; 39 G. A., ch. 161, § 1.]

NOTE: Investments in federal reserve bank stock, see § 9269.

9184. Commercial paper. It may discount, purchase, sell, and make loans upon commercial paper, notes, bills of exchange, drafts, or any other personal or public security, but shall not purchase, hold, or make loans upon the shares of its capital stock. [C., '97, § 1850; S., '13, § 1850.]

9185. Expense attending loans. In all cases of loans upon real estate, all the expenses of searches, examination and certificates of title, or the inspection of property, appraisals of value, and of drawing, perfecting, and recording papers, shall be paid by such borrowers. [C., '97, § 1850; S., '13, § 1850.]

9186. Insurance. If buildings are included in the valuation of real estate upon which a loan shall be made, they shall be insured by the mortgagor for at least two-thirds of their value, in some solvent company, and the loss, if any, under the policy of insurance shall be made payable to the bank or its assigns, as its interests may appear. When the mortgagor neglects to procure the insurance as above provided, the mortgagee may procure the same in the mortgagor's name for its benefit, and the premium so paid therefor shall be added to the mortgage debt. [C., '97, § 1850; S., '13, § 1850.]

9187. Surplus fund—investment. The directors of any savings bank may set apart from its earnings, over and above expenses, a surplus fund, to be maintained as such, separate and apart from earnings usually carried and designated as undivided profits, and which surplus fund shall not be drawn upon for the payment of expenses or dividends, except that it may be made use of as a stock dividend for increasing the capital of the bank. Such surplus shall be invested in the same manner as the capital of the bank, as provided in section 9183. [S., '13, § 1850-a; 40 G. A., ch. 186, § 1; 40 Ex. G. A., S. F. 325, § 4.]

NOTE: For similar provisions, see §§ 9189, 9217, and 9301.

9188. Retransfer of fund. The directors may transfer said surplus fund, or any part of the same, back to the undivided profits account, and make use of the same, when so transferred, for the payment of expenses and dividends when the deposits of the bank shall be less than ten times the capital, or capital and remaining surplus, and not otherwise. [S., '13, § 1850-a.]

9189. Surplus fund required. Before any dividend is declared, not less than one-tenth

of the net profits of the bank for the preceding half year or for each period as is covered by the dividend shall be carried to a surplus fund until such surplus shall amount to twenty per cent of its capital stock, and no dividend in excess of eight per cent per annum for the period covered by said dividend shall be paid, unless said surplus fund is equal to twenty per cent of its capital. [40 G. A., ch. 186, § 1.]

NOTE: For similar provisions as to surplus, see §§ 9187, 9217, and 9301.

For similar limitation on dividends, see §§ 9217 and 9302.

9190. Real estate holdings. A savings bank may purchase, hold, and convey real estate only as follows:

1. The lot and building in which its business is carried on.

2. Such as shall have been purchased at sales upon foreclosure of mortgages owned by it, or upon judgments or decrees obtained or rendered for debts due it, or such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or such as it may obtain by redemption as junior mortgagee or judgment creditor, and which shall be sold by said bank within ten years after the title shall be vested in it. [C., '97, § 1851.]

9191. Interest—dividends. No dividend shall be declared or paid to stockholders, save out of the undivided profits on hand after paying or setting apart sums sufficient for the payment of all expenses in operating the bank, and of interest to depositors according to the rate fixed therefor by the board of directors from time to time. The bank shall pay interest to the depositors, when due, upon presentation of deposit book or certificate. [C., '97, § 1852; S., '13, § 1852.]

NOTE: For similar provisions, see §§ 9263 and 9299.

9192. Shares—transfers. The capital of savings banks shall be divided into shares of one hundred dollars each, issued or acquired only upon full payment of the sums represented by them, transferable on the books of the corporation in such manner as shall be prescribed by law and in its by-laws. Stock owned by any corporation, association, or society may be transferred by any person authorized to do so by its board of directors or trustees. [C., '97, § 1853.]

9193. Deposits—to whom payable. Deposits made by a person as executor, administrator, or in any other official capacity, shall be payable to him as such official; if personally made by a minor, to him, although he have no guardian, or his guardian shall not have authorized such payment; and the check, receipt, or acquittance of the minor therefor shall be valid and binding. If a deposit be made in her own name by a woman, then or afterwards married, payment shall be made to her upon her check or receipt; if made by any corporation, association, or society, to any person authorized by its board of directors

or trustees to receive the same. [C., '97, § 1854.]

9194. Increase of capital stock. The capital of savings banks may be increased by an affirmative vote of two-thirds of the shares thereof, at a stockholders' meeting, called upon a notice signed by the officers of the bank and a majority of its directors, specifying the object of the meeting, its time and place, and the amount of the proposed increase, published once a week for four consecutive weeks before the time fixed, in some newspaper of the county where the bank is located. [C., '97, § 1856.]

9195. Record of increase—certificate. If at such meeting the required vote is given, a certificate of the proceedings showing compliance with the foregoing provisions, the amount of capital paid in, the amount to which it is to be increased, and the manner thereof, shall be signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the board of directors, and filed and recorded in the office of the recorder of deeds of the proper county, and with the secretary of state, and a certificate shall thereupon be issued by him in the manner required in the original organization of the bank. When this is done, the stock shall be increased to the amount stated in the certificate. [C., '97, § 1856.]

9196. Reorganization as savings bank. Any bank existing under any law of the state may be reorganized under the provisions of this chapter by filing with the recorder of deeds of the county in which the business is to be conducted, articles of incorporation as required for the organization of savings banks, or such amendment of its articles as will comply with the provisions of this chapter. [C., '97, § 1858.]

9197. Articles — execution—record—certificate of authority. Such articles or amendment shall be signed by a majority of the directors of such bank, acknowledged before some officer authorized to take the acknowledgment of deeds, and recorded in the office of the proper recorder of deeds and secretary of state, as if the original articles, whereupon the superintendent of banking shall issue his certificate, as in case of the original organization of savings banks, which, when received and published as in such cases required, shall authorize it to transact business. [C., '97, § 1858.]

9198. Effect of reorganization. All the provisions relating to savings banks shall

apply to banks thus reorganized, and all its securities, real estate, or property may be then transferred to such new organization. [C., '97, § 1858.]

9199. Preexisting obligations. Such reorganization shall not discharge the original bank, its directors or stockholders from any liability to its depositors or any other person; and such new savings bank shall be liable for every claim or demand existing against such former organization. [C., '97, § 1858.]

9200. Fraudulent representations. Any bank, banking association, private banker, or person, not incorporated under the provisions of this chapter, or any officer, agent, servant, or employee thereof, who shall advertise, issue, or circulate any card or other paper, or exhibit any sign as a savings bank or savings institution, and any savings bank advertising in any way a greater amount of capital than it has actually paid in, shall forfeit and pay one hundred dollars for each day the offense is continued, to be recovered in a suit brought in the name of the state, by the county attorney, of and for the use of the school fund of the county where such bank is located, and, in addition thereto, shall be guilty of a misdemeanor for each day the same is done or continued. [C., '97, § 1859.]

9201. Cash reserve fund. Savings banks doing a commercial business, located in towns having a population of less than three thousand inhabitants, shall at all times keep a cash reserve fund equal to fifteen per cent of their sight and demand deposits, and eight per cent of their savings deposits and time certificates having a fixed and definite time of maturity.

All such banks located in cities and towns having a population of three thousand or over shall at all times keep a cash reserve fund equal to twenty per cent of their sight and demand deposits, and eight per cent of their savings deposits and time certificates having a fixed and definite time of maturity.

Savings banks doing an exclusive savings bank business shall at all times keep a cash fund equal to eight per cent of their deposits.

Eighty-five per cent of such reserve fund provided for in this section may be kept on deposit, subject to call, with other banks organized under state or national laws. [C., '97, § 1860; S. S., '15, § 1860; 37 G. A., ch. 189, § 1.]

NOTE: Above section made applicable to state banks, see § 9216.

CHAPTER 414

STATE BANKS

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9202. "State banks" defined. Associations organized under the general incorporation laws of this state for transacting a banking business, buying or selling exchange, receiving deposits, discounting notes and bills, other than savings banks, shall be designated state banks, and shall have the word "state" incorporated in and made a part of the name of such corporation; and no such corporation shall be authorized to transact business unless the provisions of this code have been complied with. [C., '97, § 1861.]

9203. Other use of name prohibited. No partnership, individual, or unincorporated association engaged in buying or selling exchange, receiving deposits, discounting notes and bills, or other banking business, shall incorporate or embrace the word "state" in its name, but this section shall not apply to associations organized under the laws of the United States. [C., '97, § 1862.]

9204. Incorporation—articles—contents. State banks may be hereafter organized by not less than five persons of lawful age, who shall, prior to the commencement of business, sign and acknowledge articles of incorporation before some officer authorized to take acknowledgments of deeds. Such articles of incorporation shall state:

1. The object of the corporation and the name by which it shall be known.
2. The principal place of business.
3. The time of the commencement and termination of the corporation, which shall in no case exceed twenty years.
4. The amount of capital stock authorized, and the times and conditions in which it shall be paid in.
5. By what officers and persons the affairs of the corporation are to be conducted, and the times at which they will be elected.
6. The highest amount of indebtedness to which the corporation may at any time subject itself.
7. Whether private property, in addition to the liability fixed by law, shall be liable for corporate debts.

8. The name and postoffice address of each officer or person who shall manage the affairs of the corporation until the first election.

9. Such other provisions, not contrary to law, which the corporation may adopt for the conduct of the business of the corporation. [C., '97, § 1863.]

9205. Record and notice of incorporation. Such articles shall be filed and recorded, and notice of incorporation given, as provided in sections 9158 and 9159 in reference to savings banks. [C., '97, § 1863.]

9206. Paid-up capital required. No state bank shall be organized under the provisions of this chapter with a less amount of paid-up capital than fifty thousand dollars, except in cities or towns having a population not exceeding three thousand, where such association may be organized with a paid-up capital of not less than twenty-five thousand dollars. [C., '97, § 1864; S., '13, § 1864.]

9207. Commencement of business—certificate of authority. No such association shall have the right to commence business until its officers or its stockholders shall have furnished to the superintendent of banking a sworn statement of the paid-up capital, and, when the said superintendent is satisfied as to that fact, he shall issue to such association a certificate authorizing it to commence business. [C., '97, § 1864; S., '13, § 1864.]

9208. Publication of certificate. The association shall cause said certificate to be published in some newspaper printed in the city or town where the association is located, once each week, for at least four weeks, or, if no newspaper is published in such city or town, then in a newspaper published nearest thereto in the county. [C., '97, § 1864; S., '13, § 1864.]

9209. Shares. The capital of state banks hereafter organized shall be divided into shares of one hundred dollars each, issued or acquired only upon full payment of the sum represented by them. [C., '97, § 1865.]

9210. Directors. The business and property of each state bank shall be managed by a board of directors of not less than five, all of whom shall be shareholders. [C., '97, § 1866; 39 G. A., ch. 70, § 1.]

9211. Articles to state number—change by stockholders. The articles of incorporation shall designate the maximum number of directors, and the stockholders by a majority of all of the votes of the stockholders of such bank may change at any annual meeting by resolution, the number of its directors, as said stockholders may decide, to any number not less than five nor more than the maximum designated in the articles of incorporation or certificate of authorization, provided that said resolution of the stockholders shall after being duly adopted as aforesaid be filed in the office of the superintendent of banking within thirty days after such adoption. [C., '97, § 1866.]

9212. Amendment of articles. The maximum number of directors as fixed by the articles of incorporation may be changed in the manner prescribed by law for changing the said articles of incorporation. [C., '97, § 1866.]

9213. Eligibility—stock holdings. No person shall be eligible as director of any state bank, nor shall he qualify or serve as such, unless he owns in his own right shares of stock in such bank, as follows:

1. In those having a capital of twenty-five thousand dollars or over, but less than thirty thousand dollars, two shares.

2. In those having a capital of thirty thousand dollars or over, but less than forty thousand dollars, three shares.

3. In those having a capital of forty thousand dollars or over, but less than fifty thousand dollars, four shares.

4. In those having a capital of fifty thousand dollars or over, five shares. [C., '97, § 1866.]

9214. Oath. Each director, before acting as such, shall take an oath that he is the bona fide owner in his own right of the number of shares of stock required in this chapter, and that the same is not hypothecated nor in any manner pledged as security for any loan or debt. [C., '97, § 1866.]

9215. Execution of oath—filing. Said oath shall be signed by each director and certified by the officer before whom it is taken, and filed with and preserved in the office of the superintendent of banking. [C., '97, § 1866.]

9216. Cash reserve required. All of the provisions of section 9201 shall apply with equal force and effect to all state banks heretofore or hereafter incorporated under the provisions of this chapter. [C., '97, § 1867; 37 G. A., ch. 189, § 2; 38 G. A., ch. 67, § 1.]

9217. Surplus—limitation on dividends. Henceforth before any dividend is declared by any state bank, not less than one-tenth of the net profits of the bank for the preceding half year or for each period as is covered by the dividend shall be carried to a surplus fund, until such surplus shall amount to twenty per cent of its capital stock, and no dividend in excess of eight per cent per annum for the period covered by said dividend shall be paid, unless said surplus fund is equal to twenty per cent of its capital. [40 G. A., ch. 186, § 3.]

NOTE: For similar provisions as to surplus, see §§ 9187, 9189, and 9301.

For similar limitation on dividends, see §§ 9189 and 9302.

CHAPTER 415

GENERAL PROVISIONS RELATING TO BANKS AND TRUST COMPANIES

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9218. **Misnomer.** The misnomer of any savings or state bank in any instrument shall not vitiate or impair the same, if such bank be sufficiently described to ascertain the intention of the parties. [C., '97, § 1868.]

9219. **Compensation of officers.** Officers of savings and state banks may receive for their services a reasonable compensation to be fixed from time to time in the by-laws, or by vote of the board of directors; provided, however, directors as such shall receive only such reasonable compensation as shall be fixed from year to year by the stockholders at their annual meeting and when approved by the superintendent of banking, and a director of such bank who is paid a salary as an active officer thereof shall not draw any added compensation for attendance upon board meetings. [C., '97, § 1869; S., '13, § 1869.]

9220. **Loans—use of funds.** No officer or employee of the bank shall in any manner

directly or indirectly use its funds or deposits or any part thereof, except for the regular business transactions of the bank, and no loans shall be made by it to any of them except upon express order of the board of directors, made in the absence of the applicant, duly entered in the records of the board proceedings and only upon the same security as required of others; but the board of directors may by resolution, duly entered in the records of the board proceedings, authorize loans to directors not holding any other office nor being an employee, not exceeding a maximum sum at any one time, which resolution shall be voted upon in the absence of such director. [C., '97, § 1869; S., '13, § 1869.]

9221. **Violations.** Any such officer, director or employee of the bank violating any of the provisions of the two preceding sections shall be guilty of embezzlement and shall be imprisoned in the penitentiary not exceeding ten years, or fined in a sum not less than the

amount embezzled, or punished by both fine and imprisonment, but nothing in this and the two preceding sections shall prevent or defeat the right to recover upon any note or notes given in violation thereof. [C., '97, § 1869; S., '13, § 1869.]

9222. Indebtedness. State and savings banks may contract indebtedness or liability for the following purposes only: for necessary expenses in managing and transacting their business, for deposits, and to pay depositors; provided that in pursuance to an order of the board of directors previously adopted, other liabilities not in excess of amount equal to the capital stock may be incurred. [C., '97, § 1855; S., '13, § 1855-a.]

NOTE: For similar provision, see § 9297.

9223. Limit of liabilities. The total liabilities to any savings or state bank of any person, corporation, company, or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed twenty per cent of the actually paid-up capital and surplus of such bank; provided that they may loan not to exceed one-half of their capital stock to any person, corporation, company, or firm on notes or bonds secured by mortgage or deed of trust upon unincumbered farm land in this state, worth at least twice the amount loaned thereon; but the discount of bona fide bills of exchange drawn against actually existing value, and the discount of commercial or business paper actually owned by the person or persons, corporation, company, or firm negotiating the same, shall not be considered money so borrowed. [C., '97, § 1870; S. S., '15, § 1870.]

9224. Examinations by directors. The board of directors of each savings and state bank shall, at its annual meeting, appoint from its members an examining committee of not less than two, which shall examine the condition of the bank, at least every quarter, and report the same in writing duly signed to the board, which shall cause said report to be recorded in the directors' minute book of the bank. [C., '97, § 1871; S., '13, § 1871.]

9225. Time of examination—report to superintendent. One of these examinations shall be made during the month of June, and another one during the month of December, in each year, and these two examinations, besides being recorded in the minute book of the bank, shall be reported to the superintendent of banking on blanks to be supplied by him. [S., '13, § 1871.]

9226. Failure to report. In case any bank refuses or neglects to so forward such report, said superintendent shall be authorized to have such examination made by one of his regular examiners, and the bank shall be charged with and required to pay the reasonable expense of such examination. [S., '13, § 1871.]

9227. Compensation. Members of such examining committee shall receive for their services a reasonable compensation, to be fixed by

the board at its annual meeting, but in no case shall such compensation exceed five dollars per day for each day's actual service to each member. [C., '97, § 1871; S., '13, § 1871.]

9228. Statements. All savings and state banks shall make a full, clear and accurate statement of the condition of the bank, verified by the oath of the president, vice president, cashier, or assistant cashier, and attested by the signatures of at least three of the directors, or verified by the oath of two of its officers and attested by two of the directors, which statement shall contain:

1. The amount of capital actually paid in.
2. The amount of debts of every kind due to banks, bankers, or persons other than regular depositors.
3. The amount due depositors, including sight and time deposits.
4. The amount subject to be drawn at sight then remaining on deposit with solvent banks or bankers of the country, specifying each city and town and the amount deposited in each and belonging to such bank.
5. The amount of gold and silver coin and bullion belonging to such bank at the time of making such statement.
6. The amount then on hand of legal tender and national bank notes and subsidiary coin.
7. The amount of drafts and checks on other solvent banks, and other cash items not dishonored, then on hand and belonging to such bank.
8. The amount of bills, bonds, and other evidences of debt discounted or purchased by such bank, and then belonging to the same.
9. The value of real or personal property owned by such bank, specifying the amount of each.
10. The amount of undivided profits, if any, then on hand.
11. The total amount of liabilities to such association on the part of the directors thereof. [R., '60, § 1636; C., '73, § 1570; C., '97, § 1872.]

9229. Filing with superintendent. Said statement shall be transmitted to the superintendent of banking within ten days after the receipt of a request or requisition therefor from him, and by him filed in his office. [R., '60, § 1636; C., '73, § 1570; C., '97, § 1872.]

9230. Failure to furnish information. Any bank or trust company subject to supervision by the superintendent of banking which fails to furnish him the call statement within the time required by the preceding section, or fails to furnish him any report, or other information he is legally authorized to call for, within ten days of his call therefor, or within the time required by law, shall be subject to a penalty of ten dollars for each such day of delinquency, unless prior to such delinquency the superintendent has extended the time within which the same may be filed and same is filed within such extended time; such penalty to be paid to the superintendent of banking and collected and accounted for by him, pursuant to the provisions of section 9150. [39 G. A., ch. 69.]

9231. Examinations—reports required. The superintendent of banking may, at any time he may see proper, make or cause to be made an examination of any savings or state bank, or he shall call upon it for a report of its condition upon any given day which has passed, as often as three times or more, at his discretion, each year, which report shall contain the information under section 9228. [R., '60, § 1637; C., '73, § 1571; C., '97, § 1873; S., '13, § 1873; 40 G. A., ch. 187.]

9232. Publication of reports—expense. The said superintendent shall cause said report to be published, except as hereinafter provided, in one regular issue in some daily, semiweekly or weekly newspaper in the city or town where such bank is located, or if there be none in such city or town, then, in one regular issue of some daily, semiweekly, triweekly or weekly newspaper printed in said county, and the expense of such publication shall be paid by the bank. [R., '60, § 1637; C., '73, § 1571; C., '97, § 1873; S., '13, § 1873.]

9233. Matters not published. The statement published in the newspaper shall not contain the name of the bank or banks in which the bank making the statement, has on deposit, funds subject to be drawn at sight, nor shall said statement show the amount of liabilities due such bank on the part of the directors thereof, nor contain an itemized statement of reserve. The reserve with respect to the total amount of cash on hand and due from banks may be shown in one sum. [S., '13, § 1873; 39 G. A., ch. 71.]

9234. Special reports. The superintendent of banking shall also have power to call for special reports from savings and state banks whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of their condition, which reports shall be verified and attested in the same manner as required in this chapter. [C., '97, § 1874.]

9235. Illegal practices—insolvency. When it shall appear to the superintendent of banking that any savings or state bank has refused to pay its deposits in accordance with the terms on which such deposits were received, or has become insolvent, or that its capital has become impaired, or it has violated the law, or is conducting its business in an unsafe manner, he shall, by an order addressed to such bank, direct a discontinuance of such illegal or unsafe practices, and require conformity with the law. [C., '73, § 1572; C., '97, § 1877.]

9236. Examination — oath — evidence. The said superintendent may appoint an examiner to investigate the affairs of any savings or state bank, who shall have power to administer oaths to any person whose testimony may be required on such examination, and to compel his attendance for the purpose thereof, by subpoena or attachment, in the manner now authorized in respect to witnesses in the courts of the state,

and all books and papers which it may be found necessary to inspect on the examination so ordered shall be produced, and their production may be compelled in like manner. [C., '97, § 1877.]

9237. Expense of examination. All expenses thereof shall be paid by the banks examined, in such amount as the said superintendent shall certify to be just and reasonable, but costs taxed as such shall not exceed those allowed for like services in the district court. [C., '97, § 1877.]

9238. Liquidation—right of levy suspended. If any such bank shall fail or refuse to comply with the demands made by the said superintendent, or if the said superintendent shall become satisfied that any such bank is in an insolvent or unsafe condition, or that the interests of creditors require the closing of any such bank, he may appoint an additional bank examiner to assist him in the duty of liquidation and distribution, whereupon the right of levy, or execution, or attachment against said bank or its assets shall be suspended. [C., '73, § 1572; C., '97, § 1877; 40 G. A., ch. 189, § 1.]

9239. Receivership—distribution. The superintendent of banking may apply to the district court for that district in which said bank is located, or a judge thereof, for the appointment of said superintendent as receiver for such bank, and its affairs shall thereafter be under the direction of the court, and the assets thereof after the payment of the expenses of liquidation and distribution shall be ratably distributed among the creditors thereof, giving preference in payment to depositors. [C., '73, § 1572; C., '97, § 1877; 40 G. A., ch. 189, § 1.]

9240. Attorney for receiver. The attorney general of the state, or such assistants as may be appointed by the court, shall represent the superintendent of banks in all proceedings provided for hereunder. [C., '97, § 1877; 40 G. A., ch. 189, § 1.]

9241. General assignments. No general assignment for the benefit of creditors shall be of any validity. [C., '97, § 1877; 40 G. A., ch. 189, § 1.]

9242. Superintendent as receiver. The superintendent of banking henceforth shall be the sole and only receiver or liquidating officer for state incorporated banks and trust companies and he shall serve without compensation other than his stated compensation as superintendent of banking, but he shall be allowed clerical and other expenses necessary in the conduct of the receivership. [40 G. A., ch. 189, § 1.]

9243. Expenses of liquidation. All expenses of supervision and liquidation shall be fixed by the superintendent, subject to approval by the court or a judge thereof, and shall upon his certificate be paid out of the funds of such bank in his hands. [40 G. A., ch. 189, § 1.]

9244. Converted assets—examination. The court having direction and control of any such receiver, or any judge thereof, may require, upon the motion of said receiver, any person suspected of having taken wrongful possession of any of the effects of a state or savings bank for which said receiver has been appointed, or of having had such effects under his control, or any officer or agent of any such suspected person, to appear and submit to an examination, under oath, touching such matters, and if, on such examination, it appears that the person examined has the wrongful possession of any such property, the court or judge may order the delivery thereof to the receiver. [40 G. A., ch. 188, § 1.]

9245. Contempt—enforcement of orders. If, on being served with the order of the court or judge requiring him to do so, any person fails to appear in accordance therewith, or if, having appeared, he refuses to answer any questions which the court or judge thinks proper to be put to him in the course of such examination, or if he fails to comply with the order of the court or judge requiring him to deliver any such property or effects to the receiver, he may be committed to the jail of the county until he does. [40 G. A., ch. 188, § 2.]

9246. Impairment of capital stock—assessments. Should the capital stock of any state or savings bank become impaired by losses or otherwise, the superintendent of banking may require an assessment upon the stockholders, and shall address an order to the several members of the board of directors of such bank, fixing the amount of assessment required. [C., '97, § 1878.]

9247. Compliance with order. The board of directors shall, within thirty days after the receipt of such order, cause such deficiency to be made good by a ratable assessment upon the stockholders for the amount of stock held by them, by giving such stockholders notice in writing, signed by the president or vice president, attested by the cashier or secretary of the bank, under its seal, if it have one, and deposited in the postoffice, addressed to the last known residence of the stockholders, proof thereof to be made by the affidavit of the person so making the deposit, which notice shall state the entire sum to be raised, and the amount due from the addressed stockholder. [C., '97, § 1878.]

9248. Assessment enforced. Should any stockholder neglect or refuse to pay his assessment within ninety days from the date of mailing notice thereof, the board of directors shall cause a sufficient amount of the capital stock held by such stockholder to be sold at public auction to make good the deficiency, after giving thirty days' notice thereof by posting the same in the bank, and publishing it in some newspaper of the county in which the bank is located, which notice shall recite the assessment made, the amount due thereunder from

the stockholder, and the time and place of sale; proof of all which may be made in the manner provided in the preceding section. [C., '97, § 1879.]

9249. Balance of proceeds. After such deficiency is made good, the balance of the proceeds of said sale, if any, shall be paid to the delinquent stockholder. [C., '97, § 1879.]

9250. Liability of directors. Should the board of directors of such bank having an impaired capital neglect or refuse to proceed as above provided for a period of thirty days after receipt of such order from the superintendent of banking, they shall become severally liable for any deficiency, which liability may be enforced at law by any creditor of or stockholder in the bank, or receiver appointed to wind up its affairs. [C., '97, § 1880.]

9251. Liability of stockholders. All stockholders of savings and state banks shall be individually liable to the creditors of such corporation of which they are stockholders over and above the amount of stock by them held therein and any amount paid thereon, to an amount equal to their respective shares, for all its liabilities accruing while they remained such stockholders. [C., '97, § 1882.]

9252. Enforcement. Should any such association or corporation become insolvent, its stockholders may be severally compelled to pay such deficiency in proportion to the amount of stock owned by each, not to exceed the extent of the additional liability hereby created. [C., '97, § 1882.]

9253. Action by creditor. The assignee or receiver of any such corporation, or in case there is none, or of his failure or refusal to act, any creditor thereof, may maintain an action in equity to determine the liability of the stockholders, and the amount to which each creditor shall be entitled; and all parties interested shall be brought into court. [C., '97, § 1882.]

9254. Distribution of proceeds. Should the whole amount for which the stockholders are made individually responsible, as provided by the three preceding sections, be found in any case to be inadequate for the payment of all the debts of any such association or corporation, after the application of its assets to the payment of such debts, then the amount due from such stockholders, on account of their individual liability created by said sections, as such, shall be distributed equally among all the creditors of such corporation in proportion to the several sums due them. [C., '97, § 1883.]

9255. List of officers, stockholders, and holdings. The president and cashier of every savings and state bank shall cause to be kept at all times a full and correct list of the names and residences of the officers, directors, examining committee, and of all the stockholders in the bank, and the number of shares held

by each, in the office where its business is transacted. [C., '97, § 1889; S., '13, § 1889.]

9256. Right to inspect list. Said list shall be subject to the inspection of all the stockholders and creditors of the bank during business hours of each day in which business may be legally transacted. [C., '97, § 1889; S., '13, § 1889.]

9257. List filed with superintendent. A copy of such list, verified by the oath of the president or cashier, shall be transmitted to the superintendent of banking within ten days after each annual meeting. [C., '97, § 1889; S., '13, § 1889.]

9258. Banking business—limitation and exceptions. No corporation shall engage in the banking business, receive deposits, and transact the business generally done by banks, unless it is subject to and organized under the provisions of this title, or of the banking laws of the state heretofore existing, except that loan and trust companies may receive time deposits subject to the same limitations as are now or may hereafter be prescribed for the receiving of deposits by state banks and issue drafts on their depositories. [C., '97, § 1889; S., '13, § 1889.]

9259. Loan and trust companies. All such companies and all corporations organized under the provisions of chapter 384, whose articles of incorporation authorize the acceptance and execution of trusts, and all corporations in whose name the word "trust" is incorporated and forms a part, shall have a full paid capital of not less than the amount of capital of savings banks, as provided in section 9160 and shall be subject to examination, regulation and control by the superintendent of banking, like savings and state banks, and their stockholders shall be liable to the creditors of such companies as provided in sections 9251 to 9253, inclusive, for stockholders in savings and state banks. [C., '97, § 1889; S., '13, § 1889.]

9260. Violations. Any corporation violating the five preceding sections shall forfeit its charter at the suit of the attorney general, and said corporation, its officers, directors and agents, shall be punished by a fine of not less than five hundred dollars, or imprisonment of not less than two years in the penitentiary, or by both such fine and imprisonment, at the discretion of the court. [C., '97, § 1889; S., '13, § 1889.]

9261. Reorganizations of loan and trust companies. Loan and trust companies organized under the general incorporation laws of the state, which were engaged in the banking business prior to January 1, 1886, and have continued therein since said date, may, by the proper additions to their articles of incorporation, become state banks within the provisions of this title, without incorporating the word "state" in the names of such corporations. [C., '97, § 1889; S., '13, § 1889.]

9262. Withdrawal of capital stock. No corporation organized under the banking laws of this state shall withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any part of its capital stock, except as hereinafter provided. [37 G. A., ch. 218, § 1.]

9263. Unallowable dividends. If losses have at any time been sustained, equal to or exceeding undivided profits on hand, no dividends shall be made; and no dividends shall be made by any association formed under the banking laws of the state to an amount greater than the net profits on hand, less the losses and bad debts. [37 G. A., ch. 218, § 1.]

NOTE: For similar provisions, see §§ 9191 and 9299.

9264. Reduction of capital stock. The capital stock may be reduced by the affirmative vote of the stockholders holding two-thirds of the shares of the capital stock, at a meeting of the stockholders to be called for this purpose in the manner and after the publication of notice as required in case of the increase of the capital stock. No reduction shall be to any amount less than the capital required to authorize the confirmation of such association. [37 G. A., ch. 218, § 1.]

9265. Approval of reduction or cancellation. There shall be no reduction of capital or cancellation of stock, until said reduction or cancellation shall first be approved by the superintendent of banking. [37 G. A., ch. 218, § 1.]

9266. Forged or raised checks—liability of bank. No bank shall be liable to a depositor for the payment by it of a forged or raised check unless within six months after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid is forged or raised. [S., '13, § 1889-a.]

9267. Deposit in names of two persons. When a deposit shall hereafter be made in any bank or trust company in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or interest or dividend thereon, may be paid to either of said persons whether the other be living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank, banker, or trust company for any payment so made. [S., '13, § 1889-b.]

9268. Securities—deposit with federal treasurer. All state and savings banks existing under and by virtue of the laws of this state are authorized and permitted to deposit with the treasurer of the United States such of the securities of the depositing bank as may be required to secure the postal savings funds deposited therein. [S., '13, § 1889-c.]

9269. Membership in federal reserve system—investment. Any state bank, savings bank, or trust company organized under the laws of this state is authorized and empowered,

upon a vote of the shareholders thereof owning not less than fifty-one per cent of the capital stock of such state bank, savings bank, or trust company, to become a member of the federal reserve bank system and to invest their funds in the stock of the federal reserve bank in the federal reserve district in which such banks or trust companies are located, and to incur liability therefor. [S. S., '15, § 1889-o.]

9270. Reserve funds of members federal reserve system. Any state bank, savings bank, or trust company incorporated under the laws of this state, which is or hereafter may become a member of the federal reserve bank system of the United States of America, shall be required to carry during the period of such membership only such cash reserve funds as may be required from time to time to be maintained by national bank members of said federal reserve bank system. [38 G. A., ch. 319, § 1.]

9271. Investment in federal reserve and farm loan bank stock. State banks and trust companies are hereby authorized, subject to the approval of the superintendent of banking, to invest an amount not exceeding ten per cent of their capital stock and surplus in the capital stock of corporations chartered or incorporated under the provisions of section 25-a of the federal reserve act, approved December 24, 1919, and a like amount in the capital stock of corporations organized under the laws of this state for the purpose of extending credit to those engaged in agriculture and to agricultural organizations; provided that the said investments by state banks and trust companies shall in no event exceed in the aggregate twenty per cent of the capital stock and surplus of said state bank or trust company. [39 G. A., ch. 157, § 1.]

9272. Acceptance of drafts. Any state bank, savings bank, or trust company may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, provided shipping documents conveying or securing title are attached at the time of acceptance, or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. [38 G. A., ch. 66, § 1.]

9273. Acceptances limited. No state bank, savings bank, or trust company shall accept, whether in a foreign or domestic transaction, for any one person, company, firm, or corporation to an amount equal at any time in the aggregate to more than ten per cent of its paid-up and unimpaired capital stock and surplus, unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance; nor shall the total of bills

accepted for and money borrowed by any one person, company, firm, or corporation exceed in the aggregate more than twenty per cent of its paid-up capital and surplus; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus. [38 G. A., ch. 66, § 1.]

9274. Superintendent to regulate acceptances. The superintendent of banking, under such general regulations as he may prescribe, which shall apply to all banks alike regardless of the amount of capital stock and surplus, may authorize any state bank, savings bank, or trust company to accept such bills to an amount not exceeding at any time in the aggregate one hundred per cent of its paid-up and unimpaired capital stock and surplus; but the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty per cent of such capital stock and surplus. [38 G. A., ch. 66, § 1.]

9275. Commission for organizing banks. No individual, partnership, or corporation shall, directly or indirectly, receive or contract to receive any commission or bonus of any kind for organizing any bank or trust company in this state, or for securing a subscription to the original capital stock or surplus of any bank or trust company in this state, or to any increase thereof; provided that this section shall not be construed as prohibiting an attorney at law from receiving reasonable compensation for legal service in connection therewith. [38 G. A., ch. 144, § 1.]

9276. Violations. Each and every individual, partnership, or corporation violating the provisions of the preceding section shall forfeit to the state one hundred dollars, for each and every such violation, and in addition thereto forfeit double the amount of such commission, compensation or bonus. [38 G. A., ch. 144, § 1.]

9277. Dissolution. State or savings banks may be dissolved prior to the period fixed in the certificate of incorporation, by the affirmative votes of the stockholders holding three-fourths of the capital, at a meeting of stockholders to be called for this purpose in the manner and after publication of notice as required in case of the increase of its capital. [C., '97, § 1857; S., '13, § 1857.]

9278. Receivership—forced sale. In case of dissolution of the bank or proceedings to close the same as authorized in this chapter, no receiver appointed thereunder shall be allowed to sell the assets thereof at forced sale, but he shall collect the same with all diligence, and make distribution of the proceeds from time to time to those entitled thereto. [C., '97, § 1857; S., '13, § 1857.]

9279. Receiving deposits when insolvent. No bank, banking house, exchange broker, deposit office, firm, company, corporation, or per-

son engaged in the banking, brokerage, exchange, or deposit business, shall, when insolvent, accept or receive on deposit, with or without interest, any money, bank bills or notes, United States treasury notes or currency, or other notes, bills, checks, or drafts, or renew any certificate of deposit. [C., '97, § 1884.]

9280. Violations. If any such bank, banking house, exchange broker, deposit office, firm, company, corporation, or person shall receive or accept on deposit any such deposits, as aforesaid, when insolvent, any owner, officer, director, cashier, manager, member, or person knowing of such insolvency, who shall knowingly receive or accept, be accessory, or permit, or connive at receiving or accepting on deposit therein, or thereby, any such deposits, or renew any certificate of deposit, as aforesaid, shall be guilty of a felony, and, upon conviction, shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the penitentiary for a term of not more than ten years, or by imprisonment in the county jail not more than one year, or by both fine and imprisonment. [C., '97, § 1885.]

9281. Official neglect of officers. Any officer or officers whose duty it is to make statement of the condition of their bank and make publication of same, who shall wilfully neglect or refuse to perform such duties imposed upon them or either of them, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not less

than three months nor more than three years in the penitentiary. [C., '97, § 1886.]

9282. False statements or entries—diversion of funds. Any owner, director, officer, agent, employee, or clerk of any bank who shall knowingly subscribe or make any false statements or false entries in the books thereof, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe and make false reports, or shall knowingly divert the funds of the bank to other objects than those authorized by law, shall be punished by a fine not exceeding ten thousand dollars, and be imprisoned in the penitentiary not less than two nor more than five years, and be forever after barred from holding any office created by this chapter. [C., '97, § 1887.]

9283. Intentional fraud—payment of unlawful dividends. Any owner, director, officer, agent, employee, or clerk of any bank who is guilty of intentional fraud, or of deceiving the public or individuals in relation to the means or liabilities of such bank, or who aids, assists, or consents to the payment of dividends which leave insufficient funds with which to meet the liabilities of the bank, shall be punished by a fine of not less than five hundred dollars, or imprisonment of not less than one year, or by both such fine and imprisonment, at the discretion of the court; and such act shall cause a forfeiture of all the privileges of said bank, and the court may proceed to close the same in the manner prescribed by law. [C., '97, § 1888.]

CHAPTER 416

BANKS AND TRUST COMPANIES AS FIDUCIARIES

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9284. Authorization — additional powers. Trust companies, state and savings banks existing under the provisions of this title, in addition to the powers already granted to such corporations, shall have power, when so authorized by their articles of incorporation:

1. To be appointed assignee or trustee by deed, and guardian, executor, or trustee by will, and such appointment, upon qualification as herein required, shall be of like force as in case of appointment of a natural person.

2. To be appointed receiver, assignee, guardian, administrator, or other trustee by any court

of record in this state, and it shall be lawful for such court to appoint such corporation as such receiver, assignee, guardian, administrator, or other trustee, in the manner provided by law for the appointment of any natural person to such trust; provided any such appointment as guardian shall apply to the estate and not the person.

3. To act as fiscal or transfer agents, or registrar for estates, municipalities, companies, and corporations.

4. To take, accept, and execute any and all such trusts and powers of whatsoever char-

acter and description, not in conflict with the laws of the United States or of this state, as may be conferred upon or intrusted or committed to them by any person or persons or any body politic, corporation, or other authority, by grant, assignment, transfer, devise, bequest, or otherwise, or which may be intrusted or committed or transferred to them or vested in them by order of any court of record, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust, and to manage and dispose of such property or estate in accordance with the terms of such trust or power.

5. To issue drafts upon depositories, and to purchase, invest in, and sell promissory notes, bills of exchange, bonds, mortgages, and other securities.

6. To exercise the powers conferred on and to carry on the business of a safe deposit company. [S. S., '15, § 1889-d.]

9285. Deposit of trust funds — payment. Any court having appointed, and having jurisdiction of any receiver, executor, administrator, guardian, assignee, or other trustee, upon the application of such officer or trustee, after such notice to the other parties in interest as the court may direct, and after a hearing upon such application, may order such officer or trustee to deposit any moneys then in his hands, or which may come into his hands thereafter, and until the further order of said court, with any such trust company, state or savings bank, and upon deposit of such money, and its receipt and acceptance by such corporation, the said officer or trustee shall be discharged from further care or responsibility therefor. Such deposit shall be paid out only upon the orders of said court. [S. S., '15, § 1889-d.]

9286. Avoiding burdensome bond by deposit. Whenever, in the judgment of any court having jurisdiction of any estate in process of administration by any assignee, receiver, executor, administrator, guardian, or other trustee, the bond required by law of such officer shall seem burdensome or excessive, upon application of such officer or trustee, and after such notice to the parties in interest as the court shall direct, and after a hearing on such application, the said court may order the said officer or trustee to deposit with any such corporation for safe-keeping, such portions or all of the personal assets of said estate as it shall deem proper, and thereupon said court shall, by an order of record, reduce the bond to be given, or theretofore given by such officer or trustee, and the property as deposited shall thereupon be held by the corporation under the orders and directions of said court. [S. S., '15, § 1889-d.]

9287. Payment of deposited funds. When any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given to the corporation in the event of the death of the trustee,

the same or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the said deposit was made, or to his or her legal representatives; provided that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the consent of the legal representatives of said trustee. [S. S., '15, § 1889-d.]

9288. National banks. When so authorized by any law of the United States now in force or hereafter enacted, national banks may exercise the same powers and perform the same duties as are by the preceding sections of this chapter conferred upon trust companies, state and savings banks. [S. S., '15, § 1889-d.]

9289. Voting of stock. In case any corporation shall hold any of its own shares of stock in any of the trust capacities herein authorized, then such shares shall be voted at stockholders' meetings by any person so authorized by the board of directors of said corporation. [S., '13, § 1889-e.]

9290. Separation of funds — liability. All property, real or personal, received in trust by any such corporation exercising the powers granted by this chapter, shall be kept separate from such funds or property which may be in the possession of such corporation, and shall not be liable for the debts or obligations of such corporation. [S., '13, § 1889-f.]

9291. Analogous rights and duties—compensation—bond. Every state or savings bank, or trust company, acting as guardian, administrator, executor, trustee, assignee, receiver, or custodian shall have the same rights, powers, and privileges as individuals so acting, and receive the same compensation as is or may be allowed individuals for exercising similar offices or trusts, so far as the same are fixed by statutes, and shall execute a bond for the faithful performance of the trust confided to it in like sum and with like penalties as is required by individuals. [S., '13, § 1889-g.]

9292. Appointment of successor. In case any corporation desires to retire from business under this chapter, or in case of the dissolution of any such corporation, the court having jurisdiction of each of the several trusts and appointments held by such corporation shall, upon application of such corporation or its receiver, after such notice to the other parties in interest as the court may direct, and after a hearing upon such application, appoint another corporation as successor trustee or appointee. [S., '13, § 1889-h.]

9293. Release from liability. Upon the acceptance of such office by the successor trustee and due qualification therefor, and the transfer of the property in such case held, to the successor trustee then the dissolving corporation shall be discharged from any further responsibility in such trust capacity or appointment. [S., '13, § 1889-h.]

9294. Return of securities. The superintendent of banking, upon being furnished with satisfactory evidence of said corporation's release and discharge from all of the obligations and trusts assumed by virtue of this chapter, shall thereupon return to such corporation the securities deposited by it with him. [S., '13, § 1889-h.]

9295. Mandatory use of "trust", "state", or "savings". Any trust company, state or savings bank, which under this chapter and by its original or amended articles of incorporation shall be authorized to exercise any of the powers herein granted, shall have the word "trust", "state", or "savings" incorporated in the name thereof. [S., '13, § 1889-i.]

9296. Prohibited use of word "trust". No corporation hereinafter organized without complying with the terms of this chapter, and no partnership, individual or unincorporated association, shall incorporate or embrace the word "trust" in its name. [S., '13, § 1889-i.]

9297. Indebtedness or liability—exceptions. Trust companies, state or savings banks, may contract indebtedness or liability for the following purposes: For necessary expenses in managing and transacting their business, for deposits, and to pay depositors, provided that in pursuance of an order of the board of directors previously adopted, other liabilities not in excess of an amount equal to the capital stock may be incurred. Nothing herein contained shall limit the issuance, by trust companies, of debentures or bonds, the actual payment of which shall be secured by an actual transfer of real estate securities. [S., '13, § 1889-j.]

NOTE: For similar provisions, see § 9222.

9298. Attorney—appointment of—fee. The beneficiaries of any trust held by any such corporation may appoint, by and with the approval of the court having jurisdiction thereof, a practicing attorney in good standing to look after the legal interests of said beneficiaries; and said attorney shall be allowed by the court a reasonable fee for such legal services, to be paid out of said trust estate. [S., '13, § 1889-k.]

9299. Dividends. After providing for all expenses, interest, and taxes accrued or due from any corporation exercising the powers herein conferred and deducting all losses and bad debts, the board of directors of said corporation may declare a dividend of so much of the profits of the corporation as they shall judge expedient. [S., '13, § 1889-l.]

NOTE: For similar provision, see §§ 9191 and 9263.

9300. "Bad debts" defined. All debts past due to any corporation on which interest is past due and unpaid for a period of twelve months, unless the same are well secured and

in process of collection, shall be considered bad debts within the meaning of the preceding section. [S., '13, § 1889-l.]

9301. Surplus fund required. Before any such dividend is declared, not less than one-tenth of the net profits of the corporation for the preceding half year, or for such period as is covered by the dividend, shall be carried to a fund to be designated the surplus fund, until such surplus fund shall amount to twenty per cent of its capital stock, and thereafter such surplus fund shall always be equal to at least twenty per cent of the capital stock of such corporation unless impaired by losses, and whenever the same becomes so impaired it shall be reimbursed in the manner provided for its accumulation. [S., '13, § 1889-l.]

NOTE: For similar provisions, see §§ 9187, 9189, and 9217.

9302. Limitation on dividends. In no event shall any corporation exercising the powers herein conferred pay any dividend in excess of eight per cent per annum for the period covered by said dividend unless said surplus is equal to twenty per cent of its capital. [40 G. A., ch. 186, § 2.]

NOTE: For similar limitation on dividends, see §§ 9189 and 9217.

9303. Investment of surplus. Said surplus shall be invested the same as the original capital. [S., '13, § 1889-l.]

9304. Applicable provisions. All of the provisions of sections 8371 to 3375, inclusive, relating to the renewal of corporate existence of state and savings banks, and all of the provisions of sections 9155, and 9157 to 9161, inclusive, so far as same relate to time and manner of commencing business, sections 9163 to 9182, inclusive, 9192 to 9199, inclusive, 9201, 9277, and 9278, and all the provisions of sections 9218 to 9221, inclusive, 9223 to 9268, inclusive, and 9279 to 9283, inclusive, shall apply with equal force and effect to all trust companies organized or reorganized under this chapter. [S., '13, § 1889-m.]

9305. Trust matters—report. Any corporation exercising any of the powers herein granted, in addition to matters required by section 9228, to be given in the statement of conditions, shall give:

A list and brief description of the trusts held by such company, the source of the appointment thereto, and the amount of real and personal estate held by such company by virtue thereof, except that mere mortgage trusts wherein no action has been taken by such company, shall not be included in such statement; said list to be transmitted to the superintendent of banking within thirty days after the receipt of requisition therefor, but such list shall not be published. [S., '13, § 1889-m.]

TITLE XXII

BUILDING AND LOAN ASSOCIATIONS

CHAPTER 417

ORGANIZATION AND GENERAL REGULATIONS

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INCORPORATED ASSOCIATIONS

9306. Defined generally. Corporations organized for the purpose of furnishing money to their members upon sufficient security shall be known as building and loan or savings and loan associations. [C., '73, § 1184; C., '97, § 1890.]

9307. Domestic local companies. Domestic local building and loan or savings and loan associations shall include corporations, societies, organizations, or associations incorporated under the laws of this state for the purpose of and doing business only within the county in which is situated the town or city named in its articles of incorporation as its principal place of business; provided that, where the town or city named in its articles of incorporation as the principal place of business is situated in more than one county, and the business of the association is restricted to the town or city and to the county within which is located its principal office, said association shall be deemed a domestic local building and loan or savings and loan association within the meaning of this chapter. [C., '97, § 1890.]

9308. Domestic companies. Domestic building and loan or savings and loan associations shall include corporations, societies, organizations, or associations incorporated under the laws of this state for the purposes herein provided, the business of which is not restricted to the county in which is situated the town or city named in its articles of incorporation as its principal place of business. [C., '97, § 1890.]

9309. Foreign companies. Foreign building and loan or savings and loan associations shall include corporations, societies, organizations, or associations incorporated under the laws of another state, territory, country, or nation for the purposes specified herein. [C., '97, § 1890.]

9310. Organization. Any number of persons not less than five, residents of the state, may become incorporated as building and loan or savings and loan associations under the general incorporation laws of this state, except as otherwise herein provided, and upon complying with the provisions of this chapter. [C., '73, § 1184; C., '97, § 1891.]

9311. Capital—commencement of business. The capital named in the articles of incorporation shall be taken to mean the authorized capital, and the association may commence business when one hundred shares thereof have been subscribed and the other provisions of this chapter in relation thereto have been complied with. [C., '97, § 1892.]

9312. Directors. Such associations shall be governed by a board of directors who shall be elected annually by the stockholders, and who shall hold their office for not less than one nor more than five years, and, if for a

longer period than one year, it shall be so arranged that the terms of an equal number thereof, as nearly as may be, shall expire each year. [C., '97, § 1892.]

9313. Articles The articles of incorporation shall show:

1. The names and residences of the incorporators.
2. The name of the association and its principal place of business.
3. The purpose for which such association is formed.
4. The terms and plan of becoming and continuing a member.
5. The plan of making loans.
6. The plan of distributing profits.
7. The plan of equalizing losses.
8. The plan and terms of withdrawal of members.
9. The plan of providing for payment of expenses.
10. The number of shares into which capital stock is to be divided.
11. The classes into which its capital stock is to be divided, and the terms of paying for the same by subscribers.
12. The term of corporate existence.
13. The manner of electing officers and filling vacancies. [C., '97, § 1893.]

9314. Maximum and uniform interest rate. No such associations shall be authorized or empowered to collect or receive premiums and interest from a borrower at a greater rate than eight per cent and in case of an amendment to the articles of incorporation so that a lower rate of interest or charge for the use of money loaned to the borrowing member is authorized, then the rate of interest charged upon loans to members who have theretofore borrowed shall in like manner be reduced to the same rate as that permitted to borrowers after such amendments to the articles of incorporation, so that the interest charged under whatever name, whether charged as premium or interest, to all members of the same association shall be the same, all reductions of the rate of interest or premium charged to new borrowers shall be made and apply equally to those who have theretofore borrowed. [S., '13, § 1893-a.]

9315. Approval of articles—certificate of authority. Such articles of incorporation with the by-laws of the association shall be presented to the executive council, and if it finds they are in conformity with the law, and based upon a plan equitable in all respects to its members, it shall attach thereto its certificate of approval, and thereupon such articles and by-laws shall be filed in the office of the auditor of state, who shall issue a certificate authorizing the association to transact business. [C., '97, § 1894.]

9316. Amendments—approval. Amendments to such articles may be made from time to time at any regular or special meeting of the stockholders, and shall in like manner be sub-

mitted to the executive council and approved by it. [C., '97, § 1894.]

9317. Record. The council shall keep a record of its proceedings with reference to such associations. [C., '97, § 1894.]

9318. Revocation of certificates. The executive council shall have the power, and it shall be its duty, to revoke any certificate of authority given to any building and loan or savings and loan association whenever it appears to said council that said association is transacting business illegally, or is unjust and oppressive to its members or the public. [S., '13, § 1894-a.]

9319. Domestic companies—bonds—custody. The officers of any domestic building and loan or savings and loan association who sign or indorse checks or handle any funds or securities of such association shall give such bonds or fidelity insurance for the faithful performance of their duties in such sum as the board of directors may require; and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by the board of directors and by the state auditor. Said bond shall be deposited and filed with the auditor of state. [C., '97, § 1895.]

9320. Additional bonds. All such bonds shall be increased or additional securities required by the board of directors or the auditor of state when it becomes necessary to protect the interests of the association or its members. [C., '97, § 1895.]

9321. Disqualified sureties. No director shall be accepted as surety on such bonds, and no person shall be accepted as surety on the bond of more than one officer of said association. [C., '97, § 1895.]

9322. Liability of directors. The directors shall be individually liable for loss to the association or its members caused by their failure to require a compliance with the provisions of the three preceding sections. [C., '97, § 1895.]

9323. Domestic local companies—bonds. The officers of any domestic local building and loan or savings and loan association who sign or indorse checks or handle any funds or securities of said association shall give such bonds or fidelity insurance for the faithful performance of their duties in such sum as the board of directors may require; and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by the board of directors and the clerk of the district court of the county of the principal place of business of said association. [C., '97, § 1896.]

9324. Approval and custody of bonds. Said bonds shall be deposited with the said clerk, and it is hereby made the duty of the said clerk to approve said bonds and to receive the same as herein provided. [C., '97, § 1896.]

9325. Disqualified sureties. No person shall be accepted as surety on the bond of more than one officer of said association. [C., '97, § 1896.]

9326. Increase in bonds. All such bonds shall be increased or additional securities required by the board of directors or by the clerk of said district court when it shall be deemed necessary to protect the interests of the association or its members. [C., '97, § 1896.]

9327. Liability of directors. The directors shall be individually liable for loss to the association or to its members caused by their failure to require a compliance with the provisions of the four preceding sections. [C., '97, § 1896.]

9328. Banking prohibited. It shall be unlawful for any building and loan or savings and loan association to receive deposits of money without issuing shares of stock for the same, or to transact a banking business. [C., '97, § 1897.]

9329. Powers. All building and loan or savings and loan associations, upon receiving the certificate from the auditor, shall have power, subject to the terms and conditions contained in their articles of incorporation and by-laws:

1. To issue stock to members to be paid for in single, stated, or monthly payments.

2. To assess and collect from members such dues, membership fees, fines, premiums, and interest on loans as may in the articles of incorporation and by-laws have been provided, and the same shall not be held to be usurious.

3. To permit members, other than holders of guarantee stock, to withdraw all or a part of their stock deposits upon such terms and at such times as the articles of incorporation and by-laws may provide.

4. To acquire, hold, incumber and convey such real estate and personal property as may be necessary for the transaction of their business.

5. To make loans to members on such terms, conditions, and securities as the articles of incorporation and by-laws provide; said loans to be made only on real estate security, or on the security of their own shares of stock, not to exceed ninety per cent of the withdrawal value thereof. [C., '73, §§ 1185, 1186; C., '97, § 1898; S., '13, § 1898.]

9330. Limitation on issue of stock. Not more than ten thousand dollars of stock, computed at par value, of any kind shall be issued to one person except that any association having assets in excess of one million dollars may issue to one person stock, computed at par value, not in excess of one per cent of its assets. [C., '73, § 1185; 39 G. A., ch. 258, § 1.]

9331. Foreclosure—debit and credit. In case of foreclosure, the borrower shall be charged with the full amount of the loan made to him, together with the dues, interest, pre-

mium, and fines for which he is delinquent, and he shall be credited with the same value of his pledged shares as if he had voluntarily withdrawn the same. [C., '97, § 1898; S., '13, § 1898.]

9332. Limitation on judgment. In event that judgment is obtained against a borrower from a building and loan association, no greater recovery shall be had than the net amount of principal actually received, with interest thereon at a rate not greater than twelve per cent per annum on the net amount of loan actually received by and paid to borrower, with statutory attorney fees; no evasion of this provision shall be had by means of any dues, membership fees, premiums, fines, forfeitures, or other charges, any agreement to the contrary notwithstanding. [C., '73, § 1186; C., '97, § 1898; S., '13, § 1898.]

9333. Annual statement as to stock values. It shall be the duty of the secretary of every such association doing business in this state to prepare, on or before February fifteenth of each year, a duly verified statement, showing the book value and withdrawal value of a share of each class of stock in said association, for each monthly period up to January first preceding, and file the same with the auditor of state, which shall be preserved in his office.

The said association shall, on or before February fifteenth of each year, mail to each shareholder a written or printed copy of the same. [C., '97, § 1898; S., '13, § 1898.]

9334. Forbidden stocks—rate of dividend. No building and loan or savings and loan associations shall issue guarantee stock, fully paid stock, or single payment stock, or any stock of any other kind or name which shall receive fixed dividends, or is not subject to all the liabilities of all other classes of stock of said associations, except that it shall be lawful for such associations to issue fully paid stock upon the payment by the holder thereof of the par value of such stock upon which the dividends to be declared shall not exceed the sum named in said certificate of stock, but in no event shall the dividend exceed eight per cent per annum nor the rate of dividend declared upon the other stock of said association, which said stock shall be subject to be called in and redeemed by the said association by giving the holder thirty days' notice thereof. [S., '13, § 1898-c; 39 G. A., ch. 258, § 2.]

9335. Foreclosure—debts and credits. In case of foreclosure of any mortgage given by a shareholder of any such association, the mortgagor shall be charged with the rate of interest agreed upon, not, however, to exceed eight per cent per annum, and shall be entitled to be credited, as of any anniversary of said mortgage, with the total amount of all payments made on the stock to the said association during the preceding year, and such payment on the stock shall be treated as a payment upon the mortgage, anything in the articles of incorporation or the by-laws of such association

to the contrary notwithstanding. [S., '13, § 1898-d.]

9336. Equitable contribution to losses. If such association shows affirmatively that losses have occurred during the period of the membership of such shareholder in excess of the amount of any fund accumulated from which to pay such losses, to such an extent that the value of the shares of stock have been impaired, then such associations shall be entitled to have entered as a part of the judgment of foreclosure the equitable contribution of said shareholder toward such losses. [S., '13, § 1898-d.]

9337. When withdrawal value credited. If, by the articles of incorporation, the withdrawal value of the stock of such mortgagor is greater than the amount paid thereon, together with eight per cent interest, then such withdrawal value shall be credited on the mortgages of the date to which such value is computed, in lieu of the credits of payment on stock as aforesaid, and judgment and decree shall be rendered for only the balance found due. [S., '13, § 1898-d.]

9338. Costs. In any suit in which the recovery upon the mortgage shall be for a less amount than the amount demanded in the plaintiff's petition, all costs of suit, including attorneys' fees, may in the discretion of the court be taxed to the plaintiff. [S., '13, § 1898-d.]

9339. Right of association to judgment. In case of foreclosure, judgment and decree shall be entered for as much as would be due the association under the provisions of this chapter if suit had not been brought. [S., '13, § 1898-d.]

9340. Investments—mortgages—collateral. All funds, except those necessary to defray the expenses of the association, shall be invested for the benefit of the shareholders. For every loan made a nonnegotiable note or bond secured by first mortgage on real estate shall be given, unless the prior mortgage is to the same association; then a second mortgage may be taken to secure said note, except when such loan is on the withdrawal value of stock only. Said note or bond shall be accompanied by the transfer of the shares of stock of the borrower to the association, to be held as collateral security. [C., '97, § 1899.]

9341. Loans—premium and interest. Such associations shall have power to loan money to their members at such rate as may be agreed upon, and may collect premiums and interest thereon, but in no case shall the amount of premium and interest paid exceed eight per cent per annum; but nothing herein shall be construed as prohibiting the payment of such interest and premium monthly, or at such time as may be provided for in the articles of incorporation. [S., '13, § 1899-a.]

9342. Voting shares of stock. Each member shall have one vote for each one hundred dollars of stock par value owned and held by

him at any election, and may vote the same by proxy, but no person shall vote more than ten per cent of the outstanding shares at the time of said election. Anyone depositing or transferring stock to the association as collateral security shall be deemed the owner of such stock within the meaning of this section. [C., '97, § 1900.]

9343. Voting in representative capacity. Any guardian, executor, administrator, or trustee shall have the right to vote, manage, and control the shares held by him in his representative capacity. [C., '97, § 1901.]

9344. Minors as members. Minors may become members and make withdrawals the same as other members, unless notice to the contrary is given in writing to said association by the parent or guardian of said minor. [39 G. A., ch. 258, § 3.]

9345. Expenses. The expenses of every such association shall be paid from the earnings, or from a fixed charge provided for in the by-laws, and said expenses shall not exceed eight dollars for the maturing of every one hundred dollars of installment stock, said sum to be equitably distributed over the maturity period; and two dollars per year for every one hundred dollars for full paid or prepaid stock. [C., '73, § 1187; C., '97, § 1902.]

9346. "Expenses" defined. Membership fees and expenses incurred in making loans shall not be deemed a part of the expenses of the association. [C., '97, § 1902.]

9347. Dividends The net earnings of such association shall be apportioned as a dividend, annually, semiannually, or quarterly, to members, in such manner as the articles of incorporation and by-laws may provide. [C., '73, § 1187; C., '97, § 1902.]

9348. Expenditures and expenses. All expenditures and expenses for management and conducting the affairs of such associations, not including membership fees and charges for closing loans, shall be paid from the receipts of interest, premiums, and other sources of profit. Said associations may thus use for expenses in any one year a sum not in excess of the following percentages on their assets, as shown by the last annual report, to wit:

1. Associations with assets not in excess of one hundred thousand dollars, three per cent per annum.

2. Associations with assets in excess of one hundred thousand dollars and less than three hundred thousand dollars, two and one-half per cent.

3. Associations in excess of three hundred thousand dollars and less than five hundred thousand dollars, two and one-quarter per cent.

4. Associations with assets in excess of five hundred thousand dollars and less than eight hundred thousand dollars, one and three-quarters per cent.

5. Associations with assets in excess of eight hundred thousand dollars and less than one million dollars, one and one-half per cent.

6. Associations with assets in excess of one million dollars, one per cent. [S., '13, § 1902-a; 39 G. A., ch. 269, § 1.]

9349. Compensation of officers and agents. No officer, employee, or agent of any association shall receive directly or indirectly any salary or other compensation, except for services actually rendered. Any compensation paid in violation of this section may be recovered by the association or by any shareholder or borrower, in the name and for the use of such association, within three years from the receipt of such illegal compensation, from the person accepting the same, or from any officer knowingly consenting to the allowance thereof. [S., '13, § 1902-a; 39 G. A., ch. 269, § 2.]

9350. Dues—premiums—losses. Dues, fines, premiums, and interest less current expenses, shall accrue to the shareholders, and any net loss shall be deducted before declaring any dividend. [C., '97, § 1903.]

9351. Fines. Any stockholder in arrears in payments may be fined in a sum not in excess of three cents per share of one hundred dollars each for the first month's delinquency and five cents per share of one hundred dollars each for each succeeding month's delinquency; but said penalty shall only be due and payable from the profits belonging to said delinquent. [S., '13, § 1903-a.]

9352. Withdrawals. The terms of withdrawal of a member from such association shall be such that any withdrawing member shall receive a sum not less than he has paid into said association, unless losses have occurred to said association, during the time that said withdrawing member was a member, which exceed the amount of the profits, or any fund created with which to pay such losses, and in that case such withdrawing member shall be charged with his proportionate share of the excess of the losses over the profits, and no more. [S., '13, § 1903-a.]

9353. Nonborrowing members—withdrawal. The articles of incorporation of any building and loan, or building and savings association may, by a three-fourths vote of the board of directors, provide that nonborrowing members shall withdraw their stock at book value in the order of its issue, beginning with the stock first issued, by giving the stockholders thereof thirty days' notice. [S., '13, § 1903-b.]

9354. Examinations. At least once in each year the auditor of state shall, by himself or some competent person appointed by him, make an examination of all domestic and foreign building and loan and savings and loan associations doing business in this state, and may examine under oath any officer, agent, or employee of the association, or other person, and may compel the production of its books and

papers, and for this purpose such examiner shall have the same power as the district court to secure the attendance of witnesses and the production of such books and papers, and to punish as for contempt. [C., '97, § 1904.]

9355. Verification—additional examinations. If the report is made by another than the auditor, it shall be under oath. Examinations may be made at such other times as the auditor may order. [C., '97, § 1904.]

9356. Expenses and per diem. If the examination is made by the auditor in person, he shall receive his actual expenses. If by another, his actual expenses and the per diem fixed by law, which in either case shall be paid by the association examined. [C., '97, § 1904; 39 G. A., ch. 209, § 57.]

9357. Record required. A record of such examination shall be kept in the auditor's office, showing in detail as to each association all matters connected with the conduct of the business, its financial standing and everything touching its solvency, plan of business, and integrity. [C., '97, § 1904.]

9358. Revocation of authority. If any such association refuse to submit to such examination, the auditor shall revoke its certificate of authority. [C., '97, § 1904.]

9359. Examination of domestic locals. When twenty shareholders of any domestic local building and loan or savings and loan association shall in writing request the auditor of state, he shall have the same authority and shall proceed to make an examination of the affairs of such association in the manner provided in this chapter for the examination of domestic associations, and the costs and penalties shall be the same. [C., '97, § 1905.]

9360. Auditor's biennial report. The auditor shall, in his biennial report to the governor, state the general conduct and condition of the building and loan or savings and loan associations doing business in the state, with such suggestions as he may deem expedient. Such report shall also include the information contained in the statements of the associations, arranged in tabulated form, with the names and compensations of the clerks employed by him, the entire income, the source whence derived, and the expense during the year ending on the thirty-first day of December, in detail. [C., '97, § 1906.]

9361. Statement of salaries. The auditor of state shall publish, in his report of building and loan and savings and loan associations, a detailed statement of the salaries and compensation paid, and to whom, giving the names of the officers and agents respectively receiving such salaries. [S., '13, § 1906-a.]

9362. Quo warranto. When any building and loan or savings and loan association is

conducting its business illegally, or in violation of its articles of incorporation or by-laws, or is practicing deception upon its members or the public, or is pursuing a plan of business that is injurious to the interests of its members, or its affairs are in an unsafe condition, the auditor of state shall notify the directors thereof, and, if they shall fail to put its affairs upon a safe basis, he shall advise the attorney general thereof, who shall take the necessary steps to wind up its affairs in the manner provided by law. [C., '97, § 1907.]

9363. Voluntary liquidation. Building and loan or savings and loan associations, by a vote of three-fourths of the shareholders of such associations, represented in person or by proxy, may go into voluntary liquidation upon such plan as shall be determined upon by the shareholders at their meeting. [S., '13, § 1907-a.]

9364. Transfer of mortgages—maturity. In case any such association resolves to go into voluntary liquidation, it shall have power, after crediting the mortgages given by the borrowing member with the full book value of the stock, to sell and assign such mortgages to a similar building and loan association, or to any other parties who will hold the same upon the terms under which such mortgage was given to the association. In that event the said mortgage shall be held to become due, if no other time can be agreed upon between the mortgagor and the association, within three years after the assignment thereof. [S., '13, § 1907-a.]

9365. Statutory plan of liquidation. In case the shareholders are unable to agree upon other plan and terms upon which the said association may wind up its affairs, the following plan shall be adopted. Interest shall be computed on the respective amounts paid in by the several shareholders from the date of such payments until the date that said association resolves to go into liquidation, and amount so found shall be the basis for distribution of the assets of the association. In the case of a borrowing member the amount thus found due him on stock, if there have been no losses so as to impair the capital, shall be credited on his mortgage and the balance of such mortgage shall be paid within one year, together with interest at the rate therein agreed upon, not to exceed eight per cent, and upon the payments of the outstanding mortgages and the conversion of the assets into money the same shall be distributed pro rata among the stockholders according to the amount found due each as aforesaid. And any balance due the borrowing member, over and above the amount actually received as a credit on the mortgage, shall be paid to such members. In case, however, of an impairment of the capital by loss, the amount of such loss shall be estimated and apportioned to each member pro rata according to the amount found due such members in the manner aforesaid, and the borrowing members shall be entitled to receive a credit on their mortgages for the balance after the stock is charged

with its pro rata share of the loss, and the balance due on such mortgages shall be paid within twelve months, and upon the final distribution any balance due such borrowing member shall be paid to him. But in the final distribution, before the final dividend is made, interest shall be allowed on the amount found due the nonborrowing member not to exceed six per cent so as to equalize between the borrowing member who has received a credit on his mortgage, and the nonborrowing member. Any plan other than that herein specified shall be submitted to the executive council for approval before the same is adopted. [S., '13, § 1907-a.]

9366. Consolidation with other companies. Any building and loan or savings and loan association organized under the laws of this state shall have authority to consolidate its business and membership with one or more building and loan or savings and loan associations of the same class organized under the laws of this state and to transfer to such association or associations its entire assets subject to its existing liabilities, and upon the consolidation of such associations, if any one or more of said companies shall have heretofore issued guaranty stock, they may provide for the withdrawal and retirement of said guaranty stock, and the same may be withdrawn in accordance with the plan therein adopted. [S., '13, § 1907-b.]

9367. Approval by executive council. The plan of such consolidation, when approved by the board of directors of each of the associations, shall be reduced to writing and submitted to the executive council, and if they find that the plan is in conformity with the law, and equitable in all respects to the members of both associations, they shall attach thereto their certificate of approval. [S., '13, § 1907-b.]

9368. Approval by members. Such plan shall then be submitted to the members of both associations, either at the regular meetings or at special meetings called for that purpose, and, if approved by a vote of three-fourths of the shares of stock of each association, the same shall then be filed in the office of the auditor of state, who shall issue a certificate authorizing the consolidation. [S., '13, § 1907-b.]

9369. Manner of voting. At such meetings the members may vote in person, or by proxy, or by written ballot mailed or otherwise delivered to the secretary at or before the time of meeting. [S., '13, § 1907-b.]

9370. Consolidation under receivership. In any case where a receiver has been appointed for any such association, its membership and business may in like manner be consolidated with, and its assets transferred to, another such association of the same class, but in such case the receiver shall act in place of the board of directors, and the plan must also be approved by the court by which the receiver was appointed. [S., '13, § 1907-c.]

9371. Foreign companies. If any foreign building and loan or savings and loan association, as in this chapter defined, desires to transact business within this state, it shall furnish to the executive council a certified copy of its articles of incorporation, or charter and by-laws, and a certified copy of the state laws under which it is organized, together with a report for the year next preceding, verified by its president, vice president, secretary, and at least three directors, which report shall show:

1. The amount of its authorized capital stock and the par value of each share.
2. The number of shares sold during the year.
3. The number of shares canceled or withdrawn during the year.
4. The number of shares in force at the end of the year.
5. A detailed statement of all funds received during the year and all disbursements.
6. The salaries paid each of its officers.
7. A detailed statement of its assets and liabilities at the end of such year and the nature thereof.
8. Any other matters of fact which the council may require. [C., '97, § 1908.]

9372. Approval by council—certificate of authority. Upon receipt of such report the council, if it finds therefrom that the association is properly managed, that its financial condition is satisfactory, and that its business is conducted upon a safe and reliable plan and one equitable to its members, shall so certify upon such copy and statement, and, the same being filed with the auditor, he shall issue a like certificate as in the case of domestic associations. [C., '97, § 1908.]

9373. Conditions attending approval. No building and loan or savings and loan association, incorporated under the laws of any other state or country, shall be authorized to do business in this state, whose articles of incorporation are not found by the executive council to be in substantial compliance with the laws of this state, and affording equal security and protection to the members thereof. [S., '13, § 1908-a.]

9374. Deposit by foreign company. Every such foreign building and loan or savings and loan association, before the state auditor shall issue to it a certificate, shall comply with the following provisions:

1. It shall deposit with the auditor of state one hundred thousand dollars, either in cash, or bonds of the United States or of the state of Iowa, or of any county or municipal corporation of the state of Iowa, or notes secured by first mortgage, on real estate, or a like amount in such other security as shall be satisfactory to said auditor.

2. Such foreign association may collect and use the interest on any securities so deposited as long as it fulfills its obligations and complies with the provisions of this chapter. It may also exchange them for other securities of equal value and satisfactory to said auditor. [C., '97, § 1909.]

9375. Liability of deposit. The deposit made with the auditor shall be held as security for all claims of resident shareholders of the state against said association, and shall be liable for all judgments or decrees thereon, and subject to the payment of the same. [C., '97, § 1910.]

9376. Auditor of state as process agent. Such foreign association shall also file with the auditor of this state a duly authenticated copy of a resolution adopted by the board of directors of such association, stipulating and agreeing that, if any legal process or notice affecting such association be served on the said state auditor, and a copy thereof be mailed, postage prepaid, by the party procuring and issuing the same, or his attorney, to said association, addressed to its home office, then such service and mailing of such process or notice shall have the same effect as personal service on said association within this state. [C., '97, § 1911.]

9377. Manner of service. When proceedings have been commenced against, or affecting any foreign building and loan or savings and loan association, as contemplated in the preceding section, and notice has been served upon the auditor of the state, the same shall be by duplicate copies, one of which shall be filed in his office, and the other mailed by him, postage prepaid, to the home office of such association. [C., '97, § 1911.]

9378. Amendments to articles. All foreign building and loan or savings and loan associations shall file with the auditor of state, within ten days after their adoption, a duly certified copy of any amendment or amendments to their articles of incorporation or by-laws that may have been adopted. [C., '97, § 1912.]

9379. Fees—foreign companies. Foreign building and loan or savings and loan associations shall pay to the auditor of state the following fees, which shall be paid by him into the state treasury: For each application to do business in this state, one hundred dollars; for each certificate of authority and each annual renewal thereof, fifty dollars; for filing each annual statement of the assets of the association, as shown by the statement filed, amounts to fifty thousand dollars or less, three dollars; if more than fifty thousand dollars and less than one hundred thousand dollars, five dollars; if more than one hundred thousand dollars and less than two hundred and fifty thousand dollars, ten dollars; if more than two hundred and fifty thousand dollars, and less than five hundred thousand dollars, twenty dollars; if more than five hundred thousand dollars and less than one million dollars, thirty dollars; and if more than one million dollars, fifty dollars. [C., '97, § 1913.]

9380. Fees—domestic companies. Domestic building and loan or savings and loan associations shall pay to the auditor of state the sum of twenty-five dollars for each certificate

of authority and each renewal thereof, and for filing each annual statement, ten dollars. [C., '97, § 1913.]

9381. Fees—domestic local companies. Domestic local building and loan or savings and loan associations shall pay to the auditor of state for filing each annual statement the sum of five dollars. [C., '97, § 1913.]

9382. Annual statement. All building and loan or savings and loan associations doing business in this state shall, on or before the first day of February of each year, file with the auditor of state a detailed report and financial statement of their business for the year ending the thirty-first day of December next preceding, and such report shall be verified by the president and secretary or by three directors of the association, and such report shall show:

1. The date when the association was incorporated and the par value of each share of stock.

2. The number of shares sold during the year.

3. The number of shares canceled or withdrawn during the year.

4. The number of shares in force at the end of the year.

5. A detailed statement of receipts and disbursements, showing specifically from what source received and in what manner applied.

6. A statement of the assets and liabilities at the end of the year.

7. The salary paid to each of its officers during the year. [C., '97, § 1914.]

9383. Additional report by foreign company. All foreign building and loan or savings and loan associations shall, in addition to the above, report the name of each shareholder of such association residing within the state, together with the postoffice address of each, and the number of shares owned by each of said persons on the first day of January preceding, and the cash value of each of said shares on said date. [C., '97, § 1914.]

9384. Violations. If an association shall fail or refuse to furnish to the auditor of state the report required in the two preceding sections, it shall forfeit the sum of twenty-five dollars for every day such report shall be withheld, and the auditor of state may maintain an action in the name of the state to recover such penalty, and the same shall be paid into the treasury of the state. [C., '97, § 1915.]

9385. Sale of stock in unauthorized foreign company. It shall be unlawful for any agent, solicitor, or other person to sell stock or solicit persons to subscribe for stock in any such association named in section 9373, which has not been authorized to do business in this state, and any person convicted of so doing shall be punished by a fine of not less than fifty nor more than two hundred dollars, and shall be committed to the county jail until the fine and costs are paid. [S., '13, § 1915-a.]

9386. Discrimination in foreign states. When by the laws of any other state, territory, country, or nation, or by the decision or rulings of the appropriate and proper officers thereof, any greater taxes, fines, penalties, licenses, fees, deposits of money or other securities, or other obligations or prohibitions, are demanded of building and loan or savings and loan associations of this state, as a condition to be complied with before doing business in such other state, territory, country, or nation, or their agents therein, than are imposed upon foreign associations doing business in this state, so long as such laws continue in force, the same requirements, obligations, and prohibitions of whatever kind shall be imposed on all building and loan or savings and loan associations of such other state, territory, country, or nation doing business in this state, and upon their agents. It is hereby made the duty of the auditor of state to enforce the provisions of this section. [C., '97, § 1916.]

9387. Revocation of certificate. If a certificate of authority to do business shall have been issued to any association, and it shall violate any of the provisions of this chapter, the auditor of state shall revoke the same. [C., '97, § 1917.]

9388. Criminal offenses. If any officer, director, or agent of any building and loan or savings and loan association shall knowingly and wilfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, he shall be guilty of perjury. If any director of any such association shall vote to declare a dividend greater than has been earned; or if any officer or director or any agent or employee of any such association shall issue, utter, or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized to do so by the board of directors in pursuance of its lawful power; or if any such officer, director, agent, or employee shall embezzle or convert to his own use, or shall use or pledge for his own benefit or purpose, any moneys, securities, credits, or other property belonging to the association, or shall knowingly do or attempt to do any business for such association that has not procured and does not hold the certificate of authority therefor as in this chapter provided, or shall knowingly make or cause to be made any false entries in the books of the association, or shall, with the intent to deceive any person making an examination in this chapter required to be made, exhibit to the person making the examination any false entry, paper, or statement, or shall knowingly do or solicit business for any building and loan or savings and loan association which has not procured the required certificate therefor, he

shall be fined in any sum not exceeding ten thousand dollars, or imprisoned in the penitentiary not exceeding ten years, or punished by both such fine and imprisonment. [C., '97, § 1918.]

9389. Preexisting associations. All building and loan or savings and loan associations having heretofore transacted business in this state, which shall not have complied with the provisions of this chapter, shall have the right to close up their business and fulfill their contracts heretofore entered into with the residents of this state, without being subject to the penalties prescribed in this chapter. [C., '97, § 1919.]

NOTE: The above section is a part of chapter 85, acts 26 G. A., which took effect July 4, 1896.

UNINCORPORATED ASSOCIATIONS

9390. Statutes applicable. All unincorporated organizations, associations, societies, partnerships, or individuals conducting and carrying on a business, the purpose of which is to create a fund derived from periodical payments by members of such organizations, associations, societies, or other persons, upon contracts or otherwise, as well as from fines, forfeitures, incidental fees, and payment of premiums and interest; which fund is to be loaned or advanced to members of the organization, association, society, or to the persons making such periodical payments, for the purpose of enabling them to acquire the ownership or free possession of real estate, or personal property, or to construct buildings, or any or all of such purposes, shall be deemed building and loan associations; and the provisions of this chapter shall apply to all such building and loan associations so far as the same can be made applicable to unincorporated organizations, associations, societies, partnerships, or individuals. [S., '13, § 1920-a.]

9391. Statement of resources, liabilities, and plan. Every such unincorporated organization, association, society, partnership, or individual, conducting and carrying on the business defined in the preceding section shall, before transacting any business in this state, submit to the executive council a full and complete sworn statement of the resources and liabilities of such organization, association, society, partnership, or individual, and of the proposed plan or method of doing business. [S., '13, § 1920-b.]

9392. Deposit of securities. No such unincorporated building and loan association shall be permitted to carry on its business within this state unless it shall first deposit with the auditor of state at least fifty thousand dollars of first mortgages and negotiable notes in the same amount secured thereby upon real estate in the state, bearing interest at a rate not less than five per cent per annum, which said mortgages shall in no case exceed one-half the actual value of the real estate upon which they are taken. [S., '13, § 1920-b.]

9393. Additional deposits. The auditor of state shall have power and authority to require that such further amount of such securities shall be deposited with him as in his judgment may thereafter be necessary to protect the members of such building and loan association, or the persons making periodical payments thereto. [S., '13, § 1920-b.]

9394. Securities held in trust. The notes, mortgages, and securities so deposited with the auditor of state shall, with all interest and accumulations thereon, be held in trust by him for the purpose of fulfilling and carrying out all contracts made by such building and loan association with the members thereof, and with the persons making periodical payments thereto. [S., '13, § 1920-b.]

9395. Approval—certificate of authority. If the executive council approves the plan or method of business of any such building and loan association, it shall indorse its approval upon the statement of the resources and liabilities and plan of business presented to it, and such statement shall thereupon be filed in the office of the auditor of state, who shall issue a certificate to such building and loan association to transact business within the state, if such association has deposited with him the mortgages and securities required by the provisions of the three preceding sections. [S., '13, § 1920-c.]

9396. Officers to give bonds—approval. Every officer of such building and loan association who signs or indorses checks, or handles any of the funds or securities thereof, shall give such bond or fidelity insurance for the faithful performance of his duty in such sum as the auditor of state may require, and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by, and deposited with, the auditor of state. And any such bond may be increased or additional sureties required by the auditor of state whenever in his judgment it becomes necessary to protect the interest of the association or its members, or persons making periodical payments of money thereto. [S., '13, § 1920-d.]

9397. Examination. The auditor of state may at any time he may see proper, make, or cause to be made, an examination of any such building and loan association, or he may call upon it for a report of its condition upon any given day which has passed, as often as four times each year, which report shall contain the information hereinafter required. [S., '13, § 1920-e.]

9398. Expense of examination. The expense of making such examination shall be paid by the building and loan association, and if made by the auditor in person he shall be paid his necessary expenses only; if made by an examiner designated by the auditor, he shall receive ten dollars a day for the time employed by him, and his necessary expenses. [S., '13, § 1920-f.]

9399. Annual reports. On or before the first day of February of each year, every such building and loan association shall file with the auditor of state its annual report in writing for the year ending on the thirty-first day of December preceding, giving a complete statement in detail of all of its receipts from all sources, and all disbursements made during such year, arranged and itemized as may be required by the auditor of state. Such report shall also show the number of members or persons making periodical payments to such association, the number and amount of loans made to such persons, the interest received therefrom, the number and amounts of mortgages, contracts or other securities held by the association, the actual cash value of the real estate securing such mortgages or contracts, the salary paid to each of its officers during the preceding year, the assets and liabilities of the association at the end of the year, and any other matters which in the judgment of the auditor of state may be required to give him full information as to the business transacted by such building and loan association. [S., '13, § 1920-g.]

9400. Failure to furnish reports. If any such building and loan association shall fail or refuse to furnish to the auditor of state the report required in the preceding section, the officers or persons conducting the business of such building and loan association shall forfeit the sum of twenty-five dollars for each day that such report is withheld, and the auditor of state may maintain an action, jointly or severally, against them in the name of the state to recover such penalty, and the same shall be paid into the state treasury when recovered by him. [S., '13, § 1920-h.]

9401. Criminal offenses. If any officer or agent of any such building and loan association, or any person conducting the business thereof, shall knowingly and wilfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, he shall be guilty of perjury and punished accordingly. And if any officer, agent or employee of any such association, or any person transacting the business thereof, shall issue, utter or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized so to do; or if any such officer, agent or employee of such association, or any person transacting the business thereof, shall embezzle, convert to his own use, or shall use or pledge for his own benefit or purpose, any moneys, securities, credits, or other property belonging to the association, or shall knowingly solicit, transact, or attempt to transact any business for any such association which has not procured and does not hold the cer-

tificate of authority from the auditor of state to transact business in this state as provided herein; or shall knowingly make, or cause to be made, any false entries in the books of the association, or shall, with intent to deceive any person making an examination of such association, as herein provided, exhibit to the person making the examination any false entry, paper, or statement, he shall be fined in a sum not exceeding ten thousand dollars, or imprisoned in the penitentiary not exceeding ten years, or punished by both such fine and imprisonment. [S., '13, § 1920-i.]

9402. Revocation of certificate — receiver. If any such building and loan association, holding a certificate of authority to transact business within this state issued by the auditor as herein provided, shall violate any of the provisions of this chapter, or shall fail to deposit with the auditor of state such further

amount of mortgages or securities as he may require under section 9393, the auditor of state shall at once revoke such certificate and notify the executive council of the revocation thereof; and under the direction of the executive council, application shall be made by the attorney general to the proper court for the appointment of a receiver to wind up the affairs of the association; and in such proceedings the amount due from the borrowing members or persons making periodical payments upon contracts or mortgages given by them, shall be ascertained in the manner provided in section 9365; and the amounts owing upon such mortgages or contracts from members of the association or persons making periodical payments thereto, shall be treated and considered as due and payable within a reasonable time, to be fixed by the court after the appointment of a receiver. [S., '13, § 1920-j.]

TITLE XXIII

TRADE AND COMMERCE

CHAPTER 418

MONEY AND INTEREST

9403. Denominations of money.
9404. Rate of interest.
9405. Interest on judgments and decrees.
9406. Illegal rate prohibited—usury.

9407. Penalty for usury.
9408. Interest in excess of two per cent per month.
9409. Assignee of usurious contract.

9403. Denominations of money. The money of account of this state is the dollar, cent, and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in the above denominations. Demands expressed in money of another denomination shall not be affected by the provisions of this section, but in any action or proceeding based thereon it shall be reduced to and computed by the denominations given. [C., '51, §§ 943, 944; R., '60, §§ 1785, 1786; C., '73, §§ 2075, 2076; C., '97, § 3037.]

9404. Rate of interest. The rate of interest shall be six cents on the hundred by the year in the following cases, unless the parties shall agree in writing for the payment of interest not exceeding eight cents on the hundred by the year:

1. Money due by express contract.
2. Money after the same becomes due.
3. Money loaned.
4. Money received to the use of another and retained beyond a reasonable time, without the owner's consent, express or implied.
5. Money due on the settlement of accounts from the day the balance is ascertained.
6. Money due upon open accounts after six months from the date of the last item.
7. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated. [C., '51, § 945; R., '60, § 1787; C., '73, § 2077; C., '97, § 3038.]

9405. Interest on judgments and decrees. Interest shall be allowed on all money due on judgments and decrees of courts at the rate of six cents on the hundred by the year, unless a different rate is fixed by the contract on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding eight cents on the hundred by the year, which rate must be expressed in

the judgment or decree. [C., '51, § 946; R., '60, § 1789; C., '73, § 2078; C., '97, § 3039.]

9406. Illegal rate prohibited—usury. No person shall, directly or indirectly, receive in money or in any other thing, or in any manner, any greater sum or value for the loan of money, or upon contract founded upon any sale or loan of real or personal property, than is in this chapter prescribed. [R., '60, § 1790; C., '73, § 2079; C., '97, § 3040.]

9407. Penalty for usury. If it shall be ascertained in any action brought on any contract that a rate of interest has been contracted for, directly or indirectly, in money or in property, greater than is authorized by this chapter, the same shall work a forfeiture of eight cents on the hundred by the year upon the amount of the principal remaining unpaid upon such contract at the time judgment is rendered thereon, and the court shall enter final judgment in favor of the plaintiff and against the defendant for the principal sum so remaining unpaid without costs, and also against the defendant and in favor of the state, for the use of the school fund of the county in which the action is brought, for the amount of the forfeiture; and in no case where unlawful interest is contracted for shall the plaintiff have judgment for more than the principal sum, whether the unlawful interest be incorporated with the principal or not. [R., '60, § 1791; C., '73, § 2080; C., '97, § 3041.]

9408. Interest in excess of two per cent per month. Every person or persons, company, corporation, or firm, and every agent of any person, persons, company, corporation, or firm, who shall take or receive, or agree to take or receive, directly or indirectly, by means of commissions or brokerage charges, or otherwise, for the forbearance or use of money in the sum or amount of more than three hundred dollars a rate greater than two per cent

per month, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days. Nothing herein contained shall be construed as authorizing a higher rate of interest than is now provided by law. [S. S., '15, § 3041-a; 39 G. A., ch. 35, § 20.]

9409. Assignee of usurious contract. Any assignee of a usurious contract, becoming such in good faith in the usual course of business and without notice of such fact, may recover of the usurer the full amount of the consideration paid by him therefor, less any sum that may have been realized on the contract, anything in this chapter contained to the contrary notwithstanding. [R., '60, § 1792; C., '73, § 2081; C., '97, § 3042.]

CHAPTER 419

CHATTEL LOANS

NOTE: For law regulating loans in excess of \$300.00, see § 9408.

- 9410. License required to make certain loans.
- 9411. Application for license.
- 9412. Fee for license.
- 9413. Bond—amount.
- 9414. Condition of bond.
- 9415. Issuance of license—expiration.
- 9416. Duplicate license.
- 9417. Manner of making loans.
- 9418. Display of license.
- 9419. Notice of change of place of business.
- 9420. Interest rate.
- 9421. Computation of interest.
- 9422. Additional charges.
- 9423. Excessive charges—forfeiture of loan.
- 9424. Limitation on loan.

- 9425. Duty of licensee as to borrower.
- 9426. Confession of judgment—amount of loan.
- 9427. Assignment of wages—exempt property.
- 9428. Limitation on assignment.
- 9429. Illegal rate of interest.
- 9430. Evasions by sale of property.
- 9431. Enforcement of loans made outside state.
- 9432. False advertisements.
- 9433. Examinations and inspections.
- 9434. Books and records of licensee.
- 9435. Violations—penalty.
- 9436. Revocation of license.
- 9437. Inadequate bond.
- 9438. Scope of law—exceptions.

9410. License required to make certain loans. No person, copartnership, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or to the value of three hundred dollars or less, and charge, contract for, or receive a greater rate of interest than eight per cent per annum therefor, except as authorized by this chapter, and without first obtaining a license from the superintendent of banking, hereinafter called the licensing official. [39 G. A., ch. 35, § 1.]

9413. Bond—amount. The applicant shall also, at the same time, file with the licensing official a bond in which the applicant shall be the obligor, in the sum of one thousand dollars with one or more sureties (whose liability as such sureties, in the aggregate, shall not exceed one thousand dollars), to be approved by the licensing official, which bond shall run to the state for the use of the state and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this chapter. [39 G. A., ch. 35, § 3.]

9411. Application for license. Application for such license shall be in writing and shall contain the full name and address, both of the residence and place of business, of the applicant, and if the applicant is a copartnership, of every member thereof, or if a corporation, of each officer thereof; also the county and municipality, with street and number, if any, where the business is to be conducted. [39 G. A., ch. 35, § 2.]

9414. Condition of bond. Such bond shall be conditioned that said obligor will conform to and abide by each and every provision of this chapter and will pay to the state and to any such person or persons, any and all moneys that may become due or owing to the state and to such person, or persons, from said obligor, under and by virtue of the provisions of this chapter. [39 G. A., ch. 35, § 3.]

9412. Fee for license. Every such applicant, at the time of making such application, shall pay to the licensing official the sum of one hundred dollars as an annual license fee and in full payment of all expenses of examinations under and administration of this chapter; provided that if the license is issued for a period of less than twelve months, the license fee shall be prorated according to the number of months that said license shall run. [39 G. A., ch. 35, § 2.]

9415. Issuance of license—expiration. Upon the filing of such application and the approval of said bond and the payment of said fee, the licensing official shall issue a license to the applicant to make loans in accordance with the provisions of this chapter for a period which shall expire the first day of January next following the date of its issuance. Such license shall not be assignable. [39 G. A., ch. 35, § 4.]

9416. Duplicate license. Not more than one place of business shall be maintained under

the same license, but the licensing official shall issue more than one license to the same licensee upon the payment of an additional license fee and the filing of an additional bond for each license. [39 G. A., ch. 35, § 8.]

9417. Manner of making loans. No person, copartnership, or corporation so licensed shall make any loan provided for by this chapter, under any other name, or at any other place of business, than that named in the license. [39 G. A., ch. 35, § 8.]

9418. Display of license. The license shall be kept conspicuously posted in the place of business of the licensee. [39 G. A., ch. 35, § 7.]

9419. Notice of change of place of business. Whenever the licensee shall change his place of business, he shall at once give written notice thereof to the licensing official who shall attach to the license his approval in writing of the change. [39 G. A., ch. 35, § 9.]

9420. Interest rate. Every person, copartnership, and corporation licensed hereunder may loan any sum of money not exceeding in amount the sum of three hundred dollars and may charge, contract for, and receive thereon interest at a rate not to exceed three and one-half per cent per month. [39 G. A., ch. 35, § 13.]

9421. Computation of interest. Interest shall not be payable in advance nor compounded, and shall be computed on unpaid balances. [39 G. A., ch. 35, § 13.]

9422. Additional charges. In addition to the interest herein provided for, no further or other charge, or amount whatsoever for any examination, service, brokerage, commission, or other thing, or otherwise, shall be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing, or recording in any public office any instrument securing the loan, which fees may be collected when the loan is made, or at any time thereafter. [39 G. A., ch. 35, § 13.]

9423. Excessive charges—forfeiture of loan. If interest or charges in excess of those permitted by this chapter shall be charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect, or receive any principal, interest, or charges whatsoever. [39 G. A., ch. 35, § 13.]

9424. Limitation on loan. No person shall owe any licensee, as such, at any time more than three hundred dollars for principal. [39 G. A., ch. 35, § 13.]

9425. Duty of licensee as to borrower. Every licensee shall:

1. Deliver to the borrower, at the time a loan is made, a statement in the English lan-

guage showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee and the rate of interest charged. Upon such statement there shall be printed in English a copy of the five preceding sections.

2. Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made.

3. Upon repayment of the loan in full, mark indelibly every paper signed by the borrower with the word "paid" or "canceled", and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given by the borrower as security. [39 G. A., ch. 35, § 14.]

9426. Confession of judgment—amount of loan. No licensee shall take any confession of judgment, or any power of attorney in relation to any such loan. Nor shall he take any note, promise to pay, or security that does not state the actual amount of the loan, the time for which it is made, and the rate of interest charged, nor shall he take any instrument in which blanks are left to be filled after execution. [39 G. A., ch. 35, § 15.]

9427. Assignment of wages—exempt property. No assignment of or order for the payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any such loan shall be valid unless such loan is contracted simultaneously with its execution; nor shall any such assignment, or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower be valid unless in writing signed and acknowledged in person by the borrower; nor, if the borrower is married, unless signed and acknowledged in person by both husband and wife. [39 G. A., ch. 35, § 16.]

9428. Limitation on assignment. Under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services, given as security for a loan made under this chapter, a sum not exceeding ten per cent of the borrower's salary, wages, commissions, or other compensation for services, shall be collectible therefrom by the licensee at the time of each payment of salary, wages, commissions, or other compensation for services, from the time that a copy of such assignment, verified by the oath of the licensee, or his agent, together with a verified statement of the amount unpaid upon such loan, is served upon the employer. [39 G. A., ch. 35, § 16.]

9429. Illegal rate of interest. No person, copartnership, or corporation, except as authorized by this chapter, shall, directly or indirectly, charge, contract for, or receive any interest or consideration greater than eight per cent per annum upon the loan, use, or forbearance of money, goods, or things in action, or upon the

loan, use, or sale of credit, of the amount or value of three hundred dollars or less. [39 G. A., ch. 35, § 17.]

9430. Evasions by sale of property. The foregoing prohibition shall apply to any person who, as security for any such loan, use, or forbearance of money, goods, or things in action, or for any such loan, use, or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who, by any device or pretense of charging for his services, or otherwise, seeks to obtain a greater compensation than is authorized by this chapter. [39 G. A., ch. 35, § 17.]

9431. Enforcement of loans made outside state. No loan for which a greater rate of interest or charge than is allowed by this chapter has been contracted for or received, wherever made, shall be enforced in this state, and any person in any wise participating therein in this state shall be subject to the provisions of this chapter. [39 G. A., ch. 35, § 17.]

9432. False advertisements. No licensee, or other person, copartnership, or corporation, shall print, publish, or distribute, or cause to be printed, published, or distributed in any manner whatsoever, any written or printed statement with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action, in amounts of three hundred dollars or less, which is false, or calculated to deceive. [39 G. A., ch. 35, § 12.]

9433. Examinations and inspections. The licensing official, for the purpose of discovering violations of this chapter, may, either personally or by any person designated by him, at any time and as often as he may desire, investigate the loans and business of every licensee and of every person, copartnership, and corporation by whom or which any such loan shall be made, whether such person, copartnership, or corporation shall act, or claim to act as principal, agent, or broker, or under or without the authority of this chapter; and for that purpose he shall have free access to the office or place of business, books, papers, records, safes, and vaults of all such persons, copartnerships, and corporations; he shall also have authority to examine, under oath, all persons whomsoever, whose testimony he may require, relative to such loans or business. [39 G. A., ch. 35, § 10.]

9434. Books and records of licensee. The licensee shall keep such books and records in his place of business as in the opinion of the

licensing official will enable the licensing official to determine whether the provisions of this chapter are being observed. Every such licensee shall preserve the records of final entry used in such business, including cards used in the card system, if any, for a period of at least two years after the making of any loan recorded therein. [39 G. A., ch. 35, § 11.]

9435. Violations—penalty. Any person, copartnership, or corporation and the several officers and employees thereof who shall violate any of the provisions of sections 9410, 9416, 9417, 9420 to 9422, inclusive, 9424, or 9429 to 9432, inclusive, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment of not more than six months, or by both such fine and imprisonment, in the discretion of the court. [39 G. A., ch. 35, § 18.]

9436. Revocation of license. The licensing official may, upon notice to the licensee and reasonable opportunity to be heard, revoke such license if the licensee has violated any provision of this chapter; and in case the licensee shall be convicted by a court a second time of a violation of sections 9420 to 9422, inclusive, and 9424, the licensing official shall revoke such license; provided that the second offense shall have occurred after a prior conviction, in which case another license shall not be issued to such licensee, nor to the husband or wife of the licensee, nor to any copartnership or corporation of which he is a member or officer. [39 G. A., ch. 35, § 6.]

9437. Inadequate bond. If in the opinion of the licensing official the bond of the licensee shall at any time appear to be insecure, or exhausted, or otherwise doubtful, an additional bond in the sum of not more than one thousand dollars satisfactory to the licensing official shall be filed within ten days after notice to the licensee, and upon failure of the obligor to file such additional bond, the license shall be revoked by the licensing official. [39 G. A., ch. 35, § 5.]

9438. Scope of law—exceptions. This chapter shall not apply to any existing private bank or bankers doing a general banking business, or to any person, copartnership, or corporation doing business under any law of this state or of the United States relating to banks, trust companies, building and loan associations, or licensed pawnbrokers, nor shall it apply to any domestic corporation entitled to the benefits of sections 6994 to 6996, inclusive. [39 G. A., ch. 35, § 19.]

CHAPTER 420

CONTRACTS

9439. Seals abolished.
9440. Consideration implied.

9439. Seals abolished. The use of private seals in written contracts, or other instruments in writing, by individuals, firms, or corporations that have not adopted a corporate seal, is hereby abolished; but the addition of a seal to any such instrument shall not affect its character or validity in any respect. [C., '51, § 974; R., '60, § 1823; C., '73, § 2112; C., '97, § 3068; S., 13, § 3068.]

9440. Consideration implied. All contracts in writing, signed by the party to be bound or by his authorized agent or attorney, shall import a consideration. [C., '51, § 975; R., '60, § 1824; C., '73, § 2113; C., '97, § 3069.]

9441. Failure of consideration. The want or failure, in whole or in part, of the con-

9441. Failure of consideration.
9442. Gaming contracts void.

sideration of a written contract may be shown as a defense, total or partial, except as provided in the negotiable instruments law. [C., '51, § 976; R., '60, § 1825; C., '73, § 2114; C., '97, § 3070; 40 G. A., ch. 262.]

NOTE: For negotiable instruments law, see ch. 424.

9442. Gaming contracts void. All promises, agreements, notes, bills, bonds, or other contracts, mortgages or other securities, when the whole or any part of the consideration thereof is for money or other valuable thing won or lost, laid, staked, or bet, at or upon any game of any kind or on any wager, are absolutely void and of no effect. [C., '51, § 2724; R., '60, § 4366; C., '73, § 4029; C., '97, § 4965.]

CHAPTER 421

TENDER OF PAYMENT AND PERFORMANCE

NOTE: Tender in actions against heirs, see § 12060. Tender under offer to compromise, see ch. 546.
Notary fee for noting tender, see § 1214.

9443. Demand required.
9444. Tender of labor or property.
9445. Tender when contract assigned.
9446. Effect of tender.

9443. Demand required. No cause of action shall accrue upon a contract for labor or the payment or delivery of property other than money, where the time of performance is not fixed, until a demand of performance has been made upon the maker and refused, or a reasonable time for performance thereafter allowed. [C., '51, § 959; R., '60, § 1806; C., '73, § 2097; C., '97, § 3056.]

9444. Tender of labor or property. When a contract for labor, or for the payment or delivery of property other than money, does not fix a place of payment, the maker may tender the labor or property at the place where the payee resided at the time of making the contract, or at the residence of the payee at the time of performance of the contract, or where any assignee of the contract resides when it becomes due, but if the property in such case

9447. Tender when holder absent from state.
9448. Offer in writing—effect.
9449. Nonacceptance of tender.
9450. Receipt—objection.

is too ponderous to be conveniently transported, or if the payee had no known place of residence within the state at the time of making the contract, or if the assignee of a written contract has no known place of residence within the state at the time of performance, the maker may tender the property at the place where he resided at the time of making the contract. [C., '51, §§ 960, 961; R., '60, §§ 1807, 1808; C., '73, §§ 2098, 2099; C., '97, § 3057.]

9445. Tender when contract assigned. When the contract is contained in a written instrument which is assigned before due, and the maker has notice thereof, he shall make the tender at the residence of the holder if he resides in the state and no farther from the maker than the payee did at the making thereof. [C., '51, § 962; R., '60, § 1809; C., '73, § 2100; C., '97, § 3058.]

9446. Effect of tender. A tender of the property, as above provided, discharges the maker from the contract, and the property becomes vested in the payee or his assignee, and he may maintain an action therefor as in other cases. But if the property tendered be perishable, or requires feeding, or other care, and no person is found to receive it when tendered, the person making the tender shall preserve, feed, or otherwise take care of the same, and shall have a lien thereon for his reasonable expenses and trouble in so doing. [C., '51, §§ 963, 964; R., '60, §§ 1810, 1811; C., '73, §§ 2101, 2102; C., '97, § 3059.]

9447. Tender when holder absent from state. When the holder of an instrument for the payment of money is absent from the state when it becomes due, and the indorsee or assignee of such an instrument has not notified the maker of such indorsement or assignment, the maker may tender payment at the last residence or place of business of the payee before the instrument becomes due, and if there be no person there authorized to receive payment and give proper credit therefor, the maker may deposit the amount due with the clerk of the district court in the county where the payee resided at the time it became due, and the maker shall not be liable for interest from that date. [C., '51, § 958; R., '60, § 1805; C., '73, § 2103; C., '97, § 3060.]

9448. Offer in writing—effect. An offer in writing to pay a particular sum of money, or

to deliver a written instrument or specific personal property, if not accepted, is equivalent to the actual tender of the money, instrument, or property, subject, however, to the condition contained in the following section; but if the party to whom the tender is made desires an inspection of the instrument or property tendered, other than money, before making his determination, it shall be allowed him on request. [C., '51, § 967; R., '60, § 1816; C., '73, § 2105; C., '97, § 3061.]

9449. Nonacceptance of tender. When a tender of money or property is not accepted by the party to whom it is made, the party making it may, if he sees fit, retain it in his possession; but if afterwards the party to whom the tender was made concludes to accept it and gives notice thereof to the other party, and the subject of the tender is not delivered to him within a reasonable time, the tender shall be of no effect. [C., '51, § 966; R., '60, § 1815; C., '73, § 2104; C., '97, § 3062.]

9450. Receipt—objection. The person making a tender may demand a receipt in writing for the money or article tendered, as a condition precedent to the delivery thereof. The person to whom a tender is made must, at the time, make any objection which he may have to the money, instrument, or property tendered, or he will be deemed to have waived it. [C., '51, §§ 968, 969; R., '60, §§ 1817, 1818; C., '73, §§ 2106, 2107; C., '97, § 3063.]

CHAPTER 422

ASSIGNMENT OF ACCOUNTS AND NONNEGOTIABLE INSTRUMENTS

- 9451. Assignment of nonnegotiable instruments.
- 9452. Assignment prohibited by instrument.
- 9453. Assignment of open account.

9451. Assignment of nonnegotiable instruments. Bonds, duebills, and all instruments by which the maker promises to pay another, without words of negotiability, a sum of money, or by which he promises to pay a sum of money in property or labor, or to pay or deliver any property or labor, or acknowledges any money, labor, or property to be due, are assignable by indorsement thereon, or by other writing, and the assignee shall have a right of action thereon in his own name, subject to any defense or counterclaim which the maker or debtor had against any assignor thereof before notice of such assignment. [C., '51, § 949; R., '60, § 1796; C., '73, § 2084; C., '97, § 3044.]

9452. Assignment prohibited by instrument. When by the terms of an instrument its assignment is prohibited, an assignment thereof shall nevertheless be valid, but the maker may avail himself of any defense or counterclaim against the assignee which he may have against any assignor thereof before notice of such assignment is given to him in writing. [C., '51, §

- 9454. Assignment of wages.
- 9455. Priority.
- 9456. Assignor liable.

951; R., '60, § 1798; C., '73, § 2086; C., '97, § 3046.]

9453. Assignment of open account. An open account of sums of money due on contract may be assigned, and the assignee will have a right of action thereon in his own name, subject to such defenses and counterclaims as are allowed against the instruments mentioned in the preceding section, before notice of such assignment is given to the debtor in writing by the assignee. [C., '51, § 952; R., '60, § 1799; C., '73, § 2087; C., '97, § 3047; S., '13, § 3047.]

9454. Assignment of wages. No sale or assignment, by the head of a family, of wages, whether the same be exempt from execution or not, shall be of any validity whatever unless the same be evidenced by a written instrument, and if married, unless the husband and wife sign and acknowledge the same joint instrument before an officer authorized to take acknowledgments. [S., '13, § 3047.]

NOTE: For incumbrance on exempt property, see § 10013.

9455. Priority. Assignments of wages shall have priority and precedence in the order in which notice in writing of such assignments shall be given to the employer, and not otherwise. [S., '13, § 3047.]

9456. Assignor liable. The assignor of any of the above instruments not negotiable shall be liable to the action of his assignee without notice. [C., '51, § 956; R., '60, § 1803; C., '73, § 2088; C., '97, § 3048.]

CHAPTER 423

SURETIES

9457. Requiring creditor to sue.
9458. Refusal or neglect of creditor.

9457. Requiring creditor to sue. When any person bound as surety for another for the payment of money, or the performance of any other contract in writing, apprehends that his principal is about to become insolvent or remove permanently from the state without discharging the contract, he may, if a cause of action has accrued thereon, by writing, require the creditor to sue upon the same, or permit the surety to commence an action in such creditor's name and at the surety's cost. [C., '51, § 970; R., '60, § 1819; C., '73, § 2108; C., '97, § 3064.]

9458. Refusal or neglect of creditor. If the creditor refuses or neglects to bring an action for ten days after request, and does not permit the surety to do so, and to furnish him with a true copy of the contract or other writing therefor, and enable him to have the

9459. Suit by surety.
9460. Executor—official bonds.

use of the original when requisite in such action, the surety shall be discharged. [C., '51, § 971; R., '60, § 1820; C., '73, § 2109; C., '97, § 3065.]

9459. Suit by surety. When the surety commences such action, he shall give a bond to pay such costs as may be adjudged against the creditor, and the action shall be brought against all the obligors, but those joining in the request to the creditor shall make no defense thereto, but may be heard on the assessment of the damages. [C., '51, § 972; R., '60, § 1821; C., '73, § 2110; C., '97, § 3066.]

9460. Executor—official bonds. The provisions of this chapter extend to the executor of a deceased surety and holder of the contract, but not to the official bonds of public officers, executors, or guardians. [C., '51, § 973; R., '60, § 1822; C., '73, § 2111; C., '97, § 3067.]

CHAPTER 424

NEGOTIABLE INSTRUMENTS LAW

NOTE: The number in brackets following each section number in this chapter indicates the number of the corresponding section of the uniform negotiable instruments law.

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FORM AND INTERPRETATION

9461.[§ 1.] **Form of negotiable instrument.** An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer.
2. Must contain an unconditional promise or order to pay a sum certain in money.
3. Must be payable on demand or at a fixed or determinable future time.
4. Must be payable to the order of a specified person or to bearer.
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. [S., '13, § 3060-a1.]

9462.[§ 2.] **Certainty as to sum—what constitutes.** The sum payable is a sum certain within the meaning of this chapter although it is to be paid:

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment, the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity. [S., '13, § 3060-a2.]

9463.[§ 3.] **When promise is unconditional.** An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

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But an order or promise to pay out of a particular fund is not unconditional. [S., '13, § 3060-a3.]

9464.[§ 4.] **Determinable future time—what constitutes.** An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable:

1. At a fixed period after date or sight; or
2. On or before a fixed or determinable future time specified therein; or
3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. [S., '13, § 3060-a4.]

9465.[§ 5.] **Additional provisions not affecting negotiability.** An instrument which contains an order or promise to do an act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment if the instrument be not paid at maturity; or
3. Waives the benefit of any law intended for the advantage or protection of the obligor; or
4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. [S., '13, § 3060-a5.]

9466.[§ 6.] Omissions — seal — particular money. The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument. [S., '13, § 3060-a6.]

9467.[§ 7.] When payable on demand. An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or
2. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. [S., '13, § 3060-a7.]

9468.[§ 8.] When payable to order. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer, or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty. [S., '13, § 3060-a8.]

9469.[§ 9.] When payable to bearer. The instrument is payable to bearer:

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank. [S., '13, § 3060-a9.]

9470.[§ 10.] Terms — when sufficient. The negotiable instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof. [S., '13, § 3060-a10.]

9471.[§ 11.] Date—presumption as to. When the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement, as the case may be. [S., '13, § 3060-a11.]

9472.[§ 12.] Antedated and postdated. The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. [S., '13, § 3060-a12.]

9473.[§ 13.] When date may be inserted. When an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. [S., '13, § 3060-a13.]

9474.[§ 14.] Blanks — when may be filled. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. [S., '13, § 3060-a14.]

9475.[§ 15.] Incomplete instrument not delivered. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. [S., '13, § 3060-a15.]

9476.[§ 16.] Delivery—when effectual—when presumed. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case

may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. [S., '13, § 3060-a16.]

9477.[§ 17.] Construction where instrument is ambiguous. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount.

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued.

4. Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or a note, the holder may treat it as either, at his election.

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

7. Where an instrument containing the words "I promise to pay", is signed by two or more persons, they are deemed to be jointly and severally liable thereon. [S., '13, § 3060-a17.]

9478.[§ 18.] Liability of person signing in trade or assumed name. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. [S., '13, § 3060-a18.]

9479.[§ 19.] Signature by agent—authority—how shown. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. [S., '13, § 3060-a19.]

9480.[§ 20.] Liability of person signing as agent. Where the instrument contains, or a person adds to his signature, words indicating

that he signs for or on behalf of the principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character without disclosing his principal, does not exempt him from personal liability. [S., '13, § 3060-a20.]

9481.[§ 21.] Signature by procuration—effect of. A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. [S., '13, § 3060-a21.]

9482.[§ 22.] Effect of indorsement by infant or corporation. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. [S., '13, § 3060-a22.]

9483.[§ 23.] Forged signature—effect of. Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. [S., '13, § 3060-a23.]

CONSIDERATION

9484.[§ 24.] Presumption of consideration. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. [S., '13, § 3060-a24.]

9485.[§ 25.] Consideration—what constitutes. Value is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value, and is deemed such, whether the instrument is payable on demand or at a future time. [S., '13, § 3060-a25.]

9486.[§ 26.] What constitutes holder for value. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. [S., '13, § 3060-a26.]

9487.[§ 27.] When lien on instrument constitutes holder for value. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. [S., '13, § 3060-a27.]

9488.[§ 28.] Effect of want of consideration. Absence or failure of consideration is

matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. [S., '13, § 3060-a28.]

9489.[§ 29.] Liability of accommodation party. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. [S., '13, § 3060-a29.]

NEGOTIATION

9490.[§ 30.] What constitutes negotiation. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder, completed by delivery. [S., '13, § 3060-a30.]

9491.[§ 31.] Indorsement—how made. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. [S., '13, § 3060-a31.]

9492.[§ 32.] Indorsement must be of entire instrument. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. [S., '13, § 3060-a32.]

9493.[§ 33.] Kinds of indorsement. An indorsement may be either in blank or special; and it may also be either restrictive or qualified, or conditional. [S., '13, § 3060-a33.]

9494.[§ 34.] Special indorsement—indorsement in blank. A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. [S., '13, § 3060-a34.]

9495.[§ 35.] Blank indorsement — how changed to special indorsement. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [S., '13, § 3060-a35.]

9496.[§ 36.] When indorsement restrictive. An indorsement is restrictive which either:

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. [S., '13, § 3060-a36.]

9497.[§ 37.] Effect of restrictive indorsement—rights of indorsee. A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument.
2. To bring any action thereon that the indorser could bring.

3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. [S., '13, § 3060-a37.]

9498.[§ 38.] Qualified indorsement. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. [S., '13, § 3060-a38.]

9499.[§ 39.] Conditional indorsement. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the conditions have been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. [S., '13, § 3060-a39.]

9500.[§ 40.] Indorsement of instrument payable to bearer. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. [S., '13, § 3060-a40.]

9501.[§ 41.] Indorsement where payable to two or more persons. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others. [S., '13, § 3060-a41.]

9502.[§ 42.] Effect of instrument drawn or indorsed to a person as cashier. Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. [S., '13, § 3060-a42.]

9503.[§ 43.] Indorsement where name is misspelled. Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described adding, if he thinks fit, his proper signature. [S., '13, § 3060-a43.]

9504.[§ 44.] Indorsement in representative capacity. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. [S., '13, § 3060-a44.]

9505.[§ 45.] Time of indorsement—presumption. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. [S., '13, § 3060-a45.]

9506.[§ 46.] Place of indorsement—presumption. Except where the contrary appears every indorsement is presumed prima facie to have been made at the place where the instrument is dated. [S., '13, § 3060-a46.]

9507.[§ 47.] Continuation of negotiable character. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. [S., '13, § 3060-a47.]

9508.[§ 48.] Striking out indorsement. The owner may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument. [S., '13, § 3060-a48.]

9509.[§ 49.] Transfer without indorsement—effect of. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. [S., '13, § 3060-a49.]

9510.[§ 50.] When prior party may negotiate instrument. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, re-issue and further negotiate the same, but he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. [S., '13, § 3060-a50.]

RIGHTS OF HOLDER

9511.[§ 51.] Right of holder to sue—payment. The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument. [S., '13, § 3060-a51.]

9512.[§ 52.] What constitutes a holder in due course. A holder in due course is a holder

who has taken the instrument under the following conditions:

1. That the instrument is complete and regular upon its face.

2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.

3. That he took it in good faith and for value.

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. [S., '13, § 3060-a52.]

9513.[§ 53.] When person not deemed holder in due course. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. [S., '13, § 3060-a53.]

9514.[§ 54.] Notice before full amount paid. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. [S., '13, § 3060-a54.]

9515.[§ 55.] When title defective. The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. [S., '13, § 3060-a55.]

9516.[§ 56.] What constitutes notice of defect. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. [S., '13, § 3060-a56.]

9517.[§ 57.] Rights of holder in due course. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. [S., '13, § 3060-a57.]

9518.[§ 58.] When subject to original defenses. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. [S., '13, § 3060-a58.]

9519.[§ 59.] Who deemed holder in due course. Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. [S., '13, § 3060-a59.]

NOTE: Holder in due course of paper given for intoxicating liquors, see § 2068.

LIABILITIES OF PARTIES

9520.[§ 60.] Liability of maker. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. [S., '13, § 3060-a60.]

9521.[§ 61.] Liability of drawer. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. [S., '13, § 3060-a61.]

9522.[§ 62.] Liability of acceptor. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
2. The existence of the payee and his then capacity to indorse. [S., '13, § 3060-a62.]

9523.[§ 63.] When person deemed indorser. A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. [S., '13, § 3060-a63.]

9524.[§ 64.] Liability of irregular indorser. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.
2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.
3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. [S., '13, § 3060-a64.]

9525.[§ 65.] Warranty where negotiation by delivery. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be.
2. That he has a good title to it.
3. That all prior parties had capacity to contract.
4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision 3 of this section do not apply to persons negotiating public or corporate securities, other than bills and notes. [S., '13, § 3060-a65.]

9526.[§ 66.] Liability of general indorser. Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivisions 1, 2, and 3 of the next preceding section; and
2. That the instrument is at the time of his indorsement valid and subsisting. And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. [S., '13, § 3060-a66.]

9527.[§ 67.] Liability of indorser where paper negotiable by delivery. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. [S., '13, § 3060-a67.]

9528.[§ 68.] Order in which indorsers are liable. As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. [S., '13, § 3060-a68.]

9529.[§ 69.] Liability of agent or broker. Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 9525, unless he discloses the name of his principal, and the fact that he is acting only as agent. [S., '13, § 3060-a69.]

PRESENTMENT FOR PAYMENT

9530.[§ 70.] Effect of want of demand on principal debtor. Presentment for payment is not necessary in order to charge the person primarily on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness

are equivalent to a tender of payment upon his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. [S., '13, § 3060-a70.]

9531.[§ 71.] Presentment—instrument payable and not payable on demand. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. [S., '13, § 3060-a71.]

9532.[§ 72.] What constitutes a sufficient presentment. Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf.
2. At a reasonable hour on a business day.
3. At a proper place as herein defined.
4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made. [S., '13, § 3060-a72.]

9533.[§ 73.] Place of presentment. Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented.
2. Where no place of payment is specified and the address of the person to make payment is given in the instrument and it is there presented.
3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.
4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. [S., '13, § 3060-a73.]

9534.[§ 74.] Instrument must be exhibited. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. [S., '13, § 3060-a74.]

9535.[§ 75.] Presentment where instrument payable at bank. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. [S., '13, § 3060-a75.]

9536.[§ 76.] Presentment where principal debtor is dead. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found. [S., '13, § 3060-a76.]

9537.[§ 77.] Presentment to persons liable as partners. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. [S., '13, § 3060-a77.]

9538.[§ 78.] Presentment to joint debtors. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. [S., '13, § 3060-a78.]

9539.[§ 79.] When presentment not required to charge the drawer. Presentment for payment is not required in order to charge the drawer where he has no right to except or require that the drawee or acceptor will pay the instrument. [S., '13, § 3060-a79.]

9540.[§ 80.] When presentment not required to charge the indorser. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented. [S., '13, § 3060-a80.]

9541.[§ 81.] When delay in making the presentment is excused. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. [S., '13, § 3060-a81.]

9542.[§ 82.] When presentment may be dispensed with. Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this chapter can not be made.
2. Where the drawee is a fictitious person.
3. By waiver of presentment, express or implied. [S., '13, § 3060-a82.]

9543.[§ 83.] When instrument dishonored by nonpayment. The instrument is dishonored by nonpayment when:

1. It is duly presented for payment and payment is refused or can not be obtained; or
2. Presentment is excused and the instrument is overdue and unpaid. [S., '13, § 3060-a83.]

9544.[§ 84.] Liability of person secondarily liable, when instrument is dishonored. Subject to the provisions of this chapter, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder. [S., '13, § 3060-a84.]

9545. Holidays affecting presentation. The first day of the week, called Sunday, the first day of January, the twelfth day of February, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the

first Monday in September, the eleventh day of November, the twenty-fifth day of December, the day of general election, and any day appointed or recommended by the governor of this state or by the president of the United States as a day of fasting or thanksgiving, shall be regarded as holidays for all purposes relating to the presentation for payment or acceptance, and for the protesting and giving notice of the dishonor of bills of exchange, drafts, bank checks, orders, and promissory notes, and any blank or mercantile paper falling due on any of the days above named shall be considered as falling due on the succeeding business day. [C., '73, § 2094; C., '97, § 3053; S., '13, § 3053; 39 G. A., ch. 62.]

9546.[§ 85.] Time of maturity. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday, when that entire day is not a holiday. [S., '13, § 3060-a85.]

9547.[§ 86.] Time—how computed. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. [S., '13, § 3060-a86.]

9548.[§ 87.] Rule where instrument payable at bank. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. [S., '13, § 3060-a87.]

9549.[§ 88.] What constitutes payment in due course. Payment is made in due course when it is made at or after maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. [S., '13, § 3060-a88.]

NOTICE OF DISHONOR

9550.[§ 89.] To whom notice of dishonor must be given. Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. [S., '13, § 3060-a89.]

9551.[§ 90.] By whom given. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given. [S., '13, § 3060-a90.]

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9552.[§ 91.] Notice given by agent. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. [S., '13, § 3060-a91.]

9553.[§ 92.] Effect of notice given on behalf of holder. Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. [S., '13, § 3060-a92.]

9554.[§ 93.] Effect where notice is given by party entitled thereto. Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom the notice is given. [S., '13, § 3060-a93.]

9555.[§ 94.] When agent may give notice. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder. [S., '13, § 3060-a94.]

9556.[§ 95.] When notice is sufficient. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate [the notice] unless the party to whom the notice is given is in fact misled thereby. [S., '13, § 3060-a95.]

9557.[§ 96.] Form of notice. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. [S., '13, § 3060-a96.]

9558.[§ 97.] To whom notice may be given. Notice of dishonor may be given either to the party himself or to his agent in that behalf. [S., '13, § 3060-a97.]

9559.[§ 98.] Notice where party is dead. Where any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. [S., '13, § 3060-a98.]

9560.[§ 99.] Notice to partners. Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. [S., '13, § 3060-a99.]

9561.[§ 100.] Notice to persons jointly liable. Notice to joint parties who are not part-

ners must be given to each of them, unless one of them has authority to receive such notice for the others. [S., '13, § 3060-a100.]

9562.[§101.] Notice to bankrupt. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. [S., '13, § 3060-a101.]

9563.[§102.] Time within which notice must be given. Notice may be given as soon as the instrument is dishonored, and unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter. [S., '13, § 3060-a102.]

9564.[§103.] Where parties reside in same place. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following. [S., '13, § 3060-a103.]

9565.[§104.] Where parties reside in different places. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision. [S., '13, § 3060-a104.]

9566.[§105.] When sender deemed to have given due notice. Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. [S., '13, § 3060-a105.]

9567.[§106.] Deposit in postoffice—what constitutes. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department. [S., '13, § 3060-a106.]

9568.[§107.] Notice to antecedent party—time of. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. [S., '13, § 3060-a107.]

9569.[§108.] Where notice must be sent. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or

2. If he live in one place and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this chapter, it will be sufficient, though not sent in accordance with the requirements of this section. [S., '13, § 3060-a108.]

9570.[§109.] Waiver of notice. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied. [S., '13, § 3060-a109.]

9571.[§110.] Whom affected by waiver. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only. [S., '13, § 3060-a110.]

9572.[§111.] Waiver of protest. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of a presentment and notice of dishonor. [S., '13, § 3060-a111.]

9573.[§112.] When notice is dispensed with. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged. [S., '13, § 3060-a112.]

9574.[§113.] Delay in giving notice—how excused. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. [S., '13, § 3060-a113.]

9575.[§114.] When notice need not be given to drawer. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person.

2. Where the drawee is a fictitious person or a person not having capacity to contract.

3. Where the drawer is the person to whom the instrument is presented for payment.

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.

5. Where the drawer has countermanded payment. [S., '13, § 3060-a114.]

9576.[§115.] When notice need not be given to indorser. Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the instrument.

2. Where the indorser is the person to whom the instrument is presented for payment.

3. Where the instrument was made or accepted for his accommodation. [S., '13, § 3060-a115.]

9577.[§116.] Notice of nonpayment where acceptance refused. Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted. [S., '13, § 3060-a116.]

9578.[§117.] Effect of omission to give notice of nonacceptance. An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission. [S., '13, § 3060-a117.]

9579.[§118.] When protest need not be made—when must be made. Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment as the case may be; but protest is not required, except in the case of foreign bills of exchange. [S., '13, § 3060-a118.]

DISCHARGE OF NEGOTIABLE INSTRUMENTS

9580.[§119.] How instrument discharged. A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor.

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

3. By the intentional cancellation thereof by the holder.

4. By any other act which will discharge a simple contract for the payment of money.

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right. [S., '13, § 3060-a119.]

9581[§120.] When persons secondarily liable on—discharged. A person secondarily liable on the instrument is discharged:

1. By an act which discharges the instrument.

2. By the intentional cancellation of his signature by the holder.

3. By the discharge of a prior party.

4. By the valid tender of payment made by a prior party.

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

6. By an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved. [S., '15, § 3060-a120.]

9582.[§121.] Right of party who discharges instrument. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated. [S., '13, § 3060-a121.]

9583.[§122.] Renunciation by holder. The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. [S., '13, § 3060-a122.]

9584.[§123.] Cancellation — unintentional—burden of proof. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. [S., '13, § 3060-a123.]

9585.[§124.] Alteration of instrument—effect of. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. [S., '13, § 3060-a124.]

9586.[§125.] What constitutes a material alteration. Any alteration which changes:

1. The date;

2. The sum payable, either for principal or interest;

3. The time or place of payment;

4. The number or the relations of the parties;

5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other

change or addition which alters the effect of the instrument in any respect, is a material alteration. [S., '13, § 3060-a125.]

BILLS OF EXCHANGE—FORM AND INTERPRETATION

9587.[§126.] Bill of exchange defined. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. [S., '13, § 3060-a126.]

9588.[§127.] Bill not an assignment of funds in hands of drawee. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. [S., '13, § 3060-a127.]

9589.[§128.] Bill addressed to more than one drawee. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. [S., '13, § 3060-a128.]

9590.[§129.] Inland and foreign bills of exchange. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. [S., '13, § 3060-a129.]

9591.[§130.] When bill may be treated as promissory note. Where in a bill the drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. [S., '13, § 3060-a130.]

9592.[§131.] Referee in case of need. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit. [S., '13, § 3060-a131.]

ACCEPTANCE

9593.[§132.] Acceptance—how made. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money [S., '13, § 3060-a132.]

9594.[§133.] Holder entitled to acceptance on face of bill. The holder of a bill presenting

the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored. [S., '13, § 3060-a133.]

9595.[§134.] Acceptance by separate instrument. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. [S., '13, § 3060-a134.]

9596.[§135.] Promise to accept—when equivalent to acceptance. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. [S., '13, § 3060-a135.]

9597.[§136.] Time allowed drawee to accept. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation. [S., '13, § 3060-a136.]

9598.[§137.] Liability of drawee retaining or destroying bill. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same. [S., '13, § 3060-a137.]

9599.[§138.] Acceptance of incomplete bill. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. [S., '13, § 3060-a138.]

9600.[§139.] Kinds of acceptances. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. [S., '13, § 3060-a139.]

9601.[§140.] What constitutes a general acceptance. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere. [S., '13, § 3060-a140.]

9602.[§141.] Qualified acceptance. An acceptance is qualified, which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

3. Local, that is to say, an acceptance to pay only at a particular place.

4. Qualified as to time.

5. The acceptance of some one or more of the drawees, but not of all. [S., '13, § 3060-a141.]

9603.[§142.] Rights of parties as to qualified acceptance. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto. [S., '13, § 3060-a142.]

PRESENTMENT FOR ACCEPTANCE

9604.[§143.] When presentment for acceptance must be made. Presentment for acceptance must be made:

1. When the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. [S., '13, § 3060-a143.]

9605.[§144.] When failure to present releases drawer and indorser. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged. [S., '13, § 3060-a144.]

9606.[§145.] Presentment—how made. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative.

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. [S., '13, § 3060-a145.]

9607.[§146.] On what days presentment may be made. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 9532 and 9546. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day. [S., '13, § 3060-a146.]

9608.[§147.] Presentment where time is insufficient. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. [S., '13, § 3060-a147.]

9609.[§148.] Where presentment is excused. Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where after the exercise of reasonable diligence, presentment can not be made.

3. Where although presentment has been irregular, acceptance has been refused on some [other] ground. [S., '13, § 3060-a148.]

9610.[§149.] When dishonored by nonacceptance. A bill is dishonored by nonacceptance:

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this chapter is refused or can not be obtained; or

2. When a presentment for acceptance is excused and the bill is not accepted. [S., '13, § 3060-a149.]

9611.[§150.] Duty of holder where bill not accepted. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers. [S., '13, § 3060-a150.]

9612.[§151.] Rights of holders where bill not accepted. When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. [S., '13, § 3060-a151.]

PROTEST

9613.[§152.] In what cases protest necessary. Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a for-

eign bill, protest thereof in case of dishonor is unnecessary. [S., '13, § 3060-a152.]

9614.[§153.] Protest—how made. The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment.
2. The fact that presentment was made and the manner thereof.
3. The cause or reason for protesting the bill.
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. [S., '13, § 3060-a153.]

9615.[§154.] Protest—by whom made. Protest may be made by:

1. A notary public; or
2. By any reputable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. [S., '13, § 3060-a154.]

NOTE: Protest authorized by interested notary, see § 1205.
Protest fee, see § 1214.

9616.[§155.] Protest—when to be made. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. [S., '13, § 3060-a155.]

9617.[§156.] Protest—where made. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable; and no other presentment for payment to, or demand on, the drawee is necessary. [S., '13, § 3060-a156.]

9618.[§157.] Protest both for nonacceptance and nonpayment. A bill which has been protested for nonacceptance may be subsequently protested for nonpayment. [S., '13, § 3060-a157.]

9619.[§158.] Protest before maturity where acceptor insolvent. Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. [S., '13, § 3060-a158.]

9620.[§159.] When protest dispensed with. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. [S., '13, § 3060-a159.]

9621.[§160.] Protest where bill is lost. Where a bill is lost or destroyed, or is wrongfully detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. [S., '13, § 3060-a160.]

ACCEPTANCE FOR HONOR

9622.[§161.] When bill may be accepted for honor. Where a bill of exchange has been protested for dishonor by nonacceptance, or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party. [S., '13, § 3060-a161.]

9623.[§162.] Acceptance for honor—how made. An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. [S., '13, § 3060-a162.]

9624.[§163.] When deemed to be an acceptance for honor of the drawer. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. [S., '13, § 3060-a163.]

9625.[§164.] Liability of acceptor for honor. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. [S., '13, § 3060-a164.]

9626.[§165.] Agreement of acceptor for honor. The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him. [S., '13, § 3060-a165.]

9627.[§166.] Maturity of bill payable after sight—accepted for honor. When a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor. [S., '13, § 3060-a166.]

9628.[§167.] Protest of bill accepted for honor. Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need. [S., '13, § 3060-a167.]

9629.[§168.] Presentment for payment to acceptor for honor—how made. Presentment

for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 9565. [S., '13, § 3060-a168.]

9630.[§169.] When delay in making presentment is excused. The provisions of section 9541 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. [S., '13, § 3060-a169.]

9631.[§170.] Dishonor of bill by acceptor for honor. When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him. [S., '13, § 3060-a170.]

PAYMENT FOR HONOR

9632.[§171.] Who may make payment for honor. Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. [S., '13, § 3060-a171.]

9633.[§172.] Payment for honor—how made. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it. [S., '13, § 3060-a172.]

9634.[§173.] Declaration before payment for honor. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. [S., '13, § 3060-a173.]

9635.[§174.] Preference of parties offering to pay for honor. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference. [S., '13, § 3060-a174.]

9636.[§175.] Effect on subsequent parties where bill is paid for honor. Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. [S., '13, § 3060-a175.]

9637.[§176.] Where holder refuses to receive payment supra protest. Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. [S., '13, § 3060-a176.]

9638.[§177.] Rights of payer for honor. The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. [S., '13, § 3060-a177.]

BILLS IN A SET

9639.[§178.] Bills in sets constitute one bill. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill. [S., '13, § 3060-a178.]

9640.[§179.] Rights of holders where different parts are negotiated. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. [S., '13, § 3060-a179.]

9641.[§180.] Liability of holder who indorses two or more parts of a set to different persons. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. [S., '13, § 3060-a180.]

9642.[§181.] Acceptance of bills drawn in sets. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. [S., '13, § 3060-a181.]

9643.[§182.] Payment by acceptor of bills drawn in sets. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. [S., '13, § 3060-a182.]

9644.[§183.] Effect of discharging one of a set. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. [S., '13, § 3060-a183.]

PROMISSORY NOTES AND CHECKS

9645.[§184.] Promissory note defined. A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another, signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him. [S., '13, § 3060-a184.]

9646.[§185.] Check defined. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this chapter applicable to a bill of exchange payable on demand apply to a check. [S., '13, § 3060-a185.]

9647.[§186.] Within what time a check must be presented. A check must be presented for payment within a reasonable time after its issue, or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. [S., '13, § 3060-a186.]

9648.[§187.] Certification of check—effect of. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. [S., '13, § 3060-a187.]

9649.[§188.] Effect where the holder of check procures it to be certified. Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon. [S., '13, § 3060-a188.]

9650[§189.] Check not an assignment—when bank liable. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check. [S., '13, § 3060-a189.]

GENERAL PROVISIONS

9651.[§190.] Short title. This chapter shall be known as the “negotiable instruments law”. [S., '13, § 3060-a190.]

9652.[§191.] Definitions and meaning of terms. In this chapter, unless the context otherwise requires:

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counterclaim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print. [S., '13, § 3060-a191.]

9653.[§192.] Person primarily liable on instrument. The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable. [S., '13, § 3060-a192.]

9654.[§193.] Reasonable time—what constitutes. In determining what is a “reasonable time” or an “unreasonable time” regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. [S., '13, § 3060-a193.]

9655.[§194.] Time—how computed—when last day falls on holiday. When the day, or last day, for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. [S., '13, § 3060-a194.]

9656.[§195.] Application of chapter. The provisions of this chapter do not apply to negotiable instruments made and delivered prior to the passage hereof. [S., '13, § 3060-a195.]

9657.[§196.] Law merchant—when governs. In any case not provided for in this chapter, the rules of the law merchant shall govern. [S., '13, § 3060-a196.]

9658. Days of grace—demand made on. A demand made on any one of the three days following the day of maturity of the instrument, except on Sunday or a holiday, shall be as effectual as though made on the day on which demand may be made under the provisions of this chapter, and the provisions of this chapter as to notice of nonpayment, nonacceptance, and as to protest shall be applicable with reference to such demand as though the demand were made in accordance with the terms of this chapter; but the provisions of this section shall not be construed as authorizing demand on any day after the third day from that on which the instrument falls due according to its face. [S., '13, § 3060-a198.]

9659. Indemnifying bond to protect payer. Whenever a note, bond, bill of exchange, certificate of deposit, check, or other evidence of indebtedness shall have been lost, stolen, or destroyed, and the owner thereof desires payment to be made by the person, firm, or corporation issuing the same, he shall execute and deliver, if demanded, to such person, firm, or corporation, a good and sufficient bond agreeing to indemnify and save harmless the payer thereof. [S., '13, § 3060-a199.]

9660. Indemnifying bond to protect defendants. When an action is brought on a lost note, bond, bill of exchange, draft, certificate of deposit, or other evidence of indebtedness, upon demand of any defendant therein, a good and sufficient bond shall be given to indemnify and save harmless the defendants in said cause. [S., '13, § 3060-a200.]

CHAPTER 425

WAREHOUSE RECEIPTS LAW

NOTE: The number in brackets following each section number in this chapter indicates the number of the corresponding section of the uniform warehouse receipts act.

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PART I

THE ISSUE OF WAREHOUSE RECEIPTS

9661.[§ 1.] Persons who may issue receipts. Warehouse receipts may be issued by any warehouseman. [S., '13, § 3138-a1.]

9662.[§ 2.] Form of receipts—essential terms. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

1. The location of the warehouse where the goods are stored;
2. The date of issue of the receipt;
3. The consecutive number of the receipt;
4. A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;
5. The rate of storage charges;
6. A description of the goods or of the packages containing them;
7. The signature of the warehouseman, which may be made by his authorized agent;
8. If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
9. A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damages caused by the omission from a negotiable receipt of any of the terms herein required. [S., '13, § 3138-a2.]

9663.[§ 3.] Form of receipts—what terms may be inserted. A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

1. Be contrary to the provisions of this chapter.
2. In anywise impair his obligation to exercise that degree of care in the safe-keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. [S., '13, § 3138-a3.]

9664.[§ 4.] Nonnegotiable receipt defined. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt. [S., '13, § 3138-a4.]

9665.[§ 5.] Negotiable receipt defined. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt. No provision shall be inserted in a negotiable receipt that it is nonnegotiable. Such provisions, if inserted, shall be void. [S., '13, § 3138-a5.]

9666.[§ 6.] Duplicate receipts must be so marked. When more than one negotiable re-

ceipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. [S., '13, § 3138-a6.]

9667.[§ 7.] Failure to mark "not negotiable". A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "nonnegotiable", or "not negotiable". In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. [S., '13, § 3138-a7.]

PART II

OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS

9668.[§ 8.] Obligation of warehouseman to deliver. A warehouseman, in the absence of some lawful excuse provided by this chapter, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with:

1. An offer to satisfy the warehouseman's lien;
2. An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and
3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. [S., '13, § 3138-a8.]

9669.[§ 9.] Justification of warehouseman in delivering. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is:

1. The person lawfully entitled to the possession of the goods, or his agent;
2. A person who is either himself entitled to delivery by the terms of a nonnegotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or
3. A person in possession of a negotiable receipt by the terms of which the goods are de-

liverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. [S., '13, § 3138-a9.]

9670.[§10.] Warehouseman's liability for misdelivery. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions 2 and 3 of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either:

1. Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery; or

2. Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. [S., '13, § 3138-a10.]

9671.[§11.] Negotiable receipt must be canceled when goods delivered. Except as provided in section 9696, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt, for failure to deliver goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. [S., '13, § 3138-a11.]

9672.[§12.] Negotiable receipt must be canceled or marked when part of goods delivered. Except as provided in section 9696, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable, to anyone who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. [S., '13, § 3138-a12.]

9673.[§13.] Altered receipts. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was:

1. Immaterial,
2. Authorized, or
3. Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they

were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. [S., '13, § 3138-a13.]

9674.[§14.] Lost or destroyed receipts. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [S., '13, § 3138-a14.]

9675.[§15.] Effect of duplicate receipts. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability. [S., '13, § 3138-a15.]

9676.[§16.] Warehouseman can not set up title in himself. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. [S., '13, § 3138-a16.]

9677.[§17.] Interpleader of adverse claimants. If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. [S., '13, § 3138-a17.]

9678.[§18.] Warehouseman has reasonable time to determine validity of claims. If some-

one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [S., '13, § 3138-a18.]

9679.[§19.] Adverse title no defense—exceptions. Except as provided in the two preceding sections and in sections 9669 and 9696, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. [S., '13, § 3138-a19.]

9680.[§20.] Liability for nonexistence or misdescription of goods. A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate or of the kind they were said to be by the depositor. [S., '13, § 3138-a20.]

9681.[§21.] Liability for care of goods. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. [S., '13, § 3138-a21.]

9682.[§22.] Goods must be kept separate. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited. [S., '13, § 3138-a22.]

9683.[§23.] Fungible goods may be commingled, if warehouseman authorized. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In

such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. [S., '13, § 3138-a23.]

9684.[§24.] Liability of warehouseman to depositors of commingled goods. The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. [S., '13, § 3138-a24.]

9685.[§25.] Attachment or levy upon goods for which a negotiable receipt has been issued. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishing or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court. [S., '13, § 3138-a25.]

9686.[§26.] Creditors' remedies to reach negotiable receipts. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process. [S., '13, § 3138-a26.]

9687.[§27.] What claims included in warehouseman's lien. Subject to the provisions of section 9690, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooperating, and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien. [S., '13, § 3138-a27.]

9688.[§28.] Against what property lien may be enforced. Subject to the provisions of section 9690, a warehouseman's lien may be enforced:

1. Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

2. Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims

in regard to which the lien is asserted, if such person has been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid. [S., '13, § 3138-a28.]

9689.[§29.] How lien may be lost. A warehouseman loses his lien upon goods:

1. By surrendering possession thereof; or
2. By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this chapter. [S., '13, § 3138-a29.]

9690.[§30.] Negotiable receipt must state charges for which lien is claimed. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 9687, although the amount of the charges so enumerated is not stated in the receipt. [S., '13, § 3138-a30.]

9691.[§31.] Warehouseman need not deliver until lien is satisfied. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. [S., '13, § 3138-a31.]

9692.[§32.] Warehouseman's lien does not preclude other remedies. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. [S., '13, § 3138-a32.]

9693.[§33.] Satisfaction of lien by sale. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

1. An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;
2. A brief description of the goods against which the lien exists;
3. A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the

due course of post, if the notice is sent by mail; and

4. A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, and advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods. At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this chapter, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit. [S., '13, § 3138-a33.]

9694.[§34.] Perishable and hazardous goods. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman, after a reasonable effort, is unable to sell such goods, he may dispose of them in a lawful manner, and shall incur no

liability by reason thereof. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section. [S., '13, § 3138-a34.]

9695.[§35.] Other methods of enforcing liens. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. [S., '13, § 3138-a35.]

9696.[§36.] Effect of sale. After the goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. [S., '13, § 3138-a36.]

PART III

NEGOTIATION AND TRANSFER OF RECEIPTS

9697.[§37.] Negotiation of negotiable receipts by delivery. A negotiable receipt may be negotiated by delivery:

1. Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or

2. Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. [S., '13, § 3138-a37.]

9698[§38.] Negotiation of negotiable receipts by indorsement. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner. [S., '13, § 3138-a38.]

9699.[§39.] Transfer of receipts. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable receipt can not be negotiated, and the indorsement of such a receipt gives the transferee no additional right. [S., '13, § 3138-a39.]

9700.[§40.] Who may negotiate a receipt. A negotiable receipt may be negotiated:

1. By the owner thereof; or

2. By any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been intrusted, or if, at the time of such intrusting, the receipt is in such form that it may be negotiated by delivery. [S., '13, § 3138-a40.]

9701.[§41.] Rights of persons to whom receipt has been negotiated. A person to whom a negotiable receipt has been duly negotiated acquires thereby:

1. Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value; and

2. The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. [S., '13, § 3138-a41.]

9702.[§42.] Rights of persons to whom receipt has been transferred. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the receipt is nonnegotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferor or transferee of a nonnegotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or by a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. [S., '13, § 3138-a42.]

9703.[§43.] Transfer of negotiable receipt without indorsement. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. [S., '13, § 3138-a43.]

9704.[§44.] Warranties on sale of receipt. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured

by a receipt, unless a contrary intention appears, warrants:

1. That the receipt is genuine;
2. That he has a legal right to negotiate or transfer it;
3. That he has knowledge of no fact which would impair the validity or worth of the receipt; and
4. That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. [S., '13, § 3138-a44.]

9705.[§45.] Indorser not a guarantor. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. [S., '13, § 3138-a45.]

9706.[§46.] No warranty implied from accepting payment of debt. A mortgagee, pledgee, or holder for security of a receipt who, in good faith, demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quality or quantity of the goods therein described. [S., '13, § 3138-a46.]

9707.[§47.] When negotiation not impaired by fraud, mistake, or duress. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress. [S., '13, § 3138-a47.]

9708.[§48.] Subsequent negotiation. Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. [S., '13, § 3138-a48.]

9709.[§49.] Negotiation defeats vendor's lien. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any

purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation. [S., '13, 3138-a49.]

PART IV

CRIMINAL OFFENSES

9710.[§50.] Issue of receipt for goods not received. A warehouseman or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of felony, and upon conviction shall be punished for each offense by imprisonment in the penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S., '13, § 3138-a50.]

9711.[§51.] Issue of receipt containing false statement. A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods, knowing that it contains any false statement, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S., '13, § 3138-a51.]

9712.[§52.] Issue of duplicate receipts not so marked. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate", except in the case of a lost or destroyed receipt after proceedings as provided for in section 9674, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment in the penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [S., '13, § 3138-a52.]

9713.[§53.] Issue for warehouseman's goods of receipts which do not state that fact. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment in the county jail not

exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S., '13, § 3138-a53.]

9714.[§54.] Delivery of goods without obtaining negotiable receipt. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiating of which would transfer the right to the possession of such goods, is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 9674 and 9696, be found guilty of a misdemeanor and on conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S., '13, § 3138-a54.]

9715.[§55.] Negotiation of receipt for mortgaged goods. Any person who deposits goods to which he has no title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [S., '13, § 3138-a55.]

PART V

INTERPRETATION

9716.[§56.] When rules of common law and equity applicable. In any case not provided for in this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. [S., '13, § 3138-a56.]

9717.[§57.] Interpretation to give effect to purpose of uniformity. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [S., '13, § 3138-a57.]

9718.[§58.] Definitions. In this chapter, unless the context or subject matter otherwise requires:

“Action” includes the counterclaim, set-off, and suit in equity.

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage, or which has been or is about to be stored.

“Holder of a receipt” means a person who has both actual possession of such receipt and a right of property therein.

“Order” means an order by indorsement on the receipt.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Receipt” means a warehouse receipt.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

“Warehouseman” means a person lawfully engaged in the business of storing goods for profit.

A thing is done “in good faith” within the meaning of this chapter when it is in fact done honestly whether it be done negligently or not. [S., '13, § 3138-a58.]

CHAPTER 426

BONDED WAREHOUSES FOR AGRICULTURAL PRODUCTS

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9719. Terms defined. The term “commissioners” as used in this chapter shall mean the “board of railroad commissioners”.

The term “warehouse” as used in this chapter shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural product is or may be stored within the state.

The term “agricultural product” wherever used in this chapter shall be deemed to mean cotton, wool, grains, tobacco, and flaxseed, or any of them.

As used in this chapter:

1. “Person” includes a corporation or partnership of two or more persons having a joint or common interest.

2. “Warehouseman” means a person lawfully engaged in the business of storing agricultural products.

3. “Receipt” means a warehouse receipt. [39 G. A., ch. 119, § 1.]

9720. Cooperation with federal government. The commissioners are hereby authorized to cooperate with the secretary of agriculture of the United States and with officials designated by him for such duties in the enforcement of the provisions of the United States warehouse act. [39 G. A., ch. 119, § 27.]

9721. Rules and regulations. The commissioners shall from time to time make such rules and regulations as they may deem necessary for the efficient execution of the provisions of this chapter. [39 G. A., ch. 119, § 26.]

9722. License — conditions. The commissioners are authorized, upon application to them, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this chapter and such rules and regulations as may be made hereunder,

provided that each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this chapter and the rules and regulations prescribed hereunder. [39 G. A., ch. 119, § 3.]

9723. Bond required. Each warehouseman applying for a license to conduct a warehouse in accordance with this chapter shall, as a condition to the granting thereof, execute and file with the commissioners a good and sufficient bond other than personal security to the state to secure the faithful performance of his obligations as a warehouseman under the terms of this chapter and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. [39 G. A., ch. 119, § 5.]

9724. Exemption. No bond shall be required of any warehouse licensed and bonded under the provisions of the United States warehouse act. [39 G. A., ch. 119, § 5.]

9725. Form, amount, sureties, and conditions. Said bond shall be in such form and amount, shall have such surety or sureties, subject to service of process in suits on the bond and shall contain such terms and conditions as the commissioners may prescribe to carry out the purposes of this chapter, including the requirements of fire insurance. [39 G. A., ch. 119, § 5.]

9726. Fees. The commissioners shall charge, assess, and cause to be collected a reasonable

fee for every examination or inspection of a warehouse under this chapter when such examination or inspection is made upon application of a warehouseman, and a fee not exceeding two dollars per annum for each license or renewal thereof issued to a warehouseman under this chapter. All such fees shall be deposited and covered into the treasury as miscellaneous receipts. [39 G. A., ch. 119, § 8.]

9727. Tenure of license—renewal. Each license issued under the fifth preceding section shall be issued for a period not exceeding one year, and shall specify the date upon which it is to terminate, and upon showing satisfactory to the commissioners may from time to time be renewed or extended by a written instrument, which shall specify the date of its termination. [39 G. A., ch. 119, § 4.]

9728. Use of term "bonded warehouse". Upon the filing with the approval by the commissioners of a bond, in compliance with this chapter, for the conduct of a warehouse, such warehouse shall be designated as bonded hereunder; but no warehouse shall be designated as bonded under this chapter, and no name or description conveying the impression that it is so bonded, shall be used, until a bond, such as provided for in sections 9723 and 9725, has been filed with and approved by the commissioners, nor unless the license issued under this chapter for the conduct of such warehouse remains unsuspended and unrevoked. [39 G. A., ch. 119, § 7.]

9729. Storage of agricultural products—discrimination. Every warehouseman conducting a warehouse licensed under this chapter shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities. [39 G. A., ch. 119, § 11.]

9730. Presumption attending storage. Any person who deposits agricultural products for storage in a warehouse licensed under this chapter shall be deemed to have deposited the same subject to the terms of this chapter and the rules and regulations prescribed hereunder. [39 G. A., ch. 119, § 12.]

9731. Separate keeping of deposits. Every warehouseman conducting a warehouse licensed under this chapter shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited. [39 G. A., ch. 119, § 14.]

9732. Intermingling fungible products. If authorized by agreement or by custom, a ware-

houseman may mingle fungible agricultural products with other agricultural products of the same kind and grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, but he shall at no time while they are in his custody mix fungible agricultural products of different grades. [39 G. A., ch. 119, § 14.]

9733. Inspecting and grading. Grain, flaxseed, or any other fungible agricultural product stored in a warehouse licensed under this chapter shall be inspected and graded by a person duly licensed to grade the same, provided that the commissioners may waive such inspection in the case of a warehouse licensed under the provisions of the United States warehouse act. [39 G. A., ch. 119, § 13.]

9734. License to classify, grade, or weigh. The commissioners may, upon presentation of satisfactory proof of competency, issue to any person a license to classify any agricultural product or products, stored or to be stored in a warehouse licensed under this chapter, according to grade or otherwise and to certificate the grade or other class thereof, or to weigh the same and certificate the weight thereof, or both to classify and weigh the same and to certificate the grade or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this chapter and of the rules and regulations prescribed hereunder so far as the same relate to him. [39 G. A., ch. 119, § 9.]

9735. Revocation of license to classify or weigh. Any license issued to any person to classify or to weigh any agricultural product or products under this chapter may be suspended or revoked by the commissioners whenever they are satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to classify or to weigh any agricultural product or products correctly, or has violated any of the provisions of this chapter or of the rules and regulations prescribed hereunder, so far as the same may relate to him, or that he has used his license or allowed it to be used for any improper purpose whatsoever. Pending investigation, the commissioners, whenever they deem necessary, may suspend a license temporarily without hearing. [39 G. A., ch. 119, § 10.]

9736. Original receipts. For all agricultural products stored in a warehouse licensed under this chapter original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof. [39 G. A., ch. 119, § 15.]

9737. Contents of receipt. Every receipt issued for agricultural products stored in a warehouse licensed under this chapter shall embody within its written or printed terms:

1. The location of the warehouse in which the agricultural products are stored.

2. The date of issue of the receipt.

3. The consecutive number of the receipt.

4. A statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order.

5. The rate of storage charges.

6. A description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification, and the weight of such bales or packages.

7. The grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made; provided that such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated; provided, further, that until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the secretary of agriculture of the United States.

8. A statement that the receipt is issued subject to the United States warehouse act and the rules and regulations prescribed thereunder.

9. If the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership.

10. A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien; provided that, if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient.

11. Such other terms and conditions as may be required by the said secretary of agriculture.

12. The signature of the warehouseman, which may be made by his authorized agent. [39 G. A., ch. 119, § 16.]

9738. Receipt for nonfungible products. When requested by the depositor of other than fungible agricultural products, a receipt omitting compliance with paragraph 7 of the preceding section may be issued if it have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable. [39 G. A., ch. 119, § 16.]

9739. Standards for products. The commissioners are authorized from time to time, to establish and promulgate standards for agricultural products in this chapter defined by

which their quality or value may be judged or determined; provided that the standards for any agricultural products which have been or which in future may be established by or under authority of any act of congress shall be, and are hereby, adopted for the purposes of this chapter as the official standards for the agricultural products to which they relate. [39 G. A., ch. 119, § 17.]

9740. Duplicate receipts forbidden—lost receipts. While an original receipt issued under this chapter is outstanding and uncanceled by the warehouseman issuing the same, no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon compliance with the statutes of the United States applicable thereto and with the laws of this state. [39 G. A., ch. 119, § 18.]

9741. Delivery of products on demand—conditions. A warehouseman conducting a warehouse licensed under this chapter, in the absence of some lawful excuse shall, without unnecessary delay, deliver the agricultural products stored therein upon a demand made either by the holder of a receipt for such agricultural products or by the depositor thereof if such demand be accompanied with:

1. An offer to satisfy the warehouseman's lien.

2. An offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipt.

3. A readiness and willingness to sign, when the products are delivered, an acknowledgment that they have been delivered if such signature is requested by the warehouseman. [39 G. A., ch. 119, § 19.]

9742. Cancellation of receipt. A warehouseman conducting a warehouse licensed under this chapter shall plainly cancel upon the face thereof each receipt returned to him upon the delivery by him of the agricultural products for which the receipt was issued. [39 G. A., ch. 119, § 20.]

9743. Duties of warehouseman. Every warehouseman conducting a warehouse licensed under this chapter shall:

1. Keep in a place of safety complete and correct records of all agricultural products stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and canceled by him.

2. Make reports to the commissioners concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as commissioners may require.

3. Conduct said warehouse in all other respects in compliance with this chapter and the rules and regulations made hereunder. [39 G. A., ch. 119, § 21.]

9744. Duties of commissioners. The commissioners are authorized:

1. To investigate the storage, warehousing, classifying according to grade and otherwise, weighing, and certification of agricultural products.

2. Upon application to them by any person applying for license to conduct a warehouse under this chapter, to inspect such warehouse or cause it to be inspected.

3. At any time, with or without application to them, to inspect or cause to be inspected all warehouses licensed under this chapter.

4. To determine whether warehouses for which licenses are applied for or have been issued under this chapter are suitable for the proper storage of any agricultural product or products.

5. To classify warehouses licensed or applying for a license in accordance with their ownership, location, surroundings, capacity, conditions, and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this chapter.

6. To prescribe, within the limitations of this chapter, the duties of the warehousemen conducting warehouses licensed under this chapter with respect to their care of and responsibility for agricultural products stored therein. [39 G. A., ch. 119, § 2.]

9745. Examinations—publication of findings. The commissioners are authorized to cause examinations to be made of any agricultural product stored in any warehouse licensed under this chapter. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this chapter and the rules and regulations made hereunder, the commissioners may publish their findings. [39 G. A., ch. 119, § 22.]

9746. Examination of books, records, and accounts. The commissioners are authorized through their officials, employees, or agents designated by them to examine all books, records, papers, and accounts of warehouses licensed under this chapter, and of the warehousemen conducting such warehouses relating thereto. [39 G. A., ch. 119, § 25.]

9747. Suspension or revocation of license. The commissioners may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license issued to

any warehouseman conducting a warehouse under this chapter, for any violation of or failure to comply with any provision of this chapter or of the rules and regulations made hereunder or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation, the commissioners, whenever they deem necessary, may suspend a license temporarily without hearing. [39 G. A., ch. 119, § 23.]

9748. Insufficiency of bond — revocation of license. Whenever the commissioners shall determine that a bond approved by them is, or for any cause has become insufficient, they may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of sections 9723 and 9725 and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked. [39 G. A., ch. 119, § 5.]

9749. Action on bond. Any person injured by the breach of any obligation to secure which a bond is given, under the provisions of sections 9723, 9725, 9726, or 9748, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach. [39 G. A., ch. 119, § 6.]

9750. Publication of results of investigation and other data. The commissioners from time to time may publish the results of any investigations made under section 9744, and they shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this chapter and lists of all licenses terminated under this chapter and the causes therefor. [39 G. A., ch. 119, § 24.]

9751. Penalties. Every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority, use any license issued under this chapter, or who shall violate or fail to comply with any provision of section 9728, or who shall issue or utter a false or fraudulent receipt or certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned not more than six months, or both, in the discretion of the court. [39 G. A., ch. 119, § 28.]

CHAPTER 427

UNBONDED AGRICULTURAL WAREHOUSES

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9752. Definitions. Wherever the words “secretary of agriculture” shall appear in this chapter it shall refer to the secretary of agriculture of the state of Iowa in charge of that department.

The word “board” shall refer to any local supervisory board of individual producers appointed by the secretary of agriculture under the provisions of this chapter.

The word “sealer” shall refer to any person whose duty it shall be under the provisions of this chapter to seal any granary, crib, bin, or other receptacle for grain.

The word “certificate” shall refer to any certificate or receipt evidencing the storage of grain under the provisions of this chapter and any rules or regulations promulgated thereunder.

The word “owner” shall refer to and include any person or persons (whether individuals, copartnerships, or corporations) who shall either personally or as trustee have title to or the right of possession of any grain stored under the provisions of this chapter.

The words “grain in storage” shall refer to any grain stored under the provisions of this chapter.

Where the word “owner” is used in this chapter, it shall be construed to be used in the same connection as the word “warehouseman” is used in the uniform warehouse act.

Where the word “certificate” is used in this chapter, it shall be construed to be used in the same connection as the word “receipt” is used in the uniform warehouse act. [40 G. A., ch. 191, §§ 1, 34.]

NOTE: For “uniform warehouse act”, see ch. 425.

9753. Local supervisory board—appointment. Local supervisory boards consisting of not less than three nor more than seven members shall be appointed by the secretary of agriculture in any community upon the application of one or more citizens as hereinafter provided for the purpose of supervising grain in storage and the issuing of certificates against such grain, and generally and under the direction of the secretary of agriculture for carrying out the purposes and enforcing the provisions of this chapter. [40 G. A., ch. 191, § 2.]

9754. Application for board. Any person may make application to the secretary of agriculture for the appointment of a board in and for the community in which he resides, or the secretary of agriculture may make such appointments upon his own initiative. When any such application is made the secretary of agriculture shall as soon as practicable investigate the situation and determine upon the advisability or otherwise of making the appointment requested. [40 G. A., ch. 191, § 5.]

9755. License to local board. Upon the appointment and qualification of the members of such board the secretary of agriculture shall immediately issue a license to it, and prescribe the duties of its officers and the records they shall keep. Each license shall be numbered, and specify the territory which shall be under the jurisdiction of the board and within which certificates may be issued, and such certificates shall bear the names and the license number of the board. It shall also have printed thereon such other directions, rules, and regulations as the secretary of agriculture shall make or promulgate and deem necessary to set forth upon such license. [40 G. A., ch. 191, § 4.]

9756. Name and number. A suitable name and a number shall be given to such board by the secretary of agriculture. [40 G. A., ch. 191, § 2.]

9757. Qualifications of members. The members of such boards shall at the time of their appointment be producers of grain in the state and residents thereof. [40 G. A., ch. 191, § 2.]

9758. Oath of members. Members of such boards shall qualify by taking oath similar to that required of public officials. [40 G. A., ch. 191, § 3.]

9759. Term of office—vacancies. They shall continue in office until their successors are appointed by the secretary of agriculture. In the event of vacancies arising by reason of the resignation or upon removal from the district or death of any member or members, such vacancies shall be filled in manner and form as in the case of original appointments. [40 G. A., ch. 191, § 2.]

9760. Officers. Each board shall appoint one of its own members as its secretary. The secretary may also be the treasurer and each board shall also appoint a president and vice president from its own membership, and their duties shall be those of similar officers in their organization. [40 G. A., ch. 191, § 2.]

9761. Right of owner. The privileges of this chapter shall be open to all owners upon the same conditions. Any owner desiring to place his grain in storage and have a certificate or certificates issued against it shall make application therefor to the board. [40 G. A., ch. 191, § 7.]

9762. Local sealers. The board shall submit to the secretary of agriculture the name of some person or persons who shall, subject to the approval of the secretary of agriculture, act as the local sealer or sealers, and every such sealer shall have the same authority with respect to the provisions of this chapter and the rules and regulations promulgated thereunder, and the enforcement thereof, as any officer of the peace. [40 G. A., ch. 191, § 6.]

9763. Bond and oath of sealer. The sealer shall furnish bond for the faithful perform-

ance of his duties in such an amount as shall be determined by the secretary of agriculture. Such bonds, and the sureties thereon, shall in every case be subject to the secretary's approval and be deposited with him, and in case it is not a personal bond the premium thereon shall be payable out of any funds in the hands of the board. He shall also qualify by taking an oath similar to that required of public officials. [40 G. A., ch. 191, § 9.]

9764. Duty of sealers. It shall be the duty of the sealer under the direction of the secretary of agriculture:

1. To supervise the storage of grain.

2. To ascertain the amount stored by each owner who shall desire to avail himself of the provisions of this chapter.

3. To determine, so far as possible, the grade and quality thereof.

He shall, before delivering a certificate to the owner, securely seal the granary, crib, bin, or other receptacle in which the grain so certified shall have been stored. [40 G. A., ch. 191, § 8.]

9765. Right to enter premises. The sealer shall have authority at all times to enter upon any premises for the purpose of inspecting grain in storage or the granary, crib, bin, or other receptacle in which it shall have been stored, and the acceptance of a certificate by the owner shall be deemed consent to entry and inspection by the sealer or any person duly authorized thereunto by the secretary of agriculture. [40 G. A., ch. 191, § 8.]

9766. Seals and locks. Seals, locks, or other fastenings employed shall be in accordance with specifications furnished by the secretary of agriculture. [40 G. A., ch. 191, § 8.]

9767. Certificates—form and contents. Certificates shall be upon forms to be prepared by the secretary of agriculture, and every such certificate must embody within its written or printed terms:

1. The name and license number of the board under which such certificate is issued.

2. The consecutive number of the certificate.

3. The date of issue of the certificate.

4. A particular description of the granary, bin, crib, or other receptacle in which the grain is stored, and of the premises upon which it is located.

5. A description of the grain.

6. The name of the owner or owners, whether ownership is sole, joint, or in trust, and the conditions of such ownership, and in the case of tenants the date of termination of the lease.

7. A statement of any loans or other indebtedness made to or owing by the owner which in any manner constitutes a lien, whether statutory or contractual, including both mortgage and landlord's liens, upon the grain, which statement shall be signed by the owner or his agent.

8. A form of waiver of liens which may be signed by the lienholder.

9. A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order, and at what place it will be delivered.

10. A facsimile signature of the secretary of agriculture, and the countersignature of the sealer.

11. If the owner is married, a waiver by the spouse of any claim of exemption and a consent to the instrument.

12. A statement as to whether any other certificate has been issued covering any grain in the same crib, granary, bin, or other receptacle, and the amount of such other certificate. [40 G. A., ch. 191, § 10.]

9768. Prohibited terms in certificate. No term or condition shall be inserted in any certificate, whether negotiable or otherwise, which shall in any manner purport to relieve the owner from exercising that degree of care in the safe-keeping of the grain in storage which a reasonable prudent man would exercise with regard to similar property of his own. [40 G. A., ch. 191, § 11.]

9769. Amount of certificates. The sealer shall issue to the owner one or more certificates as herein provided, but the aggregate amount of the grain represented by such certificate or certificates shall in no event exceed the amount of grain stored and sealed by the sealer. [40 G. A., ch. 191, § 14.]

9770. "Board duplicate" certificates. The sealer shall file with the secretary of the board a duplicate of all certificates delivered by him, and the secretary shall keep an accurate record thereof in a book provided by the secretary of agriculture for the purpose. Such duplicates shall have plainly printed upon the face thereof, "board duplicate, no value". [40 G. A., ch. 191, § 15.]

9771. Suitability of storage receptacle. Before issuing any certificate the sealer shall satisfy himself as to the suitability of the bin, crib, granary, or other receptacle in which the grain is stored and that such receptacle conforms with the regulations applicable thereto promulgated by the secretary of agriculture. [40 G. A., ch. 191, § 14.]

9772. Nonnegotiable certificates. A certificate in which it is stated that the grain stored shall be released or delivered to the owner, or to any other specified person, is a nonnegotiable certificate. [40 G. A., ch. 191, § 12.]

9773. Marking of certificates. A nonnegotiable certificate shall have plainly printed or written upon its face, "nonnegotiable" or "not negotiable". [40 G. A., ch. 191, § 18.]

9774. Negotiable certificates. A certificate in which it is stated that the grain stored will be delivered to the bearer, or to the order of any person named in such certificate, is a negotiable certificate. No provision shall be inserted in a negotiable certificate that is non-

negotiable. Such provisions, if inserted, shall be void. Provided, however, that in case the owner is a tenant, the certificate shall cease to be negotiable from and after the date of the termination of the lease as it appears thereon. [40 G. A., ch. 191, § 13.]

9775. Duplicate certificate—filing with recorder. When a negotiable warehouse certificate is issued, the sealer shall issue and deliver to the owner a duplicate certificate marked "no value". When the owner negotiates the original certificate, he shall at the same time deliver to the assignee the duplicate or the county recorder's receipt for the same. Such assignee may file the duplicate in the office of the county recorder of the county in which the grain is located, which duplicate shall remain in the custody of the recorder, except as hereinafter provided. [40 Ex. G. A., S. F. 75, § 15-a1.]

9776. Indexing by recorder. When a duplicate is filed in the office of the recorder, he shall index the same in the chattel mortgage index or other suitable index book showing date of the certificate, the number thereof, to whom issued, kind, quantity, and location of the grain. He shall collect twenty-five cents for each certificate indexed. [40 Ex. G. A., S. F. 75, § 15-a2.]

9777. Record of assignment. When the owner or holder of a certificate makes written assignment thereof, the recorder shall on request of the assignee enter a copy of such assignment upon the duplicate in his office, and enter upon his index book the date of the assignment, the names of the assignor and the assignee. In case of reassignment of the certificate to the person to whom issued, the recorder shall copy such assignment on the duplicate and deliver the same to the original owner and enter upon the index book "reassigned to the original owner". [40 Ex. G. A., S. F. 75, § 15-a3.]

9778. Constructive notice. The filing and indexing of such certificate shall impart the same notice as the filing and indexing of a chattel mortgage. [40 Ex. G. A., S. F. 75, § 15-a4.]

9779. Insurance. All grain stored and sealed under the provisions of this chapter shall be insured against fire and windstorm in some insurance association or company authorized to do business in this state and approved by the secretary of agriculture. [40 G. A., ch. 191, § 16.]

9780. Deposit of policies—beneficiaries. Such policies of insurance as are issued shall be deposited with the secretary of agriculture and shall inure to the benefit of the holder or holders of the certificate or certificates issued against the said stored grain and of the owner, and any incumbrancers or lienholders thereof and thereon as their interests shall appear. [40 G. A., ch. 191, § 16.]

9781. Local board as trustee. Whenever it shall appear that the interests of holders of certificates and other parties interested may be further conserved thereby, the secretary of agriculture may authorize the board to act as trustee for such certificates as may be assigned to it in that capacity and the board may then exercise all the rights of an owner, subject to the duties and responsibilities imposed and devolving upon trustees under similar conditions. [40 G. A., ch. 191, § 17.]

9782. Trustee certificates. All certificates issued by the board as trustee shall have that fact plainly set forth thereon, any other provision of this chapter to the contrary notwithstanding, but such statement shall in no manner affect the negotiability or nonnegotiability of such certificate. [40 G. A., ch. 191, § 17.]

9783. Duty to deliver. The owner shall, in the absence of some lawful excuse provided by this chapter, deliver the grain stored upon demand made by the holder of a certificate for the grain, or for such part thereof as is represented by the certificate if such demand is accompanied by:

1. A showing that all such liens as may appear upon the certificate and which shall subsist upon the date of the demand have been satisfied.

2. An offer to surrender the certificate if negotiable, with such indorsements as would be necessary for the negotiation of certificate.

3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the owner. [40 G. A., ch. 191, § 19.]

9784. Refusing to deliver—burden of proof. In case the owner refuses or fails to deliver the goods in compliance with a demand by the holder of a certificate so accompanied, the burden shall be upon the owner to establish the existence of a lawful excuse for such refusal. [40 G. A., ch. 191, § 19.]

9785. Pooling. Owners may, for the purpose of pooling their grain and affording a higher degree of security, organize themselves into groups of two or more owners of grain in storage, all of whom shall be jointly and severally liable to holders of certificates in due course to the extent of seventy-five per cent of the market price of the grain represented by certificates issued against it, and at the time of their sale, pledge, assignment, or other lawful disposition, and all the grain in storage and belonging to said pool shall be liable for the payment of moneys advanced against or paid for such certificates. [40 G. A., ch. 191, § 20.]

9786. Group certificates. Certificates issued by or on behalf of the members of such groups shall have printed thereon the words "group certificates". They shall embody the same terms as are required in the case of other certificates issued under the provisions of this

chapter in so far as they are applicable, and in addition thereto shall have stated thereon the total amount of grain belonging to the pool and the names of the members constituting the group. [40 G. A., ch. 191, § 21.]

9787. Negotiability of group certificates. All group certificates shall be negotiable, and any provision thereon contrary thereto or inconsistent therewith or in any manner purporting to relieve the members of the group of their liability or any part thereof, as provided in section 9785, shall be void. [40 G. A., ch. 191, § 21.]

9788. Application for pool—authorization. When any owners desire to organize themselves into a group for the purposes described in section 9785, they shall notify the secretary of the board upon forms provided for that purpose. The secretary shall transmit a duplicate of such application to the secretary of agriculture. Unless, for good cause shown, the secretary of agriculture shall expressly disapprove of the organization of such group or groups and the functioning thereof, the said group or groups shall be permitted to issue group certificates as provided herein. [40 G. A., ch. 191, § 22.]

9789. Statutes governing pools. All provisions of this chapter with respect to sealing and supervision of grain in storage shall apply to the members of groups and the certificates issued by them. [40 G. A., ch. 191, § 23.]

9790. Duties of secretary of agriculture. The secretary of agriculture shall have general supervision of the administration of the provisions of this chapter. He shall:

1. Make and promulgate such rules and regulations, not inconsistent herewith, as shall be necessary or desirable effectually to carry out the purposes hereof.

2. Make such reasonable regulations with respect to the construction and maintenance of granaries, cribs, bins, or other receptacles as may be necessary to protect the grain to be stored therein under the provisions of this chapter.

3. Prepare and have printed under the same conditions as other state printing the necessary blanks, forms, and other printed matter and shall make such charges to persons desiring such printed matter as shall meet the cost of production thereof. [40 G. A., ch. 191, § 24.]

9791. Right of appeal. Any owner aggrieved by any ruling or decision of the board may appeal to the secretary of agriculture whose decision shall be final. [40 G. A., ch. 191, § 7.]

9792. Procedure. If any person shall feel aggrieved by any action of the board or of the sealer or any other official, he may submit his complaint in writing to the secretary of agriculture and the secretary of agriculture shall, as soon thereafter as possible, set the matter down for hearing before himself or one of his

deputies, at such place as shall be desirable and proper, having regard to the character of the controversy and the locality of the grain and residence of the parties involved. Likewise, the board may present to the secretary of agriculture any proper complaint against any owner and the procedure shall be as nearly as practicable the same as that in the case of charges filed by owners. [40 G. A., ch. 191, § 25.]

9793. Orders—correction of abuses. The secretary of agriculture shall, upon final hearing, make and enter such orders as he shall deem proper for the correction of improper practices, and may suspend the license of the board offending until such orders are obeyed. But such suspension shall in no manner relieve the board or the owners of any liability previously incurred under the provisions of this chapter. [40 G. A., ch. 191, § 26.]

9794. Costs. The costs and expenses of such hearings shall be defrayed by the parties thereto, and shall be apportioned by the secretary of agriculture in such manner as he shall deem just and equitable. [40 G. A., ch. 191, § 26.]

9795. Supervision fund—disbursement. For the purposes of defraying the expenses of supervision, the owner shall pay to the board at the time of sealing, an amount which shall not exceed one cent per bushel of grain inspected and sealed by the sealer. Out of the fund thus created the compensation of the sealer, as fixed by the board, subject to the approval of the secretary of agriculture, and all other expenses, shall be paid. [40 G. A., ch. 191, § 27.]

9796. Compensation of board members. No compensation shall be paid to members of the board except by the express authorization and approval of the secretary of agriculture, and then only in case such payments may be made without overdrawing upon or unduly depleting the funds in the hands of the board. [40 G. A., ch. 191, § 27.]

9797. Fees of sealer. In the exercise of his powers and functions as an officer of the peace in connection with the provisions of this chapter, the sealer shall be entitled to the same fees as are provided by law for the performance of similar duties. [40 G. A., ch. 191, § 27.]

9798. Fees of secretary of agriculture. The secretary of agriculture shall receive the following fees for services rendered under the provisions of this chapter:

1. For issuing licenses in each case, three dollars.
2. For approving applications for group organizations, one dollar. [40 G. A., ch. 191, § 28.]

9799. Disposition of fees. All moneys received by the secretary of agriculture from fees and other sources in connection with the administration of the provisions of this chap-

ter shall be paid into the state treasury and may be drawn upon by him for the purposes thereof, subject to the provisions of the law applicable to disbursements by the secretary of agriculture. [40 G. A., ch. 191, § 28.]

9800. Unlawful breaking of seals. Any person unlawfully removing, breaking, or in any manner interfering or tampering with any seal, lock, or other fastening placed upon any granary, crib, bin, or other receptacle for grain under the provisions of this chapter, except when such removal shall be rendered imperative to prevent the damage, loss, or destruction of grain stored therein, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. [40 G. A., ch. 191, § 29.]

9801. Fraudulent issuance of certificates. An owner, the agent, or servant of an owner, or any member of any board, or any sealer, who fraudulently issues or aids in fraudulently issuing a certificate for grain, knowing that it contains any false statement, shall be guilty of a misdemeanor, and upon conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [40 G. A., ch. 191, § 30.]

9802. Issuance of duplicate certificates. An owner, or any officer, agent, or servant of any owner, who issues or aids in issuing a duplicate or additional negotiable certificate for grain, knowing that a former negotiable certificate for the same grain, or any part of it, is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate", except in the case of a lost or destroyed certificate after proceedings as provided for in section 9792, shall be guilty of a felony, and upon conviction shall be punished for each offense by imprisonment in the penitentiary not exceeding two years, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. [40 G. A., ch. 191, § 31.]

9803. Delivery without obtaining certificates. An owner, or any officer, agent, or servant of an owner, who delivers grain out of the possession of such owner, knowing that a negotiable certificate, the negotiating of which would transfer the right to the possession of such grain, is outstanding and uncanceled, without obtaining the possession of such certificate at or before the time of such delivery, shall, except when ordered by the court, as hereinbefore provided, be found guilty of a misdemeanor, and on conviction shall be punished for each offense by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. [40 G. A., ch. 191, § 32.]

9804. Unlawful sale, mortgage, or incumbrance. Any owner who shall, after the issu-

ance of a certificate for grain in storage, take, sell, mortgage, pledge, hypothecate, or otherwise incumber, or attempt to take, sell, mortgage, pledge, or otherwise incumber the said grain, or who shall take or remove it from the receptacle where standing, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail for not more than one year, or be punished by both

such fine and imprisonment. [40 G. A., ch. 191, § 33.]

9805. Uniform warehouse receipts law. All the provisions in the uniform warehouse receipts law as found in chapter 425, and as set forth in sections 9669 to 9708, inclusive, relative to the negotiation, transfer, sale, or indorsement of warehouse receipts shall, so far as possible, apply to the negotiation, transfer, sale, or indorsement of the certificates provided for herein. [40 G. A., ch. 191, § 34.]

CHAPTER 428

LIMITED PARTNERSHIP LAW

NOTE: The number in brackets following each section number in this chapter indicates the number of the corresponding section of the uniform limited partnership act.

- 9806.[§ 1.] Limited partnership defined.
- 9807.[§ 2.] Formation.
- 9808.[§ 2.] Sufficiency of certificate.
- 9809.[§ 3.] Business which may be carried on.
- 9810.[§ 4.] Nature of contribution.
- 9811.[§ 5.] Partnership name.
- 9812.[§ 5.] Violation—effect.
- 9813.[§ 6.] Liability for false statements.
- 9814.[§ 7.] Limited partner not liable to creditors.
- 9815.[§ 8.] Additional limited partners.
- 9816.[§ 9.] Rights, powers, and liabilities of general partners.
- 9817.[§10.] Rights of limited partners.
- 9818.[§10.] Right to receive profits and income.
- 9819.[§11.] Mistake—effect.
- 9820.[§12.] One person both general and limited partner.
- 9821.[§12.] Partner holding dual relation.
- 9822.[§13.] Transactions with limited partner.
- 9823.[§13.] Violation—effect.
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- 9856.[§25.] Amended certificate.
- 9857.[§26.] Parties to actions.
- 9858.[§27.] Name of law.
- 9859.[§28.] Rules of construction.
- 9860.[§28.] Impairment of contracts.
- 9861.[§29.] Rules for cases not provided for.
- 9862.[§30.] Provisions for existing limited partnerships.
- 9863.[§30.] Existing limited partnership.

9806.[§ 1.] Limited partnership defined. A limited partnership is a partnership formed by two or more persons under the provisions of this chapter, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership. [40 Ex. G. A., H. F. 74, § 1.]

9807.[§ 2 (1), (a) I to XIV, inc., & (b).] Formation. Two or more persons desiring to form a limited partnership shall sign and acknowledge a certificate and file the same for record

in the office of the county recorder of the county in which the principal place of business is located. The same shall be recorded in the miscellaneous records and indexed in the names of all the signers, both as grantors and grantees. Said certificate shall state:

1. The name of the partnership.
2. The character of the business.
3. The location of the principal place of business.
4. The name and place of residence of each member; general and limited partners being respectively designated.

5. The term for which the partnership is to exist.

6. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner.

7. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made.

8. The time, if agreed upon, when the contribution of each limited partner is to be returned.

9. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution.

10. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.

11. The right, if given, of the partners to admit additional limited partners.

12. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority.

13. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner.

14. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution. [40 Ex. G. A., H. F. 74, § 2.]

9808.[§ 2 (2).] Sufficiency of certificate. A limited partnership is formed if there has been substantial compliance in good faith with the requirements of the preceding section. [40 Ex. G. A., H. F. 74, § 3.]

9809.[§ 3.] Business which may be carried on. A limited partnership may carry on any business which a partnership without limited partners may carry on, except banking. [40 Ex. G. A., H. F. 74, § 4.]

9810.[§ 4.] Nature of contribution. The contributions of a limited partner may be cash or other property, but not services. [40 Ex. G. A., H. F. 74, § 5.]

9811.[§ 5 (1), (a) & (b).] Partnership name. The surname of a limited partner shall not appear in the partnership name:

1. Unless it is also the surname of a general partner, or

2. Unless, prior to the time when the limited partner became such, the business had been carried on under a name in which his surname appeared. [40 Ex. G. A., H. F. 74, § 6.]

9812.[§ 5 (2).] Violation—effect. A limited partner whose name appears in a partnership name contrary to the provisions of the preceding section is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner. [40 Ex. G. A., H. F. 74, § 7.]

9813.[§ 6 (a) & (b).] Liability for false statements. If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false:

1. At the time he signed the certificate, or

2. Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as hereinafter provided. [40 Ex. G. A., H. F. 74, § 8.]

9814.[§ 7.] Limited partner not liable to creditors. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. [40 Ex. G. A., H. F. 74, § 9.]

9815.[§ 8.] Additional limited partners. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of sections 9851 to 9856, inclusive. [40 Ex. G. A., H. F. 74, § 10.]

9816.[§ 9 (1), (a) to (g), inc.] Rights, powers, and liabilities of general partners. A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority:

1. To do any act in contravention of the certificate.

2. To do any act which would make it impossible to carry on the ordinary business of the partnership.

3. To confess a judgment against the partnership.

4. To possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose.

5. To admit a person as a general partner.

6. To admit a person as a limited partner, unless the right so to do is given in the certificate.

7. To continue the business with partnership property on the death, retirement, or insanity of a general partner, unless the right so to do is given in the certificate. [40 Ex. G. A., H. F. 74, § 11.]

9817.[§ 10 (1), (a) to (c), inc.] Rights of limited partners. A limited partner shall have the same rights as a general partner:

1. To have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them.

2. To have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable.

3. To have dissolution and winding up by decree of court. [40 Ex. G. A., H. F. 74, § 12.]

9818.[§ 10 (2).] Right to receive profits and income. A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as hereinafter provided. [40 Ex. G. A., H. F. 74, § 13.]

9819.[§ 11.] Mistake—effect. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income. [40 Ex. G. A., H. F. 74, § 14.]

9820.[§ 12 (1).] One person both general and limited partner. A person may be a general partner and a limited partner in the same partnership at the same time. [40 Ex. G. A., H. F. 74, § 15.]

9821.[§ 12 (2).] Partner holding dual relation. A person who is a general, and also at the same time a limited partner, shall have all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contributions, he shall have the rights against the other members which he would have had if he were not also a general partner. [40 Ex. G. A., H. F. 74, § 16.]

9822.[§ 13 (1), (a) & (b).] Transactions with limited partner. A limited partner may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner, in respect to any such claim, shall:

1. Receive or hold as collateral security any partnership property.

2. Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners. [40 Ex. G. A., H. F. 74, § 17.]

9823.[§ 13 (2).] Violation—effect. The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of the preceding section is a fraud on the creditors of the partnership. [40 Ex. G. A., H. F. 74, § 18.]

9824.[§ 14.] Relation of limited partners inter se. Where there are several limited part-

ners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing. [40 Ex. G. A., H. F. 74, § 19.]

9825.[§ 15.] Compensation of limited partner. A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners. [40 Ex. G. A., H. F. 74, § 20.]

9826.[§ 16 (1), (a) to (c), inc.] Withdrawal or reduction of limited partner's contribution. A limited partner shall not receive from a general partner or out of partnership property any part of his contribution:

1. Until all liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them.

2. Until the consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of the next section.

3. Until the certificate is canceled or so amended as to set forth the withdrawal or reduction. [40 Ex. G. A., H. F. 74, § 21.]

9827.[§ 16 (2), (a) to (c), inc.] Return of contribution. Subject to the provisions of the preceding section, a limited partner may rightfully demand the return of his contribution:

1. On the dissolution of a partnership.

2. When the date specified in the certificate for its return has arrived.

3. After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership. [40 Ex. G. A., H. F. 74, § 22.]

9828.[§ 16 (3).] Contribution payable in cash. In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution. [40 Ex. G. A., H. F. 74, § 23.]

9829.[§ 16 (4), (a) & (b).] Dissolution. A limited partner may have the partnership dissolved and its affairs wound up:

1. When he rightfully but unsuccessfully demands the return of his contribution, or

2. When the other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as

required by subsection 1 of section 9826 and the limited partner would otherwise be entitled to the return of his contribution. [40 Ex. G. A., H. F. 74, § 24.]

9830.[§ 17 (1), (a) & (b).] Liability of limited partner to partnership. A limited partner is liable to the partnership:

1. For the difference between his contribution as actually made and that stated in the certificate as having been made.

2. For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate. [40 Ex. G. A., H. F. 74, § 25.]

9831.[§ 17 (2), (a) & (b).] Limited partner held as trustee. A limited partner holds as trustee for the partnership:

1. Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned.

2. Money or other property wrongfully paid or conveyed to him on account of his contribution. [40 Ex. G. A., H. F. 74, § 26.]

9832.[§ 17 (4).] Continuing liability of limited partner. When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return. [40 Ex. G. A., H. F. 74, § 27.]

9833.[§ 17 (3).] Liability of limited partner—waiver. The liabilities of a limited partner as set forth in the three preceding sections can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities. [40 Ex. G. A., H. F. 74, § 28.]

9834.[§§ 18, 19 (1).] Limited partner's interest in partnership. A limited partner's interest in the partnership is personal property, and is assignable. [40 Ex. G. A., H. F. 74, § 29.]

9835.[§ 19 (2).] Substituted limited partner. A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership. [40 Ex. G. A., H. F. 74, § 30.]

9836.[§ 19 (3).] Rights of assignee. An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled. [40 Ex. G. A., H. F. 74, § 31.]

9837.[§ 19 (4).] Assignee's right to become substituted limited partner. An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto, or if the assignor, being thereunto empowered by the certificate, gives the assignee that right. [40 Ex. G. A., H. F. 74, § 32.]

9838.[§ 19 (5).] When assignee becomes substituted limited partner. An assignee becomes a substituted limited partner when the certificate is appropriately amended as hereinafter provided. [40 Ex. G. A., H. F. 74, § 33.]

9839.[§ 19 (6).] Right of substituted limited partner. The substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate. [40 Ex. G. A., H. F. 74, § 34.]

9840.[§ 19 (7).] Liability of assignor. The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 9813 and 9830 to 9833, inclusive. [40 Ex. G. A., H. F. 74, § 35.]

9841.[§ 20 (a) & (b).] Effect of retirement, death, or insanity of a general partner. The retirement, death, or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

1. Under a right so to do stated in the certificate, or

2. With the consent of all members. [40 Ex. G. A., H. F. 74, § 36.]

9842.[§ 21 (1).] Death of limited partner. On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner. [40 Ex. G. A., H. F. 74, § 37.]

9843.[§ 21 (2).] Liability of estate of limited partner. The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner. [40 Ex. G. A., H. F. 74, § 38.]

9844.[§ 22 (1) & (3).] Rights of creditors of limited partner. On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require. The remedies conferred by this section shall not be deemed exclusive of others which may exist. [40 Ex. G. A., H. F. 74, § 39.]

9845.[§ 22 (2).] Redemption. The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property. [40 Ex. G. A., H. F. 74, § 40.]

9846.[§ 22 (4).] Exemptions. Nothing in this chapter shall be held to deprive a limited partner of his statutory exemption. [40 Ex. G. A., H. F. 74, § 41.]

9847.[§ 23 (1), (a) to (f), inc.] Distribution of assets. In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

1. Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

2. Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.

3. Those to limited partners in respect to the capital of their contributions.

4. Those to general partners other than for capital and profits.

5. Those to general partners in respect to profits.

6. Those to general partners in respect to capital. [40 Ex. G. A., H. F. 74, § 42.]

9848.[§ 23 (2).] Share in partnership assets. Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of such claims. [40 Ex. G. A., H. F. 74, § 43.]

9849.[§ 24 (1).] Cancellation of certificate. The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such. [40 Ex. G. A., H. F. 74, § 44.]

9850.[§ 24 (2), (a) to (j), inc.] Amendment of certificate. A certificate shall be amended:

1. When there is a change in the name of the partnership or in the amount or character of the contribution of any limited partner.

2. When a person is substituted as a limited partner.

3. When an additional limited partner is admitted.

4. When a person is admitted as a general partner.

5. When a general partner retires, dies, or becomes insane, and the business is continued under section 9841.

6. When there is a change in the character of the business of the partnership.

7. When there is a false or erroneous statement in the certificate.

8. When there is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution.

9. When a time is fixed for the dissolution of the partnership, or the return of a con-

tribution, no time having been specified in the certificate.

10. When the members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them. [40 Ex. G. A., H. F. 74, § 45.]

9851.[§ 25 (1), (a) & (b).] Requirements for amendment of certificate. The writing to amend a certificate shall:

1. Conform to the requirements of section 9807 as far as necessary to set forth clearly the change in the certificate which it is desired to make.

2. Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner. [40 Ex. G. A., H. F. 74, § 46.]

9852.[§ 25 (2).] Requirement for cancellation of certificate. The writing to cancel a certificate shall be signed by all members. [40 Ex. G. A., H. F. 74, § 47.]

9853.[§ 25 (3).] Petition for cancellation or amendment. A person desiring the cancellation or amendment of a certificate may petition the district court to direct a cancellation or amendment in those cases where any person designated in the two preceding sections as a person who must execute the writing, refuses to do so. [40 Ex. G. A., H. F. 74, § 48.]

9854.[§ 25 (4).] Order of court. If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the county recorder in the office where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment. [40 Ex. G. A., H. F. 74, § 49.]

9855.[§ 25 (5), (a) & (b).] Consummation of cancellation or amendment. A certificate is amended or canceled when there is filed for record in the office of the county recorder:

1. A writing in accordance with the provisions of sections 9851 or 9852, or

2. A certified copy of the order of court in accordance with the provisions of section 9854. [40 Ex. G. A., H. F. 74, § 50.]

9856.[§ 25 (6).] Amended certificate. After the certificate is duly amended in accordance with sections 9851 to 9855, inclusive, the amended certificate shall thereafter be for all purposes the certificate provided for by this statute. [40 Ex. G. A., H. F. 74, § 51.]

9857.[§ 26.] Parties to actions. A contributor, unless he is a general partner, is not a proper party to proceedings by or against a

partnership, except where the object is to enforce a limited partner's right against or liability to the partnership. [40 Ex. G. A., H. F. 74, § 52.]

9858.[§ 27.] Name of law. This law may be cited as the uniform limited partnership act. [40 Ex. G. A., H. F. 74, § 53.]

9859.[§ 28 (2).] Rules of construction. This law shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it. [40 Ex. G. A., H. F. 74, § 54.]

9860.[§ 28 (3).] Impairment of contracts. This law shall not be so construed as to impair the obligations of any contract existing when said law goes into effect, nor to affect any action or proceedings begun or right accrued before it takes effect. [40 Ex. G. A., H. F. 74, § 55.]

9861.[§ 29.] Rules for cases not provided for. In any case not provided for in this statute the rules of law and equity shall govern. [40 Ex. G. A., H. F. 74, § 56.]

9862.[§ 30 (1), (a) & (b).] Provisions for existing limited partnerships. A limited partnership formed under any statute of this state prior to the adoption of this chapter, may become a limited partnership hereunder by complying with the provisions of sections 9807 and 9808; provided the certificate sets forth:

1. The amount of the original contribution of each limited partner, and the time when the contribution was made.

2. That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners. [40 Ex. G. A., H. F. 74, § 57.]

9863.[§ 30 (2).] Existing limited partnership. A limited partnership formed under any statute of this state prior to the adoption of this chapter, until or unless it becomes a limited partnership hereunder, shall continue to be governed by the provisions of such statute except that such partnership shall not be renewed unless so provided in the original agreement. [40 Ex. G. A., H. F. 74, § 58.]

CHAPTER 429

AUCTIONEERS

9864. Nonresident auctioneers—crying sales.

9865. Penalty.

9864. Nonresident auctioneers—crying sales. It shall be unlawful for any nonresident of the state to cry any sale of property as an auctioneer within the state, unless by the law of the state of which such person is a resident, a resident of this state would be permitted to cry any and all sales of property within such state as an auctioneer without a license. [38 G. A., ch. 47, § 1.]

9865. Penalty. If any person shall sell or attempt to sell any property as an auctioneer

9866. Exceptions.

in violation of the provisions of the preceding section, he shall be guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days. [38 G. A., ch. 47, § 3.]

9866. Exceptions. The provisions of the two preceding sections shall not be applicable to sales of property under direction or authority of any chattel mortgage, court, or process thereof. [38 G. A., ch. 47, § 2.]

CHAPTER 430

REGISTRATION OF TRADEMARKS, LABELS, AND ADVERTISEMENTS

9867. Registration.

9868. Certification of registration—fees.

9869. Prima facie proof of right to use.

9870. Alterations—registration.

9871. Injunction.

9872. Damages and general relief.

9873. Persons entitled to sue.

9874. Unlawful use.

9875. Penalty.

9867. Registration. Every person, firm, association, or corporation that has heretofore adopted or shall hereafter adopt for their protection any label, trademark, or form of advertisement, may file the same for record in the office of the secretary of state by leaving two copies, counterparts, or facsimiles thereof with

the secretary of state. Said label, trademark, or form of advertisement shall be of a distinctive character and not of the identical form or in any near resemblance to any label, trademark, or form of advertisement previously filed for record in the office of the secretary of state. [C., '97, § 5049; 39 G. A., ch. 29.]

9868. Certification of registration—fees. When the said secretary of state is satisfied that the facsimile copies or counterparts filed are true and correct, and that they are not in any manner an infringement or are calculated to deceive, he shall deliver to such person, firm, association, or corporation so filing the same, a duly attested certificate of registration of the same for which he shall receive a fee of one dollar for filing and an additional fee of one dollar for a certificate of registration. [C., '97, § 5049; 39 G. A., ch. 29.]

9869. Prima facie proof of right to use. Such certificate of registration shall in all actions and prosecutions be sufficient proof of the adoption of such label, trademark, or form of advertisement, and of the right of such person, firm, association, or corporation to adopt and use the same. [C., '97, § 5049; 39 G. A., ch. 29.]

9870. Alterations—registration. Should there be at any time any change, alteration, or modification in such label, trademark, or form of advertisement so registered, the same shall be registered in the office of the secretary of state in the same manner and upon the payment in amount of the same fees as in the case of the original registration. [39 G. A., ch. 29.]

9871. Injunction. Every person, firm, association, or corporation adopting a label, trademark, or form of advertisement as specified in this chapter, may proceed by action to enjoin the manufacture, use, display, or sale of any counterfeits or imitations thereof. [C., '97, § 5050; 39 G. A., ch. 29.]

9872. Damages and general relief. All courts having jurisdiction of such actions shall grant injunctions to restrain such manufacture, use, display, or sale, and shall award the complainant therein such damages resulting from such wrongful manufacture, use, display, or sale, and a reasonable attorney's fee to be fixed by the court, and said court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court to be destroyed. [C., '97, § 5050; 39 G. A., ch. 29.]

9873. Persons entitled to sue. Such actions may be prosecuted for the benefit of any firm, association, or corporation by any officer or member thereof. [C., '97, § 5050; 39 G. A., ch. 29.]

9874. Unlawful use. It shall be unlawful for any person, firm, association, or corporation to imitate any label, trademark, or form of advertisement adopted as provided in this chapter, or to knowingly use any counterfeit or imitation thereof, or to use or display such genuine label, trademark, or form of advertisement of such persons, firm, association, or corporation unless authorized by him or it. [C., '97, § 5051; 39 G. A., ch. 29.]

9875. Penalty. Any person violating any provision of the preceding section shall be imprisoned in the county jail not more than thirty days, or be fined not less than twenty-five nor more than one hundred dollars. [C., '97, § 5051; 39 G. A., ch. 29.]

CHAPTER 431

TRADEMARKS FOR ARTICLES MANUFACTURED IN IOWA

- 9876. "Manufacturer" defined.
- 9877. Iowa state manufacturers' association.
- 9878. Trademark "Made in Iowa"—state registration.
- 9879. Federal or foreign registration.
- 9880. Board of awards.

9876. "Manufacturer" defined. Where the word "manufacturer" is used in this chapter it shall be construed to mean any person, firm, or corporation engaged in manufacturing in the state. [S., '13, § 3138-c5.]

9877. Iowa state manufacturers' association. When the organization now existing in the state and known as the Iowa state manufacturers' association shall have filed with the secretary of state verified proofs of its organization and the name of its president, vice president, secretary, and treasurer, and that it has one hundred bona fide members, such association shall be recognized as the Iowa state manufacturers' association, and be entitled to the benefits of this chapter. [S., '13, § 3138-c.]

- 9881. Uniform regulations.
- 9882. Revocation of right.
- 9883. Use of trademark without permission—penalty.
- 9884. Moneys collected—how expended.

9878. Trademark "Made in Iowa"—state registration. For the purpose of aiding in the promotion and development of manufacturing in Iowa, such association may adopt a label or trademark bearing the words "Made in Iowa", together with any other appropriate design or inscription, and this label or trademark shall be registered in the office of the secretary of state. [S., '13, § 3138-cl.]

9879. Federal or foreign registration. Said association shall have the right to register or file such label or trademark under the laws of the United States or any foreign country which permits such registration, making such registration as an association or through an individual for the use and benefit of the association. [S., '13, § 3138-cl.]

9880. Board of awards. The said association shall by its articles of association provide for the election or appointment of a board of not less than fifteen manufacturers, who are residents of Iowa, which board shall be known as a board of awards. [S., '13, § 3138-c2.]

9881. Uniform regulations. The said board of awards shall then establish uniform regulations and shall then grant to any manufacturer in the state, who conforms to such regulations, the right to use said label or trademark. In making such regulations the said board of awards may make requirements as to good quality of such products, both as to materials and workmanship, and it may also fix a charge to be paid by such manufacturer for the use of such label. [S., '13, § 3138-c2.]

9882. Revocation of right. Upon failure to comply with any requirements established by the board of awards such privilege may be

by them revoked, it being the purpose of this chapter to make the said label or trademark stand for Iowa-made goods, and also for goods of quality and merit. [S., '13, § 3138-c2.]

9883. Use of trademark without permission—penalty. No person, firm, or corporation shall use the said label or trademark or advertise the same, or attach or stamp the same upon any article or product except under permission obtained in accordance with the provisions of this chapter. Any person or persons who shall use the said label or trademark except as herein authorized shall be guilty of a misdemeanor. [S., '13, § 3138-c3.]

9884. Moneys collected—how expended. All moneys collected by the said association under the provisions of this chapter shall be expended by the said association in advertising and promoting the sale of Iowa-made goods bearing the said label or trademark in the state of Iowa. [S., '13, § 3138-c4.]

CHAPTER 432

UNFAIR DISCRIMINATION

- 9885. Unfair discrimination in sales.
- 9886. Unfair discrimination in purchases.
- 9887. Violation.
- 9888. Penalty.
- 9889. Contracts or agreements.

9885. Unfair discrimination in sales. Any person, firm, company, association, or corporation, foreign or domestic, doing business in the state, and engaged in the production, manufacture, sale, or distribution of any commodity of commerce, that shall, for the purpose of destroying the business of a competitor in any locality or creating a monopoly, discriminate between different sections, localities, communities, cities, or towns of this state, by selling such commodity at a lower price or rate in one section, locality, community, city, or town than such commodity is sold for by said person, firm, association, company, or corporation, in another section, locality, community, city, or town, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of production or purchase, if a raw product, or from the point of manufacture, if a manufactured product, to a place of sale, storage, or distribution shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community, city, or town shall not be in violation of this section. [S., '13, § 5028-b.]

9886. Unfair discrimination in purchases. Any person, firm, association, company, or corporation, foreign or domestic, doing business in the state, and engaged in the business of purchasing for manufacture, storage, sale,

- 9890. Enforcement.
- 9891. Complaint—to whom made.
- 9892. Revocation of permit.
- 9893. Corporation to be enjoined.
- 9894. Cumulative remedies.

or distribution, any commodity of commerce that shall, for the purpose of destroying the business of a competitor or creating a monopoly, discriminate between different sections, localities, communities, cities, or towns, in this state, by purchasing such commodity at a higher rate or price in one section, locality, community, city, or town, than is paid for such commodity by such party in another section, locality, community, city, or town, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, sale, distribution, or storage, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; provided, however, that prices made to meet competition in such section, locality, community, city, or town shall not be in violation of this section. [S., '13, § 5028-b.]

9887. Violation. Any person, firm, association, company, or corporation, or any officer, agent, or member of any such firm, company, association, or corporation, found guilty of unfair discrimination as defined in the two preceding sections, shall be punished as provided in the following section. [S., '13, § 5028-b.]

9888. Penalty. Any person, firm, company, association, or corporation violating any of the provisions of sections 9885 and 9886, and

any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same, or any individual, found guilty of a violation thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or suffer both penalties. [S., '13, § 5028-c.]

9889. Contracts or agreements. All contracts or agreements made in violation of any of the provisions of sections 9885 and 9886 shall be void. [S., '13, § 5028-d.]

9890. Enforcement. It shall be the duty of the county attorneys, in their counties, and the attorney general, to enforce the provisions of the five preceding sections by appropriate actions in courts of competent jurisdiction, [S., '13, § 5028-e.]

9891. Complaint—to whom made. If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination, within the terms of sections 9885 and 9886, it shall be the duty of the secretary of state to refer the matter to the attorney general who may, if the facts justify it in his

judgment, institute proceedings in the courts against such corporation. [S., '13, § 5028-f.]

9892. Revocation of permit. If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, within the terms of sections 9885 and 9886, it shall be the duty of the secretary of state to immediately revoke the permit of such corporation to do business in this state. [S., '13, § 5028-g.]

9893. Corporation to be enjoined. If after revocation of its permit such corporation, or any other corporation not having a permit and found guilty of having violated any of the provisions of sections 9885 and 9886, shall continue or attempt to do business in this state, it shall be the duty of the attorney general, by a proper suit in the name of the state of Iowa, to enjoin such corporation from transacting all business of every kind and character in said state. [S., '13, § 5028-h.]

9894. Cumulative remedies. Nothing in this chapter shall be construed as repealing any other act, or part of act, but the remedies herein provided shall be cumulative to all other remedies provided by law. [S., '13, § 5028-i.]

CHAPTER 433

OPTIONS AND BUCKET SHOPS

- 9895. Dealing in options—bucket shops.
- 9896. Certain contracts exempted.
- 9897. Penalty.
- 9898. Bucket shops and bucket shopping.
- 9899. Definitions.
- 9900. Completion of offense.

9895. Dealing in options—bucket shops. It shall be unlawful for any person, corporation, association, or society to keep within the state any store, office, or other place for the pretended buying or selling of grain, pork, lard, or any mercantile, mining, or agricultural products or corporation stocks, on margins, without any intention of future delivery, whether such pretended contracts are to be performed within or without the state; and no person, corporation, association, or society within the state shall make or enter into any contract or pretended contract, such as is above stated and referred to; the intention of this section being to prevent and prohibit within the state the business now engaged in and conducted in places commonly known and designated as bucket shops. [C., '97, § 4967.]

9896. Certain contracts exempted. The preceding section shall not apply or in any way affect any contract for the actual buying or selling of any commodity whatever for present or future delivery, where the actual delivery or receipt of the thing sold is contemplated and in good faith intended by either of the parties to the contract. [C., '97, § 4967.]

- 9901. Keeping or maintaining.
- 9902. Second offense.
- 9903. Accessory defined.
- 9904. Statement of purchases or sales furnished on demand.
- 9905. Prima facie evidence.

9897. Penalty. Any person, whether acting individually or as a member of any copartnership, corporation, association, or society, guilty of violating any of the provisions of the second preceding section, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than one year, or both. [C., '97, § 4968.]

9898. Bucket shops and bucket shopping. It is the intention of this and the seven following sections to prevent, punish, and prohibit, within this state, the business now engaged in and conducted in places commonly known and designated as "bucket shops", and also to include the practice now commonly known as "bucket shopping" by any person or persons, agent, corporations, associations, or copartnerships, who or which ostensibly carry on the business or occupation of commission merchants or brokers in grain, provisions, cotton, coffee, petroleum, stocks, bonds, or other commodities whatsoever. [S., '13, § 4975-d.]

9899. Definitions. A bucket shop, within the meaning of this and the three following sections, is defined to be:

1. An office, store, or other place wherein the proprietor or keeper thereof, or other person or agent, either in his or its own behalf, or as the agent or correspondent of any other person, corporation, association, or copartnership within or without the state, conducts the business of making, or offering to make, contracts, agreements, trades, or transactions respecting the purchase or sale, or purchase and sale, of any stocks, grain, provisions, cotton, or other commodity, or personal property—

a. Wherein both parties thereto, or said proprietor or keeper, contemplate or intend that such contracts, agreements, trades, or transactions shall be, or may be closed, adjusted, or settled according to, or upon the basis of, the public market quotations of prices made on any board of trade or exchange, upon which the commodities or securities referred to in such contracts, agreements, trades, or transactions are dealt in by competitive buying and selling, and without a bona fide transaction on such board of trade or exchange; or

b. Wherein both parties, or such keeper or proprietor, shall contemplate or intend that such contracts, agreements, trades, or transactions shall be, or may be, deemed closed or terminated when the public market quotations of prices made on such board of trade, or exchange, for the articles or securities named in such contracts, agreements, trades, or transactions, shall reach a certain figure.

2. Any office, store or other place where the keeper, person, or agent, or proprietor thereof, either in his or its own behalf, or as an agent, as aforesaid, therein makes, or offers to make, with others, contracts, trades, or transactions for the purchase or sale of any such commodity, wherein the parties thereto do not contemplate or intend the actual or bona fide receipt or delivery of such property, but do contemplate or intend a settlement therefor based upon differences in the price at which said property is, or is claimed to be, bought and sold. [S., '13, § 4975-d.]

9900. Completion of offense. The said crime shall be complete against any proprietor, person, agent, or keeper thus offering to make any such contracts, trades, or transactions, whether such offer is accepted or not. [S., '13, § 4975-d.]

9901. Keeping or maintaining. It shall be unlawful, and the same is hereby made a felony, for any corporation, association, copartnership, person or persons, or agent to keep or cause to be kept, within this state, any such bucket shop; and any corporation, person or persons, or agent whether acting individually or as a member, or as an officer, agent, or employee of any corporation, association, or copartnership, who shall keep, maintain, or assist

in the keeping and maintaining of any such bucket shop within this state, shall, upon conviction thereof, be fined in a sum not to exceed one thousand dollars or be imprisoned in the penitentiary not exceeding two years. [S., '13, § 4975-e.]

9902. Second offense. Any person or persons who shall be guilty of a second offense under the preceding section, in addition to the penalty above prescribed, may, upon conviction, be both fined and imprisoned in the discretion of the court, and, if a corporation, it shall be liable to forfeiture of all its rights and privileges as such; and the continuance of such establishment after the first conviction shall be deemed a second offense. [S., '13, § 4975-e.]

9903. Accessory defined. Any corporation, association, copartnership, person or persons, or agents who shall communicate, receive, exhibit, or display in any manner any statements of quotations of the prices of any property mentioned in sections 9898 and 9899, with a view to any transactions prohibited in sections 9899 to 9901, inclusive, and section 9904, shall be deemed an accessory, and upon conviction thereof shall be fined and punished the same as the principal, and as provided in the two preceding sections. [S., '13, § 4975-f.]

9904. Statement of purchases or sales furnished on demand. It shall be the duty of every commission merchant, copartnership, association, corporation, person or persons, or agent or broker in this state engaged in the business of buying or selling, or of buying and selling, stocks, bonds, grain, provisions, cotton, or other commodities or personal property for any person, principal, customer, or purchaser, to furnish to any customer or principal for whom such commission merchant, broker, copartnership, corporation, association, person or persons, or agent, has executed any order for the actual purchase or sale of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom such property was bought, or to whom it shall have been sold, as the case may be, the time when, the place where, and the price at which, the same was either bought or sold. [S., '13, § 4975-g.]

9905. Prima facie evidence. In case such commission merchant, broker, person or persons, or agent, copartnership, corporation, or association shall fail to furnish the said statement, the fact of such failure shall be prima facie evidence that such property was not sold or bought in a legitimate manner, but was bought in violation of the five preceding sections hereof. [S., '13, § 4975-g.]

CHAPTER 434

COMBINATIONS, POOLS, AND TRUSTS

- 9906. Pools and trusts.
- 9907. Corporation not to enter.
- 9908. Penalty.
- 9909. Contracts void.
- 9910. Defense.
- 9911. Forfeiture of charter.
- 9912. Notice by secretary of state.
- 9913. Enforcement—inquiry by grand jury.
- 9914. Fees of prosecutors.
- 9915. Combinations, pools, and trusts — fixing prices.
- 9916. Labor—unions.
- 9917. Liability.

- 9918. Violation—penalty.
- 9919. Duty of grand jury.
- 9920. Gift enterprises.
- 9921. Gift enterprise defined.
- 9922. Violation.
- 9923. "Person" defined.
- 9924. Grain combinations prohibited.
- 9925. Liability for damages.
- 9926. Violation—penalty.
- 9927. Duty of grand jury.
- 9928. Provision part of every contract—forfeit.
- 9929. "Pittsburgh plus".

9906. Pools and trusts. Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership, association, or individual, creating, entering into, or becoming a member of, or a party to, any pool, trust, agreement, contract, combination, confederation, or understanding with any other corporation, partnership, association, or individual, to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced, or sold in this state, shall be guilty of a conspiracy. [C., '97, § 5060.]

9907. Corporation not to enter. No corporation shall issue or own trust certificates, and no corporation, nor any agent, officer, employee, director, or stockholder of any corporation, shall enter into any combination, contract, or agreement with any person or corporation, or with any stockholder or director thereof, for the purpose of placing the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with intent to limit or fix the price or lessen the production or sale of any article of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article. [C., '97, § 5061.]

9908. Penalty. Any corporation, company, firm, or association violating any of the provisions of the two preceding sections shall be fined not less than five hundred nor more than five thousand dollars, and any president, manager, director, officer, agent, or receiver of any corporation, company, firm, or association, or any member of any corporation, company, firm, or association, or any individual, found guilty of a violation thereof, shall be fined not less than five hundred nor more than five thousand dollars, or be imprisoned in the county jail

not to exceed one year, or both. [C., '97, § 5062; S., '13, § 5062.]

9909. Contracts void. All contracts or agreements in violation of any provisions of the three preceding sections shall be void. [C., '97, § 5063.]

9910. Defense. Any purchaser of any article or commodity from any individual, company, or corporation transacting business contrary to any provisions of the four preceding sections shall not be liable for the price or payment thereof, and may plead such provisions as a defense to any action for such price or payment. [C., '97, § 5064.]

9911. Forfeiture of charter. Any corporation created or organized by or under the law of this state, which shall violate any provision of the five preceding sections, shall thereby forfeit its corporate right and franchise, as provided in the next section. [C., '97, § 5065.]

9912. Notice by secretary of state. The secretary of state, upon satisfactory evidence that any company or association of persons incorporated under the laws of this state has entered into any trust, combination, or association in violation of the provisions of the six preceding sections, shall give notice to such corporation that, unless it withdraws from and severs all business connection with said trust, combination, or association, its articles of incorporation will be revoked at the expiration of thirty days from date of such notice. [C., '97, § 5066.]

9913. Enforcement—inquiry by grand jury. County attorneys, in their counties, and the attorney general shall enforce the provisions of a public nature in the seven preceding sections, and it shall be the duty of the grand jury to inquire into and ascertain if there exists any pool, trust, or combination within their respective counties. [C., '97, § 5067.]

9914. Fees of prosecutors. Any county attorney or the attorney general securing a con-

viction under the provisions of sections 9906 to 9912, inclusive, shall be entitled, in addition to such fee or salary as by law he is allowed for such prosecution, to one-fifth of the fine recovered. When the attorney general and county attorney act in conjunction in the prosecution of any action under such provisions, they shall be entitled to one-fourth of the fine recovered, which they shall divide equally between them, where there is no agreement to the contrary. [C., '97, § 5067.]

9915. Combinations, pools, and trusts—fixing prices. It shall be unlawful for any person, company, partnership, association, or corporation owning or operating any business of buying, selling, handling, consigning, or transporting any commodity or any article of commerce:

1. To enter into any agreement, contract, or combination with any other dealer or dealers, partnership, company, corporation, or association of dealers, whether within or without the state, engaged in like business, for the fixing of the price or prices at which any commodity or any article of commerce should be sold by different dealers or sellers.

2. To divide between said dealers the aggregate or net proceeds of the earnings of such dealers and sellers, or any portion thereof.

3. To form, enter into, maintain, or contribute money or anything of value to any trust, pool, combination, or association of persons of whatsoever character or name, which has for any of its objects the prevention of full and free competition among buyers, sellers, or dealers in any commodity or any article of commerce.

4. To do or permit to be done by his or their authority any act or thing whereby the free action of competition in the buying or selling of any commodity or any article of commerce is restrained or prevented. [S., '13, § 5067-a.]

9916. Labor—unions. The labor of a human being either mental or physical is not a commodity or article of commerce and it shall not be unlawful for men and women to organize themselves into or carry on unions for the purpose, by lawful means, of lessening the hours of labor or increasing the wages, or bettering the condition of the members of such organizations, or lawfully carrying out their legitimate purposes. [38 G. A., ch. 213, § 1.]

9917. Liability. In case any person, company, partnership, corporation, or association, trust, pool, or combination of whatsoever name shall do, cause to be done, or permit to be done, any act, matter, or thing in the second preceding section prohibited or declared to be unlawful, such person, partnership, company, association, corporation, trust, pool, or combination shall be liable to the person, partnership, company, association, or corporation injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of the second preceding section. [S., '13, § 5067-b.]

9918. Violation—penalty. Any person, partnership, company, association, or corporation subject to the provisions of the three preceding sections, or any person, trust, combination, pool, or association, or any director, officer, lessee, receiver, trustee, employee, clerk, agent, or any person acting for or employed by them, who shall violate any of the provisions of section 9915, or who shall aid and abet in such violation, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined any sum not less than five hundred dollars and not exceeding two thousand dollars or imprisoned in the county jail for a period not exceeding six months, or both, at the discretion of the court. [S., '13, § 5067-c.]

9919. Duty of grand jury. It shall be the duty of the grand jury to inquire into and ascertain if there exists any pool, trust, combination or violation of any provision in section 9915, in their respective counties. [S., '13, § 5067-c.]

9920. Gift enterprises. All gift enterprises, as hereinafter defined, and all trade practices carried on in connection therewith are hereby prohibited and declared to be unlawful. [S., '13, § 5067-d.]

9921. Gift enterprise defined. Whenever two or more persons enter into any contract arrangement or scheme, whereby for the purpose of inducing the public to purchase merchandise or other property of one of the parties to said scheme, any other party thereto, for a valuable consideration and as a part of such scheme, advertises and induces or attempts to induce the public to believe that he will give gifts, premiums, or prizes to persons purchasing such merchandise or other property of such party to said scheme, and that stamps or tickets will be given by the seller in connection with such sales entitling the purchaser of such property to receive such prizes or gifts from any other party to such scheme, the parties so undertaking and carrying out such scheme shall be deemed to be engaged in a "gift enterprise", unless the articles or things so promised to be given as gifts or premiums with or on account of such purchases, shall be definitely described on such stamp or ticket and the character and value of such promised prize or gift fully made known to the purchaser of such merchandise or other property at the time of the sale thereof, and unless the right of the holder of such stamp or ticket to the gift or premium so promised becomes absolute upon the completion upon the delivery thereof without the holder being required to collect any specified number of other similar stamps or tickets and to present them for redemption together, and the right of the holder of such stamp or ticket to the prize or gift so offered is absolute, and does not depend on any chance, uncertainty, or contingency whatever. [S., '13, § 5067-e.]

9922. Violation. Any person who engages in a gift enterprise such as is defined in the

preceding section or who advertises the same in any manner or who in furtherance of such scheme, as an inducement to purchasers, issues in connection with the sale of any merchandise or other property any such ticket or stamp purporting to be redeemable in some indefinite article not described thereon, only when presented with a collection of other stamps or tickets of like kind by some other party to such scheme, and which unless presented in the manner aforesaid is not redeemable at all, shall each and all be guilty of a misdemeanor. [S., '13, § 5067-f.]

9923. "Person" defined. The word "person" as used in the two preceding sections may in proper cases, in order to make the intent and meaning of the law effective, be construed to mean firm or corporation. [S., '13, § 5067-g.]

9924. Grain combinations prohibited. It shall be unlawful for any person, company, partnership, association, or corporation owning or operating any grain elevator or engaged in the business of buying, selling, handling, consigning, or transporting grain:

1. To enter into any agreement, contract, or combination with any other grain dealer, or grain dealers, partnership, company, corporation, or association of grain dealers, whether within or without the state, engaged in like business, for the fixing of prices to be paid for grain by different dealers or buyers.

2. To divide between said dealers the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof.

3. To form, enter into, maintain, or contribute money or anything of value to any trust, pool, combination, or association of persons of whatsoever character or name, which has for any of its objects the prevention of full and free competition among buyers, sellers, or dealers in grain.

4. To do or permit to be done by his or their authority any act or thing whereby the free action of competition in the buying or selling of grain is restrained or prevented. [S., '13, § 5077-a3.]

9925. Liability for damages. In case any person, company, partnership, corporation, or association, trust, pool, or combination of whatsoever name shall do, cause to be done, or permit to be done, any act, matter, or thing in the preceding section prohibited or declared to be unlawful, such person, partnership, company, association, corporation, trust, pool, or combination shall be liable to the person, partnership, company, association, or corporation injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of said section, together with a reasonable attorney's fee to be fixed by the court in every case of recovery and to be taxed as part of the costs in the case, and the property of any person who may be a member of any such trust, pool, combination, corporation, or association, violating the provisions of said section, shall be liable for the full amount of such judgment. [S., '13, § 5077-a4.]

9926. Violation—penalty. Any person, partnership, company, association, or corporation subject to the provisions of the two preceding sections, or any person, trust, combination, pool, or association, or any director, officer, lessee, receiver, trustee, employee, clerk, agent, or any person acting for or employed by them or either of them, who shall violate any of the provisions of section 9924, or who shall aid and abet in such violation, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined any sum not less than five hundred dollars and not exceeding two thousand dollars, or imprisoned in the county jail for a period not exceeding six months, or both, at the discretion of the court. [S., '13, § 5077-a5.]

9927. Duty of grand jury. It shall be the duty of the grand jury to inquire into and ascertain if there exists any pool, trust, combination or violation of any provision in sections 9924 and 9925 in their respective counties. [S., '13, § 5077-a5.]

9928. Provision part of every contract—forfeit. The following provision shall be deemed and held to be a part of every contract hereafter entered into by any person, firm, or private corporation with the state, or with any county, city, town, city acting under special charter, city acting under commission form of government, school corporation, or with any municipal corporation, now or hereafter created, whether said provision be inserted in such contract or not, to wit:

"The party to whom this contract has been awarded, hereby represents and guarantees that he has not, nor has any other person for or in his behalf, directly or indirectly, entered into any arrangement or agreement with any other bidder, or with any public officer, whereby he has paid or is to pay to any other bidder or public officer any sum of money or anything of value whatever in order to obtain this contract; and that he has not, nor has another person, for or in his behalf, directly or indirectly, entered into any agreement or arrangement with any other person, firm, corporation, or association which tends to or does lessen or destroy free competition in the letting of this contract and agrees that the establishment of the falsity of these representations and guaranties, or any of them, and he hereby agrees that in case it hereafter be established that such representations or guaranties, or any of them, are false, he will forfeit and pay not less than five per cent of the contract price but in no event be less than three hundred dollars, as liquidated damages to the other contracting party." [S., '13, § 1279-c.]

9929. "Pittsburgh plus". There is hereby created a committee consisting of the governor and attorney general, which committee shall have full power and authority to protect and shall be charged with the duty of protecting the state of Iowa and the people thereof against the steel trade practice commonly known as "Pittsburgh plus" and other similar trade practices, and said committee is hereby authorized to use all lawful means for the accomplishment of said purposes. [40 G. A., ch. 163, § 1.]

TITLE XXIV

PERSONAL PROPERTY

CHAPTER 435

SALES LAW

NOTE: The number in brackets following each section number in this chapter indicates the number of the corresponding section of the uniform sales act.

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PART I

FORMATION OF THE CONTRACT

9930.[§ 1.] Contracts to sell and sales.

1. A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called price.

2. A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

3. A contract to sell or a sale may be absolute or conditional.

4. There may be a contract to sell or a sale between one part owner and another. [38 G. A., ch. 396, § 1.]

9931.[§ 2.] Capacity—liabilities for necessities. Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property.

Where necessities are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or other person and to his actual requirements at the time of delivery. [38 G. A., ch. 396, § 2.]

FORMALITIES OF THE CONTRACT

9932.[§ 3.] Form of contract or sale. Subject to the provisions of this chapter and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth,

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or may be inferred from the conduct of the parties. [38 G. A., ch. 396, § 3.]

9933.[§ 4.] Statute of frauds.

1. A contract to sell or a sale of any goods or choses in action shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold and actually receive the same or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

2. The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

3. There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods. [38 G. A., ch. 396, § 4.]

SUBJECT-MATTER OF CONTRACT

9934.[§ 5.] Existing and future goods.

1. The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller

after the making of the contract to sell, in this chapter called "future goods".

2. There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

3. Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods. [38 G. A., ch. 396, § 5.]

9935.[§ 6.] Undivided shares.

1. There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer by force of the agreement becomes an owner in common with the owner or owners of the remaining shares.

2. In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight, or measure of the goods in the mass and though the number, weight, or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight, or measure bought bears to the number, weight, or measure of the mass. If the mass contains less than the number, weight, or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears. [38 G. A., ch. 396, § 6.]

9936.[§ 7.] Destruction of goods sold.

1. Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

2. Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale:

a. As avoided; or

b. As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible. [38 G. A., ch. 396, § 7.]

9937.[§ 8.] Destruction of goods contracted to be sold.

1. Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

2. Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the

goods so deteriorate in quality as to be substantially changed in character, the buyer may, at his option, treat the contract:

a. As avoided; or

b. As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible. [38 G. A., ch. 396, § 8.]

THE PRICE

9938.[§ 9.] Definition and ascertainment of price.

1. The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

2. The price may be made payable in any personal property.

3. Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this chapter shall not apply.

4. Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. [38 G. A., ch. 396, § 9.]

9939.[§10.] Sale at a valuation.

1. Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person, without fault of the seller or the buyer, can not or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

2. Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are hereinafter provided. [38 G. A., ch. 396, § 10.]

CONDITIONS AND WARRANTIES

9940.[§11.] Effect of conditions.

1. Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

2. Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly

or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods. [38 G. A., ch. 396, § 11.]

9941.[§12.] Definition of express warranty. Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty. [38 G. A., ch. 396, § 12.]

9942.[§13.] Implied warranties of title. In a contract to sell or a sale, unless contrary intention appears, there is:

1. An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass.

2. An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale.

3. An implied warranty that the goods shall be free at the time of the sale from any charge or incumbrance in favor of any third person not declared or known to the buyer before or at the time when the contract or sale is made.

4. This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest. [38 G. A., ch. 396, § 13.]

9943.[§14.] Implied warranty in sale by description. Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description, and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. [38 G. A., ch. 396, § 14.]

9944.[§15.] Implied warranties of quality. Subject to the provisions of this chapter and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment, whether he be the grower or manufacturer or not, there is an implied warranty that the goods shall be reasonably fit for such purpose.

2. Where the goods are bought by description from a seller who deals in goods of that description, whether he be the grower or manu-

facturer or not, there is an implied warranty that the goods shall be of merchantable quality.

3. If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

4. In the case of a contract to sell or a sale of a specified article under its patent or other trade name there is no implied warranty as to its fitness for any particular purpose.

5. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

6. An express warranty or condition does not negative a warranty or condition implied under this chapter unless inconsistent therewith. [38 G. A., ch. 396, § 15.]

SALE BY SAMPLE

9945.[§16.] Implied warranties in sale by sample. In the case of a contract to sell or a sale by sample:

1. There is an implied warranty that the bulk shall correspond with the sample in quality.

2. There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 9976, subdivision 3.

3. If the seller is a dealer in goods of that kind there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. [38 G. A., ch. 396, § 16.]

PART II

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

9946.[§17.] No property passes until goods are ascertained. Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 9935. [38 G. A., ch. 396, § 17.]

9947.[§18.] Property in specific goods passes when parties so intend.

1. Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

2. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case. [38 G. A., ch. 396, § 18.]

9948.[§19.] Rules for ascertaining intention. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

RULE 1.

Where there is an unconditional contract to sell specific goods in a deliverable state the

property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

RULE 2.

Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such things be done.

RULE 3.

1. When goods are delivered to the buyer "on sale or return", or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revert the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

2. When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer:

a. When he signifies his approval or acceptance to the seller or does any other act adopting the transaction.

b. If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

RULE 4.

1. Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

2. Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee, whether named by the buyer or not, for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 9949. This presumption is applicable, although by the terms of the contract the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

RULE 5.

If the contract to sell requires the seller to deliver the goods to the buyer, or at a par-

ticular place or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon. [38 G. A., ch. 396, § 19.]

9949.[§20.] Reservation of right of possession or property when goods are shipped.

1. Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

2. Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

3. Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

4. Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith for value the bill of lading or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or the goods, without notice of the facts making the transfer wrongful. [38 G. A., ch. 396, § 20.]

9950.[§21.] Sale by auction. In the case of sale by auction:

1. Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

2. A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made any

bidder may retract his bid, and the auctioneer may withdraw the goods from the sale unless the auction has been announced to be without reserve.

3. A right to bid may be reserved expressly by or on behalf of the seller.

4. Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. [38 G. A., ch. 396 § 21.]

9951.[§22.] Risk of loss. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that:

1. Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

2. Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. [38 G. A., ch. 396, § 22.]

TRANSFER OF TITLE

9952.[§23.] Sale by a person not the owner.

1. Subject to the provisions of this chapter, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

2. Nothing in this chapter, however, shall affect:

a. The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

b. The validity of any contract to sell or sale under any common law or statutory power of sale or under the order of a court of competent jurisdiction. [38 G. A., ch. 396, § 23.]

9953.[§24.] Sale by one having a voidable title. Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. [38 G. A., ch. 396, § 24.]

9954.[§25.] Sale by seller in possession of goods already sold. Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. [38 G. A., ch. 396, § 25.]

9955.[§26.] Creditors' rights against seller's goods in possession. Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void. [38 G. A., ch. 396, § 26.]

9956.[§27.] Definition of negotiable documents of title. A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title. [38 G. A., ch. 396, § 27.]

9957.[§28.] Negotiation of negotiable documents by delivery. A negotiable document of title may be negotiated by delivery:

1. Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the bearer; or

2. Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee. [38 G. A., ch. 396, § 28.]

9958.[§29.] Negotiation of negotiable documents by indorsement. A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner. [38 G. A., ch. 396, § 29.]

9959.[§30.] Negotiable documents of title marked "not negotiable". If a document of

title which contains an undertaking by a carrier, warehouseman, or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of specified person, or which contains words of like import, has placed upon it the words "not negotiable", "nonnegotiable", or the like, such a document may, nevertheless, be negotiated by the holder and is a negotiable document of title within the meaning of this chapter. But nothing in this chapter contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title of placing thereon the words "not negotiable", "nonnegotiable", or the like. [38 G. A., ch. 396, § 30.]

9960.[§31.] Transfer of nonnegotiable documents. A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable document can not be negotiated, and the indorsement of such a document gives the transferee no additional right. [38 G. A., ch. 396, § 31.]

9961.[§32.] Who may negotiate a document. A negotiable document may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the document the bailee issuing it undertakes to deliver the goods to the order of such person, or if at the time of negotiation the document is in such form that it may be negotiated by delivery. [38 G. A., ch. 396, § 32.]

9962.[§33.] Rights of person to whom document has been negotiated. A person to whom a negotiable document of title has been duly negotiated acquires thereby:

1. Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value; and

2. The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him. [38 G. A., ch. 396, § 33.]

9963.[§34.] Rights of person to whom document has been transferred. A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is nonnegotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a nonnegotiable document of title, the title of the transferee to the goods and the right to acquire the ob-

ligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. [38 G. A., ch. 396, § 34.]

9964.[§35.] Transfer of negotiable document without indorsement. Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. [38 G. A., ch. 396, § 35.]

9965.[§36.] Warranties on sale of document. A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title, unless a contrary intention appears, warrants:

1. That the document is genuine.
2. That he has a legal right to negotiate or transfer it.

3. That he has knowledge of no fact which would impair the validity or worth of the document; and

4. That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. [38 G. A., ch. 396, § 36.]

9966.[§37.] Indorser not a guarantor. The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations. [38 G. A., ch. 396, § 37.]

9967.[§38.] When negotiation not impaired by fraud, mistake, or duress. The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake, or duress to intrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress. [38 G. A., ch. 396, § 38.]

9968.[§39.] Attachment or levy upon goods for which a negotiable document has been issued. If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they can not thereafter, while in the possession of such bailee, be attached by garnishment or

otherwise or be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. [38 G. A., ch. 396, § 39.]

9969.[§40.] Creditors' remedies to reach negotiable documents. A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process. [38 G. A., ch. 396, § 40.]

PART III

PERFORMANCE OF THE CONTRACT

9970.[§41.] Seller must deliver and buyer accept goods. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale. [38 G. A., ch. 396, § 41.]

9971.[§42.] Delivery and payment are concurrent conditions. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods. [38 G. A., ch. 396, § 42.]

9972.[§43.] Place, time, and manner of delivery.

1. Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

2. Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

3. Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect

the operation of the issue or transfer of any document of title to goods.

4. Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

5. Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. [38 G. A., ch. 396, § 43.]

9973.[§44.] Delivery of wrong quantity.

1. Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

2. Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he must pay for them at the contract rate.

3. Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

4. The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties. [38 G. A., ch. 396, § 44.]

9974.[§45.] Delivery in installments.

1. Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

2. Where there is a contract to sell goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation but not to a right to treat the whole contract as broken. [38 G. A., ch. 396, § 45.]

9975.[§46.] Delivery to a carrier on behalf of the buyer.

1. Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the

buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 9948, rule 5, or unless a contrary intent appears.

2. Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

3. Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows, or ought to know, that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. [38 G. A., ch. 396, § 46.]

9976.[§47.] Right to examine the goods.

1. Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

2. Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

3. Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery", or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination. [38 G. A., ch. 396, § 47.]

9977.[§48.] What constitutes acceptance. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. [38 G. A., ch. 396, § 48.]

9978.[§49.] Acceptance does not bar action for damages. In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But

if, after acceptance of the goods, the buyer fails to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know, of such breach the seller shall not be liable therefor. [38 G. A., ch. 396, § 49.]

9979.[§50.] Buyer is not bound to return goods wrongly delivered. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them. [38 G. A., ch. 396, § 50.]

9980.[§51.] Buyer's liability for failing to accept delivery. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the right against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default. [38 G. A., ch. 396, § 51.]

PART IV

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

9981.[§52.] Definition of unpaid seller.

1. The seller of goods is deemed to be an unpaid seller within the meaning of this chapter:

a. When the whole of the price has not been paid or tendered.

b. When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

2. In this part of this chapter the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for the price, or any other person who is in the position of a seller. [38 G. A., ch. 396, § 52.]

9982.[§53.] Remedies of an unpaid seller.

1. Subject to the provisions hereof, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has:

a. A lien on the goods or right to retain them for the price while he is in possession of them.

b. In case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them.

c. A right of resale as limited by this chapter.

d. A right to rescind the sale as limited by this chapter.

2. Where the property in goods has not passed to the buyer the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transit where the property has passed to the buyer. [38 G. A., ch. 396, § 53.]

UNPAID SELLER'S LIEN

9983.[§54.] When right of lien may be exercised.

1. Subject to the provisions of this chapter, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

a. Where the goods have been sold without any stipulation as to credit.

b. Where the goods have been sold on credit, but the term of credit has expired.

c. Where the buyer becomes insolvent.

2. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. [38 G. A., ch. 396, § 54.]

9984.[§55.] Lien after part delivery. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. [38 G. A., ch. 396, § 55.]

9985.[§56.] When lien is lost.

1. The unpaid seller of goods loses his lien thereon:

a. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof.

b. When the buyer or his agent lawfully obtains possession of the goods.

c. By waiver thereof.

2. The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. [38 G. A., ch. 396, § 56.]

STOPPAGE IN TRANSITU

9986.[§57.] Seller may stop goods on buyer's insolvency. Subject to the provisions of this chapter, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu; that is to say, he may resume possession of the goods at any time while they are in transit and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. [38 G. A., ch. 396, § 57.]

9987[§58.] When goods are in transit.

1. Goods are in transit within the meaning of the preceding section:

a. From the time when they are delivered to a carrier by land or water, or other bailee, for

the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee.

b. If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

2. Goods are no longer in transit within the meaning of the preceding section:

a. If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination.

b. If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer.

c. If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

3. If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent of the buyer.

4. If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. [38 G. A., ch. 396, § 58.]

9988.[§59.] Ways of exercising the right to stop.

1. The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal by the exercise of reasonable diligence, may prevent a delivery to the buyer.

2. When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions, of the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation. [38 G. A., ch. 396, § 59.]

RESALE BY THE SELLER

9989.[§60.] When and how resale may be made.

1. Where the goods are of a perishable nature, or where the seller expressly reserves

the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

2. Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

3. It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods, or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

4. It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

5. The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. [38 G. A., ch. 396, § 60.]

RESCISSION BY THE SELLER

9990.[§61.] When and how the seller may rescind the sale.

1. An unpaid seller having a right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

2. The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted. [38 G. A., ch. 396, § 61.]

9991.[§62.] Effect of sale of goods subject to lien or stoppage in transitu. Subject to the provisions of this chapter, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale or other disposition

of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu. [38 G. A., ch. 396, § 62.]

PART V

ACTIONS FOR BREACH OF THE CONTRACT

Remedies of the Seller

9992.[§63.] Actions for the price.

1. Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

2. Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

3. Although the property in the goods has not passed, if they can not readily be resold for a reasonable price, and if the provisions of the next section are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price. [38 G. A., ch. 396, § 63.]

9993.[§64.] Action for damages for non-acceptance of the goods.

1. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.

2. The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

3. Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

4. If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing toward carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages. [38 G. A., ch. 396, § 64.]

9994.[§65.] When seller may rescind contract or sale. Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer. [38 G. A., ch. 396, § 65.]

Remedies of the Buyer

9995.[§66.] Action for converting or detaining goods. Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld. [38 G. A., ch. 396, § 66.]

9996.[§67.] Action for failing to deliver goods.

1. Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for nondelivery.

2. The measure of damages is the loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract.

3. Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver. [38 G. A., ch. 396, § 67.]

9997.[§68.] Specific performance. Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, or payment of the price and other-

wise, as to the court may seem just. [38 G. A., ch. 396, § 68.]

9998.[§69.] Remedies for breach of warranty.

1. Where there is a breach of warranty by the seller, the buyer may, at his election:

a. Accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution or extinction of the price.

b. Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty.

c. Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty.

d. Rescind the contract to sell or the sale and refuse to receive the goods, or, if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

2. When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

3. Where the goods have been delivered to the buyer, he can not rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

4. Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods or immediately after an offer to return the goods in exchange for repayment of the price.

5. Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 9982.

6. The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

7. In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the

value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. [38 G. A., ch. 396, § 69.]

9999.[§70.] Interest and special damages. Nothing in this chapter shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. [38 G. A., ch. 396, § 70.]

PART VI

INTERPRETATION

10000.[§71.] Variation of implied obligations. Where any right, duty, or liability would arise under a contract to sell or a sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale. [38 G. A., ch. 396, § 71.]

10001.[§72.] Rights may be enforced by action. Where any right, duty, or liability is declared by this chapter, it may, unless otherwise by this chapter provided, be enforced by action. [38 G. A., ch. 396, § 72.]

10002.[§73.] Rule for cases not provided for herein. In any case not provided for in this chapter the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods. [38 G. A., ch. 396, § 73.]

10003.[§74.] Interpretation shall give effect to purpose of uniformity. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it. [38 G. A., ch. 396, § 74.]

10004.[§75.] Provisions not applicable to mortgages. The provisions of this chapter relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security. [38 G. A., ch. 396, § 75.]

10005.[§76.] Definitions.

1. In this chapter, unless the context or subject matter otherwise requires:

“Action” includes counterclaim, set-off, and suit in equity.

“Buyer” means a person who buys or agrees to buy goods or any legal successor in interest of such person.

“Defendant” includes a plaintiff against whom a right of set-off or counterclaim is asserted.

“Delivery” means voluntary transfer of possession from one person to another.

“Divisible contract to sell or sale” means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

“Document of title to goods” includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods as proof of the possession or control of the goods or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document.

“Fault” means wrongful act or default.

“Fungible goods” means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale.

“Goods” include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

“Order” in sections of this chapter relating to documents of title means an order by indorsement on the document.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

“Plaintiff” includes defendant asserting a right of set-off or counterclaim.

“Property” means the general property in goods, and not merely a special property.

“Purchaser” includes mortgagee and pledgee.

“Purchases” includes taking as a mortgagee or as a pledgee.

“Quality of goods” includes their state or condition.

“Sale” includes a bargain and sale, as well as a sale and delivery.

“Seller” means a person who sells or agrees to sell goods or any legal successor in the interest of such person.

“Specific goods” means goods identified and agreed upon at the time a contract to sell or a sale is made.

“Value” is any consideration sufficient to support a simple contract. An antecedent or preexisting claim, whether for money or not, constitutes value where goods or documents of titles are taken either in satisfaction thereof or as to security therefor.

2. A thing is done “in good faith” within the meaning of this chapter when it is in fact done honestly, whether it be done negligently or not.

3. A person is insolvent within the meaning of this chapter who either has ceased to pay his debts in the ordinary course of business or can not pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

4. Goods are in a “deliverable state” within the meaning of this chapter when they are in such a state that the buyer would, under the contract, be bound to take delivery of them. [38 G. A., ch. 396, § 76.]

10006.[§76a.] Chapter does not apply to existing sales or contracts to sell. None of the provisions of this chapter shall apply to any sale, or to any contract to sell, made prior to the taking effect of this chapter. [38 G. A., ch. 396, § 76a.]

10007.[§76b.] No repeal of uniform warehouse receipt act or uniform bills of lading act. Nothing in this chapter or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the chapter to make uniform the law of warehouse receipts, or of the chapter to make uniform the law of bills of lading, or of the bulk sales law. [38 G. A., ch. 396, § 76b.]

CHAPTER 436

SALES IN BULK

10008. Inventory—creditors—notice.
10009. Meaning of terms.
10010. Exceptions.

10008. **Inventory — creditors — notice.** The sale, transfer, or assignment, in bulk, of any part or the whole of a stock of merchandise and the fixtures pertaining to the conducting of said business, otherwise than in the ordinary course of trade and in the regular prosecution of the business of the seller, transferor, or assignor, shall be void as against the creditors of the seller, transferor, or assignor:

1. *Inventory.* Unless the seller, transferor, assignor and purchaser, transferee, and assignee, shall, at least seven days before the sale, make a full detailed inventory, showing the quantity and, so far as possible with the exercise of reasonable diligence, the cost price to the seller, transferor, and assignor of each article to be included in the sale; and

2. *Creditors.* Unless the purchaser, transferee, and assignee demand and receive from the seller, transferor, and assignor a written list of names and addresses of the creditors of the seller, transferor, and assignor, with the amount of the indebtedness due or owing to each and certified by the seller, transferor, and assignor, under oath, to be a full, accurate, and complete list of his creditors, and of his indebtedness; and

3. *Notice.* Unless the purchaser, transferee, and assignee shall, at least seven days before taking possession of such merchandise, or merchandise and fixtures, or paying therefor, notify personally or by registered mail, every creditor whose name and address are stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms, and conditions thereof. [S. S., '15, §§ 2911-a, 2911-b; 37 G. A., ch. 64, § 1.]

10011. Purchaser deemed a receiver.
10012. When purchaser protected.

10009. **Meaning of terms.** Sellers, transferors and assignors, purchasers, transferees and assignees, under this chapter, shall include corporations, associations, copartnerships, and individuals. [S., '13, § 2911-c; 37 G. A., ch. 64, § 2.]

10010. **Exceptions.** Nothing contained in this chapter shall apply to sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process. [S., '13, § 2911-c; 37 G. A., ch. 64, § 2.]

10011. **Purchaser deemed a receiver.** Any purchaser, transferee, or assignee who shall not conform to the provisions of this chapter shall, upon application of any of the creditors of the seller, transferor, or assignor, become a receiver and be held accountable to such creditors for all the goods, wares, merchandise, and fixtures that have come into his possession by virtue of such sale, transfer, or assignment. [37 G. A., ch. 64, § 3.]

10012. **When purchaser protected.** Any purchaser, transferee, or assignee who shall conform to the provisions of this chapter shall not be held in any way accountable to any creditor of the seller, transferor, or assignor, or to the seller, transferor, or assignor for any of the goods, wares, merchandise, or fixtures that have come into the possession of said purchaser, transferee, or assignee by virtue of such sale, transfer, or assignment. [37 G. A., ch. 64, § 3.]

CHAPTER 437

CHATTEL MORTGAGES AND CONDITIONAL SALES OF PERSONAL PROPERTY

GENERAL PROVISIONS

10013. Exempt property—mortgage by husband and wife—exception.
10014. Right to possession—title.
10015. Sales or mortgages—recording.
10016. Conditional sales.
10017. Filing equivalent of recording.
10018. Receipt.
10019. Option to record.
10020. Time of filing noted—effect.
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10022. Transfers in representative capacity.
10023. Mortgage void after five years—extension.
10024. Assignments—how made.
10025. Copy furnished and certified—additional filings.

GENERAL PROVISIONS

10013. Exempt property—mortgage by husband and wife—exception. No incumbrance of personal property which may be held exempt from execution by the head of a family, if a resident of this state, shall be of any validity as to such exempt property only, unless the same be by written instrument, and unless the husband and wife, if both be living, concur in and sign the same joint instrument. Incumbrances on the property sold, given to secure the purchase price, need only be signed and acknowledged by the purchaser. [C., '51, § 1193; R., '60, § 2201; C., '73, § 1923; C., '97, § 2906; 38 G. A., ch. 352, § 2; 40 Ex. G. A., S. F. 75, § 1.]

10014. Right to possession—title. In the absence of stipulations in the mortgage, the mortgagee of personal property is entitled to the possession thereof, but the title shall remain in the mortgagor until divested by sale as provided by law. [C., '51, § 1210; R., '60, § 2217; C., '73, § 1927; C., '97, § 2911; 40 Ex. G. A., S. F. 75, § 2.]

10015. Sales or mortgages—recording. No sale or mortgage of personal property, where the vendor or mortgagor retains actual possession thereof, is valid against existing creditors or subsequent purchasers, without notice, unless a written instrument conveying the same is executed, acknowledged like conveyances of real estate, and such instrument, or a duplicate thereof, is duly recorded, or filed and deposited with the recorder of the county where the property shall then be situated, or if the mortgagor be a resident of this state, then of the county where the holder of the property resides. [C., '51, § 1193; R., '60, § 2201; C., '73, § 1923; C., '97, § 2906; 38 G. A., ch. 352, § 2; 40 Ex. G. A., S. F. 75, § 3.]

10026. Certified copies.
10027. Production of original.
10028. Release of mortgage.
10029. Original returned to maker.
10030. Originals destroyed.
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SALE OR LEASE OF UTILITY EQUIPMENT

10033. Conditional sale or lease authorized.
10034. Rental as purchase money.
10035. Validity of contract conditioned.
10036. Recording.
10037. Release and satisfaction.
10038. Fees.
10039. Prior contracts not affected.

10016. Conditional sales. No sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any creditor or purchaser of the vendee or lessee in actual possession obtained in pursuance thereof, without notice, unless the same be in writing, executed by the vendor and vendee, or by the lessor and lessee, acknowledged by the vendor or vendee, or by the lessor or lessee, and recorded or filed and deposited the same as chattel mortgages. [C., '73, § 1922; C., '97, § 2905; 37 G. A., ch. 154, § 1; 38 G. A., ch. 352, § 12; 40 Ex. G. A., S. F. 75, § 4.]

10017. Filing equivalent of recording. Upon receipt of any instrument affecting the title to personal property, the recorder shall indorse thereon the time of receiving it, and shall file the same in his office for the inspection of all persons, and such filing shall have the same force and effect as if recorded at length. [38 G. A., ch. 352, § 3; 40 Ex. G. A., S. F. 75, § 5.]

10018. Receipt. Upon request of person presenting instrument for filing, the county recorder shall issue a receipt therefor, and such receipt shall describe the instrument as to grantor, grantee, date, consideration, and date filed. [38 G. A., ch. 352, § 3; 40 Ex. G. A., S. F. 75, § 5.]

10019. Option to record. The recorder shall, if requested, as soon as practicable, record such instrument or any assignment or release thereof, and enter in his index book in its proper place the page and book where the record may be found, and deliver the instrument to the owner upon request. [C., '51, § 1196; R., '60, § 2204; C., '73, § 1926; C., '97, § 2910; 40 Ex. G. A., S. F. 75, § 6.]

10020. Time of filing noted—effect. When any written instrument of the character above contemplated is filed, the recorder shall note thereon the day and exact time of filing the same, and forthwith enter in his index book the first seven requirements specified in the next section; and from the time of said entry the sale or mortgage shall be deemed complete as to third persons, and have the same effect as though it had been accompanied by the actual delivery of the property sold or mortgaged. [C., '51, § 1195; R., '60, § 2203; C., '73, § 1925; C., '97, § 2908; 40 Ex. G. A., S. F. 75, § 7.]

10021. Index book. The county recorder shall keep an index book in which shall be entered a list of instruments affecting title to or incumbrance of personal property, which may be filed under this chapter. Such book shall be ruled into separate columns with appropriate heads, and shall set out:

1. Time of reception.
 2. Name of each mortgagor or vendor.
 3. Name of each mortgagee or vendee.
 4. Date of instrument.
 5. A general description of the kind or nature of the property.
 6. Where located.
 7. Amount secured.
 8. When due.
 9. Page and book where the record is to be found.
 10. Extension.
 11. When released.
 12. Remarks and assignments.
- [C., '51, § 1194; R., '60, § 2202; C., '73, § 1924; C., '97, § 2907; 38 G. A., ch. 352, § 7; 40 Ex. G. A., S. F. 75, § 8.]

10022. Transfers in representative capacity. In indexing transfers of personal property made by an administrator, executor, guardian, referee, receiver, sheriff, commissioner, or other person acting in a representative capacity, the recorder shall enter upon such index book the name and representative capacity of each person executing such instrument, and the owner of the property, if disclosed therein. [C., '97, § 2909; 40 Ex. G. A., S. F. 75, § 9.]

10023. Mortgage void after five years—extension. Every mortgage so filed shall be void as against the creditors of the person making the same, or as against subsequent purchasers or mortgagees in good faith, after the expiration of five years after the maturity of the debt thereby secured, unless an extension agreement, duly executed by the mortgagor, shall be filed with the instrument to which it relates, and such extension agreement shall operate to continue the lien in the same manner as the original instrument. [38 G. A., ch. 352, § 4; 40 Ex. G. A., S. F. 75, § 10.]

10024. Assignments—how made. A chattel mortgage filed or recorded may be assigned of record by the mortgagee or the record holder thereof, by the execution of an appropriate written instrument, duly acknowledged, and

filed in the same office where the mortgage is filed or recorded. If the mortgage is recorded, an assignment thereof may be made by the mortgagee or the record holder of the mortgage executing an assignment on the margin of the record of such mortgage, or, if the mortgage be filed but not recorded, such assignment may be indorsed upon the original instrument, but where the assignment is on the margin of the record or indorsed upon the instrument, the assignor shall be identified and his signature to such assignment witnessed and attested by the recorder or his deputy. [40 Ex. G. A., S. F. 75, § 11.]

10025. Copy furnished and certified—additional filings. A duplicate or copy of such mortgage, bill of sale, or other instrument filed under the provisions of this chapter, shall be supplied by the county recorder upon request of any party in interest, and the payment of fees therefor. Such duplicate or copy shall be duly certified by the county recorder and may be filed in other counties of the state in the same manner as herein provided. [38 G. A., ch. 352, § 5; 40 Ex. G. A., S. F. 75, § 12.]

10026. Certified copies. A copy of such original instrument, duly certified by the county recorder in whose office the same shall have been filed, shall be received in evidence in all suits to which it may be applicable. [38 G. A., ch. 352, § 6; 40 Ex. G. A., S. F. 75, § 13.]

10027. Production of original. If in any suit or action, the due execution of such instrument or its genuineness be questioned in such manner as to render the production of the original instrument desirable or necessary, then the same may be produced by the recorder of the county in obedience to a proper judicial process or court order. [38 G. A., ch. 352, § 6; 40 Ex. G. A., S. F. 75, § 13.]

10028. Release of mortgage. Any mortgage or pledge of personal property may be released of record by filing with the original instrument a duly executed satisfaction piece or release of mortgage; or by the mortgagee or his authorized agent indorsing a satisfaction of said mortgage on the index book under the head of "remarks" in the same manner as mortgages are now released by marginal satisfaction, and when so released on index book, the recorder shall enter a memorandum thereof on the original instrument or on the record thereof, if recorded. [38 G. A., ch. 352, § 8; 40 Ex. G. A., S. F. 75, § 14.]

10029. Original returned to maker. When any unrecorded chattel mortgage or other instrument of writing or indebtedness, which may have been filed as herein provided, shall have been satisfied, it shall be the duty of the recorder, after making a proper entry of such satisfaction in the index book or record where the original instrument is recorded, to return the original instrument, with any extension, assignment, or release, thereto attached, to the mortgagor or person executing the same, upon

request therefor. [38 G. A., ch. 352, § 9; 40 Ex. G. A., S. F. 75, § 15.]

10030. Originals destroyed. In case such unrecorded instrument, with the extension or release thereof, if any, be not returned as hereinbefore provided, after the expiration of five years from the maturity thereof, or the maturity of any extension thereof, the recorder shall destroy such chattel mortgages with the extension or releases thereto attached, or other instruments or writing relating thereto, by burning the same in the presence of the board of county supervisors, or a committee appointed by the board of supervisors from their own number, to superintend the same, and when so destroyed the date of such destruction shall be entered on the index record under "remarks". [38 G. A., ch. 352, § 10; 40 Ex. G. A., S. F. 75, § 16.]

10031. Fees. The fees to be collected by the county recorder under this chapter shall be as follows:

1. For filing any instrument affecting the title to or incumbrance of personal property, twenty-five cents each.

2. For recording or making certified copies of such instruments, fifty cents for the first four hundred words and ten cents for each one hundred additional words or fraction thereof. [38 G. A., ch. 352, § 11; 40 Ex. G. A., S. F. 75, § 17.]

10032. Real estate mortgage with chattel mortgage or receivership clause. Real estate mortgages which create an incumbrance on personal property or which provide for a receivership, shall, after being recorded at length, be indexed, if requested by the holder, in the chattel mortgage index book. Said indexing shall show the book and page where said mortgage is recorded and such record and index shall have the same effect as though said mortgage were retained by the recorder as a chattel mortgage, or as though the same had been recorded at length in the chattel mortgage records and indexed accordingly. When such mortgage is released of record, the recorder shall make entry thereof on said chattel mortgage index book. [39 G. A., ch. 246, § 1; 40 Ex. G. A., S. F. 75, § 18.]

SALE OR LEASE OF UTILITY EQUIPMENT

10033. Conditional sale or lease authorized. In any contract for the sale of railroad or street railway equipment or rolling stock or power house, electric or other equipment of street or interurban railways or of electric light and power companies or of steam heating companies, such equipment including engines, boilers, generators, switchboards, transformers, motors, and other machinery and appliances, it may be agreed that the title thereto, although possession thereof be delivered immediately or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money. [C., '97, § 2051; S., '13, § 2051.]

10034. Rental as purchase money. In any contract for the leasing or hiring of such property, it may be stipulated for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee. [C., '97, § 2051; S., '13, § 2051.]

10035. Validity of contract conditioned. No such contract shall be valid as against any subsequent judgment creditor, or subsequent bona fide purchaser for value without notice, unless:

1. The same shall be evidenced by an instrument executed by the parties and acknowledged by the vendee, or lessee, or bailee, as the case may be, in the same manner as deeds are acknowledged or proved.

2. Such instrument shall be filed for record in the office of the secretary of state.

3. Each locomotive engine, stationary engine, boiler, switchboard, transformer, motor, other piece of machinery or appliance or car sold, leased, or hired as aforesaid shall have the name of the vendor, lessor, or bailor plainly marked on each side thereof, followed by the word "owner", "lessor", or "bailor", as the case may be. [C., '97, § 2051; S., '13, § 2051.]

10036. Recording. The contracts herein authorized shall be recorded by the secretary of state in a record to be kept for that purpose. [C., '97, § 2052; S., '13, § 2052; 40 Ex. G. A., H. F. 190, § 3.]

10037. Release and satisfaction. On payment in full of the purchase money and the performance of the terms and conditions stipulated in such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, either on the margin of the record of the contract, duly attested, or in a separate instrument to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded in such record. [C., '97, § 2052; S., '13, § 2052; 40 Ex. G. A., H. F. 190, § 3.]

10038. Fees. For such services the secretary of state shall charge a fee of ten cents per hundred words for recording each contract and each said declaration, but in no case shall the fee be less than one dollar. [C., '97, § 2052; S., '13, § 2052; 40 Ex. G. A., H. F. 190, § 3.]

10039. Prior contracts not affected. The six preceding sections shall not invalidate or affect in any way any contract of the kind referred to in sections 10033 to 10035, inclusive, made prior to April 24, 1894, and any such contract made prior to said date upon compliance with the provisions of said six sections may be recorded as therein provided. [C., '97, § 2053; 40 Ex. G. A., H. F. 190, § 4.]

TITLE XXV

REAL PROPERTY

CHAPTER 438

REAL PROPERTY IN GENERAL

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GENERAL PRINCIPLES

10040. Who deemed seized. All persons owning real estate not held by an adverse possession shall be deemed to be seized and possessed of the same. [C., '51, § 1199; R., '60, § 2207; C., '73, § 1928; C., '97, § 2912.]

10041. Estate in fee simple. The term "heirs" or other technical words of inheritance are not necessary to create and convey an estate in fee simple. [C., '51, § 1200; R., '60, § 2208; C., '73, § 1929; C., '97, § 2913.]

10042. Conveyance passes grantor's interest. Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used. [C., '51, § 1201; R., '60, § 2209; C., '73, § 1930; C., '97, § 2914.]

10043. After-acquired interest — exception. Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, inures to the benefit of the grantee. But if the wife or husband of such grantor joins in such conveyance for the purpose of relinquishing dower or homestead only, and subsequently acquires an interest therein as above defined, it shall not be held to inure to the benefit of the grantee. [C., '51, § 1202; R., '60, § 2210; C., '73, § 1931; C., '97, § 2915.]

- 10054. Tenancy in common.
- 10055. Cotenant liable for rent.
- 10056. Partition—cotenant charged with rent.
- 10057. Vendor's lien.
- 10058. Fraudulent conveyances.
- 10059. Rule in Shelley's case.
- 10060. Devise, bequest, or conveyance not enlarged.

REGISTRATION OF FARMS

- 10061. Authorization—certificate.
- 10062. Vested interest.
- 10063. Fee.
- 10064. Transfer of farm.
- 10065. Cancellation—fee.

10044. Adverse possession. Adverse possession of real estate does not prevent any person from selling his interest in the same. [C., '51, § 1203; R., '60, § 2211; C., '73, § 1932; C., '97, § 2916.]

10045. Future estates. Estates may be created to commence at a future day. [C., '51, § 1204; R., '60, § 2212; C., '73, § 1923; C., '97, § 2917; 40 Ex. G. A., S. F. 281, § 1.]

10046. Contingent remainders. A contingent remainder shall take effect, notwithstanding any determination of the particular estate, in the same manner in which it would have taken effect if it had been an executory devise or a springing or shifting use, and shall, as well as such limitations, be subject to the rule respecting remoteness known as the rule against perpetuities, exclusive of any other supposed rule respecting limitations to successive generations or double possibilities. [40 Ex. G. A., S. F. 281, § 2.]

NOTE: This and the two following sections are (except the limiting date) literal copies of sections 3 and 10, chapter 184, General Laws of Massachusetts, 1921, Vol. II.

10047. Applicability. The preceding section, except so far as declaratory of existing law, shall apply only to instruments executed on or after July 1, 1925, and to wills and codicils revived or confirmed by a will or codicil executed on or after said date. [40 Ex. G. A., S. F. 281, § 2.]

10048. Defeating expectant estate. No expectant estate shall be defeated or barred by an alienation or other act of the owner of the precedent estate, or by the destruction of such precedent estate by disseizin, forfeiture, surrender, or merger. [40 Ex. G. A., S. F. 281, § 3.]

10049. Declarations of trust. Declarations or creations of trusts or powers in relation to real estate must be executed in the same manner as deeds of conveyance; but this provision does not apply to trusts resulting from the operation or construction of law. [C., '51, § 1205; R., '60, § 2213; C., '73, § 1934; C., '97, § 2918.]

10050. Conveyances by married women. A married woman may convey or incumber any real estate or interest therein belonging to her, and may control the same, or contract with reference thereto, to the same extent and in the same manner as other persons. [C., '51, § 1207; R., '60, § 2215; C., '73, § 1935; C., '97, § 2919.]

10051. Conveyances by husband and wife. Every conveyance made by a husband and wife shall be sufficient to pass any and all right of either in the property conveyed, unless the contrary appears on the face of the conveyance. [R., '60, § 2255; C., '73, § 1936; C., '97, § 2920.]

10052. Covenants—spouse not bound. Where either the husband or wife joins in a conveyance of real estate owned by the other, the husband or wife so joining shall not be bound by the covenants of such conveyance, unless it is expressly so stated on the face thereof. [C., '73, § 1937; C., '97, § 2921.]

10053. Title and possession of mortgagor. In absence of stipulations to the contrary, the mortgagor of real estate retains the legal title and right of possession thereto. [C., '51, § 1210; R., '60, § 2217; C., '73, § 1938; C., '97, § 2922.]

10054. Tenancy in common. Conveyances to two or more in their own right create a tenancy in common, unless a contrary intent is expressed. [C., '51, § 1206; R., '60, § 2214; C., '73, § 1939; C., '97, § 2923.]

10055. Cotenant liable for rent. In all cases in which any real estate is now or shall be hereafter held by two or more persons as tenants in common, and one or more of said tenants shall have been or shall hereafter be in possession of said real estate, it shall be lawful for any one or more of said tenants in common, not in possession, to sue for and recover from such tenants in possession, his or their proportionate part of the rental value of said real estate for the time, not exceeding a period of five years, such real estate shall have been in possession as aforesaid. [37 G. A., ch. 27, § 1.]

10056. Partition—cotenant charged with rent. In case of partition of such real estate

held in common as aforesaid, the parties in possession shall have deducted from their distributive shares of said real estate the rental value thereof to which their cotenants are entitled. [37 G. A., ch. 27, § 1.]

10057. Vendor's lien. No vendor's lien for unpaid purchase money shall be enforced in any court of this state after a conveyance by the vendee, unless such lien is reserved by conveyance, mortgage, or other instrument duly acknowledged and recorded, or unless such conveyance by the vendee is made after suit by the vendor, his executor, or assigns to enforce such lien. [C., '73, § 1940; C., '97, § 2924.]

10058. Fraudulent conveyances. Nothing in the preceding section shall be construed to deprive a vendor of any remedy now existing against conveyance procured through the fraud or collusion of the vendees therein, or persons purchasing of such vendees with notice of such fraud or lien. [C., '73, § 1940; C., '97, § 2924.]

10059. Rule in Shelley's case. The rule or principle of the common law known as the rule in Shelley's case is hereby abolished and is declared not to be a part of the law of this state. [S., '13, § 2924-a.]

10060. Devise, bequest, or conveyance not enlarged. No express devise, bequest, or conveyance of an estate for life, or other limited estate in real or personal property shall be enlarged or construed to pass any greater estate to the devisee, legatee, or grantee thereof by reason of any devise, bequest, or conveyance to the heirs, heirs of the body, children, or issue of such devisee, legatee, or grantee; but this section shall not in any manner or under any circumstances be so construed as to impair or affect the vested rights of any person in or to any lands or estates acquired prior to July 4, 1907. [S., '13, § 2924-b.]

REGISTRATION OF FARMS

10061. Authorization—certificate. Any owner of a farm in the state may have the name of his farm, together with a description of his lands to which said name applies, recorded in a register kept for that purpose in the office of the county recorder of the county in which said farm is located.

Such recorder shall furnish to such landowner a proper certificate setting forth said name and a description of such lands. [S., '13, § 2924-c.]

10062. Vested interest. When any name shall have been recorded as the name of any farm in such county, such name shall not be recorded as the name of any other farm in the same county. [S., '13, § 2924-c.]

10063. Fee. Any person having the name of his farm recorded as provided in the second preceding section shall first pay to the county recorder a fee of one dollar, which fee shall be paid to the county treasurer as other fees are

paid to the county treasurer by such recorder. [S., '13, § 2924-d.]

10064. Transfer of farm. When any owner of a farm, the name of which has been recorded as hereinbefore provided, transfers by deed or otherwise the whole of such farm, such transfer may include the registered name thereof; but if the owner shall transfer only a portion of such farm, then in that event, the registered name thereof shall not be transferred to the purchaser unless so stated in the deed of conveyance. [S., '13, § 2924-e.]

10065. Cancellation—fee. When any owner of a registered farm desires to cancel the registered name thereof, he shall state on the margin of the record of the register of such name the following: "This name is canceled and I hereby release all rights thereunder", which shall be signed by the person canceling such name and attested by the county recorder. For such latter service the county recorder shall charge a fee of twenty-five cents, which shall be paid to the county treasurer as other fees are paid to the county treasurer by him. [S., '13, § 2924-f.]

CHAPTER 439

CONVEYANCES

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10066. "Instruments affecting real estate" defined—revocation. All instruments containing a power to convey, or in any manner relating to real estate, shall be held to be instruments affecting the same; and no such instrument, when certified and recorded as in this chapter prescribed, can be revoked as to third parties by any act of the parties by whom it was executed, until the instrument containing such revocation is acknowledged and filed for record in the same office in which the instrument containing such power is recorded. [C., '51, § 1226; R., '60, § 2234; C., '73, § 1969; C., '97, § 2957; 40 Ex. G. A., H. F. 77, § 1.]

10067. Corporation having seal. In the execution of any written instrument conveying, incumbering, or affecting real estate by a corporation that has adopted a corporate seal, the seal of such corporation shall be attached or affixed to such written instrument. [C., '51, § 974; R., '60, § 1823; C., '73, § 2112; C., '97, § 3068; S., '13, § 3068; 40 Ex. G. A., H. F. 77, § 2.]

10068. Corporation not having seal. If the corporation has not adopted a corporate seal, such fact shall be stated in such written instrument. [S., '13, § 3068; 40 Ex. G. A., H. F. 77, § 2.]

10069. Release of corporate lien—omission of seal. It shall not hereafter be necessary to attach or affix the corporate seal to any release or satisfaction of any mortgage, judgment, or other lien, that is made or entered by any corporation on the page of the official record where any such lien appears, but the officer executing such release or satisfaction shall therein certify that same is executed with authority of the board of directors of such corporation, and the county recorder or deputy shall attach thereto a statement showing the relation such officer then bears to the corporation. [S., '13, § 3068; 40 Ex. G. A., H. F. 77, § 2.]

10070. Contract for deed—presumption of abandonment. When the record shows that a contract or bond for a deed has been given prior to January 1, 1900, and the record discloses no performance of the same and that more than ten years have elapsed since the contract by its terms was to be performed, such contract shall be deemed abandoned and of no effect and the land freed from any lien or defect on account of such contract. [S., '13, § 2963-j; 40 Ex. G. A., H. F. 77, § 3.]

10071. Christian names—variation—effect. When there is a difference between the christian names or initials in which title is taken, and the christian names or initials of the grantor in a succeeding conveyance, and the surnames in both instances are written the same or sound the same, such conveyances or the record thereof shall be conclusive evidence that the surname in the several conveyances and instruments refers to the same person. This section shall only apply to conveyances executed prior to January 1, 1900. [S., '13, § 2963-k; 40 Ex. G. A., H. F. 77, § 4.]

10072. Assignment of certificate of entry deemed deed. When the record shows:

1. That the original entry, certificate of entry, receipt, or duplicate thereof has been assigned;

2. That prior or subsequent to such assignment, the United States or state issued a patent or conveyance to the assignor;

3. That no deed of conveyance appears on record from the original entryman or assignor to the assignee; and

4. That the present record owner holds title under such assignment—
such assignment shall have the same force and effect as a deed of conveyance and shall be conclusively presumed to carry all right, title, and interest of the patentee of said real estate, the same as though a deed of conveyance had been subsequently executed by the patentee or assignor to a subsequent grantor. [S., '13, § 2963-n; 40 Ex. G. A., H. F. 77, § 5.]

10073. Affidavits explanatory of title—presumption. Affidavits explaining any defect in the chain of title to any real estate may be recorded as instruments affecting the same, but no one except the owner in possession of such real estate shall have the right to file

such affidavit. Such affidavit or the record thereof, including all such affidavits now of record, shall raise a presumption from the date of recording that the purported facts stated therein are true; after the lapse of three years from the date of such recording, such presumption shall be conclusive. [C., '51, § 1226; R., '60, § 2234; C., '73, § 1969; C., '97, § 2957; S., '13, § 2963-i; 40 Ex. G. A., H. F. 77, § 6.]

10074. Railroad land grants—duty to record. Every railroad company which owns or claims real estate in this state, granted by the government of the United States or this state to aid in the construction of its railroad, where it has not already done so, shall place on file and cause to be recorded, in each county wherein the real estate granted is situated, evidence of its title or claim of title, whether the same consists of patents from the United States, certificates from the secretary of the interior, or governor of this state, or the proper land office of the United States or this state. Where no patent was issued, reference shall be made in said certificate to the acts of congress, and the acts of the legislature of this state, granting such lands, giving the date thereof, and date of their approval under which claim of title is made. [C., '97, § 2939; 40 Ex. G. A., H. F. 77, § 7.]

10075. Patents covering land in different counties. Where the certificate of the secretary of the interior or the patents cover real estate situated in more than one county, the secretary of state shall, upon the application of any railroad company or its grantee, prepare and furnish, to be recorded, a list of all the real estate situated in any one county so granted, patented, or certified; and all such evidences of title shall be entered by the auditor upon the index, transfer, and plat books. [C., '97, § 2939; 40 Ex. G. A., H. F. 77, § 8.]

10076. Record—constructive notice. The evidence of title shall be filed with the recorder of deeds of the county in which the real state is situated, who shall record the same, and place an abstract thereof upon the index of deeds. The recording thereof shall be constructive notice to all persons, as provided in other cases of entries upon said index, and the recorder shall receive the same fees therefor as for recording other instruments. [C., '97, § 2940; 40 Ex. G. A., H. F. 77, § 9.]

10077. Transcript of instruments. Any person interested therein may procure from any recorder in this state a transcript of any instrument affecting real estate which is of record in his office. Such transcript shall be certified by the recorder, and the clerk of the district court shall certify under the seal of his office to the signature of such recorder and his official character. [S., '13, § 2938-a; 40 Ex. G. A., H. F. 77, § 10.]

10078. Transcript recorded. A transcript of the record of any instrument affecting real estate, certified as provided in the preceding

section, shall be entitled to record in the office of the recorder of any other county in which is situated any of the real estate affected by such instrument. The effect of the recording of such transcript shall be the same as the recording of the original instrument. [S., '13, § 2938-a; 40 Ex. G. A., H. F. 77, § 11.]

10079. Grantor described as "spouse" or "heir"—presumption. All conveyances or the record title thereof of real estate executed prior to January 1, 1900, wherein the grantor or grantors described herself, himself, or themselves as the surviving spouse, heir at law, heirs at law, surviving spouse and heir at law, or surviving spouse and heirs at law, of some person deceased in whom the record title or ownership of said real estate previously vested, shall be conclusive evidence of the facts so recited as far as they relate to the right of the grantor or grantors to convey, as fully as if the record title of said grantor or grantors had been established by due probate proceedings in the county wherein the real estate is situated. [S., '13, § 2963-e; 40 Ex. G. A., H. F. 77, § 12.]

10080. Notarial seals of nonresidents—presumption. Any notarial seal purporting to have been affixed to any instrument in writing, by any notary public residing elsewhere than in this state, shall be prima facie evidence that the words thereon engraved conform to the requirements of the law of the place where such certificate purports to have been made. [S., '13, § 2943-a; 40 Ex. G. A., H. F. 77, § 13.]

10081. Records transcribed. The board of supervisors of any county may have copied, indexed, and arranged any deed, probate, mortgage, court, or county record, or government survey belonging or relating to said county, and have a complete index thereof made; and may cause any index of deeds, mortgages, or other records to be correctly copied. [R., '60, §§ 2258, 2259; C., '73, §§ 1971, 1972; C., '97, § 2961; 40 Ex. G. A., H. F. 77, § 14.]

10082. Compensation. The board of supervisors may employ any suitable person to perform the labor contemplated in the preceding section, the amount of compensation therefor to be previously fixed by them, not exceeding six cents for each one hundred words of the records proper, and twelve and one-half cents for each one hundred words of indexing. [R., '60, § 2260; C., '73, § 1973; C., '97, § 2962; 40 Ex. G. A., H. F. 77, § 15.]

10083. Certification—effect. When any such records are copied, the officer to whose office the original records belong shall compare the copy so made with the original, and when found correct, shall attach his certificate in each volume or book of such copied records, to the effect that he has compared such copies with the original and they are true and correct, and such copied records shall thereupon have the same force and effect in all respects as the original records. [R., '60, §§ 2261, 2262;

C., '73, §§ 1974, 1975; C., '97, § 2963; 40 Ex. G. A., H. F. 77, § 16.]

10084. Forms of conveyance. The following or other equivalent forms of conveyance, varied to suit circumstances, are sufficient for the purposes herein contemplated:

1. FOR A QUITCLAIM DEED

For the consideration of dollars, I hereby quitclaim to all my interest in the following tract of real estate (describing it).

2. FOR A DEED IN FEE SIMPLE WITHOUT WARRANTY

For the consideration of dollars, I hereby convey to the following tract of real estate (describing it).

3. FOR A DEED IN FEE WITH WARRANTY

The same as the last preceding form, adding the words: "And I warrant the title against all persons whomsoever" (or other words of warranty, as the party may desire).

4. FOR A MORTGAGE

The same as deed of conveyance, adding the following: "To be void upon condition that I pay", etc. [C., '51, § 1232; R., '60, § 2240; C., '73, § 1970; C., '97, § 2958; 40 Ex. G. A., H. F. 77, § 17.]

10085. Acknowledgments within state. The acknowledgment of any deed, conveyance, or other instrument in writing by which real estate in this state is conveyed or incumbered, if made within this state, must be before some court having a seal, or some judge or clerk thereof, or some county auditor, or justice of the peace within the county, or notary public within the county of his appointment or in an adjoining county in which he has filed with the clerk of the district court a certified copy of his certificate of appointment. Each of the officers above named is authorized to take and certify acknowledgments of all written instruments, authorized or required by law to be acknowledged. [C., '51, § 1217; R., '60, § 2226; C., '73, § 1955; C., '97, § 2942; S., '13, § 2942; 40 Ex. G. A., H. F. 77, § 18.]

10086. Acknowledgments outside of state. When made out of the state but within the United States, it shall be before a judge of a court of record, or officer holding the seal thereof, or a commissioner appointed by the governor of this state to take the acknowledgment of deeds, or some notary public, or justice of the peace. [R., '60, § 2245; C., '73, § 1956; C., '97, § 2943; S., '13, § 2943; 40 Ex. G. A., H. F. 77, § 19.]

10087. Certificate of authenticity. When made out of the state but within the United States and before a judge, or justice of the peace, a certificate, under the official seal of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of state of the state or

territory within which such acknowledgment was taken, under the seal of his office, of the official character of said judge, or justice, and of the genuineness of his signature, shall accompany said certificate of acknowledgment. [R., '60, § 2245; C., '73, § 1956; C., '97, § 2943; S., '13, § 2943; 40 Ex. G. A., H. F. 77, § 20.]

10088. Authorized foreign officials. The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by any person without this state and within any other state, territory, or district of the United States, may also be made before any officer of such state, territory, or district authorized by the laws thereof to take the proof and acknowledgment of deeds; and when so taken and certified as provided in the next section, may be recorded in this state, and read in evidence in the same manner and with like effect as proofs and acknowledgments taken before any of the officers named in the second preceding section. [C., '97, § 2944; 40 Ex. G. A., H. F. 77, § 21.]

10089. Certificate of authenticity. To entitle any conveyance or written instrument, acknowledged or proved under the preceding section, to be read in evidence or recorded in this state, there shall be subjoined or attached to the certificate of proof or acknowledgment signed by such officer a certificate of the secretary of state of the state or territory in which such officer resides, under the seal of such state or territory, or a certificate of the clerk of a court of record of such state, territory, or district in the county in which said officer resides or in which he took such proof or acknowledgment, under the seal of such court. Such certificate shall comply substantially with the next section. [C., '97, § 2945; 40 Ex. G. A., H. F. 77, § 22.]

10090. Form of authentication. The following form of authentication of the proof or acknowledgment of a deed or other written instrument, when taken without this state and within any other state, territory, or district of the United States, or any form substantially in compliance with the foregoing provisions of this chapter, shall be used:

(Begin with a caption specifying the state, territory or district, and county or place where the authentication is made.)

"I,, clerk of the court in and for said county, which court is a court of record, having a seal (or I,, secretary of state of such state or territory), do hereby certify that, by and before whom the foregoing acknowledgment or proof was taken, was at the time of taking the same residing
(Name of office held)

or authorized to act in said county, and was duly authorized by the laws of said state, territory, or district to take and certify acknowledgments or proofs of deeds of land in said state, territory, or district, and that said

conveyance and the acknowledgment thereof are in due form of law; and, further, that I am well acquainted with the handwriting of said, and that I verily believe that the signature to said certificate of acknowledgment or proof is genuine. In testimony whereof, I have hereunto set my hand and affixed the seal of the said court or state this day of, A. D. 19...." [C., '97, § 2946; 40 Ex. G. A., H. F. 77, § 23.]

10091. Acknowledgments outside United States. When the acknowledgment is made without the United States, it may be before any ambassador, minister, secretary of legation, consul, vice consul, charge d'affaires, consular agent, or any other officer of the United States in a foreign country who is authorized to issue certificates under the seal of the United States. [C., '73, § 1957; C., '97, § 2947; 40 Ex. G. A., H. F. 77, § 24.]

10092. Authorized alien officials. Said instruments may also be acknowledged or proved without the United States before any officer of a foreign country who is authorized by the laws thereof to certify to the acknowledgments of written documents. [C., '73, § 1957; C., '97, § 2947; 40 Ex. G. A., H. F. 77, § 25.]

10093. Certificate of authenticity. The certificate of acknowledgment by a foreign officer must be authenticated by one of the above named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments and certify thereto, and of the genuineness of his signature, and seal if he have any. [C., '73, § 1957; C., '97, § 2947; 40 Ex. G. A., H. F. 77, § 25.]

10094. Certificate of acknowledgment. The court or officer taking the acknowledgment must indorse upon the deed or instrument a certificate setting forth the following particulars:

1. The title of the court or person before whom the acknowledgment was made.
2. That the person making the acknowledgment was known to the officer taking the acknowledgment to be the identical person whose name is affixed to the deed as grantor, or that such identity was proved by at least one credible witness, naming him.
3. That such person acknowledged the execution of the instrument to be his voluntary act and deed. [C., '51, §.1219; R., '60, § 2227; C., '73, § 1958; C., '97, § 2948; 40 Ex. G. A., H. F. 77, § 26.]

10095. Proof of execution and delivery in lieu of acknowledgment. Proof of the due and voluntary execution and delivery of a deed or other instrument may be made before any officer authorized to take acknowledgments, by one competent person other than the vendee or other person to whom the instrument is executed, in the following cases:

1. If the grantor dies before making the acknowledgment.

2. If his attendance can not be procured.

3. If, having appeared, he refuses to acknowledge the execution of the instrument. [C., '51, §§ 1220, 1221; R., '60, § 2228; C., '73, § 1959; C., '97, § 2949; 40 Ex. G. A., H. F. 77, § 27.]

10096. Contents of certificate. The certificate indorsed by the officer upon a deed or other instrument thus proved must state:

1. The title of the officer taking the proof.

2. That it was satisfactorily proved that the grantor was dead, or that for some other reason his attendance could not be procured in order to make the acknowledgment, or that, having appeared, he refused to acknowledge the same.

3. The name of the witness by whom proof was made, and that it was proved by him that the instrument was executed and delivered by the person whose name is thereunto subscribed as a party. [C., '51, § 1222; R., '60, § 2230; C., '73, § 1960; C., '97, § 2950; 40 Ex. G. A., H. F. 77, § 28.]

10097. Subpoenas. An officer having power to take the proof hereinbefore contemplated may issue the necessary subpoenas, and compel the attendance of witnesses residing within the county, in the manner provided for the taking of depositions. [C., '51, § 1225; R., '60, § 2233; C., '73, § 1965; C., '97, § 2956; 40 Ex. G. A., H. F. 77, § 29.]

10098. Use of seal. The certificate of proof or acknowledgment may be given under seal or otherwise, according to the mode by which the officer making the same usually authenticates his formal acts. [C., '51, § 1223; R., '60, § 2231; C., '73, § 1961; C., '97, § 2951; 40 Ex. G. A., H. F. 77, § 30.]

10099. Married women. The acknowledgment of a married woman, when required by law, may be taken in the same form as if she were sole, and without any examination separate and apart from her husband. [C., '97, § 2960; 40 Ex. G. A., H. F. 77, § 31.]

10100. Attorney in fact. The execution of any deed, mortgage, or other instrument in writing, executed by any attorney in fact, may be acknowledged by the attorney-executing the same. [R., '60, § 2251; C., '73, § 1962; C., '97, § 2952; 40 Ex. G. A., H. F. 77, § 32.]

10101. Certificate of acknowledgment. The person taking the acknowledgment must indorse upon such instrument a certificate, setting forth the following particulars:

1. The title of the person before whom the acknowledgment was taken.

2. That the person making the acknowledgment was known to the officer taking the acknowledgment to be the identical person whose name is subscribed to the instrument as attorney for the grantor therein named, or that such identity was proved to him by at least one credible witness, to him personally known and therein named.

3. That such person acknowledged said instrument to be the act and deed of the grantor therein named, by him, as such attorney thereunto appointed, voluntarily done and executed. [R., '60, § 2252; C., '73, § 1963; C., '97, § 2953; 40 Ex. G. A., H. F. 77, § 33.]

10102. Officers of corporation. If the acknowledgment is made by the officers of a corporation, the certificate shall show that such persons as such officers, naming the office of each person, acknowledged the execution of the instrument as the voluntary act and deed of such corporation, by each of them voluntarily executed. [C., '97, § 2954; 40 Ex. G. A., H. F. 77, § 34.]

10103. Forms of acknowledgment. The following forms of acknowledgment shall be sufficient in the cases to which they are respectively applicable. In each case where one of these forms is used, the name of the state and county where the acknowledgment is taken shall precede the certificate, and the signature and official title of the officer shall follow it as indicated in the first form, and the seal of the officer shall be attached when necessary under the provision of this chapter.

1. In the case of natural persons acting in their own right:

State of }
County of } ss.

On this day of, A. D. 19...., before me, personally appeared (Insert title of acknowledging officer), to me known to be the person named in and who executed the foregoing instrument, and acknowledged that executed the same as voluntary act and deed.

.....
Notary Public in and for said county.

2. In the case of natural persons acting by attorney:

On this day of, A. D. 19...., before me, personally appeared (Insert title of acknowledging officer) to me known to be the person who executed the foregoing instrument in behalf of, and acknowledged that he executed the same as the voluntary act and deed of said

3. In the case of corporations or joint stock associations:

On this day of, A. D. 19...., before me, a (Insert title of acknowledging officer)

and for said county, personally appeared, to me personally known, who being by me duly (sworn or affirmed) did say that he is of said (association), that (Insert title of executing officer)

(the seal affixed to said instrument is the seal of said association) no seal has been procured by the said

(corporation association) and that said instrument was signed and sealed on behalf of the said (corporation association) by authority of its board of (directors trustees) and the said acknowledged the execution of said

instrument to be the voluntary act and deed of said (corporation association) by it voluntarily executed.

(In all cases add signature and title of the officer taking the acknowledgment, and strike from between the parentheses the word or clause not used, as the case may be.) [C., '97, § 2959; 40 Ex. G. A., H. F. 77, § 35:]

10104. Liability of officer. Any officer, who knowingly misstates a material fact in either of the certificates mentioned in this chapter, shall be liable for all damages caused thereby, and shall be guilty of a misdemeanor, and fined any sum not exceeding the value of the property conveyed or otherwise affected by the instrument on which such certificate is indorsed. [C., '51, § 1224; R., '60, § 2232; C., '73, § 1964; C., '97, § 2955; 40 Ex. G. A., H. F. 77, § 36.]

10105. Recording. No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration, without notice, unless filed in the office of the recorder of the county in which the same lies, as hereinafter provided. [C., '51, § 1211; R., '60, § 2220; C., '73, § 1941; C., '97, § 2925; 40 Ex. G. A., H. F. 77, § 37.]

10106. Acknowledgment as condition precedent. It shall not be deemed lawfully recorded, unless it has been previously acknowledged or proved in the manner prescribed in this chapter, except that affidavits need not be thus acknowledged. [C., '51, § 1212; R., '60, § 2221; C., '73, § 1942; C., '97, § 2926; 40 Ex. G. A., H. F. 77, § 38.]

10107. Assignment by separate instrument. Recorded mortgages upon real estate may be assigned of record by the mortgagee or the record holder thereof, by the execution of an appropriate written instrument duly acknowledged and recorded in the county in which such real estate is situated. [40 Ex. G. A., H. F. 77, § 39.]

10108. Assignment by marginal entry. If such mortgage is recorded, an assignment thereof may be made by the mortgagee or the record holder of such mortgage executing an assignment on the margin of the record of such mortgage, and the assignor shall be identified and his signature to such assignment witnessed and attested by the recorder or his deputy. [40 Ex. G. A., H. F. 77, § 39.]

10109. Index books. The recorder must keep index books, the pages of which are so divided as to show in parallel columns:

1. Each grantor.
2. Each grantee.
3. The time when the instrument was filed.
4. The date of the instrument.
5. The nature of the instrument.
6. The book and page where the record thereof may be found.
7. The description of the real estate conveyed. [C., '51, § 1213; R., '60, § 2222; C., '73, § 1943; C., '97, § 2935; S., '13, § 2935; 40 Ex. G. A., H. F. 77, § 40.]

10110. Index for affidavits. In case of affidavits each and every affidavit filed for record shall be indexed in appropriately ruled columns as follows:

Concerning Lands in										
Affidavit of	Concerning Whom	Lot	Blk.	Addition	Town	Sec.	Twp.	Rng.	Remarks	

Affiant	Date of filing				Date of Instrument				Where Recorded	
	Month	Day	Year	Hour A M.P.M.	Month	Day	Year	Book	Page	

[S., '13, § 2935; 40 Ex. G. A., H. F. 77, § 41.]

10111. Separate indexes required. Separate index books shall be kept for mortgages and satisfactions or releases of same, one for those containing descriptions of lots, and one for those containing land; and separate books for other conveyances of real estate, one for lots, and one for lands; and an index book shall be kept for powers of attorney and affidavits; all of above indexes to be arranged alphabetically as provided in the next section. [S., '13, § 2935; 40 Ex. G. A., H. F. 77, § 42.]

10112. Alphabetical arrangement. The entries in such book shall show the names of the respective grantors and grantees, arranged in alphabetical order. When such instrument is executed by an administrator, executor, guardian, referee, commissioner, receiver, sheriff, or other person acting in a representative capacity, the recorder shall enter upon the index book the name and representative capacity of each person executing the instrument and the owner of the property if disclosed therein. [C., '51, § 1215; R., '60, § 2224; C., '73, § 1945; C., '97, § 2937; 40 Ex. G. A., H. F. 77, § 43.]

10113. Town lot deeds and mortgages. The recorder shall index and record all deeds, mortgages, and other instruments affecting lots in cities, towns, or villages, the plats whereof are recorded, in separate books from those in which other conveyances of real estate are recorded. [R., '60, § 2241; C., '73, § 1947; C., '97, § 2941; S., '13, § 2941; 40 Ex. G. A., H. F. 77, § 44.]

10114. Deeds covering both lands and lots. Where any instrument contains a description of land or lots in cities, towns, or villages, the plats whereof are recorded, and other land, he shall record such instrument in but one record and charge but one fee, but shall index in both land and town lot indexes. [S., '13, § 2941; 40 Ex. G. A., H. F. 77, § 45.]

10115. Filing and indexing—constructive notice. The recorder must indorse upon every instrument properly filed for record in his office, the day, hour, and minute of such filing, and forthwith enter in the index book the entries required to be made therein, except the book and page where the complete record will appear, and such filing and indexing shall constitute constructive notice to all persons of the rights of the grantees conferred by such instruments. [C., '51, § 1214; R., '60, § 2223; C., '73, § 1944; C., '97, § 2936; 40 Ex. G. A., H. F. 77, § 46.]

10116. Entry on auditor's transfer books. The recorder shall not record any deed or other instrument unconditionally conveying real estate until the proper entries have been made upon the transfer books in the auditor's office, and indorsement made upon the deed or other instrument properly dated and officially signed, in substantially the following form:
Entered upon transfer books and for tax-

tion this day of
19..... My fee 25c paid by recorder.

Auditor.
[C., '73, §§ 1952, 1953; C., '97, §§ 2932, 2934; 40 Ex. G. A., H. F. 77, § 47.]

10117. Recorder to collect fee and deliver to auditor. At the time of filing any deed or other instrument mentioned in the preceding section, the recorder shall collect from the person filing the same the recording fee provided by law, also the auditor's transfer fee, and forthwith deliver the deed and the transfer fee to the county auditor, after indorsing upon said instrument the following:

Filed for record, indexed, and delivered to county auditor this day of
19....., at o'clockM. Recorder's and auditor's fee \$. paid.

Recorder.
[40 Ex. G. A., H. F. 77, § 48.]

10118. Final record. Every such instrument shall be recorded, as soon as practicable, in a suitable book to be kept by the recorder for that purpose; after which he shall complete the entries aforesaid so as to show the book and page where the record is to be found. [C., '51, § 1216; R., '60, § 2225; C., '73, § 1946; C., '97, § 2938; 40 Ex. G. A., H. F. 77, § 49.]

10119. Transfer and index books. The county auditor shall keep in his office books for the transfer of real estate, which shall consist of a transfer book, index book, and plat book. [C., '73, § 1948; C., '97, § 2927; 40 Ex. G. A., H. F. 77, § 51.]

10120. Form of transfer book. Said transfer book shall be ruled and headed substantially after the following form; and entries therein shall be in numerical order, beginning with section one:

Section No., Township....., Range.....

Grantee	Grantor	Date of instrument	Description	Page of plats
.....
.....
.....
.....
.....

[C., '73, § 1949; C., '97, § 2928; 40 Ex. G. A., H. F. 77, § 52.]

10121. Form of index book. Said index book shall be ruled and headed substantially after the following form:

NAMES OF GRANTEES	PAGES OF TRANSFER BOOK
.....
.....
.....
.....

[C., '73, § 1949; C., '97, § 2928; 40 Ex. G. A., H. F. 77, § 53.]

10122. Book of plats—how kept. The auditor shall keep the book of plats so as to show

the number of lot and block, or township and range, divided into sections and subdivisions as occasion may require, and shall designate thereon each piece of real estate, and mark in pencil the name of the owner thereon, in a legible manner; which plats shall be lettered or numbered so that they may be conveniently referred to by the memoranda of the transfer book, and shall be drawn on the scale of not less than four inches to the mile. [C., '73, § 1950; C., '97, § 2929; 40 Ex. G. A., H. F. 77, § 54.]

10123. Entries of transfers. When a deed of unconditional conveyance of real estate or transcript of decree in a partition proceeding is presented, the auditor shall enter in the index book, in alphabetical order, the name of the grantee, and opposite thereto the number of the page of the transfer book on which such transfer is made; and upon the transfer book he shall enter in the proper columns the name of the grantee, the grantor, date, and character of the instrument, the description of the real estate, and the number or letter of the plat on which the same is marked. [C., '73, § 1951; C., '97, § 2930; S., '13, § 2930; 40 Ex. G. A., H. F. 77, § 55.]

10124. Council's approval of certain plats. No conveyances or plats of additions to any city or town or subdivision of any lands lying within or adjacent to any city or town in which streets and alleys and other public grounds are sought to be dedicated to public use, or other conveyances in which streets and alleys are sought to be conveyed to such city or town,

shall be so entered, unless such conveyances, plats, or other instruments have indorsed thereon the approval of the council of such city or town, the certificates of such approval to be made by the city clerk. [S., '13, § 2930; 40 Ex. G. A., H. F. 77, § 56.]

10125. Title decree—entry on transfer books. Upon receipt of a certificate from the clerk of the district or supreme court, that the title to real estate has been finally established in any named person by judgment or decree of said court, or by will, the auditor shall enter the same upon the transfer books, upon payment of a fee of twenty-five cents, which fee shall be taxed as costs in the cause, collected by the clerk, and paid to the auditor at the time of filing such certificate. [C., '97, § 2931; 40 Ex. G. A., H. F. 77, § 57.]

10126. Correction of books and instruments. The auditor from time to time shall correct any error appearing in the transfer books, and shall notify the grantee of any error in description discovered in any instrument filed for transfer, and permit the same to be corrected by the parties before completing such transfer. [C., '73, § 1954; C., '97, § 2933; 40 Ex. G. A., H. F. 77, § 58.]

10127. Perpetuities prohibited. Every disposition of property is void which suspends the absolute power of controlling the same, for a longer period than during the lives of persons then in being, and twenty-one years thereafter. [C., '51, § 1191; R., '60, § 2199; C., '73, § 1920; C., '97, § 2901.]

CHAPTER 440

OCCUPYING CLAIMANTS

- 10128. Right to improvements.
- 10129. "Color of title" defined.
- 10130. Petition—trial—appraisalment.
- 10131. Rights of parties to property.

- 10132. Tenants in common.
- 10133. Waste by claimant.
- 10134. Option to remove improvements.

10128. Right to improvements. Where an occupant of real estate has color of title thereto and has in good faith made valuable improvements thereon, and is thereafter adjudged not to be the owner, no execution shall issue to put the owner of the land in possession of the same, after the filing of a petition as hereinafter provided, until the provisions of this chapter have been complied with. [C., '51, § 1233; R., '60, § 2264; C., '73, § 1976; C., '97, § 2964; 40 Ex. G. A., H. F. 78, § 1.]

10129. "Color of title" defined. Persons of each of the classes hereinafter enumerated shall be deemed to have color of title within the meaning of this chapter, but nothing contained herein shall be construed as giving a tenant color of title against his landlord:

1. *Purchaser at judicial or tax sale.* A purchaser in good faith at any judicial or tax sale made by the proper officer, whether said officer

had sufficient authority to make said sale or not, unless want of authority in such officer was known to the purchaser at the time of the sale.

2. *Occupancy for five years.* A person who has by himself or together with those under whom he claims, occupied the premises for a period of five years continuously.

3. *Occupancy and improvements.* A person whose occupancy of the premises has been for a shorter period than five years, if during such occupancy the occupant or those under whom he claims have, with the knowledge or consent of the real owner, express or implied, made any valuable improvements thereon.

4. *Occupancy and payment of taxes.* A person whose occupancy of the premises has been for a shorter period than five years, if such occupant or those under whom he claims have at any time during such occupancy paid the ordinary county taxes thereon for any one

year, and two years have elapsed without a repayment or offer of repayment of the same by the owner thereof, and such occupancy has continued to the time the action is brought by which the recovery of the real estate is obtained.

5. *Occupancy under state or federal law or contract.* A person who has settled upon any real estate and occupied the same for three years under or by virtue of any law, or contract with the proper officers of the state or of the United States for the purchase thereof and shall have made valuable improvements thereon. [C., '51, §§ 1239, 1240; R., '60, §§ 2268, 2269; C., '73, §§ 1982-1984; C., '97, §§ 2967, 2968; 40 Ex. G. A., H. F. 78, § 2.]

10130. *Petition—trial—appraisement.* The petition of the occupant must set forth the grounds upon which he seeks relief, and state as accurately as practicable the value of the real estate, exclusive of the improvements made thereon by the claimant or his grantors, and the value of such improvements. The issue joined thereon must be tried as in ordinary actions and the value of the real estate and of such improvements separately ascertained. [C., '51, §§ 1234, 1235; R., '60, §§ 2265, 2266; C., '73, §§ 1977, 1978; C., '97, § 2965; 40 Ex. G. A., H. F. 78, § 3.]

10131. *Rights of parties to property.* The owner of the land may thereupon pay to the clerk of the court, for the benefit of the occupying claimant, the appraised value of the improvements and take the property and an execution may issue for the purpose of putting the owner of the land in possession thereof. Should he fail to make such payment within such reasonable time as the court may fix, the occupying claimant may pay to the clerk of the

court, within such time as the court may fix, for the use of the owner of the land, the value of the property exclusive of the improvements and take and retain the property together with the improvements. [C., '51, §§ 1236-1238, 1243; R., '60, §§ 2267, 2272; C., '73, §§ 1979-1981, 1986; C., '97, §§ 2966, 2970; 40 Ex. G. A., H. F. 78, § 4.]

10132. *Tenants in common.* Should the owner of the land fail to pay for the improvements and the occupying claimant fail to pay for the land within the time fixed by the court as provided in the preceding section, the parties shall be held to be tenants in common of all the real estate including the improvements, each holding an undivided interest proportionate to the values ascertained on the trial. [C., '51, §§ 1236-1238; R., '60, § 2267; C., '73, §§ 1979-1981; C., '97, § 2966; 40 Ex. G. A., H. F. 78, § 5.]

10133. *Waste by claimant.* If the occupying claimant has committed any injury to the real estate by cutting timber or otherwise, the owner may set the same off against any claim for improvements made by such claimant. [C., '51, § 1241; R., '60, § 2270; C., '73, § 1985; C., '97, § 2969; 40 Ex. G. A., H. F. 78, § 6.]

10134. *Option to remove improvements.* Any person having improvements on any real estate granted to the state in aid of any work of internal improvement, whose title thereto is questioned by another, may remove such improvements without other injury to such real estate at any time before he is evicted therefrom, or he may have the benefit of this chapter by proceeding as herein directed. [C., '73, § 1987; C., '97, § 2971; 40 Ex. G. A., H. F. 78, § 7.]

CHAPTER 441

HOMESTEAD

- 10135. "Homestead" defined.
- 10136. Extent and value.
- 10137. Dwelling and appurtenances.
- 10138. Selecting—platting.
- 10139. Platted by officer having execution.
- 10140. Platting under order of court.
- 10141. Changes.
- 10142. Referees to determine exemption.
- 10143. Referring back—marking off—costs.
- 10144. Change of circumstances.
- 10145. Occupancy by surviving spouse.

- 10146. Life possession in lieu of dower.
- 10147. Conveyance or incumbrance.
- 10148. Devise.
- 10149. Removal of spouse or children.
- 10150. Exemption—divorced spouse.
- 10151. "Family" defined.
- 10152. Descent.
- 10153. Exemption in hands of issue.
- 10154. New homestead exempt.
- 10155. Debts for which homestead liable.

10135. *"Homestead" defined.* The homestead must embrace the house used as a home by the owner, and, if he has two or more houses thus used, he may select which he will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead. [C., '51, §§ 1250, 1251; R., '60, §§ 2282,

2283; C., '73, §§ 1994, 1995; C., '97, § 2977; 40 G. A., ch. 237, § 1.]

10136. *Extent and value.* If within a city or town plat, it must not exceed one-half acre in extent, otherwise it must not contain in the aggregate more than forty acres, but if, in either case, its value is less than five hundred dollars, it may be enlarged until it reaches that

amount. [C., '51, § 1252; R., '60, § 2284; C., '73, § 1996; C., '97, § 2978; S., '13, § 2978; 40 G. A., ch. 237, § 2.]

10137. Dwelling and appurtenances. It must not embrace more than one dwelling house, or any other buildings except such as are properly appurtenant thereto, but a shop or other building situated thereon, actually used and occupied by the owner in the prosecution of his ordinary business, and not exceeding three hundred dollars in value, is appurtenant thereto. [C., '51, § 1253; R., '60, § 2285; C., '73, § 1997; C., '97, § 2978; S., '13, § 2978; 40 G. A., ch. 237, § 2.]

10138. Selecting—platting. The owner, husband, or wife, may select the homestead and cause it to be platted, but a failure to do so shall not render the same liable when it otherwise would not be, and a selection by the owner shall control. When selected, it shall be marked off by permanent, visible monuments, and the description thereof shall give the direction and distance of the starting point from some corner of the dwelling, which description, with the plat, shall be filed and recorded by the recorder of the proper county in the homestead book, which shall be, as nearly as may be, in the form of the record books for deeds, with an index kept in the same manner. [C., '51, §§ 1254, 1255; R., '60, §§ 2286, 2287; C., '73, §§ 1998, 1999; C., '97, § 2979; S., '13, § 2979; 40 G. A., ch. 237, § 3.]

10139. Platted by officer having execution. Should the homestead not be platted and recorded at the time levy is made upon real property in which a homestead is included, the officer having the execution shall give notice in writing to said owner, and the husband or wife of such owner, if found within the county, to plat and record the same within ten days after service thereof; after which time said officer shall cause said homestead to be platted and recorded as above, and the expense thereof shall be added to the costs in the case. [C., '51, § 1254; R., '60, § 2286; C., '73, § 1998; S., '13, § 2979; 40 G. A., ch. 237, § 4.]

10140. Platting under order of court. Upon application made to the district court by any creditor of the owner of the homestead, or other person interested therein, such court shall hear the cause upon the proof offered, and fix and establish the boundaries thereof, and the judgment therein shall be filed and recorded in the manner provided in the preceding section. [C., '97, § 2980; 40 G. A., ch. 237, § 5.]

10141. Changes. The owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well as the record of the plat and description, or vacate it, but such changes shall not prejudice conveyances or liens made or created previously thereto, and no such change of the entire homestead, made without the concurrence of the husband or wife, shall affect his or her

rights, or those of the children. [C., '51, §§ 1256, 1257; R., '60, §§ 2288, 2289; C., '73, §§ 2000, 2001; C., '97, § 2981; 40 G. A., ch. 237, § 6.]

10142. Referees to determine exemption. When a disagreement takes place between the owner and any person adversely interested, as to whether any land or buildings are properly a part of the homestead, the sheriff shall, at the request of either party, summon nine disinterested persons having the qualifications of jurors. The parties then, commencing with the owner, shall in turn strike off one person each, until three remain. Should either party fail to do so, the sheriff may act for him, and the three as referees shall proceed to examine and ascertain all the facts of the case, and report the same, with their opinion thereon, to the next term of court from which the execution or other process may have issued. [C., '51, §§ 1258, 1259; R., '60, §§ 2290, 2291; C., '73, §§ 2002, 2003; C., '97, § 2982; 40 G. A., ch. 237, § 7.]

10143. Referring back—marking off—costs. The court in its discretion may refer the whole or any part of the matter back to the same or other referees, to be selected in the same manner, or as the parties agree, giving them directions as to the report required of them. When the court is sufficiently advised in the case, it shall make its decision, and may direct the homestead to be marked off anew, or a new plat and description to be made and recorded, and take such other steps as shall be lawful and expedient in attaining the purpose of this chapter. It shall also award costs in accordance with the practice in other cases, as nearly as may be. [C., '51, §§ 1260, 1261; R., '60, §§ 2292, 2293; C., '73, §§ 2004, 2005; C., '97, § 2983; 40 G. A., ch. 237, § 8.]

10144. Change of circumstances. The extent or appurtenances of the homestead thus established may be called in question in like manner, whenever a change in value or circumstances will justify such new proceedings. [C., '51, § 1262; R., '60, § 2294; C., '73, § 2006; C., '97, § 2984; 40 G. A., ch. 237, § 9.]

10145. Occupancy by surviving spouse. Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law, but the setting off of the distributive share of the husband or wife in the real estate of the deceased shall be such a disposal of the homestead as is herein contemplated. [C., '51, § 1263; R., '60, § 2295; C., '73, §§ 2007, 2008; C., '97, § 2985; 40 G. A., ch. 237, § 10.]

10146. Life possession in lieu of dower. The survivor may elect to retain the homestead for life in lieu of such share in the real estate of the deceased. [C., '73, § 2008; C., '97, § 2985; 40 G. A., ch. 237, § 11.]

10147. Conveyance or incumbrance. No conveyance or incumbrance of, or contract to

convey or encumber the homestead, if the owner is married, is valid, unless the husband and wife join in the execution of the same joint instrument, whether the homestead is exclusively the subject of the contract or not; but such contracts may be enforced as to real estate other than the homestead at the option of the purchaser or incumbrancer. [C., '51, § 1247; R., '60, § 2279; C., '73, § 1990; C., '97, § 2974; 40 G. A., ch. 237 § 12.]

10148. Devise. Subject to the rights of the surviving husband or wife, the homestead may be devised like other real estate of the testator. [C., '51, § 1266; R., '60, § 2298; C., '73, § 2010; C., '97, § 2987; 40 G. A., ch. 237, § 13.]

10149. Removal of spouse or children. Neither husband nor wife can remove the other nor the children from the homestead without the consent of the other. [C., '51, § 1462; R., '60, § 2514; C., '73, § 2215; C., '97, § 3166; 40 G. A., ch. 237, § 14.]

10150. Exemption—divorced spouse. The homestead of every family, whether owned by the husband or wife, is exempt from judicial sale, where there is no special declaration of statute to the contrary, and such right shall continue in favor of the party to whom it is adjudged by divorce decree during continued personal occupancy by such party. [C., '51, § 1245; R., '60, § 2277; C., '73, § 1988; C., '97, §§ 2972, 2973; 40 G. A., ch. 237, § 15.]

10151. "Family" defined. A widow or widower, though without children, shall be deemed a family within the meaning of this chapter, while continuing to occupy the real estate used as a homestead at the death of the husband or wife. [C., '51, § 1246; R., '60, § 2278; C., '73, § 1989; C., '97, § 2973; 40 G. A., ch. 237, § 16.]

10152. Descent. If there be no survivor, the homestead descends to the issue of either husband or wife according to the rules of

descent, unless otherwise directed by will. [C., '51, § 1264; R., '60, § 2296; C., '73, § 2008; C., '97, § 2985; 40 G. A., ch. 237, § 11.]

10153. Exemption in hands of issue. Where the homestead descends to the issue of either husband or wife the same shall be held by such issue exempt from any antecedent debts of their parents or their own, except those of the owner thereof contracted prior to its acquisition. [C., '51, § 1264; R., '60, § 2296; C., '73, § 2008; C., '97, § 2985; 40 G. A., ch. 237, § 17.]

10154. New homestead exempt. Where there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been. [C., '51, § 1257; R., '60, § 2289; C., '73, § 2001; C., '97, § 2981; 40 G. A., ch. 237, § 18.]

10155. Debts for which homestead liable. The homestead may be sold to satisfy debts of each of the following classes:

1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt.

3. Those incurred for work done or material furnished exclusively for the improvement of the homestead.

4. If there is no survivor or issue, for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead. [C., '51, §§ 1248, 1249, 1265; R., '60, §§ 2280, 2281, 2297; C., '73, §§ 1991-1993, 2009; C., '97, §§ 2975, 2976, 2986; 40 G. A., ch. 237, § 19.]

CHAPTER 442

LANDLORD AND TENANT

10156. Apportionment of rent.
 10157. Double rental value—liability.
 10158. Attornment to stranger.
 10159. Tenant at will—notice to quit.

10160. Termination of farm tenancies.
 10161. Agreement for termination.
 10162. Notice—how served.

10156. Apportionment of rent. The executor of a tenant for life who leases real estate so held, and dies on or before the day on which the rent is payable, and a person entitled to rent dependent on the life of another may recover the proportion of rent which had accrued at the time of the death of such life tenant. [C., '51, § 1267; R., '60, § 2299; C., '73, § 2011; C., '97, § 2988; 40 G. A., ch. 238, § 1.]

10157. Double rental value—liability. A tenant giving notice of his intention to quit leased premises at a time named, and holding over after such time, and a tenant or his assignee wilfully holding over after the term, and after notice to quit, shall pay double the rental value thereof during the time he holds over to the person entitled thereto. [C., '51, § 1268; R., '60, § 2300; C., '73, § 2012; C., '97, § 2989; 40 G. A., ch. 238, § 2.]

10158. Attornment to stranger. The payment of rent, or delivery of possession of leased premises, to one not the lessor, is void, and shall not affect the rights of such lessor, unless made with his consent, or in pursuance of a judgment or decree of court or judicial sale to which the lessor was a party. [C., '51, § 1269; R., '60, § 2301; C., '73, § 2013; C., '97, § 2990; 40 G. A., ch. 238, § 3.]

10159. Tenant at will—notice to quit. Any person in the possession of real estate, with the assent of the owner, is presumed to be a tenant at will until the contrary is shown, and thirty days' notice in writing must be given by either party before he can terminate such a tenancy; but when in any case, a rent is reserved payable at intervals of less than thirty days, the length of notice need not be greater than such interval. [C., '51, §§ 1208, 1209; R., '60, §§ 2216, 2218; C., '73, §§ 2014, 2015; C., '97, § 2991; 40 G. A., ch. 238, § 4.]

10160. Termination of farm tenancies. In case of tenants occupying and cultivating farms, the notice must fix the termination of

the tenancy to take place on the first day of March, except in cases of mere croppers, whose leases shall be held to expire when the crop is harvested; if the crop is corn, it shall not be later than the first day of December, unless otherwise agreed upon. [R., '60, § 2218; C., '73, § 2015; C., '97, § 2991; 40 G. A., ch. 238, § 5.]

10161. Agreement for termination. Where an agreement is made fixing the time of the termination of the tenancy, whether in writing or not, it shall cease at the time agreed upon, without notice. [R., '60, § 2218; C., '73, § 2015; C., '97, § 2991; 40 G. A., ch. 238, § 6.]

10162. Notice—how served. When a tenant can not be found in the county, the notice above required may be given to any subtenant or other person in possession of the premises, or, if the premises be vacant, by affixing the notice to any outside door of the dwelling house thereon, or other building, if there be no dwelling house, or in some conspicuous position on the premises, if there be no building. [C., '73, § 2016; C., '97, § 2991; 40 G. A., ch. 238, § 7.]

CHAPTER 443

WALLS IN COMMON

10163. Resting wall on neighbor's land.
10164. Contribution by adjoining owner.
10165. Openings in walls.
10166. Repairs—apportionment.
10167. Beams, joists, and flues.
10168. Increasing height of wall.

10163. Resting wall on neighbor's land. Where building lots have been surveyed and plats thereof recorded, anyone who is about to build contiguous to the land of another may, if there be no wall on the line between them, build a brick or stone wall thereon, when the whole thickness of such wall above the cellar wall does not exceed eighteen inches exclusive of the plastering, and rest one-half thereof on the adjoining land, but the adjoining owner shall not be compelled to contribute to the expense of building said wall. [R., '60, § 1914; C., '73, § 2019; C., '97, § 2994.]

10164. Contribution by adjoining owner. If the adjoining owner contributes one-half of the expense of building such wall, then it is a wall in common between them, but if he refuses to contribute, he shall have the right to make it a wall in common by paying to the person who erected or maintained it one-half of its appraised value at the time of using it. [R., '60, § 1915; C., '73, § 2020; C., '97, § 2995.]

10165. Openings in walls. No wall shall be built by any person partly on the land of another with any openings therein, and every separating wall between buildings shall, as high as the upper part of the first story, be presumed to be a wall in common, if there

10169. Rebuilding in order to heighten.
10170. Heightened wall made common.
10171. Paying for share of adjoining wall.
10172. Openings in walls—fixtures.
10173. Disputes—delay—bonds.
10174. Special agreements—evidence.

be no titles, proof or mark to the contrary, and if any wall is erected which, under the provisions of this chapter, becomes, or may become, at the option of another, a wall in common, such person shall not be compelled to contribute to the expense of closing any openings therein, but this shall be done at the expense of the owner of such wall. [R., '60, § 1916; C., '73, § 2021; C., '97, § 2996.]

10166. Repairs—apportionment. The repairs and rebuilding of walls in common are to be made at the expense of all who have a right to them, and in proportion to the interest of each therein, but every coproprietor of a wall in common may be exonerated from contributing to the same by giving up his right in common, if no building belonging to him is actually supported by such wall. [R., '60, § 1917; C., '73, § 2022; C., '97, § 2997.]

10167. Beams, joists, and flues. Every coproprietor may build against a wall held in common, and cause beams or joists to be placed therein; and any person building such a wall shall, on being requested by his coproprietor, make the necessary flues, and leave the necessary bearings for joists or beams, at such height and distance apart as shall be specified by his coproprietor. [R., '60, § 1918; C., '73, § 2023; C., '97, § 2998.]

10168. Increasing height of wall. Every coproprietor may increase the height of a wall in common at his sole expense, and he shall repair and keep in repair that part of the same above the part held in common. [R., '60, § 1919; C., '73, § 2024; C., '97, § 2999.]

10169. Rebuilding in order to heighten. If the wall so held in common can not support the wall to be raised upon it, one who wishes to have it made higher must rebuild it anew and at his own expense, and the additional thickness of the wall must be placed entirely on his own land. [R., '60, § 1920; C., '73, § 2025; C., '97, § 2999.]

10170. Heightened wall made common. The person who did not contribute to the heightening of a wall held in common may cause the raised part to become common by paying one-half of the appraised value of raising it, and half the value of the ground occupied by the additional thickness thereof, if any ground was so occupied. [R., '60, § 1921; C., '73, § 2026; C., '97, § 2999.]

10171. Paying for share of adjoining wall. Every proprietor joining a wall has the right of making it a wall in common, in whole or in part, by repaying to the owner thereof one-half of its value, or one-half of the part which he wishes to hold in common, and one-half of the value of the ground on which it is built, if the person who has built it has laid the foundation entirely upon his own ground. [R., '60, § 1922; C., '73, § 2027; C., '97, § 3000.]

10172. Openings in walls—fixtures. Adjoining owners of walls held in common shall not

make openings or cavities therein, nor affix nor attach thereto any work or structure, without the consent of the other, or upon his refusal, without having taken all necessary precautions to guard against injury to the rights of the other, to be ascertained by persons skilled in building. [R., '60, § 1923; C., '73, § 2028; C., '97, § 3001.]

10173. Disputes—delay—bonds. No dispute between adjoining owners as to the amount to be paid by one or the other, by reason of any of the matters provided in this chapter, shall delay the execution of the provisions of the same, if the party on whom the claim is made shall enter into bonds, with security, to the satisfaction of the clerk of the district court of the proper county, conditioned that he shall pay to the claimant whatever may be found to be his due on the settlement of the matter between them, either in a court of justice or elsewhere; upon the presentation of such a bond, the clerk shall indorse his approval thereon, and retain the same until demanded by the party for whose benefit it is executed. [R., '60, § 1924; C., '73, § 2029; C., '97, § 3002.]

10174. Special agreements—evidence. This chapter shall not prevent adjoining proprietors from entering into special agreements about walls on the lines between them, but no evidence thereof shall be competent unless in writing, signed by the parties thereto or their lawfully authorized agents, or the guardian of either, if a minor, who shall have full authority to act for his ward in all matters relating to walls in common without an order of court therefor. [R., '60, § 1925; C., '73, § 2030; C., '97, § 3003.]

CHAPTER 444

EASEMENTS

10175. Adverse possession—"use" as evidence.
 10176. Light and air.
 10177. Footway.
 10178. Notice to prevent acquisition.

10175. Adverse possession—"use" as evidence. In all actions hereafter brought, in which title to any easement in real estate shall be claimed by virtue of adverse possession thereof for the period of ten years, the use of the same shall not be admitted as evidence that the party claimed the easement as his right, but the fact of adverse possession shall be established by evidence distinct from and independent of its use, and that the party against whom the claim is made had express notice thereof; and these provisions shall apply to public as well as private claims. [C., '73, § 2031; C., '97, § 3004.]

10176. Light and air. Whoever has erected, or may erect, any house or other building near the land of another person, with windows overlooking such land, shall not, by the mere

10179. Effect of notice.
 10180. Notice, service, and record.
 10181. Evidence.
 10182. Action to establish.

continuance of such windows, acquire any easement of light or air, so as to prevent the erection of any building on such land. [C., '73, § 2032; C., '97, § 3005.]

10177. Footway. No right of footway, except claimed in connection with a right to pass with carriages, shall be acquired by prescription or adverse use for any length of time. [C., '73, § 2033; C., '97, § 3006.]

10178. Notice to prevent acquisition. When any person is in the use of a way, privilege, or other easement in the land of another, the owner of the land in such case may give notice in writing to the person claiming or using the way, privilege, or easement of his intention to dispute any right arising from such claim or use. [C., '73, § 2034; C., '97, § 3007.]

10179. Effect of notice. Said notice, when served and recorded as hereinafter provided, shall be an interruption of such use, and prevent the acquiring of any right thereto by the continuance thereof. [C., '73, § 2034; C., '97, § 3007.]

10180. Notice, service, and record. Said notice, signed by the owner of the land, his agent, or guardian, may be served in the same manner as in a civil action, upon the party, his agent, or guardian, if within this state, other wise on the tenant or occupant, if there be any, and it, with the return thereof, shall be recorded within three months thereafter in the recorder's office of the county in which the

land is situated. [C., '73, § 2034; C., '97, § 3007.]

10181. Evidence. A certified copy of such record of said notice and the officer's return thereon shall be evidence of the notice and the service thereof. [C., '73, § 2034; C., '97, § 3007.]

10182. Action to establish. When notice is given to prevent the acquisition of a right to a way or other easement, it shall be considered so far a disturbance thereof as to enable the party claiming to bring an action for disturbing the same in order to try such right, and if the plaintiff in the action prevails, he shall recover costs. [C., '73, § 2035; C., '97, § 3008.]

CHAPTER 445

GIFTS

10183. Churches may lease.
10184. Taxation.
10185. Gifts to state.
10186. Management of property.
10187. Gifts to state institutions.
10188. Gifts to municipal corporations.
10189. Trustees appointed by court—bond.
10190. Tax voted to maintain.

10191. Amount of levy.
10192. Disbursements.
10193. Tax discontinued.
10194. Condition as to annuity.
10195. Annuity tax.
10196. Limitation on acceptance.
10197. Surplus of tax.

10183. Churches may lease. Church organizations, occupying real property granted to them by the territory or state, may lease the same for business purposes, and occupy other real property with their church edifices, but all of the income derived from such leased real property shall be devoted to maintaining the religious exercises and ordinance of the church to which the grant was originally made, and to no other purpose; and such churches and their affairs shall remain in the control of boards of trustees regularly chosen in accordance with their charters. [C., '73, § 1921; C., '97, § 2902.]

10184. Taxation. Real property so leased shall in all cases be subject to taxation, the same as the real property of natural persons. [C., '73, § 1921; C., '97, § 2902.]

10185. Gifts to state. A gift, devise, or bequest of property, real or personal, may be made to the state, to be held in trust for and applied to any specified purpose within the scope of its authority, but the same shall not become effectual to pass the title in such property unless accepted by the executive council in behalf of the state. [C., '73, § 1387; C., '97, § 2903; 40 G. A., ch. 239, § 1.]

10186. Management of property. If gifts are made to the state in accordance with the preceding section, for the benefit of an institution thereof, the property, if accepted, shall be held and managed in the same way as other property of the state, acquired for or devoted to the use of such institution; and any conditions attached to such gift shall become bind-

ing upon the state, upon the acceptance thereof. [C., '97, § 2904; 40 G. A., ch. 239, § 2.]

10187. Gifts to state institutions. Gifts, devises, or bequests of property, real or personal, made to any state institution for purposes not inconsistent with the objects of such institution, may be accepted by its governing board, and such board may exercise such powers with reference to the management, sale, disposition, investment, or control of property so given, devised, or bequeathed, as may be deemed essential to its preservation and the purposes for which the gift, devise, or bequest was made. [S., '13, § 2904-a; 40 G. A., ch. 239, § 3.]

10188. Gifts to municipal corporations. Counties, cities, towns, and civil townships wholly outside of any city or town, and school corporations, are authorized to take and hold property, real and personal, by gift and bequest; and to administer the same through the proper officer in pursuance of the terms of the gift or bequest. No title shall pass unless accepted by the governing board of the corporation or township. Conditions attached to such gifts or bequests become binding upon the corporation or township upon acceptance thereof. [C., '97, §§ 740, 2903, 2904; S., '13, § 740; 40 G. A., ch. 239, § 4.]

10189. Trustees appointed by court—bond. When made for the establishing of institutions of learning or benevolence, and no provision is made in the gift or bequest for the execution of the trust, the judge of the district court having charge of the probate proceedings in the county shall appoint three trustees, resi-

dents of said county, who shall have charge and control of the same, and who shall continue to act until removed by the court. They shall give bond as required in case of executors, and be subject to the orders of said court. [C., '97, § 740; S., '13, § 740; 40 G. A., ch. 239, § 5.]

10190. Tax voted to maintain. When any county, city, or town shall receive by gift or devise, property, real or personal, for the purpose of establishing any institution of benevolence including hospitals, and no sufficient fund or endowment is provided for its maintenance, or is received upon condition that the donee or devisee provide for aiding the maintenance of such institution by a tax levy upon the assessed property of such municipality, it shall be the duty of the governing board of such municipality to submit by resolution to the qualified electors thereof at a regular or special election the question whether there shall be levied upon the assessed property of such municipality an annual tax not exceeding three mills on the dollar for the purpose of aiding the maintenance of such institution. The said proposition shall be submitted in the manner provided for similar propositions in the title on elections. [S., '13, § 740; 40 G. A., ch. 239, § 6.]

10191. Amount of levy. If a majority of the votes cast at such election on the proposition so submitted shall be in favor of the proposition, the governing board of such municipality shall determine the amount to be levied for such purpose, not exceeding three mills on the dollar, and the amount so fixed shall be levied upon the assessed property of such municipality and collected in the same manner as other taxes of such municipality are levied and collected. [S., '13, § 740; 40 G. A., ch. 239, § 7.]

10192. Disbursement. When collected by the county treasurer said tax shall be paid over to the treasurer of the institution authorized to receive the same and shall be paid out on the order of the trustees of such institution who are authorized to manage and control the same, for the purposes for which it was authorized. [S., '13, § 740; 40 G. A., ch. 239, § 8.]

10193. Tax discontinued. The governing board of such municipality may discontinue

such levy of tax in the event the institution to be aided thereby is destroyed by the elements and no fund is provided or available for its rebuilding; or after five years of continuance of such tax aid the governing board may, and upon the petition of twenty-five per cent of the qualified electors of such municipality as shown by the poll books of the last preceding general election, shall, by resolution, resubmit to the qualified electors of such municipality, at a regular or special election, in the same manner hereinbefore specified, the question whether tax aid for such institution shall be discontinued, and if sixty-five per cent of the votes cast at such election on the proposition so submitted be in favor of discontinuing tax aid, no further levy of tax shall be made for such purpose. [S., '13, § 740; 40 G. A., ch. 239, § 9.]

10194. Condition as to annuity. When a gift or bequest is conditioned upon the payment of an annuity to the donor, or any other person, the governing board of such municipality may, upon acceptance of such gift or bequest, agree to pay such annuity providing the amount thereof does not exceed five per cent of the amount of the gift or bequest and does not exceed the amount realized from a three mill tax levy upon the taxable property of said municipality, [39 G. A., ch. 167, § 1; 40 G. A., ch. 239, § 10.]

10195. Annuity tax. To provide for the payment of such annuity, said municipality, through its proper officers, shall annually thereafter levy a tax, not exceeding three mills, sufficient to pay such annuity. [39 G. A., ch. 167, § 1; 40 G. A., ch. 239, § 10.]

10196. Limitation on acceptance. No agreement shall be made unless the annuity provided for therein, and all annuities provided for under prior agreements, may be paid from the proceeds of one annual tax levy of three mills. [39 G. A., ch. 167, § 1; 40 G. A., ch. 239, § 10.]

10197. Surplus of tax. Any amount collected by a tax so levied and which is not required for the payment of such annuity shall be used for the purposes for which such gift or bequest is made and may be transferred to such fund as will enable it to be used for such purpose. [40 G. A., ch. 193.]

CHAPTER 446

MANAGEMENT OF CEMETERY FUNDS BY TRUSTEES

10198. Trustee appointed—trust funds.
 10199. Requisites of petition.
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10198. Trustee appointed—trust funds. The owners of, or any party interested in, any cemetery may, by petition presented to the district court of the county where the cemetery is situated, have a trustee appointed with authority to receive any and all moneys or property that may be donated for and on account of said cemetery and to invest, manage, and control same under the direction of the court; but he shall not be authorized to receive any gift, except with the understanding that the principal sum is to be a permanent fund, and only the net proceeds therefrom to be used in carrying out the purpose of the trust created, and all such funds shall be exempt from taxation. [S., '13, § 254-a4; 40 Ex. G. A., H. F. 82, § 1.]

10199. Requisites of petition. Such petition may state the amount proposed to be placed in such trust fund, the manner of investment thereof, the provisions made for the disposition of any surplus income not required for the care and upkeep of the property described in such petition. [39 G. A., ch. 276, § 1; 40 Ex. G. A., H. F. 82, § 2.]

10200. Approval of court—surplus fund. Such provisions shall all be subject to the approval of the court and when so approved the trust fund and the trustee thereof shall, at all times, be subject to the orders and control of the court and such surplus arising from said fund shall not be used except for charitable, eleemosynary, or public purposes under the direction of the court. [39 G. A., ch. 276, § 1; 40 Ex. G. A., H. F. 82, § 2.]

10201. Receipt—cemetery record. Every such trustee shall execute and deliver to the donor a receipt showing the amount of money or other property received, and the use to be made of the net proceeds from same, duly attested by the clerk of the court granting letters of trusteeship, and a copy thereof, signed by the trustee and so attested, shall be filed with and recorded by the clerk in a book to be known as the cemetery record, in which shall be recorded all reports and other papers, including orders made by the court or judge relative to

cemetery matters. [S., '13, § 254-a5; 40 Ex. G. A., H. F. 82, § 3.]

10202. Loans—security. Any such trustee shall loan all moneys received by him, under the direction and with the approval of the court, but only as same may be secured by first mortgage upon Iowa real estate, and no loan shall be made or approved, unless it be made to appear upon oath of three disinterested citizens that such real estate is worth at least double the amount of the loan applied for, and that the applicant for the loan has good title thereto. [S., '13, § 254-a6; 40 Ex. G. A., H. F. 82, § 4.]

10203. Other investments. Said trustee may invest said fund in government bonds of the United States, federal farm loan bonds, bonds issued by authority of law by cities, towns, counties, school or drainage districts at their marketable value. [S., '13, § 254-a6; 38 G. A., ch. 55, § 1; 40 Ex. G. A., H. F. 82, § 4.]

10204. Bond—approval—oath. Every such trustee before entering upon the discharge of his duties or at any time thereafter when required by the court or judge, must give bond in such penalty as may be required by the court, approved by the clerk, conditioned for the faithful discharge of his duties, and take and subscribe an oath the same in substance as the condition of the bond, which bond and oath must be filed with the clerk. [S., '13, § 254-a7; 40 Ex. G. A., H. F. 82, § 5.]

10205. Clerk—duty of. It shall be the duty of the clerk at the time of filing each such receipt, to at once advise the court or judge as to the amount of the principal fund in the hands of such trustee, the amount of bond filed, and whether it is good and sufficient for the amount given. [S., '13, § 254-a8; 40 Ex. G. A., H. F. 82, § 6.]

10206. Compensation—costs. Such trustee shall serve without compensation, but may, out of the income received, pay all proper items of expense incurred in the performance of his duties, including cost of bond, if any. [S., '13, § 254-a9; 40 Ex. G. A., H. F. 82, § 7.]

10207. Annual report. Such trustee shall make full report of his doings in the month of January following his appointment and in January of each successive year. In each of said reports he shall apportion the net proceeds received from the sum total of the permanent fund and make proper credit to each of the separate funds assigned to him in trust. [S., '13, § 254-a10; 40 Ex. G. A., H. F. 82, § 8.]

10208. Removal—vacancy filled. Any such trustee may be removed by the court or judge thereof at any time for cause, and in the event of removal or death, the court or judge must appoint a new trustee and require his predecessor or his personal representative to make full accounting. [S., '13, § 254-a11; 40 Ex. G. A., H. F. 82, § 9.]

10209. County auditor as trustee. In case no trustee is appointed, or if so appointed does not qualify, then such funds, or any funds donated by any person or estate to improvement of cemeteries, unless otherwise provided by law, shall be placed in the hands of the county auditor, who shall receipt for, loan, and make annual reports of such funds in such manner as provided in this chapter. [S. S., '15, § 254-a12; 40 Ex. G. A., H. F. 82, § 10.]

10210. Accounting. The said auditor shall annually turn over the accrued interest in his hands to the cemetery association or other person having control of the cemetery entitled thereto, who shall use the same in carrying out the provisions of said trust, and who shall file a written report annually with the county auditor. [S. S., '15, § 254-a12; 40 Ex. G. A., H. F. 82, § 11.]

10211. Municipal corporation as trustee. Cities, irrespective of their form of government, incorporated towns, and civil townships

wholly outside of any city or incorporated town, shall be and they are hereby created trustees in perpetuity, and are required to accept, receive, and expend all moneys and property donated or left to them by bequest, to be used in caring for the property of the donor in any cemetery, or in accordance with the terms of such donation or bequest, and the money or property thus received shall be used for no other purpose. [S., '13, § 740; 40 Ex. G. A., H. F. 82, § 12.]

10212. Authority to invest funds. The mayor and council and trustees as the case may be, shall have authority to receive and invest all moneys and property, so donated or bequeathed, in bonds of the United States, federal farm loan bonds, bonds issued by authority of law by cities, towns, counties, school or drainage districts. Such money must be invested at the market value of such securities, and they shall use the income from such investment in caring for the property of the donor in any cemetery, or as shall be provided in the terms of such gift or donations. [S., '13, § 740; 40 Ex. G. A., H. F. 82, § 13.]

10213. Resolution of acceptance—interest. Before any part of the principal may be so invested or used, the said city, incorporated town, or civil township shall, by resolution, in accordance with the law as now provided, accept said donation or bequest, and shall, by said resolution, duly provide for the payment of interest thereon at the rate of not less than two per cent per annum, payable annually, to the cemetery fund or to the cemetery association, or to the person having charge of said cemetery, to be used in caring for or maintaining the individual property of the donor in said cemetery, all to be in accordance with the terms of the donation or bequest. [S., '13, § 740; 40 Ex. G. A., H. F. 82, § 14.]

CHAPTER 447

RIGHTS OF ALIENS

- 10214. Acquisition of real estate.
- 10215. Holders of liens—escheat.
- 10216. Corporate holdings—obligation to sell.
- 10217. Contract to sell.

- 10218. Escheat.
- 10219. Citizen may initiate proceedings.
- 10220. Limitation.

10214. Acquisition of real estate. Non-resident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this country one-half of the stock of which is owned or controlled by nonresident aliens, are prohibited from acquiring title to or holding any real estate in this state, except as hereinafter provided.

The widow and heirs and devisees, being non-resident aliens, of any alien or naturalized citizen who has acquired real estate in this state, may hold the same by devise, descent, or distribution, for a period of twenty years; and if at the end of that time such real estate has

not been sold to a bona fide purchaser for value, or such alien heirs have not become residents of this state, such land shall escheat to the state.

Nothing in this section contained shall prevent aliens from having or acquiring property of any kind within the corporate limits of any city or town in the state, or lands not to exceed three hundred and twenty acres in the name of one person, or any stock in any corporation for pecuniary profit, or from alienating or devising the same.

This chapter shall not affect the distribution of personal property, and shall apply to real

estate heretofore devised or descended when no proceedings for forfeiture have been commenced. [C., '73, §§ 1908, 1909; C., '97, § 2889.]

10215. Holders of liens—escheat. The provisions of this chapter shall not prevent the holder of any lien upon or interest in real estate, acquired before or after the date mentioned in the last section from taking or holding a valid title to the real estate in which he has such interest, or upon which he has such lien; nor shall it prevent any nonresident alien enforcing any lien or judgment for any debt or liability which may have been created subsequently to said date, or which he may hereafter acquire, nor from becoming a purchaser at any sale by virtue of such lien, judgment or liability, if all real estate so acquired shall be sold within ten years after the title shall be perfected in such alien under such sale.

Any real estate owned or held by any nonresident alien, as provided in this and the preceding sections and not disposed of as therein required, shall escheat to the state. [C., '97, § 2890.]

NOTE: The words "date mentioned in the last section" and the words "the preceding sections" as used in the above section originally had reference to sections 1 and 2, chapter 1, title XIV of *The Code of Iowa as reported to the Twenty-sixth General Assembly by the Code Commission, 1895, pp. 597, 598.* During consideration by the legislature, sections 1 and 2 were combined and the date which originally appeared in these sections was eliminated.

10216. Corporate holdings—obligation to sell. All corporations organized under the laws of any foreign country, and corporations organized under the laws of any state of the United States, one-half of whose stock is owned and controlled by nonresident aliens, shall have the right to own, hold, and dispose of any real property owned or held by any such corporations on July 4, 1888, or any real property acquired by any such corporations under the provisions of the preceding section; but any such corporation shall sell or dispose of any such property now owned by it on or before March 16, 1910, and in default thereof the provisions of sections 10218 to 10220, inclusive, shall be applied thereto. [S., '13, § 2889-a.]

10217. Contract to sell. A bona fide contract for the sale of any such lands owned by any such corporation shall be held and considered as a sale within the provisions of the preceding section and a good and valid deed of conveyance may be made by such corporation at any time upon the fulfillment of such contract by the purchaser of any such lands. [S., '13, § 2889-b.]

10218. Escheat. The county attorney of any county in which any real estate subject to escheat is situated shall proceed by petition in the name of the state against the owner thereof.

The court shall hear and determine the issues presented in said petition, and declare such real estate escheated, or dismiss the petition, as the facts may require.

When such escheat is decreed by the court, the clerk shall notify the governor that the title to such real estate is vested in the state by the decree of said court, and present to the auditor of state a bill of the costs incurred by the county in prosecuting such action, under his official certificate and seal, who shall issue a warrant payable to said clerk, drawn on the state treasurer, to pay the costs so incurred.

Any real estate, the title to which shall be acquired by the state under the provisions of this chapter, shall be sold in the manner provided for the sale of school lands, and the proceeds of such sales shall become a part of the permanent school fund. [C., '97, § 2891.]

10219. Citizen may initiate proceedings. Any citizen of the state, knowing of lands which have escheated under the provisions of this chapter, may file a motion or petition in the district court, praying an order directing the county attorney to commence the proceeding provided for in the preceding section; and if, after hearing such proofs as may be offered, it finds there is reasonable ground to believe that any land has escheated, shall direct the county attorney to proceed as provided in this chapter.

If in any such case the county attorney is adversely interested, the court may appoint an attorney to prosecute such action, and fix a reasonable attorney's fee therefor, to be paid as other costs in the case. [C., '97, § 2892.]

10220. Limitation. No action for the recovery of real estate, the title to which is acquired by the state under the provisions of this chapter, shall lie, after the execution and recording of a patent or conveyance thereof by the state, unless such action shall have been commenced within five years after the title became vested in the grantee of the state; but a minor or person of unsound mind shall have the right to bring an action therefor at any time within five years after his disability ceases.

The defendant in any action brought under the provisions of this chapter, if the decree is for the plaintiff, shall be entitled to the benefit of the provisions of this chapter relating to occupying claimants. [C., '97, § 2893.]

CHAPTER 448

ISLANDS AND ABANDONED RIVER CHANNELS

10221. Sale authorized.
 10222. Application by county auditor.
 10223. Application by prospective purchaser.
 10224. Form of application.
 10225. Survey.
 10226. Report of survey.
 10227. Appraisalment.
 10228. Contract for survey.
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 10230. Sale—how effected—rights of bona fide occupants.
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 10232. Deed or patent.
 10233. Previous survey.
10234. Boundary commission.
 10235. How constituted.
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 10240. Withholding patent—deposit money refunded.
 10241. Sale or lease authorized.
 10242. Survey—appraisalment—sale.
 10243. Lease.
 10244. Sales and leases for cash—expenses.
 10245. Patent or lease.

10221. Sale authorized. All land between high-water mark and the center of the former channel of any navigable stream, where such channel has been abandoned, so that it is no longer capable of use, and is not likely again to be used for the purposes of navigation, and all land within such abandoned river channels, and all bars or islands in the channels of navigable streams not heretofore surveyed or platted by the United States or the state of Iowa, and all within the jurisdiction of the state of Iowa shall be sold and disposed of in the manner hereinafter provided. [S., '13, § 2900-a2.]

10222. Application by county auditor. It shall be the duty of the county auditor to file written application with the secretary of state, asking that certain land located within the county be surveyed, appraised, and sold, whenever he is satisfied that such land is of the character contemplated by the preceding section. [S., '13, § 2900-a3.]

10223. Application by prospective purchaser. If the county auditor fails or neglects to make such application, then any person desiring to purchase such land may file a written application with the secretary of state, asking that the said land be surveyed, appraised, and sold. [S., '13, § 2900-a3.]

10224. Form of application. The said application whether made by the county auditor or by a person desiring to purchase the land, shall contain an accurate description thereof, stating whether the land is abandoned river channel, or land within such abandoned river channel, or an island or a sand bar in a navigable stream, and giving the number of township and range in which it is located, and the section numbers if possible, and also the estimated acreage. [S., '13, § 2900-a3.]

10225. Survey. Upon receiving such application, it shall be the duty of the secretary of state to order a complete survey of such land to be made by the county surveyor of the county wherein the land is situated, and in case of the refusal or inability of such county surveyor to make such survey then the secretary of state shall appoint some other competent surveyor to make such survey. [S., '13, § 2900-a4.]

10226. Report of survey. When such survey is made, a full report thereof, with field notes, shall be filed with the clerk of the state land office, which report and field notes shall constitute the official survey of such land. [S., '13, § 2900-a4.]

10227. Appraisalment. Upon the filing of such report, with the accompanying field notes, the secretary of state shall thereupon appoint a commission of three disinterested freeholders of the county wherein the land is situated, to view the land and make appraisalment of the value thereof, which appraisalment shall be returned and filed with the clerk of the state land office in the office of the secretary of state.

The secretary of state, if he deems it necessary, may either go in person or send the clerk of the state land office into the county to make proper selection of the said commissioners. [S., '13, § 2900-a5.]

10228. Contract for survey. The secretary of state shall make a contract with some surveyor for making such survey; the surveyor to furnish all the chainmen and other attendants and pay all necessary expenses, which contract before it becomes binding shall be submitted to and approved by the executive council. [S., '13, § 2900-a6; 38 G. A., ch. 32, § 1.]

10229. Commissioners' compensation. Commissioners, for their services in making such appraisement shall each be entitled to receive five dollars per day for the actual time employed. [38 G. A., ch. 32, § 2.]

10230. Sale—how effected—rights of bona fide occupants. Such lands shall be sold in the following manner: Any person who has in fact lived upon any such land and occupied the same, as a home, continuously for a period of three or more years immediately prior to the time of the appraisement thereof, and such occupancy has been in good faith for the purpose of procuring title thereto, whenever by law such title could be vested in him by purchase from the proper authority, or any person who has acquired possession of such land by inheritance, or by purchase made in good faith from a former occupant, or occupants, whose occupancy dates back over a period of three years prior to the date of appraisement of the land, shall have first right to purchase such land at the appraised value; provided such bona fide occupant shall file his application for the purchase thereof at the appraised value with the secretary of state within sixty days after the day the appraisement is made, and shall accompany such application with affidavits showing proof of such bona fide occupancy. If no application has been filed by such bona fide occupant within the sixty-day period above provided, then the secretary of state shall advertise the sale of such land once each week for four consecutive weeks in two newspapers of general circulation published in the county wherein the land is situated, and proof of publication shall be filed with the secretary of state. The sale shall be made upon written bids addressed to the secretary of state and the advertisements shall fix the time when such bids will be received and opened. All bids shall be opened by the secretary of state or by the clerk of the state land office at the time fixed, and the land thereupon may be sold to the highest bidder and at not less than the appraised value. [S. S., '15, § 2900-a7.]

10231. Lease authorized—lands readvertised—sale. If no application is filed for the purchase of the land within the sixty-day period by a bona fide occupant, and if no bids are received for the purchase thereof, on or before the date of the sale as advertised, then the secretary of state is authorized to lease the land for a period of from one to five years, upon as favorable terms as he can obtain. At the expiration of such lease he shall readvertise the land for sale in the manner provided in the preceding section. If no bids for the purchase of the land are received on the date of the second advertised sale, then the secretary of state shall submit the matter to the executive council, and they may either order the land reappraised in the manner provided in section 10227, and then advertised and sold in the manner provided in the preceding section, or if they deem it advisable, they may authorize

the secretary of state to sell the land for less than the appraised value. In such event the secretary of state shall readvertise the land for sale in the manner provided in the preceding section, and such advertisement shall also state that the land will be sold to the highest bidder without restrictions as to the appraised value. [S., '13, § 2900-a8.]

10232. Deed or patent. When, upon full compliance with the conditions of this chapter, any person shall become entitled to a deed or patent for any land, a deed or patent shall thereupon be executed and delivered to such person by the governor, on behalf of the state, duly attested with the seal of the state attached thereto, which deed shall, in addition to the usual formalities, also recite the name of the party making application to have the land surveyed, appraised, and sold, the date and the amount of the appraisement, the name of the party making final payment and entitled to a deed therefor, whether as bona fide occupant or as highest bidder, and also that such deed is given for the purpose of conveying such title and interest in the land as the state may at the time own and possess, and has the right to convey. A record of such conveyance shall be made and kept by the clerk of the state land office of the secretary of state. [S., '13, § 2900-a9.]

10233. Previous survey. When any such land shall be found to have been previously surveyed under and by virtue of any order of a court of record, and the record of such survey has been duly made and preserved, then and in that event, in the discretion of the secretary of state, a duly certified transcript of such record, together with the field notes accompanying the same, if obtainable, may be filed with the clerk of the state land office in the office of secretary of state, and when so filed shall obviate the necessity for any further survey of such land except when such survey becomes necessary for the purpose of execution of conveyance thereof, and the record of such transcript, when filed, shall constitute the official survey of such land. [S., '13, § 2900-a10.]

10234. Boundary commission. If in any proceeding contemplated by the provisions of this chapter, it shall become necessary to determine the boundary line between this state and either of the states adjoining, the matter shall then be at once referred to the executive council, who shall thereupon proceed to confer with the proper authority of such adjoining state, and if the cooperation of the proper authority of such adjoining state shall be obtained, then the executive council shall appoint a commission of three disinterested, competent persons, who shall, in conjunction with the parties acting for such adjoining state, have authority to ascertain and locate the true boundary line between this state and such adjoining state, so far as the particular land under consideration at the time is concerned. The report of the commissioners with a statement

of their findings shall be submitted to the executive council, who shall file the same with the clerk of the state land office in the office of the secretary of state. The line so ascertained and located shall constitute the true and permanent boundary line between this state and such other state to the extent such line shall be so ascertainable and located. [S., '13, § 2900-a11.]

10235. How constituted. The members of the commission shall be selected with reference to their fitness for the duties required and at least one of them shall be a competent surveyor and civil engineer. [S., '13, § 2900-a12; 40 Ex. G. A., ch. 4, § 112.]

10236. Purchase money refunded. If the grantee of the state, or his successors, administrators, or assigns, shall be deprived of the land conveyed by the state under this chapter by the final decree of a court of record for the reason that the conveyance by the state passed no title whatever to the land therein described, because title thereto had previously for any reason been vested in others, then the money so paid the state for the said land shall be refunded by the state to the person or persons entitled thereto, provided the said grantee, or his successors, administrators, or assigns, shall file a certified copy of the transcript of the said final decree with the executive council within one year from the date of the issuance of such decree, and shall also file satisfactory proof with the executive council that the action over the title to the land was commenced within ten years from the date of the issuance of patent or deed by the state. The amount of money to be refunded under the provisions of this section shall be certified by the executive council to the auditor of state, who shall draw his warrant therefor, and the same shall be paid out of the general fund. [S., '13, § 2900-a13.]

10237. Sales and leases for cash. All sales and leases of land under the provisions of this chapter shall be for cash. All money received for such sales and leases shall be paid into the state treasury by the secretary of state. [S., '13, § 2900-a14.]

10238. Good faith possession—preference. If any lands in the present or in any former channel of any navigable river, or island therein, or any lands formed by accretion or avulsion in consequence of the changes of the channel of any such river, have been for ten years or more in the possession of any person, company, or corporation, or of his or its grantors or predecessors in interest under a bona fide claim of ownership, and the person, company or corporation so in possession, or his or its grantors or predecessors in interest, have paid state or county taxes upon said lands for a period of five years, and have in good faith and under bona fide claim of title made valuable improvements thereon, and also in any other case where, in the judg-

ment of the executive council, the person in possession of any land subject to the provisions of this chapter, has, in equity and good conscience, a substantial interest therein, then the said lands shall be sold to the person, company, or corporation so in possession thereof as hereinafter provided. [S., '13, § 2900-a16.]

10239. Notice—action to determine title and value—patent. When any person, company or corporation so in possession of any such lands shall give to the secretary of state written notice of his or its claim, or whenever the executive council shall deem it advisable, it shall be the duty of the attorney general to bring an action in equity, in the district court of the county in which said lands are situated, against the party in possession thereof to determine the title of the state to such lands, and the value thereof, exclusive of improvements made thereon by the occupant or by his or its grantors or predecessors in interest. If the person, company, or corporation in possession of such land shall, after the court has determined the value thereof as herein provided, tender to the secretary of state the amount adjudged to be the value of said lands, exclusive of improvements made thereon by the occupant or by his or its grantors or predecessors in interest, a deed or patent of such land shall be executed by the governor, attested by the secretary of state, and delivered to the person, company, or corporation making such tender, as provided by law. If the person, company, or corporation so in possession shall fail to pay to the state the amount so adjudged within six months after the final determination of the action so brought by the state, then said lands shall be subject to the other provisions of this chapter. [S., '13, § 2900-a17.]

10240. Withholding patent—deposit money refunded. If the land described in any application is covered by the provisions of the two preceding sections, and notice thereof is given to the secretary of state as provided in the preceding section, no deed or patent of such land, or any part thereof, shall be executed or issued until the title thereto shall have been established by the court as herein provided. If the party making such application, or his assignee, does not desire to prosecute his application, or if he does not purchase the land under this chapter, then all of the money deposited by him with the secretary of state under the provisions of this chapter shall be repaid to said applicant by the secretary of state; and if any part of the money so deposited has been expended by the secretary of state, then the amount so expended shall be certified by the secretary of state to the auditor of state, who shall draw his warrant upon the general fund in favor of the person entitled thereto. [S., '13, § 2900-a18.]

10241. Sale or lease authorized. The executive council of the state is hereby author-

ized and empowered to sell, convey, lease, or demise any of the islands belonging to the state which are within the meandered banks of rivers in the state, and to execute and deliver a patent or lease thereof. Nothing in this and the four following sections shall be construed to apply to islands in the Mississippi or Missouri rivers. [S., '13, § 2900-a28.]

10242. Survey—appraisement—sale. Before a sale of any island is made under the provisions of the preceding section, the executive council shall cause a survey and plat of such island to be made, showing its location and area, and the plat and notes of such survey shall be filed with the secretary of state. The land composing the island shall then be appraised by a commission appointed by the governor, consisting of three disinterested freeholders of the state, who shall report their appraisement to the executive council. The sale of the island shall then be advertised once each week for four consecutive weeks in some newspaper of general circulation published in the county where the island is located, and proof of such publication filed with the executive council. The sale shall be made upon written bids addressed to the executive council of the state, and the advertisement shall fix the time when such bids will be received and opened. All bids shall be opened by the executive council at the time fixed, and the island may thereupon be sold to the highest bidder and at not less than its appraised value. [S., '13, § 2900-a29.]

10243. Lease. If it shall be deemed expedient to lease any such island, a lease thereof may be made upon written bids addressed to the executive council, and the island proposed to be leased shall be surveyed and platted, and notice of the leasing thereof and of the receiving and opening of bids shall be published, in the manner provided in the preceding section, but no appraisal shall be necessary. Upon the opening of the bids received by the executive council it may make a lease of such island to the highest bidder for such term as is deemed advisable. [S., '13, § 2900-a30.]

10244. Sales and leases for cash—expenses. All sales and leases must be for cash, and the money received therefor shall be paid into the state treasury. All expenses incurred in making the survey, plat, appraisement, sale, or lease of any such island shall be certified by the executive council to the auditor of state, who shall draw his warrant upon the state treasury for the amount, and the same shall be paid from the general fund. [S., '13, § 2900-a31.]

10245. Patent or lease. When any sale or lease of any island belonging to the state is made by the executive council as herein provided, the governor shall execute and deliver to the purchaser or lessee a patent or a lease thereof, as the case may be, duly attested by the seal of the state. [S., '13, § 2900-a32.]

CHAPTER 449

ACQUISITION OF TITLE BY STATE OR MUNICIPAL CORPORATION

- 10246. Right to receive conveyance.
- 10247. Bidding in at execution sale.
- 10248. Amount of bid.
- 10249. Costs and expenses.
- 10250. Management by executive council—leasing.
- 10251. Insurance.
- 10252. Sale.
- 10253. Contracts and conveyances.

- 10254. Management by board of supervisors—leasing.
- 10255. Insurance.
- 10256. Sale.
- 10257. Resolution—requirements.
- 10258. Resolution deemed conveyance.
- 10259. Recordation.
- 10260. Management by city council etc.

10246. Right to receive conveyance. When it becomes necessary, to secure the state or any county or other municipal corporation thereof from loss, to take real estate on account of a debt by bidding the same in at execution sale or otherwise, the conveyance shall vest in the grantee as complete a title as if it were a natural person. [C., '73, § 1910; C., '97, § 2894.]

case may be, for the use of the general or the special fund to which it rightfully belongs. [C., '73, § 1911; C., '97, § 2895.]

10248. Amount of bid. When real estate is sold as above provided, the fair and reasonable value shall be bid therefor, unless in excess of the judgment, interest, costs and accruing costs, in which case the bid shall be for such sum only. [C., '73, § 1912; C., '97, § 2896.]

10247. Bidding in at execution sale. Such real estate shall be bid in, if for the state, by the attorney general, if for the county, by the county attorney, and if for any other municipal corporation, by its attorney or agent appointed for that purpose, the proceeds of any such real estate, when sold, to be covered into the state, county, or municipal treasury, as the

10249. Costs and expenses. In all cases in which the state becomes the purchaser of real estate under the provisions of this chapter, the costs and expenses attending such purchases shall be audited and allowed by the state board of audit, and paid out of any

money in the state treasury not otherwise appropriated, upon the auditor's warrant, and charged to the fund to which the indebtedness belonged upon which such real estate was taken.

If the real estate is purchased by a county, the costs and expenses shall be audited by the board of supervisors and paid out of the county treasury, upon a warrant drawn by the auditor on the treasurer, from the fund to which the debt belonged upon which said real estate was purchased.

If the real estate is purchased by any other municipal corporation, then the costs shall be audited and paid by it in the same manner as other claims against it are audited and paid. [C., '73, § 1913; C., '97, § 2897.]

10250. Management by executive council—leasing. When the title to any real estate is vested in the state under this chapter, the executive council shall have the management and control thereof; may lease the same, while so owned, upon such terms and for such rental as it shall deem for the best interests of the state, and such rents shall be paid into the state treasury and credited to the fund to which the debt belonged upon which it was taken. [C., '73, §§ 1914, 1916; C., '97, § 2898.]

10251. Insurance. The council shall keep all valuable buildings thereon insured against loss by fire and lightning in some responsible insurance company in the name of the state, and the premiums therefor shall be paid out of the fund to which such real estate belongs, on the order of the said council and warrant of the state auditor drawn thereon. [C., '73, § 1915; C., '97, § 2898.]

10252. Sale. The council may sell the same for such sum and upon such terms as to it seems best, and for any deferred payments of the purchase price thereof it may take such adequate security as it sees proper, and the proceeds of such sales shall be paid into the state treasury, and credited to the fund to which such real estate belonged. [C., '73, § 1916; C., '97, § 2898.]

10253. Contracts and conveyances. The council shall cause to be executed by the governor, and attested by the secretary of state, such contracts, patents, or other instruments as may be necessary to complete such sales or leases, and take such notes, mortgages, and other securities in relation thereto as may be proper, running to the state. [C., '73, §§ 1916, 1919; C., '97, § 2898.]

10254. Management by board of supervisors—leasing. When a county holds such real estate, it shall be controlled, managed, and sold by the board of supervisors, and while so held may be leased upon such terms as

may seem for the best interests of the county, and all rents received therefrom shall be paid into the county treasury and credited to the fund to which the debt belonged on which such real estate was taken. [C., '73, § 1914; C., '97, § 2899.]

10255. Insurance. The board shall keep any valuable buildings thereon insured in some responsible insurance company, and cause the premiums therefor to be paid by directing the auditor of the county to draw his warrant on the treasurer therefor, which shall be paid out of the fund to which the debt belonged on which the real estate was taken. [C., '73, § 1915; C., '97, § 2899.]

10256. Sale. It shall have power to sell and convey any such real estate for such price and upon such terms as to it seems for the best interest of the county, take such portion of the purchase price in cash as to it seems best, and notes secured by mortgage on the same or other real estate for the residue, or other adequate security, in its discretion, payable to such county, and the proceeds of such sales shall be paid into the county treasury and credited to the fund to which the debt belonged on which such real estate was taken. [C., '73, §§ 1917, 1919; C., '97, § 2899.]

10257. Resolution—requirements. Any such lease or sale shall be made by resolution in writing, regularly adopted by said board, and spread upon its minutes, with the ye and nay vote by which the same was adopted, and the date thereof; such resolution shall show the price paid for such real estate in case of sale, and the rental in case of lease, and give the description thereof. [C., '73, § 1918; C., '97, § 2899.]

10258. Resolution deemed conveyance. A transcript of such resolution and action of the board thereon, including the ye and nay vote on its adoption, certified by the county auditor and under the seal of said board, shall be sufficient to pass the title or leasehold of such real estate to the purchaser or lessee. [C., '73, § 1918; C., '97, § 2899.]

10259. Recordation. Such transcript shall be entitled to be recorded in the same manner and with the same effect as a deed executed by a natural person. [C., '73, § 1918; C., '97, § 2899.]

10260. Management by city council etc. In case property is thus purchased by any other municipal corporation as contemplated in this chapter, the power of control and disposal thereof shall be vested in the governing board or body of such corporation, to be exercised substantially and as nearly as may be in accordance with the provisions of the six preceding sections. [C., '97, § 2900.]

TITLE XXVI

CERTAIN SPECIAL LIENS

CHAPTER 450

LANDLORD'S LIEN

10261. Nature of landlord's lien.
10262. Duration of lien.
10263. Limitation on lien in case of sale under judicial process.
10264. Enforcement—proceeding by attachment.
10265. Lien upon additional property.

10261. Nature of landlord's lien. A landlord shall have a lien for his rent upon all crops grown upon the leased premises, and upon any other personal property of the tenant which has been used or kept thereon during the term and which is not exempt from execution. [C., '51, § 1270; R., '60, § 2302; C., '73, § 2017; C., '97, § 2992; 40 Ex. G. A., H. F. 212, § 1.]

10262. Duration of lien. Such lien shall continue for the period of one year after a year's rent, or the rent of a shorter period, falls due. But in no case shall such lien continue more than six months after the expiration of the term. [C., '51, § 1270; R., '60, § 2302; C., '73, § 2017; C., '97, § 2992; 40 Ex. G. A., H. F. 212, § 2.]

10263. Limitation on lien in case of sale under judicial process. In the event that a stock of goods or merchandise, or a part thereof, subject to a landlord's lien, shall be sold under judicial process, order of court, or by an assignee under a general assignment for benefit of creditors, the lien of the landlord shall not be enforceable against said stock or portion thereof, except for rent due for the term already expired, and for rent to be paid for the use of demised premises for a period not exceeding six months after date of sale, any agreement of the parties to the contrary notwithstanding. [C., '97, § 2992; 40 Ex. G. A., H. F. 212, § 3.]

10264. Enforcement—proceeding by attachment. The lien may be enforced by the commencement of an action, within the period above prescribed, for the rent alone, in which action the landlord shall be entitled to a writ of attachment, upon filing with the clerk or justice a verified petition, stating that the action is commenced to recover rent accrued within one year previous thereto upon premises

10266. Action by tenant to recover property.
10267. Acts sufficient to constitute taking of property.
10268. Sale of crops held by landlord's lien.
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described in the petition; and the procedure thereunder shall be the same, as nearly as may be, as in other cases of attachment, except no bond shall be required. [C., '51, § 1271; R., '60, § 2303; C., '73, § 2018; C., '97, § 2993; 40 Ex. G. A., H. F. 212, § 4.]

10265. Lien upon additional property. If a lien for rent is given in a written lease or other instrument upon additional property, it may be enforced in the same manner as a landlord's lien and in the same action. [C., '51, § 1271; R., '60, § 2303; C., '73, § 2018; C., '97, § 2993; 40 Ex. G. A., H. F. 212, § 5.]

10266. Action by tenant to recover property. An action brought by a tenant, his assignee or under tenant, to recover the possession of specific personal property taken under landlord's attachment, may be against the party who sued out the attachment; and the property claimed in such action may, under the writ therefor, be taken from the officer who seized it, when he has no other claim to hold it than that derived from the writ. [R., '60, § 2770; C., '73, § 2575; C., '97, § 3490; 40 Ex. G. A., H. F. 212, § 6.]

10267. Acts sufficient to constitute taking of property. The indorsement of a levy on the property, made upon the process by the officer holding it, shall be a sufficient taking of the property to sustain an action against the party who sued out the writ. [R., '60, § 2770; C., '73, § 2575; C., '97, § 3490; 40 Ex. G. A., H. F. 212, § 7.]

10268. Sale of crops held by landlord's lien. If any tenant of farm lands, with intent to defraud, shall sell, conceal, or in any manner dispose of any of the grain, or other annual products thereof upon which there is a landlord's lien for unpaid rent, without the written consent of the landlord, he shall be guilty of

larceny and punished accordingly. [S., '13, § 4852-a; 40 Ex. G. A., H. F. 212, § 8.]

NOTE: For crime of larceny, see §§ 13005 and 13006.

10269. Action barred by payment of rent. The payment of the rent for the lands upon which such grain or other annual products

were raised at or before the time the same falls due, shall be a bar to any prosecution under the preceding section and no prosecution shall be commenced until such rent be wholly due. [S., '13, § 4852-b; 40 Ex. G. A., H. F. 212, § 9.]

CHAPTER 451

MECHANIC'S LIEN

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10270. Definitions and rules of construction. For the purpose of this chapter:

1. "Owner" shall include every person for whose use or benefit any building, erection, or other improvement is made, having the capacity to contract, including guardians.

2. "Subcontractor" shall include every person furnishing material or performing labor upon any building, erection, or other improvement, except those having contracts therefor directly with the owner, his agent, or trustee.

3. "Building" shall be construed as if followed by the words "erection, or other improvement upon land".

4. "Material" shall be construed as if followed by the words "machinery or fixtures". [C., '51, § 982; R., '60, §§ 1866, 1871; C., '73, §§ 2144, 2146; C., '97, §§ 3096, 3097; 40 Ex. G. A., H. F. 212, § 10.]

10271. Persons entitled to lien. Every person who shall furnish any material for or perform any labor upon any building, including those engaged in the construction or repair of any work of internal improvement and those engaged in grading any land or lot, by virtue of any contract with the owner, his agent, trustee, contractor, or subcontractor shall have a lien upon such building and upon the land belonging to such owner on which the same is situated, or upon the land or lot so graded, to secure payment for material furnished or the labor performed. [C., '51, §§ 981, 1010; R., '60, § 1846; C., '73, § 2130; C., '97, § 3089; 40 Ex. G. A., H. F. 212, § 11.]

10272. Collateral security before completion of work. No person shall be entitled to

a mechanic's lien who, at the time of making a contract for furnishing material or performing labor, or during the progress of the work, shall take any collateral security on such contract. [C., '51, § 1009; R., '60, § 1845; C., '73, § 2129; C., '97, § 3088; 40 Ex. G. A., H. F. 212, § 12.]

10273. Security after completion of work. After the completion of such work, the taking of security of any kind shall not affect the right to establish a mechanic's lien unless such new security shall, by express agreement, be given and received in lieu of such lien. [C., '97, § 3088; 40 Ex. G. A., H. F. 212, § 13.]

10274. Extent of lien. The entire land upon which any building is situated, including that portion not covered therewith, shall be subject to a mechanic's lien to the extent of the interest therein of the person for whose benefit such material was furnished or labor performed. [R., '60, § 1854; C., '73, § 2140; C., '97, § 3090; 40 Ex. G. A., H. F. 212, § 14.]

10275. In case of leasehold interest. When the interest of such person is only a leasehold, the forfeiture of the lease for the nonpayment of rent, or for noncompliance with any of the other conditions therein, shall not forfeit or impair the mechanic's lien upon such building; but the same may be sold to satisfy such lien, and removed by the purchaser within thirty days after the sale thereof. [R., '60, § 1854; C., '73, § 2140; C., '97, § 3090; 40 Ex. G. A., H. F. 212, § 15.]

10276. In case of internal improvement. When the lien is for material furnished or

labor performed in the construction, repair, or equipment of any railroad, canal, viaduct, or other similar improvement, said lien shall attach to the erections, excavations, embankments, bridges, roadbeds, rolling stock, and other equipment and to all land upon which such improvements or property may be situated, except the easement or right of way. [C., '73, § 2132; C., '97, § 3091; 40 Ex. G. A., H. F. 212, § 16.]

10277. Perfection of lien. Every person who wishes to avail himself of a mechanic's lien shall file with the clerk of the district court of the county in which the building to be charged with the lien is situated a verified statement or account of the demand due him, after allowing all credits, setting forth:

1. The time when such material was furnished or labor performed, and when completed.

2. The correct description of the property to be charged with the lien. [R., '60, § 1851; C., '73, § 2137; C., '97, § 3092; 40 Ex. G. A., H. F. 212, § 17.]

10278. Time of filing. The statement or account required by the preceding section shall be filed by a principal contractor within ninety days, and by a subcontractor within sixty days, from the date on which the last of the material was furnished or the last of the labor was performed. A failure to file the same within said periods shall not defeat the lien, except as otherwise provided in this chapter. [R., '60, § 1851; C., '73, § 2137; C., '97, § 3092; 38 G. A., ch. 380, § 1; 40 Ex. G. A., H. F. 212, § 18.]

10279. Perfecting subcontractor's lien after lapse of sixty days. After the lapse of the sixty days prescribed in the preceding section, a subcontractor may perfect a mechanic's lien by filing his claim with the clerk of the district court and giving written notice thereof to the owner, his agent, or trustee. Such notice may be served by any person in the manner original notices are required to be served. If the party to be served, his agent, or trustee, is out of the county wherein the property is situated, a return of that fact by the person charged with making such service shall constitute sufficient service from and after the time it was filed with the clerk of the district court. [C., '73, § 2133; C., '97, § 3094; S. S., '15, § 3094; 38 G. A., ch. 380, § 1; 40 Ex. G. A., H. F. 212, § 19.]

NOTE: For manner of serving original notices, see § 11060.

10280. Extent of lien filed after sixty days. Liens perfected under the preceding section shall be enforced against the property or upon the bond, if given by the owner, as hereinafter provided, only to the extent of the balance due from the owner to the contractor at the time of the service of such notice; but if the bond was given by the contractor, or person contracting with the subcontractor filing the claim for a lien, such bond shall be enforced to the full extent of the amount

found due the subcontractor. [C., '73, § 2133; C., '97, § 3094; S. S., '15, § 3094; 38 G. A., ch. 380, § 1; 40 Ex. G. A., H. F. 212, § 20.]

10281. Time of filing against railway. Where a lien is claimed upon a railway, the subcontractor shall have sixty days from the last day of the month in which such labor was done or material furnished within which to file his claim therefor. [R., '60, § 1851; C., '73, § 2137; C., '97, § 3092; 40 Ex. G. A., H. F. 212, § 21.]

10282. Liability of owner to original contractor. No owner of any building upon which a mechanic's lien of a subcontractor may be filed, shall be required to pay the original contractor for compensation for work done or material furnished for said building until the expiration of sixty days from the completion of said building, unless the original contractor shall furnish to the owner:

1. Receipts and waivers of claims for mechanics' liens, signed by all persons who furnished any material or performed any labor for said building, or

2. A good and sufficient bond to be approved by said owner, conditioned that said owner shall be held harmless from any loss which he may sustain by reason of the filing of mechanics' liens by subcontractors. [R., '60, § 1847; C., '73, § 2131; C., '97, § 3093; S., '13, § 3093; 38 G. A., ch. 380, § 1; 40 Ex. G. A., H. F. 212, § 22.]

10283. Liability to subcontractor after payment of original contractor. Payment to the original contractor by the owner of any part or all of the contract price of such building before the lapse of the sixty days allowed by law for the filing of a mechanic's lien by a subcontractor, will not relieve the owner from liability to the subcontractor for the full value of any material furnished or labor performed upon said building, if the subcontractor file his lien within the time provided by law for the filing of the same. [S., '13, § 3093; 38 G. A., ch. 380, § 1; 40 Ex. G. A., H. F. 212, § 23.]

10284. Discharge of subcontractor's lien. Every mechanic's lien of a subcontractor may be discharged at any time by the owner, principal contractor, or intermediate subcontractor filing with the clerk of the district court of the county in which the property is located a bond in twice the amount of the sum for which the claim for the lien is filed, with surety or sureties, to be approved by said clerk, conditioned for the payment of any sum for which the claimant may obtain judgment upon his claim. [C., '97, § 3093; S., '13, § 3093; 40 Ex. G. A., H. F. 212, § 24.]

10285. Rule of construction. Nothing in this chapter shall be construed to require the owner to pay a greater amount or at an earlier date than is provided in his contract with the principal contractor, unless said owner pays a part or all of the contract price

to the original contractor before the expiration of the sixty days allowed by law for the filing of a mechanic's lien by a subcontractor. [C., '97, § 3093; S., '13, § 3093; 38 G. A., ch. 380, § 1; 40 Ex. G. A., H. F. 212, § 25.]

10286. Priority of mechanics' liens between mechanics. Mechanics' liens shall have priority over each other in the order of the filing of the statements or accounts as herein provided. [R., '60, §§ 1853, 1855; C., '73, §§ 2139, 2141; C., '97, § 3095; 40 Ex. G. A., H. F. 212, § 26.]

10287. Priority over other liens. Mechanics' liens shall be preferred to all other liens which may attach to or upon any building and to the land upon which it is situated, except liens of which the contractor or subcontractor, as the case may be, has actual or constructive notice before the commencement of the work or the furnishing of material; but the rights of purchasers, incumbrancers, and other persons who acquire interests in good faith and for a valuable consideration, and without notice, after the expiration of the time for filing claims for such liens, shall be prior to the claims of all contractors or subcontractors who have not, at the dates such rights and interests were acquired, filed their claims for such liens. [R., '60, §§ 1851, 1853, 1855; C., '73, §§ 2137, 2139, 2141; C., '97, §§ 3092, 3095; 40 Ex. G. A., H. F. 212, § 27.]

10288. Priority over garnishments of the owner. Mechanics' liens shall take priority of all garnishments of the owner for the contract debts, whether made prior or subsequent to the commencement of the furnishing of the material or performance of the labor, without regard to the date of filing the claim for such lien. [C., '97, § 3095; 40 Ex. G. A., H. F. 212, § 28.]

10289. Priority as to buildings over prior liens upon land. Mechanics' liens, including those for additions, repairs, and betterments, shall attach to the building for which the material or labor was furnished or done, in preference to any prior lien, incumbrance, or mortgage upon the land upon which such building was erected or situated. [R., '60, §§ 1853, 1855; C., '73, §§ 2139, 2141; C., '97, § 3095; 40 Ex. G. A., H. F. 212, § 29.]

10290. Foreclosure of mechanic's lien when lien on land. In the foreclosure of a mechanic's lien when there is a prior lien, incumbrance, or mortgage upon the land the following regulations shall govern:

1. *Lien on original and independent building.* If such material was furnished or labor performed in the construction of an original and independent building commenced after the attaching or execution of such prior lien, incumbrance, or mortgage, the court may, in its discretion, order such building to be sold separately under execution, and the purchaser may remove the same in such reasonable time as the court may fix. If the court shall find that such building should not be sold separately,

it shall take an account of and ascertain the separate values of the land, and the building, and order the whole sold, and distribute the proceeds of such sale so as to secure to the prior lien, incumbrance, or mortgage priority upon the land, and to the mechanic's lien priority upon the building.

2. *Lien on existing building for repairs or additions.* If the material furnished or labor performed was for additions, repairs, or betterments upon any building, the court shall take an accounting of the values before such material was furnished or labor performed, and the enhanced value caused by such additions, repairs, or betterments; and upon the sale of the premises, distribute the proceeds of such sale so as to secure to the prior mortgagee or lienholder priority upon the land and improvements as they existed prior to the attaching of the mechanic's lien, and to the mechanic's lienholder priority upon the enhanced value caused by such additions, repairs, or betterments. In case the premises do not sell for more than sufficient to pay off the prior mortgage or other lien, the proceeds shall be applied on the prior mortgage or other liens. [R., '60, §§ 1853, 1855; C., '73, §§ 2139, 2141; C., '97, § 3095; 40 Ex. G. A., H. F. 212, § 30.]

10291. Record of claim. The clerk of the court shall indorse upon every claim for a mechanic's lien filed in his office the date and hour of filing and make an abstract thereof in the mechanic's lien book kept for that purpose. Said book shall be properly indexed and shall contain the following items concerning each claim:

1. The name of the person by whom filed.
2. The date and hour of filing.
3. The amount thereof.
4. The name of the person against whom filed.
5. The description of the property to be charged therewith. [R., '60, § 1852; C., '73, § 2138; C., '97, § 3100; 40 Ex. G. A., H. F. 212, § 31.]

10292. Acknowledgment of satisfaction of claim. When a mechanic's lien is satisfied by payment of the claim, the claimant shall acknowledge satisfaction thereof upon the mechanic's lien book, or otherwise in writing, and, if he neglects to do so for thirty days after demand in writing, he shall forfeit and pay twenty-five dollars to the owner or contractor, and be liable to any person injured to the extent of his injury. [R., '60, §§ 1867-1869; C., '73, § 2145; C., '97, § 3101; 40 Ex. G. A., H. F. 212, § 32.]

10293. Time of bringing action—court. An action to enforce a mechanic's lien, or an action brought upon any bond given in lieu thereof, may be commenced in the district or superior court after said lien is perfected. [R., '60, § 1856; C., '73, § 2142; C., '97, § 3098; 40 Ex. G. A., H. F. 212, § 33.]

10294. Place of bringing action. An action to enforce a mechanic's lien shall be brought

in the county in which the property to be affected, or some part thereof, is situated. [C., '73, § 2578; C., '97, § 3493; 40 Ex. G. A., H. F. 212, § 34.]

10295. Kinds of action. An action to enforce a mechanic's lien shall be by equitable proceedings, and no other cause of action shall be joined therewith. [C., '51, § 985; R., '60, § 4183; C., '73, § 2510; C., '97, § 3429; 40 Ex. G. A., H. F. 212, § 35.]

10296. Limitation on action. An action to enforce a mechanic's lien may be brought within two years from the expiration of the sixty or ninety days, as the case may be, for filing the claim as provided in this chapter and not afterwards. [C., '51, § 984; R., '60, §

1865; C., '73, § 2529; C., '97, § 3447; S., '13, § 3447; 39 G. A., ch. 27, § 1; 40 Ex. G. A., H. F. 212, § 36.]

10297. Demand for bringing suit. Upon the written demand of the owner, his agent, or contractor, served on the lienholder requiring him to commence action to enforce his lien, such action shall be commenced within thirty days thereafter, or the lien and all benefits derived therefrom shall be forfeited. [C., '73, § 2143; C., '97, § 3099; 40 Ex. G. A., H. F. 212, § 37.]

10298. Assignment of lien. A mechanic's lien is assignable, and shall follow the assignment of the debt for which it is claimed. [C., '97, § 3099; 40 Ex. G. A., H. F. 212, § 38.]

CHAPTER 452

LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

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10299. Terms defined. For the purpose of this chapter:

1. "Public corporation" shall embrace the state, and all counties, cities, towns, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements.

2. "Public improvement" is one, the cost of which is payable from taxes or other funds under the control of the public corporation, except in cases of public improvement for drainage or levee purposes the provisions of the drainage law in cases of conflict shall govern.

3. "Construction" shall, in addition to its ordinary meaning, embrace repair and alteration.

4. "Material" shall, in addition to its ordinary meaning, embrace feed, provisions, and fuel. [38 G. A., ch. 347, § 1; 39 G. A., ch. 28, § 1; 40 Ex. G. A., H. F. 254, § 1.]

10300. Public improvements—bond and conditions. Contracts for the construction of a public improvement shall, when the contract price equals or exceeds one thousand dollars, be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of such other requirements as may be provided by law. Such bond may also be required when the contract price does not equal said amount. [38 G. A.,

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ch. 347, § 1; 39 G. A., ch. 28, § 1; 40 Ex. G. A., H. F. 254, § 2.]

10301. Bond mandatory. The obligation of the public corporation to require, and the contractor to execute and deliver said bond, shall not be limited or avoided by contract. [38 G. A., ch. 347, § 1; 40 Ex. G. A., H. F. 254, § 3.]

10302. Deposit in lieu of bond. A deposit of money, or a certified check on a solvent bank of the county in which the improvement is to be located, or state or federal bonds, or bonds issued by any city, town, school corporation, or county of this state, or bonds issued on behalf of any drainage or highway paving district of this state, may be received in an amount equal to the amount of the bond and held in lieu of a surety on such bond, and when so received such securities shall be held on the terms and conditions applicable to a surety. [40 Ex. G. A., H. F. 254, § 4.]

10303. Amount of bond. Said bond shall run to the public corporation. The amount thereof shall be fixed, and the bond approved, by the official board or officer empowered to let the contract, in an amount not less than seventy-five per cent of the contract price, and sufficient to comply with all requirements of said contract and to insure the fulfillment of every condition, expressly or impliedly em-

braced in said bond; except that in contracts where no part of the contract price is paid until after the completion of the public improvement the amount of said bond may be fixed at not less than twenty-five per cent of the contract price. [38 G. A., ch. 347, § 1; 39 G. A., ch. 28, § 1; 40 Ex. G. A., H. F. 254, § 5.]

10304. Subcontractors on public improvements. The following provisions shall be held to be a part of every bond given for the performance of a contract for the construction of a public improvement, whether said provisions be inserted in such bond or not, to wit:

1. "The principal and sureties on this bond hereby agree to pay to all persons, firms, or corporations having contracts directly with the principal or with subcontractors, all just claims due them for labor performed or materials furnished, in the performance of the contract on account of which this bond is given, when the same are not satisfied out of the portion of the contract price which the public corporation is required to retain until completion of the public improvement, but the principal and sureties shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law."

2. "Every surety on this bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

a. To any extension of time to the contractor in which to perform the contract.

b. To any change in the plans, specifications, or contract, when such change does not involve an increase of more than twenty per cent of the total contract price, and shall then be released only as to such excess increase.

c. That no provision of this bond or of any other contract shall be valid which limits to less than one year from the time of the acceptance of the work the right to sue on this bond for defects in workmanship or material not discovered or known to the obligee at the time such work was accepted." [S., '13, § 1527-s18; 38 G. A., ch. 347, § 1; 40 Ex. G. A., H. F. 254, § 6.]

10305. Claims for material or labor. Any person, firm, or corporation who has, under a contract with the principal contractor or with subcontractors, performed labor, or furnished material, service, or transportation, in the construction of a public improvement, may file, with the officer authorized by law to issue warrants in payment of such improvement, an itemized, sworn, written statement of the claim for such labor, or material, service, or transportation. [C., '97, § 3102; S., '13, § 1989-a57; 38 G. A., ch. 347, § 2; 38 G. A., ch. 380, § 2; 39 G. A., ch. 147, § 1; 40 Ex. G. A., H. F. 254, § 7.]

10306. Filing claims in case of highway improvements. In case of highway improvements by the county, claims shall be filed with the county auditor of the county letting the contract. [40 Ex. G. A., H. F. 254, § 8.]

10307. Officer to indorse time of filing claim. The officer shall indorse over his official signature upon every claim filed with him, the date and hour of filing. [40 Ex. G. A., H. F. 254, § 9.]

10308. Time of filing claims. Claims may be filed with said officer as follows:

1. At any time before the expiration of thirty days immediately following the completion and final acceptance of the improvement.

2. At any time after said thirty-day period, if the public corporation has not paid the full contract price as herein authorized, and no action is pending to adjudicate rights in and to the unpaid portion of the contract price. [C., '97, § 3102; S., '13, § 1989-a57; 38 G. A., ch. 347, § 2; 38 G. A., ch. 380, § 2; 40 Ex. G. A., H. F. 254, § 10.]

10309. Claims filed after action brought. The court may permit claims to be filed with it during the pendency of the action hereinafter authorized, if it be made to appear that such belated filing will not materially delay the action. [C., '97, § 3102; 38 G. A., ch. 347, § 2; 38 G. A., ch. 380, § 2; 39 G. A., ch. 147, § 1; 40 Ex. G. A., H. F. 254, § 11.]

10310. Payments under public contracts. Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered; said payments to be made for not more than ninety per cent of said estimates and to be so made that at least ten per cent of the contract price will remain unpaid at the date of the completion of the contract, anything in the contract to the contrary notwithstanding. [S., '13, § 1989-a57; 40 Ex. G. A., H. F. 254, § 12.]

10311. Inviolability and disposition of fund. No public corporation shall be permitted to plead noncompliance with the preceding section, and the retained percentage of the contract price, which in no case shall be less than ten per cent, shall constitute a fund for the payment of claims for materials furnished and labor performed on said improvement, and shall be held and disposed of by the public corporation as hereinafter provided. [C., '97, § 3102; S., '13, § 1989-a57; 40 Ex. G. A., H. F. 254, § 13.]

10312. Retention of unpaid funds. Said fund shall be retained by the public corporation for a period of thirty days after the completion and final acceptance of the improvement. If at the end of said thirty-day period claims are on file as herein provided the public corporation shall continue to retain from said unpaid funds a sum not less than double the total amount of all claims on file. [C., '97, § 3104; S., '13, § 1989-a59; 38 G. A., ch. 53, § 1; 40 Ex. G. A., H. F. 254, § 14.]

10313. Action to determine rights to fund. The public corporation, the principal contractor, any claimant for labor or material who

has filed his claim, or the surety on any bond given for the performance of the contract, may, at any time after the expiration of thirty days, and not later than six months, following the completion and final acceptance of said improvement, bring action in equity in the county where the improvement is located to adjudicate all rights to said fund, or to enforce liability on said bond. [C., '97, § 3103; S., '13, § 1989-a58; 38 G. A., ch. 347, § 2; 40 Ex. G. A., H. F. 254, § 16.]

10314. Parties. The official board or officer letting the contract, the principal contractor, all claimants for labor and material who have filed their claim, and the surety on any bond given for the performance of the contract shall be joined as plaintiffs or defendants. [40 Ex. G. A., H. F. 254, § 17.]

10315. Adjudication—payment of claims. The court shall adjudicate all claims. Payments from said retained percentage, if still in the hands of the public corporation, shall be made in the following order:

1. Costs of the action.
2. Claims for labor.
3. Claims for materials.
4. Claims of the public corporation. [40 Ex. G. A., H. F. 254, § 18.]

10316. Insufficiency of funds. When the retained percentage aforesaid is insufficient to pay all claims for labor or materials, the court shall, in making distribution under the preceding section, order the claims in each class paid in the order of filing the same. [C., '97, § 3102; S., '13, § 1989-a57; 38 G. A., ch. 380, § 2; 40 Ex. G. A., H. F. 254, § 19.]

10317. Converting property into money. When it appears that the unpaid portion of the contract price for the public improvement, or a part thereof, is represented, in whole or in part, by property other than money, or if a deposit has been made in lieu of a surety, the court shall have jurisdiction thereover, and may cause the same to be sold, under such procedure as it may deem just and proper, and disburse the proceeds as in other cases. [40 Ex. G. A., H. F. 254, § 20.]

10318. Attorney fees. The court may tax, as costs, a reasonable attorney fee in favor

of any claimant for labor or materials who has, in whole or in part, established his claim. [C., '97, § 3103; S., '13, § 1989-a58; 40 Ex. G. A., H. F. 254, § 21.]

10319. Unpaid claimants—judgment on bond. If, after the said retained percentage has been applied to the payment of duly filed and established claims, there remain any such claims unpaid in whole or in part, judgment shall be entered for the amount thereof against the principal and sureties on the bond. In case the said percentage has been paid over as herein provided, judgment shall be entered against the principal and sureties on all such claims. [40 Ex. G. A., H. F. 254, § 22.]

10320. Abandonment of public work—effect. When a contractor abandons the work on a public improvement or is legally excluded therefrom, the improvement shall be deemed completed for the purpose of filing claims as herein provided, from the date of the official cancellation of the contract. The only fund available for the payment of the claims of persons for labor performed or material furnished shall be the amount then due the contractor, if any, and if said amount be insufficient to satisfy said claims, the claimants shall have a right of action on the bond given for the performance of the contract. [40 Ex. G. A., H. F. 254, § 23.]

10321. Retention of funds in case of highway improvement. If payment for such improvement is to be made in whole or in part from the primary road fund, the county auditor shall immediately notify the state highway commission of the filing of all claims. [40 Ex. G. A., H. F. 254, § 24.]

10322. Filing of claim—effect. The filing of any claim shall not work the withholding of any funds from the contractor except the retained percentage, as provided in this chapter. [40 Ex. G. A., H. F., 254, § 25.]

10323. Public corporation—action on bond. Nothing in this chapter shall be construed as limiting in any manner the right of the public corporation to pursue any remedy on the bond given for the performance of the contract. [40 Ex. G. A., H. F. 254, § 26.]

CHAPTER 453

MINER'S LIEN

10324. Nature of miner's lien.

10324. Nature of miner's lien. Every laborer or miner who shall perform labor in opening, developing, or operating any coal mine shall have a lien for the full value of such labor upon all the property of the person, firm, or corporation owning or operating such mine

and used in the construction or operation thereof, including real estate and personal property. Such lien shall be secured and enforced in the same manner as a mechanic's lien. [C., '97, § 3105; 40 Ex. G. A., H. F. 212, § 39.]

CHAPTER 454

COMMON CARRIER'S LIEN

- 10325. Definitions.
- 10326. Lien of common carrier.
- 10327. Enforcement.
- 10328. Personal notice of sale.
- 10329. Manner of giving notice.
- 10330. Actual notice.
- 10331. Sale.
- 10332. Sale when owner unknown.
- 10333. Inventory—sale in bulk or separate articles.

- 10334. Recovery of property by satisfaction of lien.
- 10335. Application of proceeds.
- 10336. Disposition of unclaimed balance.
- 10337. Release of carrier.
- 10338. Duties of county treasurer.
- 10339. Owner may reclaim—limitation.
- 10340. Other remedies.

10325. Definitions. For the purpose of this chapter:

1. "Perishable property" shall include fruits, vegetables, fish, oysters, candies, bakery goods, game, butter, eggs, dairy products, dressed poultry, fresh meats, and other property which by keeping may deteriorate in value or damage other property; also, gasoline, kerosene, oils, and distillates, dynamite, powder, munitions, and explosives, and other substances, which by reason of odor or leakage, or their volatile, inflammable, explosive, or dangerous nature, may become damaged or may be dangerous to persons or to other property.

2. "Live stock" shall include animals, live poultry, and birds.

3. "Nonperishable property" shall include all property not defined as perishable property or live stock.

4. "Carrier" shall mean common carrier. [R., '60, § 1903; C., '73, § 2180; C., '97, § 3132; 40 Ex. G. A., H. F. 212, § 40.]

10326. Lien of common carrier. Every carrier shall have a lien upon all property of every kind in its possession for all lawful charges thereon for transportation, demurrage, storage, handling, keeping, caring for, and, if sold under the provisions of this chapter, for selling the same. [R., '60, §§ 1898, 1899; C., '73, §§ 2177, 2178; C., '97, § 3130; 40 Ex. G. A., H. F. 212, § 41.]

10327. Enforcement. When any property upon which a carrier has a lien is unclaimed, or no directions have been given for the disposition thereof, or when any of the charges thereon are unpaid, the same may be sold by the carrier after giving the notice herein prescribed. [R., '60, §§ 1900-1902; C., '73, § 2179; C., '97, § 3131; S., '13, § 3131; 40 Ex. G. A., H. F. 212, § 42.]

10328. Personal notice of sale. Notices for the sale of property under the provisions of this chapter shall be given as follows:

1. In the case of perishable property notice may be given, at any time after the arrival of the property at its destination, to the consignee or person designated in the waybill to be notified, and said notice shall state that the property is on hand and that unless all legal charges are paid and the property removed or directions

given for the disposition of the same within the time hereinafter prescribed, the property will be sold as provided in this chapter.

2. In the case of live stock the same notice as prescribed in the preceding paragraph may be given at any time after the lapse of forty-eight hours from the time of arrival of the property at its destination.

3. In the case of nonperishable property notice may be given in accordance with the provisions of the preceding paragraph, but a like notice shall also be given to the consignor.

4. In case no shipping directions have been received for the disposition of the property, the notice required by this section may be given to the person from whom the property was received, if said person and his address are known, otherwise the carrier shall proceed as provided in section 10332. 1. [R., '60, § 1903; C., '73, § 2180; C., '97, § 3132; 40 Ex. G. A., H. F. 212, § 43.] 2. [40 Ex. G. A., H. F. 212, § 43.] 3. [R., '60, §§ 1899, 1901, 1902; C., '73, §§ 2178, 2179; C., '97, §§ 3130, 3131; S., '13, § 3131; 40 Ex. G. A., H. F. 212, § 43.] 4. [40 Ex. G. A., H. F. 212, § 43.]

10329. Manner of giving notice. The deposit in the United States postoffice or public mailing box of a written notice addressed to the person entitled to notice under the preceding section, at the address given in the waybill, with the proper postage thereon, shall constitute the service of notice required by this chapter, but in the case of nonperishable property notice shall be given by registered mail. In case there is no waybill, notice may be given as prescribed in this section to the person entitled thereto at his known place of residence or business. [R., '60, §§ 1901, 1903; C., '73, §§ 2179, 2180; C., '97, §§ 3131, 3132; S., '13, § 3131; 40 Ex. G. A., H. F. 212, § 44.]

10330. Actual notice. Actual notice to the persons entitled to notice shall be sufficient and render the mailing of notice unnecessary, and the time within which said property may be sold shall begin to run from the time of such actual notice. [40 Ex. G. A., H. F. 212, § 45.]

10331. Sale. After the required notice has been given, the carrier may make public or private sale of the property at such time and

place as in its judgment may be advisable, as follows:

1. In case of perishable property, at any time after the lapse of twenty-four hours from the service of notice.

2. In case of live stock, at any time after the lapse of five days from the service of notice.

3. In case of nonperishable property, at any time after the lapse of ten days from the service of notice. [R., '60, § 1901; C., '73, §§ 2179, 2180; C., '97, §§ 3131, 3132; S., '13, § 3131; 40 Ex. G. A., H. F. 212, § 46.]

10332. Sale when owner unknown. When a carrier is in possession of property which is unclaimed or for which no directions have been given for the disposition thereof, and the owner or person entitled thereto, or his address, is unknown, the same may be sold as provided in this chapter, after the lapse of time prescribed in the preceding section from the receipt of the property or arrival at its destination, without giving the notice heretofore prescribed, except that in the case of nonperishable property, advertisement of the sale, describing the property to be sold, and the time and place of sale, shall be published, after the lapse of the time prescribed before sale can be made, once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. [R., '60, §§ 1899, 1900, 1901; C., '73, §§ 2177, 2178, 2179; C., '97, §§ 3130, 3131; S., '13, § 3131; 40 Ex. G. A., H. F. 212, § 47.]

10333. Inventory—sale in bulk or separate articles. Property sold under the provisions of this chapter shall first be listed by the carrier, so as to show the number and kind of articles or packages, or the number of head and kind of live stock, and may be sold in bulk, in lots, or by separate package or articles, or by the head, and the carrier shall keep an accurate account of the separate and aggregate amounts received for all property sold. [R., '60, §§ 1899, 1904; C., '73, §§ 2177, 2178, 2181; C., '97, §§ 3130, 3133; 40 Ex. G. A., H. F. 212, § 48.]

10334. Recovery of property by satisfaction of lien. At any time before the property is sold any person entitled to the same may pay the amount necessary to satisfy the lien and all charges due the carrier who shall then deliver the property to said person. [40 Ex. G. A., H. F. 212, § 49.]

10335. Application of proceeds. The carrier shall make the following disposition of the proceeds of such sale:

1. Apply so much as may be necessary for the payment of all lawful charges for trans-

portation, demurrage, storing, keeping, feeding, and selling, including costs of notices and all expenses connected with the sale and disposition of proceeds.

2. Pay the balance to the consignee or owner or person entitled thereto upon a proper showing that the person claiming it is entitled thereto. [R., '60, §§ 1901, 1904; C., '73, §§ 2179, 2181; C., '97, §§ 3131, 3133; S., '13, § 3131; 40 Ex. G. A., H. F. 212, § 50.]

10336. Disposition of unclaimed balance. When no claim is made by any person for such balance, within one month after the sale the carrier shall pay the same to the treasurer of the county where such property was sold, taking his receipt therefor, which payment shall be accompanied by a verified list of the property sold, showing the amount received, the amount deducted or applied for lawful charges, and the names and addresses of the consignor and consignee as they appear on the waybill. In case there is no waybill the verified list shall show the name and address of the person entitled to notice before the sale of the property, or in case the only notice given was by advertisement then a copy of said advertisement shall be attached to said list. [R., '60, § 1904; C., '73, § 2181; C., '97, § 3133; 40 Ex. G. A., H. F. 212, § 51.]

10337. Release of carrier. Upon payment to the county treasurer of such balance or in case such property does not sell for an amount in excess of the lawful charges, the carrier shall be released from all further liability in relation to the property. [40 Ex. G. A., H. F. 212, § 52.]

10338. Duties of county treasurer. Any county treasurer receiving any funds under the provisions of this chapter, shall make a record in his office of the date and amount received, and shall file and preserve the verified list of property; and if said fund shall remain unclaimed for one year, he shall credit it to the general fund of the county. [R., '60, § 1905; C., '73, § 2182; C., '97, § 3134; 40 Ex. G. A., H. F. 212, § 53.]

10339. Owner may reclaim—limitation. The rightful owner of any such fund may at any time within ten years after it is credited to the general fund, make claim for said amount to the board of supervisors and on proof of his right thereto, it shall be allowed and paid as other claims against the county. [R., '60, § 1905; C., '73, § 2182; C., '97, § 3134; 40 Ex. G. A., H. F. 212, § 54.]

10340. Other remedies. The remedy for enforcing the lien herein provided shall not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the carrier's claim as shall not be paid by the proceeds of the sale. [40 Ex. G. A., H. F. 212, § 55.]

NOTE: Attachment in action to enforce lien, see § 12147.

CHAPTER 455

FORWARDING AND COMMISSION MERCHANT'S LIEN

10341. Nature of lien.

10341. Nature of lien. Every forwarding and commission merchant shall have a lien upon all property of every kind in his possession, for the transportation and storage thereof, for all lawful charges and services thereon or in connection therewith, and, if sold under the provisions of this chapter, for selling the same. [R., '60, §§ 1898, 1899, 1900-1902; C., '73, §§ 2177-2179; C., '97, §§ 3130, 3131; S., '13, § 3131; 40 Ex. G. A., H. F. 212, § 56.]

10342. Enforcement of lien.

10342. Enforcement of lien. The lienholder may enforce his lien in the same manner as a common carrier and all the provisions of the preceding chapter shall govern such proceedings as far as applicable. [R., '60, §§ 1898-1905; C., '73, §§ 2177-2182; C., '97, §§ 3130-3134; S., '13, § 3131; 40 Ex. G. A., H. F. 212, § 57.]

NOTE: Attachment to enforce lien, see § 12147.

CHAPTER 456

ARTISAN'S LIEN

10343. Nature of lien.

10343. Nature of lien. Any person who renders any service or furnishes any material in the making, repairing, improving, or enhancing the value of any inanimate personal property, with the assent of the owner, express or implied, shall have a lien thereon for the agreed or reasonable compensation for his service and material while such property is lawfully in his possession, which possession he may retain until such compensation is paid, but such lien shall be subject to all prior liens of record. [R., '60, § 1898; C., '73, § 2177; C., '97, § 3130; 40 Ex. G. A., H. F. 212, § 58.]

10344. Enforcement of lien.

10344. Enforcement of lien. The lienholder may enforce his lien by suit in equity or in the same manner as a common carrier and all the provisions of the second preceding chapter shall govern such proceedings as far as applicable, except that notice shall be given to the owner or bailor in lieu of the persons specified in said chapter as entitled to notice. [R., '60, §§ 1898-1905; C., '73, §§ 2177-2182; C., '97, §§ 3130-3134; S., '13, § 3131; 40 Ex. G. A., H. F. 212, § 59.]

NOTE: Attachment in action to enforce lien, see § 12147.

CHAPTER 457

LIEN FOR CARE OF STOCK AND STORAGE OF MOTOR VEHICLES

10345. Nature of lien.

10346. Satisfaction of lien by sale.

10345. Nature of lien. Livery and feed stable keepers, herders, feeders, and keepers of stock and of places for the storage of motor vehicles shall have a lien on all property coming into their hands, as such, for their charges and the expense of keeping, but such lien shall be subject to all prior liens of record. [C., '97, § 3137; 40 Ex. G. A., H. F. 212, § 60.]

10346. Satisfaction of lien by sale. If such charges and expenses are not paid, the lienholder may sell said stock and property at public auction, after giving to the owner or claimant, if found within the county, ten days'

10347. Disposal of proceeds.

notice in writing of the time and place of such sale, and also by posting written notices thereof in three public places in the township where said stock and property were kept or received. [C., '97, § 3137; 40 Ex. G. A., H. F. 212, § 62.]

10347. Disposal of proceeds. Out of the proceeds of such sale the lienholder shall pay all of the charges and expenses of keeping said stock and property, together with the costs and expenses of said sale, and the balance shall be paid to the owner or claimant of the stock and property. [C., '97, § 3137; 40 Ex. G. A., H. F. 212, § 63.]

CHAPTER 458

HOTEL KEEPER'S LIEN

10348. Definitions.

10349. Nature of hotel keeper's lien.

10350. Enforcement of claim by ordinary action.

10348. Definitions. For the purposes of this chapter:

1. "Hotel" shall include inn, rooming house, and eating house.

2. "Hotel keeper" shall mean a person who owns or operates a hotel.

3. "Guest" shall include boarder and patron.

4. "Baggage" shall include all property which is in any hotel belonging to or under the control of any guest. [C., '97, § 3138; S., '13, § 3138; 39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 64.]

10349. Nature of hotel keeper's lien. A hotel keeper shall have a lien upon the baggage of any guest, which may be in his hotel, for:

1. The accommodations and keep of said guest.

2. The money paid for or advanced to said guest.

3. The extras and other things furnished said guest. [C., '97, § 3138; S., '13, § 3138; 39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 65.]

10350. Enforcement of claim by ordinary action. The hotel keeper may take and retain possession of all baggage and may enforce his claim by an ordinary action. Said baggage shall be subject to attachment and execution for the reasonable charges of the hotel keeper against the guest, and for the costs of enforcing the lien thereon. [C., '97, § 3138; S., '13, § 3138; 39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 66.]

NOTE: Attachment in action to enforce lien, see § 12147.

10351. Satisfaction of lien by sale. If the hotel keeper does not proceed by an ordinary action he shall retain the baggage upon which

10351. Satisfaction of lien by sale.

10352. Disposal of proceeds—statement.

10353. Duty of county treasurer—right of guest.

he has a lien for a period of ninety days, at the expiration of which time, if such lien is not satisfied, he may sell such baggage at public auction after giving ten days' notice of the time and place of sale in a newspaper of general circulation in the county where the hotel is situated, and also by mailing a copy of such notice addressed to said guest at the place of residence registered by him in the register of the hotel. [C., '97, § 3138; S., '13, § 3138; 39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 67.]

10352. Disposal of proceeds—statement.

From the proceeds of said sale the hotel keeper shall satisfy his lien, the reasonable expense of storage, and the costs for enforcing the lien, and any remaining balance shall, on demand within six months, be paid to the guest, and if not demanded within said period of time, said balance shall be deposited by the hotel keeper with the county treasurer of the county in which the hotel is situated, together with:

1. A statement of the hotel keeper's claim and the costs of enforcing same.

2. A copy of the published notice of sale.

3. A statement of the amounts received for the goods sold at said sale. [C., '97, § 3138; S., '13, § 3138; 39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 68.]

10353. Duty of county treasurer—right of guest.

The balance received by the county treasurer under the preceding section shall be credited by him to the general fund of the county, subject to a right of the guest, or his representative, to reclaim the same at any time within three years from the date of deposit with the county treasurer. [C., '97, § 3138; S., '13, § 3138; 39 G. A., ch. 100, § 1; 40 Ex. G. A., H. F. 212, § 69.]

CHAPTER 459

RELEASE OF LIENS BY BOND

10354. Liens subject to release.
10355. Requirements of bond.

10356. Effect of bond.
10357. Action on bond.

10354. Liens subject to release. An owner of personal property in this state who disputes, either the existence, on such property, of a common law or statutory lien, or the amount of any such lien, may release such lien, if any, and become entitled to the immediate possession of said property by filing a bond as hereinafter provided. [38 G. A., ch. 231, § 1; 40 Ex. G. A., S. F. 273, § 1.]

10355. Requirements of bond. Said bond shall be in an amount equal to twice the amount of the lien claimed, shall have one or more sureties, shall be approved by and filed with the clerk of the district court of the county where the property is being held under the claimed lien, and shall be conditioned to pay claimant any sum found to be due and

also found to have been a lien on said property at the time the bond is filed. [38 G. A., ch. 231, § 1; 40 Ex. G. A., S. F. 273, § 2.]

10356. Effect of bond. When said bond is filed and claimant is given written notice of such filing, the said lien, if any, shall stand released, and the owner shall be entitled to the immediate possession of said property. [38 G. A., ch. 231, § 1; 40 Ex. G. A., S. F. 273, § 3.]

10357. Action on bond. An action upon said bond shall be brought in the county where the owner of the property resides; when the said owner is a nonresident of this state, the action shall be brought in the county where the bond is filed. [38 G. A., ch. 231, § 1; 40 Ex. G. A., S. F. 273, § 4.]

TITLE XXVII

LEGALIZING ACTS

NOTE: The date following the historical reference, which indicates the time of taking effect of an act by publication, has been computed on the theory that such acts take effect on the first day following the last publication. (Arnold vs. Board, 151 Iowa, 155.)

CHAPTER 460

PUBLICATION OF PROPOSED LEGALIZING ACTS

10358. Publication prior to passage.
10359. Place of publication in certain cases.
10360. Caption of publication.

10361. Cost of publication.
10362. Subsequent amendment—effect.

10358. Publication prior to passage. No bill which seeks to legalize the official proceedings of any board of supervisors, board of school directors, or city or town council, or which seeks to legalize any warrant or bond issued by any of said official bodies, shall be placed on passage in either house or senate until such bill as introduced shall have been published in full in some newspaper published within the territorial limits of the public corporation whose proceedings, warrants, or bonds are proposed to be legalized, nor until proof of such publication shall have been filed with the chief clerk of the house, and with the secretary of the senate, and a brief minute of such filing entered on the respective journals. [39 G. A., ch. 228, § 1; 40 G. A., ch. 194.]

NOTE: Fee for printing legalizing bills, see § 263.

10359. Place of publication in certain cases. In case no newspaper is published within such territorial limits, the publication required by this chapter shall be made in one newspaper of general circulation published within the county. [39 G. A., ch. 228, § 2.]

10360. Caption of publication. The publication required by this chapter shall be made under the following caption or heading, to wit: "Proposed bill for the legalization of the proceedings of (name of official body)".

If the proposed bill be for the legalization of the bonds or warrants of the public corporation, the caption shall be modified accordingly. [39 G. A., ch. 228, § 3.]

10361. Cost of publication. If the bill be introduced at the instance of the public body whose proceedings, bonds, or warrants are sought to be legalized, the cost of the aforesaid publication may be paid from the general fund of the public corporation. [39 G. A., ch. 228, § 4.]

NOTE: Limitation on printing legalizing bills, see § 263.

10362. Subsequent amendment—effect. The amendment of the proposed bill after its publication as aforesaid shall not affect its legality, provided the subject matter of the bill is not substantially changed. [39 G. A., ch. 228, § 5.]

CHAPTER 461

NOTARIES PUBLIC AND ACKNOWLEDGMENTS

- 10363. Official acts of notaries public.
- 10364. Official acts of notaries public.
- 10365. Acts of notaries after expiration of commission.
- 10366. Acknowledgments by notaries outside jurisdiction.
- 10367. Acknowledgments and affidavits of mayors and notaries.
- 10368. Acknowledgments of county auditors and deputies.
- 10369. Acknowledgments of school fund mortgages.
- 10370. Acknowledgments under provisions of code of 1873.
- 10371. Acknowledgments defective as to certificate of officer—unqualified official.
- 10372. Acknowledgments of foreign instruments.
- 10373. Defective acknowledgment by attorney in fact.
- 10374. Instruments executed when no power of attorney on record.

10363. Official acts of notaries public.

WHEREAS, certain notaries public whose commissions expired July 4, 1909, and who have continued to act as such notaries public after the expiration of such commissions and who have since qualified as such notaries public, and,

WHEREAS, certain notaries public in the state of Iowa, under a misapprehension as to the date when their commissions were issued as notaries public, did, prior to March 17, 1911, and before their commissions had actually been issued, take certain acknowledgments, and administer certain oaths, and,

WHEREAS, it is the desire of all such notaries public to have their official acts as such notaries public legalized, now, therefore:

All acknowledgments of all written instruments, affidavits, deeds, mortgages, papers and documents, by notaries public as described in the preamble hereof, whether or not the same is required by law to be acknowledged, and all taking of affidavits made by notaries public, be, and the same are hereby, legalized and made valid the same as though they had been duly commissioned as notaries public at the time such acknowledgments were taken, provided this act shall not apply to title to real estate or other property rights which are now in litigation. [34 G. A., ch. 229, § 1. (Took effect by publication April 18, 1911.)]

10364. Official acts of notaries public. All of the official acts of all notaries public holding their office during the term ending July 4, 1903, who continued to act as such notaries public after July 4, 1903, before qualifying as such, but have since qualified as provided by law, are hereby legalized and made valid to the same extent as though they had become duly qualified to act as notaries public immediately upon the expiration of the term ending July 4, 1903; provided, however, that nothing in this act [31 G. A., ch. 223] shall affect any pending litigation. [S., '13, § 2942-l. (Took effect July 4, 1906.)]

10365. Acts of notaries after expiration of commission. All of the official acts of all notaries public holding their office during the

term ending July 4, 1918, who continued to act as such notaries public after July 4, 1918, before qualifying as such, but have since qualified as provided by law, are hereby legalized and made valid to the same extent as though they had become duly qualified to act as notaries public immediately upon the expiration of the term ending July 4, 1918; provided, however, that nothing in this act shall affect any pending litigation. [38 G. A., ch. 146, § 1. (Took effect July 4, 1919.)]

10366. Acknowledgments by notaries outside jurisdiction. Acknowledgments heretofore taken by notaries public outside their jurisdiction are hereby declared valid and legal. Nothing in this act [39 G. A., ch. 151], shall affect pending litigation. [39 G. A., ch. 151, §§ 1, 2. (Took effect July 4, 1921.)]

10367. Acknowledgments and affidavits of mayors and notaries.

WHEREAS, certain mayors, under section 691 of the code of 1897, have taken the acknowledgments of written instruments and administered oaths in proceedings not connected with the administration of their offices; and,

WHEREAS, certain notaries public, whose commissions expired July 4, 1906, and who continued to act as such notaries public and who have since qualified as notaries public, desire to have their acts as such notaries public legalized. Now, therefore:

All acknowledgments and taking of affidavits made by the mayors and notaries public, as described in the preamble hereof, are hereby legalized and made of full effect, the same as though said mayors and notaries public had been originally empowered to take said acknowledgments and administer said oaths. [S., '13, § 2942-k. (Took effect by publication March 15, 1907.)]

10368. Acknowledgments of county auditors and deputies. All acknowledgments of deeds, mortgages, and contracts heretofore taken and certified by any county auditor, deputy county auditor, or deputy clerk of the

district court within this state, be and the same are hereby declared to be as legal and valid as though the law had authorized such acknowledgments at the time they were made. [18 G. A., ch. 103, § 1. (Took effect by publication March 28, 1880.)]

NOTE: See 17 G. A., ch. 164.

10369. Acknowledgments of school-fund mortgages. All acknowledgments of school-fund mortgages and contracts heretofore taken and certified by any county auditor or deputy county auditor in any county in this state be and the same are hereby legalized and declared to be as legal, valid and binding, as though such officer had been authorized to take such acknowledgment when taken. [21 G. A., ch. 163, § 1. (Took effect by publication April 18, 1886.)]

10370. Acknowledgments under provisions of code of 1873. All acknowledgments of instruments in writing taken and certified according to the provisions and form prescribed by the code of 1873, which were taken and certified after September 29, 1897, and prior to the passage of this act [27 G. A., ch. 165], by officers having authority under the provisions of the code of 1873 to take and certify acknowledgments, are here declared to be legal and valid, and of the same force and effect as though the same were taken and certified according to the form and provisions of the code [code of 1897]; and as though the officers taking and certifying the same were authorized to take and certify acknowledgments. [S., '13, § 2942-c. (Took effect by publication April 14, 1898.)]

10371. Acknowledgments defective as to certificate of officer—unqualified official. The acknowledgments of all deeds, mortgages, or other instruments in writing, taken and certified previous to the passage of this act [29 G. A., ch. 249], and which have been duly recorded in the proper counties in this state, and which are defective only in the form of the certificate of the officer taking the same, or by reason of such acknowledgment having been made before an official not qualified to take the same, but who was at the time qualified to take acknowledgments generally, are hereby declared to be as legal and valid for all purposes as if the form of the certificate had been made in accordance with law, and the official taking such acknowledgments duly qualified therefor. [S., '13, § 2942-e. (Took effect July 4, 1902.)]

10372. Acknowledgments of foreign instruments. In all acknowledgments of instruments in writing which by the laws of Iowa are required to be so acknowledged, and which said acknowledgments have been taken without the United States by officers of such countries outside the United States authorized by section 2947 of the code [code of 1897] to take such acknowledgments, the said acknowledgments are hereby legalized whether or not there is attached to such written instrument a certificate by an ambassador, minister, consul, vice consul, charge d'affaires, or consular agent of the United States certifying that full faith and credit is due such officer of such foreign country taking said acknowledgment; and the certificate of acknowledgment of such officer of such foreign country is hereby declared and made conclusive evidence that such officer was duly qualified to make such certificate of acknowledgment. [38 G. A., ch. 181, § 1. (Took effect July 4, 1919.)]

10373. Defective acknowledgment by attorney in fact. No instruments affecting real estate, including satisfactions of mortgages, executed by a party as attorney in fact for the grantor, or grantors, where a duly executed and sufficient power of attorney is on record in the county in which the land is situated, shall be held invalid for the reason that the attorney in fact executed and acknowledged the said instrument in the following form: "A. B., attorney in fact for C. D." instead of "C. D., by A. B. his attorney in fact", but all such instruments heretofore filed for record are hereby legalized and made valid as if the record showed the execution and acknowledgment thereof in the latter form above. [S. S., '15, § 2963-v. (Took effect July 4, 1915.)]

10374. Instruments executed when no power of attorney on record. No instruments affecting real estate, including satisfactions of mortgages, executed and duly recorded prior to January 1, 1900, by a party purporting to act for the grantor, or grantors, as attorney in fact, shall be invalid by reason of the fact that no power of attorney is of record in the county in which the land is situated authorizing him to so act, but all such instruments are hereby legalized and made valid as if the record showed a duly executed power of attorney authorizing the attorney to act in the premises. [S. S., '15, § 2963-x. (Took effect July 4, 1915.)]

CHAPTER 462

JUDGMENTS AND DECREES

10375. Decrees against unknown claimants.
 10376. Certain publications of original notices.
 10377. Decrees for sale of real estate by guardian.
 10378. Judgments or decrees respecting wills.
 10379. Judgments in probate by circuit courts.
 10380. Judgments or decrees quieting title.
10381. Decrees in general—affidavit of nonresidence.
 10382. Decrees in general—affidavit of publication by editor.
 10383. Annulment of marriages—service by publication.

10375. Decrees against unknown claimants. All decrees of court obtained in cases prior to January 15, 1915, in which the notice was entitled in the initial or initials of the plaintiff instead of his full christian name are hereby legalized and said decrees shall have the same force and effect as if such notice had been entitled in the full name of the plaintiff as was provided for in section 3538 of the code [code of 1897], and as is provided for in section 3538 of the supplement to the code, 1913. [S. S., '15, § 3540-a. (Took effect July 4, 1915.)]

10376. Certain publications of original notices. No action in which unknown persons were made parties defendant pursuant to the requirements of section 3538, supplemental supplement to the code, 1915, and in which notice of such action was given by publication between July 1, 1913, and July 1, 1915, for four consecutive weeks, the last publication being ten days prior to the first day of the term for which said action was brought as shown by proof on file in the office of the clerk of the court where said action was pending, shall be held ineffectual, void, or insufficient because the records fail to show that the court or judge approved said notice before publication or failed to indorse his approval on said notice or failed to designate in which paper said notice should be published, as required by section 3539 of the code [code of 1897]. [37 G. A., ch. 37, § 1. (Took effect July 4, 1917.)]

10377. Decrees for sale of real estate by guardian. In all cases where decrees and orders of court have been obtained for the sale of real estate by a guardian prior to January 1, 1921, where the original notice shows that service of notice pertaining to the sale of such real estate was made on the minor or ward outside of the state of Iowa, such services of notices are hereby legalized; and that all decrees so obtained as aforesaid are hereby legalized and held to have the same force and effect as though the service of such original notice had been made on the minor or ward within the state of Iowa. [39 G. A., ch. 88, § 1. (Took effect by publication April 2, 1921.)]

10378. Judgments or decrees respecting wills. No judgment or decree purporting to set aside any will, or the provisions of any will, or to place any construction upon any will or terms of any will, or to aid in carrying out the provisions of any will and no contract or agreement purporting to be a settlement of any suit or action to set aside any will or the terms of any will, or to place any construction upon any will or any of the terms thereof shall be held ineffectual, void, or insufficient because the records fail to show proper service of notice on all parties interested, that persons under disability affected by the action were not properly served with notice, or represented by guardian or guardian ad litem, either in suit, action, or in a settlement thereof, that all persons interested participated in the settlement, or that any other provisions of law had been complied with which are necessary to make a valid decree, judgment, or settlement; provided more than ten years had elapsed since the judgment, decree, contract, or agreement was filed, entered, or placed on record in the county where the real estate affected thereby is situated. And said decree, judgment, contract, or agreement shall be conclusive evidence of the right, title, or interest it purports to establish or adjudicate in so far as it affects the title to such real estate, and said proceedings therein are hereby made legal and effectual the same as though all provisions of law had been complied with in the obtaining of said decree, judgment, or execution of said contract or agreement; and that any judgment, decree, contract, or agreement such as above described which is now of record less than ten years in the county in which the real estate is situated, shall, at the expiration of ten years from date of filing, entering, or recording thereof, have the same force and effect as is above given to those now in effect more than ten years. [S., '13, § 2963-m. (Took effect July 4, 1913.)]

10379. Judgments in probate by circuit courts. In all cases where matters or proceedings in probate have been heard by the circuit courts, or judges outside the county in which such matters or proceedings were pend-

ing, and in all cases where orders, and judgments in probate matters, and proceedings have been made by the circuit courts, and judges outside the county in which such proceeding or matter was pending, and where such hearing was had or order or judgment made within the circuit to which the county belonged in which such proceeding or matter was pending, such hearing, order, or judgment shall be held, and deemed to be of the same validity and force and effect as if such hearing was had or such order or judgment was made within the county in which such proceeding or matter was pending, and that all titles and rights acquired under such orders and judgments shall be held and deemed to be of the same legal force and effect, and to be as valid as if such order or judgment had been made within the county in which proceeding or matter was pending. [21 G. A., ch. 41, § 1. (Took effect by publication March 26, 1886.)]

10380. Judgments or decrees quieting title. No existing judgment or decree quieting title to real estate as against defects arising prior to January 1, 1900, and purporting to sustain the record title shall be held ineffectual because of the failure to properly set out in the petition or notice the derivation or devolution of the interest of the unknown defendants, or on account of the failure of the record to show that such notice was approved by the court or that the same was published as directed by the court, or because of the failure of the record to show that an affidavit was filed by plaintiff showing that personal service could not be made on any defendant in the state of Iowa, or because of the failure of defense by a guardian ad litem for any defendant under legal disability, or where there was more than one tract of real estate described in the same petition and decree, or where the plaintiffs have no joint or common interest in the property or defects of title, or because of failure to comply with any other provision of law, but all such decrees are hereby made legal and effectual the same as if all provisions of law had been complied with in obtaining them. [S., '13, § 2963-f. (Took effect July 4, 1913.)]

10381. Decrees in general—affidavit of non-residence. In all cases where decrees of court have been obtained prior to January 1, 1907, upon publication of notice before the filing of

the affidavit of nonresidence, as provided by section 3534 of the code [code of 1897], and the same has not been filed as provided by law, but has been filed during the time that the notice was being published, on which such decrees are based, are hereby legalized and such decrees shall have the same force and effect as though the affidavit of nonresidence, as provided in said section, was filed at the time of or prior to the first publication of such notice, and that all decrees so obtained, as aforesaid, are hereby legalized and held to have the same force and effect as though the affidavit of nonresidence had been filed, as by law required. [S., '13, § 3534-a. (Took effect by publication April 12, 1911.)]

10382. Decrees in general—affidavit of publication by editor. In all cases where decrees of court have been obtained prior to January 1, 1917, in which the proof of publication of the original notice has been made by the affidavit of the editor of the newspaper or the publisher, manager, cashier, or foreman thereof in which such original notice was published, the same are hereby legalized, and such decrees shall have the same force and effect as though the affidavit of the publisher, or his foreman, of the newspaper in which original notice was published had been filed as provided by section 3536 of the code [code of 1897], that all decrees obtained as aforesaid are hereby legalized and held to have the same force and effect as though the proof of the publication on the original notice had been made by the affidavit of the publisher, or his foreman, of the newspaper in which such original notice was published. [S., '13, § 3536-a; 38 G. A., ch. 89, § 1. (Took effect July 4, 1919.)]

10383. Annulment of marriages—service by publication. All decrees of the courts of this state made and entered of record in actions brought to annul a marriage and in which cases the service of the original notice was made by publication in the manner provided by law for actions for divorce, be and the same are hereby legalized and validated as fully and to the same extent as if the statute at the time such suit was instituted had provided for service of the original notice by publication in the time and manner aforesaid. [S., '13, § 3187-a. (Took effect July 4, 1913.)]

CHAPTER 463

REAL PROPERTY

- 10384. Acknowledgments—seal not affixed.
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- 10395. Conveyances by administrators, trustees, guardians.
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- 10402. Conveyances according to law of other states.
- 10403. Releases and discharges in re real estate.
- 10404. Certain loans, contracts, and mortgages.
- 10405. Descriptions of land referring to defective plats.
- 10406. Defective conveyances—tax deeds—sheriff's deeds.

10384. Acknowledgments—seal not affixed. All deeds, mortgages, or other instruments in writing, for the conveyance of lands which have heretofore been made and executed, and the officer taking the acknowledgment has not affixed his seal to the acknowledgment; such acknowledgment shall, nevertheless, be good and valid in law and equity, anything in any law heretofore passed to the contrary notwithstanding. [S., '13, § 2942-h. (Took effect by publication March 24, 1906.)]

NOTE: See 13 G. A., ch. 160, § 3.

10385. Conveyances by county. All deeds heretofore executed by a county judge, or county court, or the chairman of the board of supervisors of any county, and to which the officer executing the same has failed or omitted to affix the county seal, and all deeds where the clerk has failed or omitted to countersign when required so to do, be and the same are hereby legalized and made valid the same in all respects as though the law had in all respects been fully complied with. [18 G. A., ch. 180. (Took effect July 4, 1880.)]

10386. Absence of or defective acknowledgments. Any instrument in writing affecting the title to real estate within the state of Iowa, to which is attached no certificate of acknowledgment, or to which is attached a defective certificate of acknowledgment, which was, prior to January 1, 1915, recorded or spread upon the records in the office of the recorder of the county in which the real estate described in such instrument is located, is, together with the recording and the record thereof, legalized and declared as valid, legal, and binding as if such instrument had been properly acknowledged and legally recorded. [S. S., '15, § 2963-a; 37 G. A., ch. 388, § 1; 40 G. A., ch. 195, § 1. (Took effect July 4, 1923.)]

NOTE: See 35 G. A., ch. 265, § 1; 14 G. A., ch. 110, § 2; 13 G. A., ch. 160, § 2.

10387. Acknowledgments by officers of corporations. The acknowledgments of all deeds, mortgages, or other instruments in writing heretofore taken or certified, and which instruments have been recorded in the recorder's office of any county of this state, including acknowledgments of instruments made by any private or other corporation, or to which such corporation was a party, or under which such corporation was a beneficiary, and which have been acknowledged before or certified by any notary public who was at the time of such acknowledgment or certifying, a stockholder or officer in such corporation, are hereby declared to be legal and valid official acts of such notaries public, and to entitle such instruments to be recorded, anything in the laws of the state of Iowa in regard to acknowledgments to the contrary notwithstanding. [40 Ex. G. A., ch. 36, § 1. (Took effect by publication January 15, 1924.)]

NOTE: See 37 G. A., ch. 397, § 1; 37 G. A., ch. 173, § 1; 34 G. A., ch. 151, § 1; 31 G. A., ch. 146, § 1; 26 Ex. G. A., ch. 23, § 1.

10388. Acknowledgments by stockholders of corporations. All deeds and conveyances of lands within this state heretofore executed but which have been acknowledged or proved according to and in compliance with the laws of this state before a notary public or other official authorized by law to take acknowledgments who was, at the time of such acknowledgment, an officer or stockholder of a corporation interested in any such deed or conveyance, or otherwise interested therein, are, if otherwise valid, hereby declared effectual and valid in law to all intents and purposes as though acknowledged or proved before an officer not interested therein; and if heretofore recorded in the respective counties in which such lands may be, the records thereof are hereby confirmed and declared effectual and

valid in law to all intents and purposes as though said deeds and conveyances, so acknowledged or proved and recorded, had (prior to being recorded) been acknowledged or proved before an officer having no interest therein. [S., '13, § 2942-d. (Took effect July 4, 1898.)]

10389. Instruments of corporations affecting real estate. All instruments in writing executed by any corporation prior to July 4, 1909, conveying, incumbering, or affecting real estate, including releases, satisfaction of mortgages, judgments, or any other liens by entry of such release or satisfaction upon the page or pages where such lien appears recorded or entered, where the corporate seal of such corporation has not been affixed or attached thereto, and which are otherwise legally and properly executed, are hereby declared legal, valid, and binding, the same as though the corporate seal had been attached or affixed thereto. [S., '13, § 3068-a. (Took effect July 4, 1911.)]

10390. Sales, contracts, and deeds by corporations. All sales, contracts, deeds, or conveyances of lands owned by any such corporation on July 4, 1888, or acquired by any such corporation under the provisions of section 6 of chapter 85 of the laws of the twenty-second general assembly or section 2890 of the code [code of 1897], bearing date on or after July 4, 1888, are hereby legalized and rendered of full force and effect, according to their terms, in so far as their validity or the validity of the titles conveyed thereby may be affected by chapter 85 of the laws of the twenty-second general assembly, or any amendments thereto, or by chapter 1, title 14, of the code [code of 1897]. [S., '13, § 2889-c. (Took effect by publication March 17, 1900.)]

NOTE: The term "such corporation" in the above section refers to corporations specified in §§ 10216 and 10217.

10391. Marginal releases of mortgages. Any release or satisfaction of any mortgage or trust deed, or of any instrument in writing creating a lien upon real estate where such release or satisfaction has been recorded in the recorder's office of the county in this state, or upon the margin of the record, where such original instrument was recorded and which release or satisfaction was made by any individual, association, copartnership, assignee, corporation, attorney in fact, or by a resident or foreign executor, administrator, referee, receiver, trustee, guardian, or commissioner, and which release or satisfaction was executed, filed, and recorded prior to March 1, 1907, is hereby legalized, declared valid, legal and binding and of full force and effect, any defects in the execution, acknowledgment, recording, filing, or otherwise of such releases or satisfactions to the contrary notwithstanding. [S., '13, § 2938-b; 37 G. A., ch. 345, § 1. (Took effect July 4, 1917.)]

10392. Marginal releases of school-fund mortgages. The release or satisfaction of any

school-fund mortgage entered on the margin of the record of such mortgage by the auditor of the county prior to July 4, 1894, is hereby legalized and given the same force and effect as though such auditor had had, at the time of entering such release or satisfaction, the same power thereafter conferred upon him by chapter 53 of the acts of the twenty-fifth general assembly. [37 G. A., ch. 339, § 1. (Took effect July 4, 1917.)]

10393. Marginal assignment of mortgage or lien. In any case where an assignment of a mortgage or other recorded lien on real estate has heretofore been made by written assignment thereof on the margin of the record where such mortgage or other lien is recorded or entered, such assignment shall be deemed to have passed all the right, title, and interest therein, which the assignor at the time had, with like force and effect as if such assignment had been made by separate instrument duly acknowledged and recorded; and any such assignment or a duly authenticated copy thereof when accompanied by a duly authenticated copy of the record of the instrument or lien it purports to assign, shall be admissible in evidence as is provided by law for the admission of the records of deeds and mortgages. [S. S., '15, § 2963-x2. (Took effect July 4, 1915.)]

NOTE: See 34 G. A., ch. 227, § 1.

10394. Conveyances by executors, trustees, assignees. In all cases where, prior to the year 1910, an executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner, acting as such in this or any state, has conveyed in such trust capacity real estate lying in this state and such conveyance has been of record since prior to January 1, 1910, in the county where the real estate so conveyed is located and which conveyance purports to sustain the title in the present record owner or owners thereof, such conveyance shall not be held void or insufficient by reason of the fact that due and legal notice of all proceedings with reference to the making of any such conveyance was not served upon all interested or necessary parties, or that such executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner is not shown to have been duly authorized by an order of court to make and execute such conveyance, that a bond was not given therefor, or that no report of the sale was made; or such sale or deed of conveyance was not approved by order of court, or that any such foreign executor, administrator, trustee, guardian, assignee, receiver, referee, or commissioner was not appointed or qualified in the state of Iowa prior to the making of such conveyance, or that the record thereof fails to disclose compliance with any other provisions of law, and all such conveyances are hereby legalized and declared valid, legal, and binding and of full force and effect. Allotments by referees in partition shall be considered conveyances within the meaning of this section. [S. S., '15, § 2963-1; 37 G. A., ch. 388, § 2. (Took effect July 4, 1917.)]

10395. Conveyances by administrators, trustees, guardians. In all cases where, prior to the year 1890, an executor, administrator, trustee, guardian, referee, or commissioner, duly appointed and qualified, and acting as such in this or any other state, has conveyed in such trust capacity, real estate lying in this state, and such conveyance has been of record since prior to January 1, 1890, in the county where the real estate so conveyed is located, and the possession of said real estate since said date has rested in the grantee thereunder, or parties claiming by, through, or under him, such conveyance shall not be held void or insufficient by reason of the fact that due and legal notice of all proceedings with reference to the making of any such conveyance was not served upon all interested or necessary parties, or that such executor, administrator, trustee, guardian, referee, or commissioner is not shown to have been duly authorized by an order of court to make and execute such conveyance, or that a bond was not given therefor; or that no report of the sale was made; or such sale or deed of conveyance was not approved by order of court, or that any such foreign executor, administrator, trustee, guardian, referee, or commissioner was not appointed or qualified in the state of Iowa, prior to the making of such conveyance, and all such conveyances are hereby legalized and declared valid, legal, binding, and of full force and effect. [S., '13, § 2942-j. (Took effect July 4, 1911.)]

10396. Sheriffs' deeds. No foreclosure proceeding or sale of real estate on execution prior to January 1, 1900, wherein a sheriff's deed was executed and which purports to sustain the record title shall be held ineffectual on account of the failure of the record to show that any of the steps in obtaining said judgment or in the sale of said property were complied with. Such proceedings are hereby legalized and made valid as if the record showed that all the provisions of the law had been complied with. [40 G. A., ch. 240, § 2. (Took effect July 4, 1923.)]

NOTE: See 35 G. A., ch. 272, § 4.

10397. Sheriff's deed executed by deputy. All conveyances of land in this state, executed in this state by a deputy sheriff, and properly recorded in the office of the county recorder of the county wherein the land is located, prior to January 1, 1900, shall have the same force and effect as though such conveyance had been executed by the sheriff. [40 G. A., ch. 240, § 1. (Took effect July 4, 1923.)]

NOTE: See 34 G. A., ch. 226, § 1.

10398. Defective tax deeds. No sale of real property for taxes made prior to January 1, 1895, wherein the tax deed was executed and which deed purports to sustain the record title, shall be held ineffectual on account of the failure of the record to show that any of the steps in the sale and deeding of said property were complied with; said proceedings are hereby legalized and made valid and effectual as if

the record showed that all the provisions of law had been complied with. [S., '13, § 2963-o. (Took effect July 4, 1913.)]

10399. Conveyances by spouse under power of attorney. No conveyance of real estate heretofore made, wherein the husband or wife conveyed or contracted to convey the inchoate right of dower through the other spouse, acting as the attorney in fact, by virtue of a power of attorney executed by such spouse, such power of attorney not having been executed as a part of a contract of separation, shall be held invalid as contravening the provisions of section 3154 of the code [code of 1897], but all such conveyances are hereby legalized and made effective. [37 G. A., ch. 351, § 2. (Took effect July 4, 1917.)]

NOTE: See 30 G. A., ch. 118; 29 G. A. ch. 237, § 1.

10400. Conveyances by foreign executors. All conveyances of real property made prior to January 1, 1913, by executors or trustees under foreign wills and prior to the expiration of three months after the recording of a duly authenticated copy of the will, original record of appointment, qualification, and bond, as required by the provisions of section 3295 of the code [code of 1897], are hereby legalized and declared as valid and effective in law as though the provisions of said section had been strictly followed, provided the proper proof of authority was a matter of record in the office of the clerk of the district court in the county where the real property is situated, at the time the conveyance was executed, or was made a matter of record prior to the passage of this act; provided that nothing in this act shall affect pending litigation. [S., '13, § 3295-b. (Took effect July 4, 1913.)]

NOTE: See 35 G. A., ch. 272, § 12; 34 G. A., ch. 157, § 1; 27 G. A., ch. 182, § 1; 23 G. A., ch. 38; 18 G. A., ch. 162, § 2.

10401. Conveyances by foreign executors. All conveyances of real property made prior to January 1, 1913, by executors or trustees under foreign wills and prior to the date upon which such will was admitted to probate in Iowa or prior to the expiration of three months after the recording of a duly authenticated copy of such will, original record of appointment, qualification, and bond as required by the provisions of section 3295 of the code [code of 1897], and in which such will was subsequent to said conveyance, probated in Iowa or shall hereafter be probated in Iowa, and in which a duly authenticated copy of the will, original record of appointment, qualification, and bond as required by said section 3295 was subsequent to such conveyance, or shall be hereafter made a matter of record as provided in said section 3295, are hereby legalized and declared as valid and effectual in law and in equity as though such will had been probated in Iowa prior to such conveyance and as though the provisions of said section 3295 had been strictly complied with; provided nothing in this act [35 G. A., ch. 273, § 1] shall affect pending litigation. [S., '13, § 3295-c. (Took effect July 4, 1913.)]

10402. Conveyances according to law of other states. All deeds and conveyances of lands lying and being within this state heretofore executed and which said deeds have been acknowledged or proved according to and in compliance with the laws and usages of the state, territory, or country in which said deeds or conveyances were acknowledged and proved are hereby declared effectual and valid in law to all intents and purposes as though the same acknowledgments had been taken or proof of execution made within this state and in pursuance of the acts and laws thereof, and such deeds so acknowledged or proved as aforesaid shall be admitted to be legally recorded in the respective counties in which such lands may be, anything in the acts and laws of this state to the contrary notwithstanding, and all deeds and conveyances of lands situated within this state which have been acknowledged or proved in any other state, territory, or country according to and in compliance with the laws and usages of such state, territory, or country and which deeds and conveyances have been recorded within this state be and the same are hereby confirmed and declared effectual and valid in law to all intents and purposes as though the said deeds or conveyances so acknowledged or proved and recorded had prior to being recorded been acknowledged or proved within this state.

This act [20 G. A., ch. 203] shall apply to all deeds, mortgages, and conveyances made, filed, recorded, and proved as contemplated in section 1 of this act prior to January 1, 1884. [20 G. A., ch. 203, §§ 1, 2. (Took effect July 4, 1884.)]

NOTE: See 14 G. A., ch. 110, § 1; 13 G. A., ch. 160, § 1.

10403. Releases and discharges in re real estate. All releases and discharges of judgments, mortgages, or deeds of trust affecting property in this state made prior to January 1, 1903, by administrators, executors, or guardians appointed by the court of any other state or country without complying with the provisions of section 3308 of the code [code of 1897] are hereby legalized and declared as valid and effective in law and in equity as though the provisions of said section had been strictly followed; provided that nothing in this act [35 G. A., ch. 276, § 1] shall affect pending

litigation. [S., '13, § 3308-a. (Took effect July 4, 1913.)]

10404. Certain loans, contracts, and mortgages. All loans, contracts, and mortgages which are affected by the repeal of chapter 48, acts of the twenty-seventh general assembly, are hereby legalized so far as to permit recovery to be had thereon for interest at the rate of eight per cent per annum, but at no greater rate, and nothing contained in such contracts shall be construed to be usurious so as to work a forfeiture of any penalty to the school fund. [S., '13, § 1898-b. (Took effect by publication May 4, 1900.)]

10405. Descriptions of land referring to defective plats. The description of land in all instruments, conveyances, and incumbrances describing lots in or referring to plats made by the county auditors of Iowa, or by the county surveyor for the owner, and placed of record by the county recorders of Iowa, are hereby legalized and the same declared valid and binding the same as though the said plats had been signed and acknowledged and filed and recorded in strict compliance with law. [S., '13, § 924-b. (Took effect by publication March 3, 1907.)]

10406. Defective conveyances—tax deeds—sheriffs' deeds. Any deed of conveyance, or other instrument purporting to convey real estate within the state of Iowa, where such deed or instrument has been recorded in the office of the recorder of any county wherein such real estate is situated, and which said deed or instrument was executed by a county treasurer under a tax sale, a sheriff under execution sale, or by a resident or foreign executor, administrator, referee, receiver, trustee, guardian, commissioner, individual, copartnership, association, or corporation, and was executed and recorded prior to January 1, 1890, and where the grantee or grantees named in such deed or conveyance, or other instrument, his, her, their, or its grantees, heirs, or devisees, by direct line of title or conveyance have been in the actual, open, adverse possession of such premises since said date, be and the same is hereby legalized, declared valid, legal, and binding, and of full force and effect, notwithstanding any defects in the execution of said deed or instrument. [S., '13, § 2963-c. (Took effect by publication April 15, 1913.)]

CHAPTER 464

WILLS

10407. Notice of appointment of executors.

10407. Notice of appointment of executors. In all instances prior to January 1, 1920, where executors or administrators have failed to publish notice of their appointment as required by code section 3304 [code of 1897], but have published a notice of appointment, such notice of

appointment is hereby legalized and shall have the same force and effect as though the same had been published as directed by the court or clerk. [40 G. A., ch. 208, § 2. (Took effect July 4, 1923.)]

CHAPTER 465

CORPORATIONS

10408. Defective publication.
 10409. Publication after required time.
 10410. Filing of renewals after required time.

10411. Notices of incorporation.
 10412. Notices of incorporation.
 10413. Amended articles and change of name.

10408. Defective publication. Corporations heretofore incorporated under the laws of the state of Iowa which have caused notice of their incorporation to be published once each week for four consecutive weeks in some daily, semi-weekly, or triweekly newspaper, instead of causing the same to be published in each issue of such newspaper for four consecutive weeks, are hereby legalized and are declared legal incorporations the same as though the law had been complied with in all respects in regard to the publication of notice. [S., '13, § 1613-a. (Took effect by publication March 12, 1902.)]

10409. Publication after required time. In all instances where the incorporators of corporations organized in this state for pecuniary profit have omitted to publish notices of such incorporation within three months from and after the date of the certificates of incorporation issued by the secretary of state, but did publish such notices thereafter in the manner and form as required by law, such notices of incorporation are hereby legalized, and shall have the same force and effect as though published within said period of three months. Nothing herein contained shall be so construed as to affect any pending litigation. [40 G. A., ch. 380, §§ 1, 2. (Took effect July 4, 1923.)]

NOTE: See 39 G. A., ch. 398, §§ 1, 2; 33 G. A., ch. 272, § 1.

10410. Filing of renewals after required time. In all instances where proper action has been taken prior to July 1, 1923, by the stockholders for renewal of any corporation for pecuniary profit and the certificate showing such proceedings together with the articles of incorporation have been filed and recorded in the office of the county recorder and later in the office of the secretary of state, although there has been failure to file such certificates and articles of incorporation in either or both of the said offices within the time specified therefor by law; such renewals are hereby legalized and shall be held to have the same force and effect as though the filings of the said documents in the said offices had been made within the periods prescribed by the statute. [S. S., '15, § 1618-1a; 40 G. A., ch. 196. (Took effect July 4, 1923.)]

10411. Notices of incorporation. In all instances where the incorporators of corporations

organized in this state for pecuniary profit have omitted to publish notices of such incorporation within three months from and after the date of the certificates of incorporation issued by the secretary of state, but did publish such notices within three months after the date required by law in such cases in the manner and form as required by law, such notices of incorporation are hereby legalized, and shall have the same force and effect in all respects as though the same had been published within said three months' period, as provided by section 1614 of the code [code of 1897] and amendments thereto, and all the corporate acts of such corporations from and after the date of such completed publications are hereby legalized in all respects. [38 G. A., ch. 158, § 1. (Took effect July 4, 1919.)]

10412. Notices of incorporation. In all instances where the incorporators of corporations for pecuniary profit have omitted to publish notice of incorporation within three months from the date of the certificate of incorporation issued by the secretary of state, but have published notice thereafter, in manner and form as by law required, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months, as to all acts of said corporation from the date of said completed publication. [37 G. A., ch. 96, § 1. (Took effect July 4, 1917.)]

10413. Amended articles and change of name. Any corporation so organized [32 G. A., ch. 250] under chapter 2 of title 9 of the code [code of 1897], which shall have heretofore adopted articles of incorporation, or changed its name, or amended its articles, and some question has arisen as to whether such articles, change in name, or amendment was adopted by a majority of the members of such corporation as required by section 1651 of the code [code of 1897], and such corporation shall have been engaged in the exercise of its corporate functions for the period of at least three years, such articles, change in name, or amendment, shall be held and considered to have been duly adopted by a majority of all the members of such corporation, and are hereby legalized and made valid. [S., '13, § 1642-b. (Took effect by publication April 19, 1907.)]

CHAPTER 466

CITIES AND TOWNS

10414. Bonds for garbage disposal plants.
 10415. Plats legalized.
 10416. City and town plats.
 10417. Making and recording plats.

10418. Ordinances and proceedings of council.
 10419. Contracts, elections, and ordinances in re libraries.
 10420. Changing names of streets.

10414. Bonds for garbage disposal plants. All proceedings of such cities and towns as herein included, heretofore had, subsequent to the adoption of section 696-b by the thirty-sixth general assembly, and prior to the passage of this act [37 G. A., ch. 367], providing for the issuance of bonds within the limitations of this act, for the purchase or erection of garbage disposal plants, the vote of the people authorizing such issue and the bonds issued under such proceedings and vote, are hereby legalized and declared legal and valid, the same as though all of the provisions of this act had been included in said section 696-b of the supplemental supplement to the code, 1915, and such cities may issue and sell such bonds without again submitting such question to vote. [37 G. A., ch. 367, § 2. (Took effect by publication May 1, 1917.)]

10415. Plats legalized. None of the provisions of this chapter [ch. 13, title 5, code of 1897] shall be construed to require replatting in any case where plats have been made and recorded in pursuance of law; and all plats heretofore filed for record and not subsequently vacated are hereby declared valid, notwithstanding irregularities and omissions in the required statement or plat, or in the manner or form of acknowledgment, or certificates thereof. [C., '73, § 571; C., '97, § 929. (Took effect Oct. 1, 1897.)]

10416. City and town plats. In all cases where, prior to January 1, 1895, any person, persons, or corporations have laid out any parcel of land into town or city lots and the plat or plats thereof have been recorded and the same appears to be insufficient because of failure to show certificates of the county judge, county treasurer, or county recorder, or because said certificates are defective, or because said plat failed to show signatures or acknowledgment of proprietors as provided by law, or because said acknowledgment was defective, and, subsequent to such platting, lots or subdivisions thereof have been sold and conveyed, all such said plats which have not been vacated and have been of record for a period of twenty years or more, are hereby legalized and made of full force and effect as of the date of the making thereof the same as though all certificates had been attached and all the other necessary steps taken as provided by

law, and the record thereof shall be conclusive evidence that the person, persons, firm, or corporation were the proprietors of such tract of land and the owners thereof at the time of said platting, and that said tract of land was free and clear of all incumbrances unless an affidavit to the contrary was filed at the time of recording such plat. Any person or persons having, or claiming to have, any right, title, or interest in any platted premises affected by the provisions of this act [37 G. A., ch. 79] and which right, title, or interest this act terminates or cuts off, or purports to terminate or cut off, shall have six months from the taking effect of this act in which to commence an action, or actions, to establish such right, and thereafter shall be barred from claiming any such right, title, or interest. The provisions of this act shall not affect pending litigation. [37 G. A., ch. 79, § 1. (Took effect July 4, 1917.)]

10417. Making and recording plats. The acts of the county auditors of Iowa, in making and recording plats as authorized under sections 922, 923, and 924 of the code [code of 1897] without first having properly signed or acknowledged the same, and the acts of the county recorders of Iowa in recording such plats, are hereby legalized and the same declared valid and binding the same as though they had in such respects been made and recorded in strict compliance with law. [S., '13, § 924-a. (Took effect by publication March 3, 1907.)]

10418. Ordinances and proceedings of council. All acts, motions, proceedings, resolutions, and ordinances heretofore passed or adopted by the council of any city, including cities acting under special charter, and incorporated towns in the state on the supposition that the mayor was not a member of such council, and which would conform to the law if the mayor had not been a member of said council, shall for all purposes from the date of such act, motion, proceeding, resolution, or ordinance, be considered as valid and legal as they would have been had the mayor not been a member of such body. [S., '13, § 658-a. (Took effect by publication March 1, 1902.)]

10419. Contracts, elections, and ordinances in re libraries. Where cities or incorporated

towns and institutions of learning have established or contracted to establish public libraries to be maintained and controlled jointly as contemplated by this act [30 G. A., ch. 24], all contracts, elections, ordinances, and other proceedings made, held, or passed in the manner provided by law are hereby declared as valid and obligatory upon the parties thereto as though the same had been made, held, or passed after the taking effect of this act. [S., '13, § 730-a. (Took effect July 4, 1904.)]

10420. Changing names of streets.

WHEREAS, certain cities or towns throughout the state of Iowa have passed ordinances changing the name or names of certain streets in said cities;

Now, therefore, it is provided that the acts of said city and town councils of such cities and towns in enacting said ordinances changing the names of said certain streets are hereby declared valid. On the filing for record of the said ordinances, duly certified by the mayor and city or town clerk, with the county recorder he shall make and record in the records of his office a plat showing the changes in the names of the streets and shall file a copy of said plat with the county auditor. [34 G. A., ch. 228, § 1. (Took effect by publication March 30, 1911.)]

CHAPTER 467

BONDS

- 10421. Refunding bonds.
- 10422. Drainage bonds.

10421. Refunding bonds. All bonds which have been heretofore issued under chapter 152 of the laws of the thirty-second general assembly of Iowa and which are subject to the objection that they were issued to refund bonds which had been issued subsequent to the adoption of said chapter 152 are hereby legalized in respect to said objection, the same in effect as if the bonds refunded had been issued prior to the adoption of said chapter 152. [37 G. A., ch. 262, § 2. (Took effect by publication May 2, 1917.)]

10422. Drainage bonds. All such drainage districts [38 G. A., ch. 135] heretofore organized, and assessments levied and confirmed in respect thereof, and bonds issued in anticipation of the collection of such assessments, are hereby validated and legalized. [38 G. A., ch. 135, § 1. (Took effect by publication April 11, 1919.)]

10423. Street improvement and sewer bonds. All bonds heretofore issued pursuant to the provisions of section 843 of the code [code of

- 10423. Street improvement and sewer bonds.
- 10424. Park bonds and certificates.

1897] wherein dates of maturity are fixed in said bonds other than April first, are hereby legalized, notwithstanding such maturities. Nothing in this act [39 G. A., ch. 347] contained shall affect any pending litigation. [39 G. A., ch. 347, § 1. (Took effect by publication March 15, 1921.)]

10424. Park bonds and certificates. In all cities covered by the provisions of chapter 312, acts of the thirty-eighth general assembly, which have heretofore caused to be issued park certificates or bonds in anticipation of levies authorized in paragraph 2 of section 1 of said chapter 312, for the purpose of paying the cost of any building constructed or under construction in any public park, such certificates or bonds, as the case may be, which have been issued or shall be issued, and all proceedings relating thereto, are hereby legalized; and in all cases where the levy of the tax authorized under paragraph 2 has been made, such levy is hereby legalized. [39 G. A., ch. 125, § 2. (Took effect by publication April 8, 1921.)]

CHAPTER 468

ELECTIONS

- 10425. Elections in re school bonds.

10425. Elections in re school bonds. In all cases where an election has been held in any school district, under the provisions of sections 2820-d1 to 2820-d5, inclusive, supplement to the code, 1913, and a majority of the votes cast, regardless of the sex of the voter, at such election was in favor of the issuance of bonds, such election is hereby declared to be sufficient authorization for the issuance of bonds, and

- 10426. Elections in re sites and buildings for counties.

all bonds so authorized, whether heretofore issued or hereafter to be issued, are hereby legalized and validated. [38 G. A., ch. 134, § 2. (Took effect by publication April 6, 1919.)]

10426. Elections in re sites and buildings for counties. The provisions of sections 443 of the code [code of 1897] and 448 of the supplemental supplement to the code, 1915, as

here amended [37 G. A., ch. 304] are hereby made retroactive, and shall apply to any election held prior to as well as after with the same effect as if the said amendments had been made prior to the call and holding of such

election, and the tax levies and bond issues voted at such prior election are hereby legalized, confirmed, and made valid. [37 G. A., ch. 304, § 3. (Took effect by publication May 1, 1917.)]

TITLE XXVIII

DOMESTIC RELATIONS

CHAPTER 469

MARRIAGE

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| 10427. Contract. | 10437. Nonstatutory solemnization—forfeiture. |
| 10428. Age. | 10438. Fee. |
| 10429. License. | 10439. Certificate—return. |
| 10430. Age and qualification—affidavit. | 10440. Contents of return. |
| 10431. Age and qualification—certificate. | 10441. Inadequate return. |
| 10432. Filing and record required. | 10442. Husband responsible for return. |
| 10433. Delivery of blank with license. | 10443. Exceptions. |
| 10434. Consent of parent. | 10444. Issue legitimized. |
| 10435. Violations. | 10445. Void marriages. |
| 10436. Who may solemnize. | |

10427. Contract. Marriage is a civil contract, requiring the consent of the parties capable of entering into other contracts, except as herein otherwise declared. [C., '51, § 1463; R., '60, § 2515; C., '73, § 2185; C., '97, § 3139.]

10428. Age. A marriage between a male of sixteen and a female of fourteen years of age is valid; but if either party has not attained the age thus fixed, the marriage will be a nullity or not, at the option of such party, made known at any time before he or she is six months older than the age thus fixed. [C., '51, § 1464; R., '60, § 2516; C., '73, § 2186; C., '97, § 3140.]

10429. License. Previous to the solemnization of any marriage, a license for that purpose must be obtained from the clerk of the district court of the county wherein the marriage is to be solemnized. Such license must not be granted in any case:

1. Where either party is under the age necessary to render the marriage valid.

2. Where the male is a minor, or the female is under eighteen years of age, unless a certificate of the consent of the parents is filed. If one of the parents is dead such certificate may be executed by the survivor. If both parents are dead the guardian of such minor may execute such certificate.

3. Where either party is disqualified from making any civil contract.

4. Where the parties are within the degrees of consanguinity or affinity in which marriages are prohibited by law.

5. Where either party is an idiot, imbecile, insane, or under guardianship as an incompetent. [C., '51, §§ 1465, 1466; R., '60, §§ 2517, 2518; C., '73, §§ 2187, 2188; C., '97, § 3141; S., '13, § 3141; 40 Ex. G. A., H. F. 213, § 1.]

10430. Age and qualification—affidavit. When an application for a license is made the clerk shall require at least one affidavit from some competent and disinterested person, stating such facts as to age and qualification of the parties as the clerk may deem necessary to determine the competency of the parties to contract a marriage. [C., '51, § 1468; R., '60, § 2520; C., '73, § 2190; C., '97, § 3142; 40 Ex. G. A., H. F. 213, § 2.]

10431. Age and qualification—certificate. If the clerk is acquainted with the age and qualification of the parties, he may execute, in lieu of said affidavit, a certificate stating such fact, and that he knew the parties to be competent to contract a marriage. [C., '51, § 1467; R., '60, § 2519; C., '73, § 2189; C., '97, § 3142; 40 Ex. G. A., H. F. 213, § 2.]

10432. Filing and record required. The affidavit or certificate, in each case, shall be filed by the clerk and constitute a part of the records of his office. A memorandum of such affidavit or certificate shall also be entered in the license book. [C., '51, § 1468; R., '60, § 2520; C., '73, § 2190; C., '97, § 3142; 40 Ex. G. A., H. F. 213, § 2.]

10433. Delivery of blank with license. When a license is issued the clerk shall deliver to the applicant a blank return for the marriage, and give such instructions relative thereto as will insure a complete and accurate return. [40 Ex. G. A., H. F. 213, § 3.]

10434. Consent of parent. If either applicant for a license is a minor, a certificate in writing of the parents or guardian, as the case may be, of consent, as provided in section 10429, must be filed in the office of the clerk,

and be acknowledged by them or proven to be genuine, and a memorandum thereof entered in the license book. The false making of such certificate shall be punishable as forgery. [C., '51, § 1469; R., '60, § 2521; C., '73, § 2191; C., '97, § 3143.]

10435. Violations. If the clerk issues a license in violation of the provisions of the preceding section, or if a marriage is solemnized without its being procured, the clerk so issuing the same, and the parties married, and all persons aiding them, are guilty of a misdemeanor. [C., '51, § 1470; R., '60, § 2522; C., '73, § 2192; C., '97, § 3144.]

10436. Who may solemnize. Marriages must be solemnized:

1. By a justice of the peace, or the mayor of the city or town wherein the marriage takes place.

2. By some judge of the supreme, district, superior, or municipal court of the state.

3. By some minister of the gospel, ordained or licensed according to the usages of his denomination.

4. By the United States government superintendent of any Indian agency where the contracting parties are members of an Indian tribe under the supervision of such superintendent, and for such marriages no license shall be required, but the return of such marriage shall be made to the clerk of the district court as required in section 10439, by such superintendent. [C., '51, § 1472; R., '60, § 2524; C., '73, § 2193; C., '97, § 3145; 37 G. A., ch. 36, § 1; 37 G. A., ch. 313, § 1.]

10437. Nonstatutory solemnization—forfeiture. Marriages solemnized, with the consent of parties, in any other manner than as herein prescribed, are valid; but the parties thereto, and all persons aiding or abetting them, shall forfeit to the school fund the sum of fifty dollars each; but this shall not apply to the person conducting the marriage ceremony, if within fifteen days thereafter he makes the required return to the clerk of the district court. [C., '51, §§ 1474, 1475; R., '60, §§ 2526, 2527; C., '73, §§ 2195, 2196; C., '97, § 3147; S., '13, § 3147.]

10438. Fee. Any person authorized to solemnize marriage may charge two dollars in each case for officiating and making return. [C., '51, § 2551; R., '60, § 4159; C., '73, § 3828; C., '97, § 3152.]

10439. Certificate—return. After the marriage has been solemnized, the officiating minister or magistrate shall:

1. Give each of the parties a certificate of the same.

2. Make return of such marriage within fifteen days to the clerk of the district court, upon the blank provided for that purpose. [C., '51, §§ 1473, 1476; R., '60, §§ 2525, 2528; C., '73, §§ 2194, 2197; C., '97, § 3146; S., '13, § 3146; 40 Ex. G. A., H. F. 213, § 4.]

10440. Contents of return. The return of a marriage shall state:

1. Number and date of license.

2. Person making affidavit of age and qualification of parties to contract marriage. If the clerk certifies to the age and qualification of the parties, such fact shall be noted on the return.

3. Name of person giving consent to marriage, in case the male is a minor or the female is under eighteen years of age, and the relationship of such person to bride or groom.

4. Full name, age, color, nationality, residence, occupation, place of birth, father's full name, mother's full maiden name, and number of marriage for both bride and groom; also, full maiden name of bride, if a widow.

5. Time and place of ceremony.

6. Witnesses to marriage.

7. Name and office of person officiating.

8. Date of return. [40 Ex. G. A., H. F. 213, § 5.]

NOTE: For disposition of marriage returns by the clerk, see § 2425.

10441. Inadequate return. If the return of a marriage is not complete in every particular, the clerk shall require the person making the same to supply the omitted information, except as to the first three items prescribed in the preceding section, which shall be supplied by the clerk. [40 Ex. G. A., H. F. 213, § 5.]

10442. Husband responsible for return. When a marriage is consummated without the services of a clergyman or magistrate, the required return thereof shall be made to the clerk by the husband. [C., '51, § 1478; R., '60, § 2530; C., '73, § 2199; C., '97, § 3149.]

10443. Exceptions. The provisions of this chapter, so far as they relate to procuring licenses and to the solemnizing of marriages, are not applicable to members of any particular denomination having, as such, any peculiar mode of entering the marriage relation. [C., '51, § 1477; R., '60, § 2529; C., '73, § 2198; C., '97, § 3148.]

10444. Issue legitimized. Illegitimate children become legitimate by the subsequent marriage of their parents. [C., '51, § 1479; R., '60, § 2531; C., '73, § 2200; C., '97, § 3150.]

10445. Void marriages. Marriages between the following persons shall be void:

1. Between a man and his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter, or sister's daughter.

2. Between a woman and her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, brother's son, or sister's son.

- 3. Between first cousins.
- 4. Between persons either of whom has a husband or wife living, but, if the parties live and cohabit together after the death or divorce

of the former husband or wife, such marriage shall be valid. [R., '60, §§ 4367, 4368; C., '73, § 4030; C., '97, § 4936; S., '13, § 4936; 40 Ex. G. A., H. F. 213, § 6.]

CHAPTER 470

HUSBAND AND WIFE

- 10446. Property rights of married women.
- 10447. Interest of spouse in other's property.
- 10448. Remedy by one against the other.
- 10449. Conveyances to each other.
- 10450. Attorney in fact.
- 10451. Insanity—conveyance of property.
- 10452. Proceedings.
- 10453. Decree.
- 10454. Conveyances—revocation.
- 10455. Abandonment of either—proceedings.
- 10456. Contracts and sales binding.
- 10457. Nonabatement of action.

- 10458. Annulment of decree.
- 10459. Family expenses.
- 10460. Custody of children.
- 10461. Wages of wife—actions by.
- 10462. Action for personal injuries—elements of recovery.
- 10463. Action by administrator—elements of recovery.
- 10464. Exemplary damages—maximum recovery.
- 10465. Liability for separate debts.
- 10466. Contracts of wife.
- 10467. Husband not liable for wife's torts.

10446. Property rights of married women. A married woman may own in her own right, real and personal property, acquired by descent, gift or purchase, and manage, sell and convey the same, and dispose thereof by will, to the same extent and in the same manner the husband can property belonging to him. [C., '73, § 2202; C., '97, § 3153.]

10447. Interest of spouse in other's property. When property is owned by the husband or wife, the other has no interest therein which can be the subject of contract between them, nor such interest as will make the same liable for the contracts or liabilities of the one not the owner of the property, except as provided in this chapter. [C., '73, § 2203; C., '97, § 3154.]

10448. Remedy by one against the other. Should the husband or wife obtain possession or control of property belonging to the other before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and extent as if they were unmarried. [C., '73, § 2204; C., '97, § 3155.]

10449. Conveyances to each other. A conveyance, transfer, or lien, executed by either husband or wife to or in favor of the other, shall be valid to the same extent as between other persons. [C., '73, § 2206; C., '97, § 3157.]

10450. Attorney in fact. A husband or wife may constitute the other his or her attorney in fact, to control and dispose of his or her property for their mutual benefit, and may revoke the appointment, the same as other persons. [C., '73, § 2210; C., '97, § 3161.]

10451. Insanity—conveyance of property. Where either the husband or wife is insane and incapable of executing a deed or mortgage relinquishing, conveying, or incumbering his or her right to the real property of the other, the other may petition the district court

of the county of his or her residence or the county where the real estate to be conveyed or incumbered is situated, setting forth the facts and praying for an order authorizing the applicant or some other person to execute a deed or mortgage and relinquish or incumber the interest of the insane person in said real estate. [R., '60, § 1500; C., '73, § 2216; C., '97, § 3167; S., '13, § 3167.]

10452. Proceedings. The petition shall be verified by the petitioner, and filed in the office of the clerk of the district court of the proper county, notice of which shall be given as in other cases. Upon completed service, the court shall appoint some responsible attorney thereof guardian for the person alleged to be insane, who shall ascertain the propriety, good faith, and necessity of the prayer of the petitioner, and may resist the application by making any legal or equitable defense thereto, and he shall be allowed by the court a reasonable compensation to be paid as the other costs. [R., '60, § 1501; C., '73, § 2217; C., '97, § 3168.]

10453. Decree. Upon the hearing of the petition the court, if satisfied that it is made in good faith by the petitioner, and he is a proper person to exercise the power and make the conveyance or mortgage, and it is necessary and proper, shall enter a decree authorizing the execution of the conveyance or mortgage for and in the name of such husband or wife by such person as the court may appoint. [R., '60, § 1502; C., '73, § 2218; C., '97, § 3169; S., '13, § 3169.]

10454. Conveyances—revocation. All deeds executed as provided in this chapter shall convey the interest of such insane person in the real estate described, but such power shall cease and be revoked as soon as he or she shall become of sound mind and apply to the court therefor, but such revocation shall not affect conveyances previously made. [R., '60, § 1503; C., '73, § 2219; C., '97, § 3170.]

10455. Abandonment of either—proceedings. In case the husband or wife abandons the other for one year, or leaves the state and is absent therefrom for such term, without providing for the maintenance and support of his or her family, or is confined in jail or the penitentiary for such period, the district court of the county where the abandoned party resides may, on application by petition setting forth the facts, authorize the applicant to manage, control, sell, and incumber the property of the guilty party for the support and maintenance of the family and for the purpose of paying debts. Notice of such proceedings shall be given as in ordinary actions, and anything done under or by virtue of the order or decree of the court shall be valid to the same extent as if the same was done by the party owning the property. [C., '51, §§ 1456-1459, 1461; R., '60, §§ 2508-2511, 2513; C., '73, § 2207; C., '97, § 3158.]

10456. Contracts and sales binding. All contracts, sales, or incumbrances made by either husband or wife under the provisions of the preceding section shall be binding on both, and during such absence or confinement the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable, and execution may be levied or attachment issued accordingly. [C., '73, § 2208; C., '97, § 3159.]

10457. Nonabatement of action. No action or proceeding shall abate or be affected by the return or release of the person absent or confined, but he or she may be permitted to prosecute or defend jointly with the other. [C., '73, § 2208; C., '97, § 3159.]

10458. Annulment of decree. The husband or wife affected by the proceedings contemplated in the three preceding sections may obtain an annulment thereof, upon filing a petition therefor and serving a notice on the person in whose favor the same was granted, as in ordinary actions; but the setting aside of such decree or order shall not affect any act done thereunder. [C., '51, § 1460; R., '60, § 2512; C., '73, § 2209; C., '97, § 3160.]

10459. Family expenses. The reasonable and necessary expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately. [C., '51, § 1455; R., '60, § 2507; C., '73, § 2214; C., '97, § 3165; S., '13, § 3165.]

10460. Custody of children. If the husband abandons the wife she is entitled to the custody of the minor children, unless the district court, upon application for that purpose, shall otherwise direct. [C., '51, § 1462; R., '60, § 2514; C., '73, § 2215; C., '97, § 3166.]

10461. Wages of wife—actions by. A wife may receive the wages for her personal labor, and maintain an action therefor in her own name, and hold the same in her own right, and may prosecute and defend all actions for the preservation and protection of her rights and property, as if unmarried. [C., '73, § 2211; C., '97, § 3162.]

10462. Action for personal injuries—elements of recovery. When any woman receives an injury caused by the negligence or wrongful act of any person, firm, or corporation, including a municipal corporation, she may recover for loss of time, medical attendance, and other expenses incurred as a result thereof in addition to any elements of damages recoverable by common law. [S. S., '15, § 3477-a.]

10463. Action by administrator—elements of recovery. If such injury result in causing death, her administrator may sue and recover for her estate the value of her services as a wife or mother, or both, in such sum as the jury may deem proportionate to the injury resulting in her death, in addition to such damages as are recoverable by common law; also loss of services and expenses incurred before death, if not previously recovered. [S. S., '15, § 3477-a.]

10464. Exemplary damages—maximum recovery. In such case of injury arising from wilful, gross, or wanton negligence, punitive damages may be allowed by the jury in addition to other damages herein provided, but in no event shall the amount exceed the sum of fifteen thousand dollars. [S. S., '15, § 3477-a.]

10465. Liability for separate debts. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise declared, they are not liable for the debts of each other contracted after marriage; nor are the wages, earnings, or property of either, nor is the rent or income of the property of either, liable for the separate debts of the other. [C., '51, § 1453; R., '60, § 2505; C., '73, § 2212; C., '97, § 3163.]

10466. Contracts of wife. Contracts may be made by a wife and liabilities incurred, and the same enforced by or against her, to the same extent and in the same manner as if she were unmarried. [C., '51, § 1454; R., '60, § 2506; C., '73, § 2213; C., '97, § 3164.]

10467. Husband not liable for wife's torts. For civil injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be liable therefor, except in cases where he would be jointly liable with her if the marriage did not exist. [C., '73, § 2205; C., '97, § 3156.]

CHAPTER 471

DIVORCE AND ANNULMENT OF MARRIAGES

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10468. Jurisdiction. The district court in the county where either party resides has jurisdiction of the subject matter of this chapter. [C., '51, § 1480; R., '60, § 2532; C., '73, § 2220; C., '97, § 3171.]

10469. Kind of action—joinder. An action for a divorce shall be by equitable proceedings, and no cause of action, save for alimony, shall be joined therewith. [R., '60, § 4184; C., '73, § 2511; C., '97, § 3430.]

10470. Petition. Except where the defendant is a resident of this state, served by personal service, the petition for divorce, in addition to the facts on account of which the plaintiff claims the relief sought, must state that the plaintiff has been for the last year a resident of the state, specifying the township and county in which he or she has resided, and the length of such residence therein after deducting all absences from the state; that it has been in good faith and not for the purpose of obtaining a divorce only; and in all cases it must be alleged that the application is made in good faith and for the purpose set forth in the petition. [C., '51, § 1481; R., '60, § 2533; C., '73, § 2221; C., '97, § 3172.]

10471. Verification—evidence. The petition must be verified by the plaintiff, and its allegations established by competent evidence. [C., '51, § 1481; R., '60, § 2533; C., '73, § 2222; C., '97, § 3173.]

10472. Public hearing—commissioners. All such actions shall be heard in open court upon the oral testimony of witnesses, or depositions taken as in other equitable actions or by a commissioner appointed by the court. [C., '73, § 2222; C., '97, § 3173.]

10473. Residence—failure of proof. If the averments as to residence are not fully proved, the hearing shall proceed no further, and the action be dismissed by the court. [C., '73, § 2222; C., '97, § 3173.]

10474. Corroboration of plaintiff. No divorce shall be granted on the testimony of the plaintiff alone. [C., '73, § 2222; C., '97, § 3173.]

10475. Causes. Divorces from the bonds of matrimony may be decreed against the husband for the following causes:

1. When he has committed adultery subsequent to the marriage.

2. When he wilfully deserts his wife and absents himself without a reasonable cause for the space of two years.

3. When he is convicted of a felony after the marriage.

4. When, after marriage, he becomes addicted to habitual drunkenness.

5. When he is guilty of such inhuman treatment as to endanger the life of his wife. [C., '51, § 1482; R., '60, § 2534; C., '73, § 2223; C., '97, § 3174.]

10476. Husband from wife—other causes. The husband may obtain a divorce from the wife for like cause, and also when the wife at the time of the marriage was pregnant by another than the husband, of which he had no knowledge, unless such husband had an illegitimate child or children then living, which at the time of the marriage was unknown to the wife. [C., '51, § 1483; R., '60, § 2535; C., '73, § 2224; C., '97, § 3175.]

10477. Cross petition. The defendant upon a cross petition may obtain a divorce for either of the causes stated in the second preceding section, and if the husband is defendant he may, in addition to those causes, have a like decree for the cause stated in the last section. [C., '73, § 2225; C., '97, § 3176.]

10478. Maintenance during litigation. The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action. [C., '73, § 2226; C., '97, § 3177.]

10479. Attachment. The petition may be presented to the court or judge for the allowance of an order of attachment, who, by indorsement thereon, may direct such attachment and fix the amount for which it may issue, and the amount of the bond, if any, that shall be given. Any property taken by virtue thereof shall be held to satisfy the judgment or decree of the court, but may be discharged or released as in other cases. [C., '73, § 2227; C., '97, § 3178.]

10480. Showing. In making such orders, the court or judge shall take into consideration the age and sex of the plaintiff, the physical and pecuniary condition of the parties, and such other matters as are pertinent, which may be shown by affidavits, in addition to the pleadings or otherwise, as the court or judge may direct. [C., '73, § 2228; C., '97, § 3179.]

10481. Alimony—custody of children—changes. When a divorce is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be right.

Subsequent changes may be made by it in these respects, when circumstances render them expedient. [C., '51, § 1485; R., '60, § 2537; C., '73, § 2229; C., '97, § 3180.]

10482. Contempt. If any party against whom such decree has been entered, shall wilfully disobey the same, or secrete his property, he may be cited and punished by the court for contempt. [40 G. A., ch. 197, § 1.]

10483. Forfeiture of rights. When a divorce is decreed the guilty party forfeits all rights acquired by marriage. [C., '51, § 1486; C., '73, § 2230; C., '97, § 3181; S., '13, § 3181.]

10484. Remarriage. In every case in which a divorce is decreed, neither party shall marry again within a year from the date of the filing of said decree unless permission to do so is granted by the court in such decree. Nothing herein contained shall prevent the persons divorced from remarriage each other. [S., '13, § 3181.]

10485. Violations. Any person marrying contrary to the provisions of the preceding section shall be deemed guilty of a misdemeanor and punished accordingly. [S., '13, § 3181.]

10486. Annuling illegal marriages—causes. Marriage may be annulled for the following causes:

1. Where the marriage between the parties is prohibited by law.

2. Where either party was impotent at the time of marriage.

3. Where either party had a husband or wife living at the time of the marriage, provided they have not, with a knowledge of such fact, lived and cohabited together after the death of the former spouse of such party.

4. Where either party was insane or idiotic at the time of the marriage. [C., '73, § 2231; C., '97, § 3182.]

10487. Petition. A petition shall be filed in such cases as in actions for divorce, and all the provisions of this chapter in relation thereto shall apply to such cases, except as otherwise provided. [C., '73, § 2232; C., '97, § 3183.]

10488. Validity determined. When the validity of a marriage is doubted, either party may file a petition, and the court shall decree it annulled or affirmed according to the proof. [C., '73, § 2233; C., '97, § 3184.]

10489. Children—legitimacy. When a marriage is annulled on account of the consanguinity or affinity of the parties, the issue shall be illegitimate; if because of the impotency of the husband, any issue of the wife shall be illegitimate; but when on account of nonage, insanity, or idiocy, the issue will be legitimate as to the party capable of contracting the marriage. [C., '73, § 2234; C., '97, § 3185.]

10490. Legitimacy in case of prior marriage. When a marriage is annulled on account of a prior marriage and the parties contracted the second marriage in good faith, believing the prior husband or wife to be dead, that fact shall be stated in the decree of nullity, and the issue of the second marriage begotten before the decree of the court will be the legitimate issue of the parent capable of contracting. [C., '73, § 2235; C., '97, § 3186.]

10491. Alimony. In case either party entered into the contract of marriage in good faith, supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be entered in the decree, and the court may decree such innocent party compensation as in cases of divorce. [C., '73, § 2236; C., '97, § 3187.]

CHAPTER 472

MINORS

- 10492. Period of minority.
- 10493. Contracts—disaffirmance.

10492. Period of minority. The period of minority extends to the age of twenty-one years, but all minors attain their majority by marriage, and females, after reaching the age of eighteen years, may make valid contracts for marriage the same as adults. [C., '51, § 1487; R., '60, § 2539; C., '73, § 2237; C., '97, § 3188; 40 G. A., ch. 198, § 1; 40 Ex. G. A., H. F. 213, § 8.]

10493. Contracts—disaffirmance. A minor is bound not only by contracts for necessities, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money or property received by him by virtue of the contract, and remaining within his control at any time after his attaining his majority, except as otherwise provided. [C., '51, § 1488; R., '60, § 2540; C., '73, § 2238; C., '97, § 3189.]

- 10494. Misrepresentations—engaging in business.
- 10495. Payments.

10494. Misrepresentations—engaging in business. No contract can be thus disaffirmed in cases where, on account of the minor's own misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reason to believe him capable of contracting. [C., '51, § 1489; R., '60, § 2541; C., '73, § 2239; C., '97, § 3190.]

10495. Payments. Where a contract for the personal services of a minor has been made with him alone, and the services are afterwards performed, payment therefor made to him, in accordance with the terms of the contract, is a full satisfaction therefor, and the parent or guardian cannot recover a second time. [C., '51, § 1490; R., '60, § 2542; C., '73, § 2240; C., '97, § 3191.]

CHAPTER 473

ADOPTION

- 10496. Who may adopt.
- 10497. Consent of parents or judge.
- 10498. Contents of instrument.

10496. Who may adopt. Any person competent to make a will is authorized to adopt as his own the minor child of another, conferring thereby upon it all the rights, privileges, and responsibilities which would pertain to it, if born in lawful wedlock to the person adopting. [R., '60, § 2600; C., '73, § 2307; C., '97, § 3250.]

10497. Consent of parents or judge. If living, and not divorced or separated, the consent of both parents; if divorced, separated, or unmarried, the consent of the parent lawfully having the care and providing for the wants of the child; or if either parent be dead, then the consent of the survivor; or if both are dead, or if the child has been abandoned, that of the judge of the district court in the county of the residence of such child or where it is living, shall be given to such adoption. [R., '60, § 2601; C., '73, § 2308; C., '97, § 3251; 40 Ex. G. A., H. F. 218, § 1.]

10498. Contents of instrument. The consent required by the preceding section shall be

- 10499. Signing—acknowledgment—record.
- 10500. Effect of adoption.
- 10501. Change of custody—bond.

given by an instrument in writing, signed by the parties or party consenting, which shall give the name of the parents, if known, the name of the child, if known, the name of the person adopting it, place of residence of all such persons, if known, the name by which such child is thereafter to be called, and shall also state that it is given to the person adopting for the purpose of adoption as his own. [R., '60, § 2601; C., '73, § 2308; C., '97, § 3251; 40 Ex. G. A., H. F. 218, § 2.]

10499. Signing—acknowledgment—record. Such instrument must also be signed by the person adopting, and be acknowledged by all the parties thereto in the same manner as deeds conveying real estate are acknowledged, and shall be recorded in the recorder's office in the county where the person adopting resides, and be indexed with the name of the parent by adoption, as grantor, and the child as grantee, in its original name, if stated in the instrument. [R., '60, § 2602; C., '73, § 2309; C., '97, § 3252.]

10500. Effect of adoption. Upon the execution, acknowledgment, and filing for record of such instrument, the rights, duties, and relations between the parent and child by adoption shall be the same that exist by law between parent and child by lawful birth, and the right of inheritance from each other shall be the same as between parent and children born in lawful wedlock. [R., '60, § 2603; C., '73, § 2310; C., '97, § 3253; S., '13, § 3253.]

10501. Change of custody—bond. In case of maltreatment committed or allowed by the adopting parent, or neglect of duty on his part

toward such child, the custody thereof may be taken from him by the district court of the county where the parent resides, and intrusted to another at his expense. The court may, on showing of the facts, require from the adopting parent bond with security, in a sum to be fixed by it, running to the county, and for the benefit of the child, conditioned for its proper treatment and the performance of his duty toward it; but no action of the court in the premises shall affect the acquired right of inheritance on the part of the child. [R., '60, § 2604; C., '73, § 2311; C., '97, § 3254.]

TITLE XXIX

JUSTICES OF THE PEACE

CHAPTER 474

JUSTICE OF THE PEACE COURT

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 10622. Transcripts by clerk.
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10502. Jurisdiction. The jurisdiction of justices of the peace, when not specially restricted, is coextensive with their respective counties; but does not embrace actions for the recovery of money against actual residents of any other county, except as provided in this chapter. [C., '51, § 2261; R., '60, § 3849; C., '73, § 3507; C., '97, § 4476.]

10503. Amount in controversy. Within the prescribed limit, it extends to all civil actions, except those by equitable proceedings, where the amount in controversy does not exceed one hundred dollars; and, by consent of parties in writing, it may be extended to actions where the amount claimed is not more than three hundred dollars. [C., '51, § 2262; R., '60, § 3850; C., '73, § 3508; C., '97, § 4477.]

10504. Suits brought where party resides. Actions in all cases may be brought in the township where the plaintiff, or the defendant, or one of several defendants, resides, unless otherwise provided by law. [C., '51, § 2263; R., '60, § 3851; C., '73, § 3509; C., '97, § 4478.]

10505. Where defendant served. They may also be brought in any other township of the same county, if actual service on one or more of the defendants is made in such township. [C., '51, § 2264; R., '60, § 3852; C., '73, § 3510; C., '97, § 4479.]

10506. Replevin. Actions in replevin may also be brought before any justice in the county in which the property is found. [C., '51, § 2265; R., '60, § 3853; C., '73, § 3511; C., '97, § 4480.]

10507. Attachment. Actions aided by attachment may be brought against nonresidents of the state in any county and township wherein the property sought to be levied upon is found. [C., '51, § 2265; R., '60, § 3853; C., '73, § 3511; C., '97, § 4480.]

10508. Nonresident. Any action against such nonresidents may be brought in any county wherein any defendant is served with notice thereof. [C., '51, § 2266; R., '60, § 3854; C., '73, § 3512; C., '97, § 4480.]

10509. Written stipulation for place of suit. On written contracts stipulating for payment at a particular place, action may be brought in the township where the payment was agreed

10627. Special constables.
 10628. No process to another county.
 10629. Constables—duties.
 10630. Sheriff and constable.
 10631. Justice his own clerk.
 10632. Jury fees.
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 10640. Annual report to board of supervisors.
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to be made. [C., '51, § 2267; R., '60, § 3855; C., '73, § 3513; C., '97, § 4481; S., '13, § 4481.]

10510. Costs when plaintiff defaults. Should action be brought under the provisions of the preceding section in any county other than that of the residence of the defendant and the plaintiff shall fail to appear at the time fixed for the trial in the original notice, the justice of the peace before whom said action is brought, shall, upon presentation of the copy of the original notice served upon the defendant, docket said cause and enter judgment therein against the plaintiff in favor of the defendant for all costs in the action, which costs shall include all reasonable expenses of the defendant in attending the place of trial and an attorney's fee not to exceed fifteen dollars for defendant's attorney. [S., '13, § 4481.]

10511. Dismissal without trial on merits. Should any action brought under the provisions of the second preceding section for any cause, except upon trial upon the merits, be dismissed, the defendant shall recover like costs and expenses and attorney fees. [S., '13, § 4481.]

10512. Change of venue for fraud. Where an action is brought relying upon the foregoing provisions to fix the venue in a township in a county other than the residence of the signer of a written contract, and the defendant files a verified answer setting forth a legal defense alleging fraud in the inception of the contract, and he files therein a motion asking to have said cause transferred to the county of his residence, accompanied by a cost bond of fifty dollars to be approved by the court where the action is brought, the justice before whom such action is brought shall thereupon order the same transferred to such county upon the defendant paying fees of transcript and postage, and all papers and transcript shall forthwith be mailed, by registered letter, to the clerk of the district court of the county of defendant's residence, and said cause shall be docketed for trial. [S., '13, § 4481.]

NOTE: For similar provisions, see § 11411.

10513. Dual applications. If two or more defendants in the same cause apply for change of venue as provided in the preceding section, the justice shall transmit said papers to the county of the defendant making first application. [S., '13, § 4481.]

10514. Costs and attorney fees. If, upon trial, the defendant shall establish his defense of fraud, then he shall be entitled to recover, as a part of his costs, the reasonable expense, including attorney's fees, for securing the change of place of trial, but if he shall fail to establish said defense, then he shall be liable to plaintiff, as a part of the costs, for the reasonable additional expense caused to him by reason of such change. [S., '13, § 4481.]

10515. In adjoining township. If there is no justice in the proper township qualified or able to act, the action may be commenced in any adjoining township in the same county. If there be no such justice in an adjoining township, it may be commenced before the justice in the same county nearest to the township in which the defendant resides. [C., '51, § 2268; R., '60, § 3856; C., '73, § 3514; C., '97, § 4482; 39 G. A., ch. 193, § 1.]

10516. Docket furnished. The board of supervisors of each county shall furnish to each justice of the peace thereof a well-bound blank record book of not less than four quires, with index, suitable for a docket, upon his certificate that the same is necessary for the business of the office. [C., '73, § 3635; C., '97, § 4483.]

10517. Entries on docket. Each justice shall keep such docket by entering therein each action and each act done, with the proper date as follows:

1. The title of the action.
2. A brief statement of the nature and amount of the plaintiff's demand, and defendant's counterclaim, if any, giving date to each where dates exist.
3. The issuing of the notice and the return thereof.
4. The appearance of the parties.
5. Every adjournment, stating at whose instance and for what time.
6. The granting of a change of place of trial, and the name of the justice to whom the case is sent.
7. The trial, and whether by the justice or by a jury.
8. The verdict and judgment.
9. The issuance of each execution, to whom delivered, the renewals, if any, and the amount of judgment and costs to be collected thereunder.
10. The issuance of each writ of attachment or replevin or other process, to whom delivered, and the particulars thereof.
11. The taking of an appeal, if any.
12. The giving of a transcript for filing in the clerk's office, or for setting off against another judgment.
13. A note of all motions made or demurrers interposed, and whether sustained or overruled. [C., '51, § 2269; R., '60, § 3857; C., '73, § 3515; C., '97, § 4484.]

10518. Parties — district court procedure applicable. The parties to the action may be the same as in the district court, and all the

proceedings prescribed for that court, so far as applicable and not herein changed, shall be pursued in justices' courts. The powers of the court are only as herein enumerated. [C., '51, § 2270; R., '60, § 3858; C., '73, § 3516; C., '97, § 4485.]

10519. How commenced. Actions in justices' courts are commenced by voluntary appearance or by notice. [C., '51, § 2271; R., '60, § 3859; C., '73, § 3517; C., '97, § 4486.]

10520. Petition not necessary. No petition need be filed except as in this chapter required. The notice must state the cause of the action in general terms, sufficient to apprise the defendant of the nature of the claims against him. [C., '51, § 2272; R., '60, § 3860; C., '73, § 3518; C., '97, § 4487.]

10521. Form of notice. It must be addressed to the defendant by name, but if his name is unknown, a description of him will be sufficient. It must be subscribed by the plaintiff, his attorney, or the justice before whom it is returnable. [C., '51, § 2273; R., '60, § 3861; C., '73, § 3519; C., '97, § 4488.]

10522. Amount of judgment claimed. It must state the amount for which the plaintiff will take judgment if the defendant fails to appear and answer at the time and place therein fixed. [C., '51, § 2274; R., '60, § 3862; C., '73, § 3520; C., '97, § 4489.]

10523. Time of trial. The time fixed in the notice must be not less than five nor more than fifteen days from the date, and it must be served not less than five days previous to the trial. [C., '51, § 2275; R., '60, § 3863; C., '73, § 3521; C., '97, § 4490.]

10524. Service and return. The service and return thereto must be made in the same manner as in the district court, except no service shall be made by publication other than is herein provided, nor shall any return made by another than the sheriff or a constable of the county be valid unless sworn to. [C., '51, § 2276; R., '60, § 3864; C., '73, § 3522; C., '97, § 4491.]

10525. Defendant may pay officer. The defendant may at any time pay to the officer having the notice for service, or to the justice of the peace, the amount of the claim, together with the costs which have then accrued, and thereupon the proceedings shall be dismissed. [C., '51, § 2277; R., '60, § 3865; C., '73, § 3523; C., '97, § 4492.]

10526. Appearance—personal or by agent. Either of the parties may appear in person or by agent; if by agent, he may be required by the justice to show his authority, if written, or prove it by his oath or otherwise, if verbal. [C., '51, § 2278; R., '60, § 3866; C., '73, § 3524; C., '97, § 4493.]

10527. Security for costs. If a defendant in any cause of action in the justice court at

any time within two days before the commencement of the trial of the cause, shall make and file an affidavit stating that he has a good defense in whole or in part, the plaintiff, if he is a nonresident of this state, or a private or foreign corporation, before any other proceedings in the action, must file with the justice of the peace before whom such action is pending, a bond with sureties to be approved by such justice in an amount to be fixed by the justice for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other justice court to which it may be carried, either to the defendant or to the officers of the court. [S., '13, § 4493-a.]

10528. Application for cost bond. The application for such security shall be by motion, filed with the case, and the facts supporting it must be shown by affidavit annexed thereto, which may be responded to by counter affidavits on or before the hearing of the motion, and each party shall file all his affidavits at once and none thereafter. [S., '13, § 4493-a.]

10529. Time for appearance. The parties in all cases are entitled to one hour in which to appear after the time fixed therefor, but neither party is bound to wait longer for the other. [C., '51, § 2279; R., '60, § 3867; C., '73, § 3525; C., '97, § 4494.]

10530. Postponement. Upon the return day, if the justice is actually engaged in other official business, he may postpone proceedings in the case until such business is finished. [C., '51, § 2280; R., '60, § 3868; C., '73, § 3526; C., '97, § 4495.]

10531. Adjournment. If from any cause the justice is unable to attend to the trial at the time fixed, or if a jury is demanded, he may adjourn the cause for a period not exceeding three days, nor shall he make more than two such adjournments. [C., '51, § 2281; R., '60, § 3869; C., '73, § 3527; C., '97, § 4496.]

10532. Showing for. In case of the absence of witnesses, either party, at his own cost, may have an adjournment, not exceeding sixty days, upon motion supported by an affidavit like that required to obtain a continuance in the district court for a like cause. [C., '51, § 2282; R., '60, § 3870; C., '73, § 3528; C., '97, § 4497.]

10533. Testimony of witness taken. Either party applying for an adjournment must, if required by the adverse party, consent that the testimony of any witness of the adverse party who is in attendance be then taken in writing, to be used as a deposition on the trial of the cause. [C., '51, § 2283; R., '60, § 3871; C., '73, § 3529; C., '97, § 4498.]

10534. Pleadings. The pleadings must be substantially the same as in the district court. They may be written or oral, but if required to be verified they must be in writing. If oral, they must in substance be written down by the justice in his docket. [C., '51, § 2284; R., '60, § 3872; C., '73, § 3530; C., '97, § 4499.]

10535. Counterclaim. A counterclaim must be made, if at all, at the time the answer is put in. [C., '51, § 2285; R., '60, § 3873; C., '73, § 3531; C., '97, § 4500.]

10536. Written instruments filed. The original, or a copy, of all written instruments upon which a cause of action or counterclaim is founded must be filed with the claim founded thereon, or a sufficient reason given for not doing so. [C., '51, § 2286; R., '60, § 3874; C., '73, § 3532; C., '97, § 4501.]

10537. Change of place of trial. Either party, before the trial is commenced, may have the place of trial changed, upon filing an affidavit that the justice is prejudiced against him, or is a near relative of the other party, or is a material witness for the affiant, or that he can not obtain justice before him; but no more than one change shall be allowed each party, unless the justice to whom the case is transmitted is related to either party by consanguinity or affinity within the fourth degree, or is a witness, or has been an attorney employed in the action; in either of which events a second change may be allowed. [R., '60, § 3875; C., '73, § 3533; C., '97, § 4502.]

10538. Next nearest justice. When a change is allowed and the fees for transcript are paid, said justice shall transmit all the original papers in the case, and a transcript of his proceedings, to the next nearest justice in the township, if there be any; if not, to the next nearest justice in his county, and said justice shall proceed to try said case, and, if he can not try the same immediately, he shall then fix a time therefor, of which all parties shall take notice. [R., '60, § 3876; C., '73, § 3534; C., '97, § 4503.]

10539. When change is not effected. If the person to whom the cause is sent is not a justice, or for any reason, though a justice, can not act, the court granting the change shall retain jurisdiction of the case for the purpose of perfecting the same and sending it to the next nearest justice who can serve. [C., '97, § 4504.]

10540. Title to real property. If the title to real property is put in issue by verified pleadings, or such fact manifestly appears from the proof on the trial of the issue, the justice shall, without further proceedings, certify the cause and papers, with a transcript of his docket showing the reason of such transfer, to the district court, where the same shall be tried on the merits. No cause so transferred shall be dismissed because the justice erred in transferring the same. [C., '51, §§ 2287, 2288; R., '60, §§ 3877, 3878; C., '73, § 3535; C., '97, § 4505.]

10541. Other causes severed. When a case is thus transferred, if there are other causes of action not necessarily connected with the issue of title, they may be severed, retained, and tried before the justice. [C., '51, § 2289; R., '60, § 3879; C., '73, § 3536; C., '97, § 4506.]

10542. Demand for jury. Unless one of the parties demands a trial by jury at or before the time for joining issue, it shall be by the justice. [C., '51, § 2290; R., '60, § 3880; C., '73, § 3537; C., '97, § 4507.]

10543. Dismissal of action. If the plaintiff fails to appear by himself or agent on the return day or time fixed for the trial, the justice shall dismiss the case and render judgment against him for costs, except as provided in the next section. [C., '51, § 2291; R., '60, § 3881; C., '73, § 3538; C., '97, § 4508.]

10544. On written instrument. When the action is founded on an instrument in writing, purporting to have been executed by the defendant, calling for a certain sum as due the plaintiff, if the signature of the defendant is not denied under oath, and if the instrument has been filed with the justice previous to the time fixed for appearance, or the action is upon an account which is verified, he may proceed with the cause, whether the plaintiff appears or not. [C., '51, § 2292; R., '60, § 3882; C., '73, § 3539; C., '97, § 4509.]

10545. Default in such case. In the case provided for in the last section, if the defendant does not appear, judgment shall be rendered against him for the amount of the plaintiff's claim. [C., '51, § 2293; R., '60, § 3883; C., '73, § 3540; C., '97, § 4510.]

10546. Default in other cases. Where the plaintiff's claim is not founded upon such written instrument or account, and the defendant does not appear, the justice shall proceed to hear the allegations and proofs of the plaintiff, and render judgment thereon for the amount to which he shows himself entitled, not exceeding the amount stated in the notice. [C., '51, § 2294; R., '60, § 3884; C., '73, § 3541; C., '97, § 4511.]

10547. Default as to counterclaim. In the cases contemplated in the last two sections, if the defendant has previously filed a counterclaim, founded on a written instrument purporting to have been signed by the plaintiff, calling for a certain sum, or on a verified account, the justice shall allow such counterclaim in the same manner as though the defendant had appeared, and render judgment accordingly. [C., '51, § 2295; R., '60, § 3885; C., '73, § 3542; C., '97, § 4512.]

10548. Judgment set aside. Judgment dismissing the cause, or by default, may be set aside by the justice at any time within six days after being rendered, if the party applying therefor shows a satisfactory excuse for his nonappearance. [C., '51, § 2296; R., '60, § 3886; C., '73, § 3543; C., '97, § 4513.]

10549. New trial. In such case a new day shall be fixed for trial, and notice thereof given to the other party or his agent. [C., '51, § 2297; R., '60, § 3887; C., '73, § 3544; C., '97, § 4514.]

10550. Costs of new trial. Such orders shall be made in relation to the additional costs

thereby created as are equitable. [C., '51, § 2298; R., '60, § 3888; C., '73, § 3545; C., '97, § 4515.]

10551. Execution recalled. Any execution which may in the meantime have been issued shall be recalled in the same manner as in cases of appeal. [C., '51, § 2299; R., '60, § 3889; C., '73, § 3546; C., '97, § 4516.]

10552. Jury summoned. If a jury be demanded, the justice shall issue his precept to some constable of the township, directing him to summon the requisite number of jurors possessing the same qualifications as are required in the district court. [C., '51, § 2301; R., '60, § 3890; C., '73, § 3547; C., '97, § 4517.]

10553. Selection of jury. The jury shall consist of six jurors, unless a smaller number be agreed upon between the parties. Each party is entitled to three peremptory challenges and no more. Any deficiency in their number, arising from any cause, may be supplied by summoning others in the manner above directed. [C., '51, § 2302; R., '60, § 3891; C., '73, § 3548; C., '97, § 4518.]

10554. Discharge of jury. The justice may discharge the jury, when satisfied that it can not agree, and shall immediately issue a new precept for summoning another, to appear at a time therein fixed, not more than three days distant, unless the parties otherwise agree. [C., '51, § 2303; R., '60, § 3892; C., '73, § 3549; C., '97, § 4519.]

10555. Motion in arrest or for new trial—instructions. No motion in arrest of judgment, to set aside a verdict, or for a new trial, can be entertained by a justice of the peace; nor can the justice give instructions to the jury, but must rule on objections to evidence. [C., '51, § 2304; R., '60, § 3893; C., '73, § 3550; C., '97, § 4520.]

10556. Verdict. The verdict of the jury must be general. Where there are several plaintiffs or defendants, it may be for or against one or more of them. [C., '51, § 2305; R., '60, § 3894; C., '73, § 3551; C., '97, § 4521.]

10557. Judgment entered. In cases of dismissal, or of judgment by confession, or on the verdict of a jury, the judgment shall be rendered and entered upon the docket forthwith. In all other cases, it shall be done within three days after the cause is submitted to the justice for final action. [C., '51, § 2306; R., '60, § 3895; C., '73, § 3552; C., '97, § 4522.]

10558. In excess of jurisdiction. If the sum found for either party exceeds the jurisdiction of the justice, such party may remit the excess and take judgment for the residue, but he can not afterwards sue for the amount remitted. [C., '51, § 2307; R., '60, § 3896; C., '73, § 3553; C., '97, § 4523.]

10559. Dismissal. Instead of remitting the excess, the party obtaining such verdict may

elect to have judgment dismissing the action, in which case such party shall pay the costs. [C., '51, § 2308; R., '60, § 3897; C., '73, § 3554; C., '97, § 4524.]

10560. Mutual judgments set off. Mutual judgments between the same parties, rendered by the same or different justices, may be set off against each other. [C., '51, § 2309; R., '60, § 3898; C., '73, § 3555; C., '97, § 4525.]

10561. As in district court. When rendered by the same court, the same course shall be pursued as is prescribed in the district court. [C., '51, § 2310; R., '60, § 3899; C., '73, § 3556; C., '97, § 4526.]

10562. When by different justices. If the judgment proposed to be set off was rendered by another justice, the party offering it must obtain a transcript thereof, with a certificate of such justice indorsed thereon, stating that no appeal has been taken, and that the transcript was obtained for the purpose of being used as a counterclaim in that case. [C., '51, § 2311; R., '60, § 3900; C., '73, § 3557; C., '97, § 4527.]

10563. Transcripts. Such transcript shall not be given until the time for taking an appeal has elapsed. [C., '51, § 2312; R., '60, § 3901; C., '73, § 3558; C., '97, § 4528.]

10564. Docket entry. The justice giving the transcript shall make an entry of the fact in his docket, and all other proceedings in his court shall thenceforth be stayed. [C., '51, § 2313; R., '60, § 3902; C., '73, § 3559; C., '97, § 4529.]

10565. Execution for balance. The transcript being presented to the justice who has rendered a judgment between the same parties, if execution has not been issued thereon, he shall strike a balance between the judgments and issue execution for such balance. [C., '51, § 2314; R., '60, § 3903; C., '73, § 3560; C., '97, § 4530.]

10566. Execution on transcript. If execution has issued, he shall also issue execution on the transcript filed with him, and deliver it to the officer who has the other execution. [C., '51, § 2315; R., '60, § 3904; C., '73, § 3561; C., '97, § 4531.]

10567. Executions as set off. Such officer shall treat the lesser execution as so much cash collected on the larger, and proceed to collect the balance. [C., '51, § 2316; R., '60, § 3905; C., '73, § 3562; C., '97, § 4532.]

10568. Costs in case of set-off. The above rules as to setting off judgments between the same parties are subject to the same prohibition as to setting off costs, when the effect will be to leave an insufficient amount of money actually collected to satisfy the costs of both judgments, as is contained in the rules of proceedings in the district court. [C., '51, § 2317; R., '60, § 3906; C., '73, § 3563; C., '97, § 4533.]

10569. Transcript filed. When the judgment of another justice is thus allowed to be set off, the transcript thereof shall be filed among the papers of the case in which it is to be used, and the proper entry made in the justice's docket. [C., '51, § 2318; R., '60, § 3907; C., '73, § 3564; C., '97, § 4534.]

10570. Refusal to allow set-off of judgment. If the justice refuses the judgment as a set-off, he shall so certify on the transcript and return it to the party who offered it. When filed in the office of the justice who gave it, proceedings may be had by him in the same manner as though no transcript had been certified. [C., '51, § 2319; R., '60, § 3908; C., '73, § 3565; C., '97, § 4535.]

10571. Judgment by confession. A judgment by confession, without action, may be entered by a justice of the peace for an amount within his jurisdiction, and the provisions of law regulating judgments by confessions in courts of record shall, so far as may be, apply to confessions of judgment before a justice of the peace, and the justice shall enter such judgment on his docket, and may issue execution thereon as in other cases. [C., '51, §§ 1837, 1841; R., '60, §§ 3397, 3401; C., '73, § 3566; C., '97, § 4536.]

10572. Transcripts—filing authorized. A party obtaining a judgment in the justice's or mayor's court may cause a transcript thereof to be certified to the office of the clerk of the district court in the county. [C., '51, § 2320; R., '60, § 3909; C., '73, § 3567; C., '97, § 4537; 37 G. A., ch. 389, § 1.]

10573. Prior filings legalized. All transcripts from mayor's courts heretofore filed in the office of the clerk of the district court as provided in the preceding section, shall have the same force and effect as though from the office of the justice of the peace. [37 G. A., ch. 389, § 2.]

10574. Effect. The clerk shall file the transcript as soon as received, and enter a memorandum thereof and the time of filing in the judgment docket and lien index, and from such entry it shall be treated in all respects and in its enforcement as a judgment obtained in the district court. No execution shall issue from the justice's court after the filing of such transcript. [C., '51, § 2321; R., '60, § 3910; C., '73, § 3568; C., '97, § 4538; S., '13, § 4538.]

10575. Executions. Executions for the enforcement of judgments in a justice's court may be issued, as provided in this chapter, at any time within ten years from the entry of the judgment, but not afterward. [C., '51, § 2322; R., '60, § 3911; C., '73, § 3569; C., '97, § 4539.]

10576. Form. Such execution shall be against the goods and chattels of the defendant therein, and shall be directed to any constable of the county. [C., '51, § 2323; R., '60, § 3912; C., '73, § 3570; C., '97, § 4540.]

10577. Return. It must be dated on the day on which it is issued, and made returnable within thirty days thereafter. [C., '51, § 2324; R., '60, § 3913; C., '73, § 3571; C., '97, § 4541.]

10578. Renewable. If not satisfied when returned, it may be renewed from time to time by an indorsement thereon to that effect, signed by the justice, and dated of the date of such renewal. [C., '51, § 2325; R., '60, § 3914; C., '73, § 3572; C., '97, § 4542.]

10579. For thirty days. The indorsement must state the amount paid thereon, and shall continue the execution in full force for thirty days from the date of renewal. [C., '51, § 2326; R., '60, § 3915; C., '73, § 3573; C., '97, § 4543.]

10580. Garnishment. Garnishment proceedings under execution shall be the same as in the district court, except, upon return of the garnishment being made to the justice who issued the execution, he shall docket a cause, fix a time, and cite the garnishee then to appear and answer. Judgment against the garnishee shall not be entered until the principal defendant shall have had five days' notice of the garnishment proceedings to be served in the same manner as original notices. [C., '97, § 4544; S., '13, § 4544.]

10581. Property sold. Property levied on before such renewal may be retained by the officer and sold after renewal. [C., '51, § 2327; R., '60, § 3916; C., '73, § 3574; C., '97, § 4545.]

10582. Appeal. Any person aggrieved by the final judgment of a justice may appeal therefrom to the district or a superior court in the county, at his option, in the manner provided by law. [C., '51, § 2328; R., '60, § 3917; C., '73, § 3575; C., '97, § 4546.]

10583. Amount in controversy. No such appeal shall be allowed when the amount in controversy does not exceed twenty-five dollars. [C., '97, § 4547.]

10584. Time. The appeal must be perfected within twenty days after the rendition of the judgment. [C., '51, § 2329; R., '60, § 3918; C., '73, § 3576; C., '97, § 4548.]

10585. By clerk. If within twenty days the appellant is prepared to take his appeal, and is prevented only by the absence or death of the justice, or his inability to act, he may apply to the clerk of the court to which the appeal may be taken for the allowance thereof. [C., '51, § 2330; R., '60, § 3919; C., '73, § 3577; C., '97, § 4549.]

10586. How secured. Such application shall be founded on an affidavit, stating the amount and nature of the judgment, and the time of the rendition thereof, as nearly as practicable, and the reason why he thus applies. [C., '51, § 2331; R., '60, § 3920; C., '73, § 3578; C., '97, § 4550.]

10587. Action of clerk. The clerk has thereupon the same power to act in the premises as the justice would have had. He may require the books and papers of the justice to be delivered to him, for which purpose he may issue a precept to the sheriff to that effect, if necessary, and may make out and file the transcript. After this he shall return to the office of the justice of the peace all the papers proper to be kept by the justice. [C., '51, § 2332; R., '60, § 3921; C., '73, § 3579; C., '97, § 4551.]

10588. Form of bond. The appeal is not perfected until a bond in the following form, or its equivalent, is taken and filed in the office of the justice or clerk as above provided, in an amount sufficient to secure the judgment and costs of appeal:

The undersigned acknowledge ourselves indebted to.....in the sum of..... dollars, upon the following conditions: Whereas.....has appealed from the judgment of....., a justice of the peace, in an action between..... as plaintiff, and..... defendant:

Now, if said appellant pays whatever amount is legally adjudged against him in the further progress of this cause, then this bond to be void.

Approved, A....B...., principal.
E....F...., justice. C....D...., surety.

If the judgment is affirmed, or if on a new trial the appellee recovers, or if the appeal is withdrawn or dismissed, judgment shall be rendered against the principal and surety on said bond. [C., '51, § 2333; R., '60, § 3922; C., '73, § 3580; C., '97, § 4552.]

10589. Proceedings suspended. Upon the appeal being perfected, all further proceedings in that court shall be suspended, and the case will be in the court to which the appeal is taken. [C., '51, §§ 2334, 2337; R., '60, §§ 3923, 3926; C., '73, §§ 3581, 3584; C., '97, § 4553.]

10590. Execution recalled. If, in the meantime, an execution has been issued, the justice shall give the appellant a certificate that an appeal has been taken and perfected. Upon that certificate being presented to the constable, he shall cease further action, and release any property taken in execution. [C., '51, § 2335; R., '60, § 3924; C., '73, § 3582; C., '97, § 4554.]

10591. Papers filed. Upon the appeal being perfected, the justice shall file in the office of the clerk of the court to which it is taken all the original papers relating to the action, with a transcript of all the entries in his docket. [C., '51, § 2336; R., '60, § 3925; C., '73, § 3583; C., '97, § 4555.]

10592. Return amended. The proper court may, by rule, compel the justice to approve an appeal bond, or make or amend his return according to law. [C., '51, § 2338; R., '60, § 3927; C., '73, § 3585; C., '97, § 4556.]

10593. Mistakes corrected. Where an omission or mistake has been made by the justice in his docket entries, and that fact is made

unquestionable, the court to which the appeal is taken may correct the mistake or supply the omission, or direct the justice to do so. [C., '51, § 2339; R., '60, § 3928; C., '73, § 3586; C., '97, § 4557.]

10594. Return—when made. If an appeal is perfected ten days before the next term of the court to which it is taken, the justice's return must be made at least five days before that term. All such cases must be tried when reached unless continued for cause. [C., '51, § 2340; R., '60, § 3929; C., '73, § 3587; C., '97, § 4558.]

10595. Affirmance—trial. If the appellant fails to pay the docket fee and have the case docketed by noon of the second day of the term at which the appeal should properly come on for trial, unless time is extended by the court, the appellee may do so, and have the judgment below affirmed, or have the case set down for trial on its merits, as he may elect. If the appellant, before noon of the next day after an order of affirmance has been granted, shall appear and make a sufficient showing of merits and proper excuse for his default, and pay to the clerk the docket fee, the court in its discretion may set aside the order of affirmance, and the cause shall stand for trial at that term, unless appellee asks a continuance, and the clerk shall pay over to the appellee the docket fee, but, if the appeal at the election of appellee is set down for trial on its merits, and the trial has commenced, the foregoing provision shall not apply. [C., '97, § 4559.]

10596. Notice of appeal. If an appeal is not perfected on the day on which judgment is rendered, written notice thereof must be served on the appellee or his agent, at least ten days before the next term of the court to which the appeal is taken, if ten days intervene, or the action, on motion of the appellee, shall be continued at the cost of the appellant. [C., '51, § 2341; R., '60, § 2930; C., '73, § 3588; C., '97, § 4560.]

10597. How served. Such notice may be served like the original notice, and if the appellee or his agent has no place of residence in the county, it may be served by being left with the justice, [C., '51, § 2342; R., '60, § 3931; C., '73, § 3589; C., '97, § 4561.]

10598. Trial of appeal. An appeal brings up the action for trial on the merits alone. All errors, irregularities, and illegalities are to be disregarded under such circumstances, if the action might have been prosecuted in the court to which the appeal is taken. [C., '51, § 2343; R., '60, § 3932; C., '73, § 3590; C., '97, § 4562.]

10599. New demand. No new demand or counterclaim can be made upon the appeal, unless by mutual consent. [C., '51, § 2344; R., '60, § 3933; C., '73, § 3591; C., '97, § 4563.]

10600. Costs of appeal. The appellant must pay the costs of the appeal, unless he obtains

a more favorable judgment than that from which he appealed. [C., '51, § 2345; R., '60, § 3934; C., '73, § 3592; C., '97, § 4564.]

10601. Offer to confess judgment. Appellant may offer to confess judgment for a certain amount, with costs, and if the final amount recovered be less favorable to the appellee than such offer, he shall pay the costs of appeal. [C., '51, § 2346; R., '60, § 3935; C., '73, § 3593; C., '97, § 4565.]

10602. Judgment on appeal bond. Any judgment on the appeal against the appellant shall be entered against him and his sureties, and shall recite the order of liability as principal and surety. [C., '51, § 2347; R., '60, § 3936; C., '73, § 3594; C., '97, § 4566.]

10603. Damages for delay. If an appeal is taken for delay, the court to which it is taken may award such damages, not exceeding ten per cent on the amount of the judgment below, as may seem right. [C., '51, § 2348; R., '60, § 3937; C., '73, § 3595; C., '97, § 4567.]

10604. Appeal from default—pleadings. If the appeal is taken from a judgment by default, the defendant may file, before noon of the second day of the term at which the appeal is triable, in the court to which it is taken, and the plaintiff reply thereto as in other cases, any pleadings necessary to properly set forth any defense he may have to the action. In such case the costs of the trial before the justice shall be taxed to the defendant. [C., '73, § 3596; C., '97, § 4568.]

10605. Writs of error—when allowed. Any person aggrieved by an erroneous decision in a matter of law or other illegality in the proceedings of a justice of the peace may, within twenty days after the final decision is made, remove the same, or so much thereof as is necessary, for correction, into the court to which an appeal from such justice might be taken. [C., '51, § 2349; R., '60, § 3938; C., '73, § 3597; C., '97, § 4569.]

10606. Affidavit—notice. The basis of the proceedings is an affidavit filed in the office of the clerk, setting forth the errors complained of, and must be filed in the same time, and the notice must be the same as in case of appeal. [C., '51, § 2350; R., '60, § 3939; C., '73, § 3598; C., '97, § 4570.]

10607. Writ. The clerk shall thereupon issue an order commanding the justice to certify the record and proceedings, so far as they relate to the facts stated in the affidavit. [C., '51, § 2351; R., '60, § 3940; C., '73, § 3599; C., '97, § 4571.]

10608. Copy served—return. A copy of the affidavit shall accompany the order and be served upon the justice, who shall, with the least practicable delay, make the return required. [C., '51, § 2352; R., '60, § 3941; C., '73, § 3600; C., '97, § 4572.]

10609. Bond. All proceedings in the justice's court subsequent to judgment may be stayed by a bond, entered into like that required in cases of appeals, and on which judgment shall be entered against the principal and surety in like manner and under like circumstances. [C., '51, § 2353; R., '60, § 3942; C., '73, § 3601; C., '97, § 4573.]

10610. Amended return. The court may compel a return to the writ, or an amended return when the first is not full and complete. [C., '51, § 2354; R., '60, § 3943; C., '73, § 3602; C., '97, § 4574.]

10611. Hearing—dismissal—affirmance. The action shall stand for hearing on the writ of error at the first term after due notice thereof has been given. In case the party suing out the writ fails to have the return of the justice docketed before noon of the second day of the term at which the case should properly come on for hearing on such writ of error, and to pay the clerk's fees therefor, the appellee, unless time is extended by the court, may cause the action to be docketed and the writ of error dismissed, and, if he so elect, the judgment below affirmed; and the provisions of the section relating to docketing of appeals by appellee shall be applicable to proceedings under writs of error, so far as may be. [C., '97, § 4575.]

10612. Judgment. The court may render final judgment, or it may remand the cause to the justice for a new trial, or such further proceedings as shall be deemed proper, and prescribe the notice necessary to bring the parties again before the justice. [C., '51, § 2355; R., '60, § 3944; C., '73, § 3603; C., '97, § 4576.]

10613. Restitution. If the court renders a final judgment reversing the judgment of the justice of the peace, after such judgment has been collected in whole or in part, it may award restitution, with interest, and issue execution accordingly, or it may remand the cause to the justice for this purpose. [C., '51, § 2356; R., '60, § 3945; C., '73, § 3604; C., '97, § 4577.]

10614. Replevin. The proceedings and verdict in replevin shall be the same as are prescribed in such cases in the district court, except as modified in this chapter. [C., '51, § 2357; R., '60, § 3946; C., '73, § 3605; C., '97, § 4578.]

10615. Attachment. Proceedings in attachment, except as modified in this chapter, shall be the same as in the district court, the justice performing the duties with reference thereto which are required of the clerk of that court. The petition must be verified, and claim more than five dollars, and, if a less sum is recovered, the plaintiff shall pay all the costs of the attachment. [C., '51, §§ 1884, 2358; R., '60, §§ 3245, 3947; C., '73, §§ 3024, 3606; C., '97, § 4579.]

10616. Answers of garnishee. The constable has the same power to administer an

oath to the garnishee in attachment or on execution, and to take his answer, as is given to the sheriff in like cases in the district court. [C., '51, § 2360; R., '60, § 3948; C., '73, § 3607; C., '97, § 4580.]

10617. Appearance. Garnishees may be required to appear and answer at the time fixed for the appearance of the parties to the action, and the conduct of the same shall be governed by the law relating to garnishments under attachments in the district court. [C., '51, § 2361; R., '60, § 3949; C., '73, § 3608; C., '97, § 4581.]

10618. Attachment without personal service. In actions in which an attachment is sought, if it is made to appear by affidavit that personal service can not be had on the defendant within the state, the justice, upon the return day, unless the defendant appear, shall make an order fixing the day for the trial, not less than sixty days thereafter, and requiring notice to be given by any constable as provided in the next section. [R., '60, § 3950; C., '73, § 3609; C., '97, § 4582.]

10619. Notice by posting. Upon such order being made, at least sixty days' notice of the pendency of such action shall be given by posting up written or printed notices in three public places in the township where the action was commenced, which shall have the effect of a service by publication in the district court, and the justice shall proceed to hear the cause upon the day specified for that purpose; but no bond shall be required of the plaintiff after judgment as may be in the district court. [R., '60, § 3951; C., '73, § 3610; C., '97, § 4583.]

10620. Records deposited with successor. Every justice of the peace, upon the expiration of his term of office, must deposit with his successor, his official docket, as well as those of his predecessors which may be in his custody, there to be kept as public records. All his official papers shall also be turned over to his successor. [C., '51, § 2377; R., '60, § 3967; C., '73, § 3625; C., '97, § 4584.]

10621. Records deposited with county auditor. If his office becomes vacant before his successor is elected, the said docket and papers shall be placed in the hands of the county auditor, and by him turned over to his successor when elected and qualified. [C., '51, § 2378; R., '60, § 3968; C., '73, § 3626; C., '97, § 4585; S., '13, § 4585.]

10622. Transcripts by clerk. During the time of the vacancy in said office, and while the docket and papers are in the hands of the auditor, the clerk of the district court of said county, on the filing of a written request and payment of the fee required by law for the filing of transcripts, by the plaintiff, his agent, or attorney, in any case in which a judgment appears in said docket, shall make a transcript and certify to the same, as provided by law, noting said fact on said docket with date

thereof, which transcript, when so made and filed in the office of the clerk of the district court, shall have the same force and effect as though made by a justice of the peace rendering said judgment. [S., '13, § 4585.]

10623. Execution or transcript by successor. The justice with whom the docket of his predecessor is thus deposited may issue or renew execution on or give a transcript of any judgment there entered, in the same manner and with like effect as the justice who rendered the judgment might have done. [C., '51, § 2379; R., '60, § 3969; C., '73, § 3627; C., '97, § 4586.]

10624. Absence, sickness or inability of justice. In case of the death, absence or inability to act of any justice, or the vacation of the office from any cause, execution may be issued from the docket of said justice, or transcript given therefrom, by any other justice in said township, with like effect as might have been done by the justice who rendered the judgment. [C., '73, § 3627; C., '97, § 4586.]

10625. Successor—how determined. When two or more justices are equally entitled to be held the successor in office of any justice, the county auditor shall determine by lot which is, and certify accordingly; which certificate shall be in duplicate, one copy of which shall be filed in the office of such auditor, and the other given to such successor. [C., '51, §§ 2380, 2381; R., '60, §§ 3970, 3971; C., '73, § 3628; C., '97, § 4587.]

10626. Interchange. In case of sickness, or other disability, or absence of a justice at the time fixed for a trial of a cause or other proceeding, any other justice of the township may, at his request, attend and transact the business for him without any transfer to another office. The entries shall be made in the docket of the justice at whose office the business is transacted, and the same effect shall be given to the proceedings as though no such interchange of official service had taken place. [C., '51, § 2382; R., '60, § 3972; C., '73, § 3629; C., '97, § 4588.]

10627. Special constables. Any justice of the peace, in writing, may specially appoint any person of suitable age to perform any particular duty properly devolving upon a constable, and for that particular purpose the appointee shall be subject to the same obligations and receive the same fees. If such person is appointed to serve an attachment, execution, or order for the delivery of property, he shall, before levying upon the same, execute a bond to the state in a penal sum of not less than two hundred dollars, to be fixed by the justice, with one or more freeholders as sureties, to be approved by and filed with the justice making the appointment, and the usual official oath shall be indorsed thereon and signed. For any breach of such bond, any person injured thereby may bring action thereon in his own name, and recover the same damages as upon a constable's bond in like cases. [C., '51, §

2383; R., '60, § 3973; C., '73, § 3630; C., '97, § 4589.]

10628. No process to another county. No process can issue from a justice's court into another county, except when specially authorized. [C., '51, § 2384; R., '60, § 3974; C., '73, § 3631; C., '97, § 4590.]

10629. Constables—duties. Constables are ministerial officers of justices of the peace, and shall serve all warrants, notices, or other process directed to them by and from any lawful authority, and perform all other duties now or hereafter required of them by law. [C., '51, §§ 229, 230; R., '60, §§ 451, 452; C., '73, §§ 398, 399; C., '97, § 579.]

10630. Sheriff and constable. The constable is the proper executive officer in a justice's court, but the sheriff may perform any of the duties required of him. The powers and duties of the sheriff in relation to the business of the district court, so far as the same are applicable and not modified by statute, devolve upon the constable in relation to the justice's court. [C., '51, § 2385; R., '60, § 3975; C., '73, § 3632; C., '97, § 4591.]

10631. Justice his own clerk. The justice shall be his own clerk, and perform the duty of both judge and clerk. [C., '51, § 2386; R., '60, § 3976; C., '73, § 3633; C., '97, § 4592.]

10632. Jury fees. Jury fees in justices' courts shall be taxed as part of the costs. [C., '51, § 2545; R., '60, § 4154; C., '73, § 3811; C., '97, § 4593.]

10633. Powers of successor. When the term of office of a justice of the peace expires, his successor may issue execution, or renew execution, in the same manner and under the same circumstances as the former justice might have done if his term of office had not expired. [C., '51, § 2387; R., '60, § 3977; C., '73, § 3634; C., '97, § 4594.]

10634. Report of unclaimed witness fees. Each justice of the peace shall, on the first Monday in January and July each year, pay into the county treasury for the use of the county, all fees of whatsoever kind in his hands at the date of payment and still unclaimed, and shall take from the treasurer duplicate receipts therefor, giving the title of the cause, the names of the witnesses, jurors, officers, or other persons, and the amount each one is entitled to receive, one of which he shall file with the county auditor, who shall charge the amount thereof to the treasurer as so much county revenue, and enter the same upon the proper records as a claim allowed, and, on demand by the persons entitled to said fees, shall issue county orders for the amount due each person, respectively. [C., '73, § 3815; C., '97, § 4595.]

10635. Penalty. Any failure to pay over to the county treasurer witness fees, as above provided, is a misdemeanor, and shall be prose-

cuted as provided by law. [R., '60, § 352; C., '73, § 3816; C., '97, § 4596.]

10636. Fees of justice. Justices of the peace shall be entitled to charge and receive the following fees:

1. For docketing each case in any action, except in garnishment proceedings, fifty cents.
2. For issuing each original notice, fifty cents.
3. For issuing attachment or order for the delivery of property, twenty-five cents.
4. For drawing and approving bond, when required in any case, fifty cents.
5. For entering judgment by confession after action brought, fifty cents.
6. For entering judgment by confession before action brought, one dollar.
7. For entering judgment by default, or on a plea of guilty, fifty cents.
8. For entering judgment when contested, fifty cents.
9. For additional when a jury is called, one dollar.
10. For issuing venire for jury, twenty-five cents.
11. For each subpoena in civil action, when demanded, twenty-five cents.
12. For each oath or affirmation, except in proceedings connected with actions before him, five cents.
13. For each continuance at the request of either party, fifty cents.
14. For setting aside each judgment by default, fifty cents.
15. For each information and affidavit, fifty cents.
16. For each execution, renewal of execution, or warrant of any kind, fifty cents.
17. For each bond or recognition, fifty cents.
18. For each mittimus or order of discharge, fifty cents.
19. For each official certificate or acknowledgment, twenty-five cents.
20. For making and certifying transcript, fifty cents.
21. For trial of all actions, civil or criminal, for each six hours or fraction thereof, one dollar.
22. For all money collected and paid over without action, five per cent; and for all money collected and paid over after action brought without judgment, two per cent, which shall be added to the costs. [C., '73, § 3804; C., '97 § 4597.]

10637. Fees of constable. Constables shall be entitled to charge and receive the following fees:

1. For serving any notice or civil process, on each person named therein, fifty cents.
2. For copy thereof when required, ten cents.
3. For serving attachment or order for the delivery of property, fifty cents.
4. For traveling fees, going and returning by the nearest traveled route, per mile, ten cents.
5. For summoning a jury, including mileage, one dollar.

6. For attending the same on trial, for each calendar day, one dollar.

7. For serving execution, besides mileage, fifty cents.

8. For advertising and selling property, seventy-five cents.

9. For advertising without selling, twenty-five cents.

10. For return of execution when no levy is made, ten cents.

11. For serving each subpoena, besides mileage, fifteen cents.

12. For posting up each notice required by law, fifteen cents.

13. For serving each warrant of any kind, seventy-five cents.

14. For attending each trial in a criminal case, for each calendar day, one dollar.

15. For serving each mittimus or order of release, besides mileage, thirty cents.

16. For serving a warrant for the seizure of intoxicating liquors and any other matter connected therewith, the same compensation as allowed a sheriff for a like service.

17. For all money collected on execution and paid over, except costs, five per cent, which shall constitute part of the costs. [C., '73, § 3805; C., '97, § 4598; 38 G. A., ch. 48, § 1.]

10638. In criminal cases. The fees contemplated in the two preceding sections, in criminal cases, shall be audited and paid out of the county treasury in any case where the prosecution fails, or where such fees can not be made from the person liable to pay the same, the facts being certified by the justice and verified by affidavit. [C., '73, § 3806; C., '97, § 4599.]

10639. Accounting for fees—compensation. Justices of the peace and constables in townships having a population of more than twelve thousand shall pay into the county treasury all criminal fees collected in each year.

Justices of the peace and constables in townships having a population of under twelve thousand shall pay into the county treasury all fees collected each year in excess of the following sums:

1. In townships having a population of four thousand and under twelve thousand, justices, eight hundred dollars; constables, six hundred dollars.

2. In all townships having a population of under four thousand, justices, six hundred dollars; constables, five hundred dollars.

In townships having a population of ten thousand or more, justices of the peace and constables shall receive in full compensation for their services performed in criminal cases during the year, the following sums which shall be paid quarterly out of the county treasury.

1. In townships having a population of forty thousand or more, justices, eighteen hundred dollars; constables, fifteen hundred dollars.

2. In townships having a population of twenty-eight thousand or more, justices, fifteen hundred dollars; constables, twelve hundred dollars.

3. In townships having a population of twenty thousand and under twenty-eight thousand, justices, twelve hundred dollars, constables, one thousand dollars.

4. In townships having a population of ten thousand and under twenty thousand, justices, one thousand dollars; constables, eight hundred dollars.

Justices and constables in all townships having a population of ten thousand and over shall retain such civil fees as may be allowed by the board of supervisors, not to exceed five hundred dollars per annum, for expenses of their offices actually incurred, and shall pay into the county treasury all the balance of the civil fees collected by them. [C., '97, § 4600; S., '13, § 4600-a; 38 G. A., ch. 216, § 1; 39 G. A., ch. 101, § 1.]

10640. Annual report to board of supervisors. All justices of the peace and constables shall under oath make an annual report to the

board of supervisors, upon blanks furnished by the county auditor, of all criminal fees taxed and collected during the year, which report shall also show that all criminal fees and fines collectible by law have been received, such annual report to be made on the first Monday in January, and before the annual settlement shall be made, and accompanied with the receipts of the treasurer for all money paid in to him. [C., '97, § 4600; S., '13, § 4600-b.]

10641. Quarterly report to county auditor. Justices of the peace shall make, under oath, quarterly reports, upon blanks furnished by the county auditor, and shall file the same with the county auditor, which reports shall contain a true and correct transcript of all criminal proceedings which have been instituted or adjudicated in their courts, with the names of all attending witnesses and jurors and fees taxed in their favor. [C., '97, § 4600; S., '13, § 4600-c.]

TITLE XXX

COURTS OF RECORD OF ORIGINAL JURISDICTION

CHAPTER 475

MUNICIPAL COURT

NOTE: This chapter made applicable to special charter cities by § 6784.

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10642. Court established—district defined. A municipal court may be established in any city having a population of five thousand or more, by proceeding as hereinafter provided. All the civil townships in which such city or any part thereof is located shall constitute the municipal court district. [S. S., '15, § 694-c1; 38 G. A., ch. 142, § 1; 40 Ex. G. A., H. F. 220, § 1.]

10643. Election. Upon the filing with the city clerk of a petition of not less than fifteen per cent of the qualified electors, as shown by the poll list in the last municipal or state election of any municipal court district, the mayor shall, by proclamation published once a week for three consecutive weeks in two newspapers of general circulation published in said municipality, or, if two such newspapers be not

published, then in one such newspaper, submit the question of establishing a municipal court at a general, municipal, or special election to be held at a time specified therein, which time shall be within two months after said petition is filed. If the said proposition is not adopted at such election, said question shall not be resubmitted to the voters of said district within two years thereafter. [S. S., '15, § 694-c2; 40 Ex. G. A., H. F. 220, § 2.]

10644. Polling places. The city council shall for all elections provided for in this chapter designate and provide polling places, select judges and clerks of the election, and furnish booths and ballots for the voters residing in each such township outside the limits of such city; but no registration of such voters shall be required. [40 Ex. G. A., H. F. 220, § 3.]

10645. Question submitted—election—certifying result. At such election the proposition to be submitted shall be, "Shall the proposition to establish a municipal court in the city of (name of city) be adopted?" The election shall be conducted, the vote canvassed, and the result declared in the manner provided by law in respect to other municipal elections. If the majority of the votes cast on said proposition be in favor thereof, said municipal court shall be deemed established. Immediately after such proposition is adopted, the mayor shall transmit to the governor, the secretary of state, and the county auditor, each, a certificate showing that such proposition was adopted. [S. S., '15, § 694-c3; 38 G. A., ch. 16, § 1; 40 Ex. G. A., H. F. 220, § 4.]

10646. Number of judges. In any municipal court district having a population of less than thirty thousand, wherein a municipal court has been established, there shall be one municipal judge; in districts having more than thirty thousand and less than fifty thousand inhabitants, there shall be two municipal judges; in districts having more than fifty thousand inhabitants there shall be one municipal judge for each thirty thousand inhabitants or major fraction thereof, but no district shall have more than four judges. [S. S., '15, § 694-c6; 38 G. A., ch. 163, § 1; 40 Ex. G. A., H. F. 220, § 5.]

10647. Appointment of officers. Whenever such court has been established, or whenever any city becomes entitled to an additional judge of such court, the governor shall appoint a judge to fill the position until the beginning of the regular term of office succeeding the next election, or until his successor is elected and qualified. Under like conditions, or, if for any other reason a vacancy shall exist, the other elective officers of the court shall be appointed by the mayor with the approval of the city council. [S. S., '15, § 694-c16; 38 G. A., ch. 16, § 3; 38 G. A., ch. 163, § 2; 40 Ex. G. A., H. F. 220, § 6.]

10648. Qualification and duties of officers. Each officer of the court shall be a qualified elector residing in the municipal court district. The judge shall be a practicing lawyer, and shall subscribe to the oath required of judges of the district court, which shall be filed with the city clerk. The duties of the clerk and the bailiff shall be the same, so far as applicable, as those of the clerk of the district court, and of constables and sheriffs, respectively. All regular police officers shall be ex officio special bailiffs when so ordered by a judge, without other compensation than that paid for their services as police officers. [S. S., '15, §§ 694-c7-694-c9; 40 Ex. G. A., H. F. 220, § 7.]

10649. Deputy clerks and bailiffs. The clerk and bailiff, with the approval of the city council, shall each have power to appoint such deputies as may be necessary to transact the business of the court, whose salaries shall be fixed by the city council. [S. S., '15, § 694-c10;

39 G. A., ch. 61, § 1; 40 Ex. G. A., H. F. 220, § 8.]

10650. Bonds. The clerk of the court, the deputy clerks, the bailiff, and the deputy bailiffs shall give such bonds as may be required by the city council, which bonds shall be filed with and approved by the city clerk. [S. S., '15, § 694-c11; 40 Ex. G. A., H. F. 220, § 9.]

10651. Officers—election and appointment. Whenever a municipal court has been established, there shall be elected at the following city election a judge or judges thereof; also a clerk and bailiff, unless the council shall appoint the city clerk to act as clerk and a policeman to act as bailiff thereof. [S. S., '15, §§ 694-c3, 694-c6; 38 G. A., ch. 163, § 1; 40 Ex. G. A., H. F. 220, § 10.]

10652. Qualification of officers—term. The elective officers of the court shall qualify, and their term of office shall begin, on the first Monday after their election. They shall serve for a term of four years. If the city clerk acts as clerk, or a policeman as bailiff, the council shall determine whether or not they shall have compensation additional to their regular salaries, and fix the same if allowed. [S. S., '15, §§ 694-c3, 694-c6; 38 G. A., ch. 163, § 1; 40 Ex. G. A., H. F. 220, § 11.]

10653. Nomination and election of officers. The elective officers of the court shall be nominated and elected in the manner provided by law for the nomination and election of other elective officers of the city in such district, except as herein otherwise provided. At all primary and general municipal elections at which officers of the court are to be nominated or elected, as the case may be, there shall be a separate ballot entitled "The Municipal Judiciary Ballot" upon which shall be placed in alphabetical order the names of the candidates without party designation, and the number of judges, clerks, and bailiffs for whom each elector is entitled to vote shall be designated thereon.

Those receiving the highest number of votes at the primary election, if one be held, shall be nominated for such offices to the extent of twice the number to be filled, if that many or more candidates are voted for at such primary. [S. S., '15, §§ 694-c6, 694-c12-694-c15; 38 G. A., ch. 163, § 1; 40 Ex. G. A., H. F. 220, § 12.]

10654. Court of record—records. The court shall be a court of record, and shall have a seal with the words "Municipal court of (inserting name of city), Iowa" thereon. The records of the court shall be kept in substantially the same form and manner as the records of the district court. [S. S., '15, § 694-c25; 40 Ex. G. A., H. F. 220, § 13.]

10655. Jurisdiction—civil matters. It shall have concurrent jurisdiction with the district court in all civil matters where the amount in controversy does not exceed one thousand dollars, except in probate matters, actions for

divorce and alimony and separate maintenance, juvenile proceedings unless otherwise authorized, and those directly affecting the title to real estate. [S. S., '15, § 694-c18; 40 Ex. G. A., H. F. 220, § 14.]

10656. Criminal matters. In all criminal matters, the court shall exercise the jurisdiction conferred on justice of the peace courts, mayors' courts, and police courts, except that the mayor's court of any incorporated city or town within such municipal court district other than the city in which said court is established shall have exclusive jurisdiction of prosecutions for the violations of the ordinances of such town. [S. S., '15, §§ 694-c1, 694-c18; 39 G. A., ch. 202, § 1; 40 Ex. G. A., H. F. 220, § 15.]

10657. Powers of court and judges. In all matters of which the municipal court has jurisdiction, the court and the judges shall have the same powers in reference to injunctions, writs, orders, and other proceedings in and out of court as are possessed by the district court and the judges thereof. [S. S., '15, §§ 694-c18, 694-c25; 40 Ex. G. A., H. F. 220, § 16.]

10658. Inferior courts abolished. Upon the qualification of the officers of the municipal court, the police court, mayor's court, except in incorporated cities or towns other than the city in which said court is established, justice of the peace courts, and the superior court, in and for the municipal court district, and the offices of police judge, clerk of police court, justices of the peace, constables, judge and clerk of the superior court, shall be abolished. [S. S., '15, §§ 694-c1, 694-c5; 38 G. A., ch. 16, § 2; 39 G. A., ch. 202, § 1; 40 Ex. G. A., H. F. 220, § 17.]

10659. Transfer of causes and records. All causes pending in the superior court of which the district court has original jurisdiction shall be forthwith transferred to the district court and there docketed, and all records and papers pertaining to the same delivered to and preserved by the clerk. [S. S., '15, § 694-c5; 40 Ex. G. A., H. F. 220, § 18.]

10660. Other causes and records transferred. All other causes pending in the superior court, and all causes pending in the police court, mayor's court, except for violation of ordinances of incorporated cities or towns other than that in which said court is established, and justice of the peace courts shall forthwith be transferred to the municipal court and there docketed, and all records and papers pertaining to such causes shall be delivered to the clerk thereof, except that certified copies of such records as have been filed in the district court may be filed with the clerk of the municipal court in lieu of original records. [S. S., '15, § 694-c5; 39 G. A., ch. 202, § 1; 40 Ex. G. A., H. F. 220, § 19.]

10661. Records transferred to municipal court. All records and papers of the superior

court, police court, mayor's court, except for violation of ordinances of incorporated cities or towns in which said court is established, and justice of the peace courts not transferred under the two preceding sections shall be transferred to the municipal court. [S. S., '15, § 694-c5; 39 G. A., ch. 202, § 1; 40 Ex. G. A., H. F. 220, § 20.]

10662. Certified copies of records. The clerk of the district court shall have full power to certify and transcript such records of the superior court as come into his possession; and the clerk of the municipal court shall have full power and authority to certify and transcript such records and certified copies thereof as may come into his possession, and certified copies made by him of said certified copies filed with him shall have the same force and effect as though they were certified copies of the original records. [S. S., '15, § 694-c5; 40 Ex. G. A., H. F. 220, § 21.]

10663. Sessions to be continuous—absence of judge. There shall be no terms of court, and the court shall be open for business twelve months of the year. There shall always be one judge present each day to hold court and issue such writs and orders as are required. In case of inability of any judge to act, any other judge of any municipal or district court may hold court during such inability; or the governor may appoint a judge to hold court during such inability, who shall have the same qualifications and shall be paid the same salary and in the same manner as the regular judge. [S. S., '15, §§ 694-c16, 694-c17; 38 G. A., ch. 16, § 3; 40 Ex. G. A., H. F. 220, § 22.]

10664. Laws applicable—rules. All provisions of law relating to the district court and the judges and jurors thereof shall, so far as applicable and when not inconsistent with this chapter, apply to the municipal court and the judges thereof. The judges of the municipal court shall adopt and promulgate rules of practice which shall conform, as nearly as may be, to the rules of the district court of the district in which said municipal court is located. If not established by statute or rule, the judge hearing the cause may prescribe the method of procedure. [S. S., '15, §§ 694-c4, 694-c20, 694-c25, 694-c26; 40 Ex. G. A., H. F. 220, § 23.]

10665. Change of venue. All provisions of the law relating to change of venue from the district court shall govern so far as applicable changes of venue from the municipal court. [S. S., '15, § 694-c23; 40 Ex. G. A., H. F. 220, § 23-a1.]

10666. Causes of action divided. Causes of action within its jurisdiction shall be divided into the following classes:

Class "A" shall include all equitable actions, actions of forcible entry and detainer, and all ordinary actions, when the amount in controversy exceeds one hundred dollars, and all

special actions of which the court has jurisdiction.

Class "B" shall include all ordinary actions when the amount in controversy is one hundred dollars or less.

Class "C" shall include the trial of all public offenses of which this court has jurisdiction, other than for the violation of the city ordinances.

Class "D" shall include all criminal actions for the violation of city ordinances. [S. S., '15, § 694-c19; 40 Ex. G. A., H. F. 220, § 24.]

10667. Filing petition—pleadings. The petition in class "A" cases must be filed with the clerk of the court not less than five days before the date set in the original notice for the appearance of the defendant and unless so filed the defendant shall not be held to appear and answer. Pleadings in class "B" cases shall be the same as for civil actions in justice of the peace courts. [S. S., '15, §§ 694-c21, 694-c22; 37 G. A., ch. 75, § 2; 40 Ex. G. A., H. F. 220, § 25.]

10668. Return day. In all civil actions, the original notice shall require the defendant, if served within the county, to appear and answer not less than five nor more than fifteen days from the day of service thereof; if served without the county, not less than ten nor more than twenty days from the day of service thereof. [S. S., '15, § 694-c22; 37 G. A., ch. 75, § 2; 40 Ex. G. A., H. F. 220, § 26.]

10669. Criminal actions—how tried. All criminal actions for the violation of city ordinances shall be tried summarily and without a jury. All other criminal actions shall, except as otherwise provided in this chapter, be triable in the same manner as criminal actions in justice of the peace or other courts having jurisdiction thereof. Prisoners may be committed to either the city or county jail, or they may be paroled, or their sentence suspended, at the discretion of the court. [S. S., '15, §§ 694-c18, 694-c24; 40 Ex. G. A., H. F. 220, § 27.]

10670. Witness fees. In class "A" cases witnesses shall receive the same fees as witnesses in the district court.

In class "B", "C", and "D" cases, witness fees shall be the same as in justice of the peace courts. In class "C" and "D" cases, no witness fees shall be paid to any regular police officer of said city, any clerk of said court or his deputy, or any bailiff thereof or his deputy. [S. S., '15, § 694-c28; 40 Ex. G. A., H. F. 220, § 28.]

10671. Fees, costs, and expenses. If no provision is made in the laws applicable to the district court for fees, costs, and expenses, they shall be the same as in justice of the peace courts. The bailiff may retain the amounts allowed to him by law for mileage and necessary actual expenses in addition to his salary. All other fees, fines, forfeitures, costs, and expenses shall be turned over to the city

treasurer by the officer collecting the same on or before the tenth day of each succeeding month, and the city treasurer shall forthwith pay to the county treasurer, for the benefit of the school fund, the portion of the fines and forfeitures collected for the violation of state laws. [R., '60, § 1791; C., '73, § 2080; C., '97, § 3041; S. S., '15, § 694-c27; 37 G. A., ch. 226, § 1; 38 G. A., ch. 42, § 1; 40 Ex. G. A., H. F. 220, § 29.]

10672. Jury commission. The city clerk and the city auditor, or in cities not having both such officers, then the city clerk and the city treasurer, and the clerk of the municipal court shall constitute the jury commission. They shall receive no additional compensation, but necessary expenses incurred in the performance of their duties shall be allowed and paid from the city treasury. [S. S., '15, §§ 694-c29, 694-c30, 694-c40; 40 Ex. G. A., H. F. 220, § 30.]

10673. Jury list. The commission, in the presence and under the supervision of the judge of said court, if only one, and if more than one, a judge of said court designated by the judges thereof, shall, on the establishment of the court, prepare from the poll books of the last preceding general election in the territory included in the municipal court district, a list equal in number to one-tenth of all electors thereon qualified for jury service, which shall be known as the "jury list"; and shall, before the last Monday in April following the general municipal election thereafter, prepare such a list from the poll books of the preceding general municipal election. [S. S., '15, § 694-c32; 40 Ex. G. A., H. F. 220, § 31.]

10674. Jury list book. The name of each person on said list shall be entered in alphabetical order in a book kept for that purpose, and opposite each name shall be entered the person's place of residence, giving his street and number or other definite location if possible. The book shall be kept in the office of the city clerk, and shall be open to the public for inspection and investigation. The jury list may be revised annually on order of the judge. [S. S., '15, § 694-c32; 40 Ex. G. A., H. F. 220, § 32.]

10675. Jury—how drawn—when. When the jury commission shall have completed such jury list, each name contained thereon shall be prepared and deposited in a jury box in the manner required in the district court, which jury box, after being sealed by the jury commissioners, shall be deposited with and remain in the custody of the clerk of the court. On the last Monday of each month, the jury commission shall, in open court and in the presence of the judge or judges, break the seal on said jury box, and draw therefrom the number of names ordered by the court, to constitute the jury panel for the succeeding month. [S. S., '15, §§ 694-c34-694-c36, 694-c39; 40 Ex. G. A., H. F. 220, § 33.]

10676. Jury summons—mileage. The clerk of the municipal court shall forthwith issue a summons to each person drawn to appear in court at such time during the succeeding month as may be ordered by the judge or judges. At such time each juror shall be called and all excuses heard and determined. Jurors shall not be allowed mileage. [S. S., '15, §§ 694-c37, 694-c42; 38 G. A., ch. 161, § 1; 40 Ex. G. A., H. F. 220, § 34.]

10677. Jurors to serve one month—exemptions. The clerk of the court shall, at the end of each month, check off the jury list the names of all jurors who have served during that month, and such names shall not be again deposited in the jury box until after a new jury list has been prepared, but the names of those who have been drawn and excused from service shall be again deposited therein. Jurors in the district court shall be exempt from service in the municipal court during the biennium in which service was rendered in the district court. [S. S., '15, §§ 694-c31, 694-c38; 40 Ex. G. A., H. F. 220, § 35.]

10678. Jurors—number—demand for jury. Demand for trial by jury may be made as provided by rule of court, and if not so made, the cause shall be tried by the court. The jury shall consist of six jurors, unless, in class "A" cases, a jury of twelve is demanded. The party demanding a jury of twelve must at the time deposit with the clerk the sum of six dollars. [S. S., '15, § 694-c42; 40 Ex. G. A., H. F. 220, § 36.]

10679. Peremptory challenges in jury of six. In all cases where the jury consists of six jurors, the clerk shall select eight jurors by lot from the regular panel or additions thereto. Each party shall have the right to peremptorily challenge two jurors and strike off one juror. After all challenges have thus been exercised or waived, and two jurors have been stricken from the list, the clerk shall read the names of the six jurors remaining who shall constitute the jury selected. [S. S., '15, § 694-c43; 37 G. A., ch. 75, § 10; 40 Ex. G. A., H. F. 220, § 37.]

10680. Instructions. In all criminal actions and in all civil actions triable to a jury where the amount in controversy exceeds one hundred dollars, the judge shall instruct the jury in writing. Where the amount in controversy in civil actions is one hundred dollars or less, the instructions may be oral. [S. S., '15, § 694-c44; 40 Ex. G. A., H. F. 220, § 38.]

10681. Entry judgment—jurisdiction—setting aside default. Judgments shall be rendered and entered upon the record in all cases within ten days after final submission of the cause, unless for good cause the court extends the time. The court shall retain jurisdiction, for the purpose of correction of errors of the court or in the record, for ten days after the entry of final judgment. Motions to set aside defaults may be made within ten days after the

entry thereof. Motions to vacate a judgment or order, because of irregularity in obtaining it, must be made within ninety days from the entry thereof. [S. S., '15, § 694-c17; 37 G. A., ch. 75, §§ 1, 9; 40 Ex. G. A., H. F. 220, § 39.]

10682. Judgment liens. Judgments of the court may be by it enforced the same as judgments of the district court, except that no real property shall be levied on or sold on process issued out of said court. Judgments may be made liens on real estate in the county by filing transcripts thereof in the district court, which thereafter shall have exclusive jurisdiction for the enforcement of such judgments as though rendered in the district court as of the date of filing in said court. [S. S., '15, § 694-c46; 40 Ex. G. A., H. F. 220, § 40.]

10683. Appeals. The laws relating to appeals from judgments or orders of the district court, or a judge thereof, to the supreme court shall apply to judgments or orders of the municipal court, or a judge thereof, in all civil actions. In class "C" actions, appeals shall be taken direct to the supreme court the same as from the district court. In class "D" actions, appeals shall be taken to the district court as provided in the case of appeals from justice courts. [S. S., '15, §§ 694-c24, 694-c45; 37 G. A., ch. 75, § 4; 40 Ex. G. A., H. F. 220, § 41.]

10684. Judgments superseded. Whenever a judgment of the court is appealed from and superseded and a transcript of the judgment has been, or thereafter shall be, filed in the district court, the clerk of the municipal court shall certify such fact to the clerk of the district court thereof, who shall note the same on the docket entry of the cause, which shall have the same effect as though the cause had been appealed from and superseded in the district court. Whenever further action is taken in such causes in the municipal court, the same shall be certified to the clerk of the district court, who shall note the same on the docket entry of said cause. [37 G. A., ch. 75, § 5; 40 Ex. G. A., H. F. 220, § 42.]

10685. Shorthand reporter. Each judge of the municipal court may appoint a shorthand reporter. All provisions relating to shorthand reporters and their duties in the district court, in so far as applicable, shall govern, except their compensation which shall be fixed by order of the court not exceeding eight dollars per day, for the time actually engaged in their court duties, and shall be paid one-half by the county and one-half by the city.

All actions included in class "A" hereof, may be reported the same as in the district court, and the reporter's fees shall be taxed therein as costs.

The transcript fees paid reporters shall be the same as in the district court, and may be taxed as part of the costs on appeal. [S. S., '15, § 694-c49; 39 G. A., ch. 244, § 1; 40 Ex. G. A., H. F. 220, § 43.]

10686. Report of preliminary examinations. The judge may order the testimony offered upon preliminary examinations taken down and certified by the shorthand reporter and a transcript of the testimony of the witnesses upon such preliminary examination, or the substance of their testimony, prepared by such reporter and filed in the district court with the transcript of proceedings on such preliminary examination. The fees for reporting such preliminary examinations and for transcript of the testimony shall be the same as allowed in civil causes, and shall be taxed as part of the costs in the case. [40 Ex. G. A., H. F. 220, § 44.]

10687. No report in class "B" actions. No reporter shall be provided for in the trial of actions in class "B" unless the party demanding the same shall pay the fees of the reporter to the clerk in advance, which shall be taxed as costs in the case, unless otherwise ordered by the court. [S. S., '15, § 694-c49; 39 G. A., ch. 244, § 1; 40 Ex. G. A., H. F. 220, § 45.]

10688. Salary. The annual salary of each municipal judge shall be three thousand dollars in cities of less than thirty thousand inhabitants; three thousand four hundred dollars in cities of thirty thousand and less than seventy-five thousand inhabitants; and three thousand six hundred dollars in cities of seventy-five thousand or more inhabitants.

Each clerk shall receive an annual salary of eighteen hundred dollars in cities of less than thirty thousand inhabitants; twenty-two hundred dollars in cities of thirty thousand and less than seventy-five thousand inhabitants; and twenty-six hundred dollars in cities of seventy-five thousand or more inhabitants.

Each bailiff shall receive an annual salary of fifteen hundred dollars in cities of less than thirty thousand inhabitants; seventeen hundred fifty dollars in cities of thirty thousand and less than seventy-five thousand inhabitants, and two thousand dollars in cities of seventy-five thousand or more inhabitants.

The deputy clerks and deputy bailiffs shall receive such compensation as the city council may allow.

The salaries of municipal judges, clerk, bailiff, and all deputies shall be paid monthly on the first Monday of each month. For the first month such salary shall be paid from the city treasury and the second month such salary shall be paid from the county treasury. Each month thereafter such payments shall alternate from the city to the county treasury in like manner. [S. S., '15, § 694-c47; 37 G. A., ch. 152, § 1; 39 G. A., ch. 61, § 1; 40 Ex. G. A., H. F. 220, § 46.]

10689. City to provide rooms. The city council shall provide suitable place for holding said court, and such other rooms and offices as may be necessary for the transaction of the business of said court. All of the other expenses of maintaining said court not otherwise provided for in this chapter shall be paid from the city treasury. [S. S., '15, § 694-c48; 37

G. A., ch. 226, § 2; 40 Ex. G. A., H. F. 220, § 47.]

10690. Abolishing municipal courts. When a municipal court shall have been established for more than four years, it may be abandoned by proceeding as follows: Upon the filing with the city clerk of a petition of not less than fifteen per cent of the qualified electors of such municipal court district as shown by the poll lists of the last municipal or state election, the mayor, by proclamation, shall submit such proposition at a general election. If the majority of votes cast at such election be in favor of the proposition of abandoning the court, the officers elected at the next succeeding general election shall be those prescribed by law for such cities and townships, and upon the qualification of such officers such municipal court shall be abolished. [S. S., '15, § 694-c50; 40 Ex. G. A., H. F. 220, § 48.]

10691. Municipal court buildings authorized. Cities having a population of fifty thousand or over shall have the power to erect a municipal court building, and to purchase the grounds therefor, such building when constructed to be used for the housing of the municipal court and such other like purposes as the council from time to time may by ordinance direct, including the housing and retention of persons charged with offenses against the laws of the city and the state. Provided that no such grounds shall be purchased nor any building erected thereon until the question has been submitted to the people at a regular or special election, and approved by majority of the votes cast at such election voting on said question. [37 G. A., ch. 17, §§ 1, 4; 40 Ex. G. A., H. F. 220, § 49.]

10692. Tax levy authorized. For the purpose of paying for the construction of such building, and the purchase price of such grounds, such city shall have the power to levy upon all the property within the corporate limits of such cities, subject to taxation, in addition to all other taxes provided by law, a special tax not exceeding in any one year one mill on the dollar for a period of years not exceeding fifty. [37 G. A., ch. 17, § 2; 40 Ex. G. A., H. F. 220, § 50.]

10693. Bonds authorized—maturity—duty of treasurer. Any city desiring to construct such a building or to purchase grounds therefor, may anticipate the collection of the tax herein authorized to be levied for the construction of a municipal court building, and for that purpose may issue interest bearing bonds carrying a rate of interest not to exceed five per cent per annum, to be denominated "municipal court building bonds" and the said bonds, and the interest thereon, shall be secured by said assessment and levy, and shall be payable only out of the proceeds of the special tax provided for in the preceding section, and no bonds shall be issued in excess of taxes authorized to be levied to secure the payment of the same. It shall be the duty of the treasurer of such city to collect said tax authorized to be levied, and to hold the same separate and apart in trust,

for the payment of said bonds, and interest, and to apply the proceeds of said special tax, pledged for that purpose, to the payment of said bonds and interest. Such bonds shall be known as "municipal court building bonds" and shall be issued and sold in accordance with the provisions of chapter 320. In issuing such bonds, the city council may cause portions of said bonds to become due at different definite periods, but none of such bonds so issued shall be due and payable in less than three or more than fifty years from date. [37 G. A., ch. 17, § 3.]

10694. Election as condition precedent. No building shall be erected under the provisions of this chapter unless a majority of the legal voters voting thereon vote in favor of the same at a general city election, or at a special election called for such purpose. [37 G. A., ch. 17, § 4.]

10695. Election—procedure. The question provided in the preceding section, to be sub-

mitted, may be ordered by the city council submitted to a vote at a general city election, or at one specially called for that purpose. Notice of such election shall be given by publication in two newspapers published in said city, once each week, for not less than four consecutive weeks, and the election shall be held not less than seven nor more than ten days after the completion of such publication. The question to be submitted shall be in the following form:

"Shall the city of, erect a municipal court building at a cost not exceeding \$?" [37 G. A., ch. 17, § 5.]

10696. Fund to be exclusive. No part of the purchase price of the grounds or of any of the bonds issued hereunder and no part of the interest accruing thereon shall ever be paid from the general revenue or funds of the city, or out of any fund, or from the proceeds of any tax, other than funds arising from the tax provided for herein. [37 G. A., ch. 17, § 6.]

CHAPTER 476

SUPERIOR COURT

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10697. Establishment and effect of. Any city in this state containing four thousand inhabitants, whether organized under a special charter or the general law for the incorporation of cities and towns, may establish a superior court as hereinafter provided, which, when established, shall take the place of the police court of such city. [C., '97, § 255; S., '13, § 255.]

10698. Submission to voters. Upon petition of one hundred citizens of any such city, the mayor, by and with the consent of the council, may, at least ten days before any general or city election, issue a proclamation submitting to the qualified voters of any city the question of establishing said court. Should a majority of all the votes cast upon such proposition be in favor of said court, the same shall be deemed

established. [C., '97, § 256; S., '13, § 256-a; 40 Ex. G. A., H. F. 221, § 1.]

10699. Governor to appoint judge. Whenever such court has been established, the governor shall appoint a judge, who shall hold office until the day following the first Monday in May succeeding the next regular city election and until his successor is elected and qualified. [40 Ex. G. A., H. F. 221, § 2.]

10700. Judges—terms of office—commission. Each judge hereafter elected shall hold office for four years from the first Monday in May next succeeding his election and shall be elected at the regular municipal election next preceding the expiration of the term of the incumbent as herein extended. The term of each present incumbent is extended until the first Monday in May next succeeding the city election first following the expiration of the term for which he was elected. The mayor shall transmit his certificate of election of such judge to the governor who shall thereupon issue to him the commission empowering him to act as judge. [C., '97, § 256; S., '13, § 256-a; 40 Ex. G. A., H. F. 221, § 3.]

10701. Judge—qualification—bond as clerk. Said judge shall be a qualified elector of the city, and a practicing attorney at law, and shall subscribe in writing the same oath required of judges of the district court, and file the same with the mayor of the city, and when he acts as clerk thereof he shall give bond to the state in the sum of four thousand dollars, for the faithful discharge of his duties as clerk, which must be filed with and approved by the mayor; and the effect of such election and qualification shall be to abolish the office of police judge of such city. [C., '97, § 257.]

10702. Vacancy. In case of vacancy in said office, the governor shall appoint a judge who shall hold office until the next city election, and in case of inability of any judge to act through sickness or any other cause, a judge shall be appointed by the governor to hold office during such inability. [C., '97, § 258; S., '13, § 258-a; 40 Ex. G. A., H. F. 221, § 4.]

10703. Terms. There shall be held not less than eight nor more than eleven terms of court in each year, the times being arranged by the judge in such manner as shall least conflict with the terms of the district court of the county where said superior court is held, to be fixed by general order made of record, at least ten days before the first term in each year; but, as a police court, it shall always be open for the dispatch of business. [C., '97, § 259.]

10704. Concurrent jurisdiction. Said court shall have jurisdiction concurrent with the district court in all civil matters, except in probate matters and actions for divorce, alimony and separate maintenance. [C., '97, § 260; S., '13, § 260.]

10705. Exclusive jurisdiction. It shall have exclusive original jurisdiction to try and determine all actions, civil and criminal, for the violation of city ordinances, and all jurisdiction conferred on police courts as now or as may hereafter be provided by law, and concurrent jurisdiction with justices of the peace. [C., '97, § 260; S., '13, § 260.]

10706. Writs of error. Writs of error and appeals may be taken thereto from justices' courts in the township in which the court is held, and, by consent of parties, from any other township in the county. [C., '97, § 260; S., '13, § 260.]

10707. Criminal actions. For the trial of criminal actions on information and complaint, the court shall be open at such times and under such rules as it shall prescribe. [C., '97, § 260; S., '13, § 260.]

10708. Attachments. In actions by attachment, where real property is levied on by writ of attachment, the officer levying the writ shall make entry thereof in the incumbrance book in the office of the clerk of the district court, in like manner and with like effect as of levies made in the district court. [C., '97, § 260; S., '13, § 260.]

10709. Commitments. Parties may be committed to the city prison for confinement or punishment, instead of the county jail, at the option of the judge. [C., '97, § 260; S., '13, § 260.]

10710. Substitute judge. In the absence of the judge, or in case of his inability to act, then, during such time, proceedings for the violation of city ordinances may be had before a justice of the peace residing in such city. [C., '97, § 260; S., '13, § 260.]

10711. Changes of venue. Changes of venue may be taken from said court in all civil actions to the district court of the same or another county, in the same manner, for like causes and with the same effect as the venue is changed from the district court. [C., '97, § 261; S., '13, § 261.]

10712. Nonresident defendants. In all civil cases where any party defendant shall, before any pleading is filed by him, file in said cause a motion for a change of venue to the district court of the county, supported by affidavit showing that such party defendant was not a resident of the city where such court is held, at the time of the commencement of the action, the cause, upon such motion, shall be transferred to the district court of the county. [S., '13, § 261.]

10713. Criminal actions. All criminal actions, including those for the violation of the city ordinances, shall be tried summarily and without a jury, saving to the defendant the right of appeal to the district court, which appeal shall be taken in the same time and manner as appeals are taken from justices' courts

in criminal actions. [C., '97, § 261; S., '13, § 261.]

10714. Transfers to district court. In case of vacancy in said office for sixty days or more, a district judge of the county may, on application of any party to any proceeding pending in the superior court, enter an order directed to the clerk of that court, or his deputy, or the acting clerk, directing such clerk to forthwith transmit to said district court the files and exhibits in said cause, together with a certified copy of the record in said cause, and thereupon said cause shall be disposed of in the district court as though originally brought therein. [40 Ex. G. A., H. F. 221, § 5.]

10715. Powers of judge. The judge shall have the same power in regard to injunctions, writs, orders, and other proceedings, out of court, as are possessed by the judges of the district court. [C., '97, § 262.]

10716. Court of record—laws applicable. The superior court shall be a court of record. All statutes governing the district court as to venue, commencement of action, jurisdiction, process, pleadings, practice, modes of trial, judgment, execution, and costs shall apply to and govern the superior courts, except when the same may be inconsistent with the provisions of this chapter. [C., '97, § 263.]

10717. Seal. Each such court shall have its own seal, with the words "Superior court" and the name of the city and state thereon. [C., '97, § 264.]

10718. Recorder to act as clerk. As long as the business of the court can be done without a clerk, the judge shall be the clerk of said court, and the city recorder or city clerk shall be deputy clerk of said court and may perform the duties of his principal as clerk of said court. Whenever, from the accumulation of causes and other demands upon the court, a clerk becomes necessary, the city recorder or clerk shall be the clerk thereof. He shall give bonds as required when the judge acts as clerk, and perform the same services as required by law of the clerk of the district court. [C., '97, § 265; S., '13, § 265.]

10719. Marshal as sheriff. The city marshal shall be the executive officer of said court, and his duties and authority in court and in executing process shall correspond with those of the sheriff of the county in the district court, and with process from that court. The process of said court may be also served by the sheriff. [C., '97, § 266.]

10720. Costs in civil actions. The costs and fees of said courts in civil actions shall be the same as in the district court, except as herein otherwise provided. [C., '97, § 267.]

10721. Accounting by clerk. The clerk of the superior court shall account for and pay over to the city all fees that may be paid into the said court, and also all fines for the viola-

tion of the city ordinances. Of all other fines he shall render the same account as is provided for justices of the peace. [C., '97, § 267.]

10722. Violations of ordinances. In actions for the violation of city ordinances, if unsuccessful, the city shall pay all costs, the same as provided by law for the county in criminal actions prosecuted in the name and on behalf of the state. [C., '97, § 267.]

10723. Criminal actions. The fees in criminal actions shall be the same as in justices' courts, and shall be paid and accounted for as hereinbefore stated, and as otherwise provided by law for justices of the peace and their courts. [C., '97, § 267.]

10724. Right to jury. When causes are assigned for trial, any party desiring a jury shall then make his demand therefor, or the same shall be deemed to have been waived. Causes in which a jury has been demanded shall be tried first in their order, and when disposition shall have been made of such causes the jury shall be discharged from further attendance at that term. [C., '97, § 268.]

10725. How jurors drawn. In order to provide jurors for the superior courts, the county auditor, clerk of the district court and recorder, of the county in which any city having a superior court is located, shall meet at the courthouse on the third Monday of February, April, June, August, October and December of each year, and proceed, in the manner provided by chapter 482, to draw the names of fifteen persons to act as jurors in said superior court. [C., '97, § 269; 38 G. A., ch. 251, § 1.]

10726. Drawing to constitute panel. The persons whose names are drawn at any drawing under the provisions hereof shall be subject to jury duty, and constitute the regular panel of jurors in said superior court, for the two calendar months commencing with the first day of the month next succeeding the drawing. [C., '97, § 269.]

10727. Certification to city clerk. A list of the names of the persons drawn at each drawing provided by this chapter shall be immediately made out and certified by the clerk of the district court, under his hand and seal, and such certified list transmitted by mail to the recorder or clerk of the city in which said superior court is located. [C., '97, § 269.]

10728. Precept. A precept of said superior court shall issue, five days before the first day of each term of court, for the jurors constituting the panel for such term, under the provisions hereof, which precept shall be issued and served as provided by law in like cases in the district court. [C., '97, § 269.]

10729. Drawing of jurors—provisions applicable. The provisions of chapter 482 in relation to the selection and drawing of petit

jurors and talesmen for the district courts, shall also apply to the selection and drawing of petit jurors and talesmen for the superior courts in such counties. [38 G. A., ch. 251, § 2.]

10730. Jury of six. The jury shall consist of six qualified jurors, unless, when a jury is demanded as provided in this chapter, the party at that time shall demand a jury of twelve. [C., '97, § 270.]

10731. Jury of twelve. In all civil cases the party requesting a jury of twelve shall at the time of making such demand deposit with the clerk the entire additional expense of the additional jurors, which sum shall be fixed by the court and paid to the clerk at the time of making such demand. [C., '97, § 270.]

10732. Talesmen. Talesmen may be summoned on the order of the court by the marshal from the body of the county. [C., '97, § 270.]

10733. Accounting. All such deposits of additional expense for jurors shall be paid into the county treasury at the close of each term of such superior court, and the county treasurer shall give duplicate receipts therefor, one to be held by said clerk, and the other to be presented by him to the county auditor, who shall charge the treasurer with the amount thereof in the proper account. [C., '97, § 270.]

10734. Juries in certain cities. In all cities which now have a population of forty thousand or more, and in which superior courts are now or may hereafter be established, it shall be unnecessary in such superior court to make demand for trial by jury, and causes triable to a jury shall be tried to twelve jurors without the additional expense to any of the parties, required by section 10731. [S., '13, § 280-a; 38 G. A., ch. 245, § 2.]

10735. Manner of drawing. In providing jurors for superior courts in all such cities, the names of sixty persons shall be drawn by the officers at the times and in the manner provided by chapter 482. [S., '13, § 280-b; 38 G. A., ch. 245, § 3.]

10736. Drawing to constitute panel. Such persons whose names are drawn shall be subject to jury duty, and shall constitute the regular panel of jurors in said superior courts for the two calendar months, commencing with the first day of the month succeeding the drawing. [S., '13, § 280-b; 38 G. A., ch. 245, § 3.]

10737. Certification to city clerk. A list of the names of the persons drawn at each drawing provided by this chapter shall be immediately made out and certified by the clerk of the district court, under his hand and seal, and such certified list transmitted by mail to the recorder or clerk of the city in which said superior court is located. [38 G. A., ch. 245, § 3.]

10738. Precept. A precept of said superior court shall issue at such time or times as the judge of said court shall direct, authorizing

and directing the marshal of said city in which said superior court is located, to summon such number of said jurors, in the order of their certification by the clerk of the district court, as the judge of said superior court shall deem necessary, which precept shall be issued and served as provided by law in like cases in the district court. [S., '13, § 280-b; 38 G. A., ch. 245, § 3.]

10739. Salary of judge. In all such cities the salary of the judge of the superior court shall be thirty-seven hundred fifty dollars per annum, and paid quarterly; the first two quarters from the city treasury, and the last two from the county treasury of the county wherein such court is located. [S., '13, § 280-c; 39 G. A., ch. 128, § 1.]

10740. Per diem of shorthand reporters. In all such cities the compensation of the shorthand reporter in such superior court shall be eight dollars a day for the time actually employed. [S., '13, § 280-d.]

10741. Deputy clerk—compensation. In all such cities there may be appointed by the city council, a deputy clerk of the court, who shall receive such compensation as the city council may allow. [S., '13, § 280-e.]

10742. Applicable to certain cities. The eight preceding sections shall apply to cities which now have, or may hereafter have a population of forty-five thousand or more. [S., '13, § 280-f; 39 G. A., ch. 128, § 2.]

10743. Challenges. In all civil cases, where the jury shall consist of six jurors, the challenges allowed to either party shall be limited to three each, but where the jury shall consist of twelve jurors, the same number of challenges shall be allowed to either party as is or may be allowed in the district court. [C., '97, § 271.]

10744. Appeals to supreme court. All appeals from judgments or orders of said court, or the judge thereof, in civil actions shall be taken to the supreme court in the same manner, under the same restrictions, within the same time, and with the same effect, as appeals are taken from the district court to the supreme court. [C., '97, § 272.]

10745. Judgments made liens. Judgments in said court may be made liens upon real estate in the county in which the city is situated, by filing transcripts of the same in the district court, as provided in this code in relation to judgments of justices of the peace, and with equal effect, and from the time of such filing they shall be treated in all respects as to their effect and mode of enforcement as judgments rendered in the district court as of that date, and no execution can thereafter be issued from the said superior court on such judgments, and no real property shall be levied on or sold on process issued out of the superior court. Judgments of said court may be made liens upon real estate in other counties in the

same manner as judgments in the district courts. [C., '97, § 273.]

10746. Informations. It shall be the duty of the city attorney or solicitor to file informations in the superior court for violations of the city ordinances and prosecute the same, and for such services he shall receive such compensation as the city council shall allow. [C., '97, § 274.]

10747. Shorthand reporters—compensation. The judge of each superior court may appoint a shorthand reporter. All provisions relating to shorthand reporters and their duties in the district court, in so far as applicable in every respect, shall govern, except the compensation shall not exceed eight dollars a day for the time actually employed. [C., '97, § 275; 37 G. A., ch. 186, § 1.]

10748. Salary of judge. The salary of each superior court judge in all cities having a population of less than twenty-five thousand shall be two thousand dollars per annum, payable quarterly. In cities having a population of more than twenty-five thousand and less than forty-five thousand such salary shall be three thousand dollars per annum, payable quarterly.

The first two quarters shall, in all cases, be paid from the city treasury, and the last two from the county treasury of the county wherein said court is located. [C., '97, § 278; 40 G. A., ch. 200.]

10749. Compensation of clerk. When a clerk or recorder of a city in which such court is established is required to perform the duties of clerk thereof, he shall receive such compensation for such services as the city council may allow. [C., '97, § 279.]

10750. Compensation of marshal. The marshal shall receive the same fees and compensation for serving the process of said court, and for other services required of the sheriff in the district court, as the sheriff receives for like services, but in all criminal cases in said court the marshal shall receive the same fees for his services as are paid to the constable in justice court. [C., '97, § 280; S., '13, § 280.]

10751. Question of abolishing court. Upon the filing with the city clerk of the petition of two hundred of the qualified electors of any city in which a superior court is now or hereafter established, the mayor shall at least ten days before any general election or election for city officers, issue a proclamation submitting to the qualified voters of said city the proposition to abolish the superior court. The ballots shall be printed in the following form: "Shall the proposition to abolish the superior court of be adopted?", and the election shall be conducted in all respects in accordance with the provisions of the election law. [C., '97, § 276; S., '13, § 276; 40 Ex. G. A., H. F. 221, § 6.]

10752. Certificate that court abolished. If a majority of the votes cast at said election are for abolishing said superior court, the mayor of such city shall immediately transmit a

certificate showing such fact to the secretary of state. [C., '97, § 277.]

10753. Date when court abolished. Said court shall be abolished, to take effect upon the date of the expiration of the term of office of the judge then upon the bench. [C., '97, § 277.]

10754. Effect of abolishment. The effect of such abolition shall be to revive and reestablish in such city the police court and all the powers incident thereto, in the same manner as the law prescribes for cities where superior courts do not exist. [C., '97, § 277.]

10755. Deposit with city clerk. The judge of said superior court shall, before retiring from said position, turn over to the clerk of said city the judgment records of his court in which are entered and recorded all judgments and fines for the violation of ordinances of such city, together with all money collected as fines for the violation of such ordinances, and take the clerk's receipt therefor. [C., '97, § 277.]

10756. Deposit with clerk district court. All other books, records, and papers pertaining to said superior court shall be turned over to the clerk of the district court of the county in which such city is situated, and his duplicate receipt taken therefor, together with all the money in the hands of said judge which has come into his hands as judge of said court, one receipt to be filed with the county auditor. [C., '97, § 277.]

10757. Report to supervisors. Said judge shall immediately make reports to the board of supervisors and city council as to the disposition made of said books, papers, dockets, and moneys, as herein provided. [C., '97, § 277.]

10758. Pending actions. It shall be the duty of the clerk of the district court, upon receipt of such books, dockets, and records belonging to said superior court, to transfer all cases pending before the same, as shown by said record, and of which the district court would have jurisdiction, to the proper appearance docket of the district court, and to notify the parties or their attorneys of such transfer, and such causes shall stand for trial as if brought originally in said court. [C., '97, § 277.]

10759. Actions transferred to police court. All causes pending in the superior court at the time it is abolished, of which the district court would not have jurisdiction, shall be transferred to the police court. [C., '97, § 277.]

10760. Transcripts and executions. The clerk of the district court shall make transcripts and issue executions from the records of said superior court under the seal of the district court, for which he shall be entitled to charge and receive the same fees as are now allowed for like services in the district court, and all papers so issued shall have the same force and effect as if issued from the superior court during its existence. [C., '97, § 277.]

CHAPTER 477

DISTRICT COURT

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10761. General jurisdiction. The district court shall have general, original, and exclusive jurisdiction of all actions, proceedings, and remedies, both civil and criminal, except in cases where exclusive or concurrent jurisdiction is or may hereafter be conferred upon some other court or tribunal by the constitution and laws of the state, and shall have and exercise all the powers usually possessed and exercised by courts of record. [C., '51, § 1576; R., '60, § 2663; C., '73, § 161; C., '97, § 225; S., '13, § 395-a.]

10762. Appeals and writs of error. It shall also possess and exercise jurisdiction in all appeals and writs of error taken in civil and criminal actions and special proceedings authorized to be taken from all inferior courts, tribunals, boards, or officers, under any provisions of the laws of this state, and shall have a general supervision thereof, in all matters, to prevent and correct abuses, where no other remedy is provided. [C., '51, § 1576; R., '60, § 2663; C., '73, § 161; C., '97, § 225; S., '13, § 395-a.]

10763. Wills — administration — guardianship. The district court of each county shall have original and exclusive jurisdiction:

1. To probate the wills of, and to grant administration upon the estates of, all persons who at the time of their death were residents of the county, and of nonresidents of the state who die leaving property within the county subject to administration, or whose property is afterwards brought into the county.

2. To appoint guardians of the persons and property of all persons resident in the county subject to guardianship.

3. To appoint guardians of the property of all such persons nonresidents of the state who have property within the county subject to guardianship, or whose property is afterwards brought into the county. [C., '73, § 2312; C., '97, § 225; S., '13, § 395-a.]

10764. Executors and trustees. It shall have jurisdiction in all matters in relation to the appointment of executors and trustees, and the management and disposition of the property of and settlement of such estates; provided that where jurisdiction has heretofore been acquired, the same shall be retained until such estate is closed. [C., '97, § 225; S., '13, § 395-a.]

10765. Circuit court records. The district court shall succeed to, and exercise full authority and jurisdiction over, the records of the circuit court, and may enforce all judgments, decrees, and orders thereof in the same manner and to the same extent as it may exercise like jurisdiction and authority over its own records, and, for the purpose of the issuance of process, and of any and all other acts necessary to the due and efficient enforcement of the orders, judgments, and decrees of the circuit court, the records thereof shall be deemed records of the district court. [C., '73, §§ 162, 2312; C., '97, § 225; S., '13, § 395-a.]

10766. Transcripts—process. Transcripts and process from the judgments, decrees, and records of the circuit court shall be issued by the clerk of the district court, and under the seal of his office. [C., '97, § 225; S., '13, § 395-a.]

10767. Counties bordering on Missouri river. The jurisdiction of the courts of the state of Iowa, in counties bordering on the Missouri river, in all civil and criminal actions and proceedings, is hereby declared to extend to the center of the main channel of the Missouri river, where the same now is or may hereafter be, and to all lands and territory lying along said river, which have been adjudged by the United States supreme court or the supreme court of this state to be within the state of Iowa, and to such other lands and territory along said river over which the courts of this state have heretofore exercised jurisdiction. [S., '13, § 395-a.]

10768. Judicial districts. For judicial purposes, the state is hereby divided into twenty-one judicial districts, as follows:

The first district shall consist of the county of Lee, and have two judges.

The second district shall consist of the counties of Lucas, Monroe, Wapello, Jefferson, Davis, Van Buren, and Appanoose, and have four judges.

The third district shall consist of the counties of Wayne, Decatur, Clarke, Union, Ringgold, Taylor, and Adams, and have three judges.

The fourth district shall consist of the counties of Woodbury and Monona, and have four judges.

The fifth district shall consist of the counties of Dallas, Guthrie, Adair, Madison, Warren, and Marion, and have three judges.

The sixth district shall consist of the counties of Jasper, Poweshiek, Mahaska, Keokuk, and Washington, and have three judges.

The seventh district shall consist of the counties of Muscatine, Scott, Clinton, and Jackson, and shall have five judges, who shall be so elected that each county shall have at least one resident judge.

The eighth district shall consist of the counties of Iowa and Johnson, and have two judges, who shall not be residents of the same county.

The ninth district shall consist of the county of Polk, and have five judges.

The tenth district shall consist of the counties of Delaware, Buchanan, Black Hawk, and Grundy, and have three judges.

The eleventh district shall consist of the counties of Story, Boone, Webster, Hamilton, Hardin, Franklin, and Wright, and have four judges.

The twelfth district shall consist of the counties of Bremer, Butler, Floyd, Mitchell, Worth, Cerro Gordo, Hancock, and Winnebago, and have four judges.

The thirteenth district shall consist of the counties of Clayton, Allamakee, Fayette, Winnesiek, Howard, and Chickasaw, and have three judges.

The fourteenth district shall consist of the counties of Buena Vista, Clay, Palo Alto, Kosuth, Emmet, Dickinson, Humboldt, and Pocahontas, and have three judges.

The fifteenth district shall consist of the counties of Pottawattamie, Cass, Shelby, Audubon, Montgomery, Mills, Page, Fremont, and Harrison, and shall have five judges.

The sixteenth district shall consist of the counties of Ida, Sac, Calhoun, Crawford, Carroll, and Greene, and have two judges.

The seventeenth district shall consist of the counties of Tama, Benton, and Marshall, and have two judges.

The eighteenth district shall consist of the counties of Linn, Jones, and Cedar, and have four judges.

The nineteenth district shall consist of the county of Dubuque, and have two judges.

The twentieth district shall consist of the counties of Des Moines, Henry, and Louisa, and shall have two judges.

The twenty-first district shall consist of the counties of Cherokee, O'Brien, Osceola, Lyon, Sioux, and Plymouth, and shall have two judges. [C., '97, § 227; S. S., '15, § 227; 37 G. A., ch. 91, §§ 1, 2; 37 G. A., ch. 255, § 1; 37 G. A., ch. 256, § 1; 37 G. A., ch. 257, § 1; 40 G. A., ch. 201, § 1; 40 G. A., ch. 202, § 1; 40 G. A., ch. 203, § 1.]

10769. Place of holding court. Courts must be held at the places provided by law, except for the determination of actions, special proceedings, and other matters not requiring a jury, when they may, by consent of the parties therein, be held at some other place. [C., '51, § 1597; R., '60, § 2687; C., '73, § 192; C., '97, § 286.]

10770. County without courthouse. When there is no courthouse at the place where the courts are to be held, its sessions shall be at such suitable place as the board of supervisors provide, but if no such place is provided, the court may direct the sheriff to procure one at the expense of the county. [C., '51, §§ 1573, 1574; R., '60, §§ 2660, 2661; C., '73, §§ 173, 174; C., '97, § 239.]

10771. City or town to provide court room. Where terms are held in any city or town not the county seat, such city or town shall provide and furnish the necessary rooms and places for such terms, free of charge to the county. [C., '51, § 1566; R., '60, § 2653; C., '73, § 163; C., '97, § 226.]

10772. Dual county seats. In any county having two county seats, terms of court shall be held at each, and, in the county of Pottawattamie, court shall be held at Avoca, as well as at the county seat. [C., '73, § 164; C., '97, § 228.]

10773. Terms not at county seats—effect—duty of clerk. When a court shall be held at a place not the county seat, all of the provisions of the statute in relation to district courts shall be applicable thereto, except as herein modified. All proceedings had in said court shall have, within the territory over which said court shall have jurisdiction, the same force and effect as though ordered in the court at the county seat of said county, but transcripts of judgments and decrees rendered therein, levies of writs of attachment upon real estate, mechanics' liens, lis pendens, sales of real estate, redemption, satisfaction of judgments and me-

chanics' liens, dismissals or decrees in lis pendens, together with all other matters affecting titles to real estate, shall be forthwith certified by the deputy clerk at such place, to the clerk of such court at the county seat, who shall immediately enter the same upon the records in his office. [C., '97, § 230.]

10774. Terms to be held. The district judges shall hold four terms of court at each of the places in the several counties of their districts where court is authorized to be held, and, if business requires, then the judges of such district shall, by joint order made at the time of making the assignment of terms hereinafter required and entered of record, provide for regular additional terms. [C., '97, § 229.]

10775. First district—judges to alternate. The judges in the first judicial district shall as nearly as practicable, alternate in holding terms at the places for holding court in said judicial district, and terms may be held simultaneously at both places. [S., '13, § 227-1a.]

10776. Eighth district—judges to alternate. The judges in the eighth judicial district shall as nearly as practicable, alternate in holding terms at the places for holding court in said judicial district, and terms may be held simultaneously at both places. [S. S., '15, § 227-8ab.]

10777. Schedule of terms. On or before the first day of October in each odd-numbered year the judges shall meet in their respective districts and determine the times and places of holding their courts during the two succeeding calendar years. [C., '51, § 1567; R., '60, § 2654; C., '73, § 165; C., '97, § 232; S., '13, § 232.]

10778. Filing of schedule. The plan or schedule thus agreed upon, or ordered by the chief justice of the supreme court when they can not agree, shall be forthwith forwarded by the district judges to the secretary of state and the clerk of the district court in each county in such district, and the clerk shall file the same and enter it of record in the journal of the court. [C., '73, § 165; C., '97, § 232; S., '13, § 232.]

10779. Tabular statement prepared. The secretary of state shall, within ten days after receiving said orders, or before the first Monday in December after said orders are made, prepare a tabular statement of the times of holding the several courts, as fixed by the several orders in his office, and have printed five thousand copies thereof. [C., '51, § 1568; R., '60, § 2655; C., '73, § 165; C., '97, § 232; S., '13, § 232.]

10780. Distribution. Said tabular statement shall be distributed as follows: One copy to each state officer, each county auditor and sheriff, two copies to each judge of the district and superior courts, ten copies each to the state library, the library of the law department of the state university, and the state historical society, thirty-five hundred copies

to the clerks of the district court, in proportion to the population of the county, for gratuitous distribution among the attorneys of the county, and the residue for free distribution under the supervision of the secretary of state. [C., '51, § 1567; R., '60, § 2655; C., '73, § 165; C., '97, § 232; S., '13, § 232.]

10781. Judge to hold one term. In preparing said plan or schedule, the judges shall so arrange, if practicable, that each judge shall hold at least one term of court during the year in each of the several counties of his district. [C., '73, § 165; C., '97, § 232; S., '13, § 232.]

10782. Special terms. A special term may be ordered in any county at any regular term of court in that county, or at any other time, by any judge of the district, for the trial of all causes pending at the last regular term of said court held prior to said special term, in which either party shall have served a trial notice as provided by law, or for receiving pleas of guilty in criminal cases and the entry of judgment thereon. When ordering a special term, the court or judge shall direct whether a grand or trial jury, or both, shall be summoned. [C., '51, §§ 1569-1571; R., '60, §§ 2656-2658; C., '73, § 166; C., '97, § 233; S., '13, § 233.]

10783. Disagreements. In case the judges of any district are unable to agree as to the manner of holding their courts, or as to the counties in which they are severally to preside, they shall refer the matter to the chief justice of the supreme court, who shall assign said judges to such counties as he may determine. [C., '97, § 231.]

10784. Power to assign judge. The chief justice of the supreme court shall also have power to assign any district judge, when not occupied in holding court in his own district, to hold court in any other district in the state where any judge may be incapacitated from holding court, or there may arise a necessity therefor. This and the preceding section shall not be held to affect the right of the judges to interchange holding their terms of court, as now provided by law. [C., '97, § 231.]

10785. Temporary additional judge. When, from any cause, the business of the district court of any judicial district of this state can not be disposed of within a reasonable time by the judges elected within and for such district, then upon the filing of a petition signed by five or more resident attorneys of such district with the clerk of the supreme court, addressed to the chief justice thereof, setting forth the facts, the chief justice, being satisfied that the business of such judicial district demands an additional judge for a temporary period of time to dispose of such business or assist in the disposal of such business, shall name and transfer a judge from some other judicial district where the business of such district will warrant, to the place in the judicial district for which such petition is filed, who shall hold a term of court for such length

of time as the chief justice of the supreme court may determine. [S., '13, § 240-b.]

10786. Expenses. The judge so transferred shall be allowed and paid all reasonable and actual expenses while in the performance of his duties in said temporary character, in addition to his salary. [S., '13, § 240-b.]

10787. Filing of order. Upon the order being made for the transfer of such judge as contemplated by the second preceding section, such order shall be filed in the office of the clerk of the district court of the county where such judge shall hold a term or part thereof. [S., '13, § 240-c.]

10788. Jurors drawn. Upon the filing of said order the proper officers, as by statute provided, shall proceed and are hereby empowered as by statute provided, to draw a grand jury and trial jury, if necessary, which shall have the same force and effect as if drawn for a regular term and upon the order of a judge elected for such district in the usual and ordinary transaction of business of such district. [S., '13, § 240-c.]

NOTE: Drawing of jurors, see § 10878 et seq.

10789. Failure of judge to appear. If the judge does not appear on the day appointed for holding the term, the clerk shall make an entry thereof in his record, and adjourn the court until the next day, and so on until the third day, unless he appears, provided three days are allowed for such term, and if he does not appear by five o'clock p. m. of the third day, and before the expiration of the time allotted to the term, it shall stand adjourned until the next regular term. [C., '51, §§ 1581, 1582; R., '60, §§ 2668, 2669; C., '73, §§ 167, 168; C., '97, § 234.]

10790. Special adjournments. If the judge is sick, or for any cause is unable to attend court at the regularly appointed time, he may by letter, telegram, or telephone direct an adjournment to a particular day, and the clerk shall, on the first day thereof, or as soon after as he receives the order, adjourn the court as directed. [C., '51, § 1583; R., '60, § 2670; C., '73, § 169; C., '97, § 235; 38 G. A., ch. 190, § 1.]

10791. Failure of term—effect. No recognition or other instrument or proceeding shall be rendered invalid by reason of there being a failure of the term; but all proceedings pending in court shall be continued to the next regular term, unless an adjournment be made as authorized in the preceding section. [C., '51, § 1584; R., '60, § 2671; C., '73, § 170; C., '97, § 236.]

10792. Recognizances continued. In cases of such continuances or adjournments, persons recognized or bound to appear at the regular term, which has failed as aforesaid, shall be held bound in like manner to appear at the time so fixed, and their sureties, if any, shall

be liable in case of their nonappearance, in the same manner as though the term had been held at the regular time and they had failed to make their appearance thereat. [C., '51, § 1585; R., '60, § 2672; C., '73, § 171; C., '97, § 237.]

10793. Regular adjournment—effect. Upon any final adjournment of the court, all business not otherwise disposed of shall stand continued. [C., '51, § 1586; R., '60, § 2673; C., '73, § 172; C., '97, § 238.]

10794. Decisions and entries in vacation. With consent of parties, actions and other matters pending in the courts named in this chapter may be taken under advisement by the judges, decided and entered of record in vacation, or at the next term; if so entered in vacation, they shall have the same force and effect from the time of such entry as if done in term time. [C., '73, § 183; C., '97, § 247.]

10795. Expiration of term—pending trials. Whenever a trial has been commenced, it may be concluded and all proceedings in the case thereafter conducted in the usual course, whether the time has arrived for commencing a term in another county in the district or not, and without regard to any other court or term thereof. [C., '73, §§ 185, 186; C., '97, § 248.]

10796. Judges may interchange. The district judges may interchange and hold each other's courts. [C., '51, § 1575; R., '60, § 2662; C., '73, § 175; C., '97, § 240.]

10797. Judges not to sit together. In districts in which the district court is composed of more than one judge, the judges shall not sit together in the trial of causes, nor upon the hearing of motions for new trials, but may together hold the same term, making an apportionment of the business between them; and in districts composed of more than one county they may hold terms in different counties at the same time. [C., '97, § 241.]

10798. Preparation and signing of record. The clerk shall from time to time make a record of all proceedings of the court, which, when correct, shall be signed by the judge. [C., '51, § 1577; R., '60, § 2664; C., '73, § 176; C., '97, § 242.]

10799. Signing after term—effect. When it is not practicable to have all the records prepared and signed during the term, they may be prepared in vacation and corrected and signed at the next succeeding term; but such delay shall not prevent an execution from issuing in the meantime, and all other proceedings may be had in the same manner as though the record had been signed. [C., '51, § 1578; R., '60, § 2665; C., '73, § 177; C., '97, § 242.]

10800. Vacation entries. Entries authorized to be made in vacation shall be signed at the next term of the court. [C., '51, § 1578; R., '60, § 2665; C., '73, § 177; C., '97, § 242.]

10801. Amending or expunging entry. The record aforesaid is under the control of the court, and may be amended, or any entry therein expunged, at any time during the term at which it is made, or before it is signed by the judge. [C., '51, § 1579; R., '60, § 2606; C., '73, § 178; C., '97, § 243.]

10802. Unauthorized alteration. No record shall be amended or impaired by the clerk or

other officer of the court, or by any other person without the order of such court, or of some court of competent authority. [R., '60, § 2984; C., '73, § 2736; C., '97, § 3646.]

10803. Corrections because of mistakes. Entries made and signed at a previous term can be altered only to correct an evident mistake. [C., '51, § 1580; R., '60, § 2667; C., '73, § 179; C., '97, § 244.]

CHAPTER 478

GENERAL PROVISIONS RELATING TO JUDGES AND COURTS

10804. Salary of judges.
10805. Expenses.
10806. Audit and payment.
10807. Shorthand reporter.
10808. Oath—removal.
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10810. Deficiency—how paid.
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10804. Salary of judges. The salary of each judge of the district court shall be four thousand dollars per year. [C., '73, § 3774; C., '97, § 253; S. S., '15, § 253; 37 G. A., ch. 235, § 1.]

10805. Expenses. Where a judge of the district court is required, in the discharge of his official duties, to leave the county of his residence or leave the city or town of his residence to perform such duties, he shall be paid such actual and necessary hotel and living expenses not to exceed the sum of three dollars per day and transportation expenses as shall be incurred. [S. S., '15, § 253; 38 G. A., ch. 70, § 1.]

10806. Audit and payment. An itemized expense account shall be certified by the party entitled thereto to the auditor of state, which account shall be rendered quarterly and shall be paid in the same manner as the salary of such judge. [S. S., '15, § 253.]

10807. Shorthand reporter. Each judge of the district court shall appoint a shorthand reporter who shall, upon the request of either party in a civil case or a criminal case, take and report in full the oral evidence and proceedings in the case, and perform all duties required of him on the trial, as provided by law. [C., '73, § 181; C., '97, § 245.]

10808. Oath—removal. Such reporter shall take an oath faithfully to perform the duties of his office, which shall be filed in the office of the clerk. He shall attend such sessions of the court as the judge who appointed him may direct, and may be removed by the judge making such appointment. [C., '73, § 182; C., '97, § 246.]

10809. Compensation. Shorthand reporters of the district courts shall be paid ten dollars per day for each day's attendance upon said court, under the direction of the judge, out of the county treasury where such court is held, upon the certificate of the judge holding the court. [C., '73, § 3777; C., '97, § 254; S. S., '15, § 254-a2; 38 G. A., ch. 268, § 1.]

10810. Deficiency—how paid. In case the total per diem of each reporter and his substitute shall not amount to the sum of twenty-four hundred dollars per year, the judge appointing him shall at the end of the year apportion the deficiency so remaining unpaid among the several counties of the district, if there be more than one county in such district, in proportion to the number of days of court actually held by said judge in such counties, which apportionment shall be by him certified to the several county auditors, who shall issue warrants therefor to said reporter, which warrants shall be paid by the county treasurers out of any funds in the treasury not otherwise appropriated. [S. S., '15, § 254-a2; 38 G. A., ch. 268, § 1.]

10811. Expenses. Where a shorthand court reporter is required, in the discharge of his official duties, to leave the county of his residence or leave the city or town of his residence to perform such duties, he shall be paid his actual and necessary hotel and living expenses not to exceed the sum of three dollars per day and transportation expenses as shall be incurred, which account shall be itemized and approved by the presiding judge of the district court and certified to the county auditor of the county in which such expenses are incurred, and shall be paid in the same manner

as the per diem of such reporter is paid. [S. S., '15, § 254-a2; 38 G. A., ch. 268, § 1.]

10812. Transcript fee. Shorthand reporters shall also receive eight cents per hundred words for transcribing their official notes, to be paid for in all cases by the party ordering the same. [C., '73, § 3777; C., '97, § 254; S. S., '15, § 254-a2.]

10813. Taxed as part of costs. A charge of six dollars per day for reporting in all cases, except where the defendant in a criminal case is acquitted, shall be taxed as part of the costs in the case by the clerk of the court and paid into the county treasury when collected. [S., '13, § 254-a3.]

10814. Residence. The district judge shall be a resident of the district in which he is elected. [C., '97, § 227; S. S., '15, § 227.]

10815. Judge to be attorney. No person shall be eligible to the office of judge of a court of record who is not, at the time of his election, an attorney at law, duly admitted to practice under the laws of this state. [S., '13, § 281; 40 G. A., ch. 264.]

10816. Practice prohibited. During the time that he is holding such office he shall not practice as an attorney or counselor or give advice in relation to any action pending or about to be brought in any of the courts of the state. Nothing contained in this section shall be construed to prohibit police court judges from practicing as attorneys and counselors in civil matters. [C., '51, § 1587; R., '60, § 2674; C., '73, § 187; C., '97, § 281; S., '13, § 281; 40 G. A., ch. 264.]

10817. Judicial proceedings public. All judicial proceedings must be public, unless otherwise specially provided by statute or agreed upon by the parties. [C., '51, § 1593; R., '60, § 2683; C., '73, § 189; C., '97, § 283.]

10818. When judge disqualified. A judge or justice is disqualified from acting as such, except by mutual consent of parties, in any case wherein he is a party or interested, or where he is related to either party by consanguinity or affinity within the fourth degree, or where he has been attorney for either party in the action or proceeding. This section shall not prevent him from disposing of any preliminary matter not affecting the merits of the case. [C., '51, § 1595; R., '60, § 2685; C., '73, § 190; C., '97, § 284.]

10819. Sunday—permissible acts. No court can be opened nor any judicial business transacted on Sunday, except:

1. To give instructions to a jury then deliberating on its verdict.

2. To receive a verdict or discharge a jury.

3. To exercise the powers of a single magistrate in a criminal proceeding.

4. To perform such other acts as are provided by law. [C., '51, § 1596; R., '60, § 2686; C., '73, § 191; C., '97, § 285.]

10820. Rules for conciliation. The judges of the district court for their districts, the judges of the superior court for their districts, and the judges of the municipal court for their districts may adopt and enforce rules prescribing the manner of settlement of controversies by conciliation and the duties of the clerks of the several courts in respect thereto; may appoint conciliators or any judge may act as such, but no judge shall preside at the trial of any action involving a controversy in which he has acted as conciliator. [40 G. A., ch. 265, § 1.]

10821. Procedure. No party shall be represented by counsel, except by consent of the conciliator. The proceedings shall be informal and no record thereof shall be preserved except the agreement of settlement signed by the parties. The judge may direct the same to be filed in the office of the clerk and judgment to be entered thereon. [40 G. A., ch. 265, § 2.]

10822. Condition to maintaining action. In districts in which rules for conciliation are adopted and the conciliators appointed, no person may maintain an action for the recovery of a disputed claim of one hundred dollars, or less, unless he alleges and proves by certificate of the conciliator that he has made a good faith effort to settle the controversy. [40 G. A., ch. 265, § 3.]

10823. Exceptions. The preceding section shall not apply to suits aided by attachment, or to enforce a lien, or for replevin, or upon written contracts when due, or in cases where the petition states that the defendant is about to change his residence from the county, or where either party to the controversy is a nonresident of the county in which the conciliator is acting. [40 G. A., ch. 265, § 3.]

10824. Speedy determination. Such judges shall adopt rules for the speedy determination of causes involving comparatively small amounts as stated in such rules, and the clerks shall enter such causes upon a separate short cause calendar. It shall be the duty of the court to set aside a day or days each week when such causes will be heard. Before entering upon the trial of any such cause, the judge or court will, if practicable, bring the parties together and endeavor to secure a settlement thereof by conciliation or arbitration. [40 G. A., ch. 265, § 4.]

CHAPTER 479

CLERK OF THE DISTRICT COURT

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| <p>10825. General duties.
 10826. Payment of money—notice.
 10827. Service of notice.
 10828. Default—liability.
 10829. Attestation of process.
 10830. Records and books.
 10831. Appearance docket—entries required.
 10832. Entry of return of notice.
 10833. Pleadings—when deemed filed—removal of papers.</p> | <p>10834. Subsequent proceedings.
 10835. Not to be justice or attorney.
 10836. Change in title—certification.
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10825. General duties. The clerk of the district court shall keep his office at the county seat, attend the sessions of the district court himself or by deputy, keep the records, papers, and seal, and record the proceedings of the court as hereinafter directed, under the direction of the judge. [C., '51, § 1577; R., '60, § 343; C., '73, § 194; C., '97, § 287; 40 G. A., ch. 266, § 1.]

NOTE: Right to select newspapers for publication of notices, see § 11102.

10826. Payment of money—notice. When money to the amount of five hundred dollars or more is paid to the clerk to be paid to any person, and not disbursed within thirty days, he shall notify the person entitled to receive such money, or for whose account the money is paid, or the attorney of record of such person. [40 G. A., ch. 266, § 2.]

10827. Service of notice. The notice shall be by registered mail, and shall be mailed within forty days from the receipt of the money, to the last address of the person or attorney known to the clerk, and memorandum thereof entered on the proper record. [40 G. A., ch. 266, § 2.]

10828. Default—liability. If the clerk fails to give said notice, he and his bondsmen shall be personally liable for interest on such money from the date of the receipt thereof by him to the date the same is paid to the person or attorney. [40 G. A., ch. 266, § 2.]

10829. Attestation of process. All process issued by the clerk of the court shall bear date the day it is issued, and be attested in the name of the clerk who issued it, and under the seal of the court. [C., '51, § 1592; R., '60, § 2682; C., '73, § 188; C., '97, § 282.]

10830. Records and books. The records of said court shall consist of the original papers filed in all proceedings, and the books to be kept by the clerk thereof as follows:

1. *Record book.* One containing the entries of the proceedings of the court, which may be

known as the "record book", and which is to have an index referring to each proceeding in each cause under the names of the parties, both plaintiff and defendant, and under the name of each person named in either party.

2. *Judgment docket.* One containing an abstract of the judgments, having in separate and appropriate columns the names of the parties, the date of the judgment, the damages recovered, costs, the date of the issuance and return of executions, with the entry of satisfaction, and other memoranda, which book may be known as the "judgment docket", and is to have an index like that required for the record book.

3. *Fee book.* One in which to enter in detail the costs and fees in each action or proceeding under the title of the same, with an index like that required above, and which may be known as the "fee book".

4. *Sales book.* One in which to enter the following matters in relation to any judgment under which real property is sold, entering them after the execution is returned: The title of the action, the date of the judgment, the amount of damages recovered, the total amount of costs, and the officer's return in full; which book may be known as the "sale book", and is to have an index like those required above.

5. *Incumbrance book.* One to be called the "incumbrance book", in which the sheriff shall enter a statement of the levy of every attachment on real estate.

6. *Appearance or combination docket.* One to be known as the "appearance docket", which shall contain all matters required by law to be kept therein; but the entries provided for in this paragraph and paragraphs 2 and 3 may be combined in one book, indexed as provided in paragraph 1 hereof, which, when thus kept, shall be known as the "combination docket".

7. *Lien book.* One in which an index of all liens in said court shall be kept. [R., '60, §§ 345, 346; C., '73, §§ 196, 197; C., '97, § 288.]

10831. Appearance docket—entries required. The clerk shall enter in said appearance docket the titles of all actions or special proceedings

that shall be brought in the court, numbering them consecutively in the order in which they shall have been commenced, which numbers shall not be changed during the further progress thereof. In making such entries, the clerk shall set out the full names of all the parties, plaintiffs and defendants, as contained in the petition, or as subsequently made parties by any pleading, proceeding, or order. [C., '73, § 198; C., '97, § 289.]

10832. Entry of return of notice. When the original notice shall be returned to the office of the clerk, he shall enter in said docket so much of the return thereon as to show who of the parties have been served therewith, and the manner and time of service. [C., '73, § 199; C., '97, § 290.]

10833. Pleadings—when deemed filed—removal of papers. The clerk shall, immediately upon the filing thereof, make in the appearance docket a memorandum of the date of the filing of all petitions, demurrers, answers, motions, or papers of any other description in the cause; and no pleading of any description shall be considered as filed in the cause, or taken from the clerk's office, until the said memorandum is made. [C., '73, § 200; C., '97, § 291.]

10834. Subsequent proceedings. Immediately upon the sustaining or overruling of any demurrer or motion, the striking out or amendment of any pleading, trial of the cause, rendition of the verdict, entry of judgment, issuing of execution, or any other act or thing done in the progress of the cause, the like memorandum thereof shall be made in said docket, giving the date thereof, and the number of the book and page of the record where such entry shall have been made, it being intended that the appearance docket shall be an index from the commencement to the end of a suit. [C., '73, § 201; C., '97, § 292.]

10835. Not to be justice or attorney. The clerk or deputy clerk of the district court is prohibited from holding the office of justice of the peace, or practicing, directly or indirectly, as an attorney or solicitor in any of the courts of this state. [C., '73, § 204; C., '97, § 294.]

10836. Change in title—certification. Where the title of any real estate is finally established in any person or persons by judgment or decree of said court or of the supreme court, or where title to real estate is changed by judgment, decree, will, proceeding, or order in probate, the clerk of the district court shall certify the same, under the seal of said court, to the county auditor of the county in which said land is located. [C., '97, § 295; 40 G. A., ch. 266, § 3.]

10837. Fees. The clerk of the district court shall charge and collect the following fees, all of which shall be paid into the county treasury:

1. For filing any petition, appeal, or writ of error and docketing the same, one dollar and fifty cents.

2. For every attachment, fifty cents.
3. For every cause tried by jury, one dollar and fifty cents.
4. For every cause tried by the court, seventy-five cents.
5. For every equity case, one dollar and fifty cents.
6. For each injunction or other extraordinary process or order, one dollar.
7. For all causes continued on application of a party by affidavit, fifty cents.
8. For all other continuances, fifteen cents.
9. For entering any final judgment or decree, seventy-five cents.
10. For taxing costs, fifty cents.
11. For issuing execution or other process after judgment or decree, fifty cents.
12. For filing and properly entering and indorsing each mechanic's lien, one dollar, and in case a suit is brought thereon, the same to be taxed as other costs in the action.
13. For certificate and seal, fifty cents.
14. For filing and docketing transcript of judgment from another county or a justice of the peace or municipal court, fifty cents.
15. For entering any rule or order, twenty-five cents.
16. For issuing writ or order, not including subpoenas, fifty cents.
17. For issuing commission to take depositions, fifty cents.
18. For entering sheriff's sale of real estate, fifty cents.
19. For entering judgment by confession, one dollar.
20. For entering satisfaction of any judgment, twenty-five cents.
21. For all copies of record, or papers filed in his office, transcripts, and making complete record, ten cents for each one hundred words.
22. For taking and approving a bond and sureties thereon, fifty cents.
23. For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar. For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.
24. In addition to the fees required in the preceding paragraph, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with the clerk money sufficient to cover the expense of subpoenaing and paying the legal fees of witnesses for whom he may request a subpoena, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys aforesaid, and the residue, if any, except such as may be necessary to pay the cost of serving subpoenas, shall be returned by the clerk to the petitioner.
25. For certificates and seal to applications to procure pensions, bounties, or back pay for soldiers or other persons entitled thereto, no charge.

26. For making out transcripts in criminal cases appealed to the supreme court, for each one hundred words, ten cents.

27. In criminal cases, the same fees for same services as in suits between private parties. When judgment is rendered against the defendant, the fees shall be collected from such defendant.

28. For issuing marriage licenses, one dollar and fifty cents each.

29. For all services performed in the settlement of the estate of any decedent, minor, insane person, or other persons laboring under any legal disability, except where actions are brought by the administrator, guardian, trustee, or person acting in a representative capacity or against him, or as may be otherwise provided herein, where the value of the property of the estate does not exceed three thousand dollars, three dollars; where such value is between three thousand dollars and five thousand dollars, five dollars; where such value is between five thousand dollars and seven thousand dollars, eight dollars; where such value is between seven thousand dollars and ten thousand dollars, ten dollars; where such value is between ten thousand dollars and twenty-five thousand dollars, fifteen dollars; for each additional twenty-five thousand dollars or major fraction thereof, there shall be taxed the further sum of ten dollars.

30. In addition to all other fees, for making a complete record in cases where the same is required by law or directed by an order of the court, for every one hundred words, ten cents. [C., '51, §§ 2527, 2531, 2532; R., '60, §§ 430, 436, 1852, 4136, 4140, 4141; C., '73, §§ 3781,

3782, 3787; C., '97, § 296; S., '13, § 296; 39 G. A., ch. 42, §§ 1, 2; 40 G. A., ch. 266, § 4; 40 Ex. G. A., S. F. 267, § 1.]

10838. Accounting for fees. He shall, on the first Monday in January and July of each year, pay into the county treasury, for the use of the county, all other fees not belonging to his office, in his hands at the date of preceding payment and still unclaimed. [R., '60, § 353; C., '73, § 3786; C., '97, § 300.]

10839. Receipts—filing with auditor. At the time of so doing, he shall take from the treasurer duplicate receipts therefor, giving the title of the cause and style of the court in which the same was pending, with the names of the witnesses, jurors, officers, or other persons, and the amount each one is entitled to receive; one of which receipts he shall file with the county auditor. [R., '60, § 354; C., '73, § 3786; C., '97, § 300.]

10840. Allowed claims—payment. The auditor shall charge the amount thereof to the treasurer as so much county revenue, and shall enter the same upon the proper records as a claim allowed, and, on demand by the persons entitled to said fees, he shall issue county orders for the amount due each person, respectively. [R., '60, § 356; C., '73, § 3786; C., '97, § 300.]

10841. Salary exclusive. The clerk of the district court shall accept the salary herein provided, in full compensation of all services performed by him in his official capacity as such clerk of the district court. [37 G. A., ch. 426, § 2.]

CHAPTER 480

JURORS IN GENERAL

10842. Competency.
10843. Exemption.
10844. Jurors excused.

10842. Competency. All qualified electors of the state, of good moral character, sound judgment, and in full possession of the senses of hearing and seeing, and who can speak, write, and read the English language, are competent jurors in their respective counties. [C., '51, § 1630; R., '60, § 2720; C., '73, § 227; C., '97, § 332; 40 Ex. G. A., H. F. 266, § 1.]

10843. Exemption. The following persons are exempt from liability to act as jurors:

1. Persons holding office under the laws of the United States or of this state.

2. Practicing attorneys, physicians, licensed embalmers, registered nurses, chiropractors, osteopaths, veterinarians, registered pharmacists, dentists, and clergymen.

3. Acting professors or teachers of any college, school, or other institution of learning.

4. Persons disabled by bodily infirmity.

5. Persons over sixty-five years of age.

10845. False excuse—prohibited requests.
10846. Fees of jurors.
10847. Clerk to certify attendance.

6. Active members of any fire company.

7. Persons conscientiously opposed to acting as a juror because of religious faith. [C., '51, § 1631; R., '60, § 2721; C., '73, § 228; C., '97, § 333; S., '13, § 333; 39 G. A., ch. 259; 40 G. A., ch. 204; 40 Ex. G. A., H. F. 266, § 2.]

NOTE: Exemption of officers and soldiers of national guard, see § 461.

Exemption of fire companies, see § 1556.

10844. Jurors excused. Any person may also be excused from serving on a jury when his own interests or those of the public will be materially injured by his attendance, or when the state of his own health, or the death or sickness of a member of his family, requires his absence from court. [C., '51, § 1632; R., '60, § 2722; C., '73, § 229; C., '97, § 334; 40 Ex. G. A., H. F. 266, § 3.]

10845. False excuse—prohibited requests. Any person who knowingly makes any false

affidavit, statement, or claim, for the purpose of relieving himself or another from serving as a juror, or any person who requests the judges of election to return his name as such juror, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than thirty days, or the court may punish such person as for contempt. [C., '97, § 334; 40 Ex. G. A., H. F. 266, § 4.]

10846. Fees of jurors. Jurors shall receive the following fees:

1. For each day's service or attendance in courts of record, including jurors summoned on special venire, three dollars, and for each

mile traveled from his residence to the place of trial, ten cents.

2. For each day's service before a justice of the peace, one dollar.

3. No mileage shall be allowed talesmen or jurors before justices. [C., '51, § 2545; R., '60, § 4154; C., '73, § 3811; C., '97, § 354; S., '13, § 354; 37 G. A., ch. 59, § 1; 40 Ex. G. A., H. F. 266, § 5.]

10847. Clerk to certify attendance. Immediately after the adjournment of each term of a court of record, the clerk thereof shall certify to the county auditor a list of the jurors, with the number of days' attendance to which each one is entitled. [C., '73, § 3811; C., '97, § 354; S., '13, § 354; 40 Ex. G. A., H. F. 266, § 6.]

CHAPTER 481

JURY COMMISSIONS

10848. Ex officio commission to draw jurors.

10849. Appointive commission to select.

10850. Limitation on appointment.

10851. Manner of appointment.

10852. Clerk to notify.

10853. Vacancy.

10854. Qualification—tenure.

10855. Instructions to appointive commission.

10856. Instructions to judges of election.

10857. Compensation and expenses.

10858. Assistants.

10848. Ex officio commission to draw jurors. In all counties the clerk of the district court, the county auditor, and the county recorder shall, ex officio, constitute the jury commission to draw jurors, but shall receive no extra compensation as such. [40 Ex. G. A., H. F. 266, § 7.]

10849. Appointive commission to select. In each county having situated therein a city with a population of fourteen thousand or more, the judge or judges of the district court of the judicial district in which said county is located shall, on or before October first of each year in which the general election is held, appoint three competent electors as a jury commission to select and make lists of the names of persons to serve as grand and petit jurors and talesmen for the two years beginning January first after such election. [37 G. A., ch. 267, § 2; 40 Ex. G. A., H. F. 266, § 7.]

10850. Limitation on appointment. Not more than two members of the appointive commission shall be residents of the city in which the courthouse of the county in which they are appointed, is located, and no person shall be appointed who has solicited such appointment; nor shall any county officer or attorney at law be appointed a member of such commission. [37 G. A., ch. 267, § 2; 40 Ex. G. A., H. F. 266, § 8.]

10851. Manner of appointment. The appointment shall be in writing, signed by the judge, or a majority of the judges if more than one, and shall be filed and made a matter of record, in the office of the clerk of the district court. If, for any reason, any judge is

unable to act, the appointment shall be signed by the judge, or a majority of the judges of such district, who are able to act. [37 G. A., ch. 267, § 3; 40 Ex. G. A., H. F. 266, § 9.]

10852. Clerk to notify. The clerk of the district court shall at once notify each appointive commissioner of his appointment. [37 G. A., ch. 267, § 3; 40 Ex. G. A., H. F. 266, § 10.]

10853. Vacancy. If a vacancy occurs in such appointive commission through death, removal, or inability of a member thereof to act, the judge or judges of the judicial district shall appoint some person to act during the remainder of such unexpired term. [38 G. A., ch. 211, § 1; 40 Ex. G. A., H. F. 266, § 11.]

10854. Qualification—tenure. The appointive commissioners shall qualify on or before the tenth day of October, following their appointment, by taking the oath of office required of civil officers. Said oath shall be subscribed by them and filed in the office of the clerk of the district court. They shall hold office for the term of two years and until their successors are duly appointed and qualified. [37 G. A., ch. 267, § 4; 40 Ex. G. A., H. F. 266, § 12.]

NOTE: Oath, see § 1054.

10855. Instructions to appointive commission. It shall be the duty of the judges of the district court to give instructions to appointive jury commissioners at the time of their appointment as to their duties, and to call their especial attention to the provisions of section 10860. [40 Ex. G. A., H. F. 266, § 13.]

10856. Instructions to judges of election. When the county auditor transmits the certifi-

cate of apportionment of jurors to the judges of the several election precincts, he shall call the attention of such judges to their duties, especially as set forth in section 10860. [40 Ex. G. A., H. F. 266, § 13.]

10857. Compensation and expenses. Each appointive commissioner shall, in addition to his actual expenses, receive a compensation of four dollars for each day employed by him in

the discharge of his official duties. [37 G. A., ch. 267, § 4; 38 G. A., ch. 193, § 1; 38 G. A., ch. 211, § 2; 40 Ex. G. A., H. F. 266, § 14.]

10858. Assistants. The commissioners may employ such assistants in preparing the jury lists as they may deem necessary, and the board of supervisors shall allow reasonable compensation to such assistants. [38 G. A., ch. 211, § 2; 40 Ex. G. A., H. F. 266, § 15.]

CHAPTER 482

SELECTION OF JURORS

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10859. Jury lists. The appointive jury commission shall, on the second Monday after the general election is held in each even-numbered year, meet at the courthouse in rooms provided by the county, and, in accordance with the certificate of apportionment furnished by the county auditor, prepare, select, and return on blanks furnished by the county, the following lists, to wit:

1. *Grand jurors.* A list of names and addresses of one hundred fifty electors from which to select grand jurors.

2. *Petit jurors.* A list of names and addresses of electors equal to one-eighth of the whole number of qualified electors in said county who voted in the last preceding general state election as shown by the poll books, from which to select petit jurors.

3. *Talesmen.* A list of the names and addresses of electors equal to fifteen per cent of the whole number of qualified electors who voted at the last preceding general election, as shown by the poll books, in the city or town in which the district court is held and in the township or townships in which such city or town is located (but in no case exceeding five hundred names) from which to select talesmen. [C., '51, § 1633; R., '60, § 2723; C., '73, § 234; C., '97, § 335; S., '13, §§ 335, 335-a; 37

G. A., ch. 267, §§ 5, 7; 38 G. A., ch. 211, § 3; 39 G. A., ch. 278, §§ 1, 2; 40 G. A., ch. 205, §§ 1, 2; 40 Ex. G. A., H. F. 266, § 16.]

10860. Noneligible names. The appointive commission, in the preparation of said lists, shall not place thereon the name of any person:

1. Who is not an elector of the state.
2. Who is not of good moral character.
3. Who is not of sound judgment.
4. Who is not in full possession of the senses of hearing and seeing.
5. Who cannot speak, write, and read the English language.

6. Who has served in said county and in the district court as a grand or petit juror since the first day of January preceding the last general election.

7. Who by reason of the condition of his or her health, business, domestic duties, or other circumstances will probably be unable to serve as a juror.

8. Who has, directly or indirectly, requested that his or her name be placed on said lists, or on any of them.

9. Who has been exempted by law from jury service. [C., '97, § 337; S., '13, § 337; 37 G. A., ch. 267, § 6; 40 Ex. G. A., H. F. 266, § 17.]

NOTE: Exemptions, see § 10848.

10861. Judicial division of county. In counties which are divided for judicial purposes, and in which courts are held at more than one place, each division shall be treated as a separate county, and the grand and petit jurors and talesmen, selected to serve in the respective courts, shall be drawn from the division of the county in which the court is held, at which they are required to serve. [S., '13, § 335-b; 37 G. A., ch. 267, § 5; 40 Ex. G. A., H. F. 266, § 18.]

10862. Auditor to apportion and certify. On or before the date of said meeting of the appointive commission, the county auditor shall apportion the number of grand and petit jurors to be selected among the several election precincts, and the talesmen among the precincts from which the same are to be drawn, in each case as nearly as practicable in proportion to the number of votes polled in such precincts at the last general election, and certify said apportionment to such commission. [C., '51, §§ 1635, 1636; R., '60, §§ 2725, 2726; C., '73, § 236; C., '97, §§ 336, 337; S., '13, § 337; 37 G. A., ch. 267, § 5; 40 Ex. G. A., H. F. 266, § 19.]

10863. Additional information by auditor. For the purpose of aiding the appointive commission, in making the lists aforesaid, the county auditor shall furnish said commission with the poll books of the last preceding general election, together with the names of all persons who have served as grand or petit jurors, after the first day of January, preceding the last general election. [C., '97, § 337; S., '13, § 337; 37 G. A., ch. 267, § 6; 40 Ex. G. A., H. F. 266, § 20.]

10864. Clerk to furnish data. The clerk of the district court shall furnish the auditor with the names of the jurors called for by the preceding section. [C., '97, § 337; S., '13, § 337; 40 Ex. G. A., H. F. 266, § 21.]

10865. Apportionment in other counties. The county auditor, in counties having no appointive jury commission, shall, prior to furnishing the election judges the poll books, apportion the number of grand and petit jurors to be selected from among the several election precincts, and the talesmen among the precincts from which the same are to be selected, in each case as nearly as practicable in proportion to the number of votes polled in each precinct at the last preceding general election. Such apportionment shall be computed on the same basis as provided in section 10859. [C., '51, §§ 1635, 1636; R., '60, §§ 2725, 2726; C., '73, §§ 236, 237; C., '97, § 336; S., '13, § 337; 37 G. A., ch. 267, § 5; 40 Ex. G. A., H. F. 266, § 21-a1.]

10866. Certification of apportionment to judges. In all counties having no appointive jury commission, the county auditor shall, at the time of the furnishing of the poll books to the judges of election, furnish them also a certified statement of the number of persons apportioned to the respective precincts to be returned for each grand and petit jury list.

He shall also furnish the judges of election in the city or town in which the district court is held and in the township or townships in which the said city or town is located, with a certified statement of the number of persons to be returned as talesmen.

He shall also furnish the judges of each election precinct in the county with the names of all persons who have served as grand or petit jurors since January first preceding. [C., '51, §§ 1635, 1636; R., '60, §§ 2725, 2726; C., '73, §§ 236, 237; C., '97, § 337; S., '13, § 337; 37 G. A., ch. 267, § 5; 40 Ex. G. A., H. F. 266, § 21-a2.]

10867. Duties of judges of election. The judges of election of the several precincts shall make selection of the requisite number of persons to serve as grand and petit jurors, and of talesmen, if any, and return separate lists of the names so selected to the county auditor with the return of the election, but shall not place on said lists the name of any person described in section 10860, or judges or clerks of the election. [C., '51, § 1637; R., '60, § 2727; C., '73, § 238; C., '97, § 337; S., '13, § 337; 40 Ex. G. A., H. F. 266, § 21-a3.]

10868. Lists by board of supervisors. If the judges of election in any precinct fail to return any list as provided in the preceding section, the board of supervisors shall, at the meeting held to canvass the votes cast at such election, make and certify such list or lists for the delinquent precincts, and the auditor shall file such certified lists in his office and cause copies thereof to be recorded in the proper election books. [R., '60, §§ 2727, 2728; C., '73, § 238; C., '97, § 337; S., '13, § 337; 40 Ex. G. A., H. F. 266, § 21-a4.]

10869. Certification. When the jury lists are completed, they shall be separately certified by the appointive commissioners, or by the judges of election for each precinct, as the case may be, in substantially the following form:

We,, and, constituting the appointive jury commission forcounty,
or
We,, and, the judges of election for the precinct ofcounty,
do hereby certify that the foregoing list (Grand jury, or petit jury, or talesmen, as the case may be) does not, to our knowledge and belief, contain the name of any person:

- 1. Who is not an elector of the state;
- 2. Who is not of good moral character;
- 3. Who is not of good sound judgment;
- 4. Who is not in full possession of the senses of hearing and seeing;
- 5. Who cannot speak, write, and read the English language;
- 6. Who has served in said county and in the district court as a grand or petit juror since the first of January preceding;

7. Who, by reason of the condition of his or her health, business, domestic duties, or other circumstances will probably be unable to serve as a juror;

8. Who has, directly or indirectly, requested that his or her name be placed on said list; or

9. Who has been exempted by law from jury service.

10. (In counties not having an appointive jury system.) Who is a judge or clerk at this election.

Dated atthis.....day of..... A. D.
19.....

.....
.....
.....

Jury commissioners for
county, Iowa. Or

.....
.....
.....

Judges of election for
precinct, county, Iowa.

[C., '97, § 337; S., '13, § 337; 37 G. A., ch. 267, § 7; 40 Ex. G. A., H. F. 266, § 22.]

10870. Filing commissioners' lists. The appointive commissioners shall, after so certifying said lists, place the same in envelopes and on or before the first Monday of December of the year in which such lists are made, deposit the same with the county auditor, who shall file and record the same in the proper record. [37 G. A., ch. 267, § 7; 38 G. A., ch. 211, § 4; 40 Ex. G. A., H. F. 266, § 23.]

10871. Filing election judges' lists. The jury lists returned by the judges of election together with the lists prepared by the board of supervisors, if any, shall, on or before the day stated in the preceding section, be filed with and recorded by the county auditor. [C., '51, § 1638; R., '60, § 2728; C., '73, § 238; C., '97, § 337; S., '13, § 337; 40 Ex. G. A., H. F. 266, § 23-a1.]

10872. Lists made official. The names entered upon said lists and returned as herein provided shall constitute the grand and petit jury lists, and the list of talesmen from which grand and petit jurors, and talesmen shall be selected, for the biennial period commencing with the first day of January next after the general election. [37 G. A., ch. 267, §§ 5, 7; 38 G. A., ch. 211, §§ 3, 4; 39 G. A., ch. 278, §§ 1, 2; 40 Ex. G. A., H. F. 266, § 24.]

10873. Preparation of ballots. Within five days after such lists are deposited with the county auditor, the auditor and clerk of the court shall prepare therefrom separate ballots, which shall be uniform in size, shape, and appearance, and upon which the names and places of residence of all persons selected for grand and petit jurors and talesmen, shall be written. The names of the classes of jurors shall be kept separate, and each ballot shall be folded, so as to conceal the name written thereon. [C., '51, § 1640; R., '60, § 2730; C., '73, § 240; C., '97, §§ 338, 342; 37 G. A., ch. 267, § 8; 40 Ex. G. A., H. F. 266, § 25.]

10874. Names rejected. In preparing the said ballots the county auditor and clerk shall omit the names of all persons who have served as grand or petit jurors since January first preceding. [C., '51, § 1640; R., '60, § 2730; C., '73, § 240; C., '97, § 338; 40 Ex. G. A., H. F. 266, § 26.]

10875. Ballot boxes—sealing and custody. The ballots containing the names of the grand and petit jurors and talesmen shall be deposited in separate boxes which shall be plainly marked so as to show the class of jurors whose names are contained therein, and shall have but one aperture through which a hand may be inserted. The boxes shall then be sealed by the auditor, in the presence of the clerk, and deposited with the clerk of the district court. [C., '97, § 342; 40 Ex. G. A., H. F. 266, § 27.]

10876. Petit jury panel. Petit jurors, in no case less than twenty-four and always in such number as the court or judge may order, shall be drawn for each term at which such jurors are required. [C., '51, § 1642; R., '60, § 2732; C., '73, § 231; C., '97, § 346; 37 G. A., ch. 310, § 1; 38 G. A., ch. 223, § 1; 40 Ex. G. A., H. F. 266, § 28.]

10877. Maximum service required. No person shall be required to attend as a petit juror more than one term in the same biennial period. This exemption shall not apply to talesmen. [C., '51, § 1639; R., '60, § 2729; C., '73, § 239; C., '97, § 341; S., '13, § 335-c; 40 Ex. G. A., H. F. 266, § 29.]

10878. Time for drawing. Petit and grand jurors shall be drawn by the ex officio commission at the office of the clerk of the district court and at a time to be fixed by said clerk. Said time shall not be less than twenty days nor more than thirty days before the first day of each term at which a petit or grand jury is required to be drawn. [C., '51, § 1641; R., '60, § 2731; C., '73, § 241; C., '97, § 342; 37 G. A., ch. 267, § 9; 38 G. A., ch. 211, § 5; 40 Ex. G. A., H. F. 266, § 30.]

NOTE: Drawing for special terms, see § 10788.

10879. Notice of drawing. The said clerk shall, at least five days prior to the day of such drawing, notify in writing the other members of the ex officio commission of the time and place of such drawing. [37 G. A., ch. 267, § 9; 40 Ex. G. A., H. F. 266, § 31.]

10880. Drawing of petit jurors. The members of the ex officio jury commission or a majority thereof, shall meet at the time and place fixed and shall draw from the petit jury box the required number of names of persons to serve as petit jurors, and the persons whose names are so drawn shall constitute the petit jurors for the next ensuing term of the court. [37 G. A., ch. 267, § 9; 38 G. A., ch. 211, § 5; 40 Ex. G. A., H. F. 266, § 32.]

10881. Absence of commissioner. In the absence or inability to act of any one of the ex officio jury commissioners, his deputy shall

act as such commissioner in his stead. [38 G. A., ch. 211, § 5; 40 Ex. G. A., H. F. 266, § 32.]

10882. Details of drawing. The appropriate box shall, at the time of the drawing, be first thoroughly shaken in the presence of the commissioners attending the drawing, and thereupon the seal on the opening shall be broken, likewise in the presence of the commissioners. One of said commissioners shall then, without looking at the ballots, successively draw the required number of names from the box, and successively pass said ballots to one of the other commissioners, who shall open said ballots as they are drawn, and read aloud the names thereon, and enter said names in writing on an appropriate list. [C., '51, § 1641; R., '60, § 2731; C., '73, § 241; C., '97, § 342; 37 G. A., ch. 267, § 9; 38 G. A., ch. 211, § 5; 40 Ex. G. A., H. F. 266, § 34.]

10883. Grand jury panel. A grand jury panel of twelve persons shall be drawn by the said commissioners from the grand jury box at the time of the drawing of the petit jury panel for the January term, and shall be drawn in the same manner and under the same conditions, except as otherwise provided, as are specified for the drawing of said petit jury panel. Such grand jury panel shall constitute the panel from which to select the grand jurors for one year. [C., '51, §§ 1641, 1642; R., '60, §§ 2731, 2732; C., '97, §§ 241, 339; 37 G. A., ch. 267, § 15; 38 G. A., ch. 211, § 6; 40 Ex. G. A., H. F. 266, § 35.]

10884. Maximum service permitted. No person on the list of grand jurors shall be eligible to serve as a grand juror except for one calendar year of the biennial period for which the list is made. [C., '51, § 1642; R., '60, § 2732; C., '73, § 239; C., '97, § 339; S., '15, § 335-c; 40 Ex. G. A., H. F. 266, § 36.]

10885. Number from township limited. In drawing grand jurors, not more than one person shall be drawn as grand juror from any civil township, except when there are less than twelve civil townships in the county, in which case not more than two persons shall be drawn from any one township. [C., '97, § 339; 40 Ex. G. A., H. F. 266, § 37.]

10886. Rejecting names. If more persons shall be drawn from any civil township than is hereby authorized, or any person is drawn who has served during the preceding jury year as grand juror, it is the duty of the commissioners to reject all such names so drawn, and to proceed with the drawing until the required number of jurors shall be secured. [C., '97, § 339; 40 Ex. G. A., H. F. 266, § 38.]

10887. Resealing of box. After the required number of grand or petit jurors shall have been drawn in the manner provided, and their names entered upon the list, the box or boxes shall again be sealed by the commission, and returned to the custody of the clerk. [C., '97, § 342; 37 G. A., ch. 267, § 9; 40 Ex. G. A., H. F. 266, § 39.]

10888. Filing list—precept. The clerk shall file said list or lists, in his office, and immediately issue his precept or precepts to the sheriff, commanding him to summon the persons so drawn to appear at the court house at ten o'clock a. m. of the second day of the term, or at such other time as the court or judge may order, to serve as petit or grand jurors, as the case may be. [C., '51, § 1643; R., '60, § 2733; C., '73, §§ 230, 241; C., '97, §§ 342, 345; 37 G. A., ch. 267, § 10; 40 Ex. G. A., H. F. 266, § 40.]

10889. Sheriff to summon. The sheriff shall immediately obey such precepts, and on or before the day for the appearance of said jurors must make return thereof, and, on a failure to do so without sufficient cause, may be punished for contempt. [C., '51, § 1644; R., '60, § 2734; C., '73, § 242; C., '97, § 343; 40 Ex. G. A., H. F. 266, § 41.]

10890. Grand jurors summoned but once. Except when required at a special term, the twelve persons from which the grand jury is to be impaneled need not be summoned after the first term, but must appear at each succeeding term during the year without summons, under the same penalty as though they had been summoned. [C., '51, § 1646; R., '60, § 2736; C., '73, § 243; C., '97, § 344; 40 Ex. G. A., H. F. 266, § 42.]

10891. Contempt. If any person summoned fail to appear without sending a sufficient excuse, the court may issue an order requiring him to appear and show cause why he should not be punished for contempt, and unless he render a sufficient excuse for such failure he may be punished for contempt. [C., '51, § 1645; R., '60, § 2735; C., '73, § 230; C., '97, § 345; 40 Ex. G. A., H. F. 266, § 43.]

10892. Cancellation for illegality. If the court shall, for any reason, determine that the petit jurors have been illegally drawn, selected, or summoned, it may set aside the precept, under which they were summoned, and direct a sufficient number to be drawn and summoned. In such case, the jury commission shall meet at the office of the clerk of the court, at such time as the court may direct, and in the manner provided for the drawing of an original panel, draw the number of petit jurors required, under the order of the court. The jurors so drawn and summoned shall be required to appear immediately, or at such time as the court may fix. [C., '97, § 342; 37 G. A., ch. 267, § 11; 40 Ex. G. A., H. F., 266, § 44.]

10893. Discharged jurors—resummoning. Jurors who have been discharged for any reason may, during the term, be resummoned if the business before the court necessitates such action. [C., '73, § 233; C., '97, § 348; 40 Ex. G. A., H. F. 266, § 45.]

10894. Additional petit jurors. The court, during any term of court, may order as many additional jurors drawn for the term, or for the trial of any particular case, as may be deemed necessary. [C., '51, § 1647; R., '60, § 2737; C.,

'73, § 232; C., '97, § 347; 37 G. A., ch. 267, §§ 13, 14; 40 Ex. G. A., H. F. 266, § 46.]

10895. Discharge of panel. The court may at any time discharge the panel of jurors, or any part of it, and order a new panel, or such number of jurors as may be deemed necessary to be drawn. [37 G. A., ch. 267, § 14; 40 Ex. G. A., H. F. 266, § 47.]

10896. Method of drawing. The names of the jurors contemplated in the two preceding sections shall be drawn by the commissioners in the manner provided for the drawing of an original panel. [C., '73, § 232; C., '97, § 347; 37 G. A., ch. 267, § 14; 40 Ex. G. A., H. F. 266, § 48.]

10897. Talesmen. If the court shall determine that it is probable talesmen will be needed to complete a jury, or if the regular panel has been exhausted, the clerk shall, in the presence of the court, draw such number of names as the court may order from the talesmen box to complete the jury. [C., '97, § 349; 37 G. A., ch. 267, § 15; 38 G. A., ch. 211, § 6; 40 Ex. G. A., H. F. 266, § 49.]

10898. Rejection of names. The clerk, when the court directs, shall reject the names of those known to be unable to serve, or absent from the territory from which drawn. [C., '97, § 349; 40 Ex. G. A., H. F. 266, § 50.]

10899. Talesmen summoned. The talesmen whose names have been so drawn shall, so far as possible, be immediately summoned by the sheriff to appear forthwith. [C., '97, § 349; 40 Ex. G. A., H. F. 266, § 51.]

10900. Disposition of ballots. The names of talesmen so drawn, and who serve, shall be placed in a safe receptacle from time to time, until all the ballots are drawn from the talesmen's box, when such ballots shall be returned to the said box, to be drawn in like manner as before. [C., '97, § 349; 40 Ex. G. A., H. F. 266, § 52.]

10901. Talesmen at large. When the parties to the cause, by agreement entered of record, waive the drawing of talesmen as above provided, the court may direct the sheriff to summon such talesmen from the body of the county. [C., '97, § 349; 40 Ex. G. A., H. F. 266, § 53.]

10902. Disposition of ballots drawn. All ballots drawn, when the persons do not appear or do not serve (except when permanent ineligibility or disability is shown), shall be returned to the respective boxes from which drawn. The ballots of the petit jurors, except talesmen, so drawn, who appear and serve for any term, shall be destroyed. [C., '97, § 350; 40 Ex. G. A., H. F. 266, § 54.]

10903. Special venire of talesmen. When a city or town is a party to a suit, the talesmen shall not be drawn therefrom, but in such cases the court shall order a special venire, or may order the talesmen drawn from the petit jury box. [C., '97, § 351; 40 Ex. G. A., H. F. 266, § 55.]

10904. Delinquency of officers. Any officer whose duty it is to perform any of the services mentioned in this chapter, who shall intentionally fail to perform them as required by law, or who shall act corruptly in the discharge of such duties or any of them, shall be imprisoned in the county jail not less than six months, nor more than one year. [C., '97, § 352; 40 Ex. G. A., H. F. 266, § 56.]

10905. Correcting illegality in original lists. Should the court for any reason determine that there has been such substantial failure to comply with the law relative to the selection, preparation, or return of grand, petit, or talesmen lists that lawful grand or petit jurors or talesmen cannot be drawn, said court shall order the appointive jury commissioners, or ex officio jury commissioners as the case may be, to convene at the court house at a named time and to prepare lists in lieu of those lists which have been found to be illegal. If the ex officio commissioners are called upon to act, they shall make up the lists in the same manner as such lists are required to be made by appointive commissioners. [S., '13, § 337-a; 40 Ex. G. A., H. F. 266, § 57.]

10906. Notice to commissioners. Whenever the commission shall be required to meet for the purpose of drawing jurors under the order of the court, the clerk of the court shall at once notify each commissioner of such order, and the time fixed for the meeting of the commission; and, if deemed necessary, the court may order the notice to be served by the sheriff. [37 G. A., ch. 267, § 14; 40 Ex. G. A., H. F. 266, § 59.]

CHAPTER 483

ATTORNEYS AND COUNSELORS

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10907. Admission to practice. The power to admit persons to practice as attorneys and counselors in the courts of this state, or any of them, is vested exclusively in the supreme court. [C., '97, § 309.]

10908. Qualifications for admission. Every applicant for such admission must be at least twenty-one years of age, of good moral character, and an inhabitant of this state, and must have actually and in good faith pursued a regular course of study of the law for at least three full years, either in the office of a member of the bar in regular practice of this state or other state, or of a judge of a court of record thereof, or in some reputable law school in the United States, or partly in such office and partly in such law school; but, in reckoning such period of study, the school year of any such law school, consisting of not less than thirty-six weeks exclusive of vacations, shall be considered equivalent to a full year. Every such applicant for admission must also have actually and in good faith acquired a general education substantially equivalent to that involved in the completion of a high school course of study of at least four years in extent. [C., '51, § 1610; C., '60, § 2700; C., '73, § 208; C., '97, § 310; S., '13, § 310; 40 Ex. G. A., H. F. 246, § 14.]

10909. Examinations. Every such applicant shall also be examined by the court, or by a commission of not less than five members constituted as hereinafter provided, as to his learning and skill in the law; and the court must be satisfied, before admitting to practice, that the applicant has actually and in good faith devoted the time hereinbefore required to the study of law, and possesses the requisite learning and skill therein, and has also the general education required by this chapter. The sufficiency of the general education of the

applicant may be determined by examination before the commission, or in such other manner as the supreme court may by rule prescribe. [C., '97, § 311; S., '13, § 311.]

10910. Board of law examiners. The attorney general shall, by virtue of his office, be a member of, and the chairman of, the commission provided for by this chapter, and the court shall appoint from the members of the bar of this state at least four other persons who, with the attorney general, shall constitute said commission, which shall be known as the board of law examiners. [S., '13, § 311-a.]

10911. Term of appointment—vacancies. Each person appointed shall serve for two years, except that in case of a vacancy during the term of office of any commissioner his successor shall be appointed only for the remainder of such term. [S., '13, § 311-a.]

10912. Oath—compensation. The members thus appointed shall take and subscribe an oath to be administered by one of the judges of the supreme court to faithfully and impartially discharge the duties of the office, and shall receive such compensation as may be allowed by the supreme court out of the fund arising from the examination fees hereinafter provided for. [S., '13, § 311-a.]

10913. Temporary appointments—compensation. The supreme court may also appoint from time to time, when necessary, temporary examiners to assist the commission, who shall serve for one examination only, and shall receive such compensation as the court may allow, to be paid from the fund aforesaid. [S., '13, § 311-a.]

10914. Fees—how used. Every applicant for admission shall pay to the clerk of the su-

preme court an examination fee of five dollars, payable before the examination is commenced. Practitioners from other states seeking admission to practice in this state as provided by law shall pay an admission fee of ten dollars. The fees thus paid to the clerk shall be retained by him as a special fund to be appropriated as otherwise provided; and any amount thereof remaining in his hands unappropriated on the thirtieth day of June of each year shall be turned over to the state treasury. [S., '13, § 311-b; 40 Ex. G. A., H. F. 246, § 15.]

10915. Students in law department of university. Students in the law department of the state university, who are recommended by the faculty of said department as candidates for graduation and as persons of good moral character, who have actually and in good faith studied law for the time and in the manner required by statute, at least one year of such study having been as a student in said department, may be examined at the university by not less than three members of said commission with the addition of such temporary members as may be appointed by the court in accordance with the provisions of this chapter, and upon the certificate of such examiners, that such candidates possess the learning and skill requisite for the practice of law, they shall be admitted without further examination. [C., '73, § 209; C., '97, § 312; S., '13, § 312.]

10916. Practitioners from other states. Any person a resident of this state having been admitted to the bar of any other of the United States may, in the discretion of the court, be admitted to practice in this state without examination or proof of period of study, as hereinbefore provided, on proof of the other qualifications required by this chapter, and on satisfactory proof that he has practiced law regularly for not less than one year in the state where admitted to practice, after having been admitted to the bar according to the laws of such state, or on satisfactory proof that he has taught law regularly for one year in a recognized law school in the state of Iowa, after admission to the bar of any other of the United States. [C., '97, § 313; S., '13, § 313; 37 G. A., ch. 330, § 1; 39 G. A., ch. 48, § 1; 39 G. A., ch. 143.]

10917. Oath. All persons on being admitted to the bar shall take an oath or affirmation to support the constitution of the United States and of the state of Iowa, and to faithfully discharge the duties of an attorney and counselor of this state according to the best of their ability. [C., '51, § 1613; R., '60, § 2703; C., '73, § 208; C., '97, § 314.]

10918. Mode of examination. The supreme court may by general rules prescribe the mode in which examinations under this chapter shall be conducted, and in which the qualifications required as to age, residence, character, general education and term of study shall be proved, and may make any other and further rules, not inconsistent with this chapter, for

the purpose of carrying out its object and intent. [C., '97, § 315; S., '13, § 315.]

10919. Nonresident attorney — appointment of local attorney. Any member of the bar of another state, actually engaged in any cause or matter pending in any court of this state, may be permitted by such court to appear in and conduct such cause or matter while retaining his residence in another state, without being subject to the foregoing provisions of this chapter; provided that at the time he enters his appearance he files with the clerk of such court the written appointment of some attorney resident in the county where such suit is pending, upon whom service may be had in all matters connected with said action, with the same effect as if personally made on such foreign attorney within such county. In case of failure to make such appointment, such attorney shall not be permitted to practice as aforesaid, and all papers filed by him shall be stricken from the files. [C., '51, § 1612; R., '60, § 2702; C., '73, § 210; C., '97, § 316; S., '13, § 316.]

10920. Duties of attorneys and counselors. It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers.
2. To counsel or maintain no other actions, proceedings, or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense.
3. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law.
4. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secret of his client.
5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.
6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.
7. Never to reject for any consideration personal to himself the cause of the defenseless or oppressed. [C., '51, § 1614; R., '60, § 2704; C., '73, § 211; C., '97, § 317.]

10921. Deceit or collusion. An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages to be recovered in a civil action. [C., '51, § 1615; R., '60, § 2705; C., '73, § 212; C., '97, § 318.]

10922. Authority. An attorney and counselor has power:

1. To execute in the name of his client a bond, or other written instrument, necessary and proper for the prosecution of an action or proceeding about to be or already commenced, or for the prosecution or defense of any right

growing out of an action, proceeding, or final judgment rendered therein.

2. To bind his client to any agreement, in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

3. To receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client, and, upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. [C., '51, § 1616; R., '60, § 2706; C., '73, § 213; C., '97, § 319.]

10923. Proof of authority. The court may, on motion of either party and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of the several adverse parties, to produce or prove by his own oath, or otherwise, the authority under which he appears, and, until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear. [C., '51, § 1617; R., '60, § 2707; C., '73, § 214; C., '97, § 320.]

10924. Attorney's lien—notice. An attorney has a lien for a general balance of compensation upon:

1. Any papers belonging to his client which have come into his hands in the course of his professional employment.

2. Money in his hands belonging to his client.

3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to such adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.

4. After judgment in any court of record, such notice may be given, and the lien made effective against the judgment debtor, by entering the same in the judgment or combination docket opposite the entry of the judgment. [C., '51, § 1618; R., '60, § 2708; C., '73, § 215; C., '97, § 321.]

10925. Release of lien by bond. Any person interested may release such lien by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by any district judge, payable to the attorney, with security to be approved by the clerk of the supreme or district court, conditioned to pay any amount finally found due the attorney for his services, which amount may be ascertained by suit on the bond. [C., '51, § 1619; R., '60, § 2709; C., '73, § 216; C., '97, § 322.]

10926. Automatic release. Such lien will be released, unless the attorney, within ten

days after demand therefor, files with the clerk a full and complete bill of particulars of the services and amount claimed for each item, or written contract with the party for whom the services were rendered. [C., '73, § 216; C., '97, § 322.]

10927. Unlawful retention of money. An attorney who receives the money or property of his client in the course of his professional business, and refuses to pay or deliver it in a reasonable time, after demand, is guilty of a misdemeanor. [C., '51, § 1627; R., '60, § 2717; C., '73, § 224; C., '97, § 330.]

10928. Excuse for nonpayment. When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of the preceding section until the person demanding the money proffers sufficient security for the payment of the amount of the attorney's claim, when it is legally ascertained. Nor is he in any case liable as aforesaid, provided he gives sufficient security that he will pay over the whole or any portion thereof to the claimant when he is found entitled thereto. [C., '51, §§ 1628, 1629; R., '60, §§ 2718, 2719; C., '73, §§ 225, 226; C., '97, § 331.]

10929. Revocation of license. Any court of record may revoke or suspend the license of an attorney or counselor at law to practice therein, and a revocation or suspension in one county operates to the same extent in the courts of all other counties. [C., '51, § 1620; R., '60, § 2710; C., '73, § 217; C., '97, § 323.]

10930. Grounds of revocation. The following are sufficient causes for revocation or suspension:

1. When he has been convicted of a felony, or of a misdemeanor involving moral turpitude; in either of which cases the record of conviction is conclusive evidence.

2. When he is guilty of a wilful disobedience or violation of the order of the court, requiring him to do or forbear an act connected with or in the course of his profession.

3. A wilful violation of any of the duties of an attorney or counselor as hereinbefore prescribed.

4. Doing any other act to which such a consequence is by law attached. [C., '51, § 1621; R., '60, § 2711; C., '73, § 218; C., '97, § 324.]

10931. Proceedings. The proceedings to remove or suspend an attorney may be commenced by the direction of the court or on motion of any individual. In the former case, the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to by the person making it. [C., '51, § 1622; R., '60, § 2712; C., '73, § 219; C., '97, § 325; S., '13, § 325.]

10932. Costs. If an action is commenced by direction of the court, the costs shall be taxed and disposed of as in criminal cases; provided, however, that no allowance shall be made in such case for the payment of attorney fees. [S., '13, § 325.]

10933. Notice. If the court deem the accusation sufficient to justify further action, it shall cause an order to be entered requiring the accused to appear and answer on a day therein fixed, either at the same or a subsequent term, and shall cause a copy of the accusation and order to be served upon him personally. [C., '51, § 1623; R., '60, § 2713; C., '73, § 220; C., '97, § 326.]

10934. Pleading—trial—evidence preserved. To the accusation he may plead or demur, and the issues joined thereon shall, in all cases, be tried by the court, all the evidence being reduced to writing, filed, and preserved. [C., '51, § 1624; R., '60, § 2714; C., '73, § 221; C., '97, § 327.]

10935. Plea of guilty or failure to plead. If the accused plead guilty, or fail to answer, the court shall proceed to render such judg-

ment as the case requires. [C., '51, § 1625; R., '60, § 2715; C., '73, § 222; C., '97, § 328.]

10936. Appeal. In case of a removal or suspension being ordered, an appeal therefrom lies to the supreme court, and all the original papers, together with a transcript of the record, shall thereupon be transferred to the supreme court, to be there considered and finally acted upon. A judgment of acquittal by a court of record is final. [C., '51, § 1626; R., '60, § 2716; C., '73, § 223; C., '97, § 329.]

10937. Certification of judgment. When a judgment has been entered in any court of record in the state revoking or suspending the license of any attorney at law to practice in the said court, the clerk of the court in which the judgment is rendered shall immediately certify to the clerk of the supreme court the order or judgment of the court in said cause. [S., '13, § 329-a.]

TITLE XXXI

GENERAL PROVISIONS RELATING TO CIVIL PRACTICE AND PROCEDURE

CHAPTER 484

FORMS OF ACTIONS

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10938. "Proceedings" classified. Every proceeding in court is an action, and is civil, special, or criminal. [R., '60, § 2605; C., '73, § 2504; C., '97, § 3424.]

10939. Civil and special actions. A civil action is a proceeding in a court of justice in which one party, known as the plaintiff, demands against another party, known as the defendant, the enforcement or protection of a private right, or the prevention or redress of a private wrong. It may also be brought for the recovery of a penalty or forfeiture

Every other proceeding in a civil case is a special action. [R., '60, §§ 2606, 2607, 2609; C., '73, §§ 2505, 2506; C., '97, § 3425.]

10940. Forms of action. All forms of action are abolished, but proceedings in civil actions may be of two kinds, ordinary or equitable. [R., '60, §§ 2608, 2610; C., '73, § 2507; C., '97, § 3426.]

10941. Equitable proceedings. The plaintiff may prosecute his action by equitable proceedings in all cases where courts of equity, before the adoption of this code, had jurisdiction, and must so proceed in all cases where such jurisdiction was exclusive. [R., '60, § 2611; C., '73, § 2508; C., '97, § 3427.]

10942. Action on note and mortgage. An action on a note, together with a mortgage or deed of trust for the foreclosure of the same, shall be by equitable proceedings. An action on the bond or note alone, without regard therein to the mortgage or deed of trust, shall be

by ordinary proceedings. [R., '60, § 4179; C., '73, § 2509; C., '97, § 3428.]

10943. Ordinary proceedings. In all other cases, unless otherwise provided, the plaintiff must prosecute his action by ordinary proceedings. [R., '60, § 2612; C., '73, § 2513; C., '97, § 3431.]

10944. Error—effect of. An error of the plaintiff as to the kind of proceedings adopted shall not cause the abatement or dismissal of the action, but merely a change into the proper proceedings, and a transfer to the proper docket. [R., '60, § 2613; C., '73, § 2514; C., '97, § 3432.]

10945. Correction by plaintiff. Such error may be corrected by the plaintiff without motion at any time before the defendant has answered, or afterwards on motion in court. [R., '60, § 2614; C., '73, § 2515; C., '97, § 3433.]

10946. Correction on motion. The defendant may have the correction made by motion at or before the filing of his answer, where it appears by the provisions of this code wrong proceedings have been adopted. [R., '60, §§ 2615, 2616; C., '73, § 2516; C., '97, § 3434.]

10947. Equitable issues. Where the action has been properly commenced by ordinary proceedings, either party shall have the right, by motion, to have any issue heretofore exclusively cognizable in equity tried in the manner hereinafter prescribed in cases of equitable proceedings; and if all the issues were such,

though none were exclusively so, the defendant shall be entitled to have them all tried as in cases of equitable proceedings. [R., '60, § 2617; C., '73, § 2517; C., '97, § 3435.]

10948. Court may order change. If there is more than one party plaintiff or defendant, who fail to unite on the kind of proceedings to be adopted, the court, on its own motion, may direct such proceedings to be changed to the same extent as if the parties had united in asking it to be done. [C., '73, § 2518; C., '97, § 3436.]

10949. Errors waived. An error as to the kind of proceedings adopted in the action is waived by a failure to move for its correction at the time and in the manner prescribed in this chapter; and all errors in the decisions of the court are waived unless excepted to at the time, save final judgments and interlocutory or final decrees entered of record. [R., '60, § 2619; C., '73, § 2519; C., '97, § 3437.]

10950. Uniformity of procedure. The provisions of this code concerning the prosecution of a civil action apply to both ordinary and equitable proceedings unless the contrary appears, and shall be followed in special actions not otherwise regulated, so far as applicable. [C., '51, § 2516; R., '60, §§ 2620, 4173; C., '73, § 2520; C., '97, § 3438.]

10951. Title of cause. The title of the cause shall not be changed in any of its stages of transit from one court to another. [R., '60, § 2949; C., '73, § 2721; C., '97, § 3631.]

10952. Judgments annulled in equity. Judgment obtained in an action by ordinary proceedings shall not be annulled or modified by any order in an action by equitable proceedings, except for a defense which has arisen or been discovered since the judgment was rendered. But such judgment does not prevent the recovery of any claim, though such claim might have been used by way of counterclaim in the action on which the judgment was recovered. [R., '60, § 2621; C., '73, § 2522; C., '97, § 3440.]

10953. Action to obtain discovery. No action to obtain a discovery shall be brought, except, where a person or corporation is liable either jointly or severally with others by the same contract, an action may be brought against

any parties who are liable, to obtain discovery of the names and residences of the others. [R., '60, § 4127; C., '73, § 2523; C., '97, § 3441.]

10954. Petition for discovery. In such action the plaintiff shall state in his petition, in effect, that he has used due diligence, without success, to obtain the information asked to be discovered, and that he does not believe the parties to the contract who are known to him have property sufficient to satisfy his claim. The petition shall be verified. [R., '60, § 4127; C., '73, § 2523; C., '97, § 3441.]

10955. Costs. The cost of such action shall be paid by the plaintiff unless the discovery be resisted. [R., '60, § 4127; C., '73, § 2523; C., '97, § 3441.]

10956. Successive actions. Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action has arisen thereon or therefrom. [R., '60, § 4128; C., '73, § 2524; C., '97, § 3442.]

10957. Actions survive. All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same. [C., '51, § 2502; R., '60, § 3467; C., '73, § 2525; C., '97, § 3443.]

10958. Civil remedy not merged in crime. The right of civil remedy is not merged in a public offense, but may in all cases be enforced independently of and in addition to the punishment of the latter. [C., '51, § 2500; R., '60, § 4110; C., '73, § 2526; C., '97, § 3444.]

10959. Actions by or against legal representatives—substitution. Any action contemplated in the two preceding sections may be brought, or the court, on motion, may allow the action to be continued, by or against the legal representatives or successors in interest of the deceased. Such action shall be deemed a continuing one, and to have accrued to such representative or successor at the time it would have accrued to the deceased if he had survived. If such is continued against the legal representative of the defendant, a notice shall be served on him as in case of original notices. [C., '51, § 1699; R., '60, § 4111; C., '73, § 2527; C., '97, § 3445.]

CHAPTER 485

JOINDER OF ACTIONS

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10960. When permitted. Causes of action of whatever kind, where each may be prosecuted by the same kind of proceedings, if held by the same party, and against the same party, in the same rights, and if action on all may be brought and tried in that county, may be joined in the same petition. [C., '51, § 1751; R., '60, § 2844; C., '73, § 2630; C., '97, § 3545.]

10961. Separate trial of joined actions. The court may direct all or any portion of the issues joined to be tried separately, and may determine the order thereof. [C., '51, § 1751; R., '60, § 2844; C., '73, § 2630; C., '97, § 3545.]

10962. Plaintiff may strike out. The plaintiff may at any time before the final submission of the case to the jury, or to the court when the trial is by the court, strike from his petition any cause of action or part thereof. [R., '60, § 2845; C., '73, § 2631; C., '97, § 3546.]

10963. Motion to strike out. The court, at any time before the answer is filed, upon motion of the defendant, shall strike out of the petition any cause or causes of action improperly joined with others. [R., '60, § 2846; C., '73, § 2632; C., '97, § 3547.]

10964. Misjoinder waived. All objections to the misjoinder of causes of action shall be waived, unless made as provided in the preceding section. [R., '60, § 2847; C., '73, § 2633; C., '97, § 3548.]

10965. Separate petitions. When a motion is sustained on the ground of misjoinder of causes of action, the court, on motion of the plaintiff, shall allow him, with or without costs, in his discretion, to file several petitions, each including such of said causes of action as may be joined, and an action shall be docketed for each of said petitions, and the causes shall be proceeded in without further service, the court fixing by order the time of pleading therein. [R., '60, § 2848; C., '73, § 2634; C., '97, § 3549.]

10966. Principal and agent. In any action in which the liability of a party depends upon the existence of the relation of principal and agent, a cause of action against the principal may be joined in the same suit with any cause of action against the agent, growing out of the same transaction where either cause of action is dependent upon the fact of agency, and the issue of agency shall be tried with the other issues of the respective causes of action. [37 G. A., ch. 312, § 1.]

CHAPTER 486

PARTIES TO ACTIONS

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10967. Real party in interest. Every action must be prosecuted in the name of the real party in interest. [C., '51, § 1676; R., '60, § 2757; C., '73, § 2543; C., '97, § 3459.]

10968. Plaintiff as legal representative. An executor or administrator, a guardian, a trustee of an express trust, a party with whom or in whose name a contract is made for the benefit of another, or party expressly authorized by statute, may sue in his own name, without joining with him the party for whose benefit the action is prosecuted. [C., '51, § 1676; R., '60, § 2758; C., '73, § 2544; C., '97, § 3459.]

10969. Plaintiffs joined. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may join as plaintiffs, except as otherwise provided. [C., '51, § 1678; R., '60, § 2759; C., '73, § 2545; C., '97, § 3460; 40 G. A., ch. 267.]

10970. United interests in equity. Where two or more persons claim a right of recovery against the same party or parties on like causes of action cognizable in equity, they may join as parties plaintiff, and relief may be granted to each according to his interest. [40 G. A., ch. 267.]

10971. Assignments—exception. The assignment of a thing in action shall be without prejudice to any counterclaim, defense, or cause of action, whether matured or not, if matured when pleaded, existing in favor of the defendant and against the assignor before notice of the assignment; but this section shall not apply to negotiable instruments transferred in good faith and upon a valuable con-

sideration before due. [R., '60, § 2760; C., '73, § 2546; C., '97, § 3461.]

10972. Defendants. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved in the action, except as otherwise expressly provided. [R., '60, § 2761; C., '73, § 2547; C., '97, § 3462.]

10973. United interest. Persons having a united interest must be joined on the same side, either as plaintiffs or defendants, except as otherwise expressly provided; but when some who should be made plaintiffs refuse to join, they may be made defendants, the reason therefor being set forth in the petition. [C., '51, § 1679; R., '60, § 2762; C., '73, § 2548; C., '97, § 3463.]

10974. One suing for all. When the question is one of a common or general interest to many persons, or when the parties are very numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole. [C., '51, § 1680; R., '60, § 2763; C., '73, § 2549; C., '97, § 3464.]

10975. Joint and several obligations. Where two or more persons are bound by contract or by judgment, decree, or statute, whether jointly only, or jointly and severally, or severally only, including the parties to negotiable paper, common orders, and checks, and sureties on the same or separate instruments, or by any liability growing out of the same, the action thereon may, at the plaintiff's option, be

brought against any or all of them. When any of those so bound are dead, the action may be brought against any or all of the survivors, with any or all of the representatives of the decedents, or against any or all such representatives. [C., '51, §§ 1681, 1682; R., '60, § 2764; C., '73, § 2550; C., '97, § 3465.]

10976. Adjudication. An action or judgment against any one or more of several persons jointly bound shall not be a bar to proceedings against the others. [R., '60, § 2764; C., '73, § 2550; C., '97, § 3465.]

10977. Joint common carriers. In all cases where a railway company bills property to a point beyond the terminus of its own railway and provides by contract that it shall not be liable for the destruction of or damage to such property beyond the terminus of its own railway, and the said property is damaged or destroyed between the place of shipment and place of destination to which it was billed, the initial carrier and the connecting carrier or carriers if more than one, over whose line or lines of railway the property shall have been carried between the place of shipment and said place of destination, may be joined as defendants in one action. [S., '13, § 2074-a.]

10978. Venue. Said action may be brought in any county from or into which shipment shall be made, or suit may be brought in any county through which shipment shall be made. [S., '13, § 2074-a.]

NOTE: General provision as to venue, see § 11041.

10979. Service. Service of original notice may be made on any of said carriers in any county of the state, where the carrier to be served has a station agent, by serving such notice on such station agent. [S., '13, § 2074-a.]

NOTE: General provision as to service, see § 11072.

10980. Liability of joint carriers. On proof being made by the owner of the property shipped, that the same has been destroyed or damaged in transit between the said place of shipment and the place of destination, the liability of a common carrier shall attach to all the defendants, and judgment shall be entered accordingly against them all unless one or more of the defendants shall prove that it was not or they were not liable, in which case judgment shall go only against the remaining defendant or defendants. [S., '13, § 2074-b.]

10981. Necessary parties. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a determination of the controversy between the parties before the court can not be made without the presence of other parties, it must order them to be brought in. [C., '51, § 1683; R., '60, § 2765; C., '73, § 2551; C., '97, § 3466.]

10982. Public bond. When a bond or other instrument given to the state or county or other

municipal or school corporation, or to any officer or person, is intended for the security of the public generally, or of particular individuals, action may be brought thereon in the name of any person intended to be thus secured, who has sustained an injury in consequence of a breach thereof, except when otherwise provided. [C., '51, § 1693; R., '60, § 2787; C., '73, § 2552; C., '97, § 3467.]

10983. Partnership. Actions may be brought by or against a partnership as such, or against all or either of the individual members thereof, or against it and all or any of the members thereof; and a judgment against the firm as such may be enforced against the partnership property, or that of such members as have appeared or been served with notice. A new action may be brought against the members not made parties, on the original cause of action. [C., '51, §§ 1690, 1691; R., '60, § 2785; C., '73, § 2553; C., '97, § 3468.]

10984. Foreign corporations. Foreign corporations may sue in the courts of this state in their corporate name. [C., '51, § 1695; R., '60, § 2789; C., '73, § 2554; C., '97, § 3469.]

10985. Seduction. An unmarried female may maintain, as plaintiff, an action for her own seduction. [C., '51, § 1696; R., '60, § 2790; C., '73, § 2555; C., '97, § 3470.]

10986. Injury or death of minor child. A father, or, in case of his death or imprisonment or desertion of his family, the mother, may as plaintiff maintain an action for the expenses and actual loss of service resulting from the injury or death of a minor child. [C., '51, § 1697; R., '60, § 2792; C., '73, § 2556; C., '97, § 3471.]

10987. Unknown defendant. When the precise name of any defendant can not be ascertained, he may be described as accurately as practicable, and when it is ascertained it shall be substituted in the proceedings. [C., '51, § 1694; R., '60, § 2788; C., '73, § 2557; C., '97, § 3472.]

10988. Written instrument. When an action is founded on a written instrument, it may be brought by or against any of the parties thereto by the same name and description as those by which they are designated in such instrument. [C., '51, § 1692; R., '60, § 2786; C., '73, § 2558; C., '97, § 3473.]

10989. Prisoner in penitentiary. No judgment can be rendered against a prisoner in the penitentiary until after a defense made for him by his attorney, or, if there is none, by a person appointed by the court. [R., '60, § 2784; C., '73, § 2559; C., '97, § 3474.]

10990. Actions by state. The state may maintain actions in the same manner as natural persons, but no security shall be required in such cases. [R., '60, § 2793; C., '73, § 2560; C., '97, § 3475.]

NOTE: Attachment by state, see ch. 512.

10991. Nonabatement by transfer of interest. No action shall abate by the transfer of any interest therein during its pendency, and new parties may be brought in, as may be necessary. [C., '51, § 1698; R., '60, § 2794; C., '73, § 2561; C., '97, § 3476.]

10992. Married woman. A married woman may in all cases sue and be sued without joining her husband with her, and an attachment or judgment in such action shall be enforced by or against her as if she were single. [R., '60, §§ 2771, 2772; C., '73, § 2562; C., '97, § 3477.]

10993. Defense by husband or wife. If husband and wife are sued together, the wife may defend for her own right, and if either neglects to defend, the other may defend for both. [C., '51, § 1687; R., '60, § 2774; C., '73, § 2563; C., '97, § 3478.]

10994. Desertion of family. When a husband has deserted his family, the wife may prosecute or defend in his name any action which he might have prosecuted or defended, and shall have the same powers and rights therein as he might have had; and, under like circumstances, the husband shall have the same right. [R., '60, § 2776; C., '73, § 2564; C., '97, § 3479.]

10995. Minors. The action of a minor must be brought by his guardian, if he has one, if not, by his next friend, but the court may dismiss it if it is not for his benefit, or may substitute a guardian or another person as next friend. [C., '51, §§ 1688, 1689; R., '60, § 2777; C., '73, § 2565; C., '97, § 3480.]

10996. Insane person. The action of a person judicially found to be of unsound mind must be brought by his guardian, but, if he have none, the court or judge thereof, or the clerk in vacation, may appoint one for the purposes of the action. [R., '60, § 2781; C., '73, § 2569; C., '97, § 3481.]

10997. Defense by minor. The defense of a minor must be by his regular guardian, or by one appointed to defend for him where no regular guardian appears, or, where the court directs a defense, by one appointed for that purpose. No judgment can be rendered against a minor until after a defense by a guardian. [C., '51, §§ 1688, 1689; R., '60, § 2778; C., '73, § 2566; C., '97, § 3482.]

10998. Guardian ad litem. Such appointment can not be made until after the required service of the notice in the action, and then may be by the court, or in vacation by a judge or the clerk; but the court shall have the power to remove such guardian when the interests of the minor require it. If made by the judge or clerk, it shall be done by indorsing the name of the person appointed and the time thereof on the petition in the action. [R., '60, § 2779; C., '73, § 2567; C., '97, § 3483.]

10999. Application for appointment. The appointment may also be made on the applica-

tion of the minor, if he is of the age of fourteen years, and applies at or before the time he is required to appear and defend. If he does not, or is under that age, the appointment may be made on the application of any friend of his, or on that of the plaintiff in the action. [R., '60, § 2780; C., '73, § 2568; C., '97, § 3484.]

11000. Defense of insane person. The defense of an action against a person judicially found to be of unsound mind, or of one confined in any state hospital for the insane who, by the certificate of the physician in charge, appears to be insane, must be by his guardian, or a guardian appointed by the court to defend for him. Such appointment may be made upon the application of any friend of the defendant, or on that of the plaintiff, but not until service has been made as directed in this code, and no judgment can be rendered against him until defense has been made as herein provided. [R., '60, § 2782; C., '73, § 2570; C., '97, § 3485.]

11001. Insanity pending action. Where a party is judicially found to be of unsound mind, or is confined in any state hospital for the insane, and, by the certificate of the physician in charge, appears to be insane, during the pendency of an action, the fact being stated on the record, if he is plaintiff his guardian may be joined with him in the action as such; if defendant, the plaintiff may, on ten days' notice thereof to his guardian, have an order making the guardian a defendant also. [R., '60, § 2783; C., '73, § 2571; C., '97, § 3486.]

11002. Interpleader. Upon the affidavit, before answer, of a defendant in any action upon contract for the recovery of personal property, that some third person, without collusion with him, has or makes a claim to the subject of the action, or on proof thereof, as the court may direct, it may make an order for the safekeeping, or for the payment or deposit in court, or delivery of the subject of the action to such person as it may direct, and an order requiring such third person to appear in a reasonable time and maintain or relinquish his claims against defendant, and in the meantime stay the proceedings. [C., '51, §§ 1685, 1686; R., '60, § 2767; C., '73, § 2572; C., '97, § 3487.]

11003. Failure to appear. If such third person, being served with a copy of the order, fails to appear, the court may declare him barred of all claims in respect to the subject of the action against the defendant therein. [R., '60, § 2767; C., '73, § 2572; C., '97, § 3487.]

11004. Appearance—effect. If such third person appears, he shall be allowed to make himself defendant in the action in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for payment, deposit, or delivery thereof. [C., '51, § 1686; R., '60, § 2767; C., '73, § 2572; C., '97, § 3487.]

11005. Sheriff may interplead. The provisions of section 11002 shall be so far applicable to an action brought against a sheriff or other officer for the recovery of personal property taken by him under an attachment or execution, or for the value of such property so taken and sold by him, that, upon exhibiting to the court the process under which he acted, with his affidavit that the property for the recovery of which, or its proceeds, the action was brought was taken under such process, he may have the attaching or execution creditor made a joint defendant with him, and if judg-

ment go against them, it shall provide that the property of such creditor shall be first exhausted in satisfaction thereof. [R., '60, § 2768; C., '73, § 2573; C., '97, § 3488.]

11006. Substitution. In an action against a sheriff or other officer for the recovery of property taken under an attachment or execution, the court may, upon application of the defendant and of the party in whose favor the process issued, permit the latter to be joined with such officer as defendant. [R., '60, § 2769; C., '73, § 2574; C., '97, § 3489.]

CHAPTER 487

LIMITATIONS OF ACTIONS

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GENERAL PROVISIONS

11007. Period of. Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

1. *In actions for injuries from defects in roads or streets—notice.* Those founded on injury to the person on account of defective roads, bridges, streets, or sidewalks, within three months, unless written notice specifying the time, place, and circumstances of the injury shall have been served upon the county or municipal corporation to be charged within sixty days from the happening of the injury.

2. *Penalties or forfeitures under ordinance.* Those to enforce the payment of a penalty or forfeiture under an ordinance, within one year.

3. *Injuries to person or reputation—relative rights—statute penalty—setting aside will.* Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years; and those brought to set aside a will, within two years from the time the same is filed in the clerk's office for probate and notice thereof is given; provided that after a will is probated the executor may cause personal service of an original notice to be made on any person interested, which shall contain the name of decedent, the date of his death, the court in which and the date on which the will was probated, together with a copy of said will; said notice shall be

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served in the same manner as original notices and no action shall be instituted by any person so served after one year from date of service.

4. *Against sheriff or other public officer.* Those against a sheriff or other public officer, growing out of a liability incurred by the doing of an act in an official capacity or by the omission of an official duty, including the non-payment of money collected on execution, within three years.

5. *Unwritten contracts—injuries to property—fraud—other actions.* Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years.

6. *Written contracts—judgments of courts not of record—recovery of real property.* Those founded on written contracts, or on judgments of any courts except those provided for in the next subdivision, and those brought for the recovery of real property, within ten years.

7. *Judgments of courts of record.* Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years.

8. *Judgment quieting title.* No action shall be brought to set aside a judgment or decree quieting title to real estate unless the same shall be commenced within ten years from

and after the rendition thereof. [C., '51, § 1659; R., '60, §§ 1075, 1865, 2740; C., '73, §§ 486, 2529; C., '97, § 3447; S., '13, §§ 2963-g, 3447; 37 G. A., ch. 63, § 1.]

NOTE: Action to recover lands sold or mortgaged by executors, see § 11951.

11008. Death of party to be charged. In all cases where by the death of the party to be charged, the bringing of an action against his estate shall have been delayed beyond the period provided for by statute, the time within which action may be brought against his estate is hereby extended for six months from the date of the death of said decedent. [S., '13, § 3447-a.]

11009. Judgments. No action shall be brought upon any judgment against a defendant therein, rendered in any court of record of this state, within nine years after the rendition thereof, without leave of the court, or a judge thereof, for good cause shown, and, if the adverse party is a resident of this state, upon reasonable notice of the application therefor to him; nor on a judgment of a justice of the peace in the state within nine years after the same is rendered, unless the docket of the justice or record of such judgment is lost or destroyed; but the time during which an action on a judgment is prohibited by this section shall not be excluded in computing the statutory period of limitation for an action thereon. [C., '73, § 2521; C., '97, § 3439; S., '13, § 3439; 38 G. A., ch. 96, § 1.]

11010. Fraud—mistake—trespass. In actions for relief on the ground of fraud or mistake, and those for trespass to property, the cause of action shall not be deemed to have accrued until the fraud, mistake, or trespass complained of shall have been discovered by the party aggrieved. [C., '51, § 1660; R., '60, § 2741; C., '73, § 2530; C., '97, § 3448.]

11011. Open account. When there is a continuous, open, current account, the cause of action shall be deemed to have accrued on the date of the last item therein, as proved on the trial. [C., '51, § 1662; R., '60, § 2743; C., '73, § 2531; C., '97, § 3449.]

11012. Commencement of action. The delivery of the original notice to the sheriff of the proper county, with intent that it be served immediately, which intent shall be presumed unless the contrary appears, or the actual service of that notice by another person, is a commencement of the action. [C., '51, § 1663; R., '60, § 2744; C., '73, § 2532; C., '97, § 3450.]

11013. Nonresidence. The time during which a defendant is a nonresident of the state shall not be included in computing any of the periods of limitation above described. [C., '51, § 1664; R., '60, § 2745; C., '73, § 2533; C., '97, § 3451.]

11014. Bar in foreign jurisdiction. When a cause of action has been fully barred by the laws of any country where the defendant has

previously resided, such bar shall be the same defense here as though it had arisen under the provisions of this chapter; but this section shall not apply to causes of action arising within this state. [C., '51, § 1665; R., '60, § 2746; C., '73, § 2534; C., '97, § 3452.]

11015. Minors and insane persons. The times limited for actions herein, except those brought for penalties and forfeitures, shall be extended in favor of minors and insane persons, so that they shall have one year from and after the termination of such disability within which to commence said action. [C., '51, § 1666; R., '60, § 2747; C., '73, § 2535; C., '97, § 3453.]

11016. Exception in case of death. If the person having a cause of action dies within one year next previous to the expiration of the limitation above provided for, such limitation shall not apply until one year after such death. [C., '51, § 1667; R., '60, § 2748; C., '73, § 2536; C., '97, § 3454.]

11017. Failure of action. If, after the commencement of an action, the plaintiff, for any cause except negligence in its prosecution, fails therein, and a new one is brought within six months thereafter, the second shall, for the purposes herein contemplated, be held a continuation of the first. [C., '51, § 1668; R., '60, § 2749; C., '73, § 2537; C., '97, § 3455.]

11018. Admission in writing—new promise. Causes of action founded on contract are revived by an admission in writing, signed by the party to be charged, that the debt is unpaid, or by a like new promise to pay the same. [C., '51, § 1670; R., '60, § 2751; C., '73, § 2539; C., '97, § 3456.]

11019. Counterclaim. A counterclaim may be pleaded as a defense to any cause of action, notwithstanding it is barred by the provisions of this chapter, if it was the property of the party pleading it at the time it became barred, and was not barred at the time the claim sued on originated; but no judgment thereon, except for costs, can be rendered in favor of the party so pleading it. [R., '60, § 2752; C., '73, § 2540; C., '97, § 3457.]

11020. Injunction. When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of such injunction or prohibition shall not be part of the time limited for the commencement of the action, except as herein otherwise provided. [C., '73, § 2541; C., '97, § 3458.]

SPECIAL LIMITATIONS

11021. Recovery by cestui que trust. In all cases where any deed of trust or declaration of trust has been executed and the real estate affected thereby has been conveyed by the trustee or the surviving spouse or heirs of said trustee and such conveyance was duly recorded in the proper county prior to January 1, 1890,

and the interest of the cestui que trust thereunder has not been by such cestui que trust conveyed, or established by proper proceedings in court, no action, suit or proceeding shall be commenced or maintained to foreclose the same, or to establish or recover the interest of the cestui que trust therein, or of the surviving spouse or heirs of the cestui que trust, unless such action, suit or proceeding be commenced by filing petition and service of notice not later than March 1, 1914. [S., '13, § 3447.]

11022. Recovery when spouse failed to join in conveyance. In all cases where the holder of the legal or equitable title or estate to real estate situated within this state, prior to January 1, 1905, conveyed said real estate or any interest therein by deed, mortgage, or other instrument, and the spouse failed to join therein, such spouse or the heirs at law, personal representatives, devisees, grantees, or assignees of such spouse shall be barred from recovery unless suit is brought therefor within one year after the taking effect of this act. But in case the right to such distributive share has not accrued by the death of the spouse making such instrument, then the one not joining is hereby authorized to file in the recorder's office of the county where the land is situated, a notice with affidavit, setting forth affiant's claim, together with the facts upon which such claim rests, and the residence of such claimants; and if such notice is not filed within two years from the taking effect of this act, such claim shall be barred forever. Any action contemplated in this section may include land situated in different counties, by giving notice thereof as provided by section 11095. Provided that the repeal of section 3447-b, supplement to the code, 1907, shall not affect any act done, any right accruing or which has accrued or been established, nor any suit or proceeding had or commenced in any civil cause before the time when such repeal takes effect; but the proceedings in such cases shall be conformed to the provisions of said repealed section as far as consistent. [S., '13, § 3447-b; 37 G. A., ch. 351, § 1.]

NOTE: The above section was enacted by the 34th G. A., ch. 159, § 1, and was in itself a substitute for 31st G. A., ch. 152, § 1, which became section 3447-b of the supplement to the code, 1907. The 37th G. A., ch. 351, § 1, amended the above section by striking out the date "1890" and inserting in lieu thereof the date "1905". This makes it uncertain as to the meaning of the word "act" as it appears in the section and the word has been retained.

11023. Interpretative clause. This act [37 G. A., ch. 351, § 3] shall not affect pending litigation nor shall it operate to revive rights or claims already barred by the provisions of section 3447-b, supplement to the code, 1913. [37 G. A., ch. 351, § 3.]

NOTE: Section 3447-b, supplement to the code, 1913, appears in amended form as section 11022, but the reference in the above section is to the original section and no corresponding section in this code can be substituted therefor.

11024. Recovery on claims antedating 1900. No action based upon any claim arising or

existing prior to January 1, 1900, shall be maintained, either at law or in equity, in any court to recover any real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession, when such holder of the record title and his grantors immediate or remote are shown by the record to have held chain of title to said real estate, since January 1, 1900, unless such claimant, by himself, or by his attorney or agent, or if he be a minor or under legal disability, by his guardian, trustee, or either parent shall within one year from and after July 4, 1919, file in the office of the recorder of deeds of the county wherein such real estate is situated, a statement in writing, which shall be duly acknowledged, definitely describing the real estate involved, the nature and extent of the right or interest claimed, and stating the facts upon which the same is based.

For the purposes of this and the three following sections, any person who holds title to real estate by will or descent from any person who held the title of record to such real estate at the date of his death or who holds title by decree or order of any court, or under any tax deed, trustee's, referee's, guardian's, executor's, administrator's, receiver's, assignee's, master's in chancery, or sheriff's deed, shall be deemed to hold chain of title the same as though holding by direct conveyance.

For the purposes of this section, such possession of said real estate may be shown of record by affidavits showing such possession, and when said affidavits have been filed and recorded, it shall be the duty of the recorder to enter upon the margin of said record, a certificate to the effect that said affidavits were filed by the owner in possession, as named in said affidavits, or by his attorney in fact, as shown by the records. [38 G. A., ch. 270, § 1; 39 G. A., ch. 55.]

11025. Claim indexed. Any such claim so filed, shall be indexed under the description of the real estate involved in a book set apart and specially designed for that purpose to be known as the "claimant's book" and kept in the office of the recorder of the county where such real estate is situated, and said statement, when so indexed, shall be recorded as other instruments affecting real estate. [38 G. A., ch. 270, § 2.]

11026. Minors and insane. The provisions of section 11015 as to the rights of minors and insane persons shall not be applicable against the provisions of sections 11024, 11025, and 11027. [38 G. A., ch. 270, § 3.]

11027. Limitation on act. Provided, however, that nothing contained in the three preceding sections shall be construed as limiting or extending the time within which actions by a spouse to recover dower or distributive share in real estate within this state may be brought or maintained under the provisions of section 11022, or as limiting or extending the time within which actions may be brought or

maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate under the provisions of the following section; and, provided further, that the three preceding sections should in no case revive or permit an action to be brought or maintained upon any claim or cause of action which is barred by any statute which is in force July 4, 1919; provided, however, that nothing contained in the three preceding sections shall affect pending litigation. [38 G. A., ch. 270, §§ 4, 5.]

11028. Foreclosure of ancient mortgages.

No action shall be maintained to foreclose or enforce any real estate mortgage, bond for deed, trust deed, or contract for the sale or conveyance of real estate, after twenty years from the date thereof, as shown by the record of such instrument, unless the record of such instrument shows that less than ten years have elapsed since the date of maturity of the indebtedness or part thereof, secured thereby, or since the right of action has accrued thereon, or unless the record shows an extension of the maturity of the instrument or of the debt or a part thereof, and that ten years from the expiration of the time of such extension have not yet expired. The date of maturity, when different than as appears by the record of the instrument, and the date of maturity of any extension of said indebtedness or part thereof, may be shown at any time prior to the expiration of the above periods of limitation by the holder of the debt or the owner or assignee of the instrument filing an extension agreement, duly acknowledged as the original instrument was required to be acknowledged, in the office of the recorder where the instrument is recorded, or by noting on the margin of the record of such instrument in the recorder's office an extension of the maturity of the instrument or of the debt secured, or any part thereof; each notation to be witnessed by the recorder and entered upon the index of mortgages in the name of the mortgagor and mortgagee. This section shall in no case revive the rights or claims barred by section 3447-c of the supplement to the code, 1907. [S., '13, § 3447-c.]

NOTE: Section 3447-c, S., 1907, has been repealed and therefore does not appear in this code.

11029. Action affecting ancient deeds. No action shall be maintained to set aside, cancel, annul, declare void or invalid, or to redeem from any tax deed, guardian's deed, executor's

deed, administrator's deed, receiver's deed, referee's deed, assignee's deed, sheriff's deed which shall have been recorded in the office of the recorder of the county or counties in this state in which the land described in such deed is situated prior to January 1, 1905, unless such action shall be commenced prior to January 1, 1917, and if no action to set aside, cancel, annul, declare void or invalid, or to redeem from any such deed shall be commenced prior to January 1, 1917, then such deed and all the proceedings upon which the same is based shall be conclusively presumed to have been in all things valid and unimpeachable and effective to convey title according to the purport thereof, without exception for infancy, insanity, absence from the state, or other disability or cause; provided that this and the following section shall not apply to any real property described in any such deed which is not on July 4, 1915, in the possession of those claiming title under such deed. [S. S., '15, § 3447-d.]

11030. How "possession" established. The possession of the persons claiming title as provided for in the preceding section may be established by affidavit recorded in the office of the recorder of the county or counties in this state in which the deed to the land referred to in said affidavit is recorded. [S. S., '15, § 3447-e.]

11031. Moratorium declared. All soldiers and sailors and other persons in the military or naval service of the government of the United States or who may hereafter enter such service during the present war are hereby exempted while in such service and for a period of six months after the termination of the war or of said service or death from payment of any bill of exchange or of any negotiable instrument or of any other payment in pursuance of any contract or from any writ of attachment or execution. [37 G. A., ch. 380, § 1.]

11032. Continuances of causes. Any such person in the military or naval service of the United States who is now or may hereafter be party to any litigation; the trial of said cause shall, upon his request, be continued until the termination of such service or death of said party. [37 G. A., ch. 380, § 2.]

11033. Statute of limitations tolled. The statute of limitations shall not run against any action held against anyone affected by the two preceding sections during the time the same is stayed by the terms of said sections. [37 G. A., ch. 380, § 4.]

CHAPTER 488

PLACE OF BRINGING ACTIONS

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11034. Real property. Actions for the recovery of real property, or of an estate therein, or for the determination of such right or interest, or for the partition of real property, must be brought in the county in which the subject of the action or some part thereof is situated. [C., '51, § 1703; R., '60, § 2795; C., '73, § 2576; C., '97, § 3491.]

11035. Injuries to real property. Actions for injuries to real property may be brought either in the county where the property is, or where the defendant resides. [C., '73, § 2577; C., '97, § 3492.]

11036. Local actions. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

1. *For fines, penalties, or forfeitures.* Those for the recovery of a fine, penalty, or forfeiture imposed by a statute; but when the offense for which the claim is made was committed on a watercourse or road which is the boundary of two counties, the action may be brought in either of them.

2. *Against public officers.* Those against a public officer or person specially appointed to execute his duties, for an act done by him in virtue or under color of his office, or against one who by his command or in his aid shall do anything touching the duties of such officer, or for neglect of official duty.

3. *On official bonds.* Those on the official bond of a public officer.

4. *Actions on bonds of executor or guardian.* Those on the bond of an executor, administrator, or guardian may be brought in the county in which the appointment was made and such bond filed.

5. *Actions on other bonds.* Actions on all other bonds provided for or authorized by law may be brought in the county in which such bond was filed and approved. [R., '60, § 2796; C., '73, § 2579; C., '97, § 3494; S., '13, § 3494.]

11037. Nonresident—attachment. An action against a nonresident of the state, when aided by an attachment, may be brought in any county

of the state wherein any part of the property sought to be attached may be found, or wherein any part was situated when the action was commenced, or where the defendant is personally served in this state. [C., '51, § 1703; R., '60, § 2797; C., '73, § 2580; C., '97, § 3495.]

11038. Resident — attachment. Except as hereinafter provided, an action against a resident of this state must be brought in the county of his residence, or that in which the contract was to be performed, except that, if an action be duly brought against such defendant in any other county by virtue of any of the provisions of this chapter, then such action may, if legal cause for an attachment exist, be aided by attachment. [R., '60, § 2797; C., '73, § 2580; C., '97, § 3495.]

11039. Transfer — attached property held. Should such action be brought against a resident of this state in any other county than that of his residence, he may have the place of trial changed to the district court of the county wherein he resides, in the same manner and upon the same terms as provided in section 11053, and the property attached shall not be released because said action was brought in the wrong county, but shall be held and subject in the same manner as if said action had been brought in the county of defendant's residence. [R., '60, § 2797; C., '73, § 2580; C., '97, § 3495.]

11040. Place of contract. When, by its terms, a written contract is to be performed in any particular place, action for a breach thereof may, except as otherwise provided, be brought in the county wherein such place is situated. [C., '51, § 1704; R., '60, § 2798; C., '73, § 2581; C., '97, § 3496.]

NOTE: Change of venue for fraud, see §§ 10512 and 11411.

11041. Common carriers—transmission companies. An action may be brought against any railway corporation, the owner of stages, or other line of coaches or cars, express, canal,

steamboat and other river crafts, telegraph and telephone companies, or the owner of any line for the transmission of electric current for lighting, power or heating purposes, and the lessees, companies, or persons operating the same, in any county through which such road or line passes or is operated. [C., '73, § 2582; C., '97, § 3497; S., '13, § 3497; 37 G. A., ch. 424, § 1.]

NOTE: Venue in actions against joint common carriers, see § 10978.

11042. Construction companies. An action may be brought against any corporation, company, or person engaged in the construction of a railway, canal, telegraph or telephone line, highway, or public drainage improvement, on any contract relating thereto, or to any part thereof, or for damages in any manner growing out of the contract or work thereunder, in any county where such contract was made, or performed in whole or in part, or where the work was done out of which the damage claimed arose. [C., '73, § 2583; C., '97, § 3498; 40 Ex. G. A., S. F. 227, § 1.]

11043. Insurance companies. Insurance companies may be sued in any county in which their principal place of business is kept, or in which the contract of insurance was made, or in which the loss insured against occurred, or, in case of insurance against death or disability, in the county of the domicile of the insured at the time the loss occurred, or in the county of plaintiff's residence. [C., '73, § 2584; C., '97, § 3499.]

11044. Hailstorm insurance assessments. Actions to collect assessments from any member of an association organized to insure against losses by hailstorm shall be brought in the county where such member resides, any statement in the contract of insurance to the contrary notwithstanding. [40 G. A., ch. 181.]

11045. Operators of coal mines. An action may be brought against any corporation, company, or person, owning, leasing, operating, or maintaining a coal mine, in the county where said mine is located, on any contract, or for any tort, in any manner connected with or growing out of the construction, use, or operation of said mine. [S., '13, § 3499-a.]

11046. Office or agency. When a corporation, company, or individual has an office or agency in any county for the transaction of business, any actions growing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located. [C., '51, § 1705; R., '60, § 2801; C., '73, § 2585; C., '97, § 3500.]

11047. Surety companies. Suit may be brought against any company or corporation furnishing or pretending to furnish surety, fidelity, or other bonds in this state, in any county in which the principal place of business of such company or corporation is maintained in this state, or in any county wherein is maintained its general office for the trans-

action of its Iowa business, or in the county where the principal resides at the time of bringing suit, or in the county where the principal did reside at the time the bond or other undertaking was executed; and in the case of bonds furnished by any such company or corporation for any building or improvement, either public or private, action may be brought in the county wherein said building or improvement, or any part thereof is located. [S., '13, § 3500-a.]

11048. Municipal corporations in certain counties. Actions against municipal corporations, including cities organized under special charters, in all counties where terms of the district court are held in more than one place must be brought in the county and at the place where terms of the district court are held nearest to where the cause or subject of the action originated. [S., '13, § 3504-a.]

11049. Personal actions. Personal actions, except as otherwise provided, must be brought in a county in which some of the defendants actually reside, but if neither of them have a residence in the state, they may be sued in any county in which either of them may be found. [C., '51, § 1701; R., '60, § 2800; C., '73, § 2586; C., '97, § 3501.]

11050. Negotiable paper. In all actions upon negotiable paper, except when made payable at a particular place, in which any maker thereof, being a resident of the state, is defendant, the place of trial shall be limited to a county wherein some one of such makers resides. [C., '73, § 2586; C., '97, § 3501.]

11051. Right of nonresident defendant. Where an action provided for in the two preceding sections is against several defendants, some of whom are residents and others nonresidents of the county, and the action is dismissed as to the residents, or judgment is rendered in their favor, or there is a failure to obtain judgment against such residents, such nonresidents may, upon motion, have said cause dismissed, with reasonable compensation for trouble and expense in attending at the wrong county, unless they, having appeared to the action, fail to object before judgment is rendered against them. [C., '73, § 2587; C., '97, § 3502.]

11052. Change of residence. If, after the commencement of an action in the county of the defendant's residence, he removes therefrom, the service of notice upon him in another county shall have the same effect as if it had been made in the county from which he removed. [C., '73, § 2588; C., '97, § 3503.]

11053. Change when brought in wrong county. If an action is brought in a wrong county, it may there be prosecuted to a termination, unless the defendant, before answer, demands a change of place of trial to the proper county, in which case the court shall order the same at the cost of the plaintiff, and may award the defendant a reasonable compensa-

tion for his trouble and expense in attending at the wrong county. [C., '51, § 1702; R., '60, § 2802; C., '73, § 2589; C., '97, § 3504.]

11054. Dismissal. If the sum so awarded and costs are not paid to the clerk by a time to be fixed by the court, or if the papers in such case are not filed by the plaintiff in the

court to which the change is ordered ten days before the first day of the next term thereof, or, if ten days do not intervene between the making of said order and the first day of the next term of said court, ten days preceding the first day of the next succeeding term thereof, in either event the action shall be dismissed. [C., '73, § 2589; C., '97, § 3504.]

CHAPTER 489

MANNER OF COMMENCING ACTIONS

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11055. Original notice. Action in a court of record shall be commenced by serving the defendant with a notice, signed by the plaintiff or his attorney, informing him of the name of the plaintiff, that a petition is, or on or before the date named therein will be, filed in the office of the clerk of the court wherein action is brought, naming it, and stating in general terms the cause or causes thereof, and if it is for money, the amount thereof, and that unless he appears thereto and defends before noon of the second day of the term at which defendant is required to appear, naming it, his default will be entered and judgment or decree rendered against him thereon. [C., '51, §§ 1714, 1715; R., '60, §§ 2811, 2812; C., '73, § 2599; C., '97, § 3514.]

NOTE: Notice to unknown claimant, see § 11083.

11056. Change in term—effect. In all cases where the time for the commencement of the term has been changed after the notice has been served, the defendant shall be held to appear at the time to which such term has been changed. [C., '73, § 2599; C., '97, § 3514.]

11057. Dismissal. If the petition is not filed by the date thus fixed, and ten days before the term, the defendant may have the action dismissed. [C., '51, § 1716; R., '60, § 2813; C., '73, § 2600; C., '97, § 3515.]

11058. Who may serve notice. The notice may be served by any person not a party to the action. [C., '51, § 1718; R., '60, § 2814; C., '73, § 2601; C., '97, § 3516.]

11059. How long before term. The defendant shall be held to appear at the next term after service:

1. If served within the county where the action is brought in such time as to leave at least ten days between the day of service and the first day of the next term.

2. If without the county, but within the judicial district, so as to leave at least fifteen such days.

3. If elsewhere, so as to leave twenty such days for every one thousand miles, or fraction thereof, extending between the places of trial and service, which distance shall be judicially noticed by the court. If not so served, he shall be held to appear at the second term after service. [C., '51, § 1720; R., '60, § 2815; C., '73, § 2602; C., '97, § 3517.]

11060. Method of service. The notice shall be served as follows:

1. By reading it to the defendant or offering to do so in case he neglects or refuses to hear it read, and in either case by delivering him personally a copy thereof, or, if he refuses to receive it, offering to do so.

2. If not found within the county of his residence, or if, because of his sickness or other disability, personal service can not be made upon him, by leaving a copy thereof at his usual place of residence with some member of his family over fourteen years of age, or with the person having the care and custody of him, or with the head of the family where he resides.

3. By taking an acknowledgment of the service indorsed thereon, dated and signed by the defendant. [C., '51, §§ 1721, 1732; R., '60, § 2816; C., '73, § 2603; C., '97, § 3518; 40 Ex. G. A., H. F. 228, § 1.]

11061. Return of personal service. If served personally, the return must state the time, manner, and place of making the service, and that a copy was delivered to defendant, or offered to be delivered. If made by leaving a copy with the family, it must state at whose house the same was left, and that it was the usual place of residence of the defendant, and the township, town, or city in which the house was situated, the name of the person with whom the same was left, or a sufficient reason for omitting to do so, and that such person was over fourteen years of age and was a member of the family. [C., '51, § 1723; R., '60, § 2817; C., '73, § 2604; C., '97, § 3519.]

11062. Indorsement and return by sheriff. If the notice is placed in the hands of a sheriff, he must note thereon the date when received, and proceed to serve the same without delay in his county, and must file the same, with his return thereon, in the office of the clerk of the court where the action is pending, or return the same by mail or otherwise to the party from whom he received it. [C., '51, § 1717; R., '60, § 2819; C., '73, § 2605; C., '97, § 3520.]

11063. Penalty—amendment. If a notice is not filed or returned by the sheriff to the person from whom it was received, or if the return thereon is defective, the officer making the same may be fined by the court not exceeding ten dollars, and he shall be liable to an action for damages by any person aggrieved thereby. The court may, before or after judgment is entered, permit an amendment according to the truth of the case. [R., '60, § 2820; C., '73, § 2606; C., '97, § 3521; 37 G. A., ch. 31, § 1.]

11064. Service on Sunday. Notice shall not be served on Sunday unless the plaintiff, his agent, or attorney makes oath thereon that personal service will not be possible unless then made, and a notice so indorsed shall be served by the sheriff, or may be served by another, as on a secular day. [R., '60, § 2821; C., '73, § 2607; C., '97, § 3522.]

11065. Notice of no personal claim. The plaintiff may state in the notice the general subject of the action, a brief description of the property affected by it, and that no personal claim is made against any defendant, naming him, and if such defendant unreasonably defends he shall pay the costs occasioned thereby.

[C., '51, § 1724; R., '60, § 2822, C., '73, § 2608; C., '97, § 3523.]

11066. Proof of service. If service is made within the state, the truth of the return is proven by the signature of the sheriff or his deputy, and the court shall take judicial notice thereof. If made without the state, or by one not such officer within the state, the return must be proven by the affidavit of the person making the same. [C., '51, § 1732; R., '60, § 2823; C., '73, § 2609; C., '97, § 3524.]

11067. Insane patients in hospital. Service may be made on any patient confined in any of the hospitals for the insane by the superintendent or assistant superintendent thereof, and the certificate of such officer, under the seal of the hospital, shall be proof of such service. [C., '97, § 3524.]

11068. Acknowledgment of service by superintendent. When it becomes necessary to serve personally with a notice or process of any kind a person who is confined in any state hospital for the insane, or county home, the superintendent thereof shall acknowledge service for such person, whenever in his opinion personal service would injuriously affect such person, which fact shall be stated in the acknowledgment of service. A service thus made shall be held a personal one on the defendant. [C., '73, § 2616; C., '97, § 3525; 37 G. A., ch. 217, § 1.]

11069. Insane person out of hospital. When a defendant has been judicially declared to be of unsound mind and is not confined in any state hospital for the insane, service must be made upon him and upon his guardian, and, if he have none, or if the guardian institutes the action, then upon the spouse, or the person having the care or custody of him or with whom he lives. [C., '51, § 1729; R., '60, § 2829; C., '73, § 2615; C., '97, § 3526; 40 Ex. G. A., H. F. 228, § 2.]

11070. Inmate of certain institutions. Every civil process addressed to any inmate of the department of the state university hospital for the medical and surgical treatment of indigent persons, of the psychopathic ward of said hospital or of any institution in charge of the board of control shall be served upon him, unless otherwise specially provided by law, by the person in charge of the institution of which he is an inmate, in the same manner as original notices are required to be served, and by delivering to him a correct copy of the petition or application. The person serving such process shall make return accordingly in the same manner and with the same effect as sheriffs in other cases. The process shall also be served on the spouse of such inmate if found within the state, but upon the filing of an affidavit that said spouse, after diligent search and inquiry has been made, can not be found within this state, such spouse may be served with notice by publication as in the case of an original notice. [C., '51, § 3130;

R., '60, §§ 2830, 5144; C., '73, §§ 2617, 4772; C., '97, §§ 3527, 5677; 40 Ex. G. A., H. F. 228, § 3.]

11071. County. If the county is a party to any action, service of process may be made on the chairman of the board of supervisors or county auditor. [C., '51, § 1726; R., '60, § 2824; C., '73, § 2610; C., '97, § 3528; 40 Ex. G. A., H. F. 228, § 4.]

11072. Public utility and foreign corporations. If the action is against any corporation or person owning or operating any railway or canal, steamboat or other river craft, or any telegraph, telephone, stagecoach, or car line, or against any express company, or against any foreign corporation, service may be made upon any general agent of such corporation, company, or person, wherever found, or upon any station, ticket, or other agent, or person transacting the business thereof or selling tickets therefor in the county where the action is brought; if there is no such agent in said county, then service may be had upon any such agent or person transacting said business in any other county. [C., '51, § 1727; R., '60, § 2825; C., '73, § 2611; C., '97, § 3529; S., '13, § 3529.]

NOTE: Service on joint common carriers, see § 10979.

11073. Consolidated railways. If the action is against any railway corporation which has merged and consolidated its stock, property, franchises, and liabilities with that of any other railway corporation, as authorized by section 7923, or which has sold or leased its property and franchises to any other railway corporation as authorized by section 7942, service of the original notice may be made upon any station, ticket, or other agent of the merged, vendee, or lessee corporation in the county where the action is brought; if there is no such agent in said county, then service may be made upon such agent or person in any other county. [S., '13, § 3529.]

11074. Insurance company. If the action is against an insurance company, for loss or damage upon any contract of insurance or indemnity, service may be had upon any general agent of the company wherever found, or upon any recording agent or agent who has authority to issue policies. [C., '97, § 3530.]

NOTE: Service in actions against bonding companies, see §§ 12769 and 12770.

11075. Municipal corporation. When the action is against a municipal corporation, service may be made on the mayor or clerk. [C., '51, § 1726; R., '60, § 2824; C., '73, § 2612; C., '97, § 3531.]

11076. School township or district. When the action is against a school township or independent district, service may be made on the president or secretary. [C., '97, § 3531.]

11077. Other corporations. When the action is against any other corporation, service may

be made on any trustee or officer thereof, or on any agent employed in the general management of its business, or on any of the last known or acting officers of such corporation. [C., '51, § 1726; R., '60, § 2824; C., '73, § 2612; C., '97, § 3531.]

11078. Publication service substituted. If no person can be found on whom service can be made as provided in the six preceding sections, it may be made by publication as provided in other cases. [C., '73, § 2612; C., '97, § 3531.]

11079. Actions arising out of agency. When a corporation, company, or individual has, for the transaction of any business, an office or agency in any county other than that in which the principal resides, service may be made on any agent or clerk employed in such office or agency, in all actions growing out of or connected with the business of that office or agency. [C., '51, § 1705; R., '60, § 2827; C., '73, § 2613; C., '97, § 3532.]

11080. Minor. If the defendant is a minor under fourteen years of age, the service must be made on his father, mother, or guardian, but if there be none of these within the state, then on the person therein having care of or control over him, or with whom he resides, or in whose service he is employed. When he is over fourteen years of age, service on him shall be sufficient. [C., '51, § 1729; R., '60, § 2828; C., '73, § 2614; C., '97, § 3533.]

11081. Service by publication. Service may be made by publication, when an affidavit is filed that personal service can not be made on the defendant within this state, in either of the following cases:

1. *Recovery of real property.* In actions brought for the recovery of real property, or an estate or interest therein.

2. *Partition.* In an action for the partition of real property.

3. *Foreclosure.* In an action for the sale of real property under a mortgage, lien, or other incumbrance or charge.

4. *Specific performance—wills.* In actions to compel the specific performance of a contract of sale of real estate, or in actions to establish or set aside a will, where in such cases any or all of the defendants reside out of this state and the real property is within it.

5. *Attachment.* In actions brought against a nonresident of this state, or a foreign corporation, having in the state property or debts owing to such defendant, sought to be taken by any of the provisional remedies, or to be appropriated in any way.

6. *Adjudicating title or interest.* In actions which relate to or the subject of which is real or personal property in this state, when any defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a nonresident of the state or a foreign corporation.

7. *Absconding creditor.* In all actions where the defendant, being a resident of the state, has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid the service of a notice, or keeps himself concealed therein with like intent.

8. *Divorce.* Where the action is for a divorce, if the defendant is a nonresident of the state, or his residence is unknown.

9. *Quieting title to real estate.* Where the action is an action to quiet title to real estate if the defendant is a nonresident of the state, or his residence is unknown.

10. *Annulment of marriage.* Where the action is for the annulment of an illegal marriage, if the defendant is a nonresident of the state, or his residence is unknown.

11. *Sale or mortgage in probate.* In actions or proceedings by an executor, administrator, or guardian to sell or mortgage the real property belonging to the estate of a decedent, or to a ward, as the case may be. [C., '51, § 1725; R., '60, §§ 2831, 2832; C., '73, § 2618; C., '97, § 3534; S., '13, § 3534; 39 G. A., ch. 263, § 1.]

11082. *Unknown defendants.* Where it is necessary to make an unknown person defendant, the petition shall be sworn to and state the claim of plaintiff with reference to the property involved in the action, that the name and residence of such person is unknown to the plaintiff, and that he has sought diligently to learn the same. [R., '60, § 2836; C., '73, § 2622; C., '97, § 3538; S. S., '15, § 3538; 40 Ex. G. A., H. F. 228, § 5.]

11083. *Notice to unknown defendants.* The notice thereof shall contain the name of the plaintiff, a description of the property, the claim of the plaintiff thereto, the relief demanded, the name of the court, and the term in which appearance must be made. Such notice must be entitled in the name of the plaintiff against the unknown claimants of the property and shall be signed by the plaintiff or his attorney. [R., '60, § 2837; C., '73, § 2623; C., '97, § 3538; S. S., '15, § 3538; 40 Ex. G. A., H. F. 228, § 5.]

11084. *Method of publication.* The publication must be of the original notice required for the commencement of actions, once each week for four consecutive weeks, before or after the filing of the petition, in some newspaper of general circulation published in the county where the petition is or will be filed, selected by the plaintiff or his attorney. [R., '60, §§ 2833, 2839; C., '73, §§ 2619, 2625; C., '97, §§ 3535, 3540; S., '13, § 3540; 40 Ex. G. A., H. F. 228, § 6.]

11085. *Service complete—proof.* When the foregoing provisions have been complied with, the defendant so notified shall be required to appear as if personally served on the day of the last publication, within the county in which the petition is filed, proof thereof being made by the affidavit of the publisher or his foreman,

and filed before default is taken. [C., '51, § 1732; R., '60, §§ 2834, 2839; C., '73, §§ 2620, 2625; C., '97, §§ 3536, 3540; S., '13, § 3540; 40 Ex. G. A., H. F. 228, § 7.]

11086. *Actual service.* Actual personal service of the notice within or without the state supersedes the necessity of publication. [R., '60, § 2835; C., '73, § 2621; C., '97, § 3537.]

11087. *Mode of appearance.* The mode of appearance may be:

1. By delivering to the plaintiff or the clerk of the court a memorandum in writing to the effect that the defendant appears, signed either by the defendant in person or his attorney, dated the day of its delivery and filed in the case.

2. By entering an appearance in the appearance docket or judge's calendar or by announcing to the court an appearance which shall be entered of record.

3. By taking part either personally or by attorney in the trial of the case. [R., '60, § 2840; C., '73, § 2626; C., '97, 3541; S., '13, § 3541.]

11088. *Special appearance.* Any defendant may appear specially for the sole purpose of attacking the jurisdiction of the court. Such special appearance shall be announced at the time it is made and shall limit the party to jurisdictional matters only and shall give him no right to plead to the merits of the case. [C., '73, § 2626; C., '97, § 3541; S., '13, § 3541.]

11089. *Exemption to members general assembly.* No member of the general assembly shall be held to appear or answer in any civil or special action in any court while such general assembly is in session. [C., '97, § 3541; S., '13, § 3541.]

11090. *Holidays.* No person shall be held to answer or appear in any court on any day now or hereafter made a legal holiday. [C., '97, § 3541; S., '13, § 3541.]

11091. *Unserved parties—optional procedure.* When the action is against two or more defendants, and one or more of them shall have been served, but not all, the plaintiff may proceed as follows:

1. If the action is against defendants who are jointly, or jointly and severally, or severally liable only, he may, without prejudice to his rights in that or any other action against those not served, proceed against those served in the same manner as if they were the only defendants; if he recovers against those jointly liable only, he may take judgment against all thus liable, which may be enforced against the joint and separate property of those served, but not against the separate property of those not served, until they have had opportunity to show cause why judgment should not be enforced against their separate property; or,

2. He may continue until the next term and bring in the other defendants; but at such

second term the action shall proceed against all who have been served in due time, and no further delay shall be allowed to bring in the others, unless all that appear shall consent to such delay, or the cause is continued for other reasons. [R., '60, § 2841; C., '73, § 2627; C., '97, § 3542.]

11092. Real estate—action indexed. When a petition affecting real estate is filed, the clerk of the district court where filed shall forthwith index same in an index book to be provided therefor, under the tract number which describes the property, entering in each instance the cause number as a guide to the record of court proceedings which affect such real estate. If the petition be amended to include other parties or other lands, same shall be similarly indexed. When the cause is finally determined the result shall be indicated in said book wherever indexed. [R., '60, § 2842; C., '73, § 2628; C., '97, § 3543; S., '13, § 3543; 37 G. A., ch. 324, § 1.]

11093. Lis pendens. When so indexed said action shall be considered pending so as to charge all third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's rights. [R., '60, § 2842; C., '73, § 2628; C., '97, § 3543; S., '13, § 3543.]

11094. Exceptions. If the real property affected be situated in the county where the petition is filed it shall be unnecessary to show in said index lands not situated in said county. [R., '60, § 2842; C., '73, § 2628; C., '97, § 3543; S., '13, § 3543; 37 G. A., ch. 324, § 1.]

11095. Real estate in foreign county—superior court. When any part of real property, the subject of an action, is situated in any other county than the one in which the action is brought, or when the action is brought in the superior court, the plaintiff must, in order to affect third persons with constructive notice of the pendency thereof, file with the clerk of the district court of such county a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby, who shall at once index and enter a memorandum thereof in the incumbrance book. [R., '60, § 2843; C., '73, § 2629; C., '97, § 3544; 40 Ex. G. A., H. F. 228, § 8.]

11096. Constructive notice. From the time of such indexing, the pendency of the action shall be constructive notice to subsequent purchasers or incumbrancers thereof, who shall be bound by all the proceedings taken after the filing of such notice, to the same extent as if parties to the action. [R., '60, § 2843; C., '73, § 2629; C., '97, § 3544; 40 Ex. G. A., H. F. 228, § 8.]

11097. Notice perpetuated. Within two months after the determination of the action, there shall also be filed with such clerk a certified copy of the final order, judgment or decree, who shall enter and index the same as though rendered in that county, or such notice of pendency shall cease to be constructive notice. [R., '60, § 2843; C., '73, § 2629; C., '97, § 3544; 40 Ex. G. A., H. F. 228, § 8.]

CHAPTER 490

PUBLICATION AND POSTING OF NOTICES

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11098. Publications in English. All notices, proceedings, and other matter whatsoever, required by law or ordinance to be published in a newspaper, shall be published only in the English language and in newspapers published wholly in the English language. [C., '73, §§ 306, 307; C., '97, § 549; S., '13, § 549; 38 G. A., ch. 82, § 2; 40 Ex. G. A., S. F. 145, § 18.]

11099. Violation. Any person who is in any manner a party to violation of the preceding section shall be guilty of a misdemeanor. [C., '97, § 550; 40 Ex. G. A., S. F. 145, § 19.]

11100. Permissible selection. Publications may be made in a newspaper published once a week or oftener. [C., '73, § 3832; C., '97, § 1293; S., '13, § 1293; 40 Ex. G. A., H. F. 40, § 8.]

11101. Selection by plaintiff, etc. The plaintiff or executor or his attorney, in all publications concerning actions, executions, and estates, may designate the newspaper in which such publication shall be made. [C., '73, § 3832; C., '97, § 1293; S., '13, § 1293; 40 Ex. G. A., H. F. 40, § 8.]

11102. Selection by county officers. The clerk of the district court, sheriff, auditor, treasurer, and recorder shall designate the newspapers in which the notices pertaining to their respective offices shall be published and the board of supervisors shall designate the newspapers in which all other county notices and proceedings, not required to be published in the official county newspapers, shall be published. [R., '60, § 314; C., '73, § 306; C., '97, § 549; S., '13, § 549; 40 Ex. G. A., S. F. 145, § 17.]

11103. Refusal to publish. If publication be refused when copy therefor, with the cost or security for payment of the cost, is tendered, such publication may be made in some other newspaper of general circulation at or nearest to the county seat, with the same effect as if made in the newspaper so refusing. [C., '73, § 3832; C., '97, § 1293; S., '13, § 1293; 40 Ex. G. A., H. F. 40, § 9.]

11104. Days of publication. When the publication is in a newspaper which is published oftener than once a week, the succeeding publications of such notice shall be on the same day of the week as the first publication. This section shall not apply to any notice for the publication of which provision inconsistent herewith is specially made. [31 G. A., ch. 9; § 32; S., '13, § 1293-a; 40 Ex. G. A., H. F. 40, § 10.]

NOTE: Proof of publication, see § 11349.

11105. Payment for publication. Publications required by law shall, in the first instance, be paid for by the party causing publication, and shall be taxed as costs in the

proceeding. [C., '51, § 2558; R., '60, § 4165; C., '73, § 3838; C., '97, § 1296; 40 Ex. G. A., H. F. 40, § 12.]

11106. Fees for publication. The compensation, when not otherwise fixed, for the publication in a newspaper of any notice, order, citation, or other publication required or allowed by law, shall not exceed one dollar for one insertion, and fifty cents for each subsequent insertion, for each ten lines of brevier type, or its equivalent, in a column not less than two and one-sixth inches in width. [C., '73, § 3832; C., '97, § 1293; S., '13, § 1293; 40 Ex. G. A., H. F. 40, § 7.]

11107. Fee for posting. In all cases where an officer in the discharge of his duty is required to post an advertisement or notice, he shall, when not otherwise provided, be allowed twenty-five cents, and the same mileage as a sheriff. [C., '51, § 2558; R., '60, § 4165; C., '73, § 3838; C., '97, § 1296; 40 Ex. G. A., H. F. 40, § 11.]

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CHAPTER 491

PLEADINGS

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11108. Technical forms. All technical forms of action and pleading, all common counts, general issues, and all fictions, are abolished, and hereafter the forms of pleading in civil actions, and the rules by which their sufficiency is to be determined, are those prescribed in the code. [R., '60, § 2872; C., '73, § 2644; C., '97, § 3557.]

11109. Pleadings defined. Pleadings are the written statements by the parties of their respective claims and defenses and are:

1. The petition of the plaintiff.
2. The motion, demurrer or answer of the defendant.
3. The motion, demurrer or reply of the plaintiff.
4. The motion, or demurrer of the defendant. [R., '60, §§ 2873, 2874; C., '73, § 2645; C., '97, § 3557.]

11110. Filing—option. The filing of a pleading or motion in the clerk's office during a term, and a memorandum of such filing made in the appearance docket within the time allowed, shall be equivalent to filing the same in open court. [R., '60, § 2871; C., '73, § 2643; C., '97, § 3557.]

11111. Petition. The petition must contain:

1. The name of the court and county in which the action is brought.
2. The names of the parties to the action, plaintiffs and defendants, followed by the words, "petition at law" or "petition in equity", as the case may be.
3. A statement of the facts constituting the plaintiff's cause of action.
4. A demand of the relief to which the plaintiff considers himself entitled, and if for money, the amount thereof. [C., '51, § 1736; R., '60, § 2875; C., '73, § 2646; C., '97, § 3559.]

11112. Counts or divisions—prayer. Where the petition contains more than one cause of action, each must be stated wholly in a count or division by itself, and must be sufficient in itself; but one prayer for judgment may include a sum based on all counts seeking a money remedy. [R., '60, § 2875; C., '73, § 2646; C., '97, § 3559.]

11113. When paragraphing required. In a petition by equitable proceedings, each division shall also be separated into paragraphs numbered as such, and each paragraph shall contain, as nearly as may be convenient, a complete and distinct statement. [R., '60, § 2875; C., '73, § 2646; C., '97, § 3559.]

11114. Answer. The answer shall contain:

1. The name of the court and county, and of the plaintiffs and defendants, but when there are several plaintiffs and defendants it shall only be necessary to give the first name of each class, with the words "and others".
2. A general denial of each allegation of the petition, or of any knowledge or information thereof sufficient to form a belief.
3. A special denial of each allegation of the petition controverted by the defendant, or

of any knowledge or information thereof sufficient to form a belief.

4. A statement of any new matter constituting a defense.

5. A statement of any new matter constituting a counterclaim. [R., '60, § 2880; C., '73, § 2655; C., '97, § 3566.]

11115. Multiple defenses and counterclaims. The defendant may set forth in his answer as many causes of defense or counterclaim, whether legal or equitable, as he may have. [R., '60, § 2880; C., '73, § 2655; C., '97, § 3566.]

11116. Answer of guardian. The guardian of a minor or other person, or attorney for a person in prison, must deny in the answer all the material allegations of the petition prejudicial to such defendant. [R., '60, § 2893; C., '73, § 2656; C., '97, § 3567.]

11117. Divisions of answer. Each affirmative defense shall be stated in a distinct division of the answer, and must be sufficient in itself, and must intelligibly refer to that part of the petition to which it is intended to apply. [R., '60, § 2882; C., '73, § 2657; C., '97, § 3568.]

11118. Nonnecessity for prayer. In the defense part of an answer or reply, it shall not be necessary to make a prayer for judgment. [R., '60, § 2883; C., '73, § 2658; C., '97, § 3569.]

11119. Counts and divisions numbered. The counts of the petition, and divisions of a petition, in equity, must be consecutively numbered as such, and so must the divisions of the answer and reply. [R., '60, § 2902; C., '73, § 2705; C., '97, § 3616.]

11120. Correction of defect. If any pleading does not conform to the foregoing requirements as to form, divisions, or numbering, or the distinct or separate statements of its causes of action or defense, the court may, on its own motion or that of the adverse party, order the same to be corrected, on such terms as it may impose. [R., '60, § 2903; C., '73, § 2706; C., '97, § 3617.]

11121. Time to plead. The defendant shall, in an action commenced in a court of record, demur or answer to the original petition, or assail the same by motion, before noon of the second day of the term. [C., '51, § 1737; R., '60, § 2849; C., '73, § 2635; C., '97, § 3550.]

11122. Timing pleadings. The day on which the judge actually opens court shall, for the purpose of timing the pleading, be considered the first day of the term. [R., '60, § 2857; C., '73, § 2637; C., '97, § 3553.]

11123. Extension of time. The court may extend the time for filing any pleading beyond that herein fixed, but shall do so with due regard to making up issues at the earliest day practicable. [R., '60, § 2859; C., '73, § 2638; C., '97, § 3554.]

11124. Copy of pleading—fee. Every party, at the time of filing any petition, answer, reply, demurrer, or motion, except a motion for con-

tinuance or change of venue, shall file with the same one plain copy thereof for the use of the adverse party, and, on failure to do so, the cause may be continued at the option of the adverse party, or the paper so filed stricken from the files. A fee of ten cents per hundred words shall be allowed for all copies and taxed with the costs. [C., '97, § 3558; S. S., '15, § 3558.]

11125. Delivery by clerk. The clerk of the court wherein the copy herein provided for is filed, shall, as soon as may be, either deliver or mail such copy to the attorney for the adverse party. [S. S., '15, § 3558.]

11126. Taking files from office. The original files shall be taken from the clerk's office only on order of the judge by leaving with the clerk a receipt for the same. [C., '97, § 3558; S. S., '15, § 3558.]

11127. Motion for more specific statement. When the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may, on motion, require it to be made more definite and certain. [R., '60, § 2948; C., '73, § 2720; C., '97, § 3630.]

11128. Requirements. Such motion shall point out wherein the pleading is not sufficiently specific, or it shall be disregarded. If the reason for such demand exists outside of the pleadings, the motion must state the same, and be supported by affidavit. [R., '60, § 2948; C., '73, § 2720; C., '97, § 3630.]

11129. Pleading contract. No pleading which recites or refers to a contract shall be sufficiently specific unless it states whether it is in writing or not. [R., '60, § 2948; C., '73, § 2720; C., '97, § 3630.]

11130. Equitable actions—defensive matter. In actions triable in equity, every defense in point of law arising upon the face of the petition, cross petition, petition of intervention, answer, counterclaim, or reply, as the case may be, for misjoinder of parties, or which in an action triable at law may be made by demurrer, shall be made by motion to dismiss or in the answer or reply. [R., '60, §§ 2876, 2878, 2894, 2899, 2920, 2961, 2963, 2964; C., '73, §§ 2648, 2650, 2664, 2668; C., '97, §§ 3561, 3563, 3575, 3579; 40 Ex. G. A., S. F. 229, § 1.]

11131. Disposal of points of law. Every point of law going to the whole or any material part of the cause or causes of action stated in the petition, counterclaim, cross petition, petition of intervention, or defense stated in the answer or reply, shall, on order of court or on motion of either party, be presented to the court and disposed of before final hearing. [40 Ex. G. A., S. F. 229, § 2.]

11132. Plea in bar or abatement. In such actions, every defense presented by plea in bar or in abatement, or to the jurisdiction under general appearance, made in the answer or reply, shall on motion of either party or on

order of court be separately heard and disposed of before the trial of the principal case. [40 Ex. G. A., S. F. 229, § 3.]

11133. Notice for hearing. The motion to dismiss may be set down for hearing by either party upon five days' written notice to the adverse party or his attorney. Such notice with proof of service shall be filed with the original papers. [40 Ex. G. A., S. F. 229, § 4.]

11134. Time of answer or reply. If the motion be denied, the mover shall answer or reply within five days thereafter, unless the parties agree to a longer time or the court, before or after the expiration of said time, shall extend the same. [40 Ex. G. A., S. F. 229, § 5.]

11135. Motions and demurrers. All demurrers and motions assailing a pleading shall be in writing, and filed before answer or reply has been filed to the pleading assailed, except as provided in this chapter, and specify and number the causes on which they are founded, and none other shall be argued or considered. Only one motion of the same kind and one demurrer assailing such pleading shall be filed, unless such pleading is amended after the filing of a motion or demurrer thereto. [C., '51, § 1754; R., '60, §§ 2864-2866, 2877, 2894, 2899; C., '73, §§ 2639, 2649, 2664, 2668; C., '97, §§ 3551, 3562, 3575, 3579; 40 Ex. G. A., S. F. 229, § 6.]

11136. Subsequent pleadings. Each party shall so demur, assail by motion, answer, or reply to all subsequent pleadings, including amendments thereto and substitutes therefor, before noon of the day succeeding that on which the pleading is filed, but all pleadings must be filed by the time the cause is reached for trial. [R., '60, §§ 2850, 2851, 2858; C., '73, § 2636; C., '97, § 3552.]

11137. Pleadings suspended. A motion or demurrer assailing any pleading, or count thereof, suspends the necessity of filing any other pleading thereto until the same has been determined, and the next pleading shall be filed by the morning of the day succeeding such determination. [R., '60, § 2867; C., '73, § 2640; C., '97, § 3555.]

11138. Argument and submission. All motions and demurrers shall be argued and submitted on the morning of the day succeeding the filing thereof, or at such other time as is ordered by the court, unless the cause is sooner reached for trial. [R., '60, § 2869; C., '73, § 2641; C., '97, § 3555.]

11139. Withdrawal of motion or demurrer. A motion or demurrer once filed shall not be withdrawn without the consent of the adverse party in writing, or given in open court, or of the court. [R., '60, § 2870; C., '73, § 2642; C., '97, § 3556.]

11140. Amended before answer. The plaintiff, without prejudice to the proceedings already had, may amend his petition, without leave, at any time before the answer is filed,

notice thereof being given the defendant or his attorney, and the defendant shall have the same time to plead thereto as he had to the original petition. [R., '60, § 2975; C., '73, § 2647; C., '97, § 3560.]

11141. Demurrer—causes of—actions at law. In actions triable at law, any party may demur to any pleading filed by any adverse party upon one or more of the following grounds appearing on its face:

1. That the court has no jurisdiction of the person of the defendant or the subject of the action.

2. That the adverse party has not legal capacity to sue.

3. That there is another action pending between the same parties for the same cause.

4. That there is a defect of parties, plaintiffs or defendants.

5. That the facts stated in the pleading attacked do not entitle the adverse party to the relief demanded.

6. That the pleading attacked shows that the cause of action or defense is barred by the statute of limitations; or fails to show it to be in writing where it should be so evidenced; or, if founded on an account or writing as evidence of indebtedness, that neither such writing or account or copy thereof is incorporated into or attached to the pleading, or a sufficient reason stated for not doing so. [C., '51, § 1754; R., '60, §§ 2876, 2877, 2920, 2961, 2963, 2964; C., '73, § 2648; C., '97, § 3561; 40 Ex. G. A., S. F. 229, § 7.]

11142. Insufficient statement. It shall not be sufficient to state the grounds of demurrer in the foregoing terms. [C., '73, § 2649; C., '97, § 3562; 40 Ex. G. A., S. F. 229, § 7.]

11143. Demurrer to one of several causes. The defendant may demur to one or more of the several causes of action alleged in the petition, and answer as to the residue. [C., '51, § 1738; R., '60, § 2879; C., '73, § 2651; C., '97, § 3564.]

11144. Effect of demurrer. A demurrer shall be considered as an admission of the allegations of the pleading demurred to for the purposes of demurrer, and for such purposes only; and when a demurrer shall be overruled and the party demurring shall answer or reply, the ruling on the demurrer shall not be considered as an adjudication of any question raised by the demurrer; and in such case the sufficiency of the pleading thus attacked shall be determined as if no demurrer had been filed. [C., '97, § 3564.]

11145. Failure to demur. No pleading shall be held sufficient on account of a failure to demur thereto. [C., '97, § 3564.]

11146. Joinder in demurrer. The opposite party shall be deemed to join in a demurrer whenever he shall not amend the pleading to which it is addressed. [R., '60, § 2900; C., '73, 2652; C., '97, § 3565.]

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11147. Pleading over. Upon a demurrer being overruled, the party demurring may answer or reply. [R., '60, § 2976; C., '73, § 2653; C., '97, § 3565.]

11148. Failure to plead over—effect. Upon a decision of a demurrer, if the adverse party fail to amend or plead over, the same consequences shall ensue as though a verdict had passed against the plaintiff or the defendant had made default, as the case may be. [C., '51, §§ 1755, 1771; R., '60, § 3086; C., '73, § 2654; C., '97, § 3565.]

11149. Objection raised by answer or reply. When any ground of demurrer or of motion to dismiss, as the case may be, does not appear on the face of the petition, cross-petition, or counterclaim the issue may be raised by answer or reply. [R., '60, § 2878; C., '73, § 2650; C., '97, § 3563; 40 Ex. G. A., S. F. 229, § 8.]

11150. Objection raised by motion to arrest judgment. When any petition, cross-petition, or counterclaim fails to state a cause of action, or any answer or reply a defense, advantage may be taken thereof by a motion in arrest of judgment, numbering and specifying the grounds thereof. [R., '60, § 2878; C., '73, § 2650; C., '97, § 3563; 40 Ex. G. A., S. F. 229, § 9.]

11151. Counterclaim—how stated. Each counterclaim must be stated in a distinct count or division, and must be:

1. When the action is founded on contract, a cause of action also arising on contract, or ascertained by the decision of a court.

2. A cause of action in favor of the defendants, or some of them, against the plaintiffs, or some of them, arising out of the contracts or transactions set forth in the petition or connected with the subject of the action.

3. Any new matter constituting a cause of action in favor of the defendant, or all of the defendants if more than one, against the plaintiff, or all of the plaintiffs if more than one, and which the defendant or defendants might have brought when suit was commenced, or which was then held, either matured or not, if matured when so plead. [C., '51, § 1740; R., '60, §§ 2884, 2886, 2889, 2891; C., '73, § 2659; C., '97, § 3570.]

11152. Equitable answer—paragraphs. An equitable division must also be separated into paragraphs and numbered, as required in regard to an equitable cause of action in the petition. [R., '60, § 2885; C., '73, § 2660; C., '97, § 3571.]

11153. Counterclaim by comaker or surety. A comaker or surety, when sued alone, may, with the consent of his comaker or principal, avail himself by way of counterclaim of a debt or liquidated demand due from the plaintiff at the commencement of the action to such comaker or principal, but the plaintiff may meet such counterclaim in the same way as if made by the comaker or principal himself. [R., '60, § 2887; C., '73, § 2661; C., '97, § 3572.]

11154. New party. When a new party is necessary to a final decision upon a counterclaim, the court may either permit such party to be made, or direct that it be stricken out of the answer and made the subject of a separate action. [R., '60, §§ 2888, 2890; C., '73, § 2662; C., '97, § 3573.]

11155. Cross-petition—third parties. When a defendant has a cause of action affecting the subject matter of the action against a codefendant, or a person not a party to the action, he may, in the same action, file a cross-petition against the codefendant or other person. The defendants thereto may be notified as in other cases, and defense thereto shall be made in the time and manner prescribed in regard to the original petition, and with the same right of obtaining provisional remedies applicable to the case. The prosecution of the cross-petition shall not delay the trial of the original action, when a judgment can be rendered therein that will not prejudice the rights of the parties to the cross-petition. [R., '60, § 2892; C., '73, § 2663; C., '97, § 3574.]

11156. Reply—when necessary. There shall be no reply except:

1. Where a counterclaim is alleged.
2. Where some matter is alleged in the answer to which the plaintiff claims to have a defense by reason of the existence of some fact which avoids the matter alleged in the answer. [C., '51, § 1741; R., '60, § 2895; C., '73, § 2665; C., '97, § 3576.]

11157. Statements of. When a reply must be filed, it shall consist of:

1. A general or specific denial of each allegation or counterclaim controverted, or any knowledge or information thereof sufficient to form a belief.
2. Any new matter, not inconsistent with the petition, constituting a defense to the matter alleged in the answer; or the matter in the answer may be confessed, and any new matter alleged, not inconsistent with the petition, which avoids the same. [R., '60, § 2896; C., '73, § 2666; C., '97, § 3577.]

11158. Allegation of new matter—effect. An allegation of new matter in avoidance shall not be treated as a waiver of the denial of the allegations of the answer implied by law. [C., '97, § 3577.]

11159. Defenses to counterclaim—paragraphs. Any number of defenses, negative or affirmative, are pleadable to a counterclaim, and each affirmative matter of defense in the reply shall be sufficient in itself, and must intelligibly refer to the part of the answer to which it is intended to apply. A division of equitable matter must also be separated into paragraphs and numbered, as required in case of such matter in the answer. [R., '60, §§ 2897, 2898; C., '73, § 2667; C., '97, § 3578.]

11160. Signing and verification. Every pleading must be subscribed by the party or his attorney, and when any pleading in a case shall

be verified by affidavit, all subsequent pleadings, except motions and demurrers, shall be verified also. In all cases of verification of a pleading, the affidavit shall be to the effect that the affiant believes the statements therein to be true. [R., '60, § 2904; C., '73, § 2669; C., '97, § 3580.]

11161. Verification by officer or agent. Where a corporation is a party, the affidavit may be made by any officer or agent thereof. [R., '60, § 2905; C., '73, § 2670; C., '97, § 3581.]

11162. Verification by parties united in interest. When there are several parties united in interest, the affidavit may be made by any one of them. [R., '60, § 2906; C., '73, § 2671; C., '97, § 3582.]

11163. Verification by agent or attorney. If the pleading is founded on a written instrument for the payment of money only, and such instrument is in possession of the agent or attorney, the affidavit may be made by such agent or attorney, so far as relative to the statement of the cause of action thereon; but when relief is asked other than a money judgment or decree of foreclosure, the affidavit must contain averments showing competency, as herein provided. [R., '60, § 2907; C., '73, § 2672; C., '97, § 3583.]

11164. Verification by person knowing facts. If the statements of a pleading are known to any person other than the party, such person may make the affidavit, which shall contain averments showing affiant competent to make the same. [R., '60, §§ 2908, 2909; C., '73, § 2673; C., '97, § 3584.]

11165. Verification of counterclaim. Where the petition is not verified, and the answer contains a counterclaim, the same may be verified apart from the defense part of the answer, and the foregoing provisions are applicable to the counterclaim as if the same were a separate pleading. [C., '73, § 2674; C., '97, § 3585.]

11166. Verification not required. Verifications shall not be required to any pleading of a guardian, executor, or prisoner in the penitentiary, nor to any pleading controverting the answer of a garnishee, nor to one grounded on an injury to the person or the character. [R., '60, §§ 2910, 2912; C., '73, § 2675; C., '97, § 3586.]

11167. Crimination not required. When it can be seen from the pleading to be answered that an admission of the truth of its allegations might subject the party to a criminal prosecution, no verification shall be required. [R., '60, § 2911; C., '73, § 2676; C., '97, § 3587.]

11168. Failure to verify. If a pleading is not duly verified, it may be stricken out on motion; but such defect will be waived if the other party responds thereto, or proceeds to trial without such motion. [R., '60, § 2916; C., '73, § 2677; C., '97, § 3588.]

11169. Verification applicable to amount claimed. The verification of the pleading does

not apply to the amount claimed, except in actions founded on contract, express or implied, for the payment of money only. [R., '60, § 2914; C., '73, § 2678; C., '97, § 3589.]

11170. Effect of verification. The verification shall not make other or greater proof necessary on the side of the adverse party. [R., '60, § 2915; C., '73, § 2679; C., '97, § 3590.]

11171. Verification of amendments. Amendments may be made without being verified, unless a new and distinct cause of action or counterclaim is thereby introduced, in which case they shall be verified as other pleadings. [R., '60, § 2981; C., '73, § 2680; C., '97, § 3591.]

11172. Mitigating facts. In any action brought to recover damages for an injury to person, character, or property, the defendant may set forth, in a distinct division of his answer, any facts, of which evidence is legally admissible, to mitigate or otherwise reduce the damages, whether a complete defense or justification be pleaded or not, and he may give in evidence the mitigating circumstances, whether he proves the defense or justification or not. [R., '60, § 2929; C., '73, § 2682; C., '97, § 3593.]

11173. Necessity to plead. No mitigating circumstances shall be proved unless pleaded, except such as are shown by or grow out of the testimony introduced by the adverse party. [R., '60, § 2929; C., '73, § 2682; C., '97, § 3593.]

NOTE: Contributory negligence as mitigating fact, see § 11210.

11174. Intervention. Any person who has an interest in the matter in litigation, in the success of either of the parties to the action, or against both, may become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the petition, or by uniting with the defendant in resisting the claim of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant, either before or after issue has been joined in the cause, and before the trial commences. [R., '60, § 2930; C., '73, § 2683; C., '97, § 3594.]

11175. Decision—delay—costs. The court shall determine upon the intervention at the same time that the action is decided, and the intervenor has no right to delay; and if the claim of the intervenor is not sustained he shall pay all costs of the intervention. [R., '60, § 2931; C., '73, § 2684; C., '97, § 3595.]

11176. Manner of intervening. The intervention shall be by petition, which must set forth the facts on which it rests, and all the pleadings therein shall be governed by the same principles and rules as obtain in other pleadings.

If such petition is filed during term, the court shall direct the time in which an answer shall be filed thereto. [R., '60, § 2932; C., '73, § 2685; C., '97, § 3596.]

11177. Variance. No variance between the allegations in a pleading and the proof is to be regarded as material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. [C., '51, § 1758; R., '60, § 2972; C., '73, § 2686; C., '97, § 3597.]

11178. Proof of injury—amendments. Whenever it is alleged that a party has been so misled, that fact must be shown by proof to the satisfaction of the court, and such proof must also show in what respect he has been so misled, and thereupon the court may order the pleading to be amended upon such terms as may be just. [R., '60, § 2972; C., '73, § 2686; C., '97, § 3597.]

11179. Immaterial variance. When the variance is not material, the court may direct the fact to be found according to the evidence, and order an immediate amendment without cost. [C., '51, § 1757; R., '60, § 2973; C., '73, § 2687; C., '97, § 3598.]

11180. Failure of proof. When, however, the allegation of the claim or defense to which the proof is directed is unproved in its general meaning, it shall not be held to be a case of variance within the three preceding sections, but a failure of proof. [R., '60, § 2974; C., '73, § 2688; C., '97, § 3599.]

11181. Amount of proof. A party shall not be compelled to prove more than is necessary to entitle him to the relief asked for, or any lower degree included therein, nor more than sufficient to sustain his defense. [R., '60, § 2966; C., '73, § 2729; C., '97, § 3639.]

11182. Amendments allowed. The court may, on motion of either party at any time, in furtherance of justice and on such terms as may be proper, permit such party to amend any pleadings or proceedings by adding or striking out the name of a party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceedings to the facts proved. [C., '51, § 1759; R., '60, § 2977; C., '73, § 2689; C., '97, § 3600.]

NOTE: Amendment to cure defect, see § 11557.

11183. Continuance on account of amendment. When a party amends a pleading or proceeding, the case shall not be continued in consequence thereof, unless the court is satisfied, by affidavit or otherwise, that the adverse party could not be ready for trial in consequence of such amendment; if the court is thus satisfied, a continuance may be granted to some day in the same or the next term of said court. [C., '51, § 1756; R., '60, § 2979; C., '73, § 2691; C., '97, § 3602.]

11184. How amendment made—substitute pleading. All matters of supplement or amendment, whether of addition or subtraction, shall

not be made by erasure or interlineation of the original, or by addition thereto, but upon a separate paper, which shall be filed and constitute, with the original, but one pleading. But if it be stated in such paper that it is a substitute for the former pleading intended to be amended, it shall be so taken, but the pleading superseded by the substitute shall not be withdrawn from the files. [R., '60, § 2983; C., '73, § 2692; C., '97, § 3603.]

11185. Interrogatories annexed to pleading. Either party may annex to his petition, answer, or reply written interrogatories to any one or more of the adverse parties, concerning any of the material facts in issue in the action, the answer to which, on oath, may be read by either party as a deposition between the party interrogating and the party answering. [R., '60, § 2985; C., '73, § 2693; C., '97, § 3604.]

11186. Answers. The party answering shall not be confined to responding merely to the interrogatories, but may state any new matter concerning the same cause of action, which shall likewise be read as a deposition. [R., '60, § 2986; C., '73, § 2694; C., '97, § 3605.]

11187. Time for answering—exceptions. The interrogatories shall be answered at the same time the pleading to which they are annexed is answered or replied to, unless they are excepted to by the adverse party; in which event the court shall determine as to the propriety of the interrogatories propounded, and which of them shall be answered, and within what time such answer shall be made. [R., '60, § 2987; C., '73, § 2695; C., '97, § 3606.]

11188. Continuance for failure to answer. The trial of an action by ordinary proceedings shall not be postponed on account of the failure to answer interrogatories, if the party interrogated is present in court at the trial, so that he may be orally examined; nor in case of absence, unless an affidavit is filed showing the facts the party believes will be proved by the answers thereto, and that the party has not filed the interrogatories for the purpose of delay; whereupon, if the party will consent that the facts stated in the affidavit shall be considered as admitted by those interrogated, the trial shall not be postponed for that cause. [R., '60, § 2988; C., '73, § 2696; C., '97, § 3607.]

11189. Particularity required. The party, in answering such interrogatories, shall distinguish clearly between what is stated from his personal knowledge and what from information or belief merely. An unqualified statement of a fact shall be considered as made of his personal knowledge. [R., '60, § 2989; C., '73, § 2697; C., '97, § 3608.]

11190. How verified. The answers to the interrogatories shall be verified by the affidavit of the party making them, to the effect that the statements therein made of his own personal knowledge are true, and those made from the information of others he believes to be true.

When the party interrogated is a corporation, the answers and affidavit verifying the same shall be made by the officers or agents of such corporation who have knowledge of the subjects and matters covered by the interrogatories. [R., '60, § 2990; C., '73, § 2698; C., '97, § 3609.]

11191. Effect of failure to answer. Where a party filing interrogatories shall also file an affidavit that he verily believes the subject of the interrogatories, or any of them, is in the personal knowledge of the opposite party, and that his answers thereto, if truly made from such knowledge, will sustain the claim or defense, or any part thereof, and the opposite party shall fail to answer the same within the time allowed therefor, or by the court extended, the claim or defense, or the part thereof, according to such affidavit, shall be deemed to be sustained, and judgment given accordingly. [R., '60, § 2991; C., '73, § 2699; C., '97, § 3610.]

11192. Answers compelled. The court may compel answers to interrogatories by process of contempt, and may, on the failure of the party to answer them, after reasonable time allowed therefor, dismiss the petition, or strike the pleading of the party so failing from the files. [R., '60, § 2992; C., '73, § 2700; C., '97, § 3611.]

11193. Denial as to time, sum, quantity, or place. In all cases in which a denial is made by answer or reply concerning a time, sum, quantity, or place alleged, the party denying shall declare whether such denial is applicable to every time, sum, quantity, or place and, if not, what time, sum, quantity, or place he admits. [R., '60, § 2901; C., '73, § 2701; C., '97, § 3612.]

11194. Allegations as to time. When time is material, the day, month, and year, or when there is a continued act, its duration must be alleged. When time is not material it need not be stated, and, if stated, need not be proved. [R., '60, § 2955; C., '73, § 2702; C., '97, § 3613.]

11195. Allegations as to place. It shall be necessary to allege a place only when it forms a part of the substance of the issue. [R., '60, § 2957; C., '73, § 2703; C., '97, § 3614.]

11196. Evidence under denial. Under a denial of an allegation, no evidence shall be introduced which does not tend to negative some fact the party making the controverted allegation is bound to prove. [R., '60, § 2944; C., '73, § 2704; C., '97, § 3615.]

11197. Sham defenses—redundant matter. Sham and irrelevant answers and defenses, and irrelevant and redundant matter in all pleadings, may be stricken out on motion, upon such terms as the court may, in its discretion, impose. [C., '51, § 1753; R., '60, §§ 2861, 2946; C., '73, §§ 2707, 2719; C., '97, § 3618.]

11198. Statute—how pleaded. In pleading a statute, or a right derived therefrom, it shall be sufficient to refer thereto so as to plainly designate it, and the court shall thereupon

take judicial notice thereof. [R., '60, § 2926; C., '73, § 2708; C., '97, § 3619.]

11199. Inconsistent defenses—verification. Inconsistent defenses may be stated in the same answer or reply, and when a verification is required, it must be to the effect that the party believes one or the other to be true, but can not determine which. [R., '60, § 2937; C., '73, § 2710; C., '97, § 3620.]

11200. Pleading exceptions. When a party claims a right in derogation of the general law, or when his claim is founded upon an exception of any kind, he shall set forth such claim or such exception particularly in his pleading. [R., '60, § 2940; C., '73, § 2711; C., '97, § 3621.]

11201. What deemed admitted. Every material allegation in a pleading not controverted by a subsequent pleading shall, for the purposes of the action, be taken as true, but the allegations of the answer not relating to a counterclaim, and of the reply, are to be deemed controverted. A party desiring to admit any allegations which, by this and the following section, would be considered controverted, may file at any time a written admission thereof. [C., '51, § 1742; R., '60, § 2917; C., '73, § 2712; C., '97, § 3622.]

11202. Allegations as to value or damage. An allegation of value, or amount of damage, shall not be held true by a failure to controvert it. [C., '51, § 1742; R., '60, § 2917; C., '73, § 2712; C., '97, § 3622.]

11203. Account—bill of particulars. If a pleading is founded on an account, a bill of particulars thereof, with the items therein consecutively numbered, must be incorporated into or attached to such pleading, and considered a portion thereof, subject to be made more specific on motion, and shall define and limit the proof, but may be amended as other pleadings. [R., '60, § 2918; C., '73, § 2713; C., '97, § 3623.]

11204. Account deemed true. In all actions for money due upon an open account, when the defendant has been personally served with the original notice therein, and the petition is duly verified, and where a bill of particulars of said account is incorporated into or attached to the petition, if the defendant makes default or fails to controvert or deny the same or any of the items thereof by pleading duly verified, the account, or so much thereof as is not so controverted or denied, shall be taken as true and admitted. [C., '97, § 3624.]

11205. Judgment—how pleaded. In pleading a judgment, or the determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but it may be stated to have been duly given or made. [R., '60, § 2921; C., '73, § 2714; C., '97, § 3625.]

11206. Conditions precedent. In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts

constituting such performance, but the party may state, generally, that he duly performed all the conditions on his part. [R., '60, § 2922; C., '73, § 2715; C., '97, § 3626.]

11207. Allegation of representative capacity. A plaintiff suing as a corporation, partnership, executor, guardian, or in any other way implying corporate, partnership, representative, or other than individual capacity, need not state the facts constituting such capacity or relation, but may aver the same generally, or as a legal conclusion, and where a defendant is held in such capacity or relation, a plaintiff may aver such capacity or relation in the same general way. [R., '60, § 2923; C., '73, § 2716; C., '97, § 3627.]

11208. Fact denial required. If either of the allegations contemplated in the three preceding sections is controverted, it shall not be sufficient to do so in terms contradictory of the allegation, but the facts relied on shall be specifically stated. [R., '60, § 2925; C., '73, § 2717; C., '97, § 3628.]

11209. Matters specifically pleaded. Any defense showing that a contract, written or oral, or any instrument sued on, is void or voidable; or that the instrument was delivered to a person as an escrow, or showing matter of justification, excuse, discharge, or release, and any defense which admits the facts of the adverse pleading, but by some other matter seeks to avoid their legal effect, must be specially pleaded. [R., '60, § 2942; C., '73, § 2718; C., '97, § 3629.]

11210. Negligence—burden of proof—mitigation. In all actions brought in the courts of this state to recover damages caused by the negligence of the defendant, the burden of proving contributory negligence shall rest upon the defendant. This section shall only apply to actions brought by an employee against his or her employer, or by a passenger against a common carrier, and in such cases contributory negligence may be pleaded in mitigation of damages. [S., S., '15, § 3593-a.]

11211. Judicial notice. Matters of which judicial notice is taken need not be stated in a pleading. [R., '60, § 2950; C., '73, § 2722; C., '97, § 3632.]

11212. Pleading conveyance. When a party claims by conveyance, he may state it according to its legal effect or name. [R., '60, § 2952; C., '73, § 2723; C., '97, § 3633.]

11213. Pleading estate. It shall not be necessary to allege the commencement of either a particular or a superior estate, unless it be essential to the merits of the case. [R., '60, § 2954; C., '73, § 2724; C., '97, § 3634.]

11214. Injuries to goods. In actions for injuries to goods and chattels, their kind or species shall be alleged. [R., '60, § 2956; C., '73, § 2725; C., '97, § 3635.]

11215. Injuries to real property. In actions for injuries to real property, the petition

shall describe the property, and when the injury is to an incorporeal hereditament, shall describe the property in respect of which the right is claimed, as well as the right itself, either by the numbers by which the property is designated in the national survey, or by its abutments, or by its courses and distances, or by any name which it has acquired by reputation certain enough to identify it. [R., '60, § 2958; C., '73, § 2726; C., '97, § 3636.]

11216. Malice. When the party intends to prove malice to affect damages, he must aver the same. [R., '60, § 2959; C., '73, § 2727; C., '97, § 3637.]

11217. Bond—breaches of. In an action on a bond with conditions, the party suing thereon shall notice the conditions and allege the facts constituting the breaches relied on. [C., '51, § 1818; R., '60, § 2960; C., '73, § 2728; C., '97, § 3638.]

11218. Denial of genuineness of signature. When a written instrument is referred to in a pleading, and the same or a copy thereof is incorporated in or attached to such pleading, the signature thereto, and to any indorsement thereon, shall be deemed genuine and admitted, unless the person whose signature the same purports to be shall, in a pleading or writing filed within the time allowed for pleading, deny under oath the genuineness of such signature. [R., '60, § 2967; C., '73, § 2730; C., '97, § 3640.]

11219. Execution by third party. If such instrument is not negotiable, and purports to be executed by a person not a party to the proceeding, the signature thereto shall not be deemed genuine or admitted, if a party to the proceeding, in the manner and within the time before mentioned, states under oath that he has no knowledge or information sufficient to enable him to form a belief as to the genuineness of such signature. [R., '60, § 2967; C., '73, § 2730; C., '97, § 3640.]

11220. Inspection. The person whose signature purports to be signed to such instrument shall, on demand, be entitled to an inspection thereof. [C., '73, § 2730; C., '97, § 3640.]

11221. Supplemental pleading. Either party may be allowed to make a supplemental petition, answer, or reply, alleging facts material

to the case which have happened or have come to his knowledge since the filing of the former pleading; nor shall such new pleading be considered a waiver of former pleadings. [C., '51, § 1749; R., '60, § 2968; C., '73, § 2731; C., '97, § 3641.]

11222. Matter in abatement. Matter in abatement may be stated in the answer or reply, either together with or without causes of defense in bar, and no one of such causes shall be deemed to overrule the other. [R., '60, § 2969; C., '73, § 2732; C., '97, § 3642.]

11223. Waiver of matter in bar. A party shall not, after trial on matter of abatement, be allowed in the same action to answer or reply matter in bar. [R., '60, § 2969; C., '73, § 2732; C., '97, § 3642.]

11224. Subsequent defenses. Any defense arising after the commencement of any action shall be stated according to the fact, without any formal commencement or conclusion. [R., '60, § 2970; C., '73, § 2733; C., '97, § 3643.]

11225. Presumption. Any answer which does not state whether the defense therein set up arose before or after action shall be held to be of matter arising before action. [R., '60, § 2970; C., '73, § 2733; C., '97, § 3643.]

11226. Consolidation of actions. When two or more actions are pending in the same court which might have been joined, the defendant may, on motion and notice to the adverse party, require him to show cause why the same shall not be consolidated, and if no sufficient cause is shown, it shall be done. [R., '60, § 2980; C., '73, § 2734; C., '97, § 3644.]

11227. Lost pleading—substitution. If an original pleading is lost, or withheld by anyone, the court may order a copy thereof to be substituted, or a substituted pleading to be filed. [C., '51, § 1760; R., '60, § 2982; C., '73, § 2735; C., '97, § 3645.]

11228. Immaterial errors disregarded. The court, in every stage of an action, must disregard any error or defect in the proceeding which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect. [R., '60, § 2978; C., '73, § 2690; C., '97, § 3601.]

NOTE: Immaterial exceptions, see § 11548.

CHAPTER 492

MOTIONS AND ORDERS

11229. Motion defined.
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 11232. Notice of motion.
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 11235. Parties served.
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11229. Motion defined. A motion is a written application for an order, addressed to the court or to a judge in vacation, by any party to an action, or by anyone interested therein. [R., '60, § 3428; C., '73, § 2911; C., '97, § 3831.]

11230. Several objects. Several objects may be included in the same motion, if they all grow out of or are connected with the action in which it is made. [R., '60, § 3438; C., '73, § 2912; C., '97, § 3832.]

11231. Proof by affidavit — cross-examination. Testimony to sustain or resist a motion may be in the form of affidavits, or in such other form as the parties may agree on or the court or judge direct. If by affidavit, the person making the same may be required by the court or judge to appear and submit to a cross-examination. [R., '60, § 3440; C., '73, § 2913; C., '97, § 3833.]

11232. Notice of motion. A party who has appeared in an action, or who has been served with the original notice therein in any manner provided by this code, shall take notice of all motions filed during term time, upon the same being filed by the clerk and entered in the appearance docket. All motions filed in vacation shall be entered on such docket and served as herein required. [R., '60, § 3429; C., '73, § 2914; C., '97, § 3834.]

11233. Form and service of notice. When notice of a motion is required to be served, it shall state the names of the parties to the action or proceeding in which it is made, the name of the court or judge before whom it is to be made, and the place where and the day on which it is to be heard, and, if affidavits are to be used on the hearing, the notice shall be accompanied with copies thereof, and shall be served such length of time before the hearing as the court or judge may fix. [R., '60, § 3430; C., '73, § 2915; C., '97, § 3835.]

11234. Who may serve. Notices and copies of motions mentioned in this chapter may be served by anyone who would be authorized to serve an original notice. [R., '60, § 3431; C., '73, § 2916; C., '97, § 3836.]

11237. Return.
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11235. Parties served. The service shall be on each of the parties adverse to the motion, if more than one, or on an attorney of record of such party. [R., '60, § 3432; C., '73, § 2917; C., '97, § 3837.]

11236. Manner of service. The service may be personal on such party or attorney, or may be made in the same manner as is provided for the service of the original notice in civil actions; or it may be served on the attorney by being left at his office with any person having the charge thereof. [C., '51, § 2496; R., '60, § 3433; C., '73, § 2918; C., '97, § 3838.]

11237. Return. Any officer authorized to serve any notice shall serve the same at once and make prompt return to the party who delivered it to him, and a failure to do so shall be punished as a disobedience of the process of the court. [R., '60, § 3435; C., '73, § 2919; C., '97, § 3839.]

11238. What to state. The return of proof of service must state the manner in which it was made. [C., '51, § 2499; R., '60, § 3436; C., '73, § 2920; C., '97, § 3840.]

11239. Court may direct mode of service. When the party has no known place of abode in this state, and no attorney in the county where the action is pending, or where the parties, plaintiffs or defendants, are numerous, the court or judge may direct the mode of serving such notices, and on whom they shall be served. [R., '60, § 3437; C., '73, § 2921; C., '97, § 3841.]

11240. "Order" defined. Every direction of a court or judge, made or entered in writing and not included in a judgment, is an order. [R., '60, § 3427; C., '73, 2922; C., '97, § 3842.]

11241. Vacation orders. A judge's order may issue in vacation, directing any of the officers of the court in relation to the discharge of their duties. [C., '51, § 2210; R., '60, § 3795; C., '73, § 2923; C., '97, § 3843.]

11242. How long in force. Such order shall be in force only during the vacation in which it is granted, and for the first two days of the ensuing term. [C., '51, § 2211; R., '60, § 3796; C., '73, § 2924; C., '97, § 3844.]

11243. Bond. The judge granting it may require the filing of a bond as in case of an injunction, unless from the nature of the case such requirement would be clearly unnecessary or improper. [C., '51, § 2212; R., '60, § 3797; C., '73, § 2925; C., '97, § 3845.]

11244. Filed and entered. Orders made out of court shall forthwith be filed with and entered by the clerk in the journal of the court in the same manner as orders made in the term. [R., '60, § 3439; C., '73, § 2926; C., '97, § 3846.]

CHAPTER 493

SECURITY FOR COSTS

- 11245. Bond for costs.
- 11246. Nonresident intervener—action in probate.
- 11247. Procedure.
- 11248. Dismissal for failure to furnish.
- 11249. Becoming nonresident.

- 11250. Additional security.
- 11251. Prohibited sureties.
- 11252. Judgment on bond.
- 11253. Cash in lieu of bond.

11245. Bond for costs. If a defendant, at any time before answering shall make and file an affidavit stating that he has a good defense in whole or in part, the plaintiff, or party bringing the action or proceeding, if he is a nonresident of this state, or a private or foreign corporation, before any other proceedings in the action, must file in the clerk's office a bond with sureties to be approved by the clerk, in an amount to be fixed by the court, for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other to which it may be carried, either to the defendant or to the officers of the court. [R., '60, § 3442; C., '73, § 2927; C., '97, § 3847; S., '13, § 3847; 37 G. A., ch. 47, § 2.]

institution and at any time before its final determination, becomes a nonresident of this state, he may be required to give security for costs in the manner provided in the preceding sections of this chapter. [R., '60, § 3444; C., '73, § 2929; C., '97, § 3849; S., '13, § 3849.]

11246. Nonresident intervener—action in probate. A nonresident intervener or party bringing an action in probate shall be required in like manner to give bond on motion of any party required to answer or defend. [S., '13, § 3847; 37 G. A., ch. 47, § 2.]

11250. Additional security. In an action in which a bond for costs has been given, the defendant may, at any time before trial, make a motion for additional security, and if on such motion the court is satisfied that the surety in the plaintiff's bond has removed from the state, or it is not sufficient for the amount thereof, it may dismiss the action unless, in a reasonable time to be fixed by the court, sufficient security is given by the plaintiff. [R., '60, § 3445; C., '73, § 2930; C., '97, § 3850.]

11247. Procedure. The application for such security shall be by motion, filed with the case, and the facts supporting it must be shown by affidavits annexed thereto, which may be responded to by counter affidavits on or before the hearing of the motion, and each party shall file all his affidavits at once, and none thereafter. [R., '60, § 3448; C., '73, § 2927; C., '97, § 3847; S., '13, § 3847; 37 G. A., ch. 47, § 2.]

11251. Prohibited sureties. No attorney or other officer of the court shall be received as security in any proceeding in court. [R., '60, § 3446; C., '73, § 2931; C., '97, § 3851.]

11248. Dismissal for failure to furnish. An action in which a bond for costs is required by the three preceding sections shall be dismissed, if a bond is not given in such time as the court allows. [R., '60, § 3443; C., '73, § 2928; C., '97, § 3848.]

11252. Judgment on bond. After final judgment has been rendered in an action in which security for costs has been given as above required, the court may, on motion of the defendant or any other person having the right to such costs or any part thereof, render judgment summarily, in the name of the defendant or his legal representatives, against the sureties for costs, for the amount of costs adjudged against the plaintiff, or so much thereof as may remain unpaid. [R., '60, § 3447; C., '73, § 2932; C., '97, § 3852.]

11249. Becoming nonresident. If the plaintiff or any intervener in an action, after its

11253. Cash in lieu of bond. In all cases in which a bond for security for costs is required, the party required to give such security may deposit in cash the amount fixed in said bond with the clerk of the district court or justice of the peace in lieu of said bond. [S., '13, § 3852-a.]

CHAPTER 494

EVIDENCE

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GENERAL PRINCIPLES

11254. Witnesses — who competent. Every human being of sufficient capacity to understand the obligation of an oath is a competent witness in all cases, except as otherwise declared. [C., '51, § 2388; R., '60, § 3978; C., '73, § 3636; C., '97, § 4601.]

11255. Credibility. Facts which have heretofore caused the exclusion of testimony may still be shown for the purpose of lessening its credibility. [C., '51, § 2389; R., '60, § 3979; C., '73, § 3637; C., '97, § 4602.]

11256. Interest. No person offered as a witness in any action or proceedings in any court, or before any officer acting judicially, shall be excluded by reason of his interest in the event of the action or proceeding, or because he is a party thereto, except as provided in this chapter. [R., '60, § 3980; C., '73, § 3638; C., '97, § 4603.]

11257. Transaction with person since deceased. No party to any action or proceeding, nor any person interested in the event thereof, nor any person from, through, or under whom any such party or interested person derives any interest or title by assignment or otherwise, and no husband or wife of any said party or person, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the commencement of such examination deceased, insane or lunatic, against the executor, administrator, heir at law, next of kin, assignee, legatee, devisee, or survivor of such deceased person, or the assignee or guardian of such insane person or lunatic. [R., '60, § 3982; C., '73, § 3639; C., '97, § 4604.]

11258. Exceptions. This prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor, or guardian shall be examined on his own behalf, or as to which the

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testimony of such deceased or insane person or lunatic shall be given in evidence. [R., '60, § 3982; C., '73, § 3639; C., '97, § 4604.]

11259. Depositions taken conditionally. Any person may have his own deposition, or that of any other person, read in evidence in all cases where his evidence would be incompetent by the provisions of the second preceding section, by causing it to be taken, either before or after action is brought, during the lifetime or sanity of the person against whose executor, heir, or other representative the same is to be used, if such deposition shall have been taken and filed ten days prior to the death or insanity of such person. If after action is brought, such deposition may be taken in the usual manner; if before, then the same may be taken *de bene esse*, as provided by law. [C., '73, § 3640; C., '97, § 4605.]

NOTE: Perpetuating testimony, see § 11400 et seq.

11260. Husband or wife as witness. Neither the husband nor wife shall in any case be a witness against the other, except:

1. In a criminal prosecution for a crime committed one against the other, or
2. In a civil action or proceeding one against the other, or
3. In a civil action by one against a third party for alienating the affections of the other, or
4. In any civil action brought by a judgment creditor against either the husband or the wife, to set aside a conveyance of property from one to the other on the ground of want of consideration or fraud, and to subject the same to the payment of his judgment. [C., '51, § 2391; R., '60, § 3983; C., '73, § 3641; C., '97, § 4606; S., '13, § 4606.]

11261. Witness for each other. In all civil and criminal cases the husband and wife may be witnesses for each other. [C., '51, § 2391; R., '60, § 3983; C., '73, § 3641; C., '97, § 4606; S., '13, § 4606.]

11262. Communications between husband and wife. Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal in testimony any such communication made while the marriage subsisted. [C., '51, § 2392; R., '60, § 3984; C., '73, § 3642; C., '97, § 4607.]

11263. Communications in professional confidence. No practicing attorney, counselor, physician, surgeon, or the stenographer or confidential clerk of any such person, who obtains such information by reason of his employment, minister of the gospel or priest of any denomination shall be allowed, in giving testimony, to disclose any confidential communication properly intrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline. Such prohibition shall not apply to cases where the party in whose favor the same is made waives the rights conferred. [C., '51, §§ 2393, 2394; R., '60, §§ 3985, 3986; C., '73, § 3643; C., '97, § 4608; S., '13, § 4608.]

11264. Public officers. A public officer can not be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure. [C., '51, § 2395; R., '60, § 3987; C., '73, § 3644; C., '97, § 4609.]

11265. Judge as witness. The judge of the court is a competent witness for either party, and may be sworn upon the trial. In such case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge. [C., '51, § 2408; R., '60, § 4005; C., '73, § 3645; C., '97, § 4610.]

11266. Civil liability. No witness is excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability. [C., '51, § 2396; R., '60, § 3988; C., '73, § 3646; C., '97, § 4611.]

11267. Criminating questions. When the matter sought to be elicited would tend to render a witness criminally liable, or to expose him to public ignominy, he is not compelled to answer, except as otherwise provided. [C., '51, § 2397; R., '60, § 3989; C., '73, § 3647; C., '97, § 4612; S., '13, § 4612; 40 G. A., ch. 236, § 1.]

11268. Exceptions. In the following cases no witness shall be excused from giving testimony, or from producing any evidence, upon the ground that his testimony or such evidence would tend to render him criminally liable or expose him to public ignominy:

1. In prosecutions against gaming, betting, lotteries, and dealing in options.

2. In prosecutions for creating, entering into or becoming a member of, or a party to, any pool, trust, agreement, contract, combination, confederation, or understanding with any other corporation, partnership, association, or individual to regulate or fix the price of any

article of merchandise or commodity, or to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced, or sold in this state.

3. In prosecutions for keeping gambling houses.

4. In prosecutions or proceedings for violations of the statutes relating to intoxicating liquors, including proceedings wherein a peace officer is examined as to his knowledge of violations of such statutes.

5. In prosecutions for the violation of the statutes relating to elections.

6. In prosecutions for making, soliciting, or receiving contributions for political purposes by or to any political committee, party, or candidate, or representative thereof.

7. In actions wherein an election is contested and the matter sought to be elicited relates to the qualification of the witness as a voter, or consists of a statement by the witness as to the candidate for whom the witness voted when the witness was not a qualified voter.

8. In actions for damages for violation of the laws regulating common carriers.

9. In prosecutions for violations of the statutes relating to the free transportation of persons by common carriers of passengers.

10. In investigations by the board of railroad commissioners into the manner and method pursued by common carriers, subject to their jurisdiction, in conducting their business.

11. In examinations or investigations conducted by any committee of the general assembly.

12. In prosecutions against public officers for unlawfully opening, or divulging the contents of, sealed bids.

13. In proceedings auxiliary to executions.

14. In examinations by the board of control of state institutions, or by a committee thereof, of the affairs of any institution under the control of said board.

15. In any action or investigation in relation to any public work or public contract.

1. [C., '97, § 4612; S., '13, § 4612; 40 G. A., ch. 236, § 2.] 2. [C., '97, § 4612; S., '13, § 4612; 40 G. A., ch. 236, § 2.] 3. [C., '97, § 4612; S., '13, § 4612; 40 G. A., ch. 236, § 2.] 4. [R., '60, § 1578; C., '73, §§ 1538, 1551; C., '97, §§ 2399, 2428, 4612; S., '13, § 2428; 40 G. A., ch. 236, § 2.] 5. [S., '13, § 1137-a2; 40 G. A., ch. 236, § 2.] 6. [S., '13, § 1641-j; 40 G. A., ch. 236, § 2.] 7. [C., '51, § 360; R., '60, § 590; C., '73, § 709; C., '97, § 1215; 40 G. A., ch. 236, § 2.] 8. [C., '97, § 2131; 40 G. A., ch. 236, § 2.] 9. [S., '13, § 2157-h; 40 G. A., ch. 236, § 2.] 10. [C., '97, § 2133; 40 G. A., ch. 236, § 2.] 11. [C., '73, § 17; C., '97, § 21; S., '13, § 2727-a2; 38 G. A., ch. 79, § 1; 40 G. A., ch. 236, § 2.] 12. [S., '13, § 1279-b; 40 G. A., ch. 236, § 2.] 13. [C., '51, § 1956; R., '60, § 3378; C., '73, § 3138; C., '97, § 4075; 40 G. A., ch. 236, § 2.] 14. [S., '13, § 2727-a10; 40 G. A., ch. 236, § 2.] 15. [S., '13, § 1279-d; 40 G. A., ch. 236, § 2.]

11269. Immunity from prosecution. No person compelled under the preceding section to

testify or produce evidence tending to incriminate him or to expose him to public ignominy shall be prosecuted for any crime which such testimony or evidence tends to prove or to which the same relates. This section shall not exempt any person from prosecution for perjury. [C., '51, § 2397; R., '60, § 3989; C., '73, § 3647; C., '97, §§ 2399, 4612; S., '13, §§ 2727-a2, 2727-a10, 4612; 40 G. A., ch. 236, § 3.]

11270. Previous conviction. A witness may be interrogated as to his previous conviction for a felony. No other proof is competent, except the record thereof. [C., '51, § 2398; R., '60, § 3990; C., '73, § 3648; C., '97, § 4613.]

11271. Moral character. The general moral character of a witness may be proved for the purpose of testing his credibility. [R., '60, § 3991; C., '73, § 3649; C., '97, § 4614.]

11272. Whole of a writing or conversation. When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; thus, when a letter is read, all other letters on the same subject between the same parties may be given. [C., '51, § 2399; R., '60, § 3992; C., '73, § 3650; C., '97, § 4615.]

11273. Detached acts, declarations, or conversations. When a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it fully understood, or to explain the same, may also be given in evidence. [C., '51, § 2399; R., '60, § 3992; C., '73, § 3650; C., '97, § 4615.]

11274. Writing and printing. When an instrument consists partly of written and partly of printed form, the former controls the latter, if the two are inconsistent. [C., '51, § 2400; R., '60, § 3993; C., '73, § 3651; C., '97, § 4616.]

11275. Understanding of parties to agreement. When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it. [C., '51, § 2401; R., '60, § 3994; C., '73, § 3652; C., '97, § 4617.]

11276. Historical and scientific works. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest therein stated. [C., '51, § 2402; R., '60, § 3995; C., '73, § 3653; C., '97, § 4618.]

11277. Subscribing witness—substitute proof. When a subscribing witness denies or does not recollect the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence. [C., '51, § 2403; R., '60, § 3996; C., '73, § 3654; C., '97, § 4619.]

11278. Handwriting. Evidence respecting handwriting may be given by experts, by com-

parison, or by comparison by the jury, with writings of the same person which are proved to be genuine. [C., '51, § 2404; R., '60, § 3997; C., '73, § 3655; C., '97, § 4620.]

11279. Private writing—acknowledgment. Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof. [C., '51, § 2407; R., '60, § 4000; C., '73, § 3656; C., '97, § 4621.]

11280. Entries and writings of deceased person. The entries and other writings of a person deceased, who was in a position to know the facts therein stated, made at or near the time of the transaction, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it, or when made in a professional capacity or in the ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law. [C., '51, § 2405; R., '60, § 3998; C., '73, § 3657; C., '97, § 4622.]

11281. Books of account—when admissible. Books of account containing charges by one party against the other, made in the ordinary course of business, are receivable in evidence only under the following circumstances, subject to all just exceptions as to their credibility:

1. They must show a continuous dealing with persons generally, or several items of charge at different times against the other party in the same book or set of books.

2. It must be shown by the party's oath, or otherwise, that they are his books of original entries.

3. It must be shown in like manner that the charges were made at or near the time of the transactions therein entered, unless satisfactory reasons appear for not making such proof.

4. The charges must also be verified by the party or clerk who made the entries, to the effect that they believe them just and true, or a sufficient reason must be given why such verification is not made. [C., '51, § 2406; R., '60, § 3999; C., '73, § 3658; C., '97, § 4623; S., '13, § 4623.]

11282. Loose-leaf system of accounts. Any loose-leaf or card or other form of entry which may be in use in the ordinary course of business by the party seeking to prove an account against another, and shall have been properly identified as being the original entry of such account shall be admitted as competent evidence for the purpose of proving such account by deposition or in open court, and it shall be competent for any person whose duties in the ordinary course of such business require a personal knowledge of the records of such business, to verify such account or make deposition or testify in open court with regard to any matters pertaining to such records. [38 G. A., ch. 393, § 1.]

11283. Photographic copies. In all cases where depositions are taken by either method

provided by law, outside of the county in which the case is for trial where books of account are competent evidence in the case, the party desiring to offer the entries of said books as evidence may cause the same to be photographed by or under the direction of the officer taking the deposition and such photographic copy when certified by such officer with his seal attached shall be attached to the deposition, and if the record shows affirmatively the preliminary proof required by section 11281, such copy shall be admitted in evidence with the same force and effect as the original. [S., '13, § 4623.]

11284. Notarial certificate of protest. The usual protest of a notary public, without proof of his signature or notarial seal, is prima facie evidence of what it recites concerning the dishonor, and notice thereof, of a bill of exchange or promissory note, and a copy from his record, properly certified by him, shall receive such faith and credit as it is entitled to by the law and custom of merchants. [C., '51, §§ 82, 2414; R., '60, §§ 199, 4011; C., '73, § 3668; C., '97, § 4624.]

11285. Statute of frauds. Except when otherwise specially provided, no evidence of the following enumerated contracts is competent, unless it be in writing and signed by the party charged or by his authorized agent:

1. Those made in consideration of marriage.

2. Those wherein one person promises to answer for the debt, default, or miscarriage of another, including promises by executors to pay the debt of the decedent from their own estate.

3. Those for the creation or transfer of any interest in lands, except leases for a term not exceeding one year.

4. Those that are not to be performed within one year from the making thereof. [C., '51, §§ 2409, 2410; R., '60, §§ 4006, 4007; C., '73, §§ 3663, 3664; C., '97, § 4625; 40 Ex. G. A., H. F. 268, § 1.]

NOTE: Statute of frauds relative to party walls, see § 10174.

Statute of frauds relative to sale of personal property, see § 9983.

11286. Exception. The provisions of paragraph 3 of the preceding section do not apply where the purchase money, or any portion thereof, has been received by the vendor, or when the vendee, with the actual or implied consent of the vendor, has taken and held possession of the premises under and by virtue of the contract, or when there is any other circumstance which, by the law heretofore in force, would have taken the case out of the statute of frauds. [C., '51, § 2411; R., '60, § 4008; C., '73, § 3665; C., '97, § 4626; 40 Ex. G. A., H. F. 268, § 2.]

11287. Contract not denied in the pleadings. The above regulations, relating merely to the proof of contracts, shall not prevent the enforcement of those not denied in the pleadings, except in cases when the contract is sought to be enforced, or damages recovered for the breach thereof, against some person other than him who made it. [C., '51, § 2412; R., '60, § 4009; C., '73, § 3666; C., '97, § 4627.]

11288. Party made witness. The oral evidence of the maker against whom the unwritten contract is sought to be enforced shall be competent to establish the same. [C., '51, § 2413; R., '60, § 4010; C., '73, § 3667; C., '97, § 4628.]

11289. Instruments affecting real estate—adoption of minors. Every instrument in writing affecting real estate, or the adoption of minors, which is acknowledged or proved and certified as required, may be read in evidence without further proof. [C., '51, § 1227; R., '60, §§ 2235, 4001; C., '73, § 3659; C., '97, § 4629.]

11290. Record or certified copy. When the recording of any instrument in the office of any public officer is authorized by law, the record of such instrument, or a duly authenticated copy thereof, is competent evidence whenever, by the party's own oath or otherwise, the original is shown to be lost, or not belonging to the party wishing to use the same, nor within his control. [C., '51, §§ 1228, 1476; R., '60, §§ 2528, 4002; C., '73, §§ 2197, 3660; C., '97, § 4630.]

11291. Absence of seal. In such case, it is no objection to the record that no official seal is appended to the recorded acknowledgment thereof, if, when the acknowledgment purports to have been taken by an officer having an official seal, there is a statement in the certificate of acknowledgment that the same is made under his hand and seal of office, and the record shows, by a scroll or otherwise, that there was such a seal, which will be presumptive evidence that it was attached to the original certificate. [C., '51, § 1228; R., '60, § 4002; C., '73, § 3660; C., '97, § 4630.]

11292. Retrospective. The provisions of the two preceding sections are intended to apply to all instruments heretofore recorded, as well as those hereafter to be recorded. [C., '51, § 1229; R., '60, §§ 2237, 4003; C., '73, § 3661; C., '97, § 4631.]

11293. Presumption rebuttable. Neither the certificate, the record, nor the transcript thereof is conclusive evidence of the facts therein stated. [C., '51, § 1230; R., '60, §§ 2238, 4004; C., '73, § 3662; C., '97, § 4632.]

11294. United States and state patents. United States and state patents for land in the state, and duly certified copies thereof from the general land office of the United States, or the state land office, that have been or may be recorded in the recorder's office of the county in which the land is situated, shall be matters of record, and such record, and copies thereof, certified to by the recorder, may be received and read in evidence in all courts, with like effect as the record of other instruments, and other certified copies of original papers recorded in his office; and such patents and certified copies may be recorded without an acknowledgment. [C., '97, § 4633; S., '13, § 4633.]

11295. Field notes and plats. A copy of the field notes of any surveyor, or a plat made by him and certified under oath as correct, may be received as evidence to show the shape or dimensions of a tract of land, or any other fact the ascertainment of which requires the exercise of scientific skill or calculation only. [C., '51, § 2431; R., '60, § 4046; C., '73, § 3701; C., '97, § 4634.]

11296. Records and entries in public offices. Duly certified copies of all records and entries or papers belonging to any public office, or by authority of law filed to be kept therein, shall be evidence in all cases of equal credibility with the original record or papers so filed. [C., '51, § 2432; R., '60, § 4047; C., '73, § 3702; C., '97, § 4635.]

11297. Copies of books of original entries. Copies of entries made in the book of "copies of original entries", kept as a record in the office of the county recorder, when such book has been compared with the originals and certified as true copies by the register of the United States land office at which such original entries were made, may, when certified by the recorder to be true copies, be received and read in evidence in all of the courts, with like effect as certified copies of original papers recorded in his office. [R., '60, § 4049; C., '73, § 3704; C., '97, § 4636.]

11298. Additional entries. Copies of additional entries shall, from time to time, be procured as made, certified as required in the preceding section, and entered in the book of "copies of original entries", until all the lands in the county have been entered and so certified. [R., '60, § 4050; C., '73, § 3705; C., '97, § 4637.]

11299. Officer to give copies of records. Every officer having the custody of a public record or writing shall furnish any person, upon demand and payment of the legal fees therefor, a certified copy thereof. [C., '51, § 2433; R., '60, § 4051; C., '73, § 3706; C., '97, § 4638.]

11300. Maps in office of surveyor general. Copies of all maps, official letters, and other documents in the office of the surveyor general of the United States, when certified by that officer according to law, shall be received by the courts of this state as presumptive evidence of the existence and contents of the originals, and that they are copies of the originals, notwithstanding such maps, official letters, or other papers, may themselves be copied. [R., '60, § 4052; C., '73, § 3707; C., '97, § 4639.]

11301. Certificate as to loss of paper. The certificate of a public officer, that he has made diligent and ineffectual search for a paper in his office, is of the same efficacy in all cases as if such officer had personally appeared and sworn to such facts. [C., '51, § 2434; R., '60, § 4053; C., '73, § 3708; C., '97, § 4640.]

11302. Duplicate receipt of receiver of land office. The usual duplicate receipt of the re-

ceiver of any land office, or the certificate of such receiver that the books of his office show the sale of a tract of land to a certain individual, is proof of title, equivalent to a patent, against all but the holder of an actual patent. [C., '51, § 2435; R., '60, § 4054; C., '73, § 3709; C., '97, § 4641.]

11303. Certificate of register or receiver. The certificate of the register or receiver of any land office of the United States, as to the entry of land within his district, shall be presumptive evidence of title, in the person entering, to the real estate therein named. [R., '60, § 4055; C., '73, § 3710; C., '97, § 4642.]

11304. Official signature presumed genuine. In the cases contemplated in the ten preceding sections, the signature of the officer shall be presumed to be genuine until the contrary is shown. [C., '51, § 2436; R., '60, § 4056; C., '73, § 3711; C., '97, § 4643.]

11305. Judicial record—of this state or federal courts. A judicial record of this state or any court of the United States may be proved by the production of the original, or a copy thereof certified by the clerk or person having the legal custody thereof, authenticated by his seal of office, if he have one. [C., '51, § 2437; R., '60, § 4057; C., '73, § 3712; C., '97, § 4644.]

11306. Of another state. That of another state may be proved by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of a judge, chief justice, or presiding magistrate that the attestation is in due form of law. [C., '51, § 2438; R., '60, § 4058; C., '73, § 3713; C., '97, § 4645.]

11307. Of a justice of the peace. The official certificate of a justice of the peace of any of the United States to any judgment and the preliminary proceedings before him, supported by the official certificate of the clerk of any court of record within the county in which such justice resides, stating that he is an acting justice of the peace of that county, and that the signature to his certificate is genuine, is sufficient evidence of such proceedings and judgment. [C., '51, § 2439; R., '60, § 4059; C., '73, § 3714; C., '97, § 4646.]

11308. Of a foreign country. Copies of records and proceedings in the courts of a foreign country may be admitted in evidence upon being authenticated as follows:

1. By the official attestation of the clerk or officer in whose custody such records are legally kept.

2. By the certificate of one of the judges or magistrates of such court, that the person so attesting is the clerk or officer legally intrusted with the custody of such records, and that the signature to his attestation is genuine.

3. By the official certificate of the officer who has the custody of the principal seal of the government under whose authority the court is held, attested by said seal, stating that such court is duly constituted, specifying the gen-

eral nature of its jurisdiction, and verifying the seal of the court. [C., '51, § 2440; R., '60, § 4060; C., '73, § 3715; C., '97, § 4647.]

11309. Presumption of regularity. The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular, except in regard to matters required to be entered of record, and except where otherwise expressly declared. [C., '51, § 2512; R., '60, § 4120; C., '73, § 3669; C., '97, § 4648.]

11310. Executive acts. Acts of the executive of the United States, or of this or any other state of the Union, or of a foreign government, are proved by the records of the state department of the respective governments, or by public documents purporting to have been printed by order of the legislatures of those governments, respectively, or by either branch thereof. [C., '51, § 2441; R., '60, § 4061; C., '73, § 3716; C., '97, § 4649.]

11311. Proceedings of legislature. The proceedings of the legislature of this or any other state of the Union, or of the United States, or of any foreign government, are proved by the journals of those bodies, respectively, or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceeding was had, or by a copy purporting to have been printed by its order. [C., '51, § 2442; R., '60, § 4062; C., '73, § 3717; C., '97, § 4650.]

11312. Printed copies of statutes. Printed copies of the statute laws of this or any other of the United States, or of congress, or of any foreign government, purporting or proved to have been published under the authority thereof, or proved to be commonly admitted as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this state as presumptive evidence of such laws. [C., '51, § 2443; R., '60, § 4063; C., '73, § 3718; C., '97, § 4651.]

11313. Written law or public writing. The public seal of the state or county, affixed to a copy of the written law or other public writing, is admissible as evidence of such law or writing, respectively. [C., '51, § 2444; R., '60, § 4064; C., '73, § 3719; C., '97, § 4652.]

11314. Foreign unwritten law. The unwritten laws of any other state or government may be proved as facts by parol evidence, or by the books of reports of cases adjudged in their courts. [C., '51, § 2444; R., '60, § 4064; C., '73, § 3719; C., '97, § 4652.]

11315. Ordinances of city or town. The printed copies of the ordinance of any municipal corporation, published by its authority, or transcripts of any ordinance, act, or proceeding thereof recorded in any book, or entries on any minutes or journals kept under its direction, and certified by its clerk, shall be received in evidence for any purpose for which the original ordinances, books, minutes, or journals would

be received, and with the same effect. The clerk shall furnish such transcripts, and be entitled to charge therefor at the rate that the clerk of the district court is entitled to charge for transcripts of records from that court. [R., '60, § 1076; C., '73, § 3720; C., '97, § 4653.]

11316. Production of books and papers. The district or superior court may in its discretion, by rule, require the production of any papers or books which are material to the just determination of any cause pending before it, for the purpose of being inspected and copied by or for the party thus calling for them. [C., '51, § 2423; R., '60, § 4026; C., '73, § 3685; C., '97, § 4654.]

11317. Petition—granting or refusing. The petition for that purpose shall be verified, and must state the facts expected to be proved by such books or papers, and that, as the petitioner believes, such books and papers are under the control of the party against whom the rule is sought, and must show wherein they are material. The rule shall thereupon be granted to produce the books and papers, or show cause to the contrary, if the court deems such rule expedient and proper. [C., '51, § 2424; R., '60, § 4027; C., '73, § 3686; C., '97, § 4655; 40 Ex. G. A., H. F. 230, § 1.]

11318. Failure to obey. On failure to obey the rule or show sufficient cause therefor, the same consequences shall ensue as if the party had failed to appear and testify when subpoenaed by the party now calling for the books and papers. [C., '51, § 2425; R., '60, § 4028; C., '73, § 3687; C., '97, § 4656.]

11319. Writing called for. Though a writing called for by one party is by the other produced, the party calling for it is not obliged to use it as evidence in the case. [C., '51, § 2426; R., '60, § 4029; C., '73, § 3688; C., '97, § 4657.]

11320. Subpoenas. The clerks of the several courts shall, on application of any person having a cause or matter pending in court, issue a subpoena for witnesses under the seal of the court, inserting all the names required by the applicant in one subpoena, if practicable, which may be served by the sheriff, coroner, or any constable of the county, or by the party or any other person. [R., '60, § 4012; C., '73, § 3671; C., '97, § 4658.]

11321. Proof of service—costs. When a subpoena is served by any person other than the sheriff, coroner, or constable, proof thereof shall be shown by affidavit; but no costs for serving the same shall be allowed. [R., '60, § 4012; C., '73, § 3671; C., '97, § 4658.]

11322. To whom directed—duces tecum. The subpoena shall be directed to the person therein named, requiring him to attend at a particular time or place to testify as a witness, and it may contain a clause directing the witness to bring with him any book, writing, or other thing under his control, which he is

bound by law to produce as evidence. [C., '51, § 2415; R., '60, § 4013; C., '73, § 3672; C., '97, § 4659.]

11323. How far compelled to attend. Witnesses in civil cases can not be compelled to attend the district or superior court out of the state where they are served, nor at a distance of more than one hundred miles from the place of their residence, or from that where they are served with a subpoena, unless within the same county. [C., '51, § 2416; R., '60, § 4014; C., '73, § 3673; C., '97, § 4660; 38 G. A., ch. 22, § 1.]

11324. Deposit—effect. The court or judge, for good cause shown, may, upon deposit with the clerk of the court of sufficient money to pay the legal fees and mileage of a witness, order a subpoena to issue requiring the attendance of such witness from a greater distance within the state. Such subpoena shall show that it is issued under the provisions hereof. [38 G. A., ch. 22, § 1.]

11325. Thirty mile limit. No other subpoena but that from the district or superior court can compel his attendance at a greater distance than thirty miles from his place of residence, or of service, if not in the same county. [C., '51, § 2416; R., '60, § 4014; C., '73, § 3673; C., '97, § 4660.]

11326. Witness fees. Witnesses in any court of record, except in the police courts, shall receive for each day's attendance two dollars, and in the police courts the same fees and mileage as are allowed before justices of the peace; before a justice of the peace, fifty cents for each day; and in all cases five cents per mile for each mile actually traveled. [C., '51, § 2544; R., '60, § 4153; C., '73, § 3814; C., '97, § 4661; 38 G. A., ch. 61, § 1.]

11327. Attorney, juror, or officer. An attorney, juror, or officer, who is in habitual attendance on the court for the term at which he is examined as a witness, shall be entitled to but one day's attendance. [C., '51, § 2544; R., '60, § 4153; C., '73, § 3814; C., '97, § 4661.]

11328. Peace officer. No peace officer shall, in any case, receive fees as a witness for testifying in regard to any matter coming to his knowledge in the discharge of his official duties in such case, unless the court so orders. [C., '97, § 4661.]

11329. Expert witnesses—fee. Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, shall receive additional compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed four dollars per day while so employed. [C., '73, § 3814; C., '97, § 4661.]

11330. Fees payable by county. For attending before the trial jury or court in criminal cases where the defendant is adjudged not guilty, the fees above provided for attending the district or justice's court shall be paid by the county, upon a certificate of the clerk or justice showing the amount of the services to which they are entitled. [C., '51, § 2544; R., '60, § 4153; C., '73, § 3814; C., '97, § 4661; 37 G. A., ch. 356, § 1.]

11331. Fees in advance. Witnesses, except parties to the action, are entitled to receive in advance, if demanded when subpoenaed, their traveling fees to and from the court, with their fees for one day's attendance. At the commencement of each day after the first, they are further entitled, on demand, to receive the legal fees for that day in advance. If not thus paid, they are not compelled to attend or remain as witnesses. [C., '51, § 2417; R., '60, § 4015; C., '73, § 3674; C., '97, § 4662.]

11332. Reimbursement to party or county. When the county or any party has paid the fees of any witness, and the same is afterward collected from the adverse party, the county or person so paying the same shall, upon the production of the receipt of such witness or other satisfactory evidence, be entitled to such fee, whether it be in the hands of the justice or clerk, or has been paid into the county treasury. [C., '73, § 3817; C., '97, § 4663.]

11333. Failure to attend or testify—liability. For a failure to obey a valid subpoena without a sufficient cause or excuse, or for a refusal to testify after appearance, the delinquent is guilty of a contempt of court and subject to be proceeded against by attachment. He is also liable to the party by whom he was subpoenaed for all consequences of such delinquency, with fifty dollars additional damages. [C., '51, § 2418; R., '60, § 4016; C., '73, § 3675; C., '97, § 4664.]

11334. Proceedings for contempt. Before a witness is so liable for a contempt for not appearing, he must be served personally with the process, by reading it to him, and leaving a copy thereof with him, if demanded, and it must be shown that the fees and traveling expenses allowed by law were tendered to him, if required; or it must appear that a copy of the subpoena, if left at his usual place of residence, came into his hands, with the fees and traveling expenses above mentioned. [C., '51, § 2419; R., '60, § 4017; C., '73, § 3676; C., '97, § 4665.]

11335. Serving subpoena. If a witness conceals himself, or in any manner attempts to avoid being personally served with a subpoena, any sheriff or constable having the subpoena may use all necessary and proper means to serve the same, and may for that purpose break into any building or other place where the witness is to be found, having first made known his business and demanded admission. [C., '51, § 2420; R., '60, § 4018; C., '73, § 3677; C., '97, § 4666.]

11336. When party fails to obey subpoena. In addition to the above remedies, if a party to an action in his own right, on being duly subpoenaed, fails to appear and give testimony, the other party may, at his election, have a continuance of the cause at the cost of the delinquent. [C., '51, § 2421; R., '60, § 4024; C., '73, § 3683; C., '97, § 4667.]

11337. Pleading taken true. Or if he shows by his own testimony, or otherwise, that he could not have a full personal knowledge of the transaction, the court may order his pleading to be taken as true; subject to be reconsidered during the term of the court, upon satisfactory reasons being shown for the delinquency. [C., '51, § 2422; R., '60, § 4025; C., '73, § 3684; C., '97, § 4668.]

11338. Authority to subpoena. Any officer or board authorized to hear evidence shall have authority to subpoena witnesses and compel them to attend and testify, in the same manner as officers authorized to take depositions. [C., '97, § 4669.]

11339. Prisoner produced. A person confined in a penitentiary or jail in the state may, by order of any court of record, be required to be produced for oral examination in the county where he is imprisoned, and in a criminal case in any county in the state; but in all other cases his examination must be by a deposition. [R., '60, § 4019; C., '73, § 3678; C., '97, § 4670.]

11340. Deposition of. While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking thereof. [R., '60, § 4020; C., '73, § 3679; C., '97, § 4671.]

11341. Subpoenas—enforcing obedience. When, by the laws of this or any other state or country, testimony may be taken in the form of depositions to be used in any of the courts thereof, the person authorized to take such depositions may issue subpoenas for witnesses, which must be served by the same officers and returned in the same manner as is required in a justice's court, and obedience thereto may be enforced in the same way and to the same extent a justice of the peace might do, or he may report the matter to the district court or a judge thereof, who may enforce obedience as though the action was pending in said court. [C., '51, §§ 2477-2479; R., '60, §§ 4021-4023; C., '73, §§ 3680-3682; C., '97, § 4672.]

NOTE: For similar provision enforcing obedience to a subpoena, see § 11367.

11342. Affidavits—before whom made. An affidavit is a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state. [R., '60, §§ 4030, 4035; C., '73, §§ 3689, 3690; C., '97, § 4673.]

11343. Foreign affidavits. Those taken out of the state before any judge or clerk of a court of record, or before a notary public, or

a commissioner appointed by the governor of this state to take acknowledgment of deeds in the state where such affidavit is taken, are of the same credibility as if taken within the state. [C., '51, § 2475; R., '60, § 4036; C., '73, § 3691; C., '97, § 4674.]

11344. How affidavits compelled. When a person is desirous of obtaining the affidavit of another who is unwilling to make the same fully, he may apply by petition to any officer competent to take depositions, stating the object for which he desires the affidavit. [C., '51, § 2480; R., '60, § 4038; C., '73, § 3692; C., '97, § 4675.]

11345. Subpoena issued. If the officer is satisfied that the object is legal and proper, he shall issue his subpoena to bring the witness before him, and, if he fails then to make a full affidavit of the facts within his knowledge to the extent required of him by the officer, the latter may proceed to take his deposition by question and answer in the usual way, which may be used instead of an ordinary affidavit. [C., '51, § 2481; R., '60, § 4039; C., '73, § 3693; C., '97, § 4676.]

11346. Notice. The officer may, in his discretion, require notice of the taking of such affidavit or deposition to be given to any person interested in the subject matter, and allow him to be present and cross-examine such witness. [C., '51, § 2482; R., '60, § 4040; C., '73, § 3694; C., '97, § 4677.]

11347. Cross-examination. The court or officer to whom any affidavit is presented as a basis for some action, in relation to which any discretion is lodged with such court or officer, may require the witness to be brought before it or him and submit to a cross-examination by the opposite party. [C., '51, § 2483; R., '60, § 4041; C., '73, § 3695; C., '97, § 4678.]

11348. Signature and seal—presumption. The signature and seal of such officers as are authorized to take depositions or affidavits, having a seal, and the simple signature of such as have no seal, are presumptive evidence of the genuineness thereof, as well as of the official character of the officer, except as otherwise declared. [C., '51, § 2476; R., '60, § 4037; C., '73, § 3696; C., '97, § 4679.]

11349. Newspaper publications—how proved. Publications required to be made in a newspaper may be proved by the affidavit of any person having knowledge of the fact, specifying the times when and the paper in which the publication was made, but such affidavit must be made within six months after the last day of publication. [C., '51, § 2427; R., '60, § 4042; C., '73, § 3697; C., '97, § 4680.]

11350. Proof of serving or posting notices. The posting up or service of any notice or other paper required by law may be proved by the affidavit of any competent witness attached to a copy of said notice or paper, and made within six months of the time of such posting

up. [C., '51, § 2428; R., '60, § 4043; C., '73, § 3698; C., '97, § 4681.]

11351. Other facts. Any other fact which is required to be shown by affidavit, and which may be required for future use in any action or other proceeding, may be proved by pursuing the course above indicated, as nearly as the circumstances of the case will admit. [C., '51, § 2429; R., '60, § 4044; C., '73, § 3699; C., '97, § 4682.]

11352. How perpetuated—presumption of fact. Proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in the office of the clerk of the district court of the county where the act is done. The original affidavit appended to the notice or paper, if there is one, and, if not, the affidavit by itself is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient. [C., '51, § 2430; R., '60, § 4045; C., '73, § 3700; C., '97, § 4683.]

REPORTER'S NOTES AS EVIDENCE

11353. Authorized use. The original shorthand notes of the evidence or any part thereof heretofore or hereafter taken upon the trial of any cause or proceeding, in any court of record of this state, by the shorthand reporter of such court, or any transcript thereof, duly certified by such reporter, when material and competent, shall be admissible in evidence on any retrial of the case or proceeding in which the same were taken, and for purposes of impeachment in any case, and shall have the same force and effect as a deposition, subject to the same objections so far as applicable. [S., '13, § 245-a.]

11354. Transcript must be complete. No portion of the transcript of the shorthand notes of the evidence of any witness shall be admissible as such deposition, unless it shall appear from the certificate or verification thereof that the whole of the shorthand notes of the evidence of such witness, upon the trial or hearing in which the same was given, is contained in such transcript, but the party offering the same shall not be compelled to offer the whole of such transcript. [S., '13, § 245-a.]

11355. Certification. It shall be the duty of any such reporter, upon demand by any party to any cause or proceeding, or by the attorney of such party, when such shorthand notes are offered in evidence, to read the same before the court, judge, referee, or jury, or to furnish to any person when demanded a certified transcript of the shorthand notes of the evidence, of any one or more witnesses, upon payment of his fees therefor. [S., '13, § 245-a.]

11356. Sworn verification. When the reporter taking such notes in any case or proceeding in court has ceased to be the reporter of such court, any transcript by him made therefrom, and sworn to by him before any person authorized to administer an oath as a full,

true, and complete transcript of the notes of the testimony of the witness, a transcript of whose testimony is demanded, shall have the same force and effect as though duly certified by the reporter of said court. [S., '13, § 245-a.]

11357. Identification of exhibits. When any exhibit, record, or document is referred to in such shorthand notes or transcript thereof, the identity of such exhibit, record, or document, as the one referred to by the witness, may be proven either by the reporter or any other person who heard the evidence of the witness given on the stand. [S., '13, § 245-a.]

DEPOSITIONS

11358. When and before whom taken. After the commencement of a civil action or other proceeding, if the witness is, or is about to go, beyond the reach of a subpoena, or is for any other cause expected to be unable to attend court at the time of trial, the party wishing his testimony may take his deposition in writing before any person having authority to administer oaths; and if the action is triable by equitable proceedings, then without any other reason therefor either party may so take the deposition of any witness. [C., '51, § 2445; R., '60, § 4065; C., '73, § 3721; C., '97, § 4684; 40 Ex. G. A., H. F. 230, § 2.]

11359. Upon notice or by commission. If the deposition is to be taken within the state, it may be upon notice or upon commission, and, if without the state, it must be by the latter method, except by agreement of the parties. [C., '51, §§ 2446, 2447; R., '60, §§ 4066, 4067; C., '73, §§ 3722, 3723; C., '97, § 4685.]

11360. By consent. By the written consent of parties, depositions may be taken in either method, and without any reason therefor being made to appear, and before any person designated in the agreement. [C., '51, § 2448; R., '60, § 4068; C., '73, § 3724; C., '97, § 4686.]

11361. On notice. When the deposition is taken upon notice, it must be before some person authorized to administer oaths, or agreed upon by the parties, and notice of the name of the witness, and the time when, the place where, and the person before whom it is to be taken shall be given to the opposite party. [C., '51, § 2445; R., '60, § 4065; C., '73, § 3721; C., '97, § 4687.]

11362. Not taken on certain days. No party shall be required to take depositions on notice on the day of the general election, or on any of the days on which appearance in an action can not by law be required, or during a term of the court in which the action is pending, unless such court, upon written motion, in furtherance of justice, shall so order. [C., '51, §§ 2446, 2453; R., '60, §§ 4066, 4073; C., '73, §§ 3722, 3730; C., '97, § 4688.]

11363. Different takings on same day. If notices are given in the same case by the same party of the taking of depositions at different

places upon the same day, they shall be invalid. [R., '60, § 4066; C., '73, § 3722; C., '97, § 4688.]

11364. On commission—notice—interrogatories. A party wishing to take a deposition by commission may serve on the opposite party a notice that, on a day named, a commission will issue from the office of the clerk of the court in which the action or proceeding is pending, or in a case in a justice's court, from the office of the clerk of the district court of the county, directed to any of the officers or persons enumerated in the following section, specifying the officer or person, for the taking of such depositions on written interrogatories to be filed with the clerk, a copy of which must accompany and be served with said notice. Such notice shall give the name of the witness whose deposition is thus to be taken. [C., '51, §§ 2451, 2465; R., '60, §§ 4071, 4092; C., '73, § 3727; C., '97, § 4689.]

11365. Who may act as commissioner. Such commission may issue to any of the following named officers who may be designated in the notice and in the commission, either by the name of office of such officer or by his individual name and official style, to wit:

1. The clerk or any judge of any court of record.
2. Any commissioner appointed by the governor of this state to take acknowledgments of deeds in another state.
3. Any notary public.
4. Any consul or consular agent of the United States.
5. When the witness is in the military or naval service of the United States, any commissioned officer under whose command he is serving, or any commissioned officer in the judge advocate general's department. [C., '51, § 2449; R., '60, § 4069; C., '73, § 3725; C., '97, § 4690; 40 Ex. G. A., H. F. 230, § 6.]

11366. Blank subpoenas. Any officer or commissioner before whom a deposition is to be taken within the state shall be supplied by the clerk of the district court with necessary blank subpoenas duly signed by such clerk under the seal of such court, which may be served as subpoenas in the district court. [40 Ex. G. A., H. F. 230, § 7.]

11367. Refusal to appear or testify. Any witness who refuses to obey such subpoena or after appearance refuses to testify shall be reported by the officer or commissioner to the district court of the county where the subpoena was issued or to a judge thereof who shall thereupon proceed as if the refusal had occurred in the district court. [40 Ex. G. A., H. F. 230, § 7.]

NOTE: For similar provision, see § 11341.

11368. Commissioner designated by court or parties. Such commission may also issue to any person designated by the court for that purpose or agreed upon by the parties, such person being named in the notice. [C., '51,

§ 2449; R., '60, § 4069; C., '73, § 3725; C., '97, § 4690; 40 Ex. G. A., H. F. 230, § 8.]

11369. Specification of place of taking. If the commission issue to any officer or person for the taking of the deposition in any of the United States or in Canada, the name of the state or province and county in which the deposition is to be taken shall be specified in the notice and commission; otherwise it shall be sufficient to name the state, territory, or district, and town or city. [R., '60, § 4069; C., '73, § 3725; C., '97, § 4690; 40 Ex. G. A., H. F. 230, § 9.]

11370. Officer within limits of jurisdiction. None of the above named officers are permitted to take the depositions aforesaid by virtue of a commission directed to him merely as such officer, unless within the limits of his official jurisdiction. [C., '51, § 2450; R., '60, § 4070; C., '73, § 3726; C., '97, § 4691.]

11371. Cross-interrogatories. At or before the time fixed in the notice for the issuance of the commission, the opposite party may file cross-interrogatories. If cross-interrogatories are not filed, the clerk shall file the following:

1. Are you directly or indirectly interested in this action? If interested, explain the interest you have.
2. Are all your statements in the foregoing answers made from your personal knowledge? If not, do your answers show what are made from your personal knowledge, and what are from information, and the source of that information? If not, now show what is from information, and give its source.
3. State everything you know concerning the subject of this action favorable to either party. [C., '51, § 2452; R., '60, § 4072; C., '73, § 3728; C., '97, § 4692.]

11372. Oral cross-examination. When notice is served of taking a deposition on commission, the adverse party may elect to appear and orally cross-examine the witness, and, if he so elects, he shall serve written notice of his election on the opposite party or his attorney at least one day before the date on which the commission is to be issued; and if such notice is given, then, before said commission shall issue, the party suing out the same shall deliver to the adverse party or his attorney a written statement, giving the name and address of the commissioner, the place, and, if in a city, the street and number, and the day and hour of taking the deposition. [C., '97, § 4693.]

11373. Time limit. Such statement must be delivered to said adverse party or his attorney five days before the date fixed for taking the deposition, if taken within the state; if taken elsewhere, one additional day for every three hundred miles distance between the place where the commission issues and where the deposition is to be taken. [C., '97, § 4693.]

11374. Waiver of written interrogatories. If the adverse party elects to cross-examine the witness orally, the party suing out the com-

mission may waive his written interrogatories and appear and orally examine the witness. Except as otherwise provided in the two preceding sections, the provision relating to taking depositions on notice shall be followed in taking that part of the deposition which is taken by oral examination. [C., '97, § 4693.]

11375. Form of commission. On the day fixed in the notice, the commission may issue in the name of the court and under its seal, with the signature of the clerk, and need contain only a statement of the case and court in which the testimony is to be used, the authority conferred upon the commissioner, who shall be designated as hereinbefore provided, and instructions to guide him in the taking of the deposition. The interrogatories and cross-interrogatories filed by the respective parties are to be appended to such commission. [C., '51, § 2455; R., '60, § 4078; C., '73, § 3734; C., '97, § 4694.]

11376. In justice's court. If the action in which it is desired to take a deposition on commission is pending in a justice's court, the commission shall issue from the office of the clerk of the district court of the county, or of the superior court, if there be one in the same township, on such notice as is required in suing out a commission in a case pending in such court. When such deposition is returned to the clerk of the court from which the commission issued, he shall deliver it personally or forward it by mail to the justice before whom the action is pending. [C., '97, § 4695.]

11377. Service of notice. The notice of taking depositions by either of the methods provided may be served personally upon the opposite party or his attorney of record, in the same manner as an original notice in a civil action, except by publication, or such service may be accepted by the party or his attorney. [R., '60, §§ 4074, 4075; C., '73, §§ 3731, 3732; C., '97, § 4696.]

11378. Service on nonresident or defaulting party. If the party sought to be served with notice is a nonresident, or his residence is unknown, or in case of default, and the party has no attorney of record who is a resident of the state, the notice of the taking of depositions or suing out a commission therefor may be served by filing such notice, or such notice with a copy of the interrogatories attached, with the clerk of the court in which the action or proceeding is pending, ten days before the taking of the depositions or the issuance of the commission, as the case may be. [R., '60, § 4076; C., '73, § 3733; C., '97, § 4697.]

11379. Length of notice. The notice of taking a deposition by either of the methods, except as otherwise provided shall be, when served on the attorney, at least ten days, and upon the party within the county where the deposition is to be taken or the commission sued out, at least five days. If served upon the party outside such county, the length of time shall be that required in serving an original notice.

If depositions are to be taken upon notice, whether served upon the attorney or party, one day in addition to the time hereinbefore specified must be allowed for every one hundred miles travel from the place where it is served to where the deposition is to be taken. [C., '51, § 2453; R., '60, § 4073; C., '73, § 3730; C., '97, § 4698.]

11380. Method of taking. The person before whom depositions are taken must cause the interrogatories propounded, if oral, to be written out; if written, to be stated by number, and the answers thereto inserted immediately thereunder. The answers must be in the language, as nearly as practicable, of the witness. The whole, being read over by or to the witness, must be subscribed and sworn to by him in the usual manner. [C., '51, § 2456; R., '60, § 4079; C., '73, § 3735; C., '97, § 4699.]

11381. Certificate. The officer taking the deposition shall attach thereto his certificate that the testimony of the witness was correctly and fully written down by him, or by a disinterested person named therein, under his direction and in his presence, and was read over by the officer to such witness and signed and sworn to by the witness in the officer's presence; any exhibits offered and identified shall be referred to in the certificate as thus identified, and the certificate shall show that the same or a true copy thereof is attached to and returned with the deposition. When the oath is administered to the witness by some other person, the officer's certificate shall recite such fact, stating his name and official character. [C., '51, §§ 2457, 2458; R., '60, §§ 4080, 4081; C., '73, §§ 3736, 3737; C., '97, § 4700.]

11382. Oath administered. If the deposition is taken in the state before a person not authorized to administer oaths, or out of the state, not before an officer enumerated in and allowed by this chapter so to do, the witness must be sworn by some one who has that authority. [C., '97, § 4701.]

11383. Taking in shorthand. The deposition may be taken in shorthand, in which case the certificate of the person taking it on notice or commission must show that the testimony of the witness was correctly taken down in shorthand, and was correctly extended, and that the notes of his testimony, or such extension thereof, was read over to the witness, and signed by him and sworn to, if within the state, before a person authorized to administer oaths, and if without the state, before one of the officers authorized to take depositions outside of the state, and such extension, together with the shorthand notes, if signed and sworn to, must be returned as the deposition. [C., '97, § 4702.]

11384. Oath. Anyone taking depositions in shorthand shall first take and subscribe an oath to take down and transcribe correctly such testimony, and shall certify that his translation thereof is full, true, and complete. [C., '97, § 4702.]

11385. Authentication of official character. When depositions are taken before an officer not having a seal, unless so done by agreement of parties, his signature and official character must be authenticated by the certificate of the clerk of a court of record under its seal, or that of the officer having in charge the seal of state. If taken before an officer having a seal, whether in or outside the state, the certificate of the officer under such seal shall be received as presumptive evidence of the genuineness of the signature and of his official character. [C., '51, § 2462; R., '60, § 4086; C., '73, § 3742; C., '97, § 4703.]

11386. When neither party present. Where a deposition is taken upon written interrogatories alone, neither party, nor his agent or attorney, shall be present at the examination of the witness, unless both parties are present or represented by an agent or attorney, and the certificate shall state such fact if a party or his agent is present. [R., '60, § 4082; C., '73, § 3738; C., '97, § 4704.]

11387. Transmission. The deposition duly certified as hereinbefore required, with the commission and interrogatories, if taken on commission, must be sealed up and deposited by the person taking it, within thirty days, with the clerk of the proper court, or transmitted to him by mail or express, unless some other mode be agreed upon between the parties. [C., '51, § 2458; R., '60, § 4081; C., '73, § 3737; C., '97, § 4705.]

11388. Indorsement. The deposition, when prepared for filing with or return to the clerk, must be indorsed, on the outside of a sealed envelope in which it is inclosed, with the title of the cause in which it is to be used. [C., '51, § 2460; R., '60, § 4084; C., '73, § 3740; C., '97, § 4706.]

11389. Opened—custody. When thus returned, it must be opened by the clerk and placed on file in his office, after which he shall at any time furnish any person with an attested copy of the same upon payment of the customary fees, but must not allow it to be taken from his office previous to the next term of the court, unless by the written consent of all of the parties. [C., '51, § 2459; R., '60, § 4083; C., '73, § 3739; C., '97, § 4707.]

11390. Deviations—amendments. Unimportant deviations from any of the above directions shall not cause the deposition to be excluded, where no substantial prejudice could be wrought to the opposite party thereby, and by order of court it may be returned to the officer taking the same for correction and amendments as to formal matters. [C., '51, § 2461; R., '60, § 4085; C., '73, § 3741; C., '97, § 4708.]

11391. Reasons for taking—presence of witness. The deposition in all cases, unless the record discloses a cause for the taking, must show that the witness is a nonresident of the county, or such other fact as renders its taking

legal, and no such deposition shall be read on the trial if, at the time, the witness himself is produced in court. [C., '51, § 2463; R., '60, § 4087; C., '73, § 3743; C., '97, § 4709.]

11392. On appeal from justice. Depositions taken to be used in a justice's court shall be transferred to the court to which the cause is appealed, and used on the trial of such appeal. [C., '51, § 2466; R., '60, § 4093; C., '73, § 3744; C., '97, § 4710.]

11393. Notice of filing. Upon the filing of a deposition in the clerk's office, he shall, on the day it is filed, mail to the attorney of each party to the action, directed to his postoffice address, a notice thereof, reciting the title of the case, names of witnesses, and the date of filing. If the postoffice address of any such attorney is unknown to the clerk, the notice shall be addressed to him at the postoffice where the cause is pending for trial. [R., '60, §§ 4088, 4099; C., '73, § 3751; C., '97, § 4711.]

11394. Exceptions. If a deposition is filed three days or more prior to noon of the second day of a term, no exceptions thereto, other than for incompetency, irrelevancy, or immateriality, shall be regarded, unless made by motion and filed by that time; if a deposition is filed thereafter or during a term, such exception shall be filed by noon of the third day after such filing, but all such exceptions or motions to suppress such depositions must be made before the cause is reached for trial. [C., '51, § 2464; R., '60, §§ 4088, 4089; C., '73, § 3751; C., '97, § 4712.]

11395. Hearing. The court shall, on motion of either party, hear and decide the questions arising on exceptions and motions to suppress depositions before the commencement of the trial. [R., '60, § 4090; C., '73, § 3752; C., '97, § 4713.]

11396. Errors waived. Errors of the court in its decision upon exceptions to depositions are waived, unless excepted to. [R., '60, § 4091; C., '73, § 3753; C., '97, § 4714.]

11397. Fees for taking. Any officer or person taking depositions is authorized to charge therefor ten cents per hundred words, exclusive of the certificate; for administering an oath to each witness, five cents; for certifying to the administration of the oath to and signature of the deposition by each witness, twenty-five cents; and for the certificate to the deposition or depositions, twenty-five cents, the charge for such certificate including the affixing of the seal thereto, if the person certifying is an officer having a seal; for issuing a subpoena for a witness, twenty-five cents; for certifying to a court the failure of a witness to respond to a subpoena, or his refusal to answer questions or to sign and swear to his deposition, twenty-five cents, with ten cents per hundred words for copies of papers required to be certified in such a case. [C., '51, § 2552; R., '60, § 4160; C., '73, § 3835; C., '97, § 4715.]

11398. Witness fees. A witness appearing before an officer directed to take his deposition

is entitled to the same fees and mileage as a witness in the court in which the deposition is to be used. If subpoenaed, such a witness is entitled to his fees and mileage in advance, as in other cases. [C., '97, § 4716.]

11399. Costs. In all cases of taking depositions, the taxable costs thereof must be paid in the first place by the party at whose instance they are taken, subject, like other costs, to be taxed against the failing party in the action. [C., '51, § 2474; R., '60, § 4100; C., '73, § 3754; C., '97, § 4717.]

PERPETUATING TESTIMONY

11400. Petition. The testimony of a witness may be perpetuated in the following manner: The applicant must file in the office of the clerk of the district or superior court a verified petition, which shall set forth the subject matter relative to which testimony is to be taken, the names of the persons interested, if known, and, if not, such general description as he can give of such persons, as heirs, devisees, alienees, or otherwise. It must also state the names of the witnesses to be examined, the interrogatories to be propounded to each, that the applicant expects to be a party to an action in a court of the state, in which such testimony will, as he believes, be material, and the obstacles preventing the immediate commencement of the action, where he expects to be the plaintiff. [R., '60, §§ 4094, 4095; C., '73, §§ 3745, 3746; C., '97, § 4718.]

NOTE: Perpetuating testimony of transaction with deceased, see § 11259.

Perpetuating testimony by affidavits, see § 11352.

11401. Order of court or judge. The court, or the judge thereof, may, if the occasion for taking the deposition be a proper one, make an order allowing the examination of such witnesses, which shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof, and the manner in which they shall be notified. [R., '60, § 4096; C., '73, § 3747; C., '97, § 4719.]

11402. Cross-interrogatories. When it satisfactorily appears to the court or judge that the parties interested can not be personally notified, such court or judge shall appoint a

competent attorney to examine the petition and prepare and file cross-interrogatories to those contained therein. The witnesses must be examined upon the interrogatories of the applicant, and any cross-interrogatories filed by or for parties, and no others shall be propounded to them; nor shall any statement be received which is not responsive to some of them. The attorney filing the cross-interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs. [R., '60, § 4097; C., '73, § 3748; C., '97, § 4720.]

11403. Before whom taken. Such deposition shall be taken before some one authorized by law to take depositions, or before some one specially authorized by the court or judge, and returned to the clerk's office of the court in which the petition is filed, the method of taking and verifying the same being the same as that provided for in case of depositions in an action, so far as applicable. [R., '60, § 4098; C., '73, § 3749; C., '97, § 4721.]

11404. Costs. The costs of taking the deposition, including those incurred in the proceeding for securing them, shall be paid in the first instance by the party causing them to be taken. [C., '97, § 4722.]

11405. Approval and filing. The court or judge, if satisfied that the depositions have been properly taken, and as herein required, shall approve the same and order them to be filed. [R., '60, § 4099; C., '73, § 3750; C., '97, § 4723.]

11406. Use of deposition. If a trial be had between the parties named in the petition, or their privies or successors in interest, such depositions, or certified copies thereof, may be given in evidence by either party where the witnesses are dead or insane, or where their attendance for oral examination can not be obtained as required. [R., '60, § 4099; C., '73, § 3750; C., '97, § 4723.]

11407. Permissible objections. Such depositions shall be subject to the same objections for irrelevancy, incompetency, or immateriality as may be made to depositions taken pending an action. [R., '60, § 4099; C., '73, § 3750; C., '97, § 4723.]

CHAPTER 495

CHANGE OF VENUE

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11408. Grounds for. A change of the place of trial in any civil action may be had in any of the following cases:

1. *County a party.* Where the county in which the action is pending is a party thereto, if the motion is made by the party adversely interested, and the issue be triable by jury.

2. *Judge a party or interested.* Where the judge is a party, or is directly interested in the action, or is connected by blood or affinity with any person so interested nearer than the fourth degree.

3. *Prejudice or local influence.* Where either party files an affidavit, verified by himself and three disinterested persons not related to the party making the motion nearer than the fourth degree, nor standing in the relation of servant, agent, or employee of such party, stating that the inhabitants of the county or the judge is so prejudiced against him, or that the adverse party or his attorney has such an undue influence over the inhabitants of the county, that he can not obtain a fair trial; and when either party files such an affidavit the other party shall have a reasonable time in which to prepare and file counter affidavits, and the court or judge, in its discretion, may cause the affiants upon either side to be brought into court for examination upon the matters contained in their affidavits, and, when fully advised, shall allow or refuse the change according to the very right and merits of the matter.

4. *Agreement.* By the written agreement of the parties.

5. *Jury not obtainable.* If the issue is one triable by a jury, and it is made apparent to the court or judge that a jury can not be obtained in the county where the action is pending, then, upon the application of either party, a change of place of trial shall be granted to the nearest county in which a jury can be obtained. [C., '51, § 1706; R., '60, § 2803; C., '73, § 2590; C., '97, § 3505; S., '13, § 3505.]

NOTE: Change of venue for fraud in written contract, see §§ 10512 and 11411.

11409. Limitations. Not more than two such changes to either party shall be allowed for any

of the causes enumerated in the preceding section; nor shall a change be allowed in case of appeal from a justice of the peace; nor, when the issues can only be tried to the court, for any objection to the inhabitants of the county, or for the objection that the adverse party or his attorney has such an undue influence over the inhabitants thereof that he can not obtain a fair trial. [C., '97, § 3505; S., '13, § 3505.]

11410. Subsequent changes. After a change of place of trial has been taken and a trial had, and the jury discharged or a new trial granted, a subsequent change may be taken for any of the causes mentioned in the second preceding section. [C., '97, § 3505; S., '13, § 3505.]

11411. Fraud in written contract. In an action brought on a written contract in the county where the contract by its express terms is to be performed, in which a defendant to said action, residing in a different county in the state, has filed a sworn answer alleging fraud in the inception of the contract constituting a complete defense thereto, such defendant, upon application and the filing of a sufficient bond, may have such action transferred to the district court of the county of his residence. [S., '13, § 3505.]

11412. Expense and attorney fees. If upon the trial of the action judgment is rendered against the defendant, it shall include the reasonable expenses incurred by the plaintiff and his attorney, on account of change of place of trial, as part of the costs. [S., '13, § 3505.]

11413. Bond. The bond referred to in the second preceding section shall be with sureties to be approved by the clerk, in an amount to be fixed by the court, or judge in vacation, for the payment of all costs which may accrue in the action in the court in which it is brought, or in any other to which it may be carried, either to the plaintiff or to the officers of the court. [S., '13, § 3505.]

11414. Application for change. The application for a change of place of trial may be

made either to the court or to the judge in vacation, and if made in term time shall not be awarded until the issues are made up, unless the objection is to the court, nor shall such application be allowed after a continuance, except for a cause not known to the affiant before or arising since such continuance, and after one change no party is entitled to another for any cause in existence when the first was obtained. [C., '51, § 1708; R., '60, § 2804; C., '73, § 2591; C., '97, § 3506.]

11415. To what county or court. If the application for a change is granted for any cause except on account of the prejudice or disability of the judge or under section 11411, the cause shall be sent to the nearest or most convenient county in the district, unless objections supported by affidavit are made to each county in the district, in which case to the nearest or most convenient county in another district. [C., '51, § 1707; R., '60, § 2805; C., '73, § 2592; C., '97, § 3507; S., '13, § 3507.]

11416. Objection to judge. If the objections are to the judge, the cause shall not be tried by him, but retained on the docket and tried as provided in the following section. [C., '73, § 2592; C., '97, § 3507; S., '13, § 3507.]

11417. Avoiding objections. When a change of venue is granted on the ground of objection made to the judge, he may, in his discretion, if there be a judge or judges of the same district against whom there is no objection, assign the cause to one of such judges for trial. If there be no other judge of his district against whom there is no objection, then he may, in his discretion, send the cause for trial to the nearest and most convenient county of another district, or to a county of another district agreed upon by the parties, for trial before a judge of such district; or he may procure another judge of another district to interchange with him for the trial of such cause. [C., '97, § 249.]

11418. Notice in vacation. If an application for the change is made in vacation, five days' notice thereof, with a copy of the affidavit, shall be served on the adverse party or his attorney, and, if granted, the judge shall forthwith transmit his order to the clerk, with all the papers presented to him. [C., '51, § 1709; R., '60, § 2806; C., '73, § 2593; C., '97, § 3508.]

11419. When change perfected. If the order for the change is granted in vacation, it must be perfected by noon of the second day after the order is received by the clerk, and if granted during term time, by the morning of the second day thereafter, or before the cause is reached for trial, if sooner reached, or such change, whether granted in term or vacation, will be waived, and the cause tried as though

no such order had been granted. [R., '60, § 2810; C., '73, § 2594; C., '97, § 3509.]

11420. Transcript and papers. When the change has been perfected or agreed to by the parties, the clerk must forthwith transmit to the clerk of the proper court a transcript of the record and proceedings, with all the original papers, having first made out and filed in his office authenticated copies thereof. [C., '51, § 1710; R., '60, § 2807; C., '73, § 2594; C., '97, § 3509.]

11421. Nonapplicant for change—trial. If less than all of several plaintiffs or defendants take such change, the original papers shall not be so transmitted, but a copy thereof, and, as to those who take no change, the cause shall proceed as if none had been taken. [C., '51, § 1710; R., '60, §§ 2807, 2810; C., '73, § 2594; C., '97, § 3509.]

11422. Docketed. Upon filing such transcript and papers in the office of the clerk of the court to which the same were certified, the cause shall be docketed without fee and proceeded with as though it had originated therein. [C., '51, § 1711; R., '60, § 2808; C., '73, § 2595; C., '97, § 3510.]

11423. Costs of change. Unless the change is granted under paragraphs 2, 4, or 5 of the first section of this chapter, or under section 11411, all costs caused thereby or that are rendered useless by reason thereof, shall be paid by the applicant, and the court or judge, at the time of making the order, shall designate in general terms such costs, and no change shall be held perfected until the same are paid. [C., '51, § 1712; R., '60, § 2809; C., '73, § 2596; C., '97, § 3511; S., '13, § 3511.]

11424. Jury fees. Where the place of trial in any civil or criminal action is changed to any county other than that in which the same was properly commenced, where the trial thereof takes place at a regular term and occupies more than one calendar day, the judge trying it shall certify the number of days so occupied, and the county in which the action was originally commenced shall be liable to the county where the same is tried for the sum of three dollars per day, for each jurymen engaged in the trial thereof. [C., '73, § 2597; C., '97, § 3512; 39 G. A., ch. 106.]

11425. Expense of special term. Where a special term of any court is held for the trial of any action contemplated in the preceding section, the court trying the same shall make out and certify the amount of county expenses incurred in the trial of each action, and the same shall be paid by the county in which the same was properly commenced. [C., '73, § 2598; C., '97, § 3513.]

CHAPTER 496

TRIAL AND JUDGMENT

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11426. Issues. Issues arise in the pleadings where a fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds:

1. Of law.
 2. Of fact.
- [R., '60, 2993; C., '73, § 2737; C., '97, § 3647.]

11427. Of fact and of law. An issue of fact arises:

1. Upon a material allegation of fact in the petition denied by the answer.
2. Upon material allegations of new matter in the answer, either denied by a reply or by operation of law.
3. Upon allegations of new matter in the reply, which shall be considered as controverted by the opposite party without further pleading.

Any other issue is one of law. [R., '60, §§ 2994, 2995; C., '73, § 2738; C., '97, § 3648.]

11428. Trial defined. Issues of law must be tried first. A trial is a judicial examination of the issues in an action, whether they be issues of law or of fact. [C., '51, § 1770; R., '60, §§ 2996, 2997; C., '73, § 2739; C., '97, § 3649.]

11429. How issues tried. Issues of fact in an ordinary action must be tried by jury, unless the same is waived. All other issues shall

be tried by the court, unless a reference thereof is made. [C., '51, § 1772; R., '60, § 2998; C., '73, § 2740; C., '97, § 3650.]

11430. Evidence in ordinary actions. All issues of fact in ordinary actions shall be tried upon oral evidence taken in open court, except that depositions may be used as provided by law. [R., '60, § 2999; C., '73, § 2741; C., '97, § 3651.]

11431. Ordinary actions—evidence on appeal. Upon appeal, in ordinary actions no evidence shall go to the supreme court except such as may be necessary to explain any exception taken in the cause, and such court shall hear and try the case only on the legal errors so presented. [R., '60, § 2999; C., '73, § 2741; C., '97, § 3651.]

11432. Evidence in equitable actions. In actions cognizable in equity, wherein issues of fact are joined, the court may order the evidence or any part thereof to be taken in the form of depositions, or either party may take depositions as authorized by law, and shall be entitled to a continuance to the second term for that purpose. [R., '60, § 2999; C., '73, § 2742; C., '97, § 3652; S., '13, § 3652; 40 Ex. G. A., S. F. 231, § 1.]

11433. Equitable actions—evidence on appeal. The evidence in actions cognizable in

equity shall be presented on appeal to the supreme court, which shall try such causes anew. [R., '60, § 2999; C., '73, § 2742; C., '97, § 3652; S., '13, § 3652; 40 Ex. G. A., S. F. 231, § 1.]

11434. Abstracts in equity causes. In equitable causes, where the evidence is taken in the form of depositions, the court may require to be submitted with the arguments an abstract of the pleadings and evidence, substantially as required by the rules of the supreme court for abstracts in appeals in equitable causes, except that the same need not be printed. [C., '97, § 3653.]

11435. Finding of facts by court. In all trials of fact by the court, other than those contemplated in the third preceding section, the court shall, if either party requests it, give its decision in writing, stating separately the facts found and the legal conclusion founded thereon; and the whole decision shall be a part of the record, and the finding shall have the effect of a special verdict. [C., '51, § 1793; R., '60, § 3088; C., '73, § 2743; C., '97, § 3654.]

11436. Trial term. Causes shall be triable at the first term after legal and timely service has been made. [C., '51, § 1763; R., '60, § 3007; C., '73, § 2744; C., '97, § 3655; 40 Ex. G. A., S. F. 231, § 2.]

11437. Separate trials. The court may, in its discretion, allow separate trials between the plaintiff and any defendant, or of any cause of action united with others, or of any issue in an action; and such separate trials may be had at the same or different terms of the court, as circumstances may require. [C., '51, § 1768; R., '60, §§ 3024, 3025; C., '73, § 2746; C., '97, § 3657.]

11438. Trial notice. In any case once continued, where an answer is on file, either party desiring to bring such cause on for trial at any term shall, at least ten days before such term, file with the clerk a notice of trial, and no such cause shall stand for trial unless a trial notice be so filed, except by consent of parties. But after the commencement of the term, the court may in its discretion, by order entered of record, permit notices of trial to be entered in the same manner, ten days prior to such date as the court may name in such order. Such order may be general, and not entered of record in each particular case. The clerk, in preparing the court calendars, shall note thereon, opposite the title of each cause noticed for trial, the words, "for trial", which words shall also appear on the printed calendar. This rule shall not apply to appearance or criminal cases, nor to proceedings in probate. [C., '97, § 3658.]

11439. Assignments — hearing of motions and demurrers. On the first day of the term, or as soon thereafter as practicable, the court may make an assignment of the trial causes, which assignment shall fix the day of the term on which each cause will be tried, and parties will be required to conform to this order of

trial. Further assignments may be made by the court as often as necessary. The court may also designate particular times for the hearing of motions and demurrers. [C., '97, § 3659.]

11440. Docketing appeals. In appeals from justices' courts or other inferior tribunals in civil causes, the appellant shall cause the case to be docketed by noon of the second day of the term to which the same is returnable, and, in case of his failure to do so, the appellee may procure the case to be docketed, and thereupon will be entitled to have the judgment below affirmed, or to have the case set down for trial upon its merits, as he may elect, and the provisions of this code as to appeals from justices' courts shall be applicable, so far as may be, to other appeals contemplated in this section. [C., '97, § 3660.]

11441. Calendar. The clerk shall keep a calendar distinguishing, first, criminal causes, and next, civil causes, and arranging each in the order of their commencement and, if the court so order, shall, under the direction of the court or judge, apportion the same to as many days as is believed necessary, and, at the request of any party to a cause or his attorney, shall issue subpoenas accordingly. The clerk shall furnish the court and the bar with a sufficient number of printed copies of the calendar. [C., '51, §§ 1761, 1762; R., '60, § 3005; C., '73, § 2747; C., '97, § 3661.]

11442. Continuances—application for. When time is asked for making application for continuance, the cause shall not lose its place on the calendar, or it may be continued at the option of the other party, and at the cost of the party applying therefor, for which cost judgment may at once be entered by the clerk, unless the contrary be agreed between the parties or ordered by the court. [C., '51, § 1764; R., '60, § 3008; C., '73, § 2748; C., '97, § 3662.]

11443. Causes for. A continuance shall not be granted for any cause growing out of the fault or negligence of the party applying therefor; subject to this rule, it may be allowed for any cause which satisfies the court that substantial justice will thereby be more nearly obtained. [C., '51, § 1765; R., '60, § 3009; C., '73, § 2749; C., '97, § 3663.]

11444. Absence of evidence. Motions for continuance on account of the absence of evidence must be founded on the affidavit of the party, his agent or attorney, and must state:

1. The name and residence of such witness, or, if not known, that the affiant has used reasonable diligence to ascertain them, and in either case facts showing reasonable grounds of belief that his attendance or testimony will be procured at the next term.

2. Efforts constituting due diligence which have been used to obtain such witness, or his testimony.

3. What particular facts, as distinguished from legal conclusions, the affiant believes the

witness will prove, and that the affiant believes them to be true, and that he knows of no other witness by whom such facts can be fully proven. [C., '51, § 1766; R., '60, §§ 3010, 3011; C., '73, § 2750; C., '97, § 3664.]

11445. Admission by opposite party. If the application is insufficient, it shall be overruled; if sufficient, the cause shall be continued, unless the adverse party will admit that the witness, if present, would testify to the facts therein stated, in which event the cause shall not be continued, but the party may read as evidence of such witness the facts held by the court to be properly stated. [C., '51, § 1767; R., '60, §§ 3012, 3013; C., '73, § 2751; C., '97, § 3665.]

11446. Filing motion—diligence. The motion must be filed on the second day of the term, if it is then certain that it will have to be made before the trial, and as soon thereafter as it becomes certain that it will need to be made, and shall not be allowed to be made when the cause is called for trial, except for matters which could not by reasonable diligence have been before that time discovered. If made after the second day of the term, the affidavit must state facts constituting an excuse for the delay in making it. If time is taken when the case is called to make such motion, it shall be made and determined as soon as the court opens after the next ordinary adjournment. [R., '60, § 3014; C., '73, § 2752; C., '97, § 3666.]

11447. Amendment. The application may be amended but once, unless by permission to supply a clerical error. [R., '60, § 3015; C., '73, § 2753; C., '97, § 3667.]

11448. Written objections. To such motion, in its original form or as amended, the adverse party may at once, or within such reasonable time as the court shall allow, file written objections, stating wherein he claims that the same is insufficient, and on such motion and objections no argument shall be heard unless the court desires it. [R., '60, § 3016; C., '73, § 2754; C., '97, § 3668.]

11449. Part of record. Such motion and objections shall be a part of the record. [R., '60, § 3017; C., '73, § 2755; C., '97, § 3669.]

11450. Appeal. Error in refusing a continuance or in compelling an election may be reviewed upon appeal. [R., '60, § 3017; C., '73, § 2755; C., '97, § 3669.]

11451. Entry on appearance docket. No copy of a motion for continuance or of objections thereto need be served, but a minute of the filing thereof shall be entered on the appearance docket. [R., '60, § 3018; C., '73, § 2756; C., '97, § 3670.]

11452. Costs. Every continuance granted shall be at the cost of the party applying therefor, unless otherwise ordered by the court. [R., '60, § 3019; C., '73, § 2757; C., '97, § 3671.]

11453. By agreement. The court shall grant continuances whenever the parties agree there-

to, and provide as to costs as may be stipulated. [R., '60, § 3020; C., '73, § 2758; C., '97, § 3672.]

11454. Case remains on docket. A case continued remains for all purposes except a trial on the facts. [R., '60, § 3022; C., '73, § 2759; C., '97, § 3673.]

11455. One of several defendants. When the defenses are distinct, any one of several defendants may continue as to himself. [R., '60, § 3023; C., '73, § 2760; C., '97, § 3674.]

11456. Detailed report of trial. In all appealable actions triable by ordinary or equitable proceedings, any party thereto shall be entitled to have reported the whole proceedings upon the trial or hearing, and the court or judge shall direct the reporter to make such report in writing or shorthand, which shall contain the date of the commencement of the trial, the proceedings impaneling the jury, and any objections thereto with the rulings thereon, the oral testimony at length, and all offers thereof, all objections thereto, the rulings thereon, the identification as exhibits, by letter or number or other appropriate mark, of all written or other evidence offered, and by sufficient reference thereto, made in the report, to make certain the object or thing offered, all objections to such evidence and the rulings thereon, all motions or other pleas orally made and the rulings thereon, the fact that the testimony was closed, the portions of arguments objected to, when so ordered by the court, all objections thereto with the rulings thereon, all oral comments or statements of the court during the progress of the trial, and any exceptions taken thereto, the fact that the jury is instructed, all objections and exceptions to instructions given by the court on its own motion, the fact that the case is given to the jury, the return of the verdict and action thereon of whatever kind, and any other proceedings before the court, judge, or jury which might be preserved and made of record by bill of exceptions, and shall note that exception was saved by the party adversely affected to every ruling made by the court or judge. [C., '97, § 3675.]

11457. Certification—ipso facto bill. Such report shall be certified by the trial judge and reporter, when demanded by either party, to the effect that it contains a full, true, and complete report of all proceedings had that are required to be kept, and, when so certified, the same shall be filed by the clerk and, with all matters set out or identified therein, shall be a part of the record in such action, and constitute a complete bill of exceptions. [C., '97, § 3675.]

11458. Matters excluded. On a trial before a jury it shall not be necessary to take down arguments of counsel or statements of the court, except his rulings, when not made in the presence of the jury. [C., '97, § 3675.]

11459. Selection of jury. When an action is to be tried by a jury, the clerk shall select

sixteen jurors by lot from the regular panel or additions thereto, which shall be supplied as provided in the chapter on jurors. [C., '51, § 1773; R., '60, § 3026; C., '73, § 2761; C., '97, § 3676; 37 G. A., ch. 310, § 2.]

11460. Challenges. A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel.
2. To an individual juror.

[C., '51, § 2972; R., '60, § 3027; C., '73, § 2762; C., '97, § 3677.]

11461. Joint challenges. Where there are several parties, plaintiffs or defendants, and no separate trial is allowed, they shall not sever their challenges, but must join in them. [R., '60, § 3028; C., '73, § 2763; C., '97, § 3678.]

11462. To the panel. A challenge to the panel can be founded only on a material departure from the forms prescribed by statute in respect to the drawing and return of the jury. [C., '51, § 2974; R., '60, § 3029; C., '73, § 2764; C., '97, § 3679.]

11463. When and how made. A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying distinctly the facts constituting the ground of challenge. [C., '51, § 2975; R., '60, § 3030; C., '73, § 2765; C., '97, § 3680.]

11464. How tried. A challenge to the panel may be taken by either party, and upon the trial thereof the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge. [C., '51, § 2976; R., '60, § 3031; C., '73, § 2766; C., '97, § 3681.]

11465. Allowance. If the challenge is sustained by the court, the jury must be discharged, and its members will be disqualified from sitting in the trial in question; if it is overruled, the court shall direct the jury to be impaneled. [C., '51, § 2977; R., '60, § 3032; C., '73, § 2767; C., '97, § 3682.]

11466. To jurors. A challenge to an individual juror is either peremptory or for cause. [C., '51, § 2978; R., '60, § 3033; C., '73, § 2768; C., '97, § 3683.]

11467. When made—determination. It must be taken when the juror appears and before the jury is sworn. Upon the trial of a challenge, the juror challenged shall be sworn, if demanded by either party, and examined as a witness, and must answer every question pertinent to the inquiry thereof. [C., '51, § 2979; R., '60, § 3034; C., '73, § 2769; C., '97, § 3684.]

11468. Peremptory. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him. [C., '51, § 2980; R., '60, §§ 3035, 4778; C., '73, §§ 2770, 4412; C., '97, § 3685.]

11469. Challenges—number—striking. Each party shall have the right to peremptorily challenge three jurors and shall strike two jurors. The clerk shall prepare a list of jurors called and after all challenges for cause are exhausted or waived, the parties, commencing with the plaintiff, shall alternately challenge peremptorily or waive by indicating any such challenge upon the list opposite the name of the juror challenged or by indicating the number of waiver elsewhere on the list.

After all challenges or waivers have been indicated the parties shall alternately in the same manner each strike two jurors from the list. [C., '51, § 1774; R., '60, § 3036; C., '73, § 2771; C., '97, § 3686; 37 G. A., ch. 310, § 3.]

11470. Vacancies. After each challenge, either for cause or peremptory, as indicated on the list, another juror shall be called and examined for challenge for cause before further challenge is made and any new juror thus called may be challenged for cause and shall be subject to peremptory challenge or to being struck from the list as other jurors. [C., '51, § 1775; R., '60, § 3037; C., '73, § 2772; C., '97, § 3687; 37 G. A., ch. 310, § 4.]

11471. Reading of names. After all challenges have thus been exercised or waived and four jurors have been struck from the list the clerk shall read the names of the twelve jurors remaining who shall constitute the jury selected. [37 G. A., ch. 310, § 4.]

11472. Challenges for cause. A challenge for cause is an objection to a juror, and may be for any of the following causes:

1. A conviction of felony.
2. A want of any of the qualifications prescribed by statute to render a person a competent juror.
3. Such defects in the faculties of mind or organs of the body as render him incapable of performing the duties of a juror.
4. Consanguinity or affinity within the ninth degree to the adverse party.
5. Standing in the relation of guardian and ward, or the client of any attorney engaged in the cause, master and servant, landlord and tenant, or being a member of the family or in the employment of the adverse party.
6. Being a party adverse to the challenging party in a civil action, or having complained against or been accused by him in a criminal prosecution.
7. Having already sat upon the trial of the same issues.
8. Having served as a grand or trial juror in a criminal case based on the same transaction.
9. When it appears the juror has formed or expressed an unqualified opinion on the merits of the controversy, or shows such a state of mind as will preclude him from rendering a just verdict.
10. Being interested in a like question with the issue to be tried.
11. Having requested, directly or indirectly, that his name be returned as a juror for the regular biennial period.

12. Having served in the district court as a grand or petit juror during the last preceding calendar year. [R., '60, §§ 2271, 3037-3040; C., '73, § 2772; C., '97, §§ 337, 3688; S., '13, § 337; 37 G. A.; ch. 267, § 6; 40 Ex. G. A., H. F. 266, § 60.]

11473. How tried. Upon the trial of a challenge to an individual juror, he may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry thereon, and other evidence may be heard. [C., '51, § 2988; R., '60, § 3042; C., '73, § 2773; C., '97, § 3689.]

11474. Determination. In all challenges, the court shall determine the law and the fact, and must either allow or disallow the challenge. [C., '51, § 2989; R., '60, § 3043; C., '73, § 2774; C., '97, § 3690.]

11475. Saturday as religious day. A person whose religious faith requires him to keep the seventh day of the week can not be compelled to attend as a juror on that day. [C., '51, § 2504; R., '60, § 4112; C., '73, § 2776; C., '97, § 3691.]

11476. Exemption as personal privilege. An exemption from service as a juror is not a cause of challenge, but the privilege of the person exempt. [C., '51, § 2987; R., '60, §§ 3041, 4772; C., '73, §§ 2777, 4406; C., '97, § 3692.]

11477. Attachment for absent jurors. When a cause is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and an attachment to be issued against those who are absent, but the court may, in its discretion, wait or not for the return of the attachment. [C., '97, § 3693.]

11478. Ballots prepared. The clerk shall prepare separate ballots containing the names of the persons returned as jurors, which shall be folded, each in the same manner, as nearly as may be, and so that the name thereon shall not be visible, and must deposit them in a box kept for that purpose. [C., '97, § 3694.]

11479. Drawing. Before the name of any juror is drawn, the box must be closed and shaken, so as to intermingle the ballots therein, and the clerk shall draw such ballots from the box, without seeing the names written thereon, through the top of the lid thereof. [C., '97, § 3695.]

11480. Jurors absent or excused. If a juror is absent when his name is drawn, or be set aside or excused from serving on that trial, the ballot containing his name must be folded and returned to the box as soon as the jury is sworn. [C., '97, § 3696.]

11481. Ballots returned to box. When a jury is completed, the ballots containing the names of the jurors sworn must be laid aside and kept apart from the ballots containing the names of the other jurors until it is discharged, and must then be again folded and returned to

the box, and so on, as often as a trial is had. [C., '97, § 3697.]

11482. Panel exhausted. If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the chapter upon selecting, drawing, and summoning juries. [C., '97, § 3698.]

11483. Majority verdict. The parties, at any time before the final submission, may agree to take the verdict of the majority, which agreement, being stated to the court and entered upon the record, shall bind the parties, and in such case a verdict, signed by any seven or more and duly rendered, when read and not disapproved by said majority, shall in every particular be as binding as if made by a full jury. [R., '60, § 3045; C., '73, § 2778; C., '97, § 3699.]

11484. Struck jury. When both parties require it, a struck jury may be ordered, whereupon eighteen jurors shall be called into the box, and the plaintiff first, and then the defendant, shall strike out one juror in turn until each has struck six, and the remaining six shall try the cause. [C., '51, § 1776; R., '60, § 3045; C., '73, § 2778; C., '97, § 3699.]

11485. Procedure after jury is sworn—order of evidence. When the jury has been sworn, the court shall proceed in the following order:

1. The party on whom rests the burden of proof may briefly state his claim and the evidence by which he expects to sustain it.

2. The other party may then briefly state his defense and the evidence by which he expects to sustain it.

3. The party on whom rests the burden of proof in the whole action must first produce his evidence, to be followed by that of the adverse party.

4. The parties then will be confined to rebutting evidence, unless the court for good reasons, in furtherance of justice, permit them to offer evidence in their original case.

5. But one counsel on each side shall examine the same witness. [R., '60, § 3046; C., '73, § 2779; C., '97, § 3700.]

11486. Interlocutory questions. Upon interlocutory questions, the party moving the court or objecting to testimony shall be heard first; the respondent may then reply by one counsel, and the mover rejoicing, confining his remarks to the points first stated and a pertinent answer to respondent's argument. Argument on the questions shall then be closed, unless further requested by the court. [R., '60, § 3046; C., '73, § 2779; C., '97, § 3700.]

11487. Argument—opening and closing. The parties may then either submit or argue the case to the jury. In the argument, the party then having the burden of the issue shall have the opening and closing, but shall disclose in the opening all the points relied on in the cause; and if in the close he should refer to any new

material point or fact not relied upon in the opening, the adverse party shall have the right of reply thereto, which reply shall close the argument in the case. [R., '60, § 3047; C., '73, § 2780; C., '97, § 3701.]

11488. Waiver of opening. If the party holding the affirmative waives the opening, he shall be limited in the close simply to a reply to his adversary's argument, otherwise the other party shall have the concluding argument. [R., '60, § 3048; C., '73, § 2781; C., '97, § 3702.]

11489. Number of attorneys—court to arrange order. Every plaintiff or defendant shall be entitled to appear by one attorney, and if there be but one plaintiff or defendant he may appear by two, and where there are several defendants having the same or separate defenses and appearing by the same or different attorneys, the court shall, before argument, arrange their order. [R., '60, § 3049; C., '73, § 2782; C., '97, § 3703.]

11490. Argument restricted. The court may restrict the time of argument of any attorney to itself, but shall not limit the argument in cases tried to a jury. [R., '60, § 3050; C., '73, § 2783; C., '97, § 3704.]

11491. Instructions requested. At the conclusion of the evidence, any party may file with the clerk and present to the court consecutively numbered instructions to the jury on points of law with the request that they be given. The court may at any time before final submission of the case to the jury grant leave to any party to file a request for the giving of additional instructions. [R., '60, § 3051; C., '73, § 2784; C., '97, § 3705; S., '13, § 3705; 40 G. A., ch. 268, § 1.]

11492. Duty as to instructions asked. The court shall either give or refuse to give, or modify and give the instructions requested and make a memorandum of the decision on the margin thereof. If the court give any instruction with a modification, the same shall not be indicated on the instruction requested by interlineation or erasure but shall follow some such characterizing words as "changed thus", indicating that the same was refused as requested. [R., '60, §§ 3051, 3053, 3054; C., '73, §§ 2784, 2785, 2786; C., '97, §§ 3705, 3706, 3708; S., '13, § 3705; 40 G. A., ch. 268, § 2.]

11493. Instructions by the court. The court shall instruct the jury as to the law applicable to all the material issues in the case and such instructions shall be in writing and in consecutively numbered paragraphs and shall be read to the jury without oral or other comment or explanation. [R., '60, §§ 3051, 3057, 3058, 3060; C., '73, §§ 2784, 2786, 2788; C., '97, §§ 3705, 3708; S., '13, § 3705; 40 G. A., ch. 268, § 3.]

11494. Record. All instructions requested or given shall be filed by the clerk and be a part of the record. [R., '60, § 3055; C., '73, § 2787; C., '97, § 3707; 40 G. A., ch. 268, § 4.]

11495. Exceptions to instructions. Any party may take and file exceptions to the instructions of the court, or any part of the instructions given, or to the refusal to give any instructions as requested, within five days after the verdict in the cause is filed or within such further time as the court may allow, and may include the same or any part thereof in a motion for a new trial, but all such exceptions shall specify the part of the instructions as excepted to, or of the instructions requested and refused and the grounds of such exceptions. [R., '60, § 3059; C., '73, § 2789; C., '97, § 3709; S., '13, § 3705-a; 37 G. A., ch. 24, § 1; 38 G. A., ch. 11, § 1; 40 G. A., ch. 268, § 5.]

11496. View of premises. When in the opinion of the court it is proper for the jury to have a view of the real property which is the subject of controversy, or the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose; while the jury are thus absent, no one, save such person so selected, shall speak to them on any subject connected with the trial. [C., '51, § 1779; R., '60, § 3061; C., '73, § 2790; C., '97, § 3710.]

11497. Rules as to jury—deliberation—kept together. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they shall be kept together, under charge of an officer, until they agree upon a verdict or are discharged by the court. The officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court, and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon. [C., '51, § 1781; R., '60, § 3062; C., '73, § 2791; C., '97, 3711.]

11498. Separation—advice by court. After the jury is sworn they shall not be permitted to separate during the trial, unless so ordered by the court, and, when so ordered, they must be advised by the court that it is the duty of each one of them not to converse with any other of them, or with any person, nor to suffer himself to be addressed by any person, on any subject of the trial, and that, during the same, it is the duty of each one of them to avoid, as far as possible, forming any opinion thereon until the cause is finally submitted to them. [C., '51, § 1780; R., '60, § 3063; C., '73, § 2792; C., '97, § 3712.]

11499. Discharge of juror. If, after impaneling a jury and before a verdict, a juror becomes sick, so as to be unable to perform his duty, he may be discharged. In such case the trial shall proceed with the remaining jurors if the parties consent, which consent shall be entered by the court or shorthand reporter and become a part of the record; otherwise the

jury shall be discharged. [C., '51, § 1782; R., '60, § 3064; C., '73, § 2793; C., '97, § 3713.]

11500. Discharge of jury. The jury may be discharged by the court on account of any accident or calamity requiring it, or by the consent of both parties, or when on an amendment a continuance is ordered, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing. [R., '60, § 3065; C., '73, § 2794; C., '97, § 3714.]

11501. Cause retried. In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately, or at a future time, as the court may then direct. [R., '60, § 3066; C., '73, § 2795; C., '97, § 3715.]

11502. Adjournment. The court may, at any time after having entered upon the trial of any cause, and in furtherance of justice, order an adjournment for such time within the term, and subject to such terms and conditions as to costs and otherwise, as it may think just. [R., '60, § 3067; C., '73, § 2796; C., '97, § 3716.]

11503. What jury may take with them. Upon retiring for deliberation, the jury may take with them all books of accounts and all papers which have been received as evidence in the cause, except depositions, which shall not be taken unless all the testimony is in writing and none of the same has been ordered to be struck out. [C., '51, § 1783; R., '60, § 3068; C., '73, § 2797; C., '97, § 3717.]

11504. Court open for verdict. When the jury is absent, the court may adjourn from time to time in respect to other business, but shall be regarded as open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. [C., '51, § 1784; R., '60, § 3069; C., '73, § 2798; C., '97, § 3718.]

11505. Further testimony to correct mistake. At any time before the cause is finally submitted to the court or jury, either party may be permitted by the court to give further testimony to correct an evident oversight or mistake, but terms may be imposed upon the party obtaining the privilege. [C., '51, § 1778; R., '60, § 3070; C., '73, § 2799; C., '97, § 3719.]

11506. Additional instructions. After the jury has retired for deliberation, if they desire to be instructed as to any point of law arising in the case, they may request the officer to conduct them into court, which he shall do, when the court may further instruct, which instruction shall be given in the presence of, or after notice to, the parties or their counsel. Such instruction shall be in writing, be filed as other instructions in the case, and be a part of the record, and may be excepted to in the same time and manner as the instructions given before the jury retires. [R., '60, §§ 3071, 3072; C., '73, §§ 2800, 2801; C., '97, § 3720.]

11507. Food and lodging. If, while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court orders them to be provided with suitable food and lodging, it must be provided by the sheriff at the expense of the county. [R., '60, § 3076; C., '73, § 2802; C., '97, § 3721.]

11508. Verdict—how signed and rendered. The verdict must be in writing, signed by a foreman chosen by the jury itself, and, when agreed to, the jury must be conducted into court, their names called, and the verdict rendered by him and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again, but if no disagreement is expressed, and neither party requires the jury to be polled, the verdict is complete, and the jury shall be discharged from the case. [C., '51, § 1789; R., '60, § 3073; C., '73, § 2803; C., '97, § 3722.]

11509. Jury polled. When the verdict is announced, either party may require the jury to be polled, which shall be done by the court or clerk, asking each juror if it is his verdict. If any one answers in the negative, the jury must be sent out for further deliberation. [R., '60, § 3074; C., '73, § 2804; C., '97, § 3723.]

11510. Sealed verdict. When by consent of the parties and the court, the jury has been permitted to seal its verdict and separates before it is rendered, such sealing is equivalent to a rendition and a recording thereof in open court, and such jury shall not be polled or permitted to disagree thereto, unless such course has been agreed upon between the parties in open court and entered on the record. [C., '51, § 1785; R., '60, § 3075; C., '73, § 2805; C., '97, § 3724.]

11511. General or special. The verdict of a jury is either general or special. A general verdict is one in which they pronounce generally for the plaintiff or for the defendant upon all or upon any of the issues. [R., '60, § 3077; C., '73, § 2806; C., '97, § 3725.]

11512. Special defined. A special verdict is one in which the jury finds facts only; it must present the ultimate facts as established by the evidence, and not the evidence to prove them, so that nothing remains to the court but to draw from them its conclusions of law. [R., '60, § 3078; C., '73, § 2807; C., '97, § 3726.]

11513. Findings. The jury in any case in which it renders a general verdict may be required by the court, and must be so required on the request of any party to the action, to find specially upon any particular questions of fact, to be stated to it in writing, which questions of fact shall be submitted to the attorneys of the adverse party before argument to the jury is commenced. [C., '51, §§ 1786, 1787; R., '60, § 3079; C., '73, § 2808; C., '97, § 3727.]

11514. Findings inconsistent with verdict. When the special finding of facts is inconsis-

ent with the general verdict, the former controls the latter, and the court may give judgment accordingly, or set aside the verdict and findings, as justice may require. [R., '60, § 3080; C., '73, § 2809; C., '97, § 3728.]

11515. Assessment of recovery. When by the verdict either party is entitled to recover money of the adverse party, the jury in its verdict must assess the amount of such recovery. [C., '51, § 1788; R., '60, § 3081; C., '73, § 2810; C., '97, § 3729.]

11516. Joint or several verdicts. Where there are several plaintiffs or defendants, whether the pleadings are joint or several, the verdicts shall be molded according to the facts and to suit the exigencies of the case. [R., '60, § 3083; C., '73, § 2811; C., '97, § 3730.]

11517. Form. The verdict shall be sufficient in form if it expresses the intention of the jury. [C., '51, § 1790; R., '60, § 3084; C., '73, § 2812; C., '97, § 3731.]

11518. Entered of record. The verdict shall in all cases be filed with the clerk and entered upon the record, after having been put into form by the court, if necessary, and be a part of the record. [C., '51, § 1789; R., '60, § 3085; C., '73, § 2813; C., '97, § 3732.]

11519. Waiver of jury trial. Trial by jury may be waived by the several parties to an issue of fact in the following cases:

1. By suffering default, or by failing to appear at the trial.
2. By written consent, in person or by attorney, filed with the clerk.
3. By oral consent in open court, entered in the minutes. [R., '60, § 3087; C., '73, § 2814; C., '97, § 3733.]

11520. Reference—by consent. All or any of the issues in an action, whether of fact or of law, or both, may be referred upon the consent of the parties, written or oral, in court entered upon the record. [C., '51, §§ 1650, 1794; R., '60, § 3089; C., '73, § 2815; C., '97, § 3734.]

11521. Without consent. When the parties do not consent, the court may, upon motion of either, or upon its own motion, direct a reference in either of the following cases:

1. When the trial of an issue of fact shall require the examination of mutual accounts, or when, the account being on one side only, it shall be made to appear to the court that it is necessary that the party of the other side should be examined as a witness to prove the account, in which case the referee may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein.
2. When the taking of an account shall be necessary for the information of the court before judgment, or for carrying a judgment or order into effect.
3. When a question of fact shall arise in any action by equitable proceedings, in which case

the court in the order of reference shall prescribe the manner in which the testimony shall be taken on the trial. [R., '60, § 3090; C., '73, § 2816; C., '97, § 3735.]

11522. Hearing—decision. Where not otherwise declared in the order of reference, all the referees must meet to hear proofs, arguments, and to deliberate, but a decision of a majority shall be regarded as their decision. [C., '51, § 1652; R., '60, § 3091; C., '73, § 2817; C., '97, § 3736.]

11523. Vacancies. When appointed by the court, the judge thereof may fill vacancies in vacation. [C., '51, § 1653; R., '60, § 3092; C., '73, § 2818; C., '97, § 3737.]

11524. Powers. The referee shall stand in the place of the court, and shall have the same power, so far as necessary, to discharge his duty. [C., '51, § 1796; R., '60, § 3093; C., '73, § 2819; C., '97, § 3738.]

11525. Method of trial—power of referee. The trial by referee shall be conducted in the same manner as a trial by the court; he shall have the same power to summon and enforce by attachment the attendance of witnesses, to punish them as for a contempt for non-attendance or refusal to be sworn or to testify, and to administer all necessary oaths in the trial of the case, to take testimony by commission, to allow amendments to pleadings, grant continuances, preserve order, and punish all violations thereof. [R., '60, § 3094; C., '73, § 2820; C., '97, § 3739.]

11526. Report—judgment. The report of the referee on the whole issue must state the facts thus found and the conclusions of the law separately, and shall stand as the finding of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court; the report may be excepted to and reviewed in like manner. [R., '60, § 3095; C., '73, § 2821; C., '97, § 3740.]

11527. Finding of facts. When the reference is to report the facts, the report shall have the effect of a special verdict. [R., '60, § 3096; C., '73, § 2822; C., '97, § 3741.]

11528. Bill of exceptions. The referee shall sign any true bill of exceptions taken to any ruling by him made in the case upon the demand of either party, who shall have the same rights to obtain such bill as exists in the court, which bill shall be returned with the report. [R., '60, § 3097; C., '73, § 2823; C., '97, § 3742.]

11529. When bill unnecessary. No bill of exceptions is necessary to preserve or make of record any matter taken or noted down by the official shorthand reporter of the court, or one appointed by it or the referee, or agreed upon by the parties, and whose report is certified by such reporter and referee to be a full and true report of all the proceedings had, which shall be filed with the referee's report, and the whole be a part of the record.

Such reporter shall be governed by the law relating to official shorthand reporters. [C., '97, § 3742.]

11530. Selection of referees. In all cases of reference, the parties, except when a minor is a party, may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly; and if the parties do not agree, the court shall appoint one or more referees, not exceeding three, who shall be persons free from objection, or the court may allow each party to select one and itself select a third. [C., '51, §§ 1651, 1795; R., '60, § 3098; C., '73, § 2824; C., '97, § 3743.]

11531. Appointed in vacation. A judge of the court, when a cause is pending, may, in vacation, upon the written consent of the parties, make an order of reference, which shall be written on the agreement to refer, and filed with the clerk with the other papers in the case, and become part of the record. [R., '60, § 3099; C., '73, § 2825; C., '97, § 3744.]

11532. Oath. The referee must make affidavit well and faithfully to hear and examine the case, and make a just and true report therein, according to the best of his understanding. The affidavit shall be returned with the report, filed by the clerk, and be a part of the record. [R., '60, § 3100; C., '73, § 2826; C., '97, § 3745.]

11533. Procedure. The order shall not be made until the case is at issue as to the parties whose rights are to be examined on the reference. The order may direct when the referee shall proceed to a hearing and when he shall make his report, but, in the absence of such direction, he shall do so on the morning of the tenth day after the day on which the order of reference was made, and shall file his report as soon as done. The parties shall take notice of the time thus fixed or determined and non-attendance of either party within an hour thereof shall be attended with like consequences as if the case were in court, which consequences shall be reported as any other fact or finding of the referee. [R., '60, § 3102; C., '73, § 2827; C., '97, § 3746.]

11534. Acceptance by referee. The referee must be called on by the court to accept or refuse the appointment, and his acceptance shall be entered of record; and he shall be under the control of the court, who may, on the motion of either party, make proper orders with a view to his proceeding with all due dispatch, and the court or judge may, on motion, extend the time for making his report. [R., '60, § 3103; C., '73, § 2828; C., '97, § 3747.]

11535. Proceed as court. The form of procedure which in the court itself regulates service, pleading, proof, trial, and the preparation, progress, and method of each of these, shall obtain before the referee; and in every incident of the proceeding before him the rights and responsibilities of parties and of their attorneys, and of the referee, shall be the same as if the referee was the court engaged in the same man-

ner. [R., '60, § 3105; C., '73, § 2830; C., '97, § 3748.]

11536. Exception defined. An exception is an objection, taken to a decision of the court, or person acting as the court, on a matter of law. [C., '51, § 1805; R., '60, § 3106; C., '73, § 2831; C., '97, § 3749.]

11537. Time to except. The party excepting to the decision must do so at the time it is made, unless it is upon a motion or demurrer, in which case it may be taken within three days. [C., '51, § 1805; R., '60, § 3106; C., '73, § 2831; C., '97, § 3749.]

11538. Bill of exceptions. An exception may be embodied in a bill of exceptions to be filed within thirty days after the final determination of the case, or within a reasonable time thereafter, to be fixed by the court, not to exceed ninety days therefrom. [C., '51, § 1805; R., '60, § 3106; C., '73, § 2831; C., '97, § 3749.]

11539. When bill unnecessary. In equitable actions, triable de novo on appeal, no bill of exceptions shall be necessary, nor in other actions in which all the proceedings are, under the direction of the court, taken in writing or shorthand by the regular court reporter, or another appointed by the court or judge for the purpose, and embodied in a report by such reporter, certified by him and the court or judge, in the manner provided in this chapter for making and certifying such report. [C., '73, § 2831; C., '97, § 3749.]

11540. Optional method. The two preceding sections shall not be so construed as to prevent any party embodying in a bill of exceptions all or any part of the proceedings in any action in which he may elect to preserve his exceptions in that form. [C., '97, § 3749.]

11541. Certification by successor. Whenever the judge or referee trying a cause is unable by reason of death, removal, resignation, or any cause to sign a bill of exceptions, or certify the shorthand reporter's record, the same shall be done by his successor, and the time for such signing or certification shall be extended thirty days after the appointment, or election and qualification of such successor. [C., '97, § 3749.]

11542. Form and grounds of exception. No stated form of exception is required. If the exception is to the admission or exclusion of evidence, oral or written, the ground of the objection must be stated, and no other shall be regarded. [R., '60, § 3107; C., '73, § 2832; C., '97, § 3750.]

11543. Exception noted. When the decision objected to is entered on the record, and the grounds of the exception appear in the entry, or when any error appears of record, the exception may be taken by the party causing to be noted at the end of the decision, or in connection therewith, that he excepts. [R., '60, § 3108; C., '73, § 2833; C., '97, § 3751.]

11544. Writings identified — skeleton bill. A bill of exceptions, when presented for signature, need not include therein, spread out at length, any writing filed in court, but may incorporate the same by any unmistakable reference thereto; and the clerk, in making a transcript of the bill of exceptions, shall write therein at length all of such writing included therein by reference. [R., '60, § 3109; C., '73, § 2834; C., '97, § 3752.]

11545. Signing by judge or bystanders. When the decision is not entered on the record, or the grounds of objection do not sufficiently appear therein, the party excepting must reduce his exception to writing and present it to the judge for his signature, which, if it fairly presents the facts, he shall sign; if he refuses, the party may procure the signature of two bystanders attesting that the exception is correctly stated, and that the judge has refused to sign the same, which bill of exceptions shall then be filed with the clerk and become a part of the record. [C., '51, §§ 1806, 1807; R., '60, § 3110; C., '73, § 2835; C., '97, § 3753.]

11546. Exception controverted. The truth of such exceptions may be controverted and maintained by affidavits, not exceeding five on each side, which shall become a part of the record. [R., '60, § 3110; C., '73, § 2835; C., '97, § 3753.]

11547. Filing affidavits. All affidavits impugning the exception must be filed within three days from the time of filing the bill, and all affidavits sustaining the same within two days thereafter. [R., '60, § 3110; C., '73, § 2835; C., '97, § 3753.]

11548. Must be on material point. No exception shall be regarded in the supreme court unless the ruling has been on a material point, and the effect thereof prejudicial to the rights of the party excepting. [R., '60, § 3111; C., '73, § 2836; C., '97, § 3754.]

NOTE: Errors disregarded, see § 11228.

11549. New trial defined. A new trial is a reexamination in the same court of an issue of fact, or some part or portions thereof, after verdict by a jury, report of a referee, or a decision by the court. [R., '60, § 3112; C., '73, § 2837; C., '97, § 3755.]

11550. Grounds for new trial. The former report, verdict, or decision, or some part or portion thereof, shall be vacated and a new trial granted, on the application of the party aggrieved, for the following causes affecting materially the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, referee, or prevailing party; or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial.

2. Misconduct of the jury or prevailing party.

3. Accident or surprise which ordinary prudence could not have guarded against.

4. Excessive damages appearing to have been given under the influence of passion or prejudice.

5. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract or for the injury or detention of property.

6. That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law.

7. Newly discovered evidence, material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial.

8. Error of law occurring at the trial, excepted to by the party making the application.

9. That the pleadings of the prevailing party do not state facts sufficient to constitute a cause of action or defense, as the case may be, specifying wherein they are defective. [R., '60, § 3112; C., '73, § 2837; C., '97, § 3755.]

11551. Application—use of affidavits. The application must be made within five days after the verdict, report, or decision is rendered, unless for good cause the court extends the time, except for the cause of newly discovered evidence; must be by motion upon written grounds, and, if for the causes enumerated in paragraphs 2, 3, and 7 of the preceding section, may be sustained and controverted by affidavits. [C., '51, §§ 1808-1810; R., '60, §§ 3114, 3115; C., '73, § 2838; C., '97, § 3756; 38 G. A., ch. 11, § 2.]

11552. Verdicts returned after term. If a verdict shall be returned after the expiration of the term, a motion for a new trial may be filed at any time on or before the first day of the next term of court. [C., '97, § 248.]

11553. Judgment notwithstanding verdict. Either party may file a motion for judgment in his favor notwithstanding the fact that a verdict has been returned against him, if the pleadings of the party in whose favor the verdict has been returned omit to aver some material fact or facts necessary to constitute a complete cause of action or defense, the motion clearly pointing out the omission. [R., '60, §§ 3119, 3138; C., '73, §§ 2842, 2859; C., '97, § 3757.]

11554. Arrest of judgment. Either party may file a motion in arrest of judgment, where the pleadings of the prevailing party wholly fail to state a cause of action or a complete defense, and a verdict has been returned in his favor. [R., '60, § 2878; C., '73, § 2650; C., '97, § 3758.]

11555. Filing of motion. The filing of either a motion for a new trial, for judgment notwithstanding the verdict, or in arrest of judgment, shall not be a waiver of the right to file either or both of the others. [C., '97, § 3759.]

11556. Time of filing. Any such motion shall be filed within the time fixed for the filing of motions for new trials. [C., '97, § 3759.]

11557. Curative amendments—time of filing. Upon any motion for a new trial, for judgment

notwithstanding the verdict, or in arrest of judgment, the party whose pleading it is alleged is defective may, if the court considers it necessary, file an amendment setting up the omitted facts, which, if true, would remedy the alleged defects. Such amendment shall be filed before the hearing of the motion, and shall suspend the same. [R., '60, § 3119; C., '73, § 2842; C., '97, § 3760.]

NOTE: Amendments generally, see § 11182.

11558. Effect of amendment—procedure. If the facts thus stated would not, if proven, defeat the object of the motion, it shall be sustained. If such new averments would, if proven, defeat its object and are not admitted, they must be denied, or confessed and avoided, by the opposite party within such time as the court shall direct, unless the same are denied by legal operation, and in such case the law of pleading and procedure shall apply, except that the amendment and response need not be verified. [R., '60, § 3119; C., '73, § 2842; C., '97, § 3760.]

11559. Issues tried—judgment. If the facts thus pleaded are admitted, the party pleading the same shall be entitled to such judgment as he would have been entitled to if such facts had been stated in the original pleading and admitted as proven on the trial, but, if controverted, there shall be a trial of the issues raised by the new pleadings, and judgment shall be rendered on the original verdict or finding, as modified or supplemented by the verdict or finding on the new issues. [R., '60, § 3120; C., '73, § 2843; C., '97, § 3761.]

11560. Costs of new trial. The cost of all new trials shall either abide the event of the action or be paid by the party to whom such new trial is granted, according to the order of the court, to be made at the time of granting such new trial. [R., '60, § 3117; C., '73, § 2840; C., '97, § 3762.]

11561. Conditions. The court may determine not to grant a new trial unless certain terms or conditions named by it shall be agreed to by the opposite party, and, in the event of his agreement, the terms or conditions named shall be entered on the record, and no new trial shall be granted if he refuses to agree thereto. [R., '60, § 3118; C., '73, § 2841; C., '97, § 3763.]

11562. Dismissal of action. An action may be dismissed, and such dismissal shall be without prejudice to a future action:

1. By the plaintiff, before the final submission of the case to the jury, or to the court when the trial is by the court.

2. By the court, when the plaintiff fails to appear when the case is called for trial.

3. By the court, for want of necessary parties, when not made according to the requirements of the court.

4. By the court, on the application of some of the defendants, when there are others whom the plaintiff fails to prosecute with diligence.

5. By the court, for disobedience by the party of an order concerning the pleadings or any proceeding in the action. [C., '51, §§ 1803, 1804; R., '60, § 3127; C., '73, § 2844; C., '97, § 3764.]

11563. Decision on the merits. In all other cases upon the trial of the action the decision must be upon the merits. [R., '60, § 3128; C., '73, § 2845; C., '97, § 3765.]

11564. Counterclaim tried. In any case when a counterclaim has been filed, the defendant shall have the right of proceeding to trial thereon, although the plaintiff may have dismissed his action or failed to appear. [C., '51, § 1801; R., '60, § 3129; C., '73, § 2846; C., '97, § 3766.]

11565. Dismissal of counterclaim. The defendant may, at any time before the final submission of the cause to the jury, or to the court when the trial is by the court, dismiss his counterclaim without prejudice. [C., '51, § 1802; R., '60, § 3130; C., '73, § 2847; C., '97, § 3767.]

11566. Dismissal in vacation. Any party to any claim may dismiss the same in vacation, and the clerk shall make the proper entry of dismissal on the record, and, if the costs are not paid, may enter judgment against such party therefor in favor of the party entitled thereto, and issue execution therefor at the order of such party. The party so dismissing shall be liable for no costs made by the other party after notice to him of such dismissal. [C., '51, § 1822; R., '60, § 3131; C., '73, § 2848; C., '97, § 3768.]

11567. Judgment—final adjudication. Every final adjudication of the rights of the parties in an action is a judgment; and such adjudication may consist of many judgments, one of which may determine for the plaintiff or defendant on the claim of either as an entirety; or, when a claim consists of several parts or items, such judgment may be for either of them on any specific part or item of such aggregate claim, and against him on the other part thereof; or a judgment may, in either of these ways, determine on the claims of coparties on the same side against each other. [C., '51, §§ 1814, 1815; R., '60, § 3121; C., '73, § 2849; C., '97, § 3769.]

11568. Judgment for part. Any party who succeeds in part of his cause or causes, and fails as to part, may have the entry in such case express judgment for him for such part as he succeeds upon, and against him on the other part. [R., '60, § 3122; C., '73, § 2850; C., '97, § 3770.]

11569. Pleading in abatement and bar. Where matter in abatement is pleaded in connection with other matter not such, the finding of the jury or court must distinguish between matter in abatement and matter in bar, and the judgment must, if it is rendered on the matter in abatement, and not on the merits, so

declare. [R., '60, § 3124; C., '73, § 2851; C., '97, § 3771.]

11570. Special execution—pleading. Where any other than a general execution of the common form is required, the party must state in his pleading the facts entitling him thereto, and the judgment may be entered in accordance with the finding of the court or jury thereon. [R., '60, § 3125; C., '73, § 2852; C., '97, § 3772.]

11571. Several judgment. In an action by several plaintiffs, or against several defendants, the court may, in its discretion, render judgment for or against one or more of them when a several judgment is proper, leaving the action to proceed as to the others. [C., '51, § 1816; R., '60, §§ 3123, 3126; C., '73, § 2853; C., '97, § 3773.]

11572. Judgment against one of joint defendants. Though all the defendants have been served with notice, judgment may be rendered against any of them severally, where the plaintiff would be entitled to judgments against such defendants if the action had been against such alone. [R., '60, § 3132; C., '73, § 2854; C., '97, § 3774.]

11573. What relief granted. The relief granted to the plaintiff, if there be no answer, can not exceed that which he has demanded in his petition. In any other case the court may grant him any relief consistent with the case made by the petition and embraced within the issue. [C., '51, § 1820; R., '60, § 3133; C., '73, § 2855; C., '97, § 3775.]

11574. Judgment for part of claim. If only part of the claim is controverted by the pleading, judgment may at any time be rendered for the part not controverted. [R., '60, § 3135; C., '73, § 2856; C., '97, § 3776.]

11575. Judgment on verdict. When a trial by jury has been had, judgment must be entered by the clerk in conformity with the verdict, unless it is special, or the court orders the case to be reserved for future argument or consideration. [R., '60, § 3136; C., '73, § 2857; C., '97, § 3777.]

11576. When verdict is special. When the verdict is special, or when there has been a special finding on particular questions of fact or issues, or when the court has ordered the case to be reserved, it shall order what judgment shall be entered. [R., '60, § 3137; C., '73, § 2858; C., '97, § 3778.]

11577. Principal and surety—order of liability. When a judgment is rendered against a principal and his surety, it shall recite the order of their liability therefor, and the term "surety" includes all persons whose liability on the claim is posterior to that of another. [R., '60, § 3259; C., '73, § 3040; C., '97, § 3779.]

11578. Judgment on counterclaim—affirmative relief. If more is recovered on a counterclaim than on the plaintiff's claim, judgment

for the defendant must be given for the excess; or, if it appears that the defendant is entitled to any other affirmative relief, judgment must be given therefor. [C., '51, § 1798; R., '60, § 3139; C., '73, § 2860; C., '97, § 3780.]

11579. Judgment by agreement. Any judgment in a case pending, other than for divorce, which may be agreed upon between the parties interested therein, may at any time be entered, and if not done in open court, the judgment agreed to shall be in writing, signed, and filed with the clerk, who shall thereupon enter the same accordingly, and execution thereon may issue forthwith unless therein otherwise agreed upon. [C., '51, §§ 1821, 1822; R., '60, § 3143; C., '73, § 2861; C., '97, § 3781.]

11580. Distinction between debt and damages. In all actions where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of debt or damages. [R., '60, § 3144; C., '73, § 2862; C., '97, § 3782.]

11581. Court acting as jury. The provisions of this chapter relative to juries are intended to be applied to the court when acting as a jury on the trial of a cause, so far as they are applicable and not incompatible with other provisions herein contained. [C., '51, § 1823; R., '60, § 3145; C., '73, § 2863; C., '97, § 3783.]

11582. Judgments and orders entered. All judgments and orders must be entered on the record of the court, and must specify clearly the relief granted or order made in the action. [R., '60, § 3140; C., '73, § 2864; C., '97, § 3784.]

11583. Satisfaction of judgment. Where a judgment is set aside or satisfied by execution or otherwise, the clerk shall at once enter a memorandum thereof on the column left for that purpose in the judgment docket. [C., '51, § 1819; R., '60, § 3141; C., '73, § 2865; C., '97, § 3785; 40 Ex. G. A., S. F. 231, § 3.]

11584. Complete record. In cases where the title to land is involved and expressly settled or determined, the clerk shall make a complete record of the whole cause, except abstracts of title attached to the pleadings, and enter it in the proper book. In no other case need a complete entry be made, except at the request of either party, which party shall pay the costs of said entry. [C., '51, § 1817; R., '60, § 3142; C., '73, § 2866; C., '97, § 3785; 40 Ex. G. A., S. F. 231, § 3.]

11585. Discharge on motion. A defendant against whom a judgment has been rendered, or any person interested therein, having matter of discharge which has arisen since the judgment may, upon motion, in a summary way, have the same discharged, either in whole or in part, according to the circumstances. [R., '60, § 3146; C., '73, § 2867; C., '97, § 3786.]

11586. Fraudulent assignment. The court shall have power, on motion, to inquire into the

facts attending or connected with the assignment of a judgment, or the entry of the same to the use of any party, and to strike out such use, or to declare such assignment void, either in whole or in part, whenever such assignment or use shall be determined to be inequitable, fraudulent, or in bad faith. [R., '60, § 3147; C., '73, § 2868; C., '97, § 3787.]

11587. Default—when made and entered. If a party fails to file or amend his pleading by the time prescribed by the rules of pleading, or, in the absence of rules, by the time fixed by the court, or if, having pleaded, his petition, answer, or reply on motion or demurrer is held insufficient, or is stricken out, and he fails to amend, answer, or reply further as required by the rules of or by the court, or if he withdraws his pleading without authority or permission to replead, judgment by default may be rendered against him, on demand of the adverse party, made before such pleading is filed. [C., '51, § 1824; R., '60, § 3148; C., '73, § 2869; C., '97, § 3788.]

11588. Failure to appear. Where no appearance is made, default shall not be entered until the court determines from an inspection of the record that notice has been given as required by this code. [C., '51, § 1826; R., '60, § 3149; C., '73, § 2870; C., '97, § 3789.]

11589. Setting aside default. Default may be set aside on such terms as to the court may seem just, among which must be that of pleading issuably and forthwith, but not unless an affidavit of merits is filed, and a reasonable excuse shown for having made such default, nor unless application therefor is made at the term in which default was entered, or if entered in vacation, then on the first day of the succeeding term. [C., '51, § 1827; R., '60, § 3150; C., '73, § 2871; C., '97, § 3790.]

11590. Amount of judgment—how determined. When the action is for a money demand, and the amount of the proper judgment is a mere matter of computation, the clerk shall ascertain the amount, but no fee shall be charged therefor. When long accounts are to be examined, the court may refer the matter. In other cases the court shall assess the damages, unless a jury is demanded by the party not in default. The proper amount having been ascertained by either of the above methods, judgment shall be rendered therefor. [C., '51, §§ 1828-1830, 1832; R., '60, § 3151; C., '73, § 2872; C., '97, § 3791.]

11591. Appearance to cross-examine. The party in default may appear at the time of the assessment and cross-examine the witnesses against him, but for no other purpose. [C., '51, § 1831; R., '60, § 3152; C., '73, § 2873; C., '97, § 3792.]

11592. Default in equitable proceeding. When the action is of an equitable character, the court, upon hearing the pleadings and proofs, and hearing the testimony offered, shall render such judgment as is consistent with

the rules of equity. [C., '51, § 1833; R., '60, § 3153; C., '73, § 2874; C., '97, § 3793.]

11593. Setting aside, if on notice by publication. A defendant served by publication alone shall be allowed, at any time before judgment, to appear and defend the action, and, upon a substantial defense being declared, time may be given on reasonable terms to prepare for trial. [R., '60, § 3154; C., '73, § 2875; C., '97, § 3794.]

11594. Security required of plaintiff. When judgment by default is rendered against a defendant who has not been personally served, the court, before issuing process to enforce such judgment, may, if deemed expedient, require the plaintiff to give security to abide the future order of the court as contemplated in the two following sections. [C., '51, § 1834; R., '60, §§ 3156-3159; C., '73, § 2876; C., '97, § 3795.]

11595. New trial after judgment, on publication. When a judgment has been rendered against a defendant or defendants, served by publication only, and who do not appear, such defendants, or any one or more of them, or any person legally representing him or them, may, at any time within two years after the rendition of the judgment, appear in court and move to have the action retried, and, security for the costs being given, they shall be permitted to make defense; and thereupon the action shall be retried as to such defendants as if there had been no judgment. [C., '51, § 1835; R., '60, § 3160; C., '73, § 2877; C., '97, § 3796.]

11596. Judgment on retrial. Upon the new trial the court may confirm the former judgment, or may modify or set it aside, and may order the plaintiff to restore any money of such defendant paid to him under it and yet remaining in his possession, and pay to the defendant the value of any property which may have been taken in attachment in the action or under the judgment, and not restored. [C., '51, § 1835; R., '60, § 3160; C., '73, § 2877; C., '97, § 3796.]

11597. Title to property not affected. The title of a purchaser in good faith to any property sold under attachment or judgment shall not be affected by the new trial permitted by the two preceding sections, except the title of property obtained by the plaintiff and not bought of him in good faith by others. [C., '51, § 1836; R., '60, § 3163; C., '73, § 2878; C., '97, § 3797.]

11598. Serving copy of judgment. The plaintiff may, at any time after the judgment, cause a certified copy thereof to be served on a defendant served by publication only, whereupon the period in which such defendant is allowed to appear and have a new trial shall be reduced to six months after such service. [R., '60, § 3161; C., '73, § 2879; C., '97, § 3798.]

11599. Manner of service. The service, whether made within or without the state, shall be actual and personal by delivery of such

certified copy, and made and returned as in case of original notice. [R., '60, § 3162; C., '73, § 2880; C., '97, § 3799.]

11600. Judgment on publication service. No personal judgment shall be rendered against a defendant served by publication only who has not made an appearance. [R., '60, § 3164; C., '73, § 2881; C., '97, § 3800.]

11601. Personal judgment — when authorized. A personal judgment may be rendered against a defendant, whether he appears or not, who has been served in any mode provided in this code other than by publication, whether served within or without this state, if such defendant is a resident of the state. [R., '60, § 3164; C., '73, § 2881; C., '97, § 3800.]

11602. Liens of judgments. Judgments in the supreme or district court of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all he may subsequently acquire, for the period of ten years from the date of the judgment. [C., '51, §§ 2485, 2489; R., '60, §§ 4105, 4109; C., '73, § 2882; C., '97, § 3801.]

NOTE: Nonlienable judgments in probate, see § 11967.

11603. When judgment lien attaches. When the land lies in the county wherein the judgment was rendered, the lien shall attach from the date of such rendition, but if in another it will not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the land lies. [C., '51, §§ 2486, 2487; R., '60, §§ 4106, 4107; C., '73, §§ 2883, 2884; C., '97, § 3802; S., '13, § 3802.]

11604. Federal and supreme court judgments. The lien of judgments of the district or circuit courts of the United States, and the supreme court of Iowa, shall not attach to any real estate until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the land lies. [S., '13, § 3802.]

11605. Docketing transcript. Such clerk shall, on the filing of such transcript of the judgment in his office, immediately proceed to docket and index the same in the same manner as though rendered in the court of his own county. [C., '51, § 2488; R., '60, § 4108; C., '73, § 2885; C., '97, § 3803.]

11606. Judgment against railway. A judgment against any railway, interurban railway, or street railway corporation or copartnership, for an injury to any person or property, and any claim for compensation under the workmen's compensation act for personal injuries sustained by their employees arising out of and in the course of their employment, shall be a lien upon the property of such corporation or copartnership within the county where the judgment was recovered or in which occurred the injury for which compensation is due. [C., '73, § 1309; C., '97, § 2075; 37 G. A., ch. 403, § 1.]

11607. Priority. Said lien shall be prior and superior to the lien of any mortgage or trust deed executed since July 4, 1862, by any railway corporation or partnership, and prior and superior to the lien of any mortgage or trust deed executed after August 9, 1897, by any interurban railway or street railway corporation or copartnership. [C., '73, § 1309; C., '97, § 2075; 37 G. A., ch. 403, § 1.]

11608. Judgments on motion. Judgments or final orders may be obtained on motion by sureties against their principals, or by sureties against their cosureties, for the recovery of money due them on account of payments made by them as such; by clients against attorneys; plaintiffs in execution against sheriffs, constables, and other officers, for the recovery of money or property collected for them, and damages; and in all other cases specially authorized by statute. [R., '60, § 3422; C., '73, § 2906; C., '97, § 3826.]

11609. Notice—service. Notice of such motion shall be served on the party against whom the judgment or order is sought, at least ten days before the motion is made. [R., '60, § 3423; C., '73, § 2907; C., '97, § 3827.]

11610. Form. The notice shall state in plain and ordinary language the nature and grounds thereof, and the day on which it will be made. [R., '60, § 3424; C., '73, § 2908; C., '97, § 3828.]

11611. When abandoned. Unless the motion is made and filed with the case on or before the day named in the notice, it shall be considered as abandoned. [R., '60, § 3425; C., '73, § 2909; C., '97, § 3829.]

11612. No written pleadings. It shall be heard and determined by the court without written pleadings, and judgment given according to the very right of the matter. [R., '60, § 3426; C., '73, § 2910; C., '97, § 3830.]

11613. Conveyance by commissioner. Real property may be conveyed by a commissioner appointed by the court:

1. Where, by judgment in an action, a party is ordered to convey such property to another.

2. Where such property has been sold under a judgment or order of the court, and the purchase price has been paid. [R., '60, § 3165; C., '73, § 2886; C., '97, § 3805.]

11614. Deed. The deed of the commissioner shall refer to the judgment, orders, and proceedings authorizing the conveyance. [R., '60, § 3166; C., '73, § 2887; C., '97, § 3806.]

11615. Conveys title. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land. [R., '60, § 3167; C., '73, § 2888; C., '97, § 3807.]

11616. Other parties. A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding. [R., '60, § 3168; C., '73, § 2889; C., '97, § 3808.]

11617. Approval by court. A conveyance by a commissioner shall not pass any right until it has been approved by the court, which approval shall be indorsed on the conveyance and recorded with it. [R., '60, § 3169; C., '73, § 2890; C., '97, § 3809.]

11618. Form. The conveyance shall be signed by the commissioner only, without affixing the names of the parties whose title is conveyed, but the names of such parties shall be recited in the body of the conveyance. [R., '60, § 3170; C., '73, § 2891; C., '97, § 3810.]

11619. Recorded. The conveyance shall be recorded in the office in which, by law, it should have been recorded had it been made by the parties whose title is conveyed by it. [R., '60, § 3171; C., '73, § 2892; C., '97, § 3811.]

11620. Approval in vacation. Whenever by law it is permitted or required that judicial or

other sales and conveyances of land may or shall be confirmed and approved by a court, the judge of the court may, in vacation, approve the same, and cause the proper entry or entries to be made. [C., '73, § 2893; C., '97, § 3812.]

11621. Satisfaction of judgment—penalty. When the amount due upon judgment is paid off, or satisfied in full, the party entitled to the proceeds thereof, or those acting for him, must acknowledge satisfaction thereof upon the record of such judgment, or by the execution of an instrument referring to it, duly acknowledged and filed in the office of the clerk in every county wherein the judgment is a lien. A failure to do so for thirty days after having been requested in writing shall subject the delinquent party to a penalty of fifty dollars, to be recovered in an action therefor by the party aggrieved. [C., '97, § 3804.]

CHAPTER 497

COSTS

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11622. Recoverable by successful party. Costs shall be recovered by the successful against the losing party. [C., '51, § 1811; R., '60, § 3449; C., '73, § 2933; C., '97, § 3853; S., '13, § 3853; 40 G. A., ch. 269, § 1.]

11623. Witness fees—limitation. The losing party, however, shall not be assessed with the cost of mileage of any witness for a distance of more than one hundred miles from the place of trial, unless otherwise ordered by the court at the time of entering judgment. [S., '13, § 3853; 40 G. A., ch. 269, § 1.]

11624. Apportionment generally. Where the party is successful as to a part of his demand, and fails as to part, unless the case is otherwise provided for, the court on rendering judgment may make an equitable apportionment of costs. [C., '51, § 1811; R., '60, § 3449; C., '73, § 2933; C., '97, § 3853; S., '13, § 3853; 40 G. A., ch. 269, § 2.]

11625. Apportionment among numerous parties. In actions where there are several plaintiffs or several defendants, the costs shall be apportioned according to the several judgments rendered; and where there are several

causes of action embraced in the same petition, or several issues, the plaintiff shall recover costs upon the issues determined in his favor, and the defendant upon those determined in his favor. [R., '60, § 3451; C., '73, § 2934; C., '97, § 3854.]

11626. Liability of successful party. All costs accrued at the instance of the successful party, which can not be collected of the other party, may be recovered on motion by the person entitled to them against the successful party. [R., '60, § 3452; C., '73, § 2935; C., '97, § 3855.]

11627. Cost of procuring testimony. The necessary fees paid by the successful party in procuring copies of deeds, bonds, wills, or other records filed as a part of the testimony shall be taxed in the bill of costs. [R., '60, § 3453; C., '73, § 2936; C., '97, § 3856.]

11628. Postage. Postage paid by the officers of the court, or by the parties, in sending process, depositions, and other papers being part of the record, by mail, shall be taxed in the bill of costs. [R., '60, § 3454; C., '73, § 2937; C., '97, § 3857.]

11629. Jury fees—report. There shall be taxed, in every action tried in a court of record by a jury, a jury fee of ten dollars, which, when collected, shall be paid by the clerk into the county treasury; all such fees, not previously reported, to be by him reported to the board of supervisors at each regular session, and by it charged to the treasurer. [C., '73, § 3812; C., '97, § 3872; 39 G. A., ch. 275.]

11630. Referee fees. Referees, acting under a submission by a court in an action pending therein, shall receive such compensation as is fixed by the court or judge, or agreed upon by the parties to the action, which shall be taxed as a part of the costs therein. [C., '51, § 2114; R., '60, § 3691; C., '73, § 3834; C., '97, § 3874.]

11631. Transcripts—retaxation. The fees of shorthand reporters for making transcripts of the notes in any case or any portion thereof, as directed by any party thereto, shall be taxed as costs, as shall also the fees of the clerk for making any transcripts of the record required on appeal, but such taxation may be revised by the supreme court on motion on the appeal, without any motion in the lower court for the retaxation of costs. [C., '97, § 3875.]

11632. Defense arising after action brought. When a pleading contains a defense matter which arose after the commencement of the action, whether such matter of defense is pleaded alone or with other matter of defense which arose before the action, the party affected by such matter may confess the same, and shall be entitled to the costs of the action to the time of such pleading. [R., '60, § 3455; C., '73, § 2938; C., '97, § 3858.]

11633. Dismissal of action or abatement. When a plaintiff dismisses the action or any part thereof, or suffers it to abate by the death of the defendant or other cause, or where the action abates by the death of the plaintiff, and his representatives fail to revive the same, judgment for costs may be rendered against such plaintiff or representative, and, if against a representative, shall be paid as other claims against the estate. [R., '60, § 3456; C., '73, § 2939; C., '97, § 3859.]

11634. Between coparties. Coparties against whom judgment has been recovered are entitled, as between themselves, to a taxation of the costs of witnesses whose testimony was obtained at the instance of one of the coparties and inured exclusively to his benefits. [R., '60, § 3457; C., '73, § 2940; C., '97, § 3860.]

11635. Dismissal for want of jurisdiction. Where an action is dismissed from any court for want of jurisdiction, or because it has not been regularly transferred from an inferior to a superior court, the costs shall be adjudged against the party attempting to institute or bring up the same. [R., '60, § 3458; C., '73, § 2941; C., '97, § 3861.]

11636. Costs taxable. The clerk shall tax in favor of the party recovering costs the allowance of his witnesses, the fees of officers, the

compensation of referees, the necessary expenses of taking depositions by commission or otherwise, and any further sum for any other matter which the court may have awarded as costs in the progress of the action, or may allow. [R., '60, § 3459; C., '73, § 2942; C., '97, § 3862.]

11637. Liability of nonparty. In actions in which the cause of action shall, by assignment after the commencement thereof, or in any other manner, become the property of a person not a party to the action, such party shall be liable for the costs in the same manner as if he were a party. [R., '60, § 3460; C., '73, § 2943; C., '97, § 3863.]

11638. Retaxation. Any person aggrieved by the taxation of a bill of costs may, upon application, have the same retaxed by the court, or by a referee appointed by the court in which the application or proceeding was had, and in such retaxation all errors shall be corrected. [C., '51, § 1813; R., '60, § 3461; C., '73, § 2944; C., '97, § 3864.]

11639. Liability of clerk. If the party aggrieved shall have paid any unlawful charge by reason of the first taxation, the clerk shall pay the costs of retaxation, and also to the party aggrieved the amount which he may have paid by reason of the allowing of such unlawful charges. [C., '51, § 1813; R., '60, § 3461; C., '73, § 2944; C., '97, § 3864.]

11640. Bill of costs on appeal. In cases of appeals from the district court, the clerk, if final judgment is rendered in the supreme court, shall make a complete bill of costs in the court below which shall be filed in the office of the clerk of the supreme court and taxed with the costs in the action therein. [R., '60, § 3462; C., '73, § 2945; C., '97, § 3865.]

11641. Costs in supreme court. When the costs accrued in the supreme court and the court below are paid to the clerk of the supreme court, he shall pay so much of them as accrued in the court below to the clerk of said court, and take his receipt therefor. [R., '60, § 3463; C., '73, § 2946; C., '97, § 3866.]

11642. Duty of clerk below. On receiving such costs, the clerk of the court below shall charge himself with the money and pay it to the persons entitled thereto. [R., '60, § 3464; C., '73, § 2947; C., '97, § 3867.]

11643. Interest. When the judgment is for the recovery of money, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added to the costs of the party entitled thereto. [R., '60, § 3466; C., '73, § 2948; C., '97, § 3868.]

11644. Attorney's fees. When judgment is recovered upon a written contract containing an agreement to pay an attorney's fee, the court shall allow and tax as a part of the costs:

1. On the first two hundred dollars or fraction thereof recovered, ten per cent.

2. On the excess of two hundred to five hundred dollars, five per cent.

3. On the excess of five hundred to one thousand dollars, three per cent, and

4. On all sums in excess of one thousand dollars, one per cent. [C., '97, § 3869.]

11645. Limitations. If action is commenced and the claim paid off before return day, the amount shall be one-half of the sum above provided, and if it is paid after the return day but before judgment, three-fourths of said sum; but no fee shall be allowed in any case if an action has not been commenced, or expense incurred, nor shall any greater sum be allowed, any agreement in the contract to the contrary notwithstanding. [C., '97, § 3869.]

11646. Affidavit required. The attorney's fee allowed in the two preceding sections shall not be taxed in any case unless it shall appear by affidavit of the attorney, filed with the petition at the commencement of the action, that

there has been, and is, no agreement between such attorney and his client, express or implied, nor between him and any other person, except a practicing attorney engaged with him as an attorney in the cause, for any division or sharing of the fee to be taxed, which, when taxed, shall be only in favor of a regular attorney and as compensation for services actually rendered in the action. [C., '97, § 3870.]

11647. Opportunity to pay. No such attorney fee shall be taxed if the defendant is a resident of the county and the action is not aided by an attachment, unless it shall be made to appear that such defendant had information of and a reasonable opportunity to pay the debt before action was brought. This provision, however, shall not apply to contracts made payable by their terms at a particular place, the maker of which has not tendered the sum due at the place named in the contract. [C., '97, § 3871.]

CHAPTER 498

EXECUTIONS

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11648. Enforcement of judgments and orders. Judgments or orders requiring the payment of money, or the delivery of the possession of property, are to be enforced by execution. Obedience to those requiring the performance of any other act is to be coerced by attachment as for a contempt. [C., '51, § 1885; R., '60, § 3247; C., '73, § 3026; C., '97, § 3954.]

11649. Within what time—to what counties. Executions may issue at any time before the judgment is barred by the statute of limitations; and upon those in the district and supreme courts, into any county which the party ordering may direct. [C., '51, §§ 1886, 1888; R., '60, §§ 3246, 3248; C., '73, §§ 3025, 3027; C., '97, § 3955; S., '13, § 3955.]

11650. Limitation on number. Only one execution shall be in existence at the same time. [R., '60, § 3246; C., '73, § 3025; C., '97, § 3955; S., '13, § 3955.]

11651. Lost writ. When the plaintiff in judgment shall file in any court in which a judgment has been entered an affidavit made by himself, his agent or attorney, or by the officer to whom the execution was issued, that an outstanding execution has been lost or destroyed, the clerk of such court may issue a duplicate execution as of the date of the lost execution, which shall have the same force and effect as the original execution, and any levy made under the execution so lost shall have the same force and effect under the duplicate execution as under the original. [S., '13, § 3955.]

11652. Expiration of lost writ—effect. When the lost execution shall have expired by limitation and such affidavit is filed, an execution may issue as it might if such lost execution had been duly returned. [S., '13, § 3955.]

11653. Issuance on Sunday. An execution may be issued and executed on Sunday, when an affidavit is filed by the plaintiff, or some person in his behalf, stating that he believes he will lose his judgment unless process issues on that day. [R., '60, § 3263; C., '73, § 3028; C., '97, § 3956.]

11654. Issuance on demand. Upon the rendition of judgment, execution may be at once issued by the clerk on the demand of the party entitled thereto. [R., '60, § 3265; C., '73, § 3029; C., '97, § 3957.]

11655. Record kept. The clerk shall enter on the judgment docket the date of its issuance and to what county and officer issued, the return of the officer, with the date thereof, the dates and amount of all moneys received or paid out of the office thereon; which entries shall be made at the time each act is done. [R., '60, § 3265; C., '73, § 3029; C., '97, § 3957.]

11656. Entries in foreign county. In case execution is issued to a county other than that in which judgment is rendered, and is levied upon real estate in such county, an entry thereof shall be made upon the incumbrance book of that county by the officer making it, showing

the same particulars as are required in case of the attachment of real estate, which shall be bound from the time of such entry. [R., '60, § 3249; C., '73, § 3031; C., '97, § 3958; S., '13, § 3958.]

11657. Duplicate returns and record. If real estate is sold under said execution said officer shall make return thereof in duplicate, one of which shall be appended to the execution and returned to the court from which it is issued, the other with a copy of the execution to the district court of the county in which said real estate is situated, which shall be filed by the clerk who shall make entries thereof in the sale book in the same manner as if such judgment had been rendered and execution issued from said court. [S., '13, § 3958.]

11658. Return from foreign county. When sent into any county other than that in which the judgment was rendered, return may be made by mail. Money can not thus be sent, except by direction of the party entitled thereto, or his attorney. [C., '51, § 1889; R., '60, § 3250; C., '73, § 3032; C., '97, § 3959.]

11659. Form of execution. The execution must intelligibly refer to the judgment, stating the time when and place at which it was rendered, the names of the parties to the action as well as to the judgment, its amount, and the amount still to be collected thereon, if for money; if not, it must state what specific act is required to be performed. If it is against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment and interest out of property of the debtor subject to execution. [C., '51, § 1890; R., '60, § 3251; C., '73, § 3033; C., '97, § 3960.]

11660. Property in hands of others. If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment and interest out of such property. [R., '60, § 3252; C., '73, § 3034; C., '97, § 3961.]

11661. Delivery of possession and money recovery. If it is for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require him to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered subject to execution.

The value of the property for which judgment was recovered shall be specified therein, if a delivery thereof can not be had, and it shall in that respect be regarded as an execution against property. [R., '60, § 3253; C., '73, § 3035; C., '97, § 3962.]

11662. Performance of other acts. When it requires the performance of any other act, a certified copy of the judgment may be served on the person against whom it is rendered, or

upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced. [R., '60, § 3254; C., '73, § 3036; C., '97, § 3963.]

11663. Receipt and return. Every officer to whose hands an execution may come shall give a receipt therefor, if required, stating the hour when the same was received, and shall make sufficient return thereof, together with the money collected, on or before the seventieth day from the date of its issuance. [R., '60, § 3255; C., '73, § 3037; C., '97, § 3964.]

11664. Indorsement by officer. The officer to whom an execution is issued shall indorse thereon the day and hour when he received it, the levy, sale, or other act done by virtue thereof, with the date thereof, the dates and amounts of any receipts or payment in satisfaction thereof; which entries must be made at the time of the receipt or act done. [R., '60, § 3257; C., '73, § 3038; C., '97, § 3965.]

11665. Principal and surety—order of liability. The clerk issuing an execution on a judgment against principal and surety shall state in the execution the order of liability recited in the judgment, and the officer serving it shall exhaust the property of the principal first, and of the other defendants in the order of liability thus stated. To obtain the benefits of this section, the order of liability must be recited in the execution, and the officer holding it must separately return thereon the amount collected from the principal debtor and surety. [C., '51, § 1915; R., '60, §§ 3258, 3260, 3261, 3303; C., '73, §§ 3039, 3041, 3042, 3071; C., '97, § 3966.]

11666. Duty to point out property. Each person subsequently liable shall, if requested by the officer, point out property owned by the party liable, before him, to obtain the benefits of the provision of the preceding section. [R., '60, § 3259; C., '73, § 3040; C., '97, § 3966.]

11667. Surety subrogated. When the principal and surety are liable for any claim, such surety may pay the same, and recover thereon against all liable to him. If a judgment against principal and surety has been paid by the surety, he shall be subrogated to all the rights of the creditor, and may take an assignment thereof, and enforce the same by execution or otherwise, as the creditor could have done. All questions between the parties thereto may be heard and determined on motion by the court, or a judge thereof, upon such notice as may be prescribed by it or him. [C., '97, § 3967.]

11668. Levy—how made and indorsed. When an execution is delivered to an officer, he must proceed to execute it with diligence; if executed, an exact description of the property at length, with the date of the levy, shall be indorsed upon or appended to the execution and if it was not executed, or only executed in part, the reason in such case must be stated in the return. [R., '60, § 3262; C., '73, § 3043; C., '97, § 3968.]

11669. Acts necessary. The officer must execute the writ by levying on the property of the judgment debtor, collecting the things in action by suit in his own name, if necessary, or by selling the same, selling the other property, and paying to the clerk or the plaintiff the proceeds, or so much thereof as will satisfy the execution. He may retain his own costs on receipting therefor on the judgment docket. [C., '51, § 1904; R., '60, § 3267; C., '73, § 3044; C., '97, § 3969.]

11670. Selection of property. The officer shall in all cases select such property, and in such quantities, as will be likely to bring the exact amount required to be raised, as nearly as practicable, and having made one levy, may at any time thereafter make others, if he finds it necessary. [C., '51, § 1903; R., '60, § 3268; C., '73, § 3045; C., '97, § 3970.]

11671. Lien on personalty. No execution shall be a lien on personal property before the actual levy thereof. [C., '73, § 3045; C., '97, § 3970.]

11672. Choses in action. Judgments, money, bank bills, and other things in action may be levied upon, and sold or appropriated thereunder, and an assignment thereof by the officer shall have the same effect as if made by the defendant. [C., '51, § 1893; R., '60, § 3272; C., '73, § 3046; C., '97, § 3971.]

11673. Levy on judgment. The levy upon a judgment shall be made by entering upon the judgment docket a memorandum of such fact, giving the names of the parties plaintiff and defendant, the court from which the execution issued, and the date and hour of such entry, which shall be signed by the officer serving the execution, and a return made on the execution of his doings in the premises. [C., '97, § 3971.]

11674. Persons indebted may pay officer. After the rendition of judgment, any person indebted to the defendant in execution may pay to the sheriff the amount of such indebtedness, or so much thereof as is necessary to satisfy the execution, and his receipt shall be a sufficient discharge therefor. [C., '51, § 1894; R., '60, § 3273; C., '73, § 3047; C., '97, § 3972.]

11675. Levy against municipal corporation—tax. If no property of a municipal corporation against which execution has issued can be found, or if the judgment creditor elects not to issue execution against such corporation, a tax must be levied as early as practicable to pay off the judgment. When a tax has been so levied and any part thereof shall be collected, the treasurer of such corporation shall pay the same to the clerk of the court in which the judgment was rendered, in satisfaction thereof. [C., '51, § 1896; R., '60, § 3275; C., '73, § 3049; C., '97, § 3973.]

11676. Corporation stock—debts—property in hands of third persons. Stock or interest owned by the defendant in any company or cor-

poration, and also debts due him and property of his in the hands of third persons, may be levied upon in the manner provided for attaching the same. [C., '51, § 1892; R., '60, § 3269; C., '73, § 3050; C., '97, § 3974.]

11677. Garnishment. Property of the defendant in the possession of another, or debts due him, may be reached by garnishment. [R., '60, § 3270; C., '73, § 3051; C., '97, § 3975.]

11678. Expiration or return of execution. Proceedings by garnishment on execution shall not be affected by its expiration or its return. [R., '60, § 3271; C., '73, § 3052; C., '97, § 3976.]

11679. Return of garnishment—action docketed. Where parties have been garnished under it, the officer shall return to the next term thereafter a copy of the execution with all his doings thereon, so far as they relate to the garnishments, and the clerk shall docket an action thereon without fee, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be. [R., '60, § 3271; C., '73, § 3052; C., '97, § 3976.]

11680. Joint or partnership property. When an officer has an execution against a person who owns property jointly, in common or in partnership with another, such officer may levy on and take possession of the property owned jointly, in common or in partnership, sufficiently to enable him to appraise and inventory the same, and for that purpose shall call to his assistance three disinterested persons, which inventory and appraisal shall be returned by the officer with the execution, and shall state in his return who claims to own the property. [C., '51, § 1917; R., '60, § 3287; C., '73, § 3053; C., '97, § 3977.]

11681. Lien-equitable proceeding—receiver. The plaintiff shall, from the time such property is so levied on, have a lien on the interest of the defendant therein, and may commence an action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien; and, if deemed necessary or proper, the court or judge may appoint a receiver under the circumstances provided in the chapter relating to receivers. [R., '60, §§ 3289-3291; C., '73, § 3054; C., '97, § 3978.]

11682. Mortgaged personal property—payment of mortgage. Mortgaged personal property not exempt from execution may be taken on attachment or execution issued against the mortgagor, if the officer, or the attachment or execution creditor, within ten days after such levy, shall pay to the holder of the mortgage the amount of the mortgaged debt and interest accrued, or deposit the same with the clerk of the district court of the county from which the attachment or execution issued, for the use of the holder of the mortgage, or secure the same as in this chapter provided. [C., '97, § 3979.]

11683. Interest on mortgage debt. When the debt secured by the mortgage is not due as

shown by the mortgage, the officer, or the attachment or execution creditor, must also pay or deposit with the clerk interest on the principal sum at the rate specified in the mortgage for the term of sixty days from the date of the deposit, unless the debt secured falls due in a less time, in which case interest shall be deposited for such shorter period. [C., '97, § 3980.]

11684. Failure to pay, deposit, or give security. If within ten days after such levy the attachment or execution creditor does not pay the amount, make the deposit, or give the security required, the levy shall be discharged, and the property restored to the possession of the person from whom it was taken and the creditor shall be liable to the holder of the mortgage for any damages sustained by reason of such levy. [C., '97, § 3981.]

11685. Creditor subrogated. When such sum is paid to the holder of the mortgage or deposited with the clerk, the attachment or execution creditor shall be subrogated to all the rights of such holder, and the proceeds of the sale of the mortgaged property shall be first applied to the discharge of such indebtedness and the costs incurred under the writ of attachment or execution. [C., '97, § 3982.]

11686. Holder reinstated. If, for any reason, the levy upon the mortgaged property is discharged or released without a sale thereof, the attachment or execution creditor who has paid or deposited the amount of the mortgage debt shall have all the rights under such mortgage possessed by the holder at the time of the levy. If the holder thereof desires to be reinstated in his rights thereunder, he may repay the money received by him, with interest thereon at the rate borne by the mortgage debt for the time it has been held by him, and demand the return of the mortgage, whereupon his rights thereunder shall revert in him, and the attachment or execution creditor shall be entitled to the deposit made, or any part thereof remaining in the hands of the clerk, or any money returned to the clerk by the holder of the mortgage. [C., '97, § 3983.]

11687. Statement of amount due. The holder of the mortgage shall, before receiving the money tendered to him by the attaching or execution creditor or deposited with the clerk, state over his signature and under oath, on the back of the mortgage, the amount due or to become due thereon, and deliver the same, together with the note or other evidence of indebtedness secured by said mortgage, to the person paying the said amount or the clerk with whom the deposit is made, and the holder of the mortgage shall only receive the amount so stated to be due, and the surplus, if any, shall be returned to the person making the deposit. [C., '97, § 3984.]

11688. Indemnifying bond. When the attaching or execution creditor thus pays or deposits the amount of the claim under the mort-

gage, he shall not be required to give an indemnifying bond on notice to the sheriff by the holder of the mortgage of his right to the property thereunder, or if one has been given, it shall be released. [C., '97, § 3985.]

11689. Sale—costs—surplus. If under execution sale the mortgaged property does not sell for enough to pay the mortgage debt, interests, and costs of sale, the judgment creditor shall be liable for all costs thus made, but if a greater sum is realized, the officer conducting the sale shall at once pay to the mortgage holder the amount due thereunder, and apply the surplus on the execution. [C., '97, § 3986.]

11690. Statement of indebtedness. For the purpose of enabling the attaching or execution creditor to determine the amount to be tendered or deposited to hold the levy under the writ of attachment or execution, the person entitled to receive payment of the mortgage debt shall deliver to any such person, upon written demand therefor, a statement in writing under oath, showing the nature and amount of the original debt, the date and the amount of each payment, if any, which has been made thereon, and an itemized statement of the amount then due and unpaid. [C., '97, § 3987.]

11691. Contest as to validity or amount. If the right of the mortgagee to receive such or any sum is for any reason questioned by the levying creditor, he may, within ten days after levy, or after demand is made for a statement of the amount due as above provided, commence an action in equity or contest such right upon filing a bond in a penalty double the amount of such mortgage, or double the value of the property levied upon, conditioned either for the payment of any sum found due on said mortgage to the person entitled thereto, or for the value of the property levied upon, as the party ordering the levy may elect, with sureties to be approved by the clerk. [C., '97, § 3988; S., '13, § 3988.]

11692. Nonresident — service — transfer of action. If such mortgagee is a nonresident or his residence is unknown, service may be made by publication as in other actions, but if such residence becomes known before final submission, the court may order personal service to be made. If commenced at law, the court may transfer the same to the equity side as in other cases. [C., '97, § 3988; S., '13, § 3988.]

11693. Receiver—decree—costs. The court may appoint a receiver, and shall determine the amount due on the mortgage, the value of the property levied upon, and all other questions properly presented, and may continue and preserve or dismiss the lien of the levy, the costs to be taxed to the losing party as in other cases. [C., '97, § 3988; S., '13, § 3988.]

11694. Various mortgages—priority. If there are two or more mortgages, the creditor may admit the validity of one or more, and make the required deposit as to such, and contest the

other, and where there are two or more such mortgages, each of which is questioned, a failure to establish the invalidity of all shall not defeat the rights of the levying creditor, but in such case the decree shall determine the priority of liens, and direct the order of payment out of the proceeds of the property which shall be sold under special execution to be awarded in said cause. [C., '97, § 3988; S., '13, § 3988.]

11695. Other remedies. Nothing in this chapter contained shall be construed to forbid or in any way affect the right of a creditor to contest in any other way the validity of any mortgage. [C., '97, § 3988; S., '13, § 3988.]

11696. Failure to make statement—effect. A failure to make the statement, when required as above provided, shall have the effect to postpone the lien of the mortgage and give the levy of the writ of attachment or execution priority over the claim of the holder thereof. [C., '97, § 3989.]

11697. Where mortgagee garnished. If the mortgagee, before the levy of a writ of attachment or execution, has been garnished at the suit of a creditor of the mortgagor, a creditor desiring to seize the mortgaged property under a writ of attachment or execution shall pay to the holder of the mortgage, or deposit with the clerk, in addition to the mortgage debt, the sum claimed under the garnishment, and the provisions of this chapter, so far as applicable, in all respects shall govern proceedings relating thereto. [C., '97, § 3990.]

11698. Duty to levy—notice of ownership or exemption. An officer is bound to levy an execution on any personal property in the possession of, or that he has reason to believe belongs to, the defendant, or on which the plaintiff directs him to levy, unless he has received notice in writing under oath from some other person, his agent or attorney, that such property belongs to him; stating the nature of his interests therein, how and from whom he acquired the same, and consideration paid therefor; or from the defendant, that the property is exempt from execution. [C., '51, § 1916; R., '60, § 3277; C., '73, § 3055; C., '97, § 3991.]

11699. Failure to give notice—effect. Failure to give such notice shall not deprive the party of any other remedy. [C., '97, § 3991.]

11700. Right to release levy. If after levy he receives such notice, such officer may release the property unless a bond is given as provided in the second following section. [C., '51, § 1916; R., '60, § 3277; C., '73, § 3055; C., '97, § 3991.]

11701. Exemption from liability. The officer shall be protected from all liability by reason of such levy until he receives such written notice. [C., '51, § 1916; R., '60, § 3277; C., '73, § 3055; C., '97, § 3991.]

11702. Indemnifying bond—sale and return. When the officer receives such notice he may

forthwith give the plaintiff, his agent, or attorney, notice that an indemnifying bond is required. Bond may thereupon be given by or for the plaintiff, with one or more sufficient sureties, to be approved by the officer, to the effect that the obligors will indemnify him against the damages which he may sustain in consequence of the seizure or sale of the property, and will pay to any claimant thereof the damages he may sustain in consequence of the seizure or sale, and will warrant to any purchaser of the property such estate or interest therein as is sold; and thereupon the officer shall proceed to subject the property to the execution, and shall return the indemnifying bond to the court from which the execution issued. [R., '60, § 3277; C., '73, § 3056; C., '97, § 3992.]

11703. Failure to give bond. If such bond is not given, the officer may refuse to levy, or if he has done so, and the bond is not given in a reasonable time after it is required by the officer, he may restore the property to the person from whose possession it was taken, and the levy shall stand discharged. [R., '60, § 3278; C., '73, § 3057; C., '97, § 3993.]

11704. Application of proceeds. Where property for the sale of which the officer is indemnified sells for more than enough to satisfy the execution under which it was taken, the surplus shall be paid into the court to which the indemnifying bond is directed to be returned. The court may order such disposition or payment of the money to be made, temporarily or absolutely, as may be proper in respect to the rights of the parties interested. [R., '60, § 3280; C., '73, § 3059; C., '97, § 3994.]

11705. Executions by justices. The provisions of the preceding sections, as to bonds, shall apply to proceedings upon executions issued by justices of the peace. Indemnifying bonds shall be returned in such cases with the execution under which they are taken. [R., '60, § 3286; C., '73, § 3060; C., '97, § 3995.]

11706. Stay of execution—exceptions. On all judgments for the recovery of money, except those rendered on any appeal or writ of error, or in favor of a laborer or mechanic for his wages, or against one who is surety in the stay of execution, or against any officer, person, or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty, there may be a stay of execution, if the defendant therein shall, within ten days from the entry of judgment, procure one or more sufficient freehold sureties to enter into a bond, acknowledging themselves security for the defendant for the payment of the judgment, interest, and costs from the time of rendering judgment until paid, as follows:

1. If the sum for which judgment was rendered, inclusive of costs, does not exceed one hundred dollars, three months.

2. If such sum and costs exceed one hundred dollars, six months. [R., '60, § 3293; C., '73, § 3061; C., '97, § 3996.]

11707. Affidavit of surety. Officers approving stay bonds shall require the affidavit of the signers thereof, unless waived in writing by the party in whose favor the judgment is rendered, that they own property not exempt from execution, and aside from incumbrance, to the value of twice the amount of the judgment. [C., '73, § 3062; C., '97, § 3997.]

11708. Stay waives appeal. No appeal shall be allowed after a stay of execution has been obtained. [R., '60, § 3294; C., '73, § 3063; C., '97, § 3998.]

11709. Bond—approval—recording—effect. The sureties for stay of execution may be taken and approved by the clerk, and the bond shall be recorded in a book kept for that purpose, and have the force and effect of a judgment confessed from the date thereof against their property, and shall be indexed in the proper judgment docket, as in case of other judgments. [R., '60, §§ 3295, 3298; C., '73, § 3064; C., '97, § 3999.]

11710. Execution recalled. When the bond is accepted and approved after execution has been issued, the clerk shall immediately notify the sheriff of the stay, and he shall forthwith return the execution with his doings thereon. [R., '60, § 3296; C., '73, § 3065; C., '97, § 4000.]

11711. Property released. All property levied on before stay of execution, and all written undertakings for the delivery of personal property to the sheriff, shall be relinquished by the officer, upon stay of execution being entered. [R., '60, § 3297; C., '73, § 3066; C., '97, § 4001.]

11712. Execution against principal and sureties. At the expiration of the stay, the clerk shall issue a joint execution against the property of all the judgment debtors and sureties, describing them as debtors or sureties therein, and the liability of such sureties shall be subject to that of their principal as provided in this chapter. [R., '60, § 3299; C., '73, § 3067; C., '97, § 4002.]

11713. Objection by surety. When any court shall render judgment against two or more persons, any of whom is surety for any other in the contract on which judgment is founded, there shall be no stay of execution allowed, if the surety objects thereto at or before the time of rendering the judgment, whereupon it shall be ordered by the court that there be no stay, unless the surety for the stay of execution will undertake specifically to pay the judgment in case the amount thereof can not be levied of the principal defendant, and the judgment shall recite that the liability of such stay is prior to that of the objecting surety. [R., '60, § 3300; C., '73, § 3068; C., '97, § 4003.]

11714. Stay terminated by surety. Any surety for the stay of execution may file with the clerk an affidavit, stating that he verily believes he will be compelled to pay the judgment, interest, and costs thereon unless execution

issues immediately, and gives notice thereof in writing to the party for whom he is surety; and the clerk shall thereupon issue execution forthwith, unless other sufficient surety be entered before the clerk within five days after such notice is given as in other cases. [R., '60, § 3301; C., '73, § 3069; C., '97, § 4004.]

11715. Other security given. If other sufficient surety is given, it shall have the force of the original surety entered before the filing of the affidavit, and shall discharge the original surety. [R., '60, § 3302; C., '73, § 3070; C., '97, § 4005.]

11716. Lien not released. Where a stay of execution has been taken, such confessed judgment shall not release any judgment lien by virtue of the original judgment for the amount then due. [R., '60, § 3303; C., '73, § 3071; C., '97, § 4006.]

11717. Labor claims preferred. When the property of any company, corporation, firm, or person shall be seized upon by any process of any court, or placed in the hands of a receiver, trustee, or assignee, or their property shall be seized by the action of creditors, for the purpose of paying or securing the payment of the debts of such company, corporation, firm, or person, the debts owing to employees for labor performed within the ninety days next preceding the seizure or transfer of such property, to an amount not exceeding one hundred dollars to each person, shall be a preferred debt and paid in full, or if there is not sufficient realized from such property to pay the same in full, then, after the payment of costs, ratably out of the fund remaining. [C., '97, § 4019; S., '13, § 4019.]

NOTE: Labor claims preferred, see §§ 11971 and 12732.

11718. Exceptions. Such preference shall be junior and inferior to mechanics' liens for labor in opening and developing coal mines. [C., '97, § 4019; S., '13, § 4019.]

11719. Statement of claim—allowance. Any employee desiring to enforce his claim for wages, at any time after the seizure of the property under execution or writ of attachment or under any other authority, and before sale thereof is ordered, shall present to the officer levying on such property or to such receiver, trustee or assignee, or to the court having custody of such property or from which such process issued, or person charged with such property, a statement under oath, showing the amount due after allowing all just credits and set-offs, and the kind of work for which such wages are due, and when performed; and unless objection be made thereto as provided in the following section, such claim shall be allowed and paid to the person entitled thereto, after first paying all costs occasioned by the proceeding out of the proceeds of the sale of the property so seized or placed in the hands of a receiver, trustee, or assignee, or court, or person charged with the same, subject, however, to the provisions of the second

preceding section. [C., '97, § 4020; S., '13, § 4020.]

11720. Contest. Any person interested may contest any claim or part thereof by filing objections thereto, supported by affidavit, with such court, receiver, trustee, or assignee, and its validity shall be determined in the same way the validity of other claims are which are sought to be enforced against such property, provided that where the claim is filed with a person charged with the property other than the officers above enumerated and a contest is made, the cause shall be transferred to the district court, and there docketed and determined. [C., '97, § 4021; S., '13, § 4021.]

11721. Priority. Claims of employees for labor, if not contested, or if allowed after contest, shall have priority over all claims against or liens upon such property, except prior mechanics' liens for labor in opening or developing coal mines as allowed by law. [C., '97, § 4022.]

11722. Notice of sale. The officer must give four weeks' notice of the time and place of selling real property, and three weeks' notice of personal property. [C., '51, § 1905; R., '60, § 3310; C., '73, § 3079; C., '97, § 4023.]

11723. Posting and publication—compensation. Notice shall be given by posting up in at least three public places of the county, one of which shall be at the place where the last district court was held. In addition to which, in case of the sale of real estate, or where personal property to the amount of two hundred dollars or upwards is to be sold, there shall be two weekly publications of such notice in some newspaper printed in the county, to be selected by the party causing the notice to be given, and the compensation for such publication shall be the same as is provided by law for legal notices. [C., '51, § 1906; R., '60, § 3311; C., '73, § 3080; C., '97, § 4024; S., '13, § 4024.]

11724. Sales by constables. In constables' sales, the notice shall be posted for two weeks in three public places of the township of the justice, one of them at his office door, without newspaper publication. [C., '51, § 1906; R., '60, § 3311; C., '73, § 3080; C., '97, § 4026.]

11725. Penalty for selling without notice. An officer selling without the notice prescribed in the three preceding sections shall forfeit one hundred dollars to the defendant in execution, in addition to the actual damages sustained by either party; but the validity of the sale is not thereby affected. [C., '51, § 1907; R., '60, § 3312; C., '73, § 3081; C., '97, § 4027; S., '13, § 4027.]

11726. Notice to defendant. If the debtor is in actual occupation and possession of any part of the land levied on, the officer having the execution shall, at least twenty days previous to such sale, serve him with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale,

which notice shall be served in the manner provided by section 11060. [R., '60, § 3318; C., '73, § 3087; C., '97, § 4025; S., '13, § 4025.]

11727. Setting aside sale. Sales made without the notice required in the preceding section may be set aside on motion made at the same or the next term thereafter. [R., '60, § 3318; C., '73, § 3087; C., '97, § 4025; S., '13, § 4025.]

11728. Time and manner. The sale must be at public auction, between nine o'clock in the forenoon and four o'clock in the afternoon, and the hour of the commencement of the sale must be fixed in the notice. [C., '51, § 1908; R., '60, § 3313; C., '73, § 3082; C., '97, § 4028.]

11729. Sale postponed. When there are no bidders, or when the amount offered is grossly inadequate, or when from any cause the sale is prevented from taking place on the day fixed, or the parties so agree, the officer may postpone the sale for not more than three days without being required to give any further notice thereof, which postponement shall be publicly announced at the time the sale was to have been made, but not more than two such adjournments shall be made, except by agreement of the parties in writing and made a part of the return upon the execution. [C., '51, § 1909; R., '60, § 3314; C., '73, § 3083; C., '97, § 4029.]

11730. Overplus. When the property sells for more than the amount required to be collected, the overplus must be paid to the debtor, unless the officer has another execution in his hands on which said overplus may be rightfully applied, or unless there are liens upon the property which ought to be paid therefrom, and the holders thereof make claim to such surplus and demand application thereon, in which case the officer shall pay the same into the hands of the clerk of the district court, and it shall be applied as ordered by the court. [C., '51, § 1910; R., '60, § 3315; C., '73, § 3084; C., '97, § 4030.]

11731. Deficiency—additional execution. If the property levied on sells for less than sufficient to satisfy the execution, the judgment holder may order out another, which shall be credited with the amount of the previous sale. The proceedings under the second execution shall conform to those hereinbefore prescribed. [C., '51, § 1911; R., '60, § 3316; C., '73, § 3085; C., '97, § 4031.]

11732. Plan of division of land. At any time before nine o'clock a. m. of the day of the sale, the debtor may deliver to the officer a plan of division of the land levied on, subscribed by him, and in that case the officer shall sell, according to said plan, so much of the land as may be necessary to satisfy the debt and costs, and no more. If no such plan is furnished, the officer may sell without any division. [R., '60, § 3319; C., '73, § 3088; C., '97, § 4032.]

11733. Failure of purchaser to pay—optional procedure. When the purchaser fails to

pay the money when demanded, the judgment holder or his attorney may elect to proceed against him for the amount; otherwise the sheriff shall treat the sale as a nullity, and may sell the property on the same day, or after postponement as above authorized. [C., '51, § 1913; R., '60, § 3320; C., '73, § 3089; C., '97, § 4033.]

11734. Sales vacated for lack of lien. When any person shall purchase at a sheriff's sale any real estate on which the judgment upon which the execution issued was not a lien at the time of the levy, and which fact was unknown to the purchaser, the court shall set aside such sale on motion, notice having been given to the debtor as in case of action, and a new execution may be issued to enforce the judgment, and, upon the order being made to set aside the sale, the sheriff or judgment creditor shall pay over to the purchaser the purchase money; said motion may also be made by any person interested in the real estate. [R., '60, § 3321; C., '73, § 3090; C., '97, § 4034.]

11735. Money—things in action. Money levied upon may be appropriated without being advertised or sold, and so may bank bills, drafts, promissory notes, or other papers of the like character, if the plaintiff will receive them at their par value as cash, or if the officer can exchange them for cash at that value. [C., '51, § 1914; R., '60, § 3322; C., '73, § 3091; C., '97, § 4035.]

11736. Real estate of deceased judgment debtor. When a judgment has been obtained against a decedent in his lifetime, the plaintiff may file his petition in the office of the clerk of the court where the judgment is rendered, against the executor, the heirs, and devisees of real estate, if such there be, setting forth the facts, and that there is real estate of the deceased, describing its location and extent, and praying the court to award execution against the same. [C., '51, § 1918; R., '60, § 3323; C., '73, § 3092; C., '97, § 4036.]

11737. Notice. The person against whom the petition is filed shall be notified by the plaintiff to appear on the first day of the term and show cause, if any he have, why execution should not be awarded. [C., '51, § 1919; R., '60, § 3324; C., '73, § 3093; C., '97, § 4037.]

11738. Service and return. The notice must be served and returned in the ordinary manner, and the same length of time shall be allowed for appearance as in civil actions, and service of such notice on nonresident defendants may be had in such cases by publication. [C., '51, § 1920; R., '60, § 3325; C., '73, § 3094; C., '97, § 4038.]

11739. Execution awarded. At the proper time, the court shall award the execution, unless sufficient cause is shown to the contrary, but the nonage of the heirs or devisees shall not be held such sufficient cause. [C., '51, §§ 1921, 1922; R., '60, §§ 3326, 3327; C., '73, §§ 3095, 3096; C., '97, § 4039.]

11740. Mutual judgments—set off. Mutual judgments, executions on which are in the hands of the same officer, may be set off the one against the other, except the costs, but if the amount collected on the large judgment is sufficient to pay the costs of both, such costs shall be paid therefrom. [C., '51, § 1923; R., '60, § 3328; C., '73, § 3097; C., '97, § 4040.]

11741. Personal property and leasehold interests—appraisement. Personal property, and leasehold interests in real property having less than two years of an unexpired term, levied upon and advertised for sale on execution, must be appraised before sale by two disinterested householders of the neighborhood, one of whom shall be chosen by the execution debtor and the other by the plaintiff, or, in case of the absence of either party, or if either or both parties neglect or refuse to make choice, the officer making the levy shall choose one or both, as the case may be, who shall forthwith return to said officer a just appraisement, under oath, of said property if they can agree; if they can not, they shall choose another disinterested householder, and with his assistance shall complete such appraisement, and the property shall not, upon the first offer, be sold for less than two-thirds of said valuation; but if offered at the same place and hour of the day as advertised upon three successive days, and no bid is received equal to two-thirds of the appraised value thereof, then it may be sold for one-half of said valuation. [C., '73, § 3100; C., '97, § 4041.]

11742. Property unsold—optional procedure. Subject to the provisions of the preceding section, when property is unsold for want of bidders, the levy still holds good; and, if there be sufficient time, it may again be advertised, or the execution returned and one issued commanding the officer to sell the property, describing it, previously levied on, to which a clause may be added that, if such property does not produce a sum sufficient to satisfy such execution, the officer shall proceed to make an additional levy, on which he shall proceed as on other executions; or the plaintiff may, in writing filed with the clerk or justice, abandon such levy, upon paying the costs thereof; in which case execution may issue with the same effect as if none had ever been issued. [C., '51, § 1912; R., '60, § 3317; C., '73, § 3086; C., '97, § 4042.]

11743. Deed or certificate. If the property sold is not subject to redemption, the sheriff must execute a deed therefor to the purchaser; but, if subject to redemption, a certificate, containing a description of the property and the amount of money paid by such purchaser, and stating that, unless redemption is made within one year thereafter, according to law, he or his heirs or assigns will be entitled to a deed for the same. [C., '51, § 1925; R., '60, § 3331; C., '73, § 3101; C., '97, § 4044.]

11744. Deed. If the debtor or his assignee fails to redeem, the sheriff then in office must, at the end of the year, execute a deed to the

person who is entitled to the certificate as hereinbefore provided, or to his assignee. If the person entitled is dead, the deed shall be made to his heirs. [C., '51, § 1946; R., '60, § 3354; C., '73, §§ 348, 3124; C., '97, § 4062.]

11745. Constructive notice—recording. The purchaser of real estate at a sale on execution need not place any evidence of his purchase upon record until sixty days after the expiration of the full time of redemption. Up to that time the publicity of the proceedings is constructive notice of the rights of the purchaser. [C., '51, § 1947; R., '60, § 3355; C., '73, § 3125; C., '97, § 4063.]

11746. Presumption. Deeds executed by a sheriff in pursuance of the sales contemplated in this chapter are presumptive evidence of the regularity of all previous proceedings in the case, and may be given in evidence without preliminary proof. [C., '51, § 1948; R., '60, § 3356; C., '73, § 3126; C., '97, § 4064.]

11747. Damages for injury to property. When real estate has been sold on execution, the purchaser thereof, or any person who has succeeded to his interest, may, after his estate becomes absolute, recover damages for any injury to the property committed after the sale and before possession is delivered under the conveyance. [C., '51, § 1949; R., '60, § 3357; C., '73, § 3127; C., '97, § 4065.]

11748. Proceedings in justices' courts. The provisions of this chapter are intended to embrace proceedings in justices' courts, so far as they are applicable; and the terms "sheriff" and "clerk" are to be understood as qualified in this chapter in the same manner in this respect as in that relative to attachment. [C., '51, § 1952; R., '60, § 3359; C., '73, § 3129; C., '97, § 4066.]

11749. Death of holder of judgment. The death of any or all of the joint owners of a judgment shall not prevent an execution being issued thereon, but on any such execution the clerk shall indorse the fact of the death of such of them as are dead, and if all are dead, the names of their personal representatives, if the judgment passed to the personal representatives, or the names of the heirs of such deceased person, if the judgment was for real property. [R., '60, § 3482; C., '73, § 3130; C., '97, § 4067.]

11750. Officer's duty. In acting upon an execution, so indorsed, the sheriff shall proceed as if the surviving owners, or the personal representatives or heirs as above provided, were the only owners of the judgment upon which it was issued, and take bonds accordingly. [R., '60, § 3483; C., '73, § 3131; C., '97, § 4068.]

11751. Affidavit required. Before making the indorsements as above provided, an affidavit shall be filed with the clerk by one of the owners of such judgment, or one of such personal representatives or heirs, or their at-

torney, of the death of such owners as are dead, and that the persons named as such are the personal representatives or heirs, and in the case of personal representatives they shall file with the clerk a certificate of their qualification, unless their appointment is by the court from which the execution issues, in which case the record of such appointment shall be sufficient evidence of the fact. [R., '60, § 3484; C., '73, § 3132; C., '97, § 4069.]

11752. Execution quashed. Any debtor in such a judgment may move the court or judge to quash an execution on the ground that the personal representatives or heirs of a deceased judgment creditor are not properly stated in the indorsement on the execution, and during the vacation of the court may obtain an injunction, upon satisfactory showing that the persons named as such are not entitled to the

judgment on which the execution was issued. [R., '60, § 3486; C., '73, § 3134; C., '97, § 4070.]

11753. Death of part of defendants. The death of part of the joint debtors in a judgment shall not prevent execution being issued thereon, but, when issued, it shall operate alone on the survivors and their property. [R., '60, § 3485; C., '73, § 3133; C., '97, § 4071.]

11754. Fee bill execution. After the expiration of sixty days from the rendition of a final judgment not appealed, removed, or reversed, the clerk of the court, or a justice of the peace in whose office the judgment is entered, may, and, upon demand of any party entitled to any part thereof, shall, issue a fee bill for all costs of such judgment, which shall have the same force and effect as an execution issued by such officer; and shall be served and executed in the same manner. [C., '73, § 3842; C., '97, § 1299.]

CHAPTER 499

EXEMPTIONS

NOTE: Avails of life and accident insurance and wrongful death, see §§ 8776, 11919, and 11920.

- 11755. "Family" defined.
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- 11768. Persons starting to leave the state.
- 11769. Wages of nonresidents—garnishment.
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11755. "Family" defined. The word "family", as used in this chapter, does not include strangers or boarders lodging with the family. [C., '51, § 1900; R., '60, § 3306; C., '73, § 3073; C., '97, § 4012.]

11756. Who deemed resident. Any person coming into this state with the intention of remaining shall be considered a resident. [C., '51, § 1902; R., '60, § 3308; C., '73, § 3076; C., '97, § 4014.]

11757. Failure to claim exemption. Any person entitled to any of the exemptions mentioned in this chapter does not waive his rights thereto by failing to designate or select such exempt property, or by failing to object to a levy thereon, unless he fails or neglects to do so when required in writing by the officer about to levy thereon. [C., '51, §§ 1898, 1899; R., '60, §§ 3304, 3305, 3308; C., '73, § 3072; C., '97, § 4017.]

11758. Absconding debtor. When a debtor absconds and leaves his family, such property as is exempt to him under this chapter shall be exempt in the hands of his wife and children, or either of them. [R., '60, § 3309; C., '73, § 3078; C., '97, § 4016.]

11759. Purchase money. None of the exemptions prescribed in this chapter shall be

allowed against an execution issued for the purchase money of property claimed to be exempt, and on which such execution is levied. [C., '73, § 3077; C., '97, § 4015.]

11760. General exemptions. If the debtor is a resident of this state and the head of a family, he may hold exempt from execution the following property:

1. All wearing apparel of himself and family kept for actual use and suitable to their condition, and the trunks or other receptacles necessary to contain the same.
2. One musket or rifle and shotgun.
3. All private libraries, family bibles, portraits, pictures, musical instruments, and paintings not kept for the purpose of sale.
4. A seat or pew occupied by the debtor or his family in any house of public worship.
5. An interest in a public or private burying ground, not exceeding one acre for any defendant.
6. Two cows and two calves.
7. Fifty sheep and the wool therefrom and the materials manufactured from such wool.
8. Six stands of bees.
9. Five hogs, and all pigs under six months.
10. The necessary food for all animals exempt from execution for six months.
11. One bedstead and the necessary bedding for every two in the family.

12. All cloth manufactured by the defendant, not exceeding one hundred yards in quantity.

13. Household and kitchen furniture, not exceeding two hundred dollars in value.

14. All spinning wheels and looms.

15. One sewing machine and other instruments of domestic labor kept for actual use.

16. The necessary provisions and fuel for the use of the family for six months.

17. The proper tools, instruments, or books of the debtor, if a farmer, mechanic, surveyor, clergyman, lawyer, physician, teacher, or professor.

18. If the debtor is a physician, public officer, farmer, teamster, or other laborer, a team, consisting of not more than two horses or mules, or two yoke of cattle, and the wagon or other vehicle, with the proper harness or tackle, by the use of which he habitually earns his living, otherwise one horse.

19. If a printer, a printing press and the types, furniture, and material necessary for the use of such printing press and a newspaper office connected therewith, not to exceed in all the value of twelve hundred dollars.

20. Poultry to the value of fifty dollars, and the same to any woman whether the head of a family or not.

21. And if the debtor is a seamstress, one sewing machine. [C., '51, §§ 1898, 1899; R., '60, §§ 3304, 3305, 3308; C., '73, § 3072; C., '97, § 4008.]

11761. Pension money. All money received by any person, a resident of the state, as a pension from the United States government, whether the same shall be in the actual possession of such pensioner, or deposited, loaned, or invested by him, shall be exempt from execution, whether such pensioner shall be the head of a family or not. [C., '97, § 4009.]

11762. Homestead bought with pension money. The homestead of every such pensioner, whether the head of a family or not, purchased and paid for with any such pension money, or the proceeds or accumulations thereof, shall also be exempt; and such exemption shall apply to debts of such pensioner contracted prior to the purchase of the homestead. [C., '97, § 4010.]

11763. Personal earnings. The earnings of a debtor, who is a resident of the state and the head of a family, for his personal services, or those of his family, at any time within ninety days next preceding the levy, are exempt from liability for debt. [C., '51, § 1901; R., '60, § 3307; C., '73, § 3074; C., '97, § 4011.]

11764. Exception under divorce decree. Where the party in whose favor the order, decree, or judgment was rendered has not remarried, the personal earnings of the debtor shall not be exempt from any order, judgment, or decree for temporary or permanent alimony hereafter rendered in this state, nor from any installment of any such order, judgment, or decree heretofore rendered within this state which, by the provisions thereof, may hereafter become due: [38 G. A., ch. 65, § 1.]

11765. Exception under decree for support of minors. The personal earnings of the debtor shall not be exempt from any order, judgment, or decree for the support of his minor child or children hereafter rendered in this state nor any installment of any such order, judgment, or decree heretofore rendered in this state which, by the provisions thereof, may hereafter become due. [38 G. A., ch. 65, § 1; 39 G. A., ch. 149.]

11766. Workmen's compensation. Any compensation due or that may become due an employee or dependent under the provisions of chapter 70 shall be exempt from garnishment, attachment, and execution. [40 G. A., ch. 206.]

11767. Unmarried persons — nonresidents. There shall be exempt to an unmarried person not the head of a family, and to nonresidents, their own ordinary wearing apparel and trunk necessary to contain the same. [C., '51, § 1902; R., '60, § 3308; C., '73, § 3075; C., '97, § 4013.]

11768. Persons starting to leave the state. Where the debtor, if the head of a family, has started to leave this state, he shall have exempt only the ordinary wearing apparel of himself and family, and such other property, in addition, as he may select, in all not exceeding seventy-five dollars in value; which property shall be selected by the debtor and appraised according to the provisions of this code relating to the discharge of attached property. [C., '51, § 1902; R., '60, § 3308; C., '73, § 3076; C., '97, § 4014.]

11769. Wages of nonresidents—garnishment. Wages earned outside of this state by a nonresident of this state, and payable outside of this state, shall in all cases where the garnishing creditor is a nonresident of this state, be exempt from attachment or garnishment where the cause of action arises outside of this state; and it shall be the duty of the garnishee in such cases to plead such exemption, unless the defendant shall be personally served with original notice in this state. [S., '13, § 4071-a.]

11770. Sending claims out of state. Whoever, whether as principal, agent, or attorney, with intent to deprive a resident in good faith of the state of the benefit of the exemption laws thereof, sends a claim against such resident and belonging to a resident, to another state for action, or causes action to be brought on such claim in another state, or assigns or transfers such claim to a nonresident of the state, with intent that action thereon be brought in the courts of another state, the action in either case being one which might have been brought in this state, and the property or debt sought to be reached by such action being such as might, but for the exemption laws of this state, have been reached by action in the courts of this state, shall be guilty of a misdemeanor, and punished by a fine of not less than ten nor more than fifty dollars. [C., '97, § 4018.]

11771. Public property. Public buildings owned by the state, or any county, city, school

district, or other municipal corporation, or any other public property which is necessary and proper for carrying out the general purpose for which such corporation is organized, are exempt

from execution. The property of a private citizen can in no case be levied on to pay the debt of any such. [C., '51, § 1895; R., '60, § 3274; C., '73, § 3048; C., '97, § 4007.]

CHAPTER 500

REDEMPTION

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11772. Place of redemption. All redemptions made under the provisions of this chapter shall be made in the county where the sale is had. [S., '13, § 4051.]

11773. When sale absolute. When real property has been levied upon, if the estate is less than a leasehold having two years of an unexpired term, the sale is absolute, but if of a larger amount, it is redeemable as hereinafter prescribed. [C., '51, § 1924; R., '60, §§ 3329, 3330; C., '73, §§ 3098, 3099; C., '97, § 4043.]

11774. Redemption by debtor. The debtor may redeem real property at any time within one year from the day of sale, and will, in the meantime, be entitled to the possession thereof; and for the first six months thereafter such right of redemption is exclusive. [C., '51, §§ 1926, 1927; R., '60, §§ 3332, 3333; C., '73, §§ 3102, 3103; C., '97, § 4045.]

11775. Redemption prohibited. No party who has taken an appeal from the superior or district court, or stayed execution on the judgment, shall be entitled to redeem. [C., '73, § 3102; C., '97, § 4045.]

11776. Redemption by creditors. If no redemption is made by the debtor as above provided, thereafter, and at any time within nine months from the day of sale, said redemption may be made by a mortgagee before or after the debt secured by the mortgage falls due, or by any creditor whose claim becomes a lien prior to the expiration of the time allowed for such redemption. [C., '51, §§ 1927, 1928; R., '60, §§ 3333, 3334; C., '73, §§ 3103, 3104; C., '97, § 4046.]

11777. Mechanic's lien before judgment. A mechanic's lien before judgment thereon is not of such character as to entitle the holder to redeem. [C., '51, § 1527; R., '60, § 3333; C., '73, § 3103; C., '97, § 4046.]

11778. Probate creditor. The owner of a claim which has been allowed and established against the estate of a decedent may redeem as in this chapter provided, by making application to the district court or any judge of the district where the real estate to be redeemed is situated. Such application shall be heard after notice to such parties as said court or judge may direct, and shall be determined with due regard to rights of all persons interested. [C., '97, § 4046.]

11779. Redemption by creditors from each other. Creditors having the right of redemption may redeem from each other within the time above limited, and in the manner herein provided. [C., '51, § 1929; R., '60, § 3335; C., '73, § 3105; C., '97, § 4047.]

11780. Senior creditor. When a senior creditor thus redeems from his junior, he is required to pay off only the amount of those liens which are paramount to his own, with the interest and costs appertaining to those liens. [C., '51, § 1931; R., '60, § 3337; C., '73, § 3107; C., '97, § 4048.]

11781. Junior may prevent. The junior creditor may in all such cases prevent a redemption by the holder of the paramount lien by paying off the lien, or by leaving with the clerk beforehand the amount necessary therefor, and a junior judgment creditor may redeem from a senior judgment creditor. [C., '51, § 1932; R., '60, §§ 3338, 3339; C., '73, §§ 3108, 3109; C., '97, § 4049.]

11782. Terms. The terms of redemption, when made by a creditor, in all cases shall be the reimbursement of the amount bid or paid by the holder of the certificate, including all costs, with interest the same as the lien redeemed from bears on the amount of such bid or payment, from the time thereof. [C., '51, § 1930; R., '60, § 3336; C., '73, § 3106; C., '97, § 4050.]

11783. Mortgage not matured—interest. Where a mortgagee whose claim is not yet due is the person from whom the redemption is thus to be made, he shall receive on such mortgage only the amount of the principal thereby secured, with unpaid interest thereon to the time of such redemption. [C., '51, § 1930; R., '60, § 3336; C., '73, § 3106; C., '97, § 4050.]

11784. By holder of title. The terms of redemption, when made by the title holder, shall be the payment into the clerk's office of the amount of the certificate, and all sums paid by the holder thereof in effecting redemptions, added to the amount of his own lien, or the amount he has credited thereon, if less than the whole, with interest at contract rate on the certificate of sale from its date, and upon sums so paid by way of redemption from date of payment, and upon the amount credited on his own judgment from the time of said credit, in each case including costs. [C., '51, § 1930; R., '60, § 3336; C., '73, § 3106; C., '97, § 4051; S., '13, § 4051.]

11785. By junior from senior creditor. When a senior redeems from a junior creditor, the latter may, in return, redeem from the former, and so on, as often as the land is taken from him by virtue of a paramount lien. [C., '51, § 1933; R., '60, § 3341; C., '73, § 3111; C., '97, § 4052.]

11786. After nine months. After the expiration of nine months from the day of sale, the creditors can no longer redeem from each other, except as hereinafter provided. [C., '51, § 1934; R., '60, § 3342; C., '73, § 3112; C., '97, § 4053.]

11787. Who gets property. Unless the defendant redeems, the purchaser, or the creditor who has last redeemed prior to the expiration of the nine months aforesaid, will hold the property absolutely. [C., '51, § 1935; R., '60, § 3343; C., '73, § 3113; C., '97, § 4054.]

11788. Claim extinguished. In case it is thus held by a redeeming creditor, his lien, and the claim out of which it arose, will be held to be extinguished, unless he pursues the course pointed out in the three following sections. [C., '51, § 1936; R., '60, § 3344; C., '73, § 3114; C., '97, § 4055.]

11789. Mode of redemption. The mode of redemption by a lienholder shall be by paying into the clerk's office the amount necessary to effect the same, computed as above provided, and filing therein his affidavit, or that of his agent or attorney, stating as nearly as practicable the nature of his lien and the amount still due and unpaid thereon. [C., '51, §§ 1938, 1940; R., '60, §§ 3346, 3348; C., '73, §§ 3116, 3118; C., '97, § 4056.]

11790. Credit on lien. If he is unwilling to hold the property and credit the debtor thereon the full amount of his lien, he must state the utmost amount he is willing to credit him with. [R., '60, § 3345; C., '73, § 3115; C., '97, § 4056.]

11791. Excess payment—entry and credit. If the amount paid to the clerk is in excess of the prior bid and liens, he shall refund the excess to the party paying the same, and enter each such redemption made by a lienholder upon the sale book, and credit upon the lien, if a judgment in the court of which he is clerk, the full amount thereof, including interest and costs, or such less amount as the lienholder is willing to credit therein, as shown by the affidavit filed. [C., '51, §§ 1937, 1939, 1941; R., '60, §§ 3340, 3347, 3349; C., '73, §§ 3110, 3117, 3119; C., '97, § 4056.]

11792. Contest determined. In case any question arises as to the right to redeem, or the amount of any lien, the person claiming such right may deposit the necessary amount therefor with the clerk, accompanied with the affidavit above required, and also stating therein the nature of such question or objection, which question or objection shall be submitted to the court or a judge thereof as soon as practicable thereafter, upon such notice as it or he shall prescribe of the time and place of the hearing of the controversy, at which time and place the matter shall be tried upon such evidence and in such manner as may be prescribed, and the proper order made and entered of record in the cause in which execution issued, and the money so paid in shall be held by the clerk subject to the order made. [C., '97, § 4057.]

11793. Assignment of certificate. A creditor redeeming as above contemplated is entitled to receive an assignment of the certificate issued by the sheriff to the original purchaser as hereinbefore directed. [C., '51, § 1942; R., '60, § 3350; C., '73, § 3120; C., '97, § 4058.]

11794. Redemption of part of property. When the property has been sold in parcels, any distinct portion may be redeemed by itself. [C., '51, § 1943; R., '60, § 3351; C., '73, § 3121; C., '97, § 4059.]

11795. Interest of tenant in common. When the interests of several tenants in common have been sold on execution, the undivided portion of any or either of them may be redeemed separately. [C., '51, § 1944; R., '60, § 3352; C., '73, § 3122; C., '97, § 4060.]

11796. Transfer of debtor's right. The rights of a debtor in relation to redemption are transferable, and the assignee has the like power to redeem. [C., '51, § 1945; R., '60, § 3353; C., '73, § 3123; C., '97, § 4061.]

CHAPTER 501

PROTECTION OF JUNIOR LIENS

11797. Avoidance of breach of condition in senior lien.

11797. **Avoidance of breach of condition in senior lien.** The holder of a sheriff's sale certificate or junior lien upon any real estate after the delinquency of any taxes or special assessment, or of interest on any senior lien, or breach of any condition of a senior incumbrance, upon payment by him, or performance of the condition broken, shall have a lien upon said real estate for such expenditures and interest thereon of equal priority with the lien so held by him upon his filing with the clerk of the district court in the county in which the land is situated, a verified statement of said expenditures and the dates thereof, together with a description of the real estate, the name of the record owner, and a reference

11798. Redemption—payment of advances.
11799. Record of lien.

to the lien which he holds, and may recover the same in any action brought for the foreclosure of the junior lien referred to in said verified statement. [40 G. A., ch. 192, § 1.]

11798. **Redemption—payment of advances.** When such advancements have been made by the holder of a sheriff's sale certificate the sum so advanced shall be a part of the amount required to redeem from said sheriff's sale. [40 G. A., ch. 192, § 1.]

11799. **Record of lien.** It shall be the duty of the clerk of the district court to record the statements so filed in the incumbrance book and to enter the same in the lien index. [40 G. A., ch. 192, § 2.]

CHAPTER 502

PROCEEDINGS AUXILIARY TO EXECUTION

11800. Debtor examined.
11801. Affidavit as to property.
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11803. Debtor interrogated.
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11816. Answers verified—petition taken as true.
11817. Lien created.
11818. Surrender of property enforced.

11800. **Debtor examined.** When execution against the property of a judgment debtor, or one of several debtors in the same judgment, has been issued from the superior, district, or supreme court to the sheriff of the county where such debtor resides, or if he do not reside in the state, to the sheriff of the county where the judgment was rendered, or a transcript of a justice's judgment has been filed, and execution issued thereon is returned unsatisfied in whole or in part, the owner of the judgment is entitled to an order for the appearance and examination of such debtor. [C., '51, § 1953; R., '60, § 3375; C., '73, § 3135; C., '97, § 4072.]

the same, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment. [C., '51, § 1954; R., '60, § 3376; C., '73, § 3136; C., '97, § 4073.]

11801. **Affidavit as to property.** The like order may be obtained at any time after the issuing of an execution, upon proof, by the affidavit of the party or otherwise, to the satisfaction of the court or judge who is to grant

11802. **By whom order granted.** Such order may be made by the superior or district court in which the judgment was rendered, or by the district court of the county to which execution has been issued, or in vacation by a judge thereof. The debtor may be required to appear and answer before either of such courts or judges, or before a referee appointed for that purpose by the court or judge who issued the order, to report either the evidence or the facts. [C., '51, § 1955; R., '60, §§ 3377, 3385; C., '73, § 3137; C., '97, § 4074.]

11803. **Debtor interrogated.** The debtor, on his appearance, may be interrogated in relation to any facts calculated to show the amount

of his property, or the disposition which has been made of it, or any other matter pertaining to the purpose for which the examination is permitted to be made. The interrogatories and answers shall be reduced to writing and preserved by the court or officer before whom they are taken. All examinations and answers under this chapter shall be on oath. [C., '51, § 1956; R., '60, § 3378; C., '73, § 3138; C., '97, § 4075; 40 Ex. G. A., H. F. 234, § 1.]

NOTE: Criminating questions, see §§ 11267 to 11269, inc.

11804. Witnesses examined. Witnesses may be required by order of the court or judge, or by subpoenas from the referee, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue. [R., '60, § 3379; C., '73, § 3139; C., '97, § 4076.]

11805. Disposition of property. If any property, rights, or credits subject to execution are thus ascertained, an execution may be issued and the same levied upon. The court or judge may order any property of the judgment debtor not exempt, in the hands of himself or others, or due him, to be delivered up, or in any other mode applied towards the satisfaction of the judgment. [C., '51, § 1957; R., '60, § 3380; C., '73, § 3140; C., '97, § 4077.]

11806. Receiver—injunction. The court or judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, or by injunction forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, or any interference therewith. [R., '60, § 3381; C., '73, § 3141; C., '97, § 4078.]

11807. Equitable interest sold. If it shall appear that the judgment debtor has any equitable interest in real estate in the county in which proceedings are had, as mortgagor, mortgagee, or otherwise, and the interest of said debtor can be ascertained as between himself and the person holding the legal estate or having any lien on or interest in the same, without controversy as to the interest of such person, the receiver may be ordered to sell and convey the same, or the debtor's equitable interest therein, in the same manner as is provided for the sale of real estate upon execution. [R., '60, § 3382; C., '73, § 3142; C., '97, § 4079.]

11808. Sheriff as receiver. If the sheriff is appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as such. [R., '60, § 3383; C., '73, § 3143; C., '97, § 4080.]

11809. Continuance. The court, judge, or referee acting under the provisions of this chapter shall have power to continue his proceedings from time to time until they shall be completed. [R., '60, § 3384; C., '73, § 3144; C., '97, § 4081.]

11810. Debtor failing to appear—contempt. Should the judgment debtor fail to appear aft-

er being personally served with notice to that effect, or should he fail to make full answers to all proper interrogatories propounded to him, he will be guilty of contempt, and may be arrested and imprisoned until he complies with the requirements of the law in this respect. If any person, party, or witness disobey an order of the court, judge, or referee, duly served, such person, party, or witness may be punished as for contempt. [C., '51, § 1958; R., '60, § 3386; C., '73, § 3145; C., '97, § 4082.]

11811. Service of order. The order mentioned herein shall be in writing and signed by the court, judge, or referee making the same, and be served in the same manner as an original notice in other cases. [R., '60, § 3387; C., '73, § 3146; C., '97, § 4083.]

11812. Compensation. Sheriffs, referees, receivers, and witnesses shall receive such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and the collection thereof from such party or parties as ought to pay the same shall be enforced by an order or execution. [R., '60, § 3388; C., '73, § 3147; C., '97, § 4084.]

11813. Warrant of arrest. Upon proof, to the satisfaction of the court or judge authorized to grant the order aforesaid, that there is danger that the defendant will leave the state, or that he will conceal himself, such court or judge, instead of the order, may issue a warrant for the arrest of the debtor, and for bringing him forthwith before the court or judge, upon which being done, he may be examined in the same manner and with the like effect as is above provided. [C., '51, § 1959; R., '60, § 3389; C., '73, § 3148; C., '97, § 4085.]

11814. Bond. Upon being brought before the court or judge, he may enter into an undertaking in such sum as the court or officer shall prescribe, with one or more sureties, that he will attend from time to time for examination before the court or judge as shall be directed, and will not, in the meantime, dispose of his property, or any part thereof; in default whereof he shall continue under arrest, and may be committed to jail for safe keeping until the examination shall be concluded. [R., '60, § 3390; C., '73, § 3149; C., '97, § 4086.]

11815. Equitable proceedings. At any time after the rendition of a judgment, an action by equitable proceedings may be brought to subject any property, money, rights, credits, or interest therein belonging to the defendant to the satisfaction of such judgment. In such action, persons indebted to the judgment debtor, or holding any property or money in which such debtor has any interest, or the evidences of securities for the same, may be made defendants. [R., '60, § 3391; C., '73, § 3150; C., '97, § 4087.]

11816. Answers verified—petition taken as true. The answers of all defendants shall be verified by their own oath, and not by that of an agent or attorney, and the court shall en-

force full and explicit discoveries in such answers by process of contempt; or, upon failure to answer the petition, or any part thereof, as fully and explicitly as the court may require, the same, or such part not thus answered, shall be deemed true, and such order made or judgment rendered as the nature of the case may require. [R., '60, § 3392; C., '73, § 3151; C., '97., § 4088.]

11817. Lien created. In the case contemplated in the two preceding sections, a lien shall be created on the property of the judgment debtor, or his interest therein, in the hands of any defendant or under his control, which is sufficiently described in the petition,

from the time of the service of notice and copy of the petition on the defendant holding or controlling such property or any interest therein. [R., '60, §§ 3393, 3394; C., '73, § 3152; C., '97, § 4089.]

11818. Surrender of property enforced. The court shall enforce the surrender of the money or securities therefor, or of any other property of the defendant in the execution, which may be discovered in the action, and for this purpose may commit to jail any defendant or garnishee failing or refusing to make such surrender until it shall be done, or the court is satisfied that it is out of his power to do so. [R., '60, § 3395; C., '73, § 3153; C., '97, § 4090.]

TITLE XXXII

ESTATES OF DECEDENTS

CHAPTER 503

PROBATE COURT

11819. Probate court always open.
11820. Time and place of hearings.
11821. Place of hearing—noncontest or agreement.
11822. Notice.
11823. Judge disqualified—procedure.
11824. Concurrent jurisdiction.
11825. Extent of jurisdiction.

11819. Probate court always open. The district court shall always be open for the transaction of probate business. [C., '73, § 2313; C., '97, § 3261.]

11820. Time and place of hearings. The hearing of any matter requiring notice, except in case of proof of wills, shall be had only in term time, or at such time and place as the judge may appoint. [C., '73, § 2313; C., '97, § 3261; 38 G. A., ch. 357, § 2.]

11821. Place of hearing—noncontest or agreement. In cases where there is no contest, or by agreement, such hearing may be had at any place within the judicial district in which the business is pending. [C., '97, § 3261.]

11822. Notice. When a judge fixes a time and place of hearing thereof, he shall direct what notice shall be given, and no hearing shall be had until proof is made of the giving of such notice. When no notice is prescribed by the judge or court as above provided, the same notice shall be given as in commencing a civil action. [C., '73, § 2314; C., '97, § 3262.]

11823. Judge disqualified—procedure. Where the judge is a party, or connected by blood or affinity with a person interested nearer than the fourth degree, or is personally interested in any probate matter, he shall order the same transferred to the district court of another district, or to be heard before another judge of the same district, or procure a judge of another district to hold his court for the hearing of such matter. [C., '73, § 2317; C., '97, § 3263.]

11824. Concurrent jurisdiction. When a case is originally within the jurisdiction of the courts of two or more counties, that one which

11826. Certified copies affecting foreign real estate.
11827. Process revoked.
11828. Bonds filed—approval.
11829. Transfer to another county.
11830. Certified copy filed.
11831. Certified copy recorded.

first takes cognizance thereof by the commencement of the proceedings shall retain the same throughout. [C., '51, § 1274; R., '60, § 2306; C., '73, § 2318; C., '97, § 3264.]

11825. Extent of jurisdiction. The court of the county in which a will is probated, or in which administration or guardianship is granted, shall have jurisdiction coextensive with the state in the settlement of the estate and the sale and distribution thereof. [R., '60, § 2472; C., '73, § 2319; C., '97, § 3265.]

11826. Certified copies affecting foreign real estate. A certified copy of any order, judgment, or deed, affecting real estate in any county other than that in which administration or guardianship is originally granted, shall be furnished to and entered by the clerk of the district court of the county where such real estate is situated in the probate records of said court. [C., '97, § 3265.]

11827. Process revoked. Any process or authority emanating from the court in probate matters may for good cause be revoked and a new one issued. [C., '51, § 1275; R., '60, § 2307; C., '73, § 2320; C., '97, § 3266.]

11828. Bonds filed—approval. All bonds relating to probate matters shall be filed in the office of the clerk of said court, and shall not be sufficient until examined by him, and his approval indorsed thereon. [C., '51, § 1276; R., '60, § 2308; C., '73, § 2321; C., '97, § 3267.]

11829. Transfer to another county. In any proceeding in probate the court may, on written showing, supported by affidavit and on such notice to interested parties as the court may prescribe, transfer such proceeding to any other county, when it is made to appear that

such transfer will be in furtherance of justice, and the same shall thereupon be pending in such other county. [40 G. A., ch. 270, § 1.]

11830. Certified copy filed. The clerk of the court ordering the transfer shall retain the original files and papers, but shall make a certified copy thereof, and of all record entries pertaining to the proceedings, and at once file

the same in the office of the clerk of the court to which the transfer has been made. [40 G. A., ch. 270, § 2.]

11831. Certified copy recorded. The clerk of the court to which the proceedings are transferred shall record at length, in the probate records of his county, the certified copy of the record entries referred to in the preceding section. [40 G. A., ch. 270, § 3.]

CHAPTER 504

CLERK OF PROBATE COURT

11832. Probate powers of clerk.
 11833. Jurisdiction of clerk terminated.
 11834. Clerk's actions reviewed.
 11835. Docketing and hearing.
 11836. Validity of clerk's orders.
 11837. Clerk not to prepare reports.
 11838. Bonds—approval.

11839. Annual examination.
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 11841. Probate docket.
 11842. Probate record.
 11843. Bond record.
 11844. Calendar.
 11845. Delinquent inventories and reports.

11832. Probate powers of clerk. The clerk of the district court shall have and exercise within his county all the powers and jurisdiction of the court and of the judge thereof, in the following matters:

1. The appointment, when not contested, of resident administrators, executors, and guardians of minors, and the approval of any and all bonds given by administrators, executors, trustees, and guardians in the discharge of their several trusts.

2. The examination and approval of all intermediate or interlocutory accounts or reports of administrators, executors, and guardians.

3. The making of all necessary orders in relation to the personal effects of a deceased person, where no objection is filed, and perform all other acts within his jurisdiction, as provided for in this code.

4. The admission to probate of wills of decedents, when not contested, and the making of necessary orders in relation thereto, including orders for the issuance of commissions to take depositions and proof may be made before the clerk in the same manner as is made in open court. [C., '73, § 2315; C., '97, § 250; 38 G. A., ch. 357, § 1.]

11833. Jurisdiction of clerk terminated. If, on or before the date set for hearing before the clerk, written objections to the probate of such will shall be filed, the clerk shall proceed no further, but the proceeding shall stand for trial before the district court on such objections without further notice. [38 G. A., ch. 357, § 1.]

11834. Clerk's actions reviewed. Any person aggrieved by any order made or entered by the clerk, under the powers conferred in the second preceding section, may have the same reviewed in court, on motion filed at the next term and not afterwards, unless upon good cause shown within one year, and upon such notice as the court or a judge thereof may prescribe. [C., '97, § 251.]

11835. Docketing and hearing. Upon the filing of such motion, the clerk shall place the cause or proceeding on the docket without additional docket fee, and the matter shall stand for hearing or trial de novo in open court. [C., '97, § 251.]

11836. Validity of clerk's orders. The records, orders, and judgments made and entered by the clerk as hereinbefore provided, and not reversed, set aside, or modified by the court, shall stand, and be of the same force, validity, and effect, and shall be entitled to the same faith and credit as if made by the court or by the judge thereof. [C., '97, § 252.]

11837. Clerk not to prepare reports. No clerk, deputy, or employee shall make or assist in making, drafting, or filling out any report of any administrator, executor, guardian, assignee, receiver, trustee, or any other report to be filed in his office. [C., '97, § 252.]

11838. Bonds—approval. The clerk shall approve the bonds of all guardians, executors, administrators, and trustees. [C., '97, § 3268; S., '13, § 3268.]

11839. Annual examination. During the month of June in each year the clerk shall examine into the sufficiency of the sureties, and amount of penalty of all executors', administrators', guardians', and trustees' bonds in force in his office which have been executed more than six months prior thereto. [C., '97, § 3268; S., '13, § 3268.]

11840. Reapproval or disapproval—procedure. If the clerk finds the said bonds sufficient, he shall note thereon his examination and reapproval, but if he finds the same insufficient, or the sureties shall not requalify on being required by him to do so, he shall note his disapproval thereon, notifying the principal thereof by registered letter, and place the matter upon the calendar of the court at the next

term for the proper order. [C., '97, § 3268; S., '13, § 3268.]

11841. Probate docket. The clerk shall keep a book to be known as the "probate docket", which shall show:

1. The name of every deceased person whose estate is administered, and who dies seized of any real estate situated within the county, and the date of his death.

2. The names of all the heirs at law and the surviving spouse of such deceased person, and their ages and places of residence, so far as they can be ascertained.

3. The name of each person as to whom application for guardianship of the person or property has been made or granted.

4. A note of every sale of real estate made under the order of the court, with a reference to the volume and page of the record where a complete record thereof may be found. [C., '73, § 2490; C., '97, § 3411.]

11842. Probate record. He shall also keep a book which shall be known as the "probate record", which shall contain full and complete journal entries of all orders or other proceed-

ings had in probate matters, and where real estate is sold or mortgaged by an executor, administrator, or guardian, under an order of court therefor, a complete record of the same, including the petition, notice, return of service, and all other papers filed, with the orders made, report, deed of conveyance or mortgage, and order of approval. [C., '73, § 2492; C., '97, § 3413.]

11843. Bond record. The clerk shall also keep a book known as "records of bonds", in which he shall record all bonds given by executors, administrators, and guardians. [C., '73, § 2493; C., '97, § 3414.]

11844. Calendar. The clerk shall keep a court calendar, and enter thereon only such cases in probate as require the action of the court. [C., '97, § 3269.]

11845. Delinquent inventories and reports. On the first day of each term the clerk shall report to the presiding judge all estates wherein an inventory or report is due by law or under the order of the court, and which has not been filed. [C., '97, § 3269.]

CHAPTER 505

WILLS AND LETTERS OF ADMINISTRATION

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of homestead and exemption created by law, and the distributive share in his estate given by law to the surviving spouse, except sufficient to pay his debts and expenses of administration. [C., '51, § 1277; R., '60, § 2309;

C., '73, § 2322; C., '97, § 3270; 40 Ex. G. A., S. F. 237, § 1.]

11847. Presumption attending devise to spouse. Where the survivor is named as a devisee in a will, it shall be presumed, unless the intention is clear and explicit to the contrary, that such devise is in lieu of such distributive share, homestead, and exemptions. [C., '97, § 3270; 40 Ex. G. A., S. F. 237, § 1.]

11848. Limitation on disposal by will. No devise or bequest to a corporation organized under the chapter relating to corporations not for profit or to a foreign corporation of a similar character, or to a trustee for the use or benefit of any such corporation, shall be valid in excess of one-fourth of the testator's estate after the payment of debts, if a spouse, child, child of deceased child, or parent survive the testator. [C., '51, § 1277; R., '60, §§ 1198, 2309; C., '73, §§ 1101, 2322; C., '97, § 3270; 40 Ex. G. A., S. F. 237, § 2.]

11849. After-acquired property. Property to be subsequently acquired may be devised, when the intention is clear and explicit. [C., '51, § 1278; R., '60, § 2310; C., '73, § 2323; C., '97, § 3271.]

11850. Verbal wills. Personal property to the value of three hundred dollars may be bequeathed by a verbal will witnessed by two competent persons, but if such bequest is of greater value, it shall be valid only to that extent. [C., '51, § 1279; R., '60, § 2311; C., '73, § 2324; C., '97, § 3272.]

11851. Soldier or mariner. A soldier in actual service, or a mariner at sea, may dispose of all his personal estate by a will so made and witnessed. [C., '51, § 1280; R., '60, § 2312; C., '73, § 2325; C., '97, § 3273.]

11852. Formal execution. All other wills, to be valid, must be in writing, signed by the testator, or by some person in his presence and by his express direction writing his name thereto, and witnessed by two competent persons. [C., '51, § 1281; R., '60, § 2313; C., '73, § 2326; C., '97, § 3274.]

11853. Defect cured by codicil. If a codicil is duly executed to a will defectively executed and clearly identified in such codicil, the will and codicil shall be considered one instrument and the execution of both sufficient. [C., '97, § 3274.]

11854. Interest of witness. No subscribing witness to a will can derive any benefit therefrom unless it be signed by two competent and disinterested persons as witnesses thereto, besides himself, but if, without a will, he would be entitled to any portion of the testator's estate, he may receive such portion to the extent in value of the amount devised. [C., '51, §§ 1282, 1283; R., '60, §§ 2314, 2315; C., '73, §§ 2327, 2328; C., '97, § 3275.]

11855. Revocation—cancellation. Wills can only be revoked in whole or in part by being

canceled or destroyed by the act or direction of the testator, with the intention of so revoking them, or by the execution of subsequent wills. When done by cancellation, the revocation must be witnessed in the same manner as the making of a new will. [C., '51, §§ 1288, 1289; R., '60, §§ 2320, 2321; C., '73, §§ 2329, 2330; C., '97, § 3276; S., '13, § 3276.]

11856. Deposit with clerk. A will sealed up and indorsed may be deposited with the clerk of the court, who shall file and preserve the same until the death of the testator, unless he sooner demands it. [C., '51, § 1290; R., '60, § 2322; C., '73, § 2331; C., '97, § 3277.]

11857. Executors. If no executors are named in a will, or if those named fail to qualify and act, the court admitting it to probate shall appoint one or more to carry it into effect. [C., '51, §§ 1299, 1302; R., '60, §§ 2331, 2334; C., '73, §§ 2332, 2333; C., '97, § 3278.]

11858. After-born children. Whenever a testator shall have a legitimate child born after the making of a last will, either in the lifetime or after the death of such testator, and shall die leaving such child so after born unprovided for by any settlement, and neither provided for nor mentioned in such will, every such child shall succeed to and inherit the same interest in such parent's real and personal estate as though no will had been made, and the said interest shall be taken ratably from the interests of heirs, devisees, and legatees. [C., '51, §§ 1284, 1285; R., '60, §§ 2316, 2317; C., '73, §§ 2334, 2335; C., '97, § 3279; S., '13, § 3279.]

11859. Claims in disregard of will. All claims which it becomes necessary to satisfy, and all amounts necessary to be paid from the estate of a testator in disregard of or in opposition to the provisions of a will, shall be taken ratably from the interests of heirs, devisees, and legatees. [S., '13, § 3279-a.]

11860. Devise—legacy—bequest. The word "devisee", as used in this title, shall, when applicable, be construed to embrace "legatees", and the word "devised" shall, in like cases, be understood as comprising the word "bequeathed". [C., '51, § 1286; R., '60, § 2318; C., '73, § 2336; C., '97, § 3280.]

11861. Heirs of devisee. If a devisee die before the testator, his heirs shall inherit the property devised to him, unless from the terms of the will a contrary intent is manifest. [C., '51, § 1287; R., '60, § 2319; C., '73, § 2337; C., '97, § 3281.]

11862. Custodian—filing—penalty. Any person having the custody of a will shall, as soon as he is informed of the death of the testator, file the same with the clerk. Any person who fails to produce the same after receiving reasonable notice so to do may be committed to jail until he does, and shall be liable for all damages occasioned by his failure. [C., '51,

§§ 1291, 1292; R., '60, §§ 2323, 2324; C., '73, §§ 2338, 2339; C., '97, § 3282.]

11863. Probate. After the will is produced, the clerk shall open and read the same, and a day shall be fixed by the court or clerk for proving it, and may be postponed from time to time in the discretion of the court. [C., '51, § 1293; R., '60, § 2325; C., '73, § 2340; C., '97, § 3283; 38 G. A., ch. 357, § 3.]

11864. Contest—jury trial. When the probate of a will is contested, either party to the contest shall be entitled to a jury trial thereon. [C., '97, § 3283.]

11865. Notice of hearing. The clerk shall give notice of the time fixed, by publishing a notice, signed by himself and addressed to all whom it may concern, in a daily or weekly newspaper printed in the county where the will is filed, once each week, for three consecutive weeks, the last publication of which shall be at least ten days before the time fixed for such hearing. The court or the judge in vacation, or clerk, in his discretion, may prescribe a different notice. [C., '51, § 1294; R., '60, § 2326; C., '73, § 2341; C., '97, § 3284; S., '13, § 3284; 38 G. A., ch. 88, § 1; 40 G. A., ch. 207, § 1.]

11866. Proof—depositions. The proof may be made by the oral testimony of the subscribing witnesses taken in open court, or by deposition when they reside outside of the state or judicial district in which the will is to be proven. When by deposition, the court or judge shall order the issuance of a commission to some officer authorized by the laws of this state to take depositions, with the will annexed, and the officer taking the deposition shall exhibit it to the witness for identification, and, when identified by him, shall mark it as "exhibit.....", and cause the witness to connect his identification with it as such exhibit. Before sending the commission out, the clerk shall make and retain in his office a true copy of such will. [C., '97, § 3285.]

NOTE: Proof when subscribing witness denies, or does not recollect, the execution of the instrument, see § 11277.

11867. Certificate of probate. A will, when admitted to probate, shall have a certificate of such fact indorsed thereon or annexed thereto, signed by the clerk and attested by the seal of the court; and, when so certified, it or the record thereof, or the transcript of such record properly authenticated, may be read in evidence in all courts without further proof. [C., '51, § 1300; R., '60, § 2332; C., '73, § 2342; C., '97, § 3286.]

11868. Record—copy for executor. After being proved and allowed, the will, together with the certificate hereinbefore required, shall be recorded in a book kept for that purpose, and the clerk shall cause the same, or an authenticated copy thereof, to be placed in the hands of the executor therein named or otherwise appointed. [C., '51, §§ 1295, 1298; R., '60, §§ 2327, 2330; C., '73, §§ 2343, 2344; C., '97, § 3287; S. '13, § 3287.]

11869. Record in foreign county. Whenever it shall appear that the testator died seized of real estate located in a county of this state other than that in which probate is granted, a complete transcript, properly authenticated, of the record entry of the order of court admitting the will to probate, and, if a copy of such will is not contained therein, a certified copy of such will shall be attached thereto and the same shall be filed by the clerk in the office of the clerk of the district court in such other county, who shall cause the same to be entered in the probate docket, and said transcript shall be recorded in full in the book kept for the recording of wills in such county. When so recorded such record may be read in evidence in all courts without further proof. [S., '13, § 3287.]

11870. Costs of transcript. The cost of such transcript and of the recording thereof shall be taxed against the estate of the decedent unless administration thereof is closed, in which event it shall be paid by the owner of the real estate involved. [S., '13, § 3287.]

11871. Married woman as executor. A married woman may act as executor, independent of her husband. [C., '51, § 1304; R., '60, § 2336; C., '73, § 2345; C., '97, § 3288.]

11872. Minors as executors. If a minor under eighteen years of age is nominated as an executor, there will be a vacancy as to him until he reaches that age. [C., '51, § 1305; R., '60, § 2337; C., '73, § 2346; C., '97, § 3289.]

11873. Vacancies. If a person nominated as executor refuses to accept the trust, or neglects to appear within ten days after his appointment and give bond as hereinafter prescribed, or if an executor removes his residence from the state, the office shall be vacant. [C., '51, § 1303; R., '60, § 2335; C., '73, § 2347; C., '97, § 3290.]

11874. Filling vacancies. In case of a vacancy, letters of administration with the will annexed may be granted to some other person, or, if there be another executor competent to act, he may be allowed to proceed by himself in administering the estate. [C., '51, § 1307; R., '60, § 2339; C., '73, § 2348; C., '97, § 3291.]

11875. Substitution—effect. The substitution of other executors shall occasion no delay in the administration of the estate. The periods hereinafter mentioned within which acts are to be performed after the appointment of executors shall all, unless otherwise declared, be computed from the issuing of the letters to the first general executor. [C., '51, § 1308; R., '60, § 2340; C., '73, § 2349; C., '97, § 3292.]

11876. Trustees to give bond. Trustees appointed by will or by the court must qualify and give bonds the same as executors, and shall be subject to control or removal by it in the same manner, and others appointed. [C., '73, § 2350; C., '97, § 3293.]

11877. Foreign probated wills. A will probated in any other state or country shall be admitted to probate in this state, without the notice required in the case of domestic wills, on the production of a copy thereof and of the original record of probate, authenticated by the attestation of the clerk of the court in which such probate was made, or, if there be no clerk, by the attestation of the judge thereof, and the seal of office of such officers, if they have a seal. [C., '51, § 1296; R., '60, § 2328; C., '73, § 2351; C., '97, § 3294.]

11878. Foreign wills—sale of real estate. All provisions of law relating to the carrying into effect of domestic wills after probate shall, so far as applicable, apply to foreign wills admitted to probate in this state. [C., '73, § 2352; C., '97, § 3295.]

11879. Sales. If the executors or trustees under such wills are empowered to sell and convey real estate, then, upon the production and recording in the proper probate record of a copy of the original record of the appointment, qualification, and bond, unless bond was waived in the will, duly authenticated in the manner foreign wills are required to be, such executors or trustees may, in conformity with the power granted in such wills, sell and convey real estate within any county in this state where such probate and proof of qualification may be of record, without further qualifying in this state, and without reporting such sale to the district court in this state for approval. [C., '97, § 3295.]

11880. Effect—pending domestic appointment. Such sales and conveyances shall have the same force as if made by executors or trustees qualified within this state and reported to and approved by the district court, unless, at the time of the execution and delivery of said deed, letters testamentary or of administration upon the estate of such decedent shall have been granted in this state and remain in force, and due notice thereof has been given in such county, if other than one in which such letters were granted here, as required in reference to actions affecting real estate; in which case, any conveyance shall be made subject to all the rights acquired under the appointment and letters granted in this state. [C., '97, § 3295.]

11881. Time limit on sales. No such conveyance shall be made by such executor or trustee until three months after the recording of a duly authenticated copy of the will, original record of appointment, and qualification and bond, unless bond was waived in the will, in the proper probate record of the county where the land is situated. [C., '97, § 3295.]

11882. Probate conclusive—setting aside. Wills, foreign or domestic, shall not be carried into effect until admitted to probate as hereinbefore provided, and such probate shall be conclusive as to the due execution thereof, until set aside by an original or appellate proceeding.

[C., '51, § 1297; R., '60, § 2329; C., '73, § 2353; C., '97, § 3296.]

11883. Administration granted. In other cases, where an executor is not appointed by will, administration shall be granted to any suitable person or persons on the request and application of:

1. The surviving spouse.
2. The next of kin.
3. Creditors.
4. Any other person showing good grounds therefor. [C., '51, §§ 1311, 1312; R., '60, §§ 2343, 2344; C., '73, §§ 2354, 2355; C., '97, § 3297; 40 Ex. G. A., S. F. 237, § 9.]

11884. Time allowed. To each of the above classes, in succession, a period of twenty days, commencing with the burial of the deceased, is allowed within which to apply for administration. [C., '51, § 1313; R., '60, § 2345; C., '73, § 2356; C., '97, § 3298.]

11885. Special administrators. When, from any cause, general administration or probate of a will can not be immediately granted, one or more special administrators may be appointed to collect and preserve the property of the deceased, and no appeal from such appointment shall prevent their proceeding in the discharge of their duties. [C., '51, §§ 1320, 1321; R., '60, §§ 2352, 2353; C., '73, §§ 2357, 2358; C., '97, § 3299.]

11886. Inventory—preservation of property. They shall make and file an inventory of the property of the deceased in the same manner as is required of general executors or administrators, and shall preserve such property from injury, and for that purpose may do all needful acts under the direction of the court, but shall take no steps in relation to the allowance of claims against the estate. Upon the granting of full administration, the powers of the special administrators shall cease, and all the business be transferred to the general executor or administrator. [C., '51, §§ 1322-1324; R., '60, §§ 2354-2356; C., '73, §§ 2359-2361; C., '97, § 3300.]

11887. Bond—oath. Every executor or administrator, except as herein otherwise declared, before entering on the discharge of his duties, must give a bond in such penalty as may be required by the court, to be approved by the clerk, conditioned for the faithful discharge of the duties imposed on him by law, according to the best of his ability, and take and subscribe an oath the same in substance as the condition of the bond, which oath and bond must be filed with the clerk. [C., '51, §§ 1316, 1317; R., '60, §§ 2348, 2349; C., '73, §§ 2362, 2363; C., '97, § 3301.]

11888. New bond. New bonds may be required by the court or judge thereof, to be given in a new penalty and with new securities, when it is found necessary. [C., '51, § 1318; R., '60, § 2350; C., '73, § 2364; C., '97, § 3302.]

11889. Letters. After filing the bond, the clerk shall issue letters testamentary or of

administration, as the case may be, under the seal of the court, giving the executor or administrator the power authorized by law. [C., '51, § 1319; R., '60, § 2351; C., '73, § 2365; C., '97, § 3303.]

11890. Notice of appointment. The executors or administrators first appointed and qualified for the settlement of the estate shall, within ten days after the receipt of their letters, publish such notice of their appointment as the court or clerk may direct, which direction shall be indorsed on the letters when issued and entered of record in the probate docket. [C., '51, §§ 1357, 1358; R., '60, §§ 2389, 2390; C., '73, § 2366; C., '97, § 3304; 40 G. A., ch. 208, § 1.]

11891. Limitation on administration. Administration shall not be originally granted after five years from the death of the decedent, or from the time his death was known, in case he died out of the state. [C., '51, § 1325; R., '60, § 2357; C., '73, § 2367; C., '97, § 3305; S., '13, § 3305.]

11892. Exception — newly discovered personality. When personal property belonging to the estate of decedent is discovered after the expiration of said five years, administration may be granted after the five-year limit, for the purpose only of making proper disposition and distribution thereof. [S., '13, § 3305.]

11893. Will executed in foreign state or country. A last will and testament executed without this state, in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided said last will and testament is in writing and subscribed by the testator. [C., '97, § 3309.]

APPOINTMENT OF FOREIGN ADMINISTRATOR

11894. Authorization. If administration of the estate of a deceased nonresident has been granted in accordance with the laws of the state or country where he resided at the time of his death, the person to whom it has been committed may, upon his application and upon qualifying in the manner required of nonresident executors, be appointed to administer upon the property of the deceased in this state, unless another had been previously appointed. [C., '51, § 1309; R., '60, § 2341; C., '73, § 2368; C., '97, § 3306.]

11895. Conditions attending appointment. The original letters or other authority conferring his power upon such administrator, or an attested copy thereof, must be filed and recorded with the clerk of the proper court, and a bond, with resident sureties, given in such an amount as the court shall prescribe, conditioned for the payment of all claims allowed to residents of the state, and the payment of all legacies and distributive shares coming to such residents, so far as the assets thereof shall extend, before such appointment can be made. [C., '51, § 1310; R., '60, § 2342; C., '73, § 2369; C., '97, § 3306.]

1. C.—91

11896. Removal of property — payment of claims. In such cases, the court or judge may require payment of all claims filed and allowed or proved belonging to residents of this state, and of all legacies or distributive shares payable to such residents, before allowing the estate to be removed from the state. [C., '97, § 3306.]

ASSIGNMENTS AND SATISFACTIONS BY FOREIGN FIDUCIARY OFFICERS

11897. Mortgages and judgments. Judgments rendered by any court in the state of Iowa, and mortgages, or deeds of trust executed as mortgages, on property in this state, and belonging to an estate, trust, or to a person under guardianship may, in whole or in part as to any particular property, be released and discharged or be assigned by an executor, administrator, guardian, trustee, receiver, referee, assignee, or commissioner, or anyone acting in a fiduciary capacity appointed by a court of record of any foreign state or country, when no resident executor, administrator, guardian, receiver, referee, assignee, commissioner, or person acting in a fiduciary capacity has been appointed or qualified in this state. Such release, satisfaction, discharge, or assignment may be made in any manner or by any instrument which would be valid and effective if made by a like officer qualified under the law of this state. [S., '13, § 3307-a; 40 Ex. G. A., S. F. 237, § 5.]

11898. Certificate of appointment and authority. Before a release, satisfaction, discharge, or assignment by such foreign officer shall be effective, a certificate executed by the judge or clerk of the court making the appointment, with seal attached, if such officer has a seal, shall be recorded. Said certificate shall show the name of the court making the appointment, the date of the same, and that such foreign officer has not been discharged at the time of the execution of the release, satisfaction, discharge, or assignment and is authorized to execute the same. [40 Ex. G. A., S. F. 237, § 6.]

11899. Filing of certificate. The certificate aforesaid shall be filed for record:

1. In case of judgments, in the office of the clerk of the court in which the judgment is of record or in which it has been filed, or

2. In case of mortgages, or deeds of trust, in the office of the county recorder of the county in which the mortgage or deed of trust is of record. [C., '97, § 3308; S. S., '15, § 3308; 39 G. A., ch. 17, § 1; 40 Ex. G. A., S. F. 237, § 7.]

11900. Record—index of satisfaction. Such certificate shall be recorded by the proper officer in the judgment records of the court in which the same appears of record, or in the appropriate chattel or real estate records, as the case may be, and the record of such release, satisfaction, discharge, or assignment shall be properly indexed. [C., '97, § 3308; S. S., '15, § 3308; 39 G. A., ch. 17, § 2; 40 Ex. G. A., S. F. 237, § 8.]

CHAPTER 506

ESTATES OF ABSENTEES

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 11909. Decree as to heirs.
 11910. Additional notice.
 11911. Rights of absentee barred—conveyance by spouse.

11901. Administration authorized—petition. Administration may be had on the estate of an absentee. A petition therefor must be filed in the office of the clerk of the district court and must allege:

1. That the absentee was a resident of this state and has, without known cause, absented himself from his usual place of residence, and concealed his whereabouts from his family, for a period of seven years.

2. That said absentee has property in this state (describing it with reasonable certainty), all or part of which is situated in the county in which the petition is filed.

3. The names of the persons, so far as known to the petitioner, who would be entitled to share in the estate of the absentee if he were dead.

4. Facts showing that the petitioner is a party who would be entitled to administer on the estate of said absentee in case the absentee were known to be dead. [C., '97, § 3307; S., '13, § 3307; 40 Ex. G. A., S. F. 237, § 3.]

11902. Notice. Upon the filing of such petition, the court, or a judge thereof in vacation, shall prescribe the notice and the return day therein, which shall be addressed to and served upon said absentee and the said beneficiaries of his estate. [C., '97, § 3307; S., '13, § 3307; 40 Ex. G. A., S. F. 237, § 3-a1.]

11903. Service. Said notice shall in all cases be served:

1. By publication in the county in which the petition is filed, once each week for eight consecutive weeks, in a newspaper designated by the court or judge, and

2. Personally upon all the known or alleged beneficiaries of the estate of said absentee, residing within the state, in the manner and for the length of time required for the service of original notices. [C., '97, § 3307; S., '13, § 3307; 40 Ex. G. A., S. F. 237, § 3-a2.]

11904. Proof of service—filing. Proof of the publication and personal service of said notice shall be filed with the clerk aforesaid on or before the day set for hearing. [C., '97, § 3307; S., '13, § 3307; 40 Ex. G. A., S. F. 237, § 3-a3.]

11905. Hearing—continuance—orders. If, on the day set for hearing, the absentee fails to appear, the court shall appoint some disinterested person to appear for the absentee and all beneficiaries not appearing, and said cause shall thereupon stand continued until the next term of said court, and the court shall have authority to make further continuance upon proper showing. Said person shall investigate the matters and things alleged in the petition. The court shall hear the proofs and, if satisfied of the truth of the allegations of the petition, shall order the issuance of letters of administration upon the estate of said absentee as though said absentee were known to be dead. [C., '97, § 3307; S., '13, § 3307; 40 Ex. G. A., S. F. 237, § 3-a4.]

11906. Administration. The person to whom the administration is granted shall proceed to administer and dispose of the estate in the same manner that administrators are required to dispose of and administer the estates of decedents. [S., '13, § 3307-a; 40 Ex. G. A., S. F. 237, § 3-a5.]

11907. Sale of real estate. Such administrator may, under the orders of the court, sell and dispose of all real estate and other property owned by such absentee, and after the payment of legal costs, expenses, and claims, make distribution of the proceeds thereof to the persons entitled thereto. [S., '13, § 3307-a; 40 Ex. G. A., S. F. 237, § 3-a6.]

11908. Procedure in sale of real estate. The provisions of law regarding application, notice, and manner of sale of real estate for the payment of debts by administrators shall be followed so far as applicable. [S., '13, § 3307-a; 40 Ex. G. A., S. F. 237, § 3-a7:]

11909. Decree as to heirs. Prior to any order of distribution, the court shall hear proof and determine the legal heirs and beneficiaries of said absentee, and their respective interests in such estate. [S., '13, § 3307; 40 Ex. G. A., S. F. 237, § 3-a8.]

11910. Additional notice. Before determining said heirs and beneficiaries the court may prescribe further and additional notices and

the service thereof. [40 Ex. G. A., S. F. 237, § 3-a9.]

11911. Rights of absentee barred—conveyance by spouse. Administration upon the estate of an absentee shall forever bar his or her right of homestead and statutory distributive share or interest in and to any real estate

owned or held by the spouse of such absentee, or in which said spouse may have a legal or equitable interest, and a conveyance thereof by such spouse after one year from and after such administration has been granted, shall be free and clear of any claim or right of homestead or statutory distributive share on the part of such absentee. [S., '13, § 3307-b.]

CHAPTER 507

SETTLEMENT OF ESTATES

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11912. Report as to surviving spouse, heirs, and real estate. Within thirty days after his appointment, each executor or administrator shall file a verified list of the names, ages, relationship, and places of residence of the heirs of the deceased, and the name, age, and residence of the surviving spouse, if any, together with an accurate description of all the real estate of which the deceased died seized. [C., '73, § 2491; C., '97, § 3412; 40 Ex. G. A., H. F. 236, § 1.]

11913. Inventory. Within fifteen days after his appointment, the executor or administrator shall make and file with the clerk an inventory of all the personal effects of the deceased which

have come to his knowledge, and a list of all book accounts which appear to be unsettled, which shall show separately and distinctly, each by itself:

1. The property inventoried as general assets of the deceased,
2. That which is regarded as exempt, and
3. The book accounts.

[C., '51, § 1328; R., '60, § 2360; C., '73, § 2370; C., '97, § 3310.]

11914. Supplemental inventories. A supplemental inventory must be made in the same manner whenever the existence of additional property is discovered. [C., '51, § 1333; R., '60, § 2365; C., '73, § 2376; C., '97, § 3310.]

11915. Filing mandatory. Inventories as above provided must be filed in all cases, notwithstanding the provisions of any will or the action of any heirs or devisees waiving the filing thereof, and no administration shall be closed until the same has been filed. The court shall enforce the filing thereof whenever the executor or administrator fails to do so. [C., '97, § 3310.]

11916. Appraisalment—waiver. All property inventoried by the executor or administrator shall be valued by three appraisers, who shall be appointed immediately on the filing of the inventory unless the court or judge or clerk of the district court in vacation shall by an order entered of record waive the valuation of the property so inventoried. [C., '51, § 1331; R., '60, § 2363; C., '73, § 2373; C., '97, § 3311; S., '13, § 3311.]

11917. Qualification—duties. The clerk shall issue to them a notice of their appointment, accompanied by a copy of the inventory returned by the executor or administrator, and they shall qualify by taking an oath faithfully and impartially to make the required valuation, and in making the same they shall fix a value to each item of property separately as it appears in the inventory. If any portion of the decedent's personal property is situated in another county, the same appraisers may serve, or others may be appointed. [C., '51, § 1332; R., '60, § 2364; C., '73, §§ 2374, 2378; C., '97, § 3311; S., '13, § 3311.]

11918. Exempt personal property. When the deceased leaves a widow, all personal property which in his hands as the head of a family would be exempt from execution, after being inventoried and appraised, shall be set apart to her as her property, and be exempt in her hands as in the hands of the decedent. [C., '51, § 1329; R., '60, § 2361; C., '73, § 2371; C., '97, § 3312.]

11919. Proceeds of insurance. The avails of any life or accident insurance, or other sum of money made payable by any mutual aid or benevolent society upon the death or disability of a member thereof, are not subject to the debts of the deceased, except by special contract or arrangement, and shall be disposed of like other property left by the deceased. [C., '51, § 1330; R., '60, § 2362; C., '73, §§ 1182, 2372; C., '97, § 3313.]

NOTE: For similar provisions, see §§ 8683, 8776, and 8796.

11920. Damages for wrongful death. When a wrongful act produces death, damages recovered therefor shall be disposed of as personal property belonging to the estate of the deceased, but if the deceased leaves a husband, wife, child, or parent, it shall not be liable for the payment of debts. [R., '60, § 4111; C., '73, § 2526; C., '97, § 3313.]

11921. When "heir" embraces surviving spouse. The words "heirs", or "legal heirs" or other equivalent words used to designate the

beneficiaries in any life insurance policy or certificate of membership in any mutual aid or benevolent association, where no contrary intention is expressed in such instrument, shall be construed to include the surviving husband or wife of the insured. [C., '97, § 3313.]

11922. Share of survivor. The share of such survivor in the proceeds of such policy or certificate made payable as aforesaid shall be the same as that provided by law for the distribution of the personal property of intestates. [C., '97, § 3313.]

NOTE: Distribution of personal property, see § 11986.

11923. Allowance to widow and children. The court shall, if necessary, set off to the widow and children of the decedent under fifteen years of age, or to either, sufficient of his property, of such kind as is appropriate, to support them for twelve months from the time of his death, and may, on the petition of the widow or other person interested, review such allowance and increase or diminish the same, and make such orders in the premises as shall be right and proper. [C., '51, § 1338; R., '60, § 2370; C., '73, §§ 2375, 2377; C., '97, § 3314.]

11924. Application for allowance. Applications for such allowance shall state under oath the number of children under fifteen years of age, the amount of property already set apart to the widow, the value of her deceased husband's estate, the amount of its indebtedness, the value of all property owned by the widow, and what allowance, if any, has heretofore been made to her. [C., '97, § 3314.]

11925. Discovery of assets. The court or judge may require any person suspected of having taken wrongful possession of any of the effects of the deceased, or of having had such effects under his control, to appear and submit to an examination under oath touching such matters, and if on such examination it appears that he has the wrongful possession of any such property, the court or judge may order the delivery thereof to the executor or administrator. [C., '51, § 1334; R., '60, § 2366; C., '73, § 2379; C., '97, § 3315.]

11926. Commitment. If, on being served with the order of the court or judge requiring him to do so, any person fails to appear in accordance therewith, or if, having appeared, he refuses to answer any question which the court or judge thinks proper to be put to him in the course of such examination, or if he fails to comply with the order of the court or judge requiring him to deliver the property to the executor or administrator, he may be committed to the jail of the county until he does. [C., '51, § 1335; R., '60, § 2367; C., '73, § 2380; C., '97, § 3316.]

11927. Recovering transferred real estate. When it is probable that the known and acknowledged property of the deceased will not be sufficient for the payment of his debts, any person to whom the legal title of any real

estate was conveyed by the decedent, or any person through whom such title has subsequently passed, or any person claiming an interest therein, may be required to appear and submit to an examination as provided in the two preceding sections, subject to the penalties therein described, and the court or judge shall direct the executor or administrator to file a petition in equity to secure to the estate the title to any real estate which, in the event of the insufficiency of the personal property, would be assets for the payment of debts. [C., '73, § 2381; C., '97, § 3317.]

11928. Compounding claims. The executor or administrator, with the approval of the court, may compound with any debtor of the estate who may be thought unable to pay his whole debt. [C., '51, § 1336; R., '60, § 2368; C., '73, § 2382; C., '97, § 3318.]

11929. Mortgage as assets—satisfaction. The interest of a deceased mortgagee shall be included among his personal assets and, upon the mortgage being paid off, satisfaction shall be entered by the executor or administrator. [C., '51, § 1337; R., '60, § 2369; C., '73, § 2383; C., '97, § 3319.]

11930. Unauthorized devise or bequest—security to sustain. When a person by his will makes such a disposition of his effects as to prejudice the rights of creditors, the will may be sustained, by giving security to the satisfaction of the court for the payment of the claims of the creditors, to the extent of the value of the property devised. [C., '51, § 1339; R., '60, § 2371; C., '73, § 2384; C., '97, § 3320.]

11931. Funds collected—paid out. When no different direction is given by will, debts due the estate, as far as practicable, shall be collected, and the debts owing by the estate paid off therewith, to the extent of the means thus obtained. [C., '51, § 1340; R., '60, § 2372; C., '73, § 2385; C., '97, § 3321.]

11932. Sale of personal property. The court, on the application of the executor or administrator, from time to time shall direct the sale of such portions of the personal effects as are of a perishable nature, or which from any cause would otherwise be likely to depreciate in value, and also such portions as are necessary to pay off the debts and charges upon the estate. [C., '51, § 1341; R., '60, § 2373; C., '73, § 2386; C., '97, § 3322.]

11933. Sale or mortgage of real estate—application. If the personal effects are found inadequate to satisfy the debts and charges, a sufficient portion of the real estate may be ordered sold or mortgaged for that purpose, application therefor being made in the court granting administration, and only after a full statement of all the claims against the estate, and after rendering a full account of the disposition made of the personal estate. [C., '51, §§ 1342, 1343; R., '60, §§ 2374, 2375; C., '73, §§ 2387, 2388; C., '97, § 3323.]

11934. Return day—notice and service. The applicant for the order to sell or mortgage may fix the time and place of hearing before the court, and, in such case, a notice thereof must be served, unless otherwise provided, on all resident and nonresident persons interested in said real estate, including claimants, if any, whose names are unknown, in the same manner, and for the same time before the day of hearing, as would be required if the day of hearing was the first day of a term of court, and the notice was a notice of the commencement of an ordinary civil action. [C., '51, § 1344; R., '60, § 2376; C., '73, § 2389; C., '97, § 3324; 39 G. A., ch. 174, § 1; 39 G. A., ch. 263, § 3; 40 Ex. G. A., H. F. 256, § 8.]

11935. Time, place of hearing, and service fixed by court. The court or judge may, on application therefor, fix, by proper order, the time and place of hearing before the court or judge, and the time of service and the manner thereof. [C., '51, § 1344; R., '60, § 2376; C., '73, § 2389; C., '97, § 3324; 39 G. A., ch. 263, § 3; 40 Ex. G. A., H. F. 256, § 9.]

11936. Order conditional on service. No order for the sale or mortgage of such real estate shall be granted until proof of service as above provided is made. [C., '51, § 1344; R., '60, § 2376; C., '73, § 2389; C., '97, § 3324; 39 G. A., ch. 263, § 3; 40 Ex. G. A., H. F. 256, § 10.]

11937. Method of sale. The real estate shall, when to the interest of the estate, be divided into parcels, appraised as the personal estate was, and the appraisement filed in like manner; but when a part can not be sold without material prejudice to the general interests of the estate, the court may order the sale of the whole, or of such parts as can be sold advantageously. [C., '51, §§ 1345, 1346; R., '60, §§ 2377, 2378; C., '73, §§ 2390, 2391; C., '97, § 3325.]

11938. Public or private sale—notice—credit. Property may be permitted to be sold at private sales when the court is satisfied that the interest of the estate will be thereby promoted, but in other cases sales must be made at public auction, after giving the same notice as is necessary for the sale of like property on execution, but it may be ordered to be sold on a partial credit of not more than twelve months. [C., '51, §§ 1347, 1348, 1350; R., '60, §§ 2379, 2380, 2382; C., '73, §§ 2392, 2393; 2395; C., '97, § 3326.]

11939. Limitation on private sale. No property can be sold at private sale for less than the appraisement, without the express approval of the court or judge. [C., '51, § 1349; R., '60, § 2381; C., '73, § 2394; C., '97, § 3326.]

11940. Borrowing money. If the court is satisfied that it will be for the best interest of the estate that the real estate shall be withheld, it may, upon the application hereinbefore provided for, order the executor or administrator to borrow money thereon, and

execute a note or notes in the name of such officer, secured by mortgage on any real estate belonging to the estate not exempt as a homestead, to secure the payment thereof, and with the proceeds pay the debts shown in the statement set out in the application, and report his action therein to the court. [C., '97, § 3327.]

11941. Bond to prevent sale. Any person interested in the estate may prevent a sale of the whole or any part of the real estate by giving bond to the satisfaction of the court, conditioned that he will pay all demands against the estate to the extent of the value of the property thus kept from sale, as soon as called upon by the court for that purpose. [C., '51, § 1351; R., '60, § 2383; C., '73, § 2396; C., '97, § 3328.]

11942. Breach of bond—procedure. If the conditions of such bond are broken, the property will be liable for the debts unless it has passed into the hands of innocent purchasers, and the executor or administrator may take possession thereof and sell it under the direction of the court, or he may prosecute the bond, or pursue both remedies at the same time, if the court so directs. [C., '51, § 1352; R., '60, § 2384; C., '73, § 2397; C., '97, § 3328.]

11943. Effect of bond. If the conditions of the bond are complied with, the property shall pass by devise, distribution, or descent in the same manner as though there had been no debts against the estate. [C., '51, § 1353; R., '60, § 2385; C., '73, § 2398; C., '97, § 3329.]

11944. Report for approval. All sales, deeds, and mortgages shall be reported to the court for approval as soon as practicable after being made. [C., '97, § 3331.]

11945. Requirements. Reports of the sale or mortgage of real estate must be sworn to, and state:

1. The term at which the order therefor was obtained.
2. Whether the property was appraised, and, if so, the appraised value.
3. Whether sold at public or private sale.
4. The terms of sale.
5. Whether the additional bond required has been given and approved.
6. The opinion of the persons making them as to whether the sale is an advantageous one and should be approved, or otherwise. [C., '97, § 3331.]

11946. Approval by court required. When real estate is sold or mortgaged, the conveyances or mortgages thereof, executed by the executor or administrator, shall not be valid until approved by the court. [C., '51, § 1354; R., '60, § 2386; C., '73, § 2399; C., '97, § 3330.]

11947. Approval recorded and indorsed. Said approval shall be entered of record, and a certificate thereof indorsed on the deed or mortgage, with the signature of the clerk and the seal of the court affixed thereto. [C., '51, § 1355; R., '60, § 2387; C., '73, § 2400; C., '97, § 3330.]

11948. Effect of conveyance—presumption. When so indorsed, said conveyance or mortgage shall pass to the purchaser all the interest of the deceased therein prior to his death, in case of sales, and create a lien thereon, in case of mortgages, and be presumptive evidence of the validity thereof, and of the regularity of all the proceedings connected therewith. [C., '51, § 1355; R., '60, § 2387; C., '73, § 2400; C., '97, § 3330.]

11949. Record in foreign county. When the subject of the sale, conveyance, or mortgage is located in a county other than that in which administration is granted, a complete transcript of the record of all proceedings relating thereto shall be filed by the administrator in the office of the clerk of the district court in such county, and he shall cause the same to be copied at length in the probate records of such county. [C., '97, § 3331.]

11950. Transcript of court conveyances—recording—effect. Any person interested therein may procure from the clerk of any district court in this state a transcript of any conveyance executed by any executor, administrator, guardian, or trustee, which has been recorded in the office of the clerk of the district or circuit courts of this state, in the county in which such real estate is situated, for more than ten years, and such transcript when certified by the clerk of the district court of such county, under the seal of his office, may be filed in the office of the recorder of such county, and shall have the same effect, when so recorded, as the original conveyance. [38 G. A., ch. 166, § 1.]

11951. Limitation of action. No action for the recovery of any real estate sold or mortgaged by an executor or administrator can be maintained by any person claiming under the deceased, unless brought within five years after the sale by him or under the foreclosure of such mortgage. [C., '51, § 1356; R., '60, § 2388; C., '73, § 2401; C., '97, § 3332.]

11952. Possession of real property. If there is no heir or devisee present and competent to take possession of the real estate left by the decedent, the executor or administrator may do so, and demand and receive the rents and profits, and do all other acts relating thereto which may be for the benefit of the persons entitled to the same. [C., '73, § 2402; C., '97, § 3333.]

11953. Proceeds—account. Such executor or administrator, under the direction of the court, may apply the profits thereof to the payment of taxes and claims against the estate of the deceased, if the personal assets are insufficient, and account to the heirs or devisees therefor, deducting therefrom the payments made as above provided, together with a reasonable compensation for his own services, to be fixed by the court. [C., '73, §§ 2403, 2404; C., '97, § 3334.]

11954. Minor heirs—payment of taxes. When there are minor heirs for whom no

guardian has been appointed, the executor or administrator shall pay, out of any assets in his hands, all taxes assessed against the estate, not otherwise provided for, and be credited therefor as for the payment of other claims against the estate. [C., '73, § 2405; C., '97, § 3335.]

11955. Procedure prescribed by will. When the interests of creditors will not thereby be prejudiced, a testator may prescribe the entire manner in which his estate shall be administered, may exempt the executor from the necessity of giving bond, and prescribe the manner in which his affairs shall be conducted until his estate is finally settled, or until his minor children become of age. [C., '51, § 1326; R., '60, § 2358; C., '73, § 2406; C., '97, § 3336.]

11956. Business continued—inventory. The court, in its discretion, may authorize an executor or administrator to continue the prosecution of any business in which the deceased was engaged at the time of his death, in order to wind up his affairs with greater advantage, but such authority shall not exempt him from returning a full inventory and appraisal, and making reports, as in other cases. [C., '51, § 1327; R., '60, § 2359; C., '73, § 2407; C., '97, § 3337.]

11957. Claims against estate—form. Claims against the estate shall be clearly stated, and, if founded upon a written instrument, the same or a copy thereof and of all indorsements thereon shall be attached as a part of the statement, and if upon account, an itemized copy shall be attached, showing the balance. [C., '51, § 1359; R., '60, § 2391; C., '73, § 2408; C., '97, § 3338.]

11958. Verification and filing. Said statement must be sworn to and filed with the clerk of the district court. [C., '51, § 1359; R., '60, § 2391; C., '73, § 2408; C., '97, § 3338.]

11959. Notice of hearing—exceptions. Ten days' notice of the hearing thereof, which shall be at some regular term of the court, accompanied by a copy of the claim, shall be served on one of the executors or administrators in the manner required for commencing ordinary actions, unless the same has been approved by the executor or administrator, in which case it may be allowed by the clerk, without notice, and so entered upon the probate calendar. [C., '51, §§ 1359, 1361; R., '60, §§ 2391, 2393; C., '73, § 2408; C., '97, § 3338.]

11960. How entitled. All claims filed against the estate shall be entitled in the name of the claimant against the executor or administrator as such, naming the estate, and in all further proceedings thereon this title shall be preserved. [C., '73, § 2409; C., '97, § 3339.]

11961. Claims deemed denied. All claims filed, and not expressly admitted in writing signed by the executor or administrator, with the approbation of the court, shall be considered as denied, without any pleading on behalf of the estate, but special defenses must

be pleaded. [C., '73, § 2410; C., '97, § 3340; S., '13, § 3340.]

11962. Burden of proof. The burden of proving that a claim is unpaid shall not be placed upon the party filing a claim against the estate; but the executor or administrator may, on the trial of said cause, subject the claimant to an examination on the question of payment, or consideration, but the estate shall not be concluded or bound thereby. [C., '97, § 3340; S., '13, § 3340.]

11963. Hearing—trial by jury. If a claim filed against the estate is not fully admitted by the executor or administrator, the court may hear and allow the same, or may submit it to a jury, and on the hearing, unless otherwise provided, all provisions of law applicable to an ordinary action shall apply. [C., '51, §§ 1360, 1362; R., '60, §§ 2392, 2394; C., '73, § 2411; C., '97, § 3341.]

11964. Demands not due. Demands not yet due may be presented, proved, and allowed as other claims. [C., '51, § 1364; R., '60, § 2396; C., '73, § 2413; C., '97, § 3342.]

11965. Contingent liabilities. Contingent liabilities must be presented and proved, or the executor or administrator shall be under no obligation to make any provision for satisfying them when they accrue. [C., '51, § 1365; R., '60, § 2397; C., '73, § 2414; C., '97, § 3343.]

11966. Referees. Claims against an estate, and counterclaims thereto, may, in the discretion of the court, be proved before one or more referees, to be agreed upon by the parties or appointed by the court, and their decision, entered upon the record, shall become the decision of the court. [C., '51, § 1366; R., '60, § 2398; C., '73, § 2415; C., '97, § 3344.]

11967. Actions pending. Actions pending against the decedent at the time of his death may be prosecuted to judgment, his executor or administrator being substituted as defendant, and any judgment rendered therein shall be placed in the catalogue of established claims, but shall not be a lien. [C., '51, § 1368; R., '60, § 2400; C., '73, § 2416; C., '97, § 3345.]

11968. Executor interested. If either of the executors or administrators is interested in favor of a claim against the estate, he shall not serve in any manner connected therewith, and if all are thus interested, the court shall appoint some competent person a temporary executor or administrator in relation to such claims. [C., '51, § 1369; R., '60, § 2401; C., '73, § 2417; C., '97, § 3346.]

11969. Expenses of funeral—allowance to widow. As soon as the executor or administrator is possessed of sufficient means over and above the expenses of administration, he shall pay off the charges of the last sickness and funeral of deceased, and next, any allowance made by the court for the maintenance of the

widow and minor children. [C., '51, §§ 1370, 1371; R., '60, §§ 2402, 2403; C., '73, §§ 2418, 2419; C., '97, § 3347.]

11970. Other demands—order of payment. Other demands against the estate shall be payable in the following order:

1. Debts entitled to preference under the laws of the United States.
2. Public rates and taxes.
3. Claims filed within six months after the first publication or posting of the notice given by the executors or administrators of their appointment.
4. All other debts.
5. Legacies and the distributive shares, if any. [C., '51, § 1372; R., '60, § 2404; C., '73, § 2420; C., '97, § 3348.]

11971. Labor as preferred claim. In payment of claims of the third class, all debts owing to employees for labor performed within the ninety days next preceding the death of the decedent, having been filed as by law provided, shall be preferred and paid in full before any other claims of said class are paid. If there is not sufficient property to pay said claims in full the same shall be applied ratably on all such claims. [S., '13, § 3348.]

11972. When claims of fourth class barred. All claims of the fourth of the above classes, not filed and allowed, or if filed and notice thereof, as hereinbefore provided, is not served within twelve months from the giving of the notice aforesaid, will be barred, except as to actions against decedent pending in the district or supreme court at the time of his death, or unless peculiar circumstances entitle the claimant to equitable relief. [C., '51, § 1373; R., '60, § 2405; C., '73, § 2421; C., '97, § 3349.]

11973. Payment of claims—classes. After the expiration of the time for filing the claims of the third of the above classes, the executors or administrators shall proceed to pay off all claims against the estate in the order above stated, as fast as the means of so doing come into their hands, but no payment can be made to a claimant in any one class until those of a previous class are satisfied. [C., '51, §§ 1374, 1376; R., '60, §§ 2406, 2408; C., '73, §§ 2422, 2424; C., '97, § 3350.]

11974. Payment of fourth class. Claims of the fourth class may be paid off at any time after the expiration of six months, without any regard to those claims not filed at the time of such payment. [C., '51, § 1375; R., '60, § 2407; C., '73, § 2423; C., '97, § 3351.]

11975. Demands not due. Demands not yet due may be paid, if the holder will consent to such a rebate of interest as the court thinks reasonable; otherwise, the money to which he would be entitled shall be invested until his debt becomes due. [C., '51, § 1377; R., '60, § 2409; C., '73, § 2425; C., '97, § 3352.]

11976. Order of payment—dividends. Within their respective classes, debts shall be paid in

the order in which they are filed, unless it is likely there will not be sufficient means with which to pay the whole of the debts of any one class, in which case the court shall from time to time order a dividend of the means on hand among all the creditors of that class, and the executors or administrators shall pay the several amounts accordingly. [C., '51, §§ 1378, 1379; R., '60, §§ 2410, 2411; C., '73, §§ 2426, 2427; C., '97, § 3353.]

11977. Incumbrances—unexecuted purchases. The executor or administrator may, with the approval of the court, use funds belonging to the estate to pay off incumbrances upon lands owned by the deceased, or to purchase lands claimed or contracted for by him, prior to his death. [C., '51, § 1380; R., '60, § 2412; C., '73, § 2428; C., '97, § 3354.]

11978. Delivery of specific legacies—security. Specific legacies of property may by the court be turned over to the legatees at any time upon their giving unquestionable security by bond, or upon real estate, as may be ordered by the court or judge, to restore the property or refund the amount at which it was appraised, if wanted for the payment of debts. [C., '51, § 1381; R., '60, § 2413; C., '73, § 2429; C., '97, § 3355.]

11979. In money. Legacies payable in money may be paid on like terms, whenever the executors possess the means which can be thus used without prejudice to the interest of any claim already filed. [C., '51, § 1382; R., '60, § 2414; C., '73, § 2430; C., '97, § 3356.]

11980. Legacies—payment after twelve months. After the expiration of the twelve months allowed for filing claims, such legacies may be paid without requiring the security provided for in the two preceding sections, if means are retained to pay off all the claims proved or pending. [C., '51, § 1383; R., '60, § 2415; C., '73, § 2431; C., '97, § 3357.]

11981. Order of paying legacies. If the testator has not prescribed the order in which legacies are to be paid, and if no security is given as above provided, in order to expedite their time of payment, they may be paid in the order in which they are given in the will, where the estate is sufficient to pay all. [C., '51, § 1384; R., '60, § 2416; C., '73, § 2432; C., '97, § 3358.]

11982. Ratable payment. When not incompatible with the manifest intention of the testator, the court may direct all payments of money to legatees to be made ratably. [C., '51, § 1385; R., '60, § 2417; C., '73, § 2433; C., '97, § 3359.]

11983. Estate insufficient. Such must be the mode pursued when there is danger that the estate will prove insufficient to pay all the legacies, unless security is given to refund as above provided. [C., '51, § 1386; R., '60, § 2418; C., '73, § 2434; C., '97, § 3360.]

11984. Failure to pay claims. If the executor or administrator fails to make any pay-

ment in accordance with the order of the court, any person aggrieved thereby may, on ten days' notice to him and his sureties, apply to the court for judgment against them on their bond. [C., '51, § 1387; R., '60, § 2419; C., '73, § 2435; C., '97, § 3361.]

11985. Hearing and judgment. The court shall hear the application in a summary man-

ner, and may render judgment against them for the amount of money directed to be paid, and costs, and issue executions against them therefor. If any of the obligors are not served, the same proceedings in relation to them may be had with the same effect as in an action by ordinary proceedings under similar circumstances. [C., '51, § 1389; R., '60, § 2421; C., '73, § 2435; C., '97, § 3361.]

CHAPTER 508

DESCENT AND DISTRIBUTION OF INTESTATE'S PROPERTY

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11986. Personal property. The personal property of the deceased not necessary for the payment of debts, nor otherwise disposed of, shall be distributed to the same persons and in the same proportions as though it were real estate. [C., '51, § 1390; R., '60, § 2422; C., '73, § 2436; C., '97, § 3362.]

11987. Payment of shares. The distributive shares shall be paid over as soon as the executor or administrator can properly do so. [C., '51, § 1391; R., '60, § 2423; C., '73, § 2437; C., '97, § 3363.]

11988. In kind—proceeds distributed. The property itself shall be distributed in kind when that can be satisfactorily and equitably done. In other cases, the court may direct the property to be sold, and the proceeds distributed. [C., '51, § 1392; R., '60, § 2424; C., '73, § 2438; C., '97, § 3364.]

11989. Partial distribution. When the circumstances of the family require it, the court may, in addition to what is set apart for their use, direct a partial distribution of the money

or effects on hand, at any time after filing the inventory and appraisal, upon the execution of security like that required of legatees in like cases. [C., '51, § 1393; R., '60, § 2425; C., '73, § 2439; C., '97, § 3365.]

NOTE: Security required of legatees, see § 11978.

11990. Dower. One-third in value of all the legal or equitable estates in real property possessed by the husband at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the wife had made no relinquishment of her right, shall be set apart as her property in fee simple, if she survive him. The same share of the real estate of a deceased wife shall be set apart to the surviving husband. [C., '51, §§ 1394, 1421; R., '60, § 2477; C., '73, § 2440; C., '97, § 3366.]

11991. Coextensive right of husband. All provisions made in this chapter in regard to the widow of a deceased husband shall be applicable to the surviving husband of a deceased wife. [C., '51, § 1421; R., '60, § 2479; C., '73, § 2440; C., '97, § 3366.]

11992. Dower to embrace homestead. The distributive share of the survivor shall be set off so as to include the ordinary dwelling house given by law to the homestead, or so much thereof as will be equal to the share allotted to her by the second preceding section, unless she prefers a different arrangement; but no such arrangement shall be permitted unless there be sufficient property remaining to pay the debts of the decedent. [C., '51, § 1395; R., '60, § 2426; C., '73, § 2441; C., '97, § 3367.]

11993. Dower denied. As against a purchaser from a nonresident alien, the survivor shall not be entitled to a distributive share in the estate of the deceased, if at the time of the purchase such survivor was also a nonresident alien. [C., '73, § 2442; C., '97, § 3368.]

11994. Setting off dower—time limit. The survivor's share may be set off by the mutual consent of all parties in interest, or by referees appointed by the court or the judge thereof, the application therefor to be made in writing, after twenty days from the death of the intestate and within ten years, which application must describe the land in which the share is claimed, and pray the appointment of referees to set it off. [C., '51, §§ 1396, 1397; R., '60, §§ 2427, 2428; C., '73, §§ 2443, 2444; C., '97, § 3369.]

11995. Referees—notice. The court or judge shall fix the time for making the appointment of the referees, and direct such notice thereof and of the application to be given to all parties interested therein as it thinks proper. [C., '51, § 1398; R., '60, § 2429; C., '73, § 2445; C., '97, § 3370.]

11996. Survey—mode of setting off. The referees may employ a surveyor, if necessary, and must cause the shares to be marked off by metes and bounds, and make report of their proceedings to the court as early as practicable. [C., '51, § 1399; R., '60, § 2430; C., '73, § 2446; C., '97, § 3371.]

11997. Report—delinquency. The court or judge may require a report by such a time as it thinks reasonable, and if the referees fail to obey this or any other of its orders, it may discharge them and appoint others in their stead, and impose upon them the payment of all costs previously made, unless they show good cause against it. [C., '51, § 1400; R., '60, § 2431; C., '73, § 2447; C., '97, § 3372.]

11998. Confirmation—new reference. The court may confirm the report, or set it aside and refer the matter to the same or other referees, at its discretion. [C., '51, § 1401; R., '60, § 2432; C., '73, § 2448; C., '97, § 3373.]

11999. Confirmation conclusive—possession. Said confirmation, after the lapse of thirty days, unless appealed from, shall be binding and conclusive, and the survivor may bring an action to obtain possession of the land set apart. [C., '51, § 1402; R., '60, § 2433; C., '73, § 2449; C., '97, § 3373.]

12000. Right contested. Nothing in the two preceding sections shall prevent any person interested from controverting the right of the survivor to the shares thus set apart, before confirmation of the report of the referees. [C., '51, § 1403; R., '60, § 2434; C., '73, § 2450; C., '97, § 3374.]

12001. Sale—division of proceeds. If the referees report that the property or any part of it can not be readily divided, the court may order the whole sold and one-third of the proceeds paid over to the survivor. [C., '51, § 1404; R., '60, § 2478; C., '73, § 2451; C., '97, § 3375.]

12002. Purchase of new homestead. With any money thus obtained, the survivor may procure a homestead, which shall be exempt from liability for all debts from which the former homestead would have been exempt. [C., '51, § 1406; C., '73, § 2451; C., '97, § 3375.]

12003. Security to avoid sale. No sale shall be made if anyone interested gives security to the satisfaction of the court, conditioned to pay the survivor the appraised value of the share, with eight per cent interest on the same, within such reasonable time as it may fix, not exceeding one year. [C., '51, § 1405; C., '73, § 2451; C., '97, § 3375.]

12004. Security by survivor. If no such arrangement is made, such survivor may keep the property by giving like security to pay the claims of all others interested upon like terms. [C., '51, § 1405; C., '73, § 2451; C., '97, § 3375.]

12005. Sale prohibited. Such sale shall not be ordered so long as those in interest shall express a contrary desire and agree upon some mode of sharing and dividing the rents, profits, or use thereof, or shall consent that the court divide it by rent, profits, or use. [C., '51, § 1405; R., '60, § 2478; C., '73, § 2451; C., '97, § 3375.]

12006. Dower right unaffected by will. The survivor's share can not be affected by any will of the spouse unless consent thereto is given as hereinafter provided. [C., '51, § 1407; R., '60, § 2435; C., '73, § 2452; C., '97, § 3376; S., '13, § 3376; 38 G. A., ch. 192.]

12007. Election between will and dower—notice. Where a voluntary election to take or refuse to take under a will has not been filed by a surviving spouse within sixty days from the date when the will of a decedent has been admitted to probate, it shall be the duty of the executor appointed to administer the will of such decedent in this state, to cause to be served, in the manner required for service of original notice, upon the surviving spouse, a notice, in writing, advising such surviving spouse that the will of such decedent has been admitted to probate, stating the name of the court and the date when the will was admitted to probate, and requiring that such spouse, within six months after the completed service of such notice, elect whether he or she shall take or refuse to take under the pro-

visions of the will of such decedent, and that such election may be made in open court or by writing filed in such court. [C., '73, § 2452; C., '97, § 3376; S., '13, § 3376; 38 G. A., ch. 192.]

12008. Record of election. Said election, when made, shall be entered on the proper records of the court. [C., '73, § 2452; C., '97, § 3376; S., '13, § 3376; 38 G. A., ch. 192.]

12009. Notice by interested party. The same notice may be given by any other person interested in the estate of decedent, and shall have the same force and effect as if given by the executor. [C., '73, § 2452; C., '97, § 3376; S., '13, § 3376; 38 G. A., ch. 192.]

12010. Election by law—exception. In case such surviving spouse does not make such election within six months from the date of the completed service of such notice, or if such surviving spouse shall be the executor of the will and fails, within six months after the will is admitted to probate, to file with the clerk of the court an election to refuse to take under the provisions of the will of the deceased, it shall be conclusively presumed that such survivor consents to the provisions of the will and elects to take thereunder; unless within such period of six months an affidavit should be filed setting forth that such surviving spouse is mentally incapable of making such election. [C., '97, § 3376; S., '13, § 3376; 39 G. A., ch. 192; 40 Ex. G. A., H. F. 236, § 3.]

12011. Insane spouse—election by court. In case such an affidavit is so filed, the court shall fix a time and place of hearing and cause a notice thereof, containing the requirements above set out, to be served upon said surviving spouse in such manner and for such time as the court may direct, and at said hearing, a guardian ad litem shall be appointed to represent such spouse and the court shall enter an order electing for and in behalf of such spouse, as it shall deem under the evidence to be for the best interests of such spouse. [S., '13, § 3376; 38 G. A., ch. 192.]

12012. Election between dower and homestead occupancy—notice. Within six months after written notice to the survivor, given by any heir of a deceased intestate, or by the administrator of his estate in case a sale of the real estate is necessary to pay debts, the survivor may elect to take the distributive share, or the right to occupy the homestead, which election shall be made and entered of record as provided in sections 12007 and 12008. [C., '97, § 3377; S., '13, § 3377.]

12013. Failure to elect—effect. In case of a failure to make such election, the right to occupy the homestead in lieu of the distributive share shall be waived. [C., '97, § 3377; S., '13, § 3377.]

12014. Mentally incapable spouse—election. When such surviving spouse is mentally incapable of making such election, the court on petition being filed alleging such disability, may set the matter down for hearing at such time

and place as it may deem best, and direct what notice thereof shall be given; and at such hearing the court may enter an order electing for such spouse, which shall be the election, under the second preceding section, of the person under such disability. [S., '13, § 3377.]

12015. Setting off dower. In case of an election of the distributive share, such distributive share may be set off to such surviving spouse under disability on the petition of the guardian of such spouse and under the provisions for setting off the survivor's share. [S., '13, § 3377.]

12016. Descent to children. Subject to the rights and charges hereinbefore provided, the remaining estate of which the decedent died seized shall, in the absence of a will, descend in equal shares to his children, unless one or more of them is dead, in which case the heirs of such shall inherit his or her share in accordance with the rules herein prescribed, in the same manner as though such child had outlived its parents. [C., '51, §§ 1408, 1409; R., '60, §§ 2436, 2437; C., '73, §§ 2453, 2454; C., '97, § 3378.]

12017. Absence of issue. If the intestate leaves no issue, the whole of the estate to the amount of seventy-five hundred dollars, after the payment of the debts and expenses of administration, and one-half of all of the estate in excess of said seventy-five hundred dollars shall go to the surviving spouse and the other one-half of said excess shall go to the parents. If no spouse, the whole shall go to the parents. In case of an adopted child, the parents by adoption shall inherit as if they were the natural parents. [C., '51, § 1410; R., '60, § 2495; C., '73, § 2455; C., '97, § 3379; S., '13, §§ 3379, 3381-a; 40 Ex. G. A., S. F. 239, § 1.]

12018. Appraisal. Prior to the settlement of every such estate in which there is a surviving spouse it shall be the duty of the court to appoint three competent, disinterested appraisers, whose duty it shall be, after first being duly sworn, to appraise such estate and to make their report to the court, duly verified, at such time as the court may direct by order. In such appraisal, the homestead, if any, shall be appraised separately. [37 G. A., ch. 250, § 2.]

12019. Procedure determined by court. The court shall at the time it appoints such appraisers, determine the kind of notice, the time for appearance, the method of service, whether by publication or otherwise. [37 G. A., ch. 250, § 3.]

12020. Notice. Said notice shall designate the names of such appraisers, the time and place of such appraisal, and the date on which such appraisers shall file with the clerk of the court the report of their appraisal, directed to all persons interested in such appraisal. [37 G. A., ch. 250, § 3.]

12021. Objections. All persons interested in and having objections to such report and ap-

praisement, shall appear thereto and file their objections before noon of the second day after the day fixed in said notice for the filing of the report of such appraisement. [37 G. A., ch. 250, § 3.]

12022. Trial. Such objections, if any, shall be tried to the court as in equity, and the final order of the court in the matter of such appraisement shall have the same force and effect as a decree of the court in equity. [37 G. A., ch. 250, § 3.]

12023. Right of spouse to select property. Thereafter, and after the payment of debts and costs of administration, the surviving spouse shall have the right to select from the property so appraised, at its appraised value so fixed, property equal to the sum of seventy-five hundred dollars in value, which selection shall be in writing filed with the clerk of the court. [37 G. A., ch. 250, § 4.]

12024. Surviving parent. If one of the parents is dead, the portion which would have gone to such deceased parent shall go to the survivor, including the portion which would have belonged to the intestate's spouse, had one been living. [C., '51, § 1411; R., '60, § 2496; C., '73, § 2456; C., '97, § 3380.]

12025. Heirs of parents. If both parents are dead, the portion which would have fallen to their share by the above rules shall be disposed of in the same manner as if they had outlived the intestate and died in the possession and ownership of the portion thus falling to their share, and so on, through ascending ancestors and their issue. [R., '60, § 2497; C., '73, § 2457; C., '97, § 3381.]

12026. Spouse and heirs. If heirs are not thus found, the portion uninherited shall go to the spouse of the intestate, or the heirs of such spouse if dead, according to like rules, and if such intestate has had more than one spouse who either died or survived in lawful wedlock, it shall be equally divided between the one who is living and the heirs of those who are dead, or between the heirs of all, if all are dead, such heirs taking by right of representation. [C., '51, § 1413; R., '60, § 2439; C., '73, § 2458; C., '97, § 3382.]

12027. Heirs of parents by adoption. If the adopted parent or parents, if more than one, be dead, the portion which would have gone to such parent or parents had they or either of them survived the intestate, shall be disposed of in the same manner as if such parent or parents had outlived the intestate and died in possession of such share, and so on through their ascending ancestors. [S., '13, § 3381-b.]

12028. Natural parents. If heirs are not thus found, the portion thus uninherited shall go to the natural parents of the intestate, and in case of their death then to their heirs under the ordinary rules of descent. [S., '13, § 3381-c.]

12029. Advancements. Property given by an intestate by way of advancement to an heir, for the purposes of the division and distribution thereof shall be considered part of the estate, and be taken by him toward his share of the estate at what it would be worth if in the condition in which it was given to him, but if such advancement exceeds the amount to which he would be entitled, he can not be required to refund any portion thereof. [C., '51, §§ 1419, 1420; R., '60, §§ 2445, 2446; C., '73, § 2459; C., '97, § 3383.]

12030. Illegitimate children—inheritor from mother. Illegitimate children inherit from their mother, and she from them. [C., '51, § 1415; R., '60, § 2441; C., '73, § 2465; C., '97, § 3384.]

12031. From father. They shall inherit from the father when the paternity is proven during his life, or they have been recognized by him as his children; but such recognition must have been general and notorious, or else in writing. Under such circumstances, if the recognition has been mutual, the father may inherit from his illegitimate children. [C., '51, §§ 1416, 1417; R., '60, §§ 2442, 2443; C., '73, §§ 2466, 2467; C., '97, § 3385.]

12032. Feloniously causing death. No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person, or receive any interest in the estate of the decedent as surviving spouse, or take by devise or legacy from him, any portion of his estate. [C., '97, § 3386; S., '13, § 3386.]

12033. Insurance beneficiary feloniously causing death. No beneficiary of any policy of insurance or certificate of membership issued by any benevolent association or organization, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate. [C., '97, § 3386; S., '13, § 3386.]

12034. Distribution to other heirs or insured. In every instance mentioned in the two preceding sections, all benefits that would accrue to any such person upon the death or disability of the person whose life is thus taken or who is thus disabled shall become subject to distribution among the other heirs of such deceased person, according to the foregoing rules of descent and distribution in case of death, and in case of disability the benefits thereunder shall be paid to the disabled person. [C., '97, § 3386; S., '13, § 3386.]

12035. Escheat. If there is property remaining uninherited, it shall escheat to the state. [C., '51, § 1414; R., '60, § 2440; C., '73, § 2460; C., '97, § 3387.]

12036. Proceedings for escheat. When the judge or clerk of the district court has reason

to believe that any property of the estate of an intestate within the county should by law escheat, he must forthwith inform the auditor of state thereof, and appoint some suitable person administrator to take charge of such property, unless an executor or administrator has already been appointed for that purpose in some county in the state. [C., '51, § 1443; R., '60, § 2468; C., '73, § 2461; C., '97, § 3388.]

12037. Notice to persons interested. The administrator must give such notice of the death of the deceased and the amount and kind of property left by him within the state as, in the opinion of the judge or clerk appointing him, will be best calculated to notify those interested, or supposed to be interested, in the property. [C., '51, § 1444; R., '60, § 2469; C., '73, § 2462; C., '97, § 3389.]

12038. Sale—proceeds. If within six months from the giving of such notice no claimant thereof appears, such property may be sold and

the proceeds, under the direction of the auditor of state, paid over by the administrator for the benefit of the school fund. If real estate, the sale shall be conducted and the proceeds treated like those of school lands. [C., '51, § 1445; R., '60, § 2470; C., '73, § 2463; C., '97, § 3390.]

12039. Payment to person entitled. The money or any portion of it shall be paid at any time within ten years after the sale of the property or the appropriation of the money, but not afterwards, to anyone showing himself entitled thereto. [C., '51, § 1446; R., '60, § 2471; C., '73, § 2464; C., '97, § 3391.]

12040. Land patented to person deceased. Where a patent has been or may be issued by the state to a person who had died, or who dies before the date of such patent, the title to the land patented shall inure to and vest in the heirs, devisees, or assignees of such patentee, as if the patent had issued to him during his life. [C., '97, § 3392.]

CHAPTER 509

ACCOUNTING OF EXECUTORS AND ADMINISTRATORS

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12041. Reference—examination of accounts. In matters of accounts of executors and administrators, the court may appoint one or more referees, who shall have the powers and perform all the duties therein of referees appointed by the court in a civil action. [C., '73, § 2412; C., '97, § 3393.]

12042. First report. On the expiration of six and within seven months from the first publication or notice of his appointment, and sooner if required by the court, the executor or administrator shall render his account to the court, showing the condition of the estate, its debts and effects, the amount of money received, and the disposition made of it. [C., '51, § 1422; R., '60, § 2447; C., '73, § 2469; C., '97, § 3394.]

12043. Additional reports. From time to time, as may be required by the court, he shall render further accounts until the estate is finally settled. Such account shall embrace all matters directed by the court and pertinent to the subject. [C., '51, §§ 1422, 1423; R., '60, §§ 2447, 2448; C., '73, § 2469; C., '97, § 3394.]

12044. Final settlement—time limit. Said final settlement shall be made within three years, unless otherwise ordered by the court. [C., '73, § 2469; C., '97, § 3394.]

12045. Examination of executor. He may be examined under oath by the court upon any matter relating to his accounts, when the vouchers and proofs in relation thereto are not sufficiently full and satisfactory. [C., '51,

§ 1424; R., '60, § 2449; C., '73, § 2470; C., '97, § 3395.]

12046. Accounting at inventoried value. He must account for all the property inventoried at the price at which it was appraised, as well as for all other property coming into his hands belonging to the estate. [C., '51, § 1425; R., '60, § 2450; C., '73, § 2471; C., '97, § 3395.]

12047. Presumption from appraisement. The appraisement shall be presumptive evidence of the value of an article and so regarded, either for or against him. [C., '51, § 1426; R., '60, § 2451; C., '73, § 2472; C., '97, § 3396.]

12048. Profit and loss. He shall derive no profit from the sale of property for a higher price than the appraisement, nor is he chargeable with any loss occurring without his fault. [C., '51, § 1427; R., '60, § 2452; C., '73, § 2473; C., '97, § 3397.]

12049. Mistakes corrected. Mistakes in settlements may be corrected in the probate court at any time before his final settlement and discharge, and after that time by equitable proceedings, on showing such grounds as will justify the interference of the court. [C., '51, § 1432; R., '60, § 2457; C., '73, § 2474; C., '97, § 3398.]

12050. Settlement contested. Any person interested in the estate may attend upon the settlement of his accounts and contest the same. [C., '51, § 1431; R., '60, § 2456; C., '73, § 2475; C., '97, § 3399.]

12051. Opening settlement. Accounts settled in the absence of any person adversely interested, and without notice to him, may be opened within three months on his application. [C., '51, § 1431; R., '60, § 2456; C., '73, § 2475; C., '97, § 3399.]

12052. Discharge. Upon final settlement, an order shall be entered discharging him from further duties and responsibilities. [C., '51, § 1434; R., '60, § 2459; C., '73, § 2476; C., '97, § 3400.]

12053. Judgment—execution. If judgment is rendered against an executor or administrator for costs in any action prosecuted or defended by him in that capacity, execution shall be awarded against him as for his own debt, if it appears to the court that such action was prosecuted or defended without reasonable cause. In other cases, the execution shall be awarded against him in his representative capacity only. [C., '51, § 1433; R., '60, § 2458; C., '73, § 2477; C., '97, § 3401.]

12054. Receipts by one executor. One of the several executors or administrators may receive and receipt for any money, which receipt shall be given by him in his own name only, and he must individually account for all the money thus received and receipted for by himself, and this shall not charge his coexec-

utor or coadministrator, except so far as it can be shown to have come into his hands. [C., '51, § 1442; R., '60, § 2467; C., '73, § 2478; C., '97, § 3402.]

12055. Notice of order—publication. When the court shall make an order affecting an executor or administrator, and it can not be personally served upon him, service thereof may be made by publication of a notice, stating the substance of such order, in some newspaper published in the county where such order was made, once each week, for four weeks in succession, which publication may be proved as in case of original notice. [R., '60, §§ 2474, 2475; C., '73, §§ 2479, 2480; C., '97, § 3403; S., '13, § 3403.]

12056. Effect. Service as above shall be as effectual as if personally made, and actions and proceedings may be commenced and prosecuted in all respects as if such notices or orders had been personally served. [R., '60, § 2476; C., '73, § 2481; C., '97, § 3404.]

12057. Failure to account. Any executor or administrator failing to account, upon being required to do so by the court or as he is required to do by law, shall, for every such failure, forfeit one hundred dollars, to be recovered in a civil action on his bond for the benefit of the estate by anyone interested therein. [C., '51, § 1428; R., '60, § 2453; C., '73, § 2482; C., '97, § 3405.]

12058. Executor of executor. An executor or administrator has no authority to act in a matter wherein his decedent was merely executor, administrator, or trustee. [C., '51, § 1438; R., '60, § 2463; C., '73, § 2483; C., '97, § 3406.]

12059. Executors in their own wrong. Any person who, without being regularly appointed as executor or administrator, intermeddles with the property of a deceased person, is responsible only to the regular executor or administrator, when appointed, for the value of all property taken or received by him, and for all damage caused by his acts to the estate of the deceased. [C., '51, § 1439; R., '60, § 2464; C., '73, § 2484; C., '97, § 3407; 39 G. A., ch. 117.]

12060. Action against heirs and devisees—costs—tender. In an action against the heirs and devisees, where the judgment is to be against them in proportion to the respective amounts received by them from the estate, costs awarded against them shall be in like proportion, and anyone may tender the amount due from him to the plaintiff, which shall have the same effect, as far as he is concerned, as though he was the sole defendant. [C., '51, §§ 1440, 1441; R., '60, §§ 2465, 2466; C., '73, §§ 2485, 2486; C., '97, § 3408.]

12061. Specific performance—how enforced. When a person who is under such obligation to convey real estate as might have been enforced against him, if living, dies before making such conveyance, the court may enforce a specific

performance of such contract by the executor or administrator, and require him to execute the conveyance accordingly, and it shall not be necessary to make any other than the executor or administrator party defendant to such proceedings in the first instance, but the court in its discretion may direct other persons interested to be made parties, and may cause them to be notified thereof in such manner as it may think expedient, or the heirs and devisees, upon their own motion, may at any time be made defendants, and such conveyances may be authorized upon the petition of the executor or administrator. [C., '51, §§ 1435, 1436; R., '60, §§ 2460, 2461; C., '73, §§ 2487, 2488; C., '97, § 3409.]

12062. Executors considered as one. In an action against several executors or administrators, they shall be considered one person, and judgment may be taken and execution issued against all as such, although only part were served with notice. [C., '51, § 1437; R., '60, § 2462; C., '73, § 2489; C., '97, § 3410.]

12063. Compensation. Executors and administrators shall be allowed such reasonable fee as may be determined by the court, for services rendered, but not in excess of the following commissions upon the personal estate sold or distributed by them and for the proceeds of real estate sold for the payment of debts by them which shall be received as full compensation for all ordinary services:

For the first one thousand dollars, six per cent.

For the overplus between one and five thousand dollars, four per cent.

For all sums over five thousand dollars, two per cent. [C., '51, § 1429; R., '60, § 2454; C., '73, § 2494; C., '97, § 3415; 38 G. A., ch. 391, § 1; 39 G. A., ch. 22.]

12064. Attorney fee. There shall also be allowed and taxed as part of the costs of administration of estates as an attorney's fee for the administrator's or executor's attorney, such reasonable fee as may be determined by the court, for services rendered, but not in excess of the schedule of fees herein provided for administrators and executors. [38 G. A., ch. 391, § 1; 39 G. A., ch. 22.]

12065. Expenses and extraordinary services. Such further allowances as are just and reasonable may be made by the court to administrators, executors, and their attorneys for actual necessary and extraordinary expenses or services. [C., '51, § 1430; R., '60, § 2455; C., '73, § 2495; C., '97, § 3415; 38 G. A., ch. 391, § 1.]

12066. Removal of executor. After letters testamentary, of special administration, or of administration with the will annexed, or general administration, shall have been granted to any person, he may be removed by the court or judge thereof, when the interests of the estate require it, for any of the following causes:

1. When by reason of age, continued sickness, imbecility, or change of residence, or any

other cause, he becomes incapable of discharging his trust in such manner as the interest and proper management of the estate may require.

2. When he shall fail or refuse to return inventories or accounts of sales of the estate, or to make reports of the condition thereof, or fails or refuses to comply with any order of the court or judge thereof, or fails to seasonably apply for authority to sell personal or real estate for the payment of debts or claims against the estate when it shall be necessary for him to do so, or fails or refuses to discharge any of the duties prescribed for him by law, or shall be guilty of any waste or maladministration of the estate, or where for any other reason it appears for the best interests of the estate.

3. Where it is shown to the court or judge thereof by his sureties that he has become or is likely to become insolvent, in consequence of which such sureties have suffered or will suffer loss. [C., '51, § 1306; R., '60, § 2338; C., '73, § 2496; C., '97, § 3416.]

12067. Petition. Petition for the removal of executors or administrators, or for the purpose of requiring additional sureties, shall be filed in the court from which the letters were issued by any person interested in the estate, which petition must be verified by oath, and specify the grounds of complaint. [C., '73, §§ 2497, 2498; C., '97, § 3417.]

12068. Citation—how served. Upon the filing of such petition, a citation shall issue to the person complained of, requiring him to appear and answer the complaint, and if he is not a resident of the county where it is made, notice thereof shall be served upon him in such manner as the court or judge thereof or clerk may direct. [C., '73, §§ 2499, 2500; C., '97, § 3418.]

12069. Property delivered—penalty. Upon the removal of any executor or administrator, he shall be required by order of the court or judge to deliver to the person who may be entitled thereto all the property in his hands or under his control belonging to the estate, and if he fails or refuses to comply with any proper order of the court, he may be committed to the jail of the county until he does. [C., '73, §§ 2501, 2502; C., '97, § 3419.]

12070. Probate reports—accounts. Each report of an executor, administrator, guardian, or trustee shall be self-explanatory, so that the clerk or court, from a perusal thereof, may understand the matter in hand without explanations or being compelled to examine or refer to other papers in the case. All accountings must state the debit and credit and show the balances. Guardians' and trustees' accounts must show the amount of interest earned since appointment or last report, and how and upon what security the trust fund is invested. All reports and accounts must be verified. [C., '97, § 3420.]

12071. Final report. Each executor or administrator shall, in his final report, set forth:

1. An accurate description of all the real estate of which the decedent died seized, stating its nature and extent.

2. Whether the deceased died testate or intestate.

3. The name, age, and place of residence of the surviving spouse, or that none survived the deceased.

4. The name, age, and place of residence of each of the heirs and their relationship to the deceased.

5. The name, age, and place of residence of each legatee or devisee, and whether any legacy or devise remains a charge on the real estate, and, if so, the nature and amount thereof.

6. The name of the guardian or trustee for any heir, legatee, or devisee and the court from which his letters were issued. [C., '73, § 2491; C., '97, § 3412; 40 Ex. G. A., H. F. 236, § 2.]

12072. Orders in probate—applications. All applications for orders in probate must be made in writing, verified and self-explanatory, so that the clerk or court from a perusal thereof may understand the relief sought without explanations. [C., '97, § 3421.]

12073. Notice of application for discharge. Unless notice be waived in writing, no administrator, executor, guardian, or trustee shall be discharged from further duty or responsibility upon final settlement, until notice of the application shall have been served upon all persons interested as required for the commencement of a civil action, unless a different service be ordered by the court or judge, which

order may be made before or after filing the final report. [C., '97, § 3422.]

12074. Attorney appointed for minors and persons not represented. At or before the hearing of petitions and contests for the probate of wills, letters testamentary or of administration, for sales of real estate and confirmation thereof, settlements and distributions of estates, and all other proceedings in this title, where all the parties interested in the estate are required to be notified thereof, the court in its discretion may appoint some competent attorney at law to represent therein the devisees, legatees, heirs, or creditors of the decedent who are minors and have no general guardian in the county, or who are non-residents of the state, and those interested who, though they are neither minors nor non-residents, are unrepresented. [C., '97, § 3423.]

12075. Order and authority thereunder. The order making the appointment must specify the names of the parties, so far as known, for whom the attorney is appointed, and he will be authorized to represent such parties in all such proceedings subsequent to his appointment. [C., '97, § 3423.]

12076. Compensation. He shall be paid for his services out of the estate, as a part of the cost of administration, a fee to be fixed by the court, and upon distribution it may be charged to the party represented by him. [C., '97, § 3423.]

12077. Substitution—division of fee. The court may substitute another attorney for the one first appointed, in which case the fees must be divided in proportion to the services rendered. [C., '97, § 3423.]

TITLE XXXIII

PARTICULAR ACTIONS AND SPECIAL PROCEEDINGS

CHAPTER 510

ATTACHMENT

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12078. **Method.** The plaintiff in a civil action may cause the property of the defendant not exempt from execution to be attached at the commencement or during the progress of the proceeding, by pursuing the course herein-after prescribed. [C., '51, § 1846; R., '60, § 3172; C., '73, § 2949; C., '97, § 3876.]

12079. **Proceedings auxiliary.** If it be subsequent to the commencement of the action, a separate petition must be filed, and in all cases the proceedings relative to the attachment are to be deemed independent of the ordinary proceedings and only auxiliary thereto. [C., '51,

§ 1847; R., '60, § 3173; C., '73, § 2950; C., '97, § 3877.]

12080. **Grounds.** The petition which asks an attachment must in all cases be sworn to. It must state one or more of the following grounds:

1. That the defendant is a foreign corporation or acting as such.
2. That he is a nonresident of the state.
3. That he is about to remove his property out of the state without leaving sufficient remaining for the payment of his debts.

4. That he has disposed of his property, in whole or in part, with intent to defraud his creditors.

5. That the defendant is about to dispose of his property with intent to defraud his creditors.

6. That he has absconded, so that the ordinary process can not be served upon him.

7. That he is about to remove permanently out of the county, and has property therein not exempt from execution, and that he refuses to pay or secure the plaintiff.

8. That he is about to remove permanently out of the state, and refuses to pay or secure the debt due the plaintiff.

9. That he is about to remove his property or a part thereof out of the county with intent to defraud his creditors.

10. That he is about to convert his property or a part thereof into money for the purpose of placing it beyond the reach of his creditors.

11. That he has property or rights in action which he conceals.

12. That the debt is due for property obtained under false pretenses. [C., '51, § 1848; R., '60, § 3174; C., '73, § 2951; C., '97, § 3878.]

12081. Alternative statement of grounds. The causes for the attachment shall not be stated in the alternative. [R., '60, § 3242; C., '73, § 3021; C., '97, § 3878.]

12082. Issued on Sunday. Where the petition states, in addition to the other facts required, that the plaintiff will lose his claim unless the attachment issues and is served on Sunday, it may be issued and served on that day. [C., '73, § 2952; C., '97, § 3879.]

12083. On contract—amount due. If the plaintiff's demand is founded on contract, the petition must state that something is due, and, as nearly as practicable, the amount, which must be more than five dollars in order to authorize an attachment. [C., '51, § 1849; R., '60, § 3175; C., '73, § 2953; C., '97, § 3880.]

12084. Value of property attached. The amount thus sworn to is intended as a guide to the sheriff, who must, as nearly as the circumstances of the case will permit, levy upon property fifty per cent greater in value than that amount. [C., '51, § 1850; R., '60, § 3176; C., '73, § 2954; C., '97, § 3881.]

12085. Allowance of value in other cases. If the demand is not founded on contract, the original petition must be presented to some judge of the supreme, district, or superior court, who shall make an allowance thereon of the amount in value of the property that may be attached. [C., '51, § 1851; R., '60, § 3177; C., '73, § 2955; C., '97, § 3882.]

12086. For debts not due—grounds. The property of a debtor may be attached on debts not due, when nothing but time is wanting to fix an absolute indebtedness, and when the petition, in addition to that fact, states one or more of the following grounds:

1. That the defendant is about to dispose of his property with intent to defraud his creditors.

2. That he is about to remove or has removed from the state, and refuses to secure the payment of the debt when it falls due, and which removal or contemplated removal was not known to the plaintiff at the time the debt was contracted.

3. That the defendant has disposed of his property in whole or in part with intent to defraud his creditors.

4. That the debt was incurred for property obtained under false pretenses. [C., '51, § 1852; R., '60, § 3178; C., '73, § 2956; C., '97, § 3883.]

12087. Appearance—judgment — perishable property. If, at the time of the service of the attachment, the claim upon which suit is brought is not due, the defendant need not appear in the action until the maturity of the demand, unless he elects to plead, in which event the cause shall stand for trial when it is reached in its regular order, and no final judgment shall be rendered therein before the maturity of the debt unless such election is made, but if perishable property is levied upon, it may be sold as in other attachment cases. [R., '60, §§ 3179, 3180; C., '73, §§ 2957, 2958; C., '97, § 3884.]

12088. Bond. In all cases before it can be issued, the plaintiff must file with the clerk a bond for the use of the defendant, with sureties to be approved by such clerk, in a penalty at least double the value of the property sought to be attached, and in no case, except in a class B case in municipal court, less than two hundred fifty dollars in a court of record, or less than fifty dollars if in a justice court or a class B case in municipal court, conditioned that the plaintiff will pay all damages which the defendant may sustain by reason of the wrongful suing out of the attachment. [C., '51, § 1853; R., '60, § 3181; C., '73, § 2959; C., '97, § 3885; 37 G. A., ch. 75, § 6.]

12089. Additional security. The defendant may, at any time before judgment, move the court or judge for additional security on the part of the plaintiff, and if, on such motion, the court or judge is satisfied that the surety on the plaintiff's bond has removed from the state, or is not sufficient, the attachment may be vacated and restitution directed of any property taken under it, unless, in a reasonable time, to be fixed by the court or judge, security is given by the plaintiff. [R., '60, § 3182; C., '73, § 2960; C., '97, § 3886.]

12090. Action on bond. In an action on such bond, the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained, and reasonable attorney's fees to be fixed by the court; and if it be shown such attachment was sued out maliciously, he

may recover exemplary damages, nor need he wait until the principal suit is determined before suing on the bond. [C., '51, § 1854; R., '60, § 3183; C., '73, § 2961; C., '97, § 3887.]

12091. Remedy for falsely suing out—counterclaim. The fact stated as a cause of attachment shall not be contested in the action by a mere defense. The defendant's remedy shall be on the bond, but he may in his discretion sue thereon by way of counterclaim, and in such case shall recover damages as in an original action on such bond. [R., '60, § 3238; C., '73, § 3017; C., '97, § 3888.]

12092. Writ to sheriff. The clerk shall issue a writ of attachment, directing the sheriff of the county therein named to attach the property of the defendant to the requisite amount therein stated. [C., '51, § 1856; R., '60, § 3185; C., '73, § 2962; C., '97, § 3889.]

12093. Several writs to different counties. Attachments may be issued from the district court to different counties, and several may, at the option of the plaintiff, be issued at the same time, or in succession and subsequently, until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court. [C., '51, §§ 1855, 1858; R., '60, § 3184; C., '73, § 2963; C., '97, § 3890.]

12094. Surplus levy. If more property is attached in the aggregate than the plaintiff is entitled to, the surplus must be abandoned, and the plaintiff pay all costs incurred in relation to such surplus. [C., '51, § 1858; R., '60, § 3184; C., '73, § 2963; C., '97, § 3890.]

12095. Property attached. The sheriff shall in all cases attach the amount of property directed, if sufficient, not exempt from execution, is found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which his title is doubtful or only equitable. [C., '51, § 1857; R., '60, § 3186; C., '73, § 2964; C., '97, § 3891.]

12096. Several attachments. Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff. [R., '60, § 3187; C., '73, § 2965; C., '97, § 3892.]

12097. Following property. If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the same in an adjoining county within twenty-four hours after removal. [R., '60, § 3188; C., '73, § 2966; C., '97, § 3893.]

12098. Corporation stock. Stock or interest owned by the defendant in any company is attached by notifying the president or other head of the company, or the secretary, cashier, or other managing agent thereof, of the fact that the stock has been so attached. [C., '51, §§ 1859, 1860; R., '60, § 3194; C., '73, § 2967; C., '97, § 3894.]

12099. Judgments—money—things in action. Judgments, money, bank bills, and other things in action may be levied upon by the officer under an attachment in the same manner as levies are made under execution, except that notice of such levy shall be given as in levies by attachment, and after judgment such property shall be sold, appropriated, or transferred as provided for in the chapter on executions. [C., '51, §§ 1859, 1860; R., '60, § 3194; C., '73, § 2967; C., '97, § 3895.]

12100. Property in possession of another. Property of defendant in possession of another, and of which defendant is entitled to the immediate possession, may be seized under attachment by taking possession thereof, in the same manner as though found in the defendant's possession. [C., '51, §§ 1859, 1860; R., '60, § 3194; C., '73, § 2967; C., '97, § 3896.]

12101. Garnishment. Property of the defendant in the possession of another, or debts due the defendant, may be attached by garnishment as hereinafter provided. [C., '51, §§ 1859, 1860; R., '60, § 3194; C., '73, § 2967; C., '97, § 3897.]

12102. When property bound. Property capable of manual delivery, and attached otherwise than by garnishment, is bound thereby from the time manual custody thereof is taken by the officer under the attachment. [C., '51, §§ 1859, 1860, 1874; R., '60, §§ 3194, 3215; C., '73, §§ 2967, 2969; C., '97, § 3898.]

12103. Real estate. Real estate or equitable interests therein may be attached. [R., '60, § 3243; C., '73, § 3022; C., '97, § 3899.]

12104. How made. The levy shall be a lien thereon from the time of an entry made and signed by the officer making the same upon the incumbrance book in the office of the clerk of the county in which the land is situated, showing the levy, the date thereof, name of the county from which the attachment issued, title of the action, and a description of the land levied on. [R., '60, § 3243; C., '73, § 3022; C., '97, § 3899.]

12105. Levy on equitable interest. In case of a levy upon any equitable interest in real estate, such entry shall show, in addition to the foregoing matters, the name of the person holding the legal title, and the owner of the alleged equitable interest, where known. [C., '97, § 3899.]

12106. Lands fraudulently conveyed. The grantor of real estate conveyed in fraud of creditors shall, as to such creditors, be deemed the equitable owner thereof, and such interest may be attached as above provided, when the petition alleges such fraudulent conveyance and the holder of the legal title is made a party to the action. [C., '97, § 3899.]

12107. Notice to defendant—return. When any property is attached, the officer making the levy shall at once give written notice

thereof to the defendant, if found within the county in which the levy is made, and the fact of the giving of such notice, or that the defendant is not found within the county, shall be shown by the officer's return. [C., '51, §§ 1859, 1860; R., '60, § 3194; C., '73, § 2967; C., '97, § 3900.]

12108. Notice to party in possession. A like notice shall be given to the party in possession of the property attached. [C., '51, § 1860; R., '60, § 3194; C., '73, § 2967; C., '97, § 3900.]

12109. Service when party absent. If the party required to be notified is not found at his usual place of business or residence, such notice may be served upon a member of his family over fourteen years of age at such place. [C., '97, § 3900.]

12110. Examination of defendant. Whenever it appears by the affidavit of the plaintiff, or by the return of the attachment, that no property is known to the plaintiff or the officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and it being shown to the judge of any court by affidavit that the defendant has property within the state not exempt, the defendant may be required by such judge to attend before him, or before the court in which the action is pending, or a commissioner appointed for that purpose, and give information on oath respecting his property. [R., '60, § 3189; C., '73, § 2968; C., '97, § 3901.]

12111. Money paid clerk. All money attached by the sheriff, or coming into his hands by virtue of the attachment, shall forthwith be paid over to the clerk, to be by him retained till the further action of the court. [C., '51, §§ 1875, 1882; R., '60, § 3217; C., '73, § 2971; C., '97, § 3902.]

12112. Other property. The sheriff shall make such disposition of other attached property as may be directed by the court or judge, and, where there is no direction upon the subject, he shall safely keep the property subject to the order of the court. [R., '60, § 3218; C., '73, § 2972; C., '97, § 3903.]

12113. Common, joint, or partnership property. In executing an attachment against a person who owns property jointly or in common with another, or who is a member of a partnership, the officer may take possession of such property so owned jointly, in common, or in partnership, sufficiently to enable him to inventory and appraise the same, and for that purpose shall call to his assistance three disinterested persons; which inventory and appraisal shall be returned by the officer with the attachment, and such return shall state who claims to own such property. [R., '60, § 3190; C., '73, § 2973; C., '97, § 3904.]

12114. Lien acquired—action to determine interest. The plaintiff shall, from the time such property is taken possession of by the officer, have a lien on the interest of the de-

endant therein, and may, either before or after he obtains judgment in the action in which the attachment issued, commence action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien. [C., '73, § 2974; C., '97, § 3904.]

12115. Receiver. If deemed necessary or proper, the court or judge may appoint a receiver under the circumstances and conditions provided in chapter 549. [C., '73, § 2974; C., '97, § 3904.]

12116. Mortgaged personal property. Mortgaged personal property may be levied on under attachment in the method provided for levying execution thereon. [C., '97, § 3905.]

12117. Indemnifying bond. The provisions as to notice of ownership and indemnifying bond to be given in cases of levies under execution shall in all respects be applicable to levies made under writs of attachment. [C., '97, § 3906.]

12118. Bond to discharge. If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment, or after the return thereof, by the clerk, to the effect that he will perform the judgment of the court, the attachment shall be discharged, and restitution made of property taken or proceeds thereof. [R., '60, § 3191; C., '73, § 2994; C., '97, § 3907.]

12119. Automatic appearance. The execution of such bond shall be deemed an appearance of such defendant to the action. [R., '60, § 3192; C., '73, § 2994; C., '97, § 3907.]

12120. Judgment on bond. Such bond shall be part of the record. If judgment go against the defendant, the same shall be entered against him and sureties [R., '60, § 3193; C., '73, § 2995; C., '97, § 3908.]

12121. Delivery bond. The defendant, or any person in whose possession any attached property is found, or any person making affidavit that he has an interest in it, may, at any time before judgment, discharge the property attached, or any part thereof, by giving bond with security, to be approved by the sheriff, or after the return of the writ, by the clerk, in a penalty at least double the value of the property sought to be released, but if that sum would exceed double the amount of the claim for which an attachment is sued out, then in such sum as equals double the amount of such claim, conditioned that such property or its appraised value shall be delivered to the sheriff, to satisfy any judgment which may be obtained against the defendant in that suit, within twenty days after the rendition thereof. This bond shall be filed with the clerk of the court. [C., '51, § 1876; R., '60, § 3219; C., '73, § 2996; C., '97, § 3909.]

12122. Appraisal. To determine the value of property in cases where a bond is to be given, unless the parties agree otherwise,

the sheriff shall summon two disinterested persons having the qualification of jurors, who, after having been sworn by him to make the appraisal faithfully and impartially, shall proceed to the discharge of their duty. If such persons disagree as to the value of the property, the sheriff shall decide between them. [C., '51, §§ 1877, 1878; R., '60, § 3220; C., '73, § 2997; C., '97, § 3910.]

12123. Defense in action on delivery bond. In an action brought upon such bond, it shall be a sufficient defense that the property for the delivery of which the bond was given did not, at the time of the levy, belong to the defendant against whom the attachment was issued, or was exempt from seizure under such attachment. [C., '51, § 1879; R., '60, § 3221; C., '73, § 2998; C., '97, § 3911.]

12124. Perishable property—examination. When the sheriff thinks the property attached in danger of serious and immediate waste and decay, or when the keeping of the same will necessarily be attended with such expense as greatly to depreciate the amount of proceeds to be realized therefrom, or when the plaintiff makes affidavit to that effect, the sheriff may summon three persons having the qualifications of jurors to examine the same. [C., '51, § 1881; R., '60, § 3222; C., '73, § 2999; C., '97, § 3912; S., '13, § 3912-a.]

12125. Notice. The sheriff shall give the defendant, if within the county, three days' notice of such hearing, and he may appear before such jury and have a personal hearing. [C., '51, § 1881; R., '60, § 3222; C., '73, § 2999; C., '97, § 3912; S., '13, § 3912-a.]

12126. Determination and sale. If they are of the opinion that the property requires soon to be disposed of, they shall specify in writing a day beyond which they do not deem it prudent that it should be kept in the hands of the sheriff. If such day occurs before the trial day, he shall thereupon give the same notice as for sale of goods on execution, and for the same length of time, unless the condition of the property renders a more immediate sale necessary. The sale shall be made accordingly. If the defendant gives his written consent, such sale may be made without such finding. [C., '51, § 1881; R., '60, § 3222; C., '73, § 2999; C., '97, § 3912; S., '13, § 3912-a.]

12127. Sheriff's return. The sheriff shall return upon every attachment what he has done under it, which must show the property attached, the time it was attached, and the disposition made of it, by a full and particular inventory; also the appraisal above contemplated when such has been made. [R., '60, § 3224; C., '73, § 3010; C., '97, § 3923.]

12128. Garnishment. When garnishees are summoned, their names and the time each was summoned must be stated, with a copy of each notice of garnishment served attached as a part of his return. [R., '60, § 3224; C., '73, § 3010; C., '97, § 3923.]

12129. Description of real estate. Where real property is attached, the sheriff shall describe it with certainty to identify it, and, where he can do so, by a reference to the book and page where the deed under which the defendant holds is recorded. [R., '60, § 3224; C., '73, § 3010; C., '97, § 3923.]

12130. Bonds, notices, and moneys. He shall return with the writ all bonds taken under it, any notice of claim to such property by another than the defendant, any indemnifying bond given by the plaintiff in consequence of such notice, and all money and bank bills levied upon or paid to him thereunder. [R., '60, § 3224; C., '73, § 3010; C., '97, § 3923.]

12131. Time of return. Such return must be made immediately after he has attached sufficient property, or all that he can find; or, at latest, on the first day of the first term on which the defendant is notified to appear. [R., '60, § 3224; C., '73, § 3010; C., '97, § 3923.]

12132. Judgment—satisfaction—special execution. If judgment is rendered for the plaintiff in any case in which an attachment has been issued, the court shall apply, in satisfaction thereof, any money seized by or paid to the sheriff under such attachment and by him delivered to the clerk, and any money arising from the sales of perishable property, and if the same is not sufficient to satisfy the plaintiff's claim, the court shall order the issuance of a special execution for the sale of any other attached property which may be under his control. [R., '60, § 3232; C., '73, § 3011; C., '97, § 3924.]

12133. Court may control property. The court may from time to time make and enforce proper orders respecting the property, sales, and application of the money collected. [R., '60, § 3233; C., '73, § 3012; C., '97, § 3925.]

12134. Expenses for keeping. The sheriff shall be allowed by the court the necessary expenses of keeping the attached property, to be paid by the plaintiff and taxed in the costs. [R., '60, § 3234; C., '73, § 3013; C., '97, § 3926.]

12135. Surplus. Any surplus of the attached property and its proceeds shall be returned to the defendant. [R., '60, § 3235; C., '73, § 3014; C., '97, § 3927.]

12136. Intervention—petition. Any person other than the defendant may, before the sale of any attached property, or before the payment to the plaintiff of the proceeds thereof, or any attached debt, present his petition verified by oath to the court, disputing the validity of the attachment, or stating a claim to the property or money, or to an interest in or lien on it, under any other attachment or otherwise, and setting forth the facts upon which the claim is founded. [R., '60, § 3237; C., '73, § 3016; C., '97, § 3928.]

12137. Hearing and orders. The petitioner's claim shall be in a summary manner investigated. The court may hear the proof or order a reference, or may impanel a jury to inquire into the facts. If it is found that the petitioner has a title to, a lien on, or any interest in such property, the court shall make such order as may be necessary to protect his rights. [R., '60, § 3237; C., '73, § 3016; C., '97, § 3928.]

12138. Costs. The costs of such proceedings shall be paid by either party at the discretion of the court. [R., '60, § 3237; C., '73, § 3016; C., '97, § 3928.]

12139. Discharge on motion. A motion may be made to discharge the attachment or any part thereof, at any time before trial, for insufficiency of statement of cause thereof, or for other cause making it apparent of record that the attachment should not have issued, or should not have been levied on all or on some part of the property held. [R., '60, § 3239; C., '73, § 3018; C., '97, § 3929.]

12140. Automatic discharge—canceling entry on incumbrance book. If the judgment is rendered in the action for the defendant, or, if the action is dismissed by the court, by the plaintiff, or, by agreement of the parties, or, if judgment has been entered for the plaintiff and has been satisfied of record, the attachment shall, subject to the right of appeal, automatically be discharged and the property attached, or its proceeds, shall be returned to the defendant. If the attachment has been entered on the incumbrance book, it shall be the duty of the clerk to cancel such attachment, and in his entry of cancellation, he shall refer to the entry in the case showing his authority to cancel said attachment. [R., '60, § 3236; C., '73, § 3015; C., '97, § 3930; 38 G. A., ch. 338, § 1.]

12141. Perfecting appeal from order of discharge. When an attachment has been discharged, if the plaintiff then announces his purpose to appeal from such order of discharge, he shall have two days in which to perfect his appeal, and during that time such discharge shall not operate to divest any lien or claim under the attachment, nor shall the property be returned, and the appeal, if so perfected,

shall operate as a supersedeas thereof. [R., '60, § 3240; C., '73, § 3019; C., '97, § 3931.]

12142. Appeal from judgment against plaintiff. If a judgment in the action be also given against the plaintiff, he must, within the same time, take his appeal thereon, or such discharge shall be final. [R., '60, § 3241; C., '73, § 3020; C., '97, § 3932.]

12143. Liberal construction—amendments. This chapter shall be liberally construed, and the plaintiff, at any time when objection is made thereto, shall be permitted to amend any defect in the petition, affidavit, bond, writ, or other proceeding; and no attachment shall be quashed or dismissed, or the property attached released, if the defect in any of the proceedings has or can be amended so as to show that a legal cause for the attachment existed at the time it was issued; and the court shall give the plaintiff a reasonable time to perfect such defective proceedings. [R., '60, § 3242; C., '73, § 3021; C., '97, § 3933.]

12144. Sheriff—constables. The word "sheriff", or "officer", as used in this chapter is meant to apply to constables when the proceedings are in a justice's court, or the like officer of any other court. [C., '51, § 1883; R., '60, § 3244; C., '73, § 3023; C., '97, § 3934.]

12145. Certificate of release. When real estate or an equitable interest therein is attached in any county other than that in which the action is commenced, or is pending, and the action is dismissed, or the attachment is dissolved and discharged or satisfied, the clerk of the court of the county wherein such action is pending must issue a certificate directed to the clerk of the court in which the land is situated giving date of release and setting forth a true copy of the order or release and he shall be allowed as compensation for such service the sum of fifty cents, to be taxed as a part of the costs in the case. [S., '13, § 3934-a.]

12146. Filing and recording. The clerk of the court receiving such certificate shall file and record the same upon the margin of the incumbrance book at place where the original entry of attachment is found. [S., '13, § 3934-b.]

CHAPTER 511

SPECIFIC ATTACHMENT

12147. When authorized.

12148. Fraudulently induced sales.

12149. Granted by court or judge—terms.

12147. When authorized. In an action to enforce a mortgage of or lien upon personal property, or for the recovery, sale, or partition of such property, or by a plaintiff having a future estate or interest therein for the security of his rights, where it satisfactorily ap-

12150. Form of writ.

12151. Bond to discharge.

pears by the petition, verified on oath, or by affidavits or the proofs in the cause, that the plaintiff has a just claim, and that the property has been or is about to be sold, concealed, or removed from the state, or where plaintiff states on oath that he has reasonable cause

to believe, and does believe, that unless prevented by the court the property will be sold, concealed, or removed, an attachment may be granted against the property. [R., '60, § 3225; C., '73, § 3000; C., '97, § 3913.]

12148. Fraudulently induced sales. In an action by a vendor of property fraudulently purchased to vacate the contract and have a restoration of the property or compensation therefor, where the petition shows such fraudulent purchase of property and the amount of the plaintiff's claim, and is verified, an attachment against the property may be granted. [R., '60, § 3226; C., '73, § 3001; C., '97, § 3914.]

12149. Granted by court or judge—terms. The attachment in the cases mentioned in the last two sections may be granted by the court in which the action is brought, or by the judge of any court, upon such terms and conditions as to security by the plaintiff for the damages

which may be occasioned, and with such directions as to the disposition to be made of the property attached as may be just and proper under the circumstances of each case. [R., '60, § 3227; C., '73, § 3002; C., '97, § 3915.]

12150. Form of writ. The attachment shall describe the specific property against which it is issued, and have indorsed upon it the direction of the court or judge as to the disposition to be made of the attached property, and be directed, executed, and returned as other attachments. [R., '60, § 3230; C., '73, § 3003; C., '97, § 3916.]

12151. Bond to discharge. The court may, in any of the cases mentioned under this head of specific attachments, direct the terms and conditions of the bond to be executed by the defendant, with security, in order to obtain a discharge of the attachment or to release the attached property. [R., '60, § 3231; C., '73, § 3004; C., '97, § 3917.]

CHAPTER 512

ATTACHMENT BY STATE

12152. Indebtedness due the state.
12153. Attachment authorized.
12154. No bond required.

12152. Indebtedness due the state. In all cases in which any person is indebted to the state, or to any officer or agent thereof for the use or benefit of the state, the proper county attorney or attorney general shall demand payment or security therefor, when, in the opinion of said county attorney or attorney general, the debt is not sufficiently secured. [C., '73, § 3005; C., '97, § 3918.]

12153. Attachment authorized. In all actions for money due to the state, or to any agent or officer for the use of the state, it shall be lawful for an attachment to issue against the property or debts of the defendant not exempt from execution, upon the filing of an affidavit by the county attorney of the proper county, or of the attorney general, that he verily believes that a specific amount therein stated is justly due, and the defendant therein has refused to pay or secure the same, and unless an attachment is issued against the property of the defendant there is danger that the amount due will be lost to the state. [C., '73, § 3006; C., '97, § 3919.]

12155. Bond to discharge or release.
12156. Sheriff indemnified.

12154. No bond required. The attachment so issued shall be levied as in other cases of attachment, and no bond shall be required of the plaintiff in such cases, and the sheriff shall not be authorized to require any indemnifying bond in case of such levy. [C., '73, § 3007; C., '97, § 3920.]

12155. Bond to discharge or release. An attachment levied under the provisions of the two preceding sections may be discharged, or any property taken thereunder may be released, by the execution of a bond with sufficient sureties, as provided by law in other cases of attachment. [C., '73, § 3008; C., '97, § 3921.]

12156. Sheriff indemnified. In case any sheriff shall be held liable to pay any damages by reason of the wrongful execution of any writ of attachment issued under the three preceding sections, and if a judgment is rendered therefor, the amount thereof, when paid by such sheriff, shall become a claim against the state in his favor, and a warrant therefor shall be drawn by the auditor upon proper proof. [C., '73, § 3009; C., '97, § 3922.]

CHAPTER 513

GARNISHMENT

- 12157. How effected—notice.
- 12158. Who may be garnished.
- 12159. Municipal corporations.
- 12160. Fund in court.
- 12161. Death of garnishee.
- 12162. Sheriff may take answers.
- 12163. Garnishee required to appear.
- 12164. Examination in court.
- 12165. Witness fees.
- 12166. Failure to appear or answer—cause shown.
- 12167. Paying or delivering.

- 12168. Answer controverted.
- 12169. Judgment against garnishee.
- 12170. Notice.
- 12171. Pleading by defendant—discharge of garnishee.
- 12172. When debt not due.
- 12173. Negotiable paper—indemnity.
- 12174. Judgment conclusive.
- 12175. Docket to show garnishments.
- 12176. Appeal.

12157. How effected—notice. The officer serving a writ of attachment shall garnish such persons as the plaintiff may direct as supposed debtors, or having in possession property of the principal defendant, which shall be effected by a notice served in the manner and as an original notice in civil actions, forbidding his paying any debt owing such defendant, due or to become due, and requiring him to retain possession of all property of the defendant in his hands or under his control, to the end that the same may be dealt with according to law, and, unless answers are required to be taken as hereinafter provided, it shall cite the garnishee to appear on the first day of the next term, if the main cause is pending in a court of record, or not less than ten days thereafter, if such court is then in session, or on the day set for trial, if in a justice's court, and answer such interrogatories as may be propounded, or he will be liable to pay any judgment which the plaintiff may obtain against the defendant. [C., '51, §§ 1861, 1863, 1866; R., '60, §§ 3195, 3199, 3202; C., '73, §§ 2975, 2979, 2981; C., '97, § 3935.]

12158. Who may be garnished. A sheriff or constable may be garnished for money of the defendant in his hands; a judgment debtor of the defendant, when the judgment has not been assigned on the record, or by writing filed in the office of the clerk and by him minuted as an assignment on the margin of the judgment docket; and an executor, for money due from decedent. [C., '51, § 1862; R., '60, § 3196; C., '73, § 2976; C., '97, § 3936.]

12159. Municipal corporations. A municipal or political corporation shall not be garnished. [R., '60, § 3196; C., '73, § 2976; C., '97, § 3936.]

12160. Fund in court. Where the property to be attached is a fund in court, the execution of a writ of attachment shall be by leaving with the clerk of the court a copy thereof, with notice, specifying the fund. [R., '60, § 3197; C., '73, § 2977; C., '97, § 3937.]

12161. Death of garnishee. If the garnishee dies after he has been summoned by garnishment and pending the litigation, the proceedings may be revived by or against his heirs or legal representatives. [R., '60, § 3198; C., '73, § 2978; C., '97, § 3938.]

12162. Sheriff may take answers. When the plaintiff, in writing, directs the sheriff to take the answer of the garnishee, he shall put to him the following questions:

1. Are you in any manner indebted to the defendant in this suit, or do you owe him money or property which is not yet due? If so, state the particulars.

2. Have you in your possession or under your control any property, rights, or credits of the said defendants? If so, what is the value of the same? State all particulars.

3. Do you know of any debts owing the said defendant, whether due or not due, or any property, rights, or credits belonging to him and now in the possession or under the control of others? If so, state the particulars.

The sheriff shall append the examination to his return. [C., '51, §§ 1864, 1865; R., '60, §§ 3200, 3201; C., '73, § 2980; C., '97, § 3939.]

12163. Garnishee required to appear. If the garnishee refuses to answer fully and unequivocally all the foregoing interrogatories, he shall be notified to appear and answer as above provided, and he may be so required in any event, if the plaintiff so notifies him. [C., '51, § 1866; R., '60, § 3202; C., '73, § 2981; C., '97, § 3940.]

12164. Examination in court. The questions propounded to the garnishee in court may be such as are above prescribed to be asked by the sheriff, and such others as the court may think proper. [C., '51, § 1867; R., '60, § 3203; C., '73, § 2982; C., '97, § 3941.]

12165. Witness fees. Where the garnishee is required to appear at court, unless he has refused to answer as contemplated above, he is entitled to the pay and mileage of a witness,

and may, in like manner, require advance payment before any liability shall arise for non-attendance. [C., '51, § 1868; R., '60, § 3204; C., '73, § 2983; C., '97, § 3942.]

12166. Failure to appear or answer—cause shown. If, duly summoned, and his fees tendered when demanded, he fails to appear and answer the interrogatories propounded to him without sufficient excuse, he shall be presumed to be indebted to the defendant to the full amount of the plaintiff's demand, but for a mere failure to appear no judgment shall be rendered against him until he has had an opportunity to show cause against the same. [C., '51, §§ 1869, 1870; R., '60, §§ 3205, 3206; C., '73, §§ 2984, 2985; C., '97, § 3943; 40 Ex. G. A., H. F. 280, § 1.]

12167. Paying or delivering. A garnishee may, at any time after answer, exonerate himself from further responsibility by paying over to the sheriff the amount owing by him to the defendant, and placing at the sheriff's disposal the property of the defendant, or so much of said debts and property as is equal to the value of the property to be attached. [C., '51, § 1871; R., '60, § 3207; C., '73, § 2986; C., '97, § 3944.]

12168. Answer controverted. When the garnishee has answered the interrogatories propounded to him, the plaintiff may controvert them by pleading thereto, and an issue may be joined, which shall be tried in the usual manner, upon which trial such answer of the garnishee shall be competent testimony. [C., '51, § 1872; R., '60, § 3208; C., '73, § 2987; C., '97, § 3945.]

12169. Judgment against garnishee. If in any of the above methods it is made to appear that the garnishee was indebted to the defendant, or had any of his property in his hands, at the time of being served with the notice of garnishment, he will be liable to the plaintiff, in case judgment is finally recovered by him, to the full amount thereof, or to the amount of such indebtedness or property held by the garnishee, and the plaintiff may have a judgment against the garnishee for the amount of money due from the garnishee to the defendant in the main action, or for the delivery to the sheriff of any money or property in the garnishee's hands belonging to the defendant in the main action within a time to be fixed by the court, and for the value of the same, as fixed in said judgment, if not delivered within the time thus fixed, unless before such judgment is entered the garnishee has delivered to the sheriff such money or property. Property so delivered shall thereafter be treated as if

levied upon under the writ of attachment in the usual manner. [C., '51, §§ 1871, 1873; R., '60, §§ 3207, 3209; C., '73, §§ 2986, 2988; C., '97, § 3946.]

12170. Notice. Judgment against the garnishee shall not be entered until the principal defendant shall have had ten days' notice of the garnishment proceedings, to be served in the same manner as original notices. [C., '51, § 1861; R., '60, § 3195; C., '73, § 2975; C., '97, § 3947; S., '13, § 3947.]

12171. Pleading by defendant—discharge of garnishee. The defendant in the main action may, by a suitable pleading filed in the garnishment proceedings, set up facts showing that the debt or the property with which it is sought to charge the garnishee is exempt from execution, or for any other reason is not liable for plaintiff's claim, and if issue thereon be joined by the plaintiff, it shall be tried with the issues as to the garnishee's liability. If such debt or property, or any part thereof, is found to be thus exempt or not liable, the garnishee shall be discharged as to that part which is exempt or not liable. [C., '97, § 3948; S., '13, § 3948.]

12172. When debt not due. If the debt of the garnishee to the defendant is not due, execution shall be suspended until its maturity. [R., '60, § 3210; C., '73, § 2989; C., '97, § 3949.]

12173. Negotiable paper—indemnity. The garnishee shall not be made liable on a debt due by negotiable paper, unless such paper is delivered, or the garnishee completely exonerated or indemnified from all liability thereon after he may have satisfied the judgment. [R., '60, § 3211; C., '73, § 2990; C., '97, § 3950.]

12174. Judgment conclusive. The judgment in the garnishment action, condemning the property or debt in the hands of the garnishee to the satisfaction of the plaintiff's demand, is conclusive between the garnishee and defendant. [R., '60, § 3212; C., '73, § 2991; C., '97, § 3951.]

12175. Docket to show garnishments. The docketing of the original case shall contain a statement of all the garnishments therein, and when judgment is rendered against a garnishee, the same shall distinctly refer to the original judgment. [R., '60, § 3213; C., '73, § 2992; C., '97, § 3952.]

12176. Appeal. An appeal lies in all garnishment cases at the instance of the plaintiff, the defendant, the garnishee, or an intervenor claiming the money or property. [R., '60, § 3214; C., '73, § 2993; C., '97, § 3953.]

CHAPTER 514

REPLEVIN

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12177. Where brought—petition. An action of replevin may be brought in any county in which the property or some part thereof is situated. The petition must be verified and must state:

1. A particular description of the property claimed.
2. Its actual value, and, where there are several articles, the actual value of each.
3. The facts constituting the plaintiff's right to the present possession thereof, and the extent of his interest in the property, whether it be full or qualified ownership.
4. That it was neither taken on the order or judgment of a court against him, nor under an execution or attachment against him or against the property; but if it was taken by either of these modes, then it must state the facts constituting an exemption from seizure by such process.
5. The facts constituting the alleged cause of detention thereof, according to his best belief.
6. The amount of damages which the affiant believes the plaintiff ought to recover for the detention thereof. [C., '51, §§ 1703, 1994, 1995; R., '60, § 3553; C., '73, § 3225; C., '97, § 4163.]

12178. Ordinary proceedings — joinder or counterclaim. The action shall be by ordinary proceedings, but there shall be no joinder of any cause of action not of the same kind, nor shall there be allowed any counterclaim. [R., '60, § 4175; C., '73, § 3226; C., '97, § 4164.]

12179. Process on Sunday. If the plaintiff alleges in his petition that he will lose the property unless process issues on Sunday, the order may be issued and served on that day. [C., '73, § 3227; C., '97, § 4165.]

12180. New parties. If a third person claims the property or any part thereof, the plaintiff may amend and bring him in as a codefendant, or the defendant may obtain his substitution by the proper mode, or the claimant may himself

intervene by the process of intervention. [C., '51, §§ 1684, 1999; R., '60, § 3561; C., '73, § 3228; C., '97, § 4166.]

12181. Bond. When the plaintiff desires the immediate delivery of the property, he shall execute a bond to the defendant, with sureties to be approved by the clerk or justice, in a penalty at least equal to twice the value of the property sought to be taken, conditioned that he will appear at the next term of the court, if in a court of record, or on the day fixed in the original notice, if in a justice's court, and prosecute his action to judgment, and return the property, if a return is awarded, and pay all costs and damages that may be adjudged against him. [C., '51, § 1996; R., '60, § 3554; C., '73, § 3229; C., '97, § 4167.]

12182. Filing—purpose of bond. Said bond shall be filed with the clerk or justice, and be for the use of any person injured by the proceeding. [C., '51, § 1996; R., '60, § 3554; C., '73, § 3229; C., '97, § 4167.]

12183. Writ issued. The clerk or justice shall thereupon issue a writ under his hand, and the seal of the court if a court of record, directed to the proper officer, requiring him to take the property therein described and deliver it to the plaintiff. [C., '51, § 1997; R., '60, § 3555; C., '73, § 3230; C., '97, § 4168.]

12184. Wrongful removal—service. If the petition shows that the property has been wrongfully removed into another county from the one in which the action is commenced, the writ may issue from the county whence the property was wrongfully taken, and may be served in any county where it may be found. [C., '73, § 3230; C., '97, § 4168.]

12185. Following property—duplicate writs. When any of the property is removed to another county after the commencement of the action, the officer to whom the writ is issued may follow the same and execute the writ in any

county of the state where the property is found. For the purpose of following the property, duplicate writs may be issued, if necessary, and served as the original. [R., '60, § 3556; C., '73, § 3231; C., '97, § 4169.]

12186. Execution of writ. The officer must forthwith execute the writ by taking possession of the property therein described, if it is found in the possession of the defendant or his agent, or of any other person who obtained possession thereof from the defendant, directly or indirectly, after the writ was placed in the officer's hands, for which purpose he may break open any dwelling house or other inclosure, having first demanded entrance and exhibited his authority, if demanded. [C., '51, § 1998; R., '60, § 3557; C., '73, § 3232; C., '97, § 4170.]

12187. Defendant examined. When it appears by affidavit that the property claimed has been disposed of or concealed so that the writ can not be executed, the court or judge, upon verified petition therefor, may compel the attendance of the defendant or other person claiming or concealing the property, and examine him on oath as to the situation of the property, and punish a wilful obstruction or hindrance or disobedience of the order of the court in this respect as in case of contempt. [R., '60, § 3558; C., '73, § 3233; C., '97, § 4171.]

12188. Delivery bond. The officer, having taken the property or any part thereof, shall forthwith deliver the same to the plaintiff, unless, before the actual delivery to him, the defendant executes a bond to the plaintiff, with sureties to be approved by the clerk or officer, conditioned that he will appear in and defend the action, and deliver the property to the plaintiff, if he recovers judgment therefor, in as good condition as it was when the action was commenced, and that he will pay all costs and damages that may be adjudged against him for the taking or detention of the property. [R., '60, § 3560; C., '73, §§ 3234, 3235; C., '97, § 4172.]

12189. Release—return of bond. Said bond shall be delivered to the officer, who shall return the property to the defendant, append the bond to the writ, return it therewith to the officer issuing it, and refer thereto in his return on the writ. [R., '60, § 3559; C., '73, § 3237; C., '97, § 4172.]

12190. Inspection—appraisement. When the property is so retained by the defendant, he shall permit the officer and plaintiff to inspect the same, and, if the plaintiff so request, the officer shall cause it to be examined and appraised by two sworn appraisers chosen by the parties to the action, or, in their default, by the officer himself, in the manner provided for other cases of appraisement, and in case they can not agree he shall select a third, and an appraisement agreed to by two of them shall be sufficient, and he shall return their appraisement with the writ. [C., '73, § 3236; C., '97, § 4173.]

12191. Return of writ. The officer must return the writ on or before the first day of the trial term, or the return day if before a justice, and shall state fully what he has done thereunder. If he has taken any property, he shall describe the same particularly. [R., '60, § 3559; C., '73, § 3237; C., '97, § 4174.]

12192. Assessment of value and damages—right of possession. The jury must assess the value of the property and the damages for the taking or detention thereof, whenever by their verdict there will be a judgment for the recovery or the return of the property, and, when required so to do by either party, must find the value of each article, and find which is entitled to the possession, designating his right therein, and the value of such right. [R., '60, § 3082; C., '73, § 3238; C., '97, § 4175.]

12193. Judgment. The judgment shall determine which party is entitled to the possession of the property, and shall designate his right therein, and if such party have not the possession thereof, shall also determine the value of the right of such party, which right shall be absolute as to an adverse party, and shall also award such damages to either party as he may be entitled to for the illegal detention thereof. If the judgment be against the plaintiff for the money value of the property, it shall also be against the sureties on his bond. [C., '51, §§ 2000, 2001; R., '60, §§ 3554, 3562, 3567; C., '73, §§ 3229, 3239; C., '97, § 4176.]

12194. Execution. The execution shall require the officer to deliver the possession of the property, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered, subject to execution, and the value of the property for which judgment was recovered to be specified therein if a delivery thereof can not be had, and shall in that respect be deemed an execution against property. [R., '60, § 3253; C., '73, § 3240; C., '97, § 4177.]

12195. Plaintiff's option. If the party found to be entitled to the property be not already in possession thereof by delivery under the provisions of this chapter or otherwise, he may at his option have an execution for the delivery of the specific property, or for the value thereof as determined by the jury, and if any article of the property can not be obtained on execution, he may take the remainder, with the value of the missing articles. [R., '60, §§ 3563, 3568; C., '73, § 3241; C., '97, § 4178.]

12196. Judgment on bond. When property for which a bond has been given as hereinbefore provided is not forthcoming to answer the judgment, and the party entitled thereto so elects, a judgment may be entered against the principal and sureties in the bond for its value. [C., '73, § 3242; C., '97, § 4179.]

12197. Concealment. When it appears by the return of the officer or by the affidavit of the plaintiff that any specific property which has been concealed or removed by the other, the court or a judge may require him to attend and be examined on oath respecting such matter, and may enforce its order in this respect as in case of contempt. [R., '60, § 3564; C., '73, § 3243; C., '97, § 4180.]

12198. Exemption. A money judgment rendered under the provisions of this chapter for property exempt from execution shall also be to the same extent exempt from execution, and from all set-off or diminution by any person, which exemption may, at the election of the party in interest, be stated in the judgment. [R., '60, § 4176; C., '73, § 3244; C., '97, § 4181.]

CHAPTER 515

LOST PROPERTY

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12199. Taking up vessels, rafts, logs, and lumber. If any person shall stop or take up any vessel or water craft, or any raft of logs, or part thereof, or any logs suitable for making lumber or hewn timber, or sawed lumber, found adrift within the limits or upon the boundaries of this state, of the value of five dollars or upwards, including the cargo, tackle, rigging, and other appendages of such vessel or water craft, such person, within five days thereafter, provided the same shall not have been previously proved and restored to the owner, shall go before some justice of the peace in the township where such property is found, and make affidavit setting forth the exact description of such property; where and when the same was found; whether any, and if so what cargo, tackle, rigging, or other appendages were found on board or attached thereto; and that the same has not been altered or defaced, either in whole or in part, since the taking up, either by him or by any other person to his knowledge. [C., '51, §§ 876-878; R., '60, § 1506; C., '73, §§ 1509, 1512; C., '97, § 2371.]

12201. Value under twenty dollars. In all cases where the appraisal of any such property shall not exceed the sum of twenty dollars, the finder shall advertise the same on the door of the courthouse, and in three other of the most public places in the county, within five days after the appraisal, and if no person shall appear to claim and prove such property within six months of the time of taking up, it shall vest in the finder. [C., '51, §§ 879, 880; R., '60, § 1507; C., '73, § 1513; C., '97, § 2372; S., '13, § 2372; 40 Ex. G. A., H. F. 57, § 1.]

12202. Value exceeding twenty dollars. If the value thereof shall exceed the sum of twenty dollars, the county auditor, within five days from the time of the reception of the justice's certificate at his office, shall cause an advertisement to be posted on the door of the courthouse, and at three other of the most public places in the county, and also a notice to be published once each week for three weeks successively, in some newspaper printed in this state; and if such property be not claimed or proved within ninety days after the advertisement of the same, as aforesaid, the finder shall deliver the same to the sheriff of the county wherein it was taken up, who shall thereupon proceed to sell it at public auction to the highest bidder for cash, having first given ten days' notice of the time and place of sale, and the proceeds of all such sales, after deducting the costs and other necessary expenses, shall be paid into the county treasury. [C., '51, § 881; R., '60, § 1507; C., '73, § 1513; C., '97, § 2372; S., '13, § 2372; 40 Ex. G. A., H. F. 57, § 2.]

12200. Warrant—appraisal—return. The said justice shall thereupon issue his warrant, directed to some constable of his township, commanding him to summon three respectable householders of the neighborhood, who shall proceed without delay to examine and appraise such property, including cargo, tackle, rigging, and other appendages if any there be, and to make report thereof under their hands to the justice issuing such warrant, who shall enter the same, together with the affidavit of the taker-up, at large in his estray book, and within five days shall transmit a certified copy thereof to the county auditor of the proper county, to be by him recorded in his estray book and filed in his office. [C., '51, §§ 878, 879, 880; R., '60, § 1506; C., '73, §§ 1509, 1512; C., '97, § 2371.]

12203. Advertisement—when title vests. In all cases where any vessel, water craft, logs, or lumber shall be taken up as aforesaid, which shall be of a value less than five dollars, the

finder shall advertise the same by posting a notice of such finding in three of the most public places in the neighborhood; but in such cases he shall keep and preserve the same in his possession, and shall make restitution thereof to the owner, without fee or reward, except the same be given voluntarily when the owner claims the same, provided it shall be done in three months from such taking up or finding; but, if no owner shall claim such property within the time aforesaid, the exclusive right to it shall be vested in the finder. [C., '51, §§ 876, 877; R., '60, § 1510; C., '73, § 1516; C., '97, § 2375; 40 Ex. G. A., H. F. 57, § 7.]

12204. Lost goods or money. If any person shall find any lost goods, money, bank notes, or other things of any description whatever, of the value of five dollars and over, such person shall inform the owner thereof, if known, and make restitution thereof. [C., '51, §§ 876-879; R., '60, § 1508; C., '73, § 1514; C., '97, § 2373; 40 Ex. G. A., H. F. 57, § 3.]

12205. When owner unknown. If the owner be unknown, such person shall, within five days after such finding, take such money, bank notes, and a description of any other property before the county auditor of the county where the property was found, and make affidavit of the description thereof, the time when and place where the same was found, and that no alteration has been made in the appearance thereof since the finding; whereupon the county auditor shall enter a description of the property and the value thereof, as nearly as he can determine it, in his estray book, together with the affidavit of the finder. [R., '60, § 1508; C., '73, § 1514; C., '97, § 2373; 40 Ex. G. A., H. F. 57, § 4.]

12206. Advertisement. The finder of such lost goods, money, bank notes, or other things, shall forthwith give written notice of the finding of such property. Such notice shall contain an accurate description of the property and a statement as to the time when and place where the same was found, and the postoffice address of the finder. Said notice shall:

1. Be posted at the door of the courthouse in the county in which the property was found and in three other of the most public places in the said county; and

2. In case the property found shall exceed ten dollars in value, the notice shall be published once each week for three consecutive weeks in some newspaper published in and having general circulation in said county. [C., '51, §§ 877, 878, 880; R., '60, §§ 1509, 1510; C., '73, §§ 1510, 1514-1516; C., '97, §§ 2372, 2374; S., '13, §§ 2372, 2374; 40 Ex. G. A., H. F. 57, § 5.]

12207. Record of publication. Proof of publication of said notice and of the posting thereof shall be made by affidavits of the publisher and the person posting said notices, and said affidavits shall be filed in the office of the county auditor of said county. [C., '51, § 886; 40 Ex. G. A., H. F. 57, § 6.]

12208. Additional publication. The affidavits provided for in the preceding section shall be entered by the auditor in the proceedings of the board of supervisors and the same shall be published with the proceedings of said board. [40 Ex. G. A., H. F. 57, § 6-a1.]

12209. Vesting of title. If no person appears to claim and prove ownership to said goods, money, bank notes, or other things within twelve months of the date when proof of said publication and posting is filed in the office of the county auditor, the right to such property shall irrevocably vest in said finder. [C., '51, §§ 879, 881; R., '60, §§ 1509, 1510; C., '73, §§ 1510, 1513, 1515, 1516; C., '97, §§ 2372, 2374, 2375; S., '13, §§ 2372, 2374; 40 Ex. G. A., H. F. 57, § 6-a2.]

12210. Ownership settled. In any case where a claim is made to property found or taken up, and the ownership of the property can not be agreed upon by the finder and claimant, they may make a case before any justice of the peace in the county, who may hear and adjudicate it, and if either of them refuses to make such case the other may make an affidavit of the facts which have previously occurred, and the claimant shall also verify his claim by his affidavit, and the justice may take cognizance of and try the matter on the other party having one day's notice, but there shall be no appeal from the decision. This section does not bar any other remedy given by law. [C., '51, § 890; R., '60, § 1504; C., '73, § 1517; C., '97, § 2376.]

12211. Compensation. As a reward for the taking up of boats and other vessels, and for finding lost goods, money, bank notes, and other things, before restitution of the property or proceeds thereof shall be made, the finder shall be entitled to ten per cent upon the value thereof, and for taking up any logs or lumber, as hereinbefore described, twenty-five cents for each log not exceeding ten, twenty cents for each exceeding ten and not exceeding fifty, fifteen cents for each exceeding fifty, and fifty cents per thousand feet for sawed lumber. [C., '51, § 892; R., '60, § 1514; C., '73, §§ 1511, 1518; C., '97, § 2377; 40 Ex. G. A., H. F. 57, § 8.]

12212. Costs, charges, and care—assessment. The owner shall also be required to pay the finder all such costs and charges as may have been paid by him for services rendered as aforesaid, including the cost of publication, together with reasonable charges for keeping and taking care of such property, which last mentioned charge, in case the finder and the owner can not agree, shall be assessed by two disinterested householders of the neighborhood, to be appointed by some justice of the peace of the proper county, whose decision, when made, shall be binding and conclusive on all parties. [C., '51, § 893; R., '60, § 1514; C., '73, § 1518; C., '97, § 2377; 40 Ex. G. A., H. F. 57, § 9.]

12213. Proceeds—forfeiture. The net proceeds of all sales made by the sheriff, and all

money or bank notes paid over to the county treasurer, as directed in this chapter, shall remain in the hands of the county treasurer in trust for the owner, if any such shall apply within one year from the time the same shall have been paid over; but, if no owner shall appear within such time, the money shall be forfeited, and the claim of the owner thereto forever barred, in which event the money shall remain in the county treasury for the use of the common schools in said county. [C., '51, § 885; R., '60, § 1516; C., '73, § 1519; C., '97, § 2378.]

12214. Responsibility of taker-up. If the taker-up of any water craft, logs, or lumber, or finder of lost goods, bank notes, or other things, shall take reasonable care of the same, and any unavoidable accident happens thereto without the fault or neglect of the finder or taker-up before the owner shall have an opportunity of reclaiming the same, such taker-up or finder shall not be accountable therefor, if in cases of accident as aforesaid he within ten days thereafter shall certify the same to the county auditor, who shall make an entry thereof in his estray book. [R., '60, § 1517; C., '73, § 1520; C., '97, § 2379.]

12215. Penalty for selling. If any person shall trade, sell, loan, or take out of the limits of this state any such property taken up or found as aforesaid, before he shall be vested with the right to the same according to the foregoing provisions, he shall forfeit and pay double the value thereof, to be recovered by any person in an action, one-half of which shall go to the plaintiff and the other half to the county. [R., '60, § 1518; C., '73, § 1521; C., '97, § 2380.]

12216. Failure to comply. If any person shall take up any boat or vessel, or any logs or lumber, or shall find any goods, money, bank notes, or other things, and shall fail to comply with the requirements of this chapter, he shall forfeit and pay the sum of twenty dollars, to be recovered in an action by any person who will sue for the same, one-half for the use of the person suing and the other half to be deposited in the county treasury for the use of the common schools; but nothing herein contained shall prevent the owner from having and maintaining his action for the recovery of any damage he may sustain. [R., '60, § 1519; C., '73, § 1522; C., '97, § 2381.]

CHAPTER 516

PROPERTY STOLEN OR EMBEZZLED

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- 12224. Delivery to owner.
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12217. Held by officer. When property alleged to have been stolen or embezzled comes into the custody of a peace officer, he must hold the same subject to the order of the proper magistrate directing the disposal thereof. [C., '51, § 3253; R., '60, § 5049; C., '73, § 4654; C., '97, § 5569.]

12218. Delivered to owner. On satisfactory proof of title by the owner of the property, the magistrate before whom the information is laid, or who shall examine the charge against the person accused of stealing or embezzling the same, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in the preservation and keeping thereof, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property. [C., '51, § 3254; R., '60, § 5050; C., '73, § 4655; C., '97, § 5570.]

12219. Proof of title. If the property stolen or embezzled come into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified as before provided. [C.,

'51, § 3255; R., '60, § 5051; C., '73, § 4656; C., '97, § 5571.]

12220. By order of court. If the property stolen or embezzled has not been delivered to the owner, the court before which a conviction is had may, on proof of his title, order its restoration. [C., '51, § 3256; R., '60, § 5052; C., '73, § 4657; C., '97, § 5572.]

12221. When not claimed. If the property stolen or embezzled be not claimed by the owner before the expiration of six months from the conviction of the person for stealing or embezzling it, the magistrate or other officer having it in his custody must, on payment of the necessary expenses incurred for its preservation, deliver it to the auditor of the county, to be applied under the direction of the board of supervisors thereof for the benefit of the poor of the county. [C., '51, § 3257; R., '60, § 5053; C., '73, § 4658; C., '97, § 5573.]

12222. Stolen or abandoned automobiles. Whenever any motor vehicle is stolen, embezzled, or abandoned and is not claimed by the owner before the date on which the person

charged with the stealing or embezzling of same is convicted, or if the motor vehicle be abandoned and is not claimed by the owner within three days, the officer having same in his custody must, on such date by registered mail, notify the secretary of state that he has such a motor vehicle in his possession, giving a full and complete description of same, including all marks of identification, factory and serial numbers. [40 G. A., ch. 209.]

12223. Notice by secretary of state. The secretary of state shall, if the owner appears of record in his office, notify such owner of the fact that such motor vehicle is in the custody of such officer, and if not of record in his office, said secretary of state shall mail such description to the county treasurer of each county, and to the state bureau of investigation. [40 G. A., ch. 209.]

12224. Delivery to owner. If, within forty days thereafter, the owner of such motor vehicle appears and properly identifies same, the officer having said motor vehicle in his custody shall deliver same to such owner upon payment by him of the costs incurred incident to the apprehension of said motor vehicle and the location of such owner. [40 G. A., ch. 209.]

12225. Advertisement. If the owner does not appear within that time, the officer having possession of same shall advertise said motor vehicle for sale in a newspaper published within the county at least once each week for two consecutive weeks. [40 G. A., ch. 209.]

12226. Sale. Said motor vehicle shall be sold at public auction to the highest cash bidder therefor and said sale must be held within one week following the date of the last publication of the notice as provided in the preceding section. [40 G. A., ch. 209.]

12227. Proceeds—costs. After deducting the costs incident thereto, such officer shall pay all remaining money to the county treasurer for the use and benefit of the general fund. [40 G. A., ch. 209.]

12228. Reimbursement after sale. If, within six months from the date of sale, the owner of any motor vehicle sold under the provisions hereof makes a showing satisfactory to the board of supervisors that he is the owner of such motor vehicle, the board may direct the county auditor to draw a warrant payable to such owner for the amount such vehicle was sold for, less costs, and direct the treasurer to pay same out of the general fund. [40 G. A., ch. 209.]

12229. Receipt given. When money or other property is taken from the defendant arrested upon a charge of a public offense, the officer taking it shall, at the time, give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he must deliver to the defendant, and the other he must forthwith file with the clerk of the district court of the county where the depositions and statements are to be sent by the magistrate. [C., '51, § 3258; R., '60, § 5054; C., '73, § 4659; C., '97, § 5574.]

CHAPTER 517

RECOVERY OF REAL PROPERTY

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12230. Ordinary proceedings — joinder — counterclaim. Actions for the recovery of real property shall be by ordinary proceedings, and there shall be no joinder and no counterclaim therein, except of like proceedings, and as provided in this chapter. [R., '60, § 4177; C., '73, § 3245; C., '97, § 4182.]

12231. Parties. Any person having a valid subsisting interest in real property, and a right to the immediate possession thereof, may re-

cover the same by action against any person acting as owner, landlord, or tenant of the property claimed. [C., '51, § 2002; R., '60, § 3569; C., '73, § 3246; C., '97, § 4183.]

12232. Title. The plaintiff must recover on the strength of his own title. [C., '51, § 2020; R., '60, § 3591; C., '73, § 3247; C., '97, § 4184.]

12233. Tenant in common. In an action by a tenant in common or joint tenant of real prop-

erty against his cotenant, the plaintiff must show, in addition to his evidence of right, that the defendant either denied the plaintiff's right, or did some act amounting to such denial. [C., '51, § 2027; R., '60, § 3605; C., '73, § 3248; C., '97, § 4185.]

12234. Service on agent. When the defendant is a nonresident having an agent of record for the property in the state, service may be made upon such agent in the same manner and with the like effect as though made on the principal. [C., '51, § 2004; R., '60, § 3572; C., '73, § 3249; C., '97, § 4186.]

12235. Petition. The petition may state generally that the plaintiff is entitled to the possession of the premises, particularly describing them, also the quantity of his estate and the extent of his interest therein, and that the defendant unlawfully keeps him out of possession, and the damages, if any, which he claims for withholding the same; but if he claims other damages than the rents and profits, he shall state the facts constituting the cause thereof. [R., '60, § 3570; C., '73, § 3250; C., '97, § 4187.]

12236. Abstract of title. The plaintiff shall attach to his petition, and the defendant to his answer, if he claims title, an abstract of the title relied on, showing from and through whom such title was obtained, together with a statement showing the page and book where the same appears of record. [C., '73, § 3251; C., '97, § 4188.]

12237. Unwritten muniments of title—unrecorded conveyances. If such title, or any portion thereof, is not in writing, or does not appear of record, such fact shall be stated in the abstract, and either party shall furnish the adverse party with a copy of any unrecorded conveyance, or furnish a satisfactory reason for not so doing within a reasonable time after demand therefor. [C., '73, § 3251; C., '97, § 4188.]

12238. Evidence—abstract amended. No written evidence of title shall be introduced on the trial unless it has been sufficiently referred to in such abstract, which, on motion, may be made more specific, or may be amended by the party setting it out. [C., '73, § 3251; C., '97, § 4188.]

12239. Answer. The answer of the defendant, and each if more than one, must set forth what part of the land he claims and what interest he claims therein generally, and if as mere tenant, the name and residence of his landlord. [C., '51, § 2005; R., '60, § 3573; C., '73, § 3252; C., '97, § 4189.]

12240. Landlord substituted. When it appears that the defendant is only a tenant, the landlord may be substituted by the service upon him of original notice, or by his voluntary appearance, in which case the judgment shall be conclusive against him. [C., '51, § 2003; R., '60, §§ 3571, 3589; C., '73, § 3253; C., '97, § 4190.]

12241. Possession. When the defendant makes defense it is not necessary to prove him in possession of the premises. [C., '51, § 2007; R., '60, § 3575; C., '73, § 3254; C., '97, § 4191.]

12242. Purchase pending suit. Any person acquiring title to land or any interest therein, after commencement of an action under this chapter to recover the same, shall take subject to notice of and without prejudice to the rights of the parties to such action. [R., '60, § 3578; C., '73, § 3255; C., '97, § 4192.]

12243. Order to enter and survey. The court on motion, and after notice to the opposite party, may for cause shown grant an order allowing the party applying therefor to enter upon the land in controversy and make survey thereof for the purposes of the action. [C., '51, § 2021; R., '60, § 3592; C., '73, § 3256; C., '97, § 4193.]

12244. Service. The order must describe the property, and a copy thereof must be served upon the owner or person having the occupancy and control of the land. [C., '51, § 2022; R., '60, § 3593; C., '73, § 3257; C., '97, § 4194.]

12245. Verdict—special. The verdict may specify the extent and quantity of the plaintiff's estate and the premises to which he is entitled, with reasonable certainty, by metes and bounds and other sufficient description, according to the facts as proved. [R., '60, § 3594; C., '73, § 3258; C., '97, § 4195.]

12246. General verdict. A general verdict in favor of the plaintiff, without such specifications, entitles the plaintiff to the quantity of interest or estate in the premises as set forth and described in the petition. [R., '60, § 3595; C., '73, § 3259; C., '97, § 4196.]

12247. Judgment for damages. If the interest of the plaintiff expires before the time in which he could be put in possession, he can obtain a judgment for damages only. [C., '51, § 2010; R., '60, § 3579; C., '73, § 3260; C., '97, § 4197.]

12248. Use and occupation. The plaintiff can not recover for the use and occupation of the premises for more than five years prior to the commencement of the action. [C., '51, § 2008; R., '60, § 3576; C., '73, § 3261; C., '97, § 4198.]

12249. Improvements set off. When the plaintiff is entitled to damages for withholding or using or injuring his property, the defendant may set off the value of any permanent improvements made thereon to the extent of the damages, unless he prefers to avail himself of the law for the benefit of occupying claimants. [C., '51, § 2023; R., '60, § 3596; C., '73, § 3262; C., '97, § 4199.]

12250. Wanton aggression. In case of wanton aggression on the part of the defendant, the jury may award exemplary damages. [C., '51, § 2024; R., '60, § 3597; C., '73, § 3263; C., '97, § 4200.]

12251. Tenant—extent of liability. A tenant in possession in good faith, under a lease or license from another, is not liable beyond the rent in arrear at the time of suit brought for the recovery of land, and that which may afterward accrue during the continuance of his possession. [R., '60, § 3598; C., '73, § 3264; C., '97, § 4201.]

12252. Growing crops—bond. If the defendant avers that he has a crop sowed, planted, or growing on the premises, the jury, finding for the plaintiff, and also finding that fact, shall further find the value of the premises from the date of the trial until the first day of January next succeeding, and no execution for possession shall be issued until that time, if the defendant executes, with surety to be approved by the clerk, a bond in double such sum to the plaintiff, conditioned to pay at said date the sum so assessed, which shall be part of the record, and shall have the force and effect of a judgment, and if not paid at maturity the clerk, on the application of the plaintiff, shall issue execution thereon against all the obligors. [R., '60, § 3599; C., '73, § 3265; C., '97, § 4202.]

12253. Writ of possession. When the plaintiff shows himself entitled to the immediate possession of the premises, judgment shall be entered and an execution issued accordingly. [C., '51, § 2009; R., '60, § 3577; C., '73, § 3266; C., '97, § 4203.]

12254. Judgment for rent accruing. The plaintiff may have judgment for the rent or rental value of the premises which accrues after judgment and before delivery of possession, by motion in the court in which the judgment

was rendered, ten days' notice thereof in writing being given, unless judgment is stayed by appeal and bond given to suspend the judgment, in which case the motion may be made after the affirmance thereof. [R., '60, § 3600; C., '73, § 3267; C., '97, § 4204.]

12255. New trial. In the cases provided for by this chapter the court, in its discretion, may grant a new trial on the application of any party thereto, or those claiming under a party, made at any time within one year after the former trial, although the grounds required for a new trial in other cases are not shown. [C., '51, § 2014; R., '60, § 3584; C., '73, § 3268; C., '97, § 4205.]

12256. Notice. If the application is made after the close of the term at which the judgment was rendered, the party obtaining a new trial shall give the opposite party ten days' notice thereof before the term at which the action stands for trial. [R., '60, § 3585; C., '73, § 3269; C., '97, § 4206.]

12257. Purchaser not affected—execution. The result of a new trial, if granted at a term subsequent to the one at which the first trial was had, shall in no case affect the rights of third persons, acquired in good faith and for a valuable consideration after the former trial; but the party showing himself on the new trial entitled to lands which have thus passed to a good-faith purchaser, may recover his damages in the same or a subsequent action against the other party, and the successful party in such new trial shall have an execution for the property, if the case requires it. [C., '51, §§ 2015-2017; R., '60, §§ 3586-3588; C., '73, §§ 3270-3272; C., '97, § 4207.]

CHAPTER 518

RESTORATION OF LOST RECORDS

12258. Action in rem.
12259. Proceedings.
12260. Proof required.

12258. Action in rem. Whenever the public records in the office of any county official in this state have been or shall hereafter be lost or destroyed in any material part, the said county on relation of said public officer or the owner of any real estate affected thereby, may bring an action in rem in equity in the district court of the state in and for the county in which said real estate is situated against all known and unknown persons, firms, or corporations that might have any interest in said real estate affected by said record, to have said lost or destroyed records restored in whole or in part.

Any number of parcels of land may be included in the same suit; and whenever said action is brought by the owner, the public official in whose office said lost or destroyed public records are required by law to be kept

12261. Filing of restored records—effect.
12262. Costs of restoration—how paid.

shall be made a defendant therein. [S., '13, § 4227-a.]

12259. Proceedings. The petition, notice, and decree in said action to restore any lost or destroyed records, and all proceedings in said suit, so far as the same relate to unknown defendants, shall conform to the statutes of this state applicable to actions against unknown defendants and unknown claimants; and all known defendants shall be served with notice in the time and manner now provided by law; and whenever said action is brought by the owner of said real estate, all clouds upon said title and defects therein and all adverse claims thereto may be adjudicated in the same suit and title quieted therein.

The provisions of sections 11595 and 11596 shall be applicable to defendants served with

original notice in such action by publication. [S., '13, § 4227-b.]

12260. Proof required. No judgment or decree restoring any lost or destroyed record in such action shall be entered by default, but the court must require proof of the facts alleged in reference thereto and the court shall make such finding of facts and decree as may be sustained by the evidence and may order such lost or destroyed record to be prepared by said public official as completely as the circumstances and proof will permit, and said record when so prepared shall be approved by the court and its approval indorsed thereon by the clerk. [S., '13, § 4227-c.]

12261. Filing of restored records—effect. All public records restored as provided by this chapter shall be filed, bound, and indexed the same as original records are required to be, and shall have the same force and effect as the original records before their loss or destruction. [S., '13, § 4227-d.]

12262. Costs of restoration—how paid. Whenever any public record is restored, as provided in this chapter, all court costs and necessary expenses of restoring the same shall be paid by the county to which said records belong, whether said action is commenced or prosecuted by a county official or by the owner of any real estate authorized to maintain such action. [S. S., '15, § 4227-e.]

CHAPTER 519

FORCIBLE ENTRY OR DETENTION OF REAL PROPERTY

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12263. Grounds. A summary remedy for forcible entry or detention of real property is allowable:

1. Where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same.

2. Where the lessee holds over after the termination of his lease.

3. Where the lessee holds contrary to the terms of his lease.

4. Where the defendant continues in possession after a sale by foreclosure of a mortgage, or on execution, unless he claims by a title paramount to the lien by virtue of which the sale was made, or by title derived from the purchaser at the sale; in either of which cases such title shall be clearly and concisely set forth in the defendant's pleading.

5. For the nonpayment of rent, when due. [C., '51, §§ 2362, 2363; R., '60, §§ 3952, 3953; C., '73, §§ 3611, 3612; C., '97, § 4208; 40 G. A., ch. 271, § 1.]

12264. By legal representatives. The legal representative of a person who, if alive, might have been plaintiff may bring this action after his death. [C., '51, § 2364; R., '60, § 3954; C., '73, § 3613; C., '97, § 4209.]

12265. Notice to quit. Before action can be brought in any except the first of the above classes, three days' notice to quit must be given to the defendant in writing. [C., '51, § 2365;

R., '60, § 3955; C., '73, § 3614; C., '97, § 4210; 40 G. A., ch. 271, § 2.]

12266. Notice terminating tenancy. When the tenancy is at will and the action is based on the ground of the nonpayment of rent when due, no notice of the termination of the tenancy other than the three day notice need be given before beginning the action. [40 G. A., ch. 271, § 2.]

12267. Jurisdiction—transfer—appeal. The district, municipal, and superior courts within the county, and justices of the peace within the township where the subject matter of the action is situated, shall have concurrent jurisdiction of actions for the forcible entry or detention of real property, and the court first acquiring jurisdiction of an action therefor shall retain the same until judgment, unless it is transferred as hereinafter provided. By agreement of the parties, it may be transferred from a justice's court to a municipal, superior, or the district court, or from a superior or a municipal to the district court, and all such actions in which judgment is rendered in a justice's court may be appealed to the district or superior court, as provided by law. [C., '51, § 2367; R., '60, § 3957; C., '73, § 3616; C., '97, § 4211; 37 G. A., ch. 230, § 1.]

12268. Petition. The action must be by petition which must be sworn to. When brought in municipal court or before the justice of the

peace, a petition must be on file at the time the defendant is required to appear by the notice. [C., '51, § 2366; R., '60, § 3956; C., '73, § 3615; C., '97, § 4212; 37 G. A., ch. 230, § 2; 39 G. A., ch. 193, § 2.]

12269. Venue. When brought before a justice of the peace, and there is none present or qualified to act in the township where the subject thereof is situated, it may be brought in an adjoining township in the county. If there be no such justice in an adjoining township in the county it may be commenced before the justice in the same county nearest to the township in which the subject thereof is situated. [C., '51, § 2367; R., '60, § 3957; C., '73, § 3616; C., '97, § 4212; 37 G. A., ch. 230, § 2; 39 G. A., ch. 193, § 2.]

12270. Change of venue. In any such action a change of place of trial may be had as in other cases. [C., '51, § 2367; R., '60, § 3957; C., '73, § 3616; C., '97, § 4212; 37 G. A., ch. 230, § 2; 39 G. A., ch. 193, § 2.]

12271. Service by publication. Where it is made to appear by affidavit that personal service of the original notice in such action can not be made upon the defendant within the state, the same may be made by publication, if in a court of record, or by posting, if in a justice's court, in the same manner and for the same length of time as is required in other cases where such substituted service may be made. [C., '97, § 4213.]

12272. Time for appearance. The time for appearance and pleading if in justice's court or municipal court, must be not less than two or more than six days from the time of completed service of the notice. If in district or superior court, the same time as is required in ordinary actions. [C., '51, § 2368; R., '60, § 3958; C., '73, § 3617; C., '97, § 4214; 37 G. A., ch. 230, § 3.]

12273. Adjournment. No adjournment shall be made in justice's courts for more than ten days, except by consent of parties. [C., '51, § 2369; R., '60, § 3959; C., '73, § 3618; C., '97, § 4215.]

12274. Title in issue. The question of title can only be investigated in the district court, and can be pleaded in a municipal court or a justice's court only as provided in paragraph 4 of section 12263. [C., '51, § 2371; R., '60, § 3961; C., '73, § 3620; C., '97, § 4216; 37 G. A., ch. 230, § 4.]

12275. Transfer to district court. When so put in issue in a justice's court or municipal court, the justice or the judge of the municipal court shall forthwith, without further proceedings, certify the cause and the papers with a transcript of his docket, showing the reason of

such transfer to the district court, where the same shall be tried on the merits. Such cause shall not be dismissed because of error in transferring the same. [C., '97, § 4216; 37 G. A., ch. 230, § 4.]

12276. How title tried. When title is put in issue, the cause shall be tried by equitable proceedings. [C., '97, § 4216; 37 G. A., ch. 230, § 4.]

12277. Trial term. The appearance term shall be the trial term, and no continuance shall be granted for the purpose of taking the testimony in writing. [C., '97, § 4216; 37 G. A., ch. 230, § 4.]

12278. Remedy not exclusive. Nothing contained in the four preceding sections shall prevent a party from suing for trespass or from testing the right of property in any other manner. [C., '51, § 2371; R., '60, § 3961; C., '73, § 3620; C., '97, § 4216; 37 G. A., ch. 230, § 4.]

12279. Possession—bar. Thirty days' peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding. [C., '51, § 2372; R., '60, § 3962; C., '73, § 3621; C., '97, § 4217.]

12280. No joinder or counterclaim. An action of this kind can not be brought in connection with any other, nor can it be made the subject of counterclaim. [C., '51, § 2373; R., '60, § 3963; C., '73, § 3622; C., '97, § 4218.]

12281. Order for removal. The order for removal can be executed only in the daytime. [C., '51, § 2374; R., '60, § 3964; C., '73, § 3623; C., '97, § 4219.]

12282. Appeal or writ of error. An appeal or writ of error, taken from the action of a justice of the peace in such action in the usual way, if the proper security is given, will suspend the execution for costs, and may, with the consent of the plaintiff, prevent a removal under execution, but not otherwise. [C., '51, § 2375; R., '60, § 3965; C., '97, § 4220.]

12283. Judgment. If the defendant is found guilty, judgment shall be entered that he be removed from the premises, and that the plaintiff be put in possession thereof, and an execution for his removal shall issue accordingly, to which shall be added a clause commanding the officer to collect the costs as in ordinary cases. [C., '51, § 2370; R., '60, § 3960; C., '73, § 3619; C., '97, § 4221.]

12284. Restitution. The court, on the trial of an appeal, may issue an execution for removal or restitution, as the case may require. [C., '51, § 2376; R., '60, § 3966; C., '73, § 3624; C., '97, § 4222.]

CHAPTER 520

QUIETING TITLE

- 12285. Who may bring action.
- 12286. Petition—notice.
- 12287. Notice.
- 12288. Disclaimer—costs.
- 12289. Demand for quitclaim—attorney’s fees.

- 12290. Equitable proceedings.
- 12291. Deeds—recitals—rebuttable and conclusive presumptions.
- 12292. Construction of act.

12285. Who may bring action. An action to determine and quiet the title of real property may be brought by anyone, whether in or out of possession, having or claiming an interest therein, against any person claiming title thereto, though not in possession. [C., '51, § 2025; R., '60, § 3601; C., '73, § 3273; C., '97, § 4223.]

12286. Petition—notice. The petition therefor must be under oath, setting forth the nature and extent of his estate, and describing the premises as accurately as may be, and that he is credibly informed and believes the defendant makes some claims adverse to the petitioner, and praying for the establishment of the plaintiff’s estate, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to the plaintiff. [R., '60, § 3602; C., '73, § 3274; C., '97, § 4224.]

12287. Notice. The notice in such action shall accurately describe the property, and, in general terms, the nature and extent of the plaintiff’s claim, and shall be served as in other cases. [C., '73, § 3274; C., '97, § 4224.]

12288. Disclaimer—costs. If the defendant appears and disclaims all right and title adverse to the plaintiff, he shall recover his costs. In all other cases the costs shall be in the discretion of the court. [R., '60, § 3603; C., '73, § 3275; C., '97, § 4225.]

12289. Demand for quitclaim — attorney’s fees. If a party, twenty days or more before bringing suit to quiet a title to real estate, shall request of the person holding an apparent adverse interest or right therein the execution of a quitclaim deed thereto, and shall also tender to him one dollar and twenty-five cents to cover the expense of the execution and delivery of the deed, and if he shall refuse or neglect to comply therewith, the filing of a disclaimer of interest or right shall not avoid the costs in an action afterwards brought, and the court may, in its discretion, if the plaintiff succeeds, tax, in addition to the ordinary costs of court, an attorney’s fee for plaintiff’s attorney, not

exceeding twenty-five dollars if there is but a single tract not exceeding forty acres in extent, or a single lot in a city or town, involved, and forty dollars, if but a single tract exceeding forty acres and not more than eighty acres; in cases in which two or more tracts are included that may not be embraced in one description, or single tracts covering more than eighty acres, or two or more city or town lots, a reasonable fee may be taxed, not exceeding, however, proportionately, those hereinbefore provided for. [C., '97, § 4226.]

12290. Equitable proceedings. In all other respects, the action contemplated in this chapter shall be conducted as other actions by equitable proceedings, so far as the same may be applicable, with the modifications prescribed. [C., '51, § 2026; R., '60, § 3604; C., '73, § 3276; C., '97, § 4227.]

12291. Deeds—recitals—rebuttable and conclusive presumptions. In the proof of title to real estate derived from deeds or other conveyances affecting real estate, executed prior to January 1, 1905, where it appears from recitals therein that such deeds or other conveyances have been executed in pursuance to a contract assigned by the original vendee or his assignee to the grantee in such deeds or other conveyances, the recitals thereof shall be presumptive evidence of the truth of said recitals, and of the fact of said assignment, and that such assignment was made in good faith for a valuable consideration, and no action shall be maintained by such original vendee, assignee, or any person or persons holding by, through, or under such vendee or assignee, against the grantee in said deed or other conveyance, and his grantees in the record chain of title, and said recitals shall be conclusive evidence of the fact of such assignment and that it was made in good faith and for a valuable consideration. [37 G. A., ch. 325, § 1.]

12292. Construction of act. The preceding section shall not be construed to remove the bar of any other statute of limitations. [37 G. A., ch. 325, § 2.]

CHAPTER 521

DISPUTED CORNERS AND BOUNDARIES

12293. When allowed.
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12293. When allowed. When one or more owners of land, the corners and boundaries of which are lost, destroyed, or in dispute, desire to have the same established, they may bring an action in the district court of the county where such lost, destroyed, or disputed corners or boundaries, or part thereof, are situated, against the owners of the other tracts which will be affected by the determination or establishment thereof, to have such corners or boundaries ascertained and permanently established. [C., '97, § 4228.]

12294. County as party. If any public road is likely to be affected thereby, the proper county shall be made defendant. [C., '97, § 4228.]

12295. Notice. Notice of such action shall be given as in other cases, and if the defendants or any of them are nonresidents of the state, or unknown, they may be served by publication as is provided by law. [C., '97, § 4229.]

12296. Nature of action. The action shall be a special one. [C., '97, § 4230.]

12297. Petition. The only necessary pleading therein shall be the petition of plaintiff describing the land involved, and, so far as may be, the interest of the respective parties, and asking that certain corners and boundaries therein described, as accurately as may be, shall be established. [C., '97, § 4230.]

12298. Specific issues—acquiescence. Either the plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true ones, or that such have been recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years, which issue may be tried before commission is appointed, in the discretion of the court. [C., '97, § 4230.]

12299. Commissioners. The court in which said action is brought shall appoint a commission of one or more disinterested surveyors, who shall, at a date and place fixed by the court in the order of appointment, proceed to locate

the lost, destroyed, or disputed corners and boundaries. [C., '97, § 4231.]

12300. Oath—assistants. The commissioners so appointed shall subscribe and file with the clerk, within ten days from the date of their appointment, an oath for the faithful and impartial discharge of their duties, and shall have the power to appoint necessary assistants. [C., '97, § 4232.]

12301. Hearing. At the time and in the manner specified in the order of court, the commission shall proceed to locate said boundaries and corners, and for that purpose may take the testimony of witnesses as to where the true boundaries and corners are located. [C., '97, § 4233.]

12302. Finding as to acquiescence. If that issue is presented, the commission shall also take testimony as to whether the boundaries and corners alleged to have been recognized and acquiesced in for ten years or more have in fact been recognized and acquiesced in, and, if it finds affirmatively on such issue, shall incorporate the same into the report to the court. [C., '97, § 4233.]

12303. Adjournments—report. The proceedings may be adjourned by the commission from time to time as may be necessary, but the survey and location of the corners and boundaries must be completed and the report thereof filed with the clerk of the court at least ten days before the first day of the term next following that of its appointment, unless there are good and sufficient reasons for delay. [C., '97, § 4234.]

12304. Exceptions—hearing in court. At the term of court after such report is filed, any party interested may file exceptions thereto before noon of the second day of the term, and the court shall hear and determine them, hearing evidence in addition to that reported by the commission, if necessary, and may approve or modify such report, or again refer the matter to the same or another commission for further report. [C., '97, § 4235.]

12305. Decree conclusive. The corners and boundaries finally established by the court in such proceeding, or on appeal therefrom, shall be binding upon the parties as the corners or boundaries which had been lost, destroyed, or in dispute. [C., '97, § 4236.]

12306. Boundaries by acquiescence established. If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established. [C., '97, § 4236.]

12307. Appeal. There shall be no appeal in such proceeding, except from final judgment of the court, taken in the time and manner that other appeals are, and heard as in an action by ordinary proceedings. [C., '97, § 4237.]

12308. Costs. The costs in the proceeding shall be taxed as the court shall think just, and shall be a lien on the land or interest therein owned by the party or parties against whom they are taxed, so far as such land is involved in the proceeding. [C., '97, § 4238.]

12309. Boundaries by agreement. Any lost or disputed corner or boundary may be determined by written agreement of all parties thereby affected, signed and acknowledged by each as required for conveyances of real estate, clearly designating the same, and accompanied by a plat thereof, which shall be recorded as an instrument affecting real estate, and shall be binding upon their heirs, successors, and assigns. [C., '97, § 4239.]

CHAPTER 522

PARTITION

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12310. Nature of action. The action for partition shall be by equitable proceedings. [R., '60, § 4178; C., '73, § 3277; C., '97, § 4240.]

12311. Joinder and counterclaims. No joinder or counterclaim of any other kind shall be allowed therein, except to perfect or quiet title, to declare and enforce liens between the parties to the action, and except as provided by this chapter. [R., '60, § 4178; C., '73, § 3277; C., '97, § 4240.]

12312. Petition. The petition must describe the property and respective interests of the several owners thereof, if known. If any interests, or the owners of any interests, are unknown, contingent, or doubtful, these facts must be set forth in the petition with reasonable certainty. [C., '51, §§ 2028, 2029; R., '60, §§ 3606, 3607; C., '73, § 3278; C., '97, § 4241.]

12313. Abstracts of title. Sections 12236 to 12238, inclusive, shall be applicable to proceed-

ings under this chapter. [C., '73, § 3279; C., '97, § 4242; 40 Ex. G. A., S. F. 271, § 1.]

12314. Lien creditors. Creditors having a specific or general lien upon the entire property may be made parties at the option of the plaintiff or defendant. [C., '51, § 2030; R., '60, § 3608; C., '73, § 3281; C., '97, § 4244.]

12315. Party defendants. Persons having apparent or contingent interests in such property may be made parties to the proceedings. [C., '51, § 2069; R., '60, § 3647; C., '73, § 3280; C., '97, § 4243.]

12316. Jurisdiction over property. The proceeds of the property so situated, or the property itself in case of partition, shall be subject to the order of the court until the right becomes fully vested. [C., '51, § 2069; R., '60, § 3647; C., '73, § 3280; C., '97, § 4243.]

12317. Share of absent owner. The ascertained share of any absent owner shall be re-

tained, or the proceeds invested for his benefit, under like order. [C., '51, § 2070; R., '60, § 3648; C., '73, § 3280; C., '97, § 4243.]

12318. Answer. The answers of the defendants must state, among other things, the amount and nature of their respective interests. They may deny the interest of any of the plaintiffs, and by supplemental pleading, if necessary, may deny the interest of any of the other defendants. [C., '51, § 2032; R., '60, § 3610; C., '73, § 3282; C., '97, § 4245.]

12319. Issues — trial — costs. Issues may thereupon be joined and tried between any of the contesting parties, the question of costs on such issues being regulated between the contestants agreeably to the principles applicable to other cases. [C., '51, § 2034; R., '60, § 3612; C., '73, § 3283; C., '97, § 4246.]

12320. Reference to ascertain incumbrances. Before making any order of sale or partition, the court may refer to the clerk or a referee to report the nature and amount of incumbrances by mortgage, judgment, or otherwise upon any portion of the property. [C., '51, §§ 2045, 2046; R., '60, §§ 3623, 3624; C., '73, § 3284; C., '97, § 4247.]

12321. Proof of incumbrances. The referee shall give the parties interested at least five days' notice of the time and place when he will receive proof of the amounts of such incumbrances. [C., '51, § 2047; R., '60, § 3625; C., '73, § 3285; C., '97, § 4248.]

12322. Issue as to incumbrances. If any question arises as to the validity or amount of an incumbrance, or the payment of the same, the court may direct an issue to be made up between the incumbrancer and an owner, and an adjudication thereon shall be decisive of their respective rights; and, upon a sale, it may order the money to be retained or invested to await final action in relation to its disposition, and notice thereof to be forthwith given to the incumbrancer unless he has already been made a party. [C., '51, §§ 2050, 2051; R., '60, §§ 3628, 3629; C., '73, § 3286; C., '97, § 4249.]

12323. Lien on undivided interests. If the lien is upon one or more undivided interests, the holder thereof shall be made a party, and the lien shall, after partition or sale, remain a charge upon the particular interests or the proceeds thereof, but the amount of costs is a charge upon those interests, paramount to all other liens. [C., '51, § 2031; R., '60, § 3609; C., '73, § 3287; C., '97, § 4250.]

12324. Not to delay distribution. The proceedings in relation to incumbrances shall not delay the distribution of the proceeds of other shares not affected thereby. [C., '51, § 2053; R., '60, § 3631; C., '73, § 3288; C., '97, § 4251.]

12325. Confirmation. After all the shares and interests of the parties have been settled in any of the methods aforesaid, decree shall be rendered establishing the rights of the par-

ties, confirming the shares and interests of the owners of the lands, and directing partition to be made accordingly. [C., '51, § 2037; R., '60, § 3615; C., '73, § 3289; C., '97, § 4252.]

12326. Referees to partition—sale. Upon entering such decree, the court shall appoint referees to make partition, unless the parties agree to a sale of the property, or where it is shown that the property can not be equitably divided into the requisite number of shares, a sale shall be ordered. [C., '51, §§ 2038, 2040, 2041; R., '60, §§ 3616, 3618, 3619; C., '73, § 3290; C., '97, § 4253; S., '13, § 4253.]

12327. Number of referees. Three referees shall be appointed to make partition, unless the parties to the suit agree to a less number, but where it is shown that partition can not be made and a sale is ordered, the court may fix the number. [C., '97, § 4253; S., '13, § 4253.]

12328. Possession pending sale. Where there is a delay in making sale and the owners of the property are not able to agree as to the possession or leasing of the same, the court may make such order as to the possession and leasing of said property by the referee as may be found to be for the best interests of the owners of said property. [S., '13, § 4253.]

12329. Shares marked out. When a partition is ordered, the referees must mark out the shares by visible monuments, and may employ a competent surveyor and assistants to aid them therein, if necessary. [C., '51, § 2059; R., '60, § 3637; C., '73, § 3291; C., '97, § 4254.]

12330. Report of referees. The report of the referees must be in writing, signed by them, and must describe the respective shares with reasonable particularity, and be accompanied by a plat of the premises, and must allot the shares to their several owners. [C., '51, §§ 2060, 2061; R., '60, §§ 3638, 3639; C., '73, § 3292; C., '97, § 4255.]

12331. Special allotments. For good and sufficient reasons appearing to the court, the referees may be directed to allot particular portions of the land to particular individuals. In other cases the shares must be made as nearly as possible of equal value. [C., '51, § 2039; R., '60, § 3617; C., '73, § 3293; C., '97, § 4256.]

12332. Partition of part. When partition can be conveniently made of part of the premises, but not of all, one portion may be partitioned and the other sold, as provided in this chapter. [C., '51, § 2062; R., '60, § 3640; C., '73, § 3294; C., '97, § 4257.]

12333. Report set aside. On good cause shown, the report may be set aside and the matter again referred to the same or other referees. [C., '51, § 2063; R., '60, § 3641; C., '73, § 3295; C., '97, § 4258.]

12334. Decree. Upon the report of the referees being approved, a decree shall be rendered confirming the partition and apportioning

the costs as herein provided, entering judgment therefor. [C., '51, § 2064; R., '60, § 3642; C., '73, § 3296; C., '97, § 4259; S., '13, § 4259.]

12335. Transcript of decree. Upon the rendition of such decree the clerk shall file with the county recorder of the county a duly certified transcript of such part of the entire decree, in the case in which partition has been ordered, as may be necessary to show the volume and page where such decree is recorded, and the confirmation of the shares and interests of the parties in the property of which partition is made, and the names of the parties who are found entitled to such shares, and an accurate description of each of the shares allotted to the several owners. [S., '13, § 4259.]

12336. Transcript recorded—foreign counties. Such transcript shall be presented to the county auditor for transfer and recorded in the deed records of the county where the action was brought and also in the other counties in the state, if any, where any of the property so partitioned is situated; and in such case the clerk shall transmit to the county recorder of each of such other counties a duplicate of such transcript, and the same shall be there so recorded and transfer so made. [S., '13, § 4259.]

12337. Transcript to be indexed. Such transcript shall be indexed in the recorder's office the same as conveyances of real estate with the names of the parties so entitled to such shares as grantors, and the name of the party to whom each share is allotted as grantee. [S., '13, § 4259.]

12338. Costs attending transcript. The costs of making and recording such transcript shall be taxed as part of the costs in the case. [S., '13, § 4259.]

12339. Costs generally. All the costs of the proceedings in partition shall be paid, in the first instance, by the plaintiffs, but eventually by all the parties in proportion to their interests, except costs which are created by contests. [C., '51, § 2067; R., '60, § 3645; C., '73, § 3297; C., '97, § 4260.]

12340. Attorney's fees. In actions for partition of real estate, when a decree ordering partition or sale is rendered, there shall be taxed in favor of plaintiff's attorney, as costs in the case, an attorney's fee; but in no case shall the amount so taxed exceed the following, to wit:

1. For the first two hundred dollars or fraction thereof, ten per cent;
2. For the next three hundred dollars, five per cent;
3. For the next five hundred dollars, three per cent;
4. For all excess over above amounts, one per cent of the value of the property partitioned.

Such value shall be determined by the court or the appraiser, or by the sale when sale is ordered. [C., '97, § 4261.]

12341. Sale—referees to give bond—removal. Before selling, the referees shall give a bond in a penalty to be fixed by the court, payable to the parties who are entitled to the proceeds, with sureties to be approved by the clerk, conditioned for the faithful discharge of their duties. At any time thereafter, the court may require further and additional security, and upon failure of the referees to comply with such order they may be removed by the court, and others appointed, and the court may at any time, for satisfactory reasons, remove them and appoint others. [C., '51, § 2042; R., '60, § 3620; C., '73, § 3298; C., '97, § 4262.]

12342. Notice of sale. The same notice of sale shall be given as when lands are sold on execution by the sheriff, and the sale shall be conducted in like manner. [C., '51, § 2043; R., '60, § 3621; C., '73, § 3299; C., '97, § 4263.]

12343. Private sale—appraisal. Whenever in the discretion of the court such lands can be disposed of to better advantage and with less expense at private sale than in the manner above provided, they may be sold on such terms as are ordered by the court, but in such case they shall be appraised by three disinterested freeholders to be appointed by the court, and sold for not less than the appraised value. [C., '51, § 2043; R., '60, § 3621; C., '73, § 3299; C., '97, § 4264.]

12344. Report of sale. After completing said sale, the referees must report their proceedings to the court, with a description of the different parcels sold to each purchaser and the price bid therefor, which report shall be filed with the clerk. [C., '51, § 2044; R., '60, § 3622; C., '73, § 3300; C., '97, § 4265.]

12345. Conveyance. If the sale is approved and confirmed by the court, an order shall be entered directing the referees, or any two of them, to execute conveyances; but no conveyances can be made until all the money is paid, without receiving from the purchaser a mortgage on the land so sold, or other equivalent security. [C., '51, § 2055; R., '60, § 3633; C., '73, § 3301; C., '97, § 4266.]

12346. Validity. Such conveyances, being recorded in the county where the premises are situated, shall be valid against all subsequent purchasers, and also against all persons interested at the time, who were made parties to the proceedings in the mode pointed out by law. [C., '51, § 2056; R., '60, § 3634; C., '73, § 3302; C., '97, § 4267.]

12347. When parties are married. If the owner of any share thus sold has a husband or wife living, and if such husband and wife do not agree as to the disposition that shall be made of the proceeds of such sale, the court must direct it to be invested in real estate, under the supervision of such person as it may appoint, taking the title in the name of the owner of the share sold as aforesaid. Provided that in case the amount of any share shall not exceed the sum of one thousand dollars the

court may in its discretion direct the same to be paid to the owner or two-thirds to the owner and one-third to the spouse; and provided, further, that in all cases when it is shown to the satisfaction of the court that the owner has been abandoned by the husband or wife, the whole amount shall be paid to the owner and no agreement therefor shall be required. [C., '51, § 2057; R., '60, § 3635; C., '73, § 3303; C., '97, § 4268; S., '13, § 4268.]

12348. Sales disapproved. If the sales are disapproved, the money paid and the securities given must be returned to the persons respectively entitled thereto. [C., '51, § 2058; R., '60, § 3636; C., '73, § 3304; C., '97, § 4269.]

12349. Security to refund money. The court in its discretion may require all or any of the parties, before they receive the moneys arising from any sale authorized in this chapter, to give satisfactory security to refund the same,

with interest, in case it afterward appears that such parties were not entitled thereto. [C., '51, § 2054; R., '60, § 3632; C., '73, § 3305; C., '97, § 4270.]

12350. Life estates. If a tenant for life or years is entitled as such to a part of the proceeds of sale, and the parties can not agree upon a sum in gross which they will consider an equivalent for such estate, the court shall direct the avails of the incumbered property to be invested, and the proceeds to be paid to the incumbrancer during the term of the incumbrance. [C., '51, § 2052; R., '60, § 3630; C., '73, § 3306; C., '97, § 4271.]

12351. Compensation of appraisers and referees. Appraisers and referees appointed under the provisions of this chapter shall receive such reasonable compensation for their services as the court allows, which shall be taxed as a part of the costs. [C., '97, § 4272.]

CHAPTER 523

FORECLOSURE OF CHATTEL MORTGAGES

12352. Notice and sale.
12353. Notice.
12354. Service.
12355. Return.
12356. Publication of notice.
12357. Title of purchaser.

12358. Attorneys' fees.
12359. Bill of sale.
12360. Evidence of service perpetuated.
12361. Validity of service.
12362. How contested.
12363. Deeds of trust.

12352. Notice and sale. A mortgage of personal property to secure the payment of money only, where the time of payment is therein fixed, may be foreclosed by notice and sale, unless a stipulation to the contrary has been agreed upon by the parties, or by action in the proper court. [C., '51, § 2071; R., '60, § 3649; C., '73, § 3307; C., '97, § 4273.]

NOTE: Attachment in aid of foreclosure, see § 12147.

12353. Notice. The notice must contain a full description of the property mortgaged, together with the time, place, and terms of sale. [C., '51, § 2072; R., '60, § 3650; C., '73, § 3308; C., '97, § 4274.]

12354. Service. Such notice must be served on the mortgagor and all purchasers from him subsequent to the execution of the mortgage, and all persons having recorded liens upon the same property which are junior to the mortgage, or they will not be bound by the proceedings. [C., '51, § 2073; R., '60, § 3651; C., '73, § 3309; C., '97, § 4275.]

12355. Return. The service and return must be made in the same manner as in the case of the original notice by which civil actions are commenced in courts of record, except that no publication in the newspapers is necessary, the general publication directed in the next section being a sufficient service upon all the parties in cases where service is to be made by publication. [C., '51, § 2074; R., '60, § 3652; C., '73, § 3310; C., '97, § 4276.]

12356. Publication of notice. After notice has been served upon the parties, it must be published in the same manner and for the same length of time as is required in cases of the sale of like property on execution, and the sale shall be conducted in the same manner. [C., '51, § 2075; R., '60, § 3653; C., '73, § 3311; C., '97, § 4277.]

12357. Title of purchaser. The purchaser shall take all the title and interest on which the mortgage operated. [C., '51, § 2076; R., '60, § 3654; C., '73, § 3312; C., '97, § 4278.]

12358. Attorneys' fees. If the notes secured by such mortgage, or the mortgage itself, provide for the payment of attorneys' fees, the same fees shall be collected, if an attorney is employed to look after and direct the proceedings, as are provided by law to be collected after judgment in actions upon such contracts. The attorney shall make an affidavit like that required in actions, and have it attached by the officer or person making sale to his return of the proceedings thereunder. [C., '97, § 4279; 40 Ex. G. A., S. F. 241, § 1.]

12359. Bill of sale. The officer or other person conducting the sale shall execute to the purchaser a bill of sale of the property, which shall be effectual to carry the whole title and interest purchased. [C., '51, § 2077; R., '60, § 3655; C., '73, § 3313; C., '97, § 4280; 40 Ex. G. A., S. F. 241, § 2.]

12360. Evidence of service perpetuated. Evidence of the service and publication of the notice aforesaid, and of the sale made in accordance therewith, together with any postponement or other material matter, shall be perpetuated by affidavits reciting the facts attached to the bill of sale, and shall constitute the return of the officer or person making the sale, and be receivable in evidence to prove the facts they state. [C., '51, §§ 2079, 2080; R., '60, §§ 3656, 3657; C., '73, §§ 3314, 3315; C., '97, § 4281.]

12361. Validity of sales. Sales made in accordance with the above requirements are valid as to property sold to a purchaser in good faith, whatever may be the equities between the mort-

gagor and mortgagee. [C., '51, § 2081; R., '60, § 3658; C., '73, § 3316; C., '97, § 4282.]

12362. How contested. The right of the mortgagee to foreclose, as well as the amount claimed to be due, may be contested by anyone interested in so doing, and the proceeding may be transferred to the district court, for which purpose an injunction may issue, if necessary. [C., '51, § 2082; R., '60, § 3659; C., '73, § 3317; C., '97, § 4283.]

12363. Deeds of trust. Deeds of trust of personal property may be executed as securities for the performance of contracts, and shall be considered as, and foreclosed like, mortgages. [C., '51, § 2096; R., '60, § 3673; C., '73, § 3318; C., '97, § 4284.]

CHAPTER 524

FORECLOSURE OF PLEDGES

- 12364. Notice and sale.
- 12365. Service by registered mail.
- 12366. Additional service on resident.
- 12367. Additional service on nonresident.

- 12368. Contents of notice.
- 12369. Sale—pledgee as bidder.
- 12370. Application of proceeds.
- 12371. Equitable action.

12364. Notice and sale. The pledgee of personal property held as security for an indebtedness, unless otherwise agreed in writing, may sell such property for the payment of the indebtedness when due by giving the pledgor and any purchaser or assignee of the property or any part of it of which the pledgee has notice in writing, ten days' written notice of his intention to sell the same for the payment of such debt. [C., '97, § 4285; 40 Ex. G. A., S. F. 241, § 3.]

NOTE: Attachment in action to enforce lien, see § 12147.

12365. Service by registered mail. The pledgee shall take the address of the pledgor at the time the pledge is made. In all cases the notice shall be served upon the pledgor by registered mail addressed to the address given by the pledgor at the time the property was pledged, or at his last known address. [40 Ex. G. A., S. F. 241, § 4.]

12366. Additional service on resident. If the pledgor is a resident of the county in which the property was held the notice shall be posted for ten days in three public places in the township of the pledgor's residence. [C., '97, § 4285; 40 Ex. G. A., S. F. 241, § 4.]

12367. Additional service on nonresident. If the pledgor is not a resident of the county where the property is held such notice shall be posted for ten days in three public places of such county. [40 Ex. G. A., S. F. 241, § 4.]

12368. Contents of notice. Such notice shall contain a full and accurate description

of the property to be sold, the day and hour when, and the place at which the same will be sold. [C., '97, § 4285; 40 Ex. G. A., S. F. 241, § 4.]

12369. Sale—pledgee as bidder. If redemption is not made before the date thus fixed, the pledgee may sell at public auction, to the highest bidder, the pledged property, or so much of the same as may be necessary to pay the debt, interest, and all costs of making such sale, and may be a bidder at such sale. [C., '97, § 4285; 40 Ex. G. A., S. F. 241, § 4.]

12370. Application of proceeds. He shall apply the proceeds, first, in the payment of such costs, and second, to the payment of the debt. Any surplus arising from the sale and any property remaining unsold shall be paid or returned to the pledgor or his assigns. [C., '97, § 4285; 40 Ex. G. A., S. F. 241, § 4.]

12371. Equitable action. Such pledgee may commence an action in equity for the foreclosure of such collaterals or pledges, and the court shall determine all issues presented as in other equity cases, and render judgment for the amount due from the pledgor, and award special execution for the sale of the collaterals or pledges, and general execution for any balance, or shall render such judgment as may be necessary to carry out any written agreement of the parties concerning the subject matter; but in all cases a sale may be ordered unless there is a written stipulation to the contrary. [C., '97, § 4286.]

CHAPTER 525

FORECLOSURE OF REAL ESTATE MORTGAGES

12372. Equitable proceedings.
 12373. Deeds of trust.
 12374. Venue.
 12375. Separate suits on note and mortgage.
 12376. Judgment—sale and redemption.
 12377. General execution for balance.
 12378. Overplus.

12372. Equitable proceedings. No deed of trust or mortgage of real estate shall be foreclosed in any other manner than by action in court by equitable proceedings. [C., '51, §§ 2083, 2096; R., '60, §§ 3660, 3673, 4179; C., '73, § 3319; C., '97, § 4287.]

12373. Deeds of trust. Deeds of trust of real property may be executed as securities for the performance of contracts, and shall be considered as, and foreclosed like, mortgages. [C., '51, § 2096; R., '60, § 3673; C., '73, § 3318; C., '97, § 4284.]

12374. Venue. An action for the foreclosure of a mortgage of real property, or for the sale thereof under an incumbrance or charge thereon, shall be brought in the county in which the property to be affected, or some part thereof, is situated. [C., '73, § 2578; C., '97, § 3493.]

12375. Separate suits on note and mortgage. If separate actions are brought in the same county on the bond or note, and on the mortgage given to secure it, the plaintiff must elect which to prosecute. The other will be discontinued at his cost. [C., '51, § 2086; R., '60, § 3663; C., '73, § 3320; C., '97, § 4288.]

12376. Judgment—sale and redemption. When a mortgage or deed of trust is foreclosed, the court shall render judgment for the entire amount found to be due, and must direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the same, with interest and costs. A special execution shall issue accordingly, and the sale thereunder shall be subject to redemption as in cases of sale under general execution. [C., '51, § 2084; R., '60, § 3661; C., '73, § 3321; C., '97, § 4289.]

12377. General execution for balance. If the mortgaged property does not sell for sufficient to satisfy the execution, a general execution may be issued against the mortgagor, unless the parties have stipulated otherwise. [C., '51, § 2085; R., '60, § 3662; C., '73, § 3322; C., '97, § 4290.]

12378. Overplus. If there is an overplus remaining after satisfying the mortgage and costs, and if there is no other lien upon the property, such overplus shall be paid to the

12379. Junior incumbrancer entitled to assignment.
 12380. Payment of other liens—rebate of interest.
 12381. How much sold.
 12382. Foreclosure of title bond.
 12383. Vendee deemed mortgagor.

mortgagor. [C., '51, § 2089; R., '60, § 3666; C., '73, § 3324; C., '97, § 4291.]

12379. Junior incumbrancer entitled to assignment. At any time prior to the sale, a person having a lien on the property which is junior to the mortgage will be entitled to an assignment of all the interest of the holder of the mortgage, by paying him the amount secured, with interest and costs, together with the amount of any other liens of the same holder which are paramount to his. He may then proceed with the foreclosure, or discontinue it, at his option. [C., '51, § 2088; R., '60, § 3665; C., '73, § 3323; C., '97, § 4292.]

12380. Payment of other liens—rebate of interest. If there are any other liens on the property sold, or other payments secured by the same mortgage, they shall be paid off in their order. If the money secured by any such lien is not yet due, a rebate of interest, to be fixed by the court or judge thereof, must be made by the holder, or his lien on such property will be postponed to those of a junior date, and if there are none such, the balance shall be paid to the mortgagor. [C., '51, § 2090; R., '60, § 3667; C., '73, § 3325; C., '97, § 4293.]

12381. How much sold. As far as practicable, the property sold must be only sufficient to satisfy the mortgage foreclosed. [C., '51, § 2091; R., '60, § 3668; C., '73, § 3326; C., '97, § 4294.]

12382. Foreclosure of title bond. In cases where the vendor of real estate has given a bond or other writing to convey the same on payment of the purchase money, and such money or any part thereof remains unpaid after the day fixed for payment, whether time is or is not of the essence of the contract, the vendor may file his petition asking the court to require the purchaser to perform his contract, or to foreclose and sell his interest in the property. [C., '51, § 2094; R., '60, § 3671; C., '73, § 3329; C., '97, § 4297.]

12383. Vendee deemed mortgagor. The vendee shall in such cases, for the purpose of the foreclosure, be treated as a mortgagor of the property purchased, and his rights may be foreclosed in a similar manner. [C., '51, § 2095; R., '60, § 3672; C., '73, § 3330; C., '97, § 4298.]

CHAPTER 526

SATISFACTION OF MORTGAGES

12384. Dual methods.
 12385. Penalty.
 12386. Identification—witnesses.

12387. Entry of foreclosure.
 12388. Entry of satisfaction.

12384. Dual methods. When the amount due on a mortgage is paid off, the mortgagee, his personal representative or assignee, or those legally acting for him, and in case of payment of a school fund mortgage the county auditor, must acknowledge satisfaction thereof in the margin of the record of the mortgage, or by execution of an instrument in writing, referring to the mortgage, and duly acknowledged and recorded. [C., '51, § 2093; R., '60, § 3670; C., '73, § 3327; C., '97, § 4295; 40 Ex. G. A., S. F. 241, § 5.]

12385. Penalty. If he fails to do so within thirty days after being requested in writing, he shall forfeit to the mortgagor or any grantee of the property who has paid the mortgage, the sum of twenty-five dollars. [C., '51, § 2093; R., '60, § 3670; C., '73, § 3327; C., '97, § 4295; 40 Ex. G. A., S. F. 241, § 5.]

12386. Identification—witnesses. When any mortgage is satisfied on the margin of the rec-

ord of the mortgage, as above provided, the person satisfying the same shall be identified to and his signature shall be witnessed by the county recorder or his deputy. [C., '97, § 4295; 40 Ex. G. A., S. F. 241, § 5.]

12387. Entry of foreclosure. When a judgment of foreclosure is entered in any court, the clerk shall make upon the margin of the record of the mortgage foreclosed a minute showing that fact, in what court foreclosed, and giving the date of the decree. [C., '73, § 3328; C., '97, § 4296.]

12388. Entry of satisfaction. When the judgment is fully paid off and satisfied upon the judgment docket of such court, the clerk shall enter satisfaction upon the margin of such mortgage, and he shall be allowed as compensation for such service the sum of twenty-five cents, to be taxed as a part of the costs in the case. [C., '73, § 3328; C., '97, § 4296.]

CHAPTER 527

FORFEITURE OF REAL ESTATE CONTRACTS

12389. Conditions prescribed.
 12390. Notice—when property is homestead.
 12391. Service.

12392. Compliance with notice.
 12393. Proof and record of service.
 12394. Scope of chapter.

12389. Conditions prescribed. A contract which provides for the sale of real estate located in this state, and for the forfeiture of the vendee's rights in such contract in case the vendee fails, in specified ways, to comply with said contract, shall, nevertheless, not be forfeited or canceled except as provided in this chapter. [C., '97, § 4299; S., '13, § 4299; 40 Ex. G. A., H. F. 270, § 1.]

12390. Notice—when property is homestead. Such forfeiture and cancellation shall be initiated by the vendor or by his successor in interest, by serving or causing to be served on the vendee or his successor in interest, if known to the vendor or his successor in interest, and on the party in possession of said real estate, a written notice which shall:

1. Reasonably identify said contract, and accurately describe the real estate covered thereby.

2. Specify the terms and conditions of said contract which have not been complied with.

3. Notify said party that said contract will stand forfeited and canceled unless said party within thirty days after the completed service of said notice performs the terms and conditions in default, and, in addition, pays the reasonable costs of serving the notice.

If the property affected by the contract, if within a city or town, does not exceed one-half acre in extent, and otherwise does not contain in the aggregate more than forty acres, and has assumed a homestead character, then the vendor or his successor in interest shall notify said vendee or his successor in interest, that said contract will stand forfeited and canceled, unless said party, within ninety days after the completed service of said notice, performs the terms and conditions in default, and, in addition, pays the reasonable cost of serving the notice. [C., '97, § 4299; S., '13, § 4299; 40 Ex. G. A., H. F. 270, § 2.]

12391. Service. Said notice may be served personally or by publication, on the same conditions, and in the same manner as is provided for the service of original notices, except that when the notice is served by publication no affidavit therefor shall be required before publication. Service by publication shall be deemed complete on the day of the last publication. [C., '97, § 4299; S., '13, § 4299; 40 Ex. G. A., H. F. 270, § 3.]

12392. Compliance with notice. The right to forfeit for breach occurring before said notice was served shall terminate if, prior to the expiration of the day for performance as specified in the notice, the party in default performs the terms and conditions as to which he is in default, and pays to the party not in default the reasonable cost of serving said notice. [C., '97, § 4300; S., '13, § 4300; 40 Ex. G. A., H. F. 270, § 4.]

12393. Proof and record of service. If the terms and conditions as to which there is de-

fault are not performed within said thirty days, or ninety days as the case may be, the party serving said notice or causing the same to be served, may file for record in the office of the county recorder a copy of the notice aforesaid with proofs of service attached or indorsed thereon (and, in case of service by publication, his personal affidavit that personal service could not be made within this state) and when so filed and recorded, the said record shall be constructive notice to all parties of the due forfeiture and cancellation of said contract. [S., '13, § 4300; 40 Ex. G. A., H. F. 270, § 5.]

12394. Scope of chapter. This chapter shall be operative in all cases where the intention of the parties, as gathered from the contract and surrounding circumstances, is to sell or to agree to sell an interest in real estate, any contract or agreement of the parties to the contrary notwithstanding. [C., '97, § 4301; 40 Ex. G. A., H. F. 270, § 6.]

CHAPTER 528

NUISANCES

- 12395. Nuisance—what constitutes—action to abate.
- 12396. What deemed nuisances.
- 12397. Penalty—abatement.

- 12398. Process.
- 12399. Warrant by justice of the peace.
- 12400. Stay of execution.
- 12401. Expenses—how collected.

12395. Nuisance—what constitutes—action to abate. Whatever is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the same and to recover damages sustained on account thereof. [C., '51, §§ 2131-2133; R., '60, §§ 3713-3715; C., '73, § 3331; C., '97, § 4302.]

12396. What deemed nuisances. The following are nuisances:

1. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.
2. The causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.
3. The obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.
4. The corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.
5. The obstructing or incumbering by fences, buildings, or otherwise the public roads, private

ways, streets, alleys, commons, landing places, or burying grounds.

6. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, or houses resorted to for the use of opium or hasheesh, or houses where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others. [C., '51, §§ 2759, 2761; R., '60, §§ 4409, 4411; C., '73, §§ 4089, 4091; C., '97, §§ 5078, 5080.]

12397. Penalty—abatement. Whoever is convicted of erecting, causing, or continuing a public or common nuisance as provided in this chapter, or at common law when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, and the court, with or without such fine, may order such nuisance abated, and issue a warrant as hereinafter provided. [C., '51, § 2762; R., '60, § 4412; C., '73, § 4092; C., '97, § 5081; S., '13, § 5081.]

12398. Process. When upon indictment, complaint, or civil action any person is found guilty of erecting, causing, or continuing a nuisance, the court before whom such finding is had may, in addition to the fine imposed, if any, or to the judgment for damages or cost for which a separate execution may issue, order that such nuisance be abated or removed at the

expense of the defendant, and, after inquiry into and estimating as nearly as may be the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor. [C., '51, § 2763; R., '60, § 4413; C., '73, § 4093; C., '97, § 5082.]

12399. Warrant by justice of the peace. When the conviction is had upon an action before a justice of the peace and no appeal is taken, the justice, after estimating as aforesaid the sum necessary to defray the expenses of removing or abating the nuisance, may issue a like warrant. [C., '51, § 2764; R., '60, § 4414; C., '73, § 4094; C., '97, § 5083.]

12400. Stay of execution. Instead of issuing such warrant, the court or justice may order the same to be stayed upon motion of the defendant, and upon his entering into an undertaking to the state, in such sum and with such surety as the court or justice may direct, conditioned either that the defendant will discontinue said nuisance, or that, within a time limited by the court, and not exceeding six months, he will cause the same to be abated and re-

moved, as either is directed by the court; and, upon his failure to perform the condition of his undertaking, the same shall be forfeited, and the court in term time or vacation, or justice of the peace, as the case may be, upon being satisfied of such default, may order such warrant forthwith to issue, and action may be brought on such undertaking. [C., '51, § 2765; R., '60, § 4415; C., '73, § 4095; C., '97, § 5084.]

12401. Expenses—how collected. The expense of abating a nuisance by virtue of a warrant can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant, or to the owner of the property levied upon; and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof. [C., '51, § 2766; R., '60, § 4416; C., '73, § 4096; C., '97, § 5085.]

CHAPTER 529

WASTE AND TRESPASS

- 12402. Treble damages.
- 12403. Forfeiture and eviction.
- 12404. Who deemed to have committed.
- 12405. Treble damages for injury to trees.
- 12406. Estate of remainder or reversion.

12402. Treble damages. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commit waste thereon, he is liable to pay three times the damages which have resulted from such waste, to the person who is entitled to sue therefor. [C., '51, § 2134; R., '60, § 3716; C., '73, § 3332; C., '97, § 4303.]

12403. Forfeiture and eviction. Judgment of forfeiture and eviction may be rendered against the defendant whenever the amount of damages so recovered is more than two-thirds the value of the interest such defendant has in the property injured, when the action is brought by the person entitled to the reversion. [C., '51, § 2135; R., '60, § 3717; C., '73, § 3333; C., '97, § 4304.]

12404. Who deemed to have committed. Any person whose duty it is to prevent waste, and who fails to use reasonable and ordinary care to avert the same, shall be held to have committed it. [C., '51, § 2136; R., '60, § 3718; C., '73, § 3334; C., '97, § 4305.]

12405. Treble damages for injury to trees. For wilfully injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or town lot, or on the public grounds of any city or town, or any land held by the state

- 12407. Action by heir.
- 12408. Purchaser at execution sale.
- 12409. Settlers on lands of state.
- 12410. Holder of tax certificate.
- 12411. Disposition of money.

for any purpose whatever, the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property. [C., '51, § 2137; R., '60, § 3719; C., '73, § 3335; C., '97, § 4306.]

12406. Estate of remainder or reversion. The owner of an estate in remainder or reversion may maintain either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years. [C., '51, § 2139; R., '60, § 3721; C., '73, § 3337; C., '97, § 4307.]

12407. Action by heir. An heir, whether a minor or of full age, may maintain these actions for injuries done in the time of his ancestor as well as in his own time, unless barred by the statute of limitations. [C., '51, § 2140; R., '60, § 3722; C., '73, § 3338; C., '97, § 4308.]

12408. Purchaser at execution sale. The purchaser of lands or tenements at execution sale may have and maintain an action against any person for either of the causes above mentioned, occurring or existing after such purchase; but this provision shall not be construed to forbid the person occupying the lands in the meantime from using them in the ordinary course of husbandry, or taking timber with

which to make suitable repairs thereon, unless the timber so taken shall be of higher grade than required, in which case he shall be held guilty of waste and liable accordingly. [C., '51, §§ 2141-2143; R., '60, §§ 3723-3725; C., '73, §§ 3339-3341; C., '97, § 4309.]

12409. Settlers on lands of state. Any person settled upon and occupying any portion of the public lands held by the state is not liable as a trespasser for improving or cultivating it in the ordinary course of husbandry, nor for taking and using timber or other materials necessary and proper to enable him to do so, provided the timber and other materials are taken from land properly constituting a part of the "claim" or tract of land so settled upon and occupied by him. [C., '51, § 2144; R., '60, § 3726; C., '73, § 3342; C., '97, § 4310.]

12410. Holder of tax certificate. The owner of a treasurer's certificate of purchase of land sold for taxes may recover treble damages of any person wilfully committing waste or trespass thereon. [C., '73, § 3343; C., '97, § 4311.]

12411. Disposition of money. All money recovered in an action brought under the preceding section shall be paid by the officer collecting it to the auditor of the county in which the lands are situated, which shall be held by him, and an entry thereof made in a book kept for that purpose, until the lands are redeemed, or a treasurer's deed therefor executed to the holder of said certificate. If redemption is made, the money shall be paid to the owner of the land, and if not, to the person to whom the deed is executed. [C., '73, § 3344; C., '97, § 4312.]

CHAPTER 530

LIBEL AND SLANDER

12412. Pleading.

12413. Libel—retraction—actual damages.

12414. Retraction — actual — special—exemplary damages.

12412. Pleading. In an action for slander or libel, it shall not be necessary to state any extrinsic facts for the purpose of showing the application to the plaintiff of any defamatory matter out of which the cause of action arose, or that the matter was used in a defamatory sense; but it shall be sufficient to state the defamatory sense in which such matter was used, and that the same was spoken or published concerning the plaintiff. [R., '60, § 2928; C., '73, § 2681; C., '97, § 3592.]

12413. Libel—retraction—actual damages. In any action for damages for the publication of a libel in a newspaper, if the defendant can show that such libelous matter was published through misinformation or mistake, the plaintiff shall recover no more than actual damages, unless a retraction be demanded and refused as hereinafter provided. Plaintiff shall serve upon the publisher at the principal place of publication a notice specifying the statements claimed to be libelous, and requesting that the same be withdrawn. [S. S., '15, § 3592-a.]

12414. Retraction — actual—special—exemplary damages. If a retraction or correction thereof be not published in as conspicuous a place and type in said newspaper as were the statements complained of, in a regular issue

12415. Candidate for office—retraction—time.

12416. Proof of malice.

thereof published within two weeks after such service, plaintiff may allege such notice, demand, and failure to retract in his complaint and may recover both actual, special, and exemplary damages if his cause of action be maintained. If such retraction be so published, he may still recover such actual, special, and exemplary damages, unless the defendant shall show that the libelous publication was made in good faith, without malice and under a mistake as to the facts. [S. S., '15, § 3592-a.]

12415. Candidate for office — retraction — time. If the plaintiff was a candidate for office at the time of the libelous publication, no retraction shall be available unless published in a conspicuous place on the editorial page, nor if the libel was published within two weeks next before the election; provided that this and the two preceding sections shall not apply to any libel imputing unchastity to a woman. [S. S., '15, § 3592-a.]

12416. Proof of malice. In actions for slander or libel, an unproved allegation of the truth of the matter charged shall not be deemed proof of malice, unless the jury on the whole case finds that such defense was made with malicious intent. [R., '60, § 2929; C., '73, § 2682; C., '97, § 3593.]

CHAPTER 531

QUO WARRANTO

- 12417. For what causes.
- 12418. Joinder or counterclaim.
- 12419. By county attorney.
- 12420. By private person.
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12417. **For what causes.** A civil action by ordinary proceedings may be brought in the name of the state in the following cases:

1. Against any person unlawfully holding or exercising any public office or franchise within this state, or any office in any corporation created by this state.

2. Against any public officer who has done or suffered an act which works a forfeiture of his office.

3. Against any person acting as a corporation within the state without being authorized by law.

4. Against any corporation doing or omitting acts which amount to a forfeiture of its rights and privileges as a corporation, or exercising powers not conferred by law.

5. Against any person claiming under any patent, granted by the proper authorities of the state, for the purpose of annulling or vacating the same as having been obtained by fraud, or through mistake or ignorance of a material fact, or when the defendants have done or omitted an act in violation of the terms or conditions on which the letters were granted, or have by any other means forfeited the interest acquired under the same. [C., '51, §§ 2151, 2175; R., '60, §§ 3732, 3757; C., '73, § 3345; C., '97, § 4313.]

12418. **Joinder or counterclaim.** In such action there shall be no joinder of any other cause of action, nor any counterclaim. [R., '60, § 4180; C., '73, § 3346; C., '97, § 4314.]

12419. **By county attorney.** Such action may be commenced by the county attorney at his discretion, and must be so commenced when directed by the governor, the general assembly, or a court of record. [C., '51, §§ 2152, 2153; R., '60, §§ 3733, 3734; C., '73, § 3347; C., '97, § 4315.]

12420. **By private person.** If the county attorney, on demand, neglects or refuses to commence the same, any citizen of the state having an interest in the question may apply to

the court in which the action is to be commenced, or to the judge thereof, for leave to do so, and, upon obtaining such leave, may bring and prosecute the action to final judgment. [R., '60, § 3735; C., '73, § 3348; C., '97, § 4316.]

12421. **Petition.** The petition shall contain a statement of the facts which constitute the grounds of the proceeding, and, with the notice and all the subsequent pleadings and proceedings, shall conform to the rules given for procedure in civil actions, except so far as the same are modified by this chapter. [C., '51, §§ 2154-2156; R., '60, §§ 3736-3738; C., '73, § 3349; C., '97, § 4317.]

12422. **Costs.** When such action is brought upon the relation of a private individual, that fact shall be stated in the petition, and the order allowing him to prosecute may require that he shall be responsible for costs in case they are not adjudged against the defendant. In other cases the payment of costs shall be regulated by the same rule as in criminal actions. [C., '51, § 2164; R., '60, § 3746; C., '73, § 3350; C., '97, § 4318.]

12423. **Right to an office.** When the defendant is holding an office to which another is claiming the right, the petition shall set forth the name of such claimant, and the trial must, if practicable, determine the rights of the contesting parties. [C., '51, § 2157; R., '60, § 3739; C., '73, § 3351; C., '97, § 4319.]

12424. **Several claimants.** When several persons claim to be entitled to the same office or franchise, a petition may be filed against all or any portion thereof, in order to try their respective rights thereto. [C., '51, § 2161; R., '60, § 3743; C., '73, § 3352; C., '97, § 4320.]

12425. **Judgment.** If judgment is rendered in favor of such claimant, he shall proceed to exercise the functions of the office, after he has qualified as required by law. [C., '51, § 2158; R., '60, § 3740; C., '73, § 3353; C., '97, § 4321.]

12426. Books and papers. The court, after such judgment, shall order the defendant to deliver over all books and papers in his custody or under his control belonging to said office. [C., '51, § 2159; R., '60, § 3741; C., '73, § 3354; C., '97, § 4322.]

12427. Action for damages. When judgment has been rendered in favor of the claimant he may, at any time within one year thereafter, bring an action against the defendant, and recover the damages he has sustained by reason of the act of the defendant. [C., '51, § 2160; R., '60, § 3742; C., '73, § 3355; C., '97, § 4323.]

12428. Judgment of ouster. If the defendant is found guilty of unlawfully holding or exercising any office, franchise, or privilege, or if a corporation is found to have violated the law by which it holds its existence, or is acting contrary to law, or in any manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted and altogether excluded from such office, franchise, or privilege, and also that he pay the costs of the proceeding. [C., '51, § 2162; R., '60, § 3744; C., '73, § 3356; C., '97, § 4324.]

12429. Judgment in other cases. If the defendant is found to have exercised merely certain individual powers and privileges to which he was not entitled, the judgment shall be the same as above directed, but only in relation to those particulars in which he is thus exceeding the lawful exercise of his rights and privileges. [C., '51, § 2163; R., '60, § 3745; C., '73, § 3357; C., '97, § 4325.]

12430. Pretended corporation — costs. In case judgment is rendered against a pretended but not real corporation, the cost may be collected from any person who has been acting as an officer or proprietor thereof. [C., '51, § 2165; R., '60, § 3747; C., '73, § 3358; C., '97, § 4326.]

12431. Action against officers of corporation. When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by anyone injured thereby. [C., '51, § 2173; R., '60, § 3755; C., '73, § 3359; C., '97, § 4327.]

12432. Corporation dissolved. If a corporation is ousted and dissolved by the proceedings

herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders. [C., '51, § 2166; R., '60, § 3748; C., '73, § 3360; C., '97, § 4328.]

12433. Bond. Said trustees shall enter into a bond in such a penalty and with such security as the court approves, conditioned for the faithful discharge of their trust. [C., '51, § 2167; R., '60, § 3749; C., '73, § 3361; C., '97, § 4329.]

12434. Action on. Action may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties. [C., '51, § 2168; R., '60, § 3750; C., '73, § 3362; C., '97, § 4330.]

12435. Duty of trustees. The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled. [C., '51, § 2169; R., '60, § 3751; C., '73, § 3363; C., '97, § 4331.]

12436. Books delivered to. The court shall, upon application for that purpose, order any officer of such corporation, or any other person having possession of any of the effects, books, or papers thereof, in any wise necessary for the settlement of its affairs, to deliver the same to the trustees. [C., '51, § 2170; R., '60, § 3752; C., '73, § 3364; C., '97, § 4332.]

12437. Inventory. As soon as practicable after their appointment, the trustees shall make and file in the office of the clerk of the court an inventory, sworn to by each of them, of all the effects, rights, and credits which come to their possession or knowledge. [C., '51, § 2171; R., '60, § 3753; C., '73, § 3365; C., '97, § 4333.]

12438. Powers. They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders, respectively, to the extent of the effects which come into their hands. [C., '51, § 2172; R., '60, § 3754; C., '73, § 3366; C., '97, § 4334.]

12439. Penalty for refusing to obey order. Any person who without good reason refuses to obey an order of the court, as herein provided, shall be guilty of contempt, and fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail until he complies therewith, and shall be further liable for the damages resulting to any person on account of his disobedience. [C., '51, § 2174; R., '60, § 3756; C., '73, § 3367; C., '97, § 4335.]

CHAPTER 532

MANDAMUS

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12440. Definition. The action of mandamus is one brought to obtain an order commanding an inferior tribunal, board, corporation, or person to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust or station. [R., '60, § 3761; C., '73, § 3373; C., '97, § 4341; S., '13, § 4341.]

12441. Discretion—exercise of. Where discretion is left to the inferior tribunal or person, the mandamus can only compel it to act, but can not control such discretion. [C., '51, § 2180; R., '60, § 3763; C., '73, § 3373; C., '97, § 4341; S., '13, § 4341.]

12442. Nature of action. All such actions shall be tried as equitable actions. [S., '13, § 4341.]

12443. Order issued. The order may be issued by the district or superior court to any inferior tribunal, or to any corporation, officer, or person; and by the supreme court to any district or superior court, if necessary, and in any other case where it is found necessary for that court to exercise its legitimate power. [C., '51, §§ 2179, 2181; R., '60, §§ 3761, 3764; C., '73, § 3374; C., '97, § 4342.]

12444. Auxiliary remedy. The plaintiff in any action, except those brought for the recovery of specific real or personal property, may also, as an auxiliary relief, have an order of mandamus to compel the performance of a duty established in such action. [R., '60, § 3767; C., '73, § 3375; C., '97, § 4343.]

12445. Enforceable duty defined. If such duty, the performance of which is sought to be compelled, is not one resulting from an office, trust, or station, it must be one for the breach of which a legal right to damages is already complete at the commencement of the action, and must also be a duty of which a court of equity would enforce the performance. [R., '60, § 3767; C., '73, § 3375; C., '97, § 4343.]

12446. Other plain, speedy, and adequate remedy. An order of mandamus shall not be issued in any case where there is a plain, speedy,

and adequate remedy in the ordinary course of the law, save as herein provided. [C., '51, § 2182; R., '60, § 3765; C., '73, § 3376; C., '97, § 4344.]

12447. When order granted. The order of mandamus is granted on the petition of any private party aggrieved, without the concurrence of the prosecutor for the state, or on the petition of the state by the county attorney, when the public interest is concerned, and is in the name of such private party or of the state, as the case may be in fact brought. [R., '60, § 3761; C., '73, § 3377; C., '97, § 4345.]

12448. Petition. The plaintiff in such action shall state his claim, and shall also state facts sufficient to constitute a cause for such claim, and shall also set forth that the plaintiff, if a private individual, is personally interested therein, and that he sustains and may sustain damage by the nonperformance of such duty, and that performance thereof has been demanded by him, and refused or neglected, and shall pray an order of mandamus commanding the defendant to fulfill such duty. [R., '60, § 3762; C., '73, § 3378; C., '97, § 4346.]

12449. Other pleadings. The pleadings and other proceedings in any action in which a mandamus is claimed shall be the same, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages. [R., '60, § 3766; C., '73, § 3379; C., '97, § 4347.]

12450. Injunction may issue—joinder. When the action is brought by a private person, it may be joined with a cause of action for such an injunction as may be obtained by ordinary proceedings, or with the causes of action specified in this chapter, but no other joinder and no counterclaim shall be allowed. [R., '60, § 4181; C., '73, § 3380; C., '97, § 4348.]

12451. Peremptory order. When the plaintiff recovers judgment, the court may include therein a peremptory order of mandamus directed to the defendant, commanding him forthwith to perform the duty to be enforced, to-

gether with a money judgment for damages and costs, upon which an ordinary execution may issue. [R., '60, § 3768; C., '73, § 3381; C., '97, § 4349.]

12452. Form of order—return. The order shall simply command the performance of the duty, shall be directed to the party, and may be issued in term or vacation, returnable forthwith, and no return except that of compliance shall be allowed; but time to return it may, upon sufficient grounds, be allowed by the court or judge, either with or without terms. [R., '60, § 3769; C., '73, § 3382; C., '97, § 4350.]

12453. Performance by another—costs. The court may, upon application of the plaintiff, besides or instead of proceeding against the defendant by attachment, direct that the act required to be done may be done by the plain-

tiff or some other person appointed by the court, at the expense of the defendant, and, upon the act being done, the amount of such expense may be ascertained by the court, or by a referee appointed by the court or judge, and the court may render judgment for the amount of the expense and cost, and enforce payment thereof by execution. [R., '60, § 3770; C., '73, § 3383; C., '97, § 4351.]

12454. Temporary orders. During the pendency of the action, the court, or judge in vacation, may make temporary orders for preventing damage or injury to the plaintiff until the action is decided. [R., '60, § 3771; C., '73, § 3384; C., '97, § 4352.]

12455. Appeal by state. When the state is a party, it may appeal without security. [R., '60, § 3772; C., '73, § 3385; C., '97, § 4353.]

CHAPTER 533

CERTIORARI

- 12456. When writ may issue.
- 12457. By whom granted.
- 12458. Stay of proceedings—bond.
- 12459. Petition.
- 12460. Discretion as to notice.
- 12461. When notice is necessary.

12456. When writ may issue. The writ of certiorari may be granted when authorized by law, and in all cases where an inferior tribunal, board, or officer exercising judicial functions is alleged to have exceeded his proper jurisdiction, or is otherwise acting illegally, and there is no other plain, speedy, and adequate remedy. [C., '51, § 1965; R., '60, § 3487; C., '73, § 3216; C., '97, § 4154.]

12457. By whom granted. The writ may be granted by the district court, or judge thereof, but if to be directed to said court or judge, or to the superior court or its judge, then by the supreme court, or one of its judges, and shall command the defendant therein to certify to the court from which it issues, at a specified time and place, a transcript of the records and proceedings, as well as the facts in the case, describing or referring to them, or any of them, with convenient certainty, and also to have then and there the writ, and, when allowed by a court, it shall be issued by the clerk thereof and under its seal. [C., '51, § 1966; R., '60, § 3488; C., '73, § 3217; C., '97, § 4155.]

12458. Stay of proceedings—bond. If a stay of proceedings is sought, the writ can only issue upon the petitioner giving bond, the penalty and conditions thereof to be fixed by the court or judge allowing the writ, which bond with the sureties thereon may be approved by such court or judge, or the clerk issuing the writ, and in either case to be filed with the clerk. [C., '51, § 1967; R., '60, § 3489; C., '73, § 3218; C., '97, § 4156.]

- 12462. Service and return.
- 12463. Defective return.
- 12464. Trial—judgment.
- 12465. Nature of action.
- 12466. Appeal.
- 12467. Limitation.

12459. Petition. The petition therefor must state facts constituting a case wherein the writ may issue, and be verified. [C., '51, § 1968; R., '60, § 3490; C., '73, § 3219; C., '97, § 4157.]

12460. Discretion as to notice. The court or judge, before issuing the writ, may require notice of the application to be given the adverse party, or may grant it without. [C., '51, § 1968; R., '60, § 3490; C., '73, § 3219; C., '97, § 4157.]

12461. When notice is necessary. If a stay of proceedings is sought, the writ can only be granted upon reasonable notice of the time, place, and court or judge before whom the application will be made, which shall be fixed by the court or judge to whom the application is presented. [C., '73, § 3219; C., '97, § 4157.]

12462. Service and return. The writ must be served and the proof of such service made in the same manner as is prescribed for the original notice in the district court, except the original shall be left with the defendant, and the return of service made upon a copy thereof. [C., '51, § 1969; R., '60, § 3491; C., '73, § 3220; C., '97, § 4158.]

12463. Defective return. If the return of the writ be defective, the court may order a further return to be made, and compel obedience to the writ and to such further order by attachment, if necessary. [C., '51, § 1970; R., '60, § 3492; C., '73, § 3221; C., '97, § 4159.]

12464. Trial—judgment. When full return has been made, the court must proceed to hear the parties upon the record, proceedings, and

facts as certified, and such other testimony, oral or written, as either party may introduce, and give judgment affirming or annulling the proceedings in whole or in part, or, in its discretion, correcting the same and prescribing the manner in which the parties or either of them shall further proceed. [C., '51, § 1971; R., '60, § 3493; C., '73, § 3222; C., '97, § 4160.]

12465. Nature of action. The action shall be prosecuted by ordinary proceedings so far as applicable. [C., '73, § 3223; C., '97, § 4161.]

12466. Appeal. From the judgment of the court an appeal lies as in ordinary actions, and the record shall be prepared in the same manner. [C., '51, § 1972; R., '60, § 3494; C., '73, § 3223; C., '97, § 4161.]

12467. Limitation. No writ shall be granted after twelve months from the time it is alleged the inferior court, tribunal, board, or officer exceeded its or his jurisdiction, or otherwise acted illegally. [C., '73, § 3224; C., '97, § 4162.]

CHAPTER 534

HABEAS CORPUS

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12468. Petition. The petition for the writ of habeas corpus must state:

1. That the person in whose behalf it is sought is restrained of his liberty, and the person by whom and the place where he is so restrained, mentioning the names of the parties, if known, and if unknown describing them with as much particularity as practicable.

2. The cause or pretense of such restraint, according to the best information of the applicant; and if by virtue of any legal process, a copy thereof must be annexed, or a satisfactory reason given for its absence.

3. That the restraint is illegal, and wherein.

4. That the legality of the imprisonment has not already been adjudged upon a prior proceeding of the same character, to the best knowledge and belief of the applicant.

5. Whether application for the writ has been before made to and refused by any court or judge, and if so, a copy of the petition in that case must be attached, with the reasons for the refusal, or satisfactory reasons given for the failure to do so. [C., '51, § 2213; R., '60, § 3801; C., '73, § 3449; C., '97, § 4417.]

12469. Verification—presentation to court. The petition must be sworn to by the person confined, or by someone in his behalf, and pre-

sent to some court or officer authorized to allow the writ. [C., '51, § 2214; R., '60, § 3802; C., '73, § 3450; C., '97, § 4418.]

12470. Writ allowed—service. The writ may be allowed by the supreme, district, or superior court, or by any judge of either of those courts, and may be served in any part of the state. [C., '51, § 2215; R., '60, § 3803; C., '73, § 3451; C., '97, § 4419.]

12471. Application—to whom made. Application for the writ must be made to the court or judge most convenient in point of distance to the applicant, and the more remote court or judge, if applied to therefor, may refuse the same unless a sufficient reason be stated in the petition for not making the application to the more convenient court or a judge thereof. [C., '51, § 2217; R., '60, § 3805; C., '73, § 3452; C., '97, § 4420; S., '13, § 4420.]

12472. Inmates of state institutions. When the applicant is an inmate of or confined in a state institution the provisions of the preceding section relating to the court to which or the judge to whom applications must be made are mandatory, and the convenience or preference of an attorney or witness or other person interested in the release of the applicant

shall not be a sufficient reason to authorize a more remote court or judge to assume jurisdiction. [S., '13, § 4420.]

12473. Writ refused. If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the court or judge must refuse to allow the writ. [C., '51, § 2218; R., '60, § 3806; C., '73, § 3453; C., '97, § 4421.]

12474. Reasons indorsed. If the writ is disallowed, the court or judge shall cause the reasons thereof to be appended to the petition and returned to the person applying for the writ. [C., '51, § 2221; R., '60, § 3809; C., '73, § 3454; C., '97, § 4422.]

12475. Form of writ. If the petition is in accordance with the foregoing requirements, and states sufficient grounds for the allowance of the writ, it shall issue, and may be substantially as follows:

The State of Iowa,

To the sheriff of, etc. (or to A..... B....., as the case may be):

You are hereby commanded to have the body of C..... D....., by you unlawfully detained, as is alleged, before the court (or before me, or before E..... F....., judge, etc., as the case may be), at, on (or immediately after being served with this writ), to be dealt with according to law, and have you then and there this writ, with a return thereon of your doings in the premises. [C., '51, § 2219; R., '60, § 3807; C., '73, § 3455; C., '97, § 4423.]

12476. How issued. When the writ is allowed by a court, it must be issued by the clerk, but when by a judge, he must issue it himself, subscribing his name thereto. [C., '51, § 2220; R., '60, § 3808; C., '73, § 3456; C., '97, § 4424.]

12477. Penalty for refusing. Any judge, whether acting individually or as a member of the court, who wrongfully and wilfully refuses the allowance of the writ when properly applied for, shall forfeit to the party aggrieved the sum of one thousand dollars. [C., '51, § 2222; R., '60, § 3810; C., '73, § 3457; C., '97, § 4425.]

12478. Issuance on judge's own motion. When any court or judge authorized to grant the writ has evidence, from a judicial proceeding before him, that any person within the jurisdiction of such court or officer is illegally imprisoned or restrained of his liberty, such court or judge shall issue the writ or cause it to be issued, on its or his own motion. [C., '51, § 2223; R., '60, § 3811; C., '73, § 3458; C., '97, § 4426.]

12479. County attorney notified. The court or officer allowing the writ must cause the county attorney of the proper county to be informed thereof, and of the time and place where and when it is made returnable. [C., '51, § 2240; R., '60, § 3828; C., '73, § 3459; C., '97, § 4427.]

12480. Service of writ. The writ may be served by the sheriff, or by any other person appointed in writing for that purpose by the court or judge by whom it is issued or allowed. If served by any other than the sheriff, he possesses the same power, and is liable to the same penalty for a nonperformance of his duty, as though he were the sheriff. [C., '51, § 2224; R., '60, § 3812; C., '73, § 3460; C., '97, § 4428.]

12481. Mode. The service shall be made by leaving the original writ with the defendant, and preserving a copy thereof on which to make the return of service, but a failure in this respect shall not be held material. [C., '51, § 2225; R., '60, § 3813; C., '73, § 3461; C., '97, § 4429.]

12482. Defendant not found. If the defendant can not be found, or if he has not the plaintiff in custody, the service may be made upon any person who has, in the same manner and with the same effect as though he had been made defendant therein. [C., '51, § 2226; R., '60, § 3814; C., '73, § 3462; C., '97, § 4430.]

12483. Power of officer. If the defendant conceals himself, or refuses admittance to the person attempting to serve the writ, or if he attempts wrongfully to carry the plaintiff out of the county or the state after the service of the writ, the sheriff, or the person who is attempting to serve or who has served it, is authorized to arrest the defendant and bring him, together with the plaintiff, forthwith before the officer or court before whom the writ is made returnable. [C., '51, § 2227; R., '60, § 3815; C., '73, § 3463; C., '97, § 4431.]

12484. Arrest. In order to make the arrest, the sheriff or other person having the writ possesses the same power as is given to a sheriff for the arrest of a person charged with a felony. [C., '51, § 2228; R., '60, § 3816; C., '73, § 3464; C., '97, § 4432.]

12485. Plaintiff taken. If the plaintiff can be found, and if no one appears to have the charge or custody of him, the person having the writ may take him into custody and make return accordingly, and to get possession of the plaintiff's person in such cases he possesses the same power as is given by the preceding section for the arrest of the defendant. [C., '51, § 2229; R., '60, § 3817; C., '73, § 3465; C., '97, § 4433.]

12486. Defects in writ. The writ must not be disobeyed for any defects of form or misdescription of the plaintiff or defendant, provided enough is stated to show the meaning and intent thereof. [C., '51, § 2234; R., '60, § 3822; C., '73, § 3466; C., '97, § 4434.]

12487. Penalty for eluding writ. If the defendant attempts to elude the service of the writ, or to avoid the effect thereof by transferring the plaintiff to another, or by concealing him, he shall, on conviction, be imprisoned in the penitentiary or county jail not more than

one year, and fined not exceeding one thousand dollars, and any person knowingly aiding or abetting in any such act shall be subject to like punishment. [C., '51, § 2253; R., '60, § 3841; C., '73, § 3467; C., '97, § 4435.]

12488. Refusal to give copy of process. An officer refusing to deliver a copy of any legal process by which he detains the plaintiff in custody to any person who demands it and tenders the fees therefor, shall forfeit two hundred dollars to the person who demands it. [C., '51, § 2254; R., '60, § 3842; C., '73, § 3468; C., '97, § 4436.]

12489. Preliminary writ. The court or judge to whom the application for the writ is made, if satisfied that the plaintiff would suffer any irreparable injury before he could be relieved by the proceedings above authorized, may issue an order to the sheriff, or any other person selected instead, commanding him to bring the plaintiff forthwith before such court or judge. [C., '51, § 2230; R., '60, § 3818; C., '73, § 3469; C., '97, § 4437.]

12490. Arrest of defendant. If the evidence is sufficient to justify the arrest of the defendant for a criminal offense committed in connection with the illegal detention of the plaintiff, the order must also direct the arrest of the defendant. [C., '51, § 2231; R., '60, § 3819; C., '73, § 3470; C., '97, § 4438.]

12491. Execution of writ—return. The officer or person to whom the order is directed must execute the same by bringing the defendant, and also the plaintiff if required, before the court or judge issuing it, and the defendant must make return to the writ in the same manner as if the ordinary course had been pursued. [C., '51, § 2232; R., '60, § 3820; C., '73, § 3471; C., '97, § 4439.]

12492. Examination. The defendant may also be examined and committed, or bailed, or discharged, according to the nature of the case. [C., '51, § 2233; R., '60, § 3821; C., '73, § 3472; C., '97, § 4440.]

12493. Informalities. Any person served with the writ is to be presumed to be the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person. [C., '51, § 2235; R., '60, § 3823; C., '73, § 3473; C., '97, § 4441.]

12494. Appearance—answer. Service being made in any of the modes herein provided, the defendant must appear at the proper time and answer the petition, but no verification shall be required to the answer. [C., '51, § 2236; R., '60, §§ 3824, 4182; C., '73, § 3474; C., '97, § 4442.]

12495. Body to be produced. He must also produce the body of the plaintiff, or show good cause for not doing so. [C., '51, § 2237; R., '60, § 3825; C., '73, § 3475; C., '97, § 4443.]

12496. Penalty—contempt. A wilful failure to comply with the above requirements will

render the defendant liable to be attached for contempt, and to be imprisoned till he complies, and shall subject him to the forfeiture of one thousand dollars to the party thereby aggrieved. [C., '51, § 2238; R., '60, § 3826; C., '73, § 3476; C., '97, § 4444.]

12497. Attachment. Such attachment may be served by the sheriff or any other person authorized by the court or judge, who shall also be empowered to produce the body of the plaintiff forthwith, and has, for this purpose, the same powers as are above conferred in similar cases. [C., '51, § 2239; R., '60, § 3827; C., '73, § 3477; C., '97, § 4445.]

12498. Answer. The defendant in his answer must state whether he then has, or at any time has had, the plaintiff under his control and restraint, and if so the cause thereof. [C., '51, § 2241; R., '60, § 3829; C., '73, § 3478; C., '97, § 4446.]

12499. Transfer of plaintiff. If he has transferred him to another person, he must state that fact, and to whom, and the time thereof, as well as the reason or authority therefor. [C., '51, § 2242; R., '60, § 3830; C., '73, § 3479; C., '97, § 4447.]

12500. Copy of process. If he holds him by virtue of a legal process or written authority, a copy thereof must be annexed. [C., '51, § 2243; R., '60, § 3831; C., '73, § 3480; C., '97, § 4448.]

12501. Demurrer or reply—trial. The plaintiff may demur or reply to the defendant's answer, but no verification shall be required to the reply, and all issues joined therein shall be tried by the judge or court. [C., '51, § 2244; R., '60, § 3832; C., '73, § 3481; C., '97, § 4449.]

12502. Commitment questioned. The reply may deny the sufficiency of the testimony to justify the action of the committing magistrate, on the trial of which issue all written testimony before such magistrate may be given in evidence before the court or judge, in connection with any other testimony which may then be produced. [C., '51, § 2245; R., '60, § 3833; C., '73, § 3482; C., '97, § 4450.]

12503. Nonpermissible issues. It is not permissible to question the correctness of the action of the grand jury in finding a bill of indictment, or of the trial jury in the trial of a cause, nor of a court or judge when lawfully acting within the scope of their authority. [C., '51, § 2246; R., '60, § 3834; C., '73, § 3483; C., '97, § 4451.]

12504. Discharge. If no sufficient legal cause of detention is shown, the plaintiff must be discharged. [C., '51, § 2247; R., '60, § 3835; C., '73, § 3484; C., '97, § 4452.]

12505. Plaintiff held. Although the commitment of the plaintiff may have been irregular, if the court or judge is satisfied from the evidence that he ought to be held to bail, or committed, either for the offense charged or

any other, the order may be made accordingly. [C., '51, § 2248; R., '60, § 3836; C., '73, § 3485; C., '97, § 4453.]

12506. Bail increased or diminished. The plaintiff may also, in any case, be committed, admitted to bail, or his bail be reduced or increased, as justice may require. [C., '51, § 2249; R., '60, § 3837; C., '73, § 3486; C., '97, § 4454.]

12507. Plaintiff retained in custody. Until the sufficiency of the cause of restraint is determined, the defendant may retain the plaintiff in his custody, and may use all necessary and proper means for that purpose. [C., '51, § 2250; R., '60, § 3838; C., '73, § 3487; C., '97, § 4455.]

12508. Right to be present waived. The plaintiff may, in writing, or by attorney, waive his right to be present at the trial, in which case the proceedings may be had in his absence. The writ will in such cases be modified accordingly. [C., '51, § 2251; R., '60, § 3839; C., '73, § 3488; C., '97, § 4456.]

12509. Disobedience of order. Disobedience to any order of discharge will subject the

defendant to attachment for contempt, and also to the forfeiture of one thousand dollars to the party aggrieved, besides all damages sustained by him in consequence thereof. [C., '51, § 2252; R., '60, § 3840; C., '73, § 3489; C., '97, § 4457.]

12510. Papers filed with clerk. When the proceedings are before a judge, except when the writ is refused, all the papers in the case, including his final order, shall be filed with the clerk of the district court of the county wherein the final proceedings were had, and a memorandum thereof shall be entered by the clerk upon his judgment docket. [C., '51, § 2255; R., '60, § 3843; C., '73, § 3490; C., '97, § 4458.]

12511. Costs. If the plaintiff is discharged, the costs shall be taxed to the defendant, unless he is an officer holding the plaintiff in custody under a warrant of arrest or commitment, or under other legal process, in which case the costs shall be taxed to the county. If the plaintiff's application is refused, the costs shall be taxed against him, and, in the discretion of the court, against the person who filed the petition in his behalf. [C., '97, § 4459.]

CHAPTER 535

INJUNCTIONS

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12512. Writ as independent remedy. An injunction may be obtained as an independent remedy in an action by equitable proceedings, in all cases where such relief would have been granted in equity previous to the adoption of the code. [C., '51, § 2189; R., '60, § 3773; C., '73, § 3386; C., '97, § 4354.]

12513. Writ as auxiliary remedy. In all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action by ordinary proceedings, he may, in the same cause, pray and have a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the commission of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right, and he may also, in the same action, include a claim for damages or other

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redress. [R., '60, § 3778; C., '73, § 3386; C., '97, § 4354.]

12514. Temporary or permanent. In any of the cases mentioned in the two preceding sections the injunction may either be a part of the judgment rendered in the action, or it may, if proper grounds therefor are shown, be granted by order at any stage of the case before judgment, and shall then be known as a temporary injunction. [C., '73, § 3387; C., '97, § 4355.]

12515. Temporary—when allowed. Where it appears by the petition therefor, which must be supported by affidavit, that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act which would produce great or irreparable

injury to the plaintiff; or where, during litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. It may also be granted in any case where it is specially authorized by statute. [C., '51, § 2191; R., '60, § 3775; C., '73, § 3388; C., '97, § 4356.]

12516. By whom granted. A temporary injunction may be granted:

1. By the court or judge thereof in which the action is pending or is to be brought.

2. By any judge of the district court of such district, or a superior court in the proper county.

3. By any judge of the supreme, or a judge of any other district court. [C., '51, § 2191; R., '60, § 3775; C., '73, § 3389; C., '97, § 4357.]

12517. General rule. In cases where an action is pending, and it is applied for to affect the subject matter thereof, it can only be granted by the court or judge thereof in which such action is pending. [C., '51, § 2191; R., '60, § 3775; C., '73, § 3389; C., '97, § 4357.]

12518. Limitation on district or superior judge. Nor shall it be granted by any judge mentioned in the second subdivision of section 12516, unless it satisfactorily appears by affidavit that the court or judge thereof in which the action is brought can not, for want of time, sickness, or other disability, hear the same, or that the residence of the judge is inconvenient, or that it is for some sufficient reason impracticable to make the application to him. [C., '51, § 2191; R., '60, § 3775; C., '73, § 3389; C., '97, § 4357.]

12519. Limitation on other judges. Nor shall it be granted by any judge mentioned in the third subdivision of section 12516, unless it be made satisfactorily to appear to such judge, by affidavit, that the application therefor can not, for some sufficient reason, be made to either of the courts or judges mentioned in the first or second subdivision of section 12516. [C., '51, § 2191; R., '60, § 3775; C., '73, § 3389; C., '97, § 4357.]

12520. Notice to defendant. An injunction shall not be granted against a defendant who has answered, unless he has had notice of the application. [C., '73, § 3390; C., '97, § 4358.]

12521. When notice necessary. An injunction to stop the general and ordinary business of a corporation, or the operations of a railway, or of a municipal corporation, or the erection of any building or other work, or the board of supervisors of any county, or to restrain a nuisance, can only be granted upon reasonable notice of the time and place of the application to the party to be enjoined. [C., '73, § 3391; C., '97, § 4359.]

12522. Granting during term time. Nor shall any temporary writ of injunction be

allowed by any judge during term time, except the petition therefor shall be first filed with the clerk and entered upon the court calendar of that term, and the order allowing the same, if granted, shall be entered therein. [C., '97, § 4359.]

12523. Refusal of writ conclusive. No injunction shall be granted by a judge after the application therefor has been overruled by the court; nor by a court or judge, when it has been refused by the court or judge thereof in which the action is brought. A judge refusing an injunction shall, if requested by either party, give him a certificate thereof. [C., '73, § 3392; C., '97, § 4360.]

12524. Motion to dissolve. The defendant may move to dissolve the injunction, either before or after the filing of the answer. [C., '51, § 2206; R., '60, § 3790; C., '73, § 3393; C., '97, § 4361.]

12525. Order issued. If the order is made by the court, the clerk shall make an entry thereof in the court record, and issue the order accordingly. If made by the judge, he must indorse the said order upon the petition. [C., '51, § 2192; R., '60, § 3776; C., '73, § 3394; C., '97, § 4362.]

12526. Bond. The order of allowance must direct the injunction to issue only after the filing of a bond in the office of the clerk of the proper court, in a penalty fixed in the order, with sureties to be approved by the clerk, and conditioned for the payment of all damages which may be adjudged against petitioner by reason of such injunction. [C., '51, § 2193; R., '60, § 3777; C., '73, § 3395; C., '97, § 4363.]

12527. Restraint on proceedings or judgment—venue. When proceedings in a civil action, or on a judgment or final order, are sought to be enjoined, the action must be brought in the county and court in which such action is pending or the judgment or order was obtained, unless such judgment or final order is obtained in the supreme court, in which case the action must be brought in the county and court from which the case was taken to the supreme court. [C., '51, § 2194; R., '60, § 3778; C., '73, § 3396; C., '97, § 4364.]

12528. Bond in such case. In an action to enjoin the proceedings in a civil action, or on a judgment or final order, the bond must be further conditioned to pay such judgment, or comply with such final order if the injunction is not made perpetual, or to pay any judgment that may be ultimately recovered against the party obtaining the injunction on the cause of action enjoined. [C., '51, § 2194; R., '60, § 3778; C., '73, § 3396; C., '97, § 4365.]

12529. Penalty. The penalty of the bond must be twice the probable amount of liability to be thereby incurred. [C., '51, § 2195; R., '60, § 3779; C., '73, § 3397; C., '97, § 4366.]

12530. Defendant to show cause. The court or judge, before granting the writ, may allow

the defendant an opportunity to show cause why such order should not be granted. [C., '51, § 2197; R., '60, § 3781; C., '73, § 3398; C., '97, § 4367.]

12531. Application for dissolution. If the order is granted without allowing the defendant to show cause, he may, at any time before the next term of the court, apply to the judge who made the order to vacate or modify the same, or the application may be made to the judge of the court in which the action is pending. [C., '51, § 2198; R., '60, § 3782; C., '73, § 3399; C., '97, § 4368.]

12532. Notice—showing. The application must be with notice to the plaintiff, upon the ground that the order was improperly granted, or it may be founded on the answer of defendants and affidavits. In the latter case, the plaintiff may fortify his application by counter affidavits, and have reasonable time therefor. [C., '51, § 2199; R., '60, § 3783; C., '73, § 3400; C., '97, § 4369.]

12533. Dissolution. The judge shall decide the matter at once, unless some good cause for delay is shown, but the vacation of the order shall not prevent the action from proceeding, if anything is left to proceed upon. [C., '51, § 2200; R., '60, § 3784; C., '73, § 3401; C., '97, § 4370.]

12534. Only one motion. Only one motion to dissolve or modify an injunction upon the whole case shall be allowed. [R., '60, § 3793; C., '73, § 3402; C., '97, § 4371.]

12535. Proceedings for violation. Any judge of the supreme, district, or superior court, being furnished with an authenticated copy of

the injunction and satisfactory proof that it has been violated, shall issue his precept to the sheriff of the county where the violation occurred, or to any other sheriff, naming him, more convenient to all parties concerned, directing him to attach the defendant and bring him forthwith before the same or some other judge, at a place to be stated in said precept. [C., '51, § 2201; R., '60, § 3785; C., '73, § 3403; C., '97, § 4372.]

12536. Contempt purged. When produced, he may file his affidavit denying or excusing the contempt, and the court may hear other evidence, oral or by affidavit, and if satisfied that the defendant is not guilty, or that the contempt is sufficiently excused, he shall be released, and all affidavits shall be filed with and preserved by the clerk. [C., '51, § 2202; R., '60, § 3786; C., '73, § 3404; C., '97, § 4373.]

12537. Bond required. If not so released, the judge may require him to give bond, with surety, for his appearance at the next term of the court and for his future obedience to the injunction, which shall be filed with the clerk. [C., '51, § 2203; R., '60, § 3787; C., '73, § 3405; C., '97, § 4374.]

12538. Commitment. If he fails to give such bond, he may be committed to the jail of the county where the proceedings are pending until the next term of court, unless he gives the bond in the meantime. [C., '51, § 2204; R., '60, § 3788; C., '73, § 3406; C., '97, § 4375.]

12539. Contempt punished. The court at the next term shall act upon the case, and, if a contempt is found to have been committed, punish it in the usual mode. [C., '51, § 2205; R., '60, § 3789; C., '73, § 3407; C., '97, § 4376.]

CHAPTER 536

CONTEMPTS

- 12540. "Court" defined.
- 12541. Acts constituting contempt.
- 12542. In courts of record.
- 12543. Punishment.
- 12544. Imprisonment.
- 12545. Affidavit necessary.
- 12546. Notice to show cause.

12540. "Court" defined. Any officer authorized to punish for contempt is a court within the meaning of this chapter. [C., '51, § 1608; R., '60, § 2698; C., '73, § 3501; C., '97, § 4470.]

12541. Acts constituting contempt. The following acts or omissions are contempts, and are punishable as such by any of the courts of this state, or by any judicial officer, including justices of the peace, acting in the discharge of an official duty, as hereinafter provided:

1. Contemptuous or insolent behavior toward such court while engaged in the discharge of a judicial duty which may tend to impair the respect due to its authority.

- 12547. Testimony reduced to writing.
- 12548. Personal knowledge of court—record required.
- 12549. Warrant of commitment.
- 12550. Revision by certiorari.
- 12551. Indictment not barred.

2. Any wilful disturbance calculated to interrupt the due course of its official proceedings.

3. Illegal resistance to any order or process made or issued by it.

4. Disobedience to any subpoena issued by it and duly served, or refusing to be sworn or to answer as a witness.

5. Unlawfully detaining a witness or party to an action or proceeding pending before such court, while going to or remaining at the place where the action or proceeding is thus pending, after being summoned, or knowingly assisting, aiding, or abetting any person in evading service of the process of such court.

6. Any other act or omission specially declared a contempt by law. [C., '51, § 1598; R., '60, § 2688; C., '73, § 3491; C., '97, § 4460.]

12542. In courts of record. In addition to the above, any court of record may punish the following acts or omissions as contempts:

1. Failure to testify before a grand jury, when lawfully required to do so.

2. Assuming to be an officer, attorney, or counselor of the court, and acting as such without authority.

3. Misbehavior as a juror, by improperly conversing with a party or with any other person in relation to the merits of an action in which he is acting or is to act as a juror, or receiving a communication from any person in respect to it without immediately disclosing the same to the court.

4. Bribing, attempting to bribe, or in any other manner improperly influencing or attempting to influence a juror to render a verdict, or suborning or attempting to suborn a witness.

5. Disobedience by an inferior tribunal, magistrate, or officer to any lawful judgment, order or process of a superior court, or proceeding in any matter in a manner contrary to law, after it has been removed from such tribunal, magistrate, or officer. [C., '51, § 1599; R., '60, § 2689; C., '73, § 3492; C., '97, § 4461.]

12543. Punishment. The punishment for contempts may be by fine or imprisonment, or both, but where not otherwise specially provided, courts of record are limited to a fine of fifty dollars, and an imprisonment not exceeding one day, and all other courts are limited to a fine of ten dollars. [C., '51, § 1600; R., '60, § 2690; C., '73, § 3493; C., '97, § 4462.]

12544. Imprisonment. If the contempt consists in an omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he performs it. In that case the act to be performed must be specified in the warrant of the commitment. [C., '51, § 1601; R., '60, § 2691; C., '73, § 3494; C., '97, § 4463.]

12545. Affidavit necessary. Unless the contempt is committed in the immediate view and presence of the court, or comes officially to its knowledge, an affidavit showing the nature of the transaction is necessary as a basis for further action in the premises. [C., '51, § 1602; R., '60, § 2692; C., '73, § 3495; C., '97, § 4464.]

12546. Notice to show cause. Before punishing for contempt, unless the offender is already in the presence of the court, he must be served personally with a rule to show cause against the punishment, and a reasonable time given him therefor; or he may be brought before the court forthwith, or on a given day, by warrant, if necessary. In either case he may, at his option, make a written explanation of his conduct under oath, which must be filed and preserved. [C., '51, § 1603; R., '60, § 2693; C., '73, § 3496; C., '97, § 4465.]

12547. Testimony reduced to writing. Where the action of the court is founded upon evidence given by others, such evidence must be in writing, and be filed and preserved. [C., '51, § 1604; R., '60, § 2694; C., '73, § 3497; C., '97, § 4466.]

12548. Personal knowledge of court—record required. If the court or judge acts upon personal knowledge in the premises, a statement of the facts upon which the order is founded must be entered on the records of the court, or be filed and preserved when the court keeps no record, and shall be a part of the record. [C., '51, § 1604; R., '60, § 2694; C., '73, § 3497; C., '97, § 4466.]

12549. Warrant of commitment. When the offender is committed, the warrant must state the particular facts and circumstances on which the court acted in the premises, and whether the same was in the knowledge of the court or was proved by witnesses. [C., '51, § 1605; R., '60, § 2695; C., '73, § 3498; C., '97, § 4467.]

12550. Revision by certiorari. No appeal lies from an order to punish for a contempt, but the proceedings may, in proper cases, be taken to a higher court for revision by certiorari. [C., '51, § 1606; R., '60, § 2696; C., '73, § 3499; C., '97, § 4468.]

12551. Indictment not barred. The punishment for a contempt constitutes no bar to an indictment, but if the offender is indicted and convicted for the same offense, the court, in passing sentence, must take into consideration the punishment before inflicted. [C., '51, § 1607; R., '60, § 2697; C., '73, § 3500; C., '97, § 4469.]

CHAPTER 537

OFFICIAL BONDS, FINES, AND FORFEITURES

12552. Official bonds construed.
 12553. Prior judgment no bar.
 12554. Fines and forfeitures.

12552. Official bonds construed. The official bond of a public officer is to be construed as a security to the body politic or civil corporation of which he is an officer, and to all the members thereof, severally, who are intended to be secured thereby. [C., '51, § 2145; R., '60, § 3727; C., '73, § 3368; C., '97, § 4336.]

12553. Prior judgment no bar. A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency, except that sureties can be made liable in the aggregate only to the extent of their undertaking. [C., '51, § 2147; R., '60, § 3728; C., '73, § 3369; C., '97, § 4337.]

12554. Fines and forfeitures. Fines and forfeitures not otherwise disposed of go into the treasury of the county where the same are collected, for the benefit of the school fund. [C., '51, §§ 1158, 2148; R., '60, § 3729; C., '73, § 3370; C., '97, § 4338.]

12555. By whom action prosecuted. Actions for their recovery may be prosecuted by the officers or persons to whom they by law belong, in whole or in part, or by the public officer into whose hands they are to be paid when collected. [C., '51, § 2149; R., '60, § 3730; C., '73, § 3371; C., '97, § 4339.]

12555. By whom action prosecuted.
 12556. Collusion.
 12557. Report of forfeited bonds.

12556. Collusion. A judgment for a penalty or forfeiture, rendered by collusion, does not prevent another action for the same subject matter. [C., '51, § 2150; R., '60, § 3731; C., '73, § 3372; C., '97, § 4340.]

12557. Report of forfeited bonds. Clerks of district, municipal, superior, and police courts, mayors of cities and towns, and justices of the peace shall, on the first Monday in January in each year, make report in writing to the board of supervisors for their respective counties of all forfeited recognizances in their offices; of all fines, penalties, and forfeitures imposed in their respective courts, which by law go into the county treasury for the benefit of the school fund; in what cause or proceeding, when and for what purpose, against whom and for what amount, rendered; whether said fines, penalties, forfeitures, and recognizances have been paid, remitted, canceled, or otherwise satisfied; if so, when, how, and in what manner, and if not paid, remitted, canceled, or otherwise satisfied, what steps have been taken to enforce the collection thereof.

Such report must be full, true, and complete with reference to the matters therein contained, and of all things required by this section to be reported, and be under oath, and any officer failing to make such report shall be guilty of a misdemeanor. [C., '73, § 3974; C., '97, § 1302.]

CHAPTER 538

SEIZURE OF BOATS OR RAFTS

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12566. Sale.
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12558. Seizure. In an action brought against the owners of any boat or raft to recover any debt contracted by such owner, or by the master, agent, clerk, or consignee thereof, for supplies furnished, or for labor done in, about, or on such boat or raft, or for materials furnished in building, repairing, fit-

ting out, furnishing, or equipping the same, or to recover for the nonperformance of any contract relative to the transportation of persons or property thereon, made by any of the persons aforementioned, or to recover damages for injuries to persons or property done by such boat or raft or the officers or crew thereof

in connection with its business, a warrant may issue for the seizure of the same as herein provided. [C., '51, § 2116; R., '60, §§ 3693, 3698, 3700; C., '73, §§ 3432, 3445, 3447; C., '97, § 4402.]

12559. Petition and warrant. The petition must be in writing, sworn to, and filed with the clerk or a justice of the peace, who shall thereupon issue a warrant to the proper officer, commanding him to seize the boat or raft, its apparel, tackle, furniture, and appendages, and detain the same until released by due course of law. [C., '51, § 2121; R., '60, § 3701; C., '73, § 3433; C., '97, § 4403.]

12560. Warrant issued on Sunday. The warrant may be issued on Sunday, if the plaintiff, his agent, or attorney states in his petition that it would be unsafe to delay proceedings. [R., '60, § 3702; C., '73, § 3434; C., '97, § 4404.]

12561. Service of notice. It shall be sufficient service of the original notice in such an action to serve it on the defendant, or on the master, agent, clerk, or consignee of such boat or raft; if neither of them can be found, it may be served by posting a copy thereof on some conspicuous part of the same. [C., '51, § 2122; R., '60, § 3703; C., '73, § 3435; C., '97, § 4405.]

12562. Service of warrant. Any constable or marshal of any city or town may execute the warrant, whether it issues from the office of the clerk of the district or superior court, or of a justice. [R., '60, § 3704; C., '73, § 3436; C., '97, § 4406.]

12563. Who may appear. Any persons interested in the property seized may appear for the defendant by himself, agent, or attorney, and defend the action, and no continuance shall be granted to the plaintiff while the property is held in custody. [C., '51, § 2123; R., '60, § 3705; C., '73, § 3437; C., '97, § 4407.]

12564. Bond to discharge. The property seized may be discharged at any time before final judgment, by giving a bond with sureties, to be approved by the officer executing the warrant, or by the clerk or justice who issued it, in a penalty double the plaintiff's demand, conditioned that the obligors therein will pay the amount which may be found due to the plaintiff, together with the costs. [C., '51, § 2124; R., '60, § 3706; C., '73, § 3438; C., '97, § 4408.]

12565. Special execution. If judgment is rendered for the plaintiff before the property is thus discharged, a special execution shall be issued against it. If it has been previously dis-

charged, the execution shall issue against the principal and sureties in the bond without further proceedings. [C., '51, § 2125; R., '60, § 3707; C., '73, § 3439; C., '97, § 4409.]

12566. Sale. The officer must first sell the furniture or appendages of the boat or raft, if by so doing he can satisfy the demand. If he sells the boat or raft, he must do so to the bidder who will advance the amount required to satisfy the execution for the lowest fractional share thereof, unless the person defending desires a different and equally convenient mode of sale. The officer making the sale shall execute a bill of sale to the purchaser for the interest sold. [C., '51, § 2126; R., '60, § 3708; C., '73, § 3440; C., '97, § 4410.]

12567. Fractional share sold. If a fractional share of the boat or raft is thus sold, the purchaser shall hold such share or interest jointly with the other owners. [C., '51, § 2127; R., '60, § 3709; C., '73, § 3441; C., '97, § 4411.]

12568. Appeal. If an appeal is taken by the defendant before the property is discharged as above provided, the appeal bond, if one is filed, will have the same effect in discharging it as the bond above contemplated, and execution shall issue against the obligors therein after judgment in the same manner. [C., '51, § 2128; R., '60, § 3710; C., '73, § 3442; C., '97, § 4412.]

12569. Rights saved. Nothing herein contained is intended to affect the rights of a plaintiff to sue in the same manner as though the provisions of this chapter had not been enacted. [C., '51, § 2129; R., '60, § 3711; C., '73, § 3443; C., '97, § 4413.]

12570. Contract alleged. In actions commenced in accordance with the provisions of this chapter, it is sufficient to allege the contract to have been made with the boat or raft itself. [C., '51, § 2130; R., '60, § 3712; C., '73, § 3444; C., '97, § 4414.]

12571. Lien. Claims growing out of either of the above causes shall be liens upon the boat or raft, its tackle, and appendages, for the term of twenty days from the time the right of action therefor accrued. [R., '60, § 3699; C., '73, § 3446; C., '97, § 4415.]

12572. Appearance by executing bond. The execution by or for the owner of such boat or raft of a bond, whereby possession of the same is obtained or retained by him, shall be an appearance of such owner as a defendant to the action. [R., '60, § 4130; C., '73, § 3448; C., '97, § 4416.]

CHAPTER 539

GUARDIANS FOR MINORS

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12573. Natural guardian of the person. Parents are the natural guardians of the persons of their minor children, and equally entitled to their care and custody. [C., '51, § 1491; R., '60, § 2543; C., '73, § 2241; C., '97, § 3192.]

12574. Surviving parent. The surviving parent becomes such guardian, but, if there is none, the district court shall appoint one, who shall have the same power and control over his ward as the parents would have, if living. [C., '51, §§ 1492, 1498; R., '60, §§ 2544, 2550; C., '73, §§ 2242, 2249; C., '97, § 3193.]

12575. Guardian of property. If a minor owns property, a guardian must be appointed to manage the same. [C., '51, §§ 1493, 1494; R., '60, §§ 2545, 2546; C., '73, § 2243; C., '97, § 3194.]

12576. Minor may choose. A minor over fourteen years of age, of sound mind, may select the guardian, subject to approval by the district court, or a judge thereof, of the county in which his parents reside, if living with them; if not, of the county of his residence. [C., '51, § 1495; R., '60, § 2547; C., '73, § 2244; C., '97, § 3195.]

12577. Bond and oath of guardian of property. Guardians of the property of a minor shall give bond, with surety to be approved by the court or clerk, in a penalty double the value of the personal estate and of the rents and profits of the real estate of the minor, conditioned for the faithful discharge of their duties as such guardians according to law, and must take an oath of the same tenor as the condition of the bond. [C., '51, § 1496; R., '60, § 2548; C., '73, § 2246; C., '97, § 3197; 40 Ex. G. A., H. F. 256, § 1.]

12578. Surety company. Where an approved surety company bond is furnished, said bond may be fixed in a lesser amount than is provided in the preceding section, but in no case less than the actual value of the personal estate and the rents and profits of the real estate, with twenty-five per cent added thereto. [38 G. A., ch. 130, § 1; 40 Ex. G. A., H. F. 256, § 2.]

12579. Bond and oath of guardian of person. The court or judge may require a bond to be given by the guardian of the person of minors, with like conditions as when the bond is given by a guardian of the property. [C., '51, § 1496; R., '60, § 2548; C., '73, § 2246; C., '97, § 3197; 40 Ex. G. A., H. F. 256, § 3.]

12580. Inventory and appraisalment. Guardians, within fifteen days after their appointment, must make out an inventory of all the property of the minor, which shall be appraised in the same manner as the property of a deceased person, and filed in the office of the clerk of the district court. [C., '51, § 1497; R., '60, § 2549; C., '73, § 2248; C., '97, § 3199.]

12581. Duties. Guardians of the property of minors must prosecute and defend for their wards, may employ counsel therefor, lease lands, loan money, and in all other respects manage their affairs, under proper orders of the court or a judge thereof. [C., '51, § 1499; R., '60, § 2551; C., '73, § 2250; C., '97, § 3200.]

12582. Suits by guardians. Any guardian may sue in his own name, describing himself as guardian of the ward for whom he sues. [R., '60, § 1452; C., '73, § 2275; C., '97, § 3224.]

12583. Nonabatement of actions. When his guardianship shall cease by his death, removal,

or otherwise, or by the decease of his ward, any action or proceeding then pending shall not abate, but his successor, or the person for whom he was guardian, or the executor or administrator of such person, as the case may require, shall be substituted or joined as party thereto. [R., '60, § 1452; C., '73, § 2275; C., '97, § 3224.]

12584. Foreign real estate. The guardian and court making the appointment have power and authority over any property of the minor, situated or being in any other county, to the same extent as if it was situated in the county where the appointment was made. [C., '73, § 2245; C., '97, § 3196.]

12585. Certification to foreign counties. If an order is made by such court affecting the title of lands lying in another county, a certified copy of such order, and of all the papers on which it is founded, shall be transmitted to the clerk of the district court in the county where such lands are situated, who shall enter the same on the proper docket, index, and make a complete record thereof, in the same manner as if the cause in which the order is made had been commenced in his court. [C., '73, § 2245; C., '97, § 3196.]

12586. Guardian to complete contracts. The guardian of any person contemplated in this and the two following chapters of this title providing for the appointment of guardians, whether appointed by a court in this state or elsewhere, may complete the real contracts of his ward, or any authorized contracts of a guardian who has died or been removed, in the same manner and by like proceedings as the real contracts of one deceased may be, under an order of court, performed by his executor or administrator. [R., '60, § 1454; C., '73, § 2277; C., '97, § 3226.]

12587. Sale or mortgage of property. When not in violation of the terms of a will by which a minor holds his real property, it may, upon application by the guardian to, and under the direction of, the district court or judge, be sold or mortgaged, when such sale or mortgage is necessary for the minor's support or education, or where his interest will be thereby promoted by reason of the unproductiveness of the property, or of its being exposed to waste, or of any other peculiar circumstances. [C., '51, § 1500; R., '60, § 2552; C., '73, § 2257; C., '97, § 3206.]

12588. Petition. The petition for that purpose must state the ground thereof and be verified. [C., '51, § 1501; R., '60, § 2553; C., '73, § 2258; C., '97, § 3207; 39 G. A., ch. 263, § 2; 40 Ex. G. A., H. F. 256, § 4.]

12589. Return day—notice. The plaintiff may fix the time and place of hearing before the court and, in such case, a notice thereof, together with a copy of the petition, must be served, unless otherwise provided, on the ward in the same manner, and for the same time, before the day of hearing as would be required if the day of hearing was the first day of a term

of court, and the notice was a notice of the commencement of an ordinary civil action, except that when service is made by publication the copy of the petition need not be published. [C., '51, § 1501; R., '60, § 2553; C., '73, § 2258; C., '97, § 3207; 39 G. A., ch. 263, § 2; 40 Ex. G. A., H. F. 256, § 5.]

12590. Optional procedure. The court or judge may, on application therefor, fix, by proper order, the time and place of hearing before the court or judge, and the time of service and the manner thereof. [39 G. A., ch. 263, § 2; 40 Ex. G. A., H. F. 256, § 6.]

12591. Postponement and publication—reference. The court in its discretion, or the judge thereof, may direct a postponement of the matter, and order such further notice, by publication through the newspapers or otherwise, as may be expedient, and may direct a reference for the purpose of ascertaining the propriety of ordering the sale or mortgage applied for. [C., '51, §§ 1502, 1503; R., '60, §§ 2554, 2555; C., '73, §§ 2259, 2260; C., '97, § 3208.]

12592. Bond. Before any such sale or mortgage can be executed, the guardian must give security to the satisfaction of the court or judge, the penalty of which shall be at least double the value of the property to be sold or of the money to be raised by the mortgage, conditioned that he will faithfully account for and apply all money received by him, by virtue of such sale or mortgage, under the direction of the court or judge. [C., '51, § 1504; R., '60, § 2556; C., '73, § 2261; C., '97, § 3209.]

12593. Costs. When the application for the sale or mortgage of property is resisted, the court may, in its discretion, award costs to the prevailing party, and, when satisfied that there was no reasonable ground for making it, may direct the costs to be paid by the guardian from his own funds. [C., '51, § 1505; R., '60, § 2557; C., '73, § 2262; C., '97, § 3210.]

12594. Deeds—approval. Deeds may be made by the guardian in his own name, but must be returned to the court, and the sale or mortgage be approved, before the same are valid. [C., '51, § 1506; R., '60, § 2558; C., '73, § 2263; C., '97, § 3211.]

12595. Applicable procedure. The rule prescribed in the sale of real property by executors shall be observed in relation to the evidence necessary to show the regularity and validity of the sales of guardians. [C., '51, § 1507; R., '60, § 2559; C., '73, § 2264; C., '97, § 3212.]

12596. Validity of sale—limitation to question. No person can question the validity of any such sale after the lapse of five years from the time it was made. [C., '51, § 1508; R., '60, § 2560; C., '73, § 2265; C., '97, § 3212.]

12597. Account. All guardians are required to render an account to the district court, at least once each year, of all moneys or other property in their possession, with all interest

which may have accrued on money loaned, belonging to their wards. [R., '60, § 2568; C., '73, § 2254; C., '97, § 3203.]

12598. Penalty. In case any guardian shall fail to make such report within the time above specified, he shall forfeit and pay into the county treasury the sum of fifty dollars, and such failure shall be ground for his removal. [R., '60, § 2569; C., '73, § 2255; C., '97, § 3204.]

12599. Compensation. Guardians shall receive such compensation as the court may from time to time allow, the amount and the service for which it was made being entered upon the records of the court. [C., '51, § 1515; R., '60, § 2567; C., '73, § 2256; C., '97, § 3205.]

12600. Disobedience of orders. A failure to comply with any order of the court or a judge thereof in relation to guardianships shall be ground for removal, and a breach of the guardian's bond. [C., '51, § 1509; R., '60, § 2561; C., '73, § 2251; C., '97, § 3201.]

12601. New appointment—delivery of property. The court or judge may appoint a new guardian, if necessary, and require his predecessor to deliver to the person entitled thereto, within a time fixed by the court or judge, the effects of such ward then in the hands of said predecessor, and may commit him to jail until he complies with such order. [C., '51, § 1509; R., '60, §§ 2561, 2563; C., '73, §§ 2251, 2252; C., '97, § 3201.]

12602. Failure to deliver—penalty. If property is not delivered in accordance with such order, the guardian removed shall, in addition to any other remedy, be subject to a penalty, for the benefit of the ward's estate, of one hundred dollars, to be recovered in an action on his bond. [C., '73, § 2252; C., '97, § 3201.]

12603. Action on bond. Action for the breach of such bond may be brought by anyone aggrieved thereby, or by such new guardian. [C., '51, § 1509; R., '60, § 2561; C., '73, § 2251; C., '97, § 3201.]

12604. Removal—new bond. Guardians may, upon notice given them, be removed by the court at any time for cause, which must be entered of record; and new or additional bonds may be required, if it finds the same necessary for the protection of the estate. [C., '51, § 1510; R., '60, § 2562; C., '73, § 2247; C., '97, § 3198.]

12605. Nonresident minors. A guardian may be appointed for a nonresident minor, idiot, lunatic, or person of unsound mind, who has property in this state, on application to the district court or judge of the county in which such property or any part thereof may be, who shall qualify in the same manner, have the same powers, and be subject to the same rules, as guardians of resident minors. [C., '73, § 2253; C., '97, § 3202.]

CHAPTER 540

FOREIGN GUARDIANS

12606. Appointment.
12607. Procedure.
12608. Bond omitted.
12609. Personal property.

12606. Appointment. The foreign guardian of any nonresident minor, idiot, lunatic, or person of unsound mind may be appointed the guardian of the property of such person in this state by the district court or judge thereof, of the county wherein he has any property, for the purpose of selling, mortgaging, or otherwise controlling that and all other property of such person within the state, unless a guardian has previously been appointed. [C., '51, § 1512; R., '60, § 2564; C., '73, § 2266; C., '97, § 3213.]

12607. Procedure. Such appointment may be made upon his filing with the clerk of the district court of the county wherein there is any such property an authenticated copy of the order for his appointment. He shall thereupon qualify like other guardians, except as provided in the next section. [C., '51, § 1513; R., '60, § 2565; C., '73, § 2267; C., '97, § 3214.]

12608. Bond omitted. Upon the filing of an authenticated copy of the bond and inventory filed by the guardian in a foreign state, if the

12610. Copy of bond.
12611. Order for delivery.
12612. Record of bond—notice to court.

court or judge is satisfied with the sufficiency and the amount of the security, it may dispense with the filing of an additional bond. [C., '51, § 1514; R., '60, § 2566; C., '73, § 2268; C., '97, § 3215.]

12609. Personal property. Foreign guardians of nonresidents may be authorized by the district court or judge thereof, of the county wherein such ward has personal property, to receive the same upon complying with the provisions of the following sections. [C., '73, § 2269; C., '97, § 3216.]

12610. Copy of bond. Such foreign guardian shall file in the office of the clerk of the district court, in the county where the property is situated, a certified copy of his official bond, duly authenticated by the court granting the letters of guardianship, and shall also execute a receipt for the property received by him. [C., '73, § 2270; C., '97, § 3217.]

12611. Order for delivery. Upon the filing of the bond as above provided, and the court

or judge being satisfied with the amount thereof, it shall order the personal property of the minor to be delivered to the guardian. [C., '73, § 2271; C., '97, § 3218.]

12612. Record of bond—notice to court. The clerk shall spread the bonds and receipt upon

the records, and notify by mail the court granting the letters of guardianship of the amount of property allowed to the guardian, and the date of the delivery thereof. [C., '73, § 2271; C., '97, § 3218.]

CHAPTER 541

GUARDIANS FOR DRUNKARDS, SPENDTHRIFTS, LUNATICS, AND PERSONS OF UNSOUND MIND

- 12613. Statutes governing guardianship.
- 12614. Petition—appointment.
- 12615. Ex officio guardian.
- 12616. Guardian of drunkard.
- 12617. Party may apply for guardianship.
- 12618. Notice not required.
- 12619. Petition—answer.
- 12620. Temporary guardian.
- 12621. Trial.
- 12622. Presumption of fraud.

- 12623. Petition to terminate.
- 12624. Notice and service.
- 12625. Trial.
- 12626. Costs.
- 12627. Limit on application to terminate.
- 12628. Sale or mortgage of real estate.
- 12629. Allowance to family.
- 12630. Insolvent estates.
- 12631. Custody.

12613. Statutes governing guardianship. The provisions of chapters 539 and 540, and all other laws relating to guardians for minors, and regulating or prescribing the powers, duties, or liabilities of each, and of the court or judge thereof, so far as the same are applicable, shall apply to guardians and their wards appointed under the following section. [R., '60, § 1451; C., '73, § 2274; C., '97, § 3223.]

12614. Petition—appointment. When a petition, verified by affidavit, is presented to the district court that any inhabitant of the county is:

1. An idiot, lunatic, or person of unsound mind; or
2. An habitual drunkard, incapable of managing his affairs; or
3. A spendthrift who is squandering his property;

and the allegations of the petition are satisfactorily proved upon the trial, the court may appoint a guardian of the property of such person. [R., '60, § 1449; C., '73, § 2272; C., '97, § 3219; 40 Ex. G. A., H. F. 256, § 6-a1.]

12615. Ex officio guardian. The guardian appointed under the preceding section shall be the guardian of the minor children of his ward, unless the court otherwise orders. [R., '60, § 1449; C., '73, § 2272; C., '97, § 3219; 40 Ex. G. A., H. F. 256, § 6-a2.]

12616. Guardian of drunkard. If a person is an habitual drunkard the court may appoint a guardian of his person, whether he has any estate or not. [C., '73, § 2272; C., '97, § 3219; 40 Ex. G. A., H. F. 256, § 6-a3.]

12617. Party may apply for guardianship. Any person, other than an idiot or lunatic, may, upon his own application, by verified petition, have a guardian appointed for his person or property, or both, if, in the opinion

of the district court or judge to whom the petition is presented, said appointment would inure to the best interest of said applicant. [40 G. A., ch. 199, § 1; 40 Ex. G. A., H. F. 256, § 6-a4.]

12618. Notice not required. Upon application under the preceding section no notice of the hearing shall be required. [40 G. A., ch. 199, § 1; 40 Ex. G. A., H. F. 256, § 6-a5.]

12619. Petition—answer. Such petition shall set forth, as particularly as may be, the facts upon which the application is based, and shall be answered as in other ordinary actions, all the rules of which shall govern so far as applicable and not otherwise provided in this chapter. The applicant shall be plaintiff and the other party defendant. [C., '73, § 2273; C., '97, § 3220; 40 Ex. G. A., H. F. 256, § 7.]

12620. Temporary guardian. A temporary guardian may be appointed, but only after a hearing on such notice to the defendant and on such service of said notice as the court or judge shall prescribe. [C., '73, § 2273; C., '97, § 3220; 40 Ex. G. A., H. F. 256, § 7-a1.]

12621. Trial. An issue arising on a prayer for the appointment of a temporary guardian shall be tried by the court, or by a judge in vacation. An issue arising on the prayer for the appointment of a permanent guardian shall be tried by the court unless a jury be demanded by either party. [C., '73, § 2273; C., '97, § 3220; 40 Ex. G. A., H. F. 256, § 7-a2.]

12622. Presumption of fraud. If a permanent guardian be appointed, all contracts or business transactions of the defendant after the filing of the petition shall be presumed to be a fraud against the rights and interests of the defendant. [40 Ex. G. A., H. F. 256, § 7-a3.]

12623. Petition to terminate. At any time, not less than six months after the appointment of such guardian, the person under guardianship may apply to the court, or any judge thereof, by petition, alleging that he is no longer a proper subject thereof and asking that the guardianship be terminated. [C., '97, § 3222.]

12624. Notice and service. Notice of such petition shall be served upon the guardian in such manner and for such length of time as the court or judge may direct, requiring the guardian to answer the same at or before a time fixed therein. [C., '97, § 3222.]

12625. Trial. If the guardian shall file an answer denying the allegations of the petition, the court or judge shall try the issue, unless the petitioner demand a jury trial, in which case the issue shall be tried by a jury as soon as practicable. [C., '97, § 3222.]

12626. Costs. The costs shall be paid by the ward, unless judgment terminating the guardianship is rendered, and a finding is made that the guardian resisted the petition therefor without reasonable cause, in which event the costs or any part thereof may be taxed against him. [C., '97, § 3222.]

12627. Limit on application to terminate. If any petition for terminating such guardianship shall be denied, no other petition shall be filed therefor until at least four months shall have elapsed since the denial of the former one. [C., '97, § 3222.]

12628. Sale or mortgage of real estate. Whenever the sale or mortgage of the real estate of such ward is necessary for his support, or for the support of his family, or the payment of his debts, or will be for the interest of the estate or his children, the guardian may sell or mortgage the same under like proceedings as required by law to authorize the sale of real estate by the guardian of the minor. [R., '60, § 1453; C., '73, § 2276; C., '97, § 3225; S., '13, § 3225.]

12629. Allowance to family. The court shall, if necessary, set off to the wife and minor children of the insane person, or to either, sufficient of his property, of such kind as it shall deem appropriate, to support them during the period such person is insane. [C., '97, § 3225; S., '13, § 3225.]

12630. Insolvent estates. If the estate of such person is insolvent, or will probably be insolvent, the same shall be settled by the guardian in like manner, and like proceedings may be had, as are required by law for the settlement of the insolvent estate of a deceased person. [R., '60, § 1455; C., '73, § 2278; C., '97, § 3227.]

12631. Custody. The priority of claim to the custody of any idiot, lunatic, person of unsound mind, habitual drunkard, or spendthrift shall be:

1. The legally appointed guardian.
2. The husband or wife.
3. The parents.
4. The children.

[C., '73, § 2279; C., '97, § 3228.]

CHAPTER 542

GUARDIANS FOR ABSENTEES

12632. Petition.
12633. Notice and publication.
12634. Personal service.
12635. Proof of service.
12636. Hearing.
12637. Evidence transcribed and filed.
12638. County attorney to appear.

12639. Guardian appointed.
12640. Qualifications—powers and duties.
12641. Termination of guardianship.
12642. Expenses chargeable to estate.
12643. Control of court—removal.
12644. Discharge.

12632. Petition. When any adult person owning property within the state and whose whereabouts are and have been unknown for a period of three months, and whose property is liable to become injured, lost, or damaged by reason of such absence, and when there is no other provision of law authorizing supervision and control over such property, any citizen of the county in which the property or any part thereof is situated may file a petition under oath in the district court of said county, setting forth:

1. The facts of such disappearance;
2. The place where and with whom he last resided;
3. The kind and value of his property;
4. The necessity for care and supervision over said property;

and asking that a guardian be appointed to take charge of, preserve, and control such property. [S., '13, § 3228-a.]

12633. Notice and publication. Whereupon, the court or judge shall prescribe a notice to be given to such absentee and order the same to be published in a newspaper published in said county, to be designated by the court or judge, once each week for four successive weeks. [S., '13, § 3228-a.]

12634. Personal service. Such notice shall also be served on the county attorney of the county and upon all the members of the family of the absentee residing within the county, for the length of time as is required for the service of original notices. [S., '13, § 3228-a.]

12635. Proof of service. Proof of the publication and service of such notice shall be filed with said cause. [S., '13, § 3228-a.]

12636. Hearing. If at the time stated in such notice for hearing the absentee fails to appear, the court shall hear such petition and the proof offered. [S., '13, § 3228-b.]

12637. Evidence transcribed and filed. All evidence given at such hearing shall be taken down by the official reporter and a verified transcript thereof filed in said cause. [S., '13, § 3228-b.]

12638. County attorney to appear. At every such hearing the county attorney shall be present and represent the interests of the absentee, and shall be allowed reasonable compensation therefor to be fixed by the court. [S., '13, § 3228-b.]

12639. Guardian appointed. If on such hearing the court is satisfied that the person has disappeared for the length of time herein required, and that his whereabouts are unknown to his family or friends, and that his property requires supervision and care, it may appoint some suitable person guardian of the estate of such absentee. [S., '13, § 3228-c.]

12640. Qualifications—powers and duties. The person so appointed to act as such guardian shall qualify in the same manner as is required in the case of other guardians, and shall have the same powers and his duties shall be the same as provided for guardians of

the estates of minors, so far as applicable. [S., '13, § 3228-d.]

12641. Termination of guardianship. If at any time the absentee shall return and claim his property, he shall file in said court his application to terminate such guardianship and, thereupon, the guardian shall make full and complete settlement with such absentee, and after paying the costs of the proceedings and the necessary expenses of the guardian in executing the trust, shall turn over to such absentee all money and property then in his hands as such guardian, taking receipt therefor, and shall make a final report to the court of his doings as such guardian. [S., '13, § 3228-e.]

12642. Expenses chargeable to estate. The estate of such absentee shall be liable for the costs of the proceedings and the necessary expenses incurred by the guardian and allowed by the court. [S., '13, § 3228-f.]

12643. Control of court—removal. Such guardian shall at all times be under the control and orders of the court, and may at any time be removed for any cause making it apparent to the court that said guardianship should be terminated or the trust transferred to another person. [S., '13, § 3228-g.]

12644. Discharge. When the final report of such guardian shall have been approved by the court he shall be discharged and the proceedings closed, or the trust transferred, as the court may determine. [S., '13, § 3228-h.]

CHAPTER 543

CHANGING NAMES

- 12645. Who authorized.
- 12646. Statement—what to contain.
- 12647. Description of real estate.
- 12648. Affidavit of freeholder.
- 12649. Filing and recording.
- 12650. Reindexing real estate.
- 12651. Fees.

12645. Who authorized. Any person, under no civil disabilities, who has attained his or her majority and is unmarried, if a female, desiring to change his or her name, may do so as provided in this chapter. [C., '51, §§ 2256-2260; R., '60, §§ 3844-3848; C., '73, §§ 3502-3506; C., '97, §§ 4471-4475; S., '13, § 4471-b.]

12646. Statement—what to contain. Such person shall make and subscribe to a statement under oath showing:

1. That he or she is a resident of the county where such application is made and of the state for a period of not less than one year.

2. His or her place of residence, giving lot and block if in a city, town, or village and street number and business address if any, and the section, township, range, and name of civil township if not in a city or town.

- 12652. Certified copies—fees.
- 12653. When change effective.
- 12654. New name of wife and minor children.
- 12655. Limitation on change.
- 12656. Indexing real estate in other counties.
- 12657. Failure to comply.

3. The different places of residence and times of such residence for the past five years.

4. Place and date of birth, and, if of foreign birth, the date of immigration to the United States.

5. Legal name and name or names by which such person is usually known and new name as changed or adopted.

6. Names of parents of such person, his or her height and color of hair and eyes.

7. The reason or cause for change of name briefly and concisely stated. [S., '13, § 4471-c.]

12647. Description of real estate. There shall be incorporated in such statement or attached thereto a concise description of all real estate within this state the title to which is in the person making such statement. [S., '13, § 4471-c.]

12648. Affidavit of freeholder. An affidavit of a freeholder of the county shall be attached to such statement to the effect that affiant has personally investigated the facts set out in same and that the same are true; that the person filing such statement is an actual resident of the county and the identical person he or she is represented to be. [S., '13, § 4471-d.]

12649. Filing and recording. Such statement shall be presented to the clerk of the district court who shall file same if it is found to be in substantial compliance with all of the provisions of this chapter, and not otherwise, and enter same of record in a book kept for that purpose and index same both under the former name and new name, and shall enter upon the back the date of filing, the book and page where recorded, and serial number thereof, and file same in his office. [S., '13, § 4471-e.]

12650. Reindexing real estate. When such statement shall have been filed and recorded as herein provided, the clerk shall, if the description of any real estate of that county be contained therein, deliver it to the county recorder who shall index the same, both under the former name and under the new name as changed or adopted, in the manner of indexing transfers of real estate, and enter opposite thereto the description of real estate as found in such statement; such indexing shall be in the index of transfers of land or town property according to the description of said real estate, or both as the case may be. The index shall also show the serial number of such statement and book and page where same is recorded in the office of the clerk of the district court, and the words "change of name" shall be written on said index in red ink, at or opposite to the name. [S., '13, § 4471-f.]

12651. Fees. The clerk shall receive a fee of one dollar for his services, and shall also collect ten cents for each separate description of real estate in the statement, which sum

shall be paid to the recorder for indexing same. [S., '13, § 4471-g.]

12652. Certified copies—fees. The clerk shall, upon demand of any party and the payment of the fee of one dollar, furnish a certified copy of such statement showing the serial number thereof, date of filing, and the book and page of record of same; and, upon the payment of twenty-five cents, shall compare and certify to any correct copy of such statement furnished him for that purpose. [S., '13, § 4471-g.]

12653. When change effective. Upon the expiration of thirty days from the time of filing the statement herein provided for, the new name as changed or adopted therein shall become the legal name of the party filing such statement. [S., '13, § 4471-h.]

12654. New name of wife and minor children. The surname of such new name shall become the legal surname of the wife and minor children of such person. [S., '13, § 4471-h.]

12655. Limitation on change. No person shall change his or her name more than once under the provisions of this chapter. [S., '13, § 4471-h.]

12656. Indexing real estate in other counties. Within one year after the filing of such statement, the party changing his or her name shall cause a certified copy thereof to be presented to the recorder of each county in Iowa where there is real estate the legal title to which is in such party, and pay such recorder ten cents for each separate description in such county, and such recorder shall index same in the manner prescribed in this chapter and return same. [S., '13, § 4471-i.]

12657. Failure to comply. Any person failing or neglecting to comply with the provisions of the preceding section shall be guilty of a misdemeanor and punished accordingly. [S., '13, § 4471-j.]

CHAPTER 544

BASTARDY PROCEEDINGS

12658. Complaint.
12659. Notice.
12660. Lien created.
12661. Attachment.
12662. County attorney to prosecute.

12663. Issue—how tried.
12664. Judgment.
12665. Execution.
12666. Costs taxed to county.
12667. Change of order.

12658. Complaint. When any woman residing in any county of the state is delivered of an illegitimate child, or is pregnant with a child which, if born alive, will be illegitimate, complaint may be made in writing by any person to the district court of the county where she resides, stating that fact, and charging the proper person with being the father thereof. The proceedings shall be entitled in the name of the state against the accused as defendant.

[C., '51, § 848; R., '60, § 1416; C., '73, § 4715; C., '97, § 5629.]

12659. Notice. Upon the filing of the complaint, the clerk shall cause notice to be given to the person so charged as in an ordinary action. [C., '51, § 849; R., '60, § 1417; C., '73, § 4716; C., '97, § 5630.]

12660. Lien created. From the time of the filing of such complaint, a lien shall be created

upon the real property of the accused in the county where the action is pending for the payment of any money and the performance of any order adjudged by the proper court. [C., '51, § 850; R., '60, § 1418; C., '73, § 4717; C., '97, § 5631.]

12661. Attachment. If the complaint is verified, the district judge may order an attachment to issue thereon without bond, which order shall specify the amount of property to be seized thereunder, and may be revoked at any time by such judge or the district court, on a showing made to either for a revocation of the same, and on such terms as such court or judge may deem proper in the premises. [C., '73, § 4718; C., '97, § 5632.]

12662. County attorney to prosecute. The county attorney, on being notified of the facts justifying a complaint as provided in this chapter, or of the filing of such complaint, shall prosecute the matter in behalf of the complainant. [C., '73, § 4719; C., '97, § 5633.]

12663. Issue—how tried. The issue on the trial shall be "guilty" or "not guilty", and shall be tried as an ordinary action. [C., '51,

§§ 851, 854; R., '60, §§ 1419, 1422; C., '73, § 4720; C., '97, § 5634.]

12664. Judgment. If the accused be found guilty, he shall be charged with the maintenance of the child in such sum or sums, and in such manner, as the court shall direct, and with the costs of the action. [C., '51, § 855; R., '60, § 1423; C., '73, § 4721; C., '97, § 5635; 40 G. A., ch. 272.]

12665. Execution. The clerk may immediately issue execution for any sum ordered to be paid, and afterward, from time to time, as it shall be required to compel compliance with the order of the court. [C., '51, § 855; R., '60, § 1423; C., '73, § 4721; C., '97, § 5635; 40 G. A., ch. 272.]

12666. Costs taxed to county. If the accused be found not guilty, the costs of the action shall be paid by the county. [40 G. A., ch. 272.]

12667. Change of order. The court may at any time increase or diminish such sums, or vacate any order or judgment rendered in the proceeding herein contemplated, on such notice to the defendant as the court or judge may prescribe. [C., '73, § 4722; C., '97, § 5636.]

CHAPTER 545

JUDGMENT BY CONFESSION

12668. Judgment by confession—how entered.
12669. For money only—contingent liability.

12668. Judgment by confession—how entered. A judgment by confession, without action, may be entered by the clerk of the district court. [C., '51, § 1837; R., '60, § 3397; C., '73, § 2894; C., '97, § 3813.]

12669. For money only—contingent liability. The judgment can be only for money due or to become due, or to secure a person against contingent liabilities on behalf of the defendant, and must be for a specified sum. [C., '51, § 1838; R., '60, § 3398; C., '73, § 2895; C., '97, § 3814.]

12670. Statement. A statement in writing must be made, signed, and verified by the defendant, and filed with the clerk, to the following effect:

1. If for money due or to become due, it must state concisely the facts out of which the

12670. Statement.
12671. Judgment—execution.

indebtedness arose, and that the sum confessed therefor is justly due, or to become due, as the case may be.

2. If for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting such liability, and must show that the sum confessed therefor does not exceed the same. [C., '51, § 1839; R., '60, § 3399; C., '73, § 2896; C., '97, § 3815.]

12671. Judgment—execution. The clerk shall thereupon make an entry of judgment in his court record for the amount confessed and costs, and shall issue execution thereon as in other cases, when ordered by the party entitled thereto. [C., '51, § 1840; R., '60, § 3400; C., '73, § 2897; C., '97, § 3816.]

CHAPTER 546

OFFER TO CONFESS JUDGMENT

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12672. Offer to confess before action brought. Before an action for the recovery of money is brought against any person, he may go before the clerk of the county of his residence, or of that in which the person having the cause of action resides, and offer to confess judgment in favor of such person for a specified sum on such cause of action, as provided for in the foregoing chapter. [R., '60, § 3403; C., '73, § 2898; C., '97, § 3817.]

12673. Nonacceptance—costs. If such person, having had the same notice as if he were defendant in an action that the offer would be made, of its amount, and of the time and place of making it, refuses to accept it, and afterwards commences an action upon such cause, and does not recover more than the amount so offered to be confessed, he shall pay all the costs of the action. [R., '60, § 3403; C., '73, § 2898; C., '97, § 3817.]

12674. Effect of nonaccepted offer. On the trial thereof the offer shall not be treated as an admission of the cause of action or amount to which the plaintiff was entitled, nor be given in evidence. [R., '60, § 3403; C., '73, § 2898; C., '97, § 3817.]

12675. Offer to confess after action brought. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. [R., '60, § 3404; C., '73, § 2899; C., '97, § 3818.]

12676. Nonacceptance—costs. If the plaintiff, being present, refuses to accept judgment for such sum in full of his demands in the action, or, having had three days' notice that the offer would be made, of its amount, and of the time of making it, fails to attend, and on the trial does not recover more than was offered to be confessed, he shall pay the costs of the defendant incurred after the offer. [R., '60, § 3404; C., '73, § 2899; C., '97, § 3818.]

12677. Effect of nonaccepted offer. The offer shall not be treated as an admission of the cause of action or amount to which the plaintiff was entitled nor be given in evidence

upon the trial. [R., '60, § 3404; C., '73, § 2899; C., '97, § 3818.]

12678. Offer to confess after action brought. The defendant in an action for the recovery of money only may, at any time after service of notice and before the trial, serve upon the plaintiff or his attorney an offer in writing to allow judgment to be taken against him for a specified sum with costs. [R., '60, § 3405; C., '73, § 2900; C., '97, § 3819.]

12679. Acceptance—judgment. If the plaintiff accepts the offer, and gives notice thereof to the defendant or his attorney within five days after the offer is made, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance with a copy of the offer, verified by affidavit; and in either case a minute of the offer and acceptance shall be entered upon the judge's calendar, and judgment shall be rendered by the court accordingly. [R., '60, § 3405; C., '73, § 2900; C., '97, § 3819.]

12680. Effect of nonaccepted offer. If the notice of acceptance is not given in the period limited, the offer shall be treated as withdrawn, and shall not be given in evidence or mentioned on the trial. [R., '60, § 3405; C., '73, § 2900; C., '97, § 3819.]

12681. Costs. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he can not recover costs, but shall pay the defendant's costs from the time of the offer. [R., '60, § 3405; C., '73, § 2900; C., '97, § 3819.]

12682. Conditional offer. In an action for the recovery of money only, the defendant, having answered, may serve upon the plaintiff or his attorney an offer in writing that, if he fails in his defense, the amount of recovery shall be assessed at a specified sum. [R., '60, § 3406; C., '73, § 2901; C., '97, § 3820.]

12683. Acceptance—effect. If the plaintiff accepts the offer, and gives notice thereof to the defendant or his attorney within five days after it was served, or within three days if

served in term time, and the defendant fails in his defense, the judgment shall be for the amount so agreed upon. [R., '60, § 3406; C., '73, § 2901; C., '97, § 3820.]

12684. Nonacceptance—effect. If the plaintiff does not accept the offer, he shall prove the amount to be recovered as if the offer had not been made, and the offer shall not be given in evidence or mentioned on the trial, and if the amount recovered by the plaintiff does not ex-

ceed the sum mentioned in the offer, the defendant shall recover his costs incurred in the defense. [R., '60, § 3406; C., '73, § 2901; C., '97, § 3820.]

12685. No cause for continuance. The making of any offer pursuant to the provisions of this chapter shall not be cause for a continuance of the action or a postponement of the trial. [R., '60, § 3407; C., '73, § 2902; C., '97, § 3821.]

CHAPTER 547

SUBMITTING CONTROVERSIES TO COURT WITHOUT TRIAL

12686. Agreed statement of facts.
 12687. Affidavit.
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12692. Pleadings abandoned—lien and custody of property.
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12686. Agreed statement of facts. Parties to a question in difference, which might be the subject of a civil action, may, without action, present an agreed statement of the facts to any court having jurisdiction of the subject matter. [C., '51, § 1843; R., '60, § 3408; C., '73, § 3408; C., '97, § 4377.]

12687. Affidavit. It must be shown by affidavit that the controversy is real, and that the proceeding is in good faith to determine the rights of the parties thereto. [C., '51, § 1844; R., '60, § 3409; C., '73, § 3409; C., '97, § 4378.]

12688. Judgment. The court shall hear and determine the case and render judgment as if an action were pending. [C., '51, § 1845; R., '60, § 3410; C., '73, § 3410; C., '97, § 4379.]

12689. Record. The statement, the submission, and the judgment shall constitute the record. [R., '60, § 3411; C., '73, § 3411; C., '97, § 4380.]

12690. Judgment enforced. The judgment shall be with costs, and it may be enforced and shall be subject to review in the same manner as if it had been rendered in an action, unless otherwise provided for in the submission. [R., '60, § 3412; C., '73, § 3412; C., '97, § 4381.]

12691. Submission of cause pending. The same may also be done at any time before trial in an action pending, subject to the same requirements and attended by the same results as in a case without action. [R., '60, § 3413; C., '73, § 3413; C., '97, § 4382.]

12692. Pleadings abandoned—lien and custody of property. Such submission of a stated case shall be an abandonment by both parties of all pleadings filed in such cause, and the cause shall stand on the agreed case alone, which must provide for any lien created for attachment, and for any property in the custody of the law, else such lien and custody will be held to be waived. [R., '60, § 3413; C., '73, § 3413; C., '97, § 4382.]

12693. Submission of question of law—agreement as to judgment. The parties may, if they think fit, enter into an agreement in writing that, upon the judgment of the court being given on the question of law raised, particular property therein described, or a sum of money fixed by the parties or to be ascertained by the court or in such manner as the court may direct, shall be delivered to and vested in one of the parties by the other, or, in case of money, shall be paid by one of such parties to the other of them, either with or without costs of the action; and the judgment of the court may be entered for the transfer and delivery of such property, or for such sum as shall be so agreed or ascertained, with or without costs, as the case may be. [R., '60, § 3414; C., '73, § 3414; C., '97, § 4383.]

12694. Costs. In case no agreement is entered into as to the costs, they shall follow the event of the action, and be recovered by the successful party. [R., '60, § 3415; C., '73, § 3415; C., '97, § 4384.]

CHAPTER 548

ARBITRATION

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12695. What controversies. All controversies which might be the subject of civil action may be submitted to the decision of one or more arbitrators, as hereafter provided. [C., '51, § 2098; R., '60, § 3675; C., '73, § 3416; C., '97, § 4385.]

12696. Written agreement. The parties themselves, or those persons who might lawfully have controlled a civil action in their behalf for the same subject matter, must sign and acknowledge a written agreement, specifying particularly what demands are to be submitted, the names of the arbitrators, and court by which the judgment on their award is to be rendered. [C., '51, §§ 2099, 2100; R., '60, §§ 3676, 3677; C., '73, § 3417; C., '97, § 4386.]

12697. What submitted. The submission may be of some particular matters or demands, or of all demands which the one party has against the other, or of all mutual demands on both sides. [C., '51, § 2101; R., '60, § 3678; C., '73, § 3418; C., '97, § 4387.]

12698. Action pending. A submission to arbitration of the subject matter of an action may also be made by an order of court, upon agreement of parties, after action is commenced. [C., '51, § 2102; R., '60, § 3679; C., '73, § 3419; C., '97, § 4388.]

12699. Procedure. All the rules prescribed by law in cases of referees are applicable to arbitrators, except as herein otherwise expressed, or except as otherwise agreed upon by the parties. [C., '51, § 2103; R., '60, § 3680; C., '73, § 3420; C., '97, § 4389.]

12700. Revocation. Neither party shall have the power to revoke the submission without the consent of the other. [C., '51, § 2104; R., '60, § 3681; C., '73, § 3421; C., '97, § 4390.]

12701. Neglect to appear. If either party neglects to appear before the arbitrators after due notice, except in case of sickness, they may nevertheless proceed to hear and determine the controversy upon the evidence which is pro-

duced before them. [C., '51, § 2105; R., '60, § 3682; C., '73, § 3422; C., '97, § 4391.]

12702. Time for award. If the time within which the award is to be made is fixed in the submission, one made after that time shall not have any legal effect, unless made upon a recommitment of the matter by the court to which it is reported. [C., '51, § 2106; R., '60, § 3683; C., '73, § 3423; C., '97, § 4392.]

12703. When time not fixed. If the time of filing the award is not fixed in the submission, it must be filed within one year from the time the agreement is signed and acknowledged, unless by mutual consent the time is prolonged. [C., '51, § 2107; R., '60, § 3684; C., '73, § 3424; C., '97, § 4393.]

12704. Award—how made. The award must be in writing, and shall be delivered by one of the arbitrators to the court designated in the agreement, or it may be inclosed and sealed by them and transmitted to the court, and not opened until the court so orders. [C., '51, § 2108; R., '60, § 3685; C., '73, § 3425; C., '97, § 4394.]

12705. Hearing in court. The award shall be entered on the docket of the court at the term to which it is returned, as an action is entered, and shall be called up and acted upon in its order, but the court may require actual notice to be given to either party, when it appears necessary and proper, before proceeding to act on the award. [C., '51, § 2109; R., '60, § 3686; C., '73, § 3426; C., '97, § 4396.]

12706. Rejection—rehearing. The award may be rejected by the court for any legal and sufficient reasons, or it may be recommitted for a rehearing to the same arbitrators, or any others agreed upon by the parties, or appointed by the court if they can not agree. [C., '51, § 2110; R., '60, § 3687; C., '73, § 3427; C., '97, § 4397.]

12707. Force and effect of award. When the award has been adopted, it shall be filed and entered on the records, and shall have the same force and effect as the verdict of a jury. Judg-

ment may be entered and execution issued accordingly. [C., '51, § 2111; R., '60, § 3688; C., '73, § 3428; C., '97, § 4398.]

12708. Appeal. When an appeal is taken from such judgment, copies of the submission and award, together with all affidavits, shall be filed with the clerk of the supreme court. [C., '51, § 2112; R., '60, § 3689; C., '73, § 3429; C., '97, § 4399.]

12709. Costs. If there is no provision in the submission respecting costs, the arbitrators may apportion the same. [C., '51, § 2113; R., '60, § 3690; C., '73, § 3430; C., '97, § 4400.]

12710. Rights saved. Nothing herein contained shall be construed to affect in any manner the control of the court over the parties, the arbitrators or their award; nor to impair

or affect any action upon an award, or upon any bond or other engagement to abide an award. [C., '51, § 2115; R., '60, § 3692; C., '73, § 3431; C., '97, § 4401.]

12711. Compensation of arbitrators. Arbitrators shall be paid, for each day actually and necessarily engaged in their official duties, two dollars, or such greater sum as the parties to the arbitration agree upon. [C., '51, § 2114; R., '60, § 3691; C., '73, § 3834; C., '97, § 3873.]

12712. Arbitration by agreement. Awards by arbitrators who may have been chosen without complying with the provisions of this chapter shall nevertheless be valid and binding upon the parties thereto, as other contracts, and may be impeached only for fraud or mistake, but such award can only be enforced by an action. [C., '97, § 4395.]

CHAPTER 549

RECEIVERS

12713. Appointment.
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12715. Oath and bond of.
12716. Powers.

12717. Priority of liens.
12718. Taxes as prior claim—nonnecessity to file claim.
12719. Claims entitled to priority.

12713. Appointment. On the petition of either party to a civil action or proceeding, wherein he shows that he has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court or judge shall prescribe, the court, or, in vacation, the judge thereof, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to him. [C., '51, § 1656; R., '60, §§ 3216, 3419; C., '73, §§ 2903, 2970; C., '97, § 3822.]

12714. Permissible proofs. Upon the hearing of the application, affidavits, and such other proof as the court or judge permits, may be introduced, and upon the whole case such order made as will be for the best interest of all parties concerned. [C., '73, 2903; C., '97, § 3822.]

12715. Oath and bond of. Before entering upon the discharge of his duties, he must be sworn faithfully to discharge his trust to the best of his ability, and must also file with the clerk a bond with sureties, to be approved by him, in a penalty to be fixed by the court or judge, and conditioned for the faithful discharge of his duties, and that he will obey the orders of the court in respect thereto. [C., '51, § 1657; R., '60, § 3420; C., '73, § 2904; C., '97, § 3823.]

12716. Powers. Subject to the control of the court or judge, a receiver has power to

bring and defend actions, to take and keep possession of property, to collect debts, to receive the rents and profits of real property, and, generally, to do such acts in respect to the property committed to him as may be authorized by law or ordered by the court. [C., '51, § 1658; R., '60, § 3421; C., '73, § 2905; C., '97, § 3824.]

12717. Priority of liens. Persons having liens upon the property placed in the hands of a receiver shall, if there is a contest as to their priority, submit them to the court for determination. [C., '97, § 3825; S., '13, § 3825.]

12718. Taxes as prior claim—nonnecessity to file claim. When the assets of any corporation, partnership, or person shall be placed in the hands of a receiver, all taxes against said corporation, partnership, or person, whether levied under the laws of the state or ordinances of municipal corporations, shall be entitled to priority and be first paid in full by the receiver, and claims therefor need not be filed with said receiver. [S., '13, § 3825.]

12719. Claims entitled to priority. When the property of any person, partnership, company, or corporation has been placed in the hands of a receiver for distribution, after the payment of all costs the following claims shall be entitled to priority of payment in the order named:

1. Taxes or other debts entitled to preference under the laws of the United States.

2. Debts due or taxes assessed and levied for the benefit of the state, county, or other municipal corporation in this state.

3. Debts owing to employees for labor performed as defined by section 11717. [S., '13, § 3825-a.]

CHAPTER 550

ASSIGNMENT FOR BENEFIT OF CREDITORS

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12720. Must be without preferences. No general assignment of property by an insolvent person, firm, or corporation, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all the creditors in proportion to the amount of their respective claims; and in every such assignment the assent of the creditors shall be presumed. [C., '51, §§ 977, 978; R., '60, §§ 1826, 1827; C., '73, §§ 2115, 2116; C., '97, § 3071.]

12721. How made. Every such assignment shall be by an instrument in writing, setting forth the name of the assignor, his residence and business, the name of the assignee and his residence and business, and, in a general way, the property assigned and its location, and the purpose of the assignment. [C., '97, § 3072.]

12722. Execution—record and index. It shall be signed and acknowledged in the manner prescribed for the execution and acknowledgment of deeds, and recorded in the office of the recorder of the county where the assignor resides, and in any other county in the state in which he has real property to be assigned thereby, in the records of deeds, and indexed in the proper index books. [R., '60, § 1828; C., '73, § 2117; C., '97, § 3072.]

12723. Inventory—list of creditors. The assignor shall annex to such instrument an inventory, under oath, of his estate, real and personal, according to the best of his knowledge, and a list of his creditors and the amount of their respective demands, but such inventory shall not be conclusive as to the amount of the debtor's estate. [R., '60, § 1828; C., '73, § 2117; C., '97, § 3072.]

12724. Effect of assignment. Such assignment shall vest in the assignee the title to

any other property belonging to the debtor at the time of making the assignment, not exempt from execution. [R., '60, § 1828; C., '73, § 2117; C., '97, § 3072.]

12725. Filing with clerk. As soon as such assignment is recorded, it shall be filed, with the inventory and list of creditors, in the office of the clerk of the district court, as shall all subsequent papers connected with such proceedings. [R., '60, § 1828; C., '73, § 2117; C., '97, § 3072.]

12726. Inventory and appraisal—bond. The assignee shall forthwith file with the clerk of the district court where such assignor resides a true and full inventory and valuation of said estate under oath, so far as the same has come to his knowledge, and shall then enter into bonds to said clerk, for the use of the creditors, in double the amount of the inventory and valuation, with one or more sureties to be approved by said clerk, for the faithful performance of said trust, and the assignee may thereupon proceed to perform any duty necessary to carry into effect the purpose of said assignment. [R., '60, § 1830; C., '73, § 2118; C., '97, § 3073.]

12727. Notice of assignment—notice to creditors. The assignee shall forthwith give notice of such assignment by publication in some newspaper in the county, which shall be continued, once each week, at least six weeks, and forthwith send a notice by mail to each creditor of whom he shall be informed, directed to his usual place of residence, requiring such creditor to present to him within three months thereafter his claims under oath. [R., '60, § 1829; C., '73, § 2119; C., '97, § 3074; S., '13, § 3074.]

12728. Claims filed. The claims of all creditors, clearly and distinctly stated and sworn

to by the claimant, or by some person acquainted with the facts, shall be filed with the assignee within three months from the date of the first publication provided for in the preceding section, unless the court extends such time for all or some of such claimants, which it may do in its discretion where peculiar circumstances seem to justify such extension, but in no case shall such time be extended beyond nine months. [C., '97, § 3075.]

12729. Report required. At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court a true and full list, under oath, of all such creditors of the assignor as shall have claimed to be such, with a statement of their claims, an affidavit of publication of notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing the same. [R., '60, § 1831; C., '73, § 2120; C., '97, § 3076.]

12730. Claims contested. Any person interested may appear within three months after such report is filed and contest the claim or demand of any creditor by written exceptions thereto filed with the clerk, who shall forthwith cause notice thereof to be given to the creditor, which shall be served as in case of an original notice and returnable at the next term, at which term the court shall proceed to hear the proofs and allegations of the parties in the case, and render such judgment thereon as shall be just, or it may allow a trial by jury. [R., '60, § 1832; C., '73, § 2121; C., '97, § 3077.]

12731. Priority of taxes—nonnecessity to file claim. In all assignments of property for the benefit of creditors, assessments thereof, or taxes levied thereon, whether under the laws of the state or ordinances of municipal corporations, shall be entitled to priority, and paid in full by the assignee, and claims therefor need not be filed with him. [C., '97, § 3078.]

12732. Labor claims preferred. If the claim of any creditor is for personal services rendered the assignor within ninety days next preceding the execution of the assignment, it shall be paid in full. [C., '97, § 3079.]

12733. Dividends—compensation. Subject to the provisions contained in the two preceding sections, if no exception be made to the claim of any creditor, or if the same has been adjudicated, the court shall order the assignee to make, from time to time, fair and equal dividends among the creditors of the assets in his hands in proportion to their claims, and as soon as may be to render a final account of said trust to said court, which may allow such compensation to said assignee in the final settlement as may be considered just and right. [C., '73, § 2122; C., '97, § 3079.]

12734. Absent creditor. If, upon making the final dividend to the creditors, the assignee shall be unable, after reasonable efforts, to ascertain the place of residence of any cred-

itor, or any person who is authorized to receive the dividend due him, he shall report the same to the court, with evidence showing diligent attempts to find such creditor or person authorized to receive the dividend, whereupon the court may, in its discretion, order the distribution of the unclaimed dividend among the other creditors. [C., '97, § 3079.]

12735. Power of court. The assignee shall be at all times subject to the order and supervision of the court or judge, and from time to time may be compelled by citation or attachment to file reports of his proceedings and of the situation and condition of the trust, and to proceed in the execution of the duties required by this chapter. [R., '60, §§ 1834, 1842; C., '73, § 2123; C., '97, § 3080.]

12736. Disposal of property—time limit. The assignee shall dispose of all personal property and divide the proceeds of the same among creditors as they may be entitled thereto within six months from the date of the assignment, and shall dispose of real estate within one year from such date, and make full settlement by that time, unless the court or judge, for good reason shown, shall extend the time within which such disposition or settlement shall be made. [C., '97, § 3080.]

12737. Neglect to file inventory or list. No assignment shall be declared fraudulent or void for want of any list or inventory, as provided in this chapter. [R., '60, § 1835; C., '73, § 2124; C., '97, § 3081.]

12738. Examination of debtor. The court or judge may, upon application of the assignee or any creditor, compel the appearance in person of the debtor before such court or judge forthwith, or at the next term, to answer under oath such matters as may be inquired of him, and such debtor may be fully examined under oath as to the amount and situation of his estate, and the names of the creditors and amounts due to each, with their places of residence, and may be compelled to deliver to the assignee any property or estate embraced in the assignment. [R., '60, § 1835; C., '73, § 2124; C., '97, § 3081.]

12739. Additional inventory and security. The assignee shall, from time to time, file with the clerk of the court an inventory and valuation of any additional property which may come into his hands under said assignment after the filing of the first inventory, and the clerk may thereupon require him to give additional security. [R., '60, § 1836; C., '73, § 2125; C., '97, § 3082.]

12740. Claims not due. Any creditor may claim debts to become due, as well as debts due, but on debts not due a reasonable rebate shall be made when the same are not drawing interest. [R., '60, § 1837; C., '73, § 2126; C., '97, § 3083.]

12741. Claims filed after three months. All creditors who shall not file their claims within

three months from the publication of notice, as aforesaid, shall not participate in the dividends until after the payment in full of all claims presented within said term, and allowed by the court, unless the court has extended the time for filing such claims, except as provided by this chapter. [R., '60, § 1837; C., '73, § 2126; C., '97, § 3083.]

12742. Sale of property generally. The assignee may dispose of and sell all the estate assigned, real and personal, which the debtor had at the time of the assignment, may sue for and recover in his name everything belonging or appertaining to said estate, and generally do whatever the debtor might have done in the premises. [R., '60, § 1838; C., '73, § 2127; C., '97, § 3084.]

12743. Sale of real estate. No sale of real estate belonging to said trust shall be made without notice, published as in case of sales of real estate on execution, unless the court or judge shall otherwise order. [R., '60, § 1838; C., '73, § 2127; C., '97, § 3084.]

12744. Approval of sales. No such sales shall be valid until approved by such court or judge. [C., '97, § 3084.]

12745. Mandatory removal of assignee. Upon a written application of two-thirds of the creditors in number, and two-thirds in amount, the court shall remove the assignee and appoint in his stead a person approved by the creditors in the same number and amount. [C., '97, § 3085.]

12746. Permissive removal of assignee. If an assignee shall reside out of the state, or become insane or otherwise incapable of discharging the trust, the court may, upon ten days' notice to him or his attorney, remove him and appoint another in his stead. [C., '97, § 3085.]

12747. Accounting and delivery. The person so removed shall immediately turn over to the clerk of the district court, or any person appointed by the court, all moneys and property of the estate in his hands. [C., '97, § 3085.]

12748. Death of assignee—failure to act. If an assignee dies before the closing of his trust, or in case any assignee shall fail or neglect for the period of twenty days after the making of any assignment to file an inventory and valuation, and give bond as required by this chapter, the district court, or any judge thereof, of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust, who shall, on giving bond with sureties as required of an assignee, have all of the powers of the assignee first appointed, and be subject to all the duties hereby imposed. [R., '60, § 1839; C., '73, § 2128; C., '97, § 3086.]

12749. Additional security—misconduct. In case any bond or surety is found to be insufficient, or, on complaint before the court or judge, it shall be made to appear that any assignee is guilty of wasting or misapplying the trust estate, such court or judge may require additional security, may remove the assignee and appoint another in his place, and such person so appointed, on giving bond, shall execute such duties, and may demand and sue for all estate in the hands of the person removed, and recover the amount and value of all moneys and property or estate wasted and misapplied, from such person and his sureties. [R., '60, § 1839; C., '73, § 2128; C., '97, § 3086.]

12750. Power of judge in vacation. Any judge of the district court in vacation shall have power in cases under this chapter to issue citations and attachments, order the sale of personal or real property, and approve sales and deeds thereof. [C., '97, § 3087.]

CHAPTER 551

SECURITIES AND INVESTMENTS OF TRUST FUNDS

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- 12767. Not applicable to criminal bonds.
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SURETY BONDS

12751. **Security to be by bond.** Whenever security is required to be given by law or by order or judgment of a court, and no particular mode is prescribed, it shall be by bond. [C., '51, § 2505; R., '60, § 4113; C., '73, § 246; C., '97, § 355.]

12752. **Payee.** Such security, when not otherwise directed, may, if for the benefit of individuals, be given to the party intended to be secured thereby; if in relation to the public matters concerning the inhabitants of one county or part of a county, it may be made payable to the county; if concerning the inhabitants of more than one county, it may be made payable to the state, but a mere mistake in these respects will not vitiate the security. [C., '51, § 2506; R., '60, § 4114; C., '73, § 247; C., '97, § 356.]

12753. **Defects rectified.** No defective bond or other security or affidavit in any case shall prejudice the party giving or making it, provided it be so rectified, within a reasonable time after the defect is discovered, as not to cause essential injury to the other party. [C., '51, § 2511; R., '60, § 4119; C., '73, § 248; C., '97, § 357.]

12754. **Qualifications of sureties.** The surety in every bond provided for or authorized by law must be a resident of this state, and worth double the sum to be secured beyond the amount of his debts, and have property liable to execu-

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- 12771. Estoppel—stockholders liable.

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- 12776. Property or funds in litigation—deposit.
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tion in this state equal to the sum to be secured, except as otherwise provided by law. Where there are two or more sureties in the same bond, they must in the aggregate have the qualification prescribed in this section. [R., '60, § 4126; C., '73, § 249; C., '97, § 358; S., '13, § 358.]

12755. **Attorneys not receivable as surety.** Attorneys at law shall not be accepted as sureties upon any official bonds provided for in the preceding section. [S., '13, § 358.]

12756. **New bond required.** Whenever the board of supervisors of any county shall have knowledge that any attorney at law is surety upon any official bond, above referred to, it shall require said officer to forthwith file a new bond. [S., '13, § 358.]

12757. **Surety bound notwithstanding disqualification.** Nothing in the two preceding sections shall exempt such person from any liability upon the bond signed by him. [S., '13, § 358.]

12758. **Affidavit of sureties—effect of.** The officer whose duty it is to take a surety in any bond provided for or authorized by law shall require the person offered as surety to make affidavit of his qualification, which affidavit may be made before such officer, or other officer authorized to administer oaths. [R., '60, § 4125; C., '73, § 250; C., '97, § 359.]

12759. **Effect of affidavit.** The taking of such an affidavit shall not exempt the officer

from any liability to which he might otherwise be subject for taking insufficient security. [R., '60, § 4125; C., '73, § 250; C., '97, § 359.]

SURETY COMPANIES

12760. Certificate of authority. Any company engaged in the business of becoming surety upon bonds shall file, with the clerk of any county in which it shall do business, a certificate from the commissioner of insurance that it has complied with the law and is authorized to do business in this state. [C., '97, § 359.]

12761. Certificate revoked—notice. Should said authority be withdrawn at any time, the commissioner of insurance shall at once notify the clerk of each district court to that effect. [C., '97, § 359.]

12762. Record kept by clerk. The clerk shall keep a book, properly indexed, in which shall be recorded all such certificates and revocations. [C., '97, § 359.]

12763. Guaranty company as surety. Whenever any person who now or hereafter may be required or permitted to give a bond applies for the approval thereof, any officer or body who is now or shall hereafter be required to approve the sufficiency of such bond shall accept and approve the same, whenever its conditions are guaranteed by a company or corporation duly organized or incorporated under the laws of this state, or authorized to do business therein, and to guarantee the fidelity of persons holding positions of public or private trust, or secure any bond above referred to, and which company shall have the certificate of the commissioner of insurance authorizing it to do business therein, as provided in chapter 404. [C., '97, § 360; S. S., '15, § 360.]

12764. Payment of premiums. The premium for any such guaranty or surety company bond as defined in the preceding section, may, by the approval of the court, be paid out of the trust funds in the hands of the party of whom the bond is required. [S. S., '15, § 360.]

12765. Certificate sufficient authority. The certificate of the commissioner of insurance, to the effect that such company has complied with the requirements of chapter 404 and is authorized to do business in this state, shall be sufficient evidence to authorize the officer or body having the approval of such bond to accept and approve the same. [C., '97, § 360; S. S., '15, § 360.]

12766. Limitation on acceptance of surety. No such security shall be accepted on any bond for an amount in excess of ten per cent of the paid-up cash capital of such company or corporation unless the excess shall be reinsured in some other company or corporation authorized to do business in the state and in no case to exceed ten per cent of the capital of the reinsuring company and provided that a certifi-

cate of such reinsurance shall be furnished to the insured. [C., '97, § 360; S. S., '15, § 360.]

12767. Not applicable to criminal bonds. Nothing contained in the four preceding sections shall apply to bonds in criminal cases. [C., '97, § 360; S. S., '15, § 360.]

12768. Release from liability. Such company or corporation may be released from its liability as such surety on any bond on the same terms and conditions, and in the same manner, as is by law prescribed for the release of natural persons as such sureties; it being the intent of this chapter to enable companies created, incorporated, or chartered for such purposes to become surety on bonds required by law, subject to all the rights and liabilities of natural persons. [C., '97, § 361.]

12769. Suit on bond—service and time thereof. Whenever suit is required to be brought on any bond given by such company, service shall be had upon any agent of such company in this state, and if there is no agent in the state, then service may be had by serving the commissioner of insurance fifteen days before the term of court in which the suit is sought to be brought. [C., '97, § 362.]

12770. Commissioner of insurance as process agent. It shall be the duty of the commissioner of insurance, upon service being made upon him, to immediately mail a copy of such notice to such company at their principal place of business, and any notice so served shall be deemed to be good and sufficient service on any such company. [C., '97, § 362.]

12771. Estoppel—stockholders liable. Any company which shall execute any bond as surety under the provisions of this chapter shall be estopped, in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability; and the private property of the stockholders shall be liable for the debts of the corporation to the full amount of the capital stock held by such stockholders. [C., '97, § 363.]

INVESTMENT OF FUNDS

12772. Authorized securities. Where investments of funds are to be made, including those to be made by executors, administrators, trustees, and guardians, and no mode of investment is pointed out by statute, they may under order of court be made:

1. *Federal and state bonds.* In the bonds of this state, or of those of the United States, or federal farm loan bonds issued under the provisions of the act of congress approved July 17, 1916, or,

2. *Real estate mortgages.* In bond or mortgage upon real property of the clear unincumbered value of twice the investment or,

3. *Municipal bonds.* In bonds issued by or under the direction of cities, towns, counties, school, or drainage districts of this state. [C.,

'51, § 2507; R., '60, § 4115; C., '73, § 251; C., '97, § 364; S., '13, § 364; 39 G. A., ch. 126.]

12773. Security subject to court order. When such investment is made by order of any court, the security taken shall in no case be discharged, impaired, or transferred without an order of the court to that effect, entered on the minutes thereof. [C., '51, § 2508; R., '60, § 4116; C., '73, § 252; C., '97, § 365.]

12774. Collection, application of funds, and reinvestment. The clerk or other person appointed in such cases to make the investment must receive all moneys as they become due thereon, and apply or reinvest the same under the direction of the court, unless the court appoints some other person to do such acts. [C., '51, § 2509; R., '60, § 4117; C., '73, § 253; C., '97, § 366.]

12775. Annual accounting. Once in each year, and oftener if required by the court, the person so appointed must, on oath, render to the court an account in writing of all moneys so received by him, and of the application thereof. [C., '51, § 2510; R., '60, § 4118; C., '73, § 254; C., '97, § 367.]

ESTATE AND TRUST FUNDS

12776. Property or funds in litigation—deposit. When it is admitted by the pleadings, or shown by the examination of a party, that he has in his possession, or under his control, any money or property capable of delivery, which is in any degree the subject of litigation, and which is held by him as trustee for another party, the court, or judge thereof, may order the same to be deposited in the office of the clerk, or delivered to such party, with or without security, subject to the further direction of the court; or may order such money to be deposited in a bank, with the consent of the parties in interest, to the credit of the court in which the action is pending, and the same shall be paid out by such bank only upon the check of the clerk, annexed to a certified copy of the order of the court directing such payment. [R., '60, § 3416; C., '73, § 255; C., '97, § 368.]

12777. Enforcement of order. Whenever a court, or judge in the exercise of its or his authority, has ordered the deposit or delivery of money or other property, and the order is disobeyed, such court or judge, besides punishing the disobedience, may make an order requiring the sheriff to take the money or property, and deposit or deliver it in conformity with the directions of the court or judge, and in such cases he has the same power as when acting under an order for the delivery of personal property. [R., '60, §§ 3417, 3418; C., '73, §§ 256, 257; C., '97, § 369.]

12778. Inability to distribute trust funds—deposit. Whenever any administrator, guardian, trustee, or referee shall desire to make his final report, and shall then have in his possession or under his control any funds,

moneys, or securities due, or to become due, to any heir, legatee, devisee, or other person, whose place of residence is unknown to such administrator, guardian, trustee, or referee, or to whom payment of the amount due can not be made as shown by the report on file, such funds, moneys, or securities may upon order of the court and after such notice as the court may prescribe, be deposited with the clerk of the district court of the county wherein such appointment was made. [C., '97, § 370; S., '13, § 397.]

12779. Receipt taken. If said administrator, guardian, trustee, or referee shall otherwise discharge all the duties imposed upon him by such appointment, he may take the receipt of the clerk of the district court for such funds, moneys, or securities so deposited, which receipt shall specifically set forth from whom said funds, moneys, or securities were derived, the amount thereof, and the name of the person to whom due or to become due, if known. [C., '97, § 370; S., '13, § 397.]

12780. Final discharge. Said administrator, guardian, trustee, or referee may file such receipt with his final report, and if it shall be made to appear to the satisfaction of the court that he has in all other respects complied with the law governing his appointment and duties, the court may approve such final report and enter his discharge. [C., '97, § 370; S., '13, § 397.]

12781. Notice of deposit. Notice of such contemplated deposit, and of final report, shall be given for the same time and in the same manner as is now required in cases of final report by administrators. [C., '97, § 370; S., '13, § 370.]

12782. Duty of clerk. The clerk of the district court with whom any deposit of funds, moneys, or securities shall be made, as provided by any law or an order of court, shall enter in a book, to be provided and kept for that purpose, the amount of such deposit, the character thereof, the date of its deposit, from whom received, from what source derived, to whom due or to become due, if known. [C., '97, § 371; S., '13, § 371.]

12783. Liability—reports required. He shall be liable upon his bond for all such funds, moneys, or securities which may be deposited with him, and shall make complete verified statements thereof to the board of supervisors at the January and June sessions each year. [C., '97, § 371; S., '13, § 371.]

12784. Deposit with county treasurer. If the funds, moneys, or securities so deposited with the clerk shall not be paid to the person or persons to whom the same are due, or to become due, within six months from the date of its deposit, the clerk shall then, unless otherwise ordered by the court or judge, deposit such funds, moneys, or securities with the county treasurer for the use of the county wherein such appointment was made, taking

the treasurer's receipt therefor, countersigned by the county auditor, who shall thereupon charge upon the books of his office and against the treasurer the amount named in such receipts. [C., '97, § 371; S., '13, § 371.]

12785. Duty of treasurer. Whenever any funds, moneys, or securities shall be deposited with the county treasurer, as provided in this chapter, he shall enter in a book, provided and kept for that purpose, the date of such deposit, the amount thereof, from whom received, the source from which derived, and the name of the person to whom the same is due or to become due, if known. [C., '97, § 372.]

12786. Disbursement. Whenever the claimant therefor, upon proper application made to the district court, shall satisfactorily show to such court that he is the rightful owner of said funds, moneys, or securities and entitled thereto, the court, by order entered of record, shall direct the county auditor to issue a warrant on the county treasurer for said money, funds, or securities, and, upon such order, the said treasurer shall pay to the person named in such order the funds, moneys, or securities to which the claimant shall have shown himself entitled. [C., '97, § 372.]

CHAPTER 552

PROCEDURE TO VACATE OR MODIFY JUDGMENTS

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12789. Petition deemed denied—method of trial.
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12795. Joinder—petition deemed denied—method of trial.
12796. Valid defense.
12797. Liens preserved.
12798. Grounds to vacate first tried.
12799. Injunction.
12800. Judgment affirmed.

12787. Judgment vacated or modified—grounds. Where a final judgment or order has been rendered or made, the district court, in addition to causes for a new trial hereinbefore authorized, may, after the term at which the same was rendered or made, vacate or modify the same or grant a new trial:

1. For mistake, neglect, or omission of the clerk, or irregularity in obtaining the same.
2. For fraud practiced in obtaining the same.
3. For erroneous proceedings against a minor or person of unsound mind, when such errors or condition of mind do not appear in the record.
4. For the death of one of the parties before the rendition of the judgment or making of the order, if no substitute has been made of the proper representative before the rendition of the judgment or order.
5. For unavoidable casualty or misfortune preventing the party from prosecuting or defending.
6. For error in the judgment or order shown by a minor within twelve months after arriving at majority. [R., '60, § 3499; C., '73, § 3154; C., '97, § 4091.]

12788. Petition for new trial after term. Where the grounds for a new trial could not with reasonable diligence have been discovered before, but are discovered after the term at which the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed, on which notice shall be served upon the successful party and returned, and he be held to appear, as in an original action. [R., '60, § 3116; C., '73, § 3155; C., '97, § 4092.]

12789. Petition deemed denied—method of trial. The facts stated in the petition shall be considered as denied without answer, and tried by the court as other actions by ordinary proceedings. [R., '60, § 3116; C., '73, § 3155; C., '97, § 4092.]

12790. Time limit. No such petition shall be filed after one year from the rendition of final judgment. [R., '60, § 3116; C., '73, § 3155; C., '97, § 4092.]

12791. Motion to correct mistake or irregularity. Proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining judgment or order, shall be by motion served on the adverse party or his attorney, and within one year; if made to vacate a judgment or order because of irregularity in obtaining it, such motion must be made on or before the second day of the succeeding term. [R., '60, § 3500; C., '73, § 3156; C., '97, § 4093.]

12792. Petition. The application based upon the other grounds shall be by verified petition setting forth the judgment or order, the alleged facts or errors constituting a cause to vacate or modify it, and the matters constituting a defense to the action, if the party applying was a defendant. [R., '60, § 3501; C., '73, § 3157; C., '97, § 4094.]

12793. Time limit. Such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto is a minor or person of unsound mind, and then within one year after the removal of such disability. [R., '60, § 3501; C., '73, § 3157; C., '97, § 4094.]

12794. Proceedings. In such proceedings the party shall be brought into court in the same

way, on the same notice as to time, mode of service, and return, and the pleadings, issues, and form and manner of trial shall be governed by the same rules and conducted in the same manner, as nearly as may be, and with the same right of appeal, as in ordinary actions. [R., '60, § 3502; C., '73, § 3158; C., '97, § 4095.]

12795. Joinder — petition deemed denied — method of trial. No new cause of action or defense shall be introduced, and the matter stated in the petition shall be taken as denied without answer, and the issue shall be tried by the court. [R., '60, § 3502; C., '73, § 3158; C., '97, § 4095.]

12796. Valid defense. The judgment shall not be vacated on motion or petition until it is adjudged there is a cause of action or defense to the action in which the judgment is rendered. [R., '60, § 3503; C., '73, § 3159; C., '97, § 4096.]

12797. Liens preserved. If a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment. [R., '60, § 3503; C., '73, § 3159; C., '97, § 4096.]

12798. Grounds to vacate first tried. The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying or deciding upon the validity of the cause of action or defense. [R., '60, § 3504; C., '73, § 3160; C., '97, § 4097.]

12799. Injunction. The party seeking to vacate or modify a judgment or order may have an injunction suspending proceedings on the whole or part thereof, which shall be granted by the court or a judge thereof upon its being rendered probable, by affidavit or verified petition, or by exhibition of the record, that the party is entitled to the relief asked. [R., '60, § 3505; C., '73, § 3161; C., '97, § 4098.]

12800. Judgment affirmed. If the judgment or order is affirmed and the proceedings have been suspended, an additional judgment shall be rendered against the plaintiff in error for the amount of the costs, together with damages at the discretion of the court, not exceeding ten per cent on the amount of the judgment affirmed. [R., '60, § 3506; C., '73, § 3162; C., '97, § 4099.]

TITLE XXXIV

SUPREME COURT

CHAPTER 553

ORGANIZATION OF SUPREME COURT.

12801. Judges—quorum.
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12803. Submission to entire court.—rules.
12804. Chief justice.
12805. Terms of court.
12806. Business at each term—docket.
12807. Recess or adjournment.
12808. Causes assigned and submitted.

12801. Judges—quorum. The supreme court shall consist of seven judges, four of whom shall constitute a quorum to hold court, but one alone thereof may adjourn from day to day or to a certain day or until the next term. [C., '51, § 1551; R., '60, § 2627; C., '73, § 139; C., '97, § 193; S., '13, § 193.]

12802. Division into sections. The court may be divided into two sections, the chief justice presiding in open court with each of said sections. The said sections may hold open court separately and cases may be submitted to each section separately in accordance with the rules that shall be provided for by the supreme court. [C., '97, § 194; S., '13, § 194.]

12803. Submission to entire court—rules. The said supreme court shall also adopt rules for the submission of any case or petition for rehearing whenever differences shall arise between members of either section or whenever the chief justice shall order or direct the submission of said question or petition for rehearing to the whole court. The supreme court shall make all rules and regulations necessary to provide for the submission of cases to the entire bench, or to the separate sections. [C., '97, § 194; S., '13, § 194.]

12804. Chief justice. Of the judges whose terms of office first expire, the senior in time of service shall be chief justice for one year, and, if there be but two of them, the junior for one year, and so on in rotation. If two or more are equal in time of service, then the right to the position and the order in which they serve shall be determined by seniority in age. And at the last term in each year, the supreme court shall determine and enter of record, who, under these rules, shall be chief

12809. Rules for assignment of causes.
12810. Divided court.
12811. Failure of judges to attend.
12812. Business continued.
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justice for the year next ensuing; and at the session of the supreme court next preceding the commencement of the first of the said two years, the supreme court shall cause a record to be made as to who shall be the chief justice for the year next ensuing. [R., '60, § 467; C., '73, § 582; C., '97, § 1066; S., '13, § 1066.]

12805. Terms of court. The supreme court shall be held at the seat of government, and shall convene and hold three regular terms each year. The first term shall begin with the second Tuesday of January and end with the first Monday of May; the second shall begin with the first Tuesday after the first Monday of May and end with the third Monday of September; and the third shall begin with the first Tuesday after the third Monday of September and end with the third Saturday of December. [C., '97, § 192; S., '13, § 192-a.]

12806. Business at each term—docket. Each of said terms of court shall be for the submission and determination of causes, and for the transaction of such other business as shall properly come before the court. All causes on the docket shall be heard at each term, unless continued or otherwise disposed of by order of the court. The court shall remain in session, so far as practicable, until it is determined what the opinion of the court shall be in all causes submitted to it, except in causes where reargument is ordered. Judgments of affirmance, rulings, and orders in causes submitted, and orders authorized by law may be made and entered by the court at any time, regardless of the terms of court. [R., '60, § 2623; C., '73, § 133; C., '97, § 192.]

12807. Recess or adjournment. The court shall not be required to continue in actual pub-

lic session during an entire term, but may adjourn from time to time as by order or rule it shall direct; provided, however, that no such recess or adjournment shall be taken for more than thirty days at one time, except during the period from the first Monday in July to the third Monday in September in each year. [S., '13, § 192-b.]

12808. Causes assigned and submitted. At each regular or adjourned session of a term of court, causes pending therein may be assigned and submitted, but no more submissions shall be taken or allowed at any one session than in the judgment of the court can be properly considered and determined before the next succeeding session. [S., '13, § 193-a.]

12809. Rules for assignment of causes. The court shall by appropriate rules provide for the assignment of causes for hearing at the regular and adjourned sessions thereof, and for reasonable notice to counsel of the time or times at which their cases will be called. [S., '13, § 193-b.]

12810. Divided court. When the court is equally divided in opinion, the judgment of the court below shall stand affirmed, but the decision is of no further force or authority, but in such cases opinions may be filed. [C., '51, § 1552; R., '60, § 2628; C., '73, § 140; C., '97, § 195.]

12811. Failure of judges to attend. If none of the judges attend on the first day of the term, the clerk must enter the fact on the record, and the court shall stand adjourned until the next day, and so on until the fourth day; then, if none of the judges appear, the court shall stand adjourned until the next term. [C., '51, § 1553; R., '60, § 2629; C., '73, § 141; C., '97, § 196.]

12812. Business continued. No process or proceeding shall in any manner be affected by an adjournment or failure to hold court, but all shall stand continued to the next term, without any special order to that effect. [C., '51, § 1554; R., '60, § 2630; C., '73, § 142; C., '97, § 197.]

12813. Opinions to be filed. The decisions of the court on all questions passed upon by it, including motions and points of practice, shall be specifically stated, and shall be accompanied with an opinion upon all such as are deemed of sufficient importance, together with any dissent therefrom, which dissent may be stated with or without an opinion. All decisions and opinions shall be in writing and filed with the clerk, except that rulings upon motions may be entered upon the announcement book. [C., '51, §§ 1560, 1561; R., '60, §§ 2636, 2637; C., '73, § 143; C., '97, § 198.]

12814. Dissenting opinions. The records and reports must in all cases show whether a decision was made by a full bench, and whether any and, if so, which of the judges dissented from the decision. [C., '51, § 1562; R., '60, § 2638; C., '73, § 144; C., '97, § 199.]

12815. What cases reported. If the decision, in the judgment of the court, is not of sufficient general importance to be published, it shall be so designated, in which case it shall not be included in the reports, and no case shall be reported except by order of the full bench. [C., '73, § 145; C., '97, § 200.]

12816. Attendance of sheriff of Polk county. The court may at any time require the attendance and services of the sheriff of Polk county. [C., '97, § 201; 39 G. A., ch. 209, § 11.]

CHAPTER 554

CLERK OF THE SUPREME COURT

- 12817. Appointment.
- 12818. Office—duties.
- 12819. Fees to be collected.

12817. Appointment. Within ninety days prior to the first secular day in January, 1927, and every four years thereafter, the judges of the supreme court shall appoint a clerk of the supreme court who shall hold office for four years and until his successor has been appointed and qualified. In case a vacancy occurs, the same shall be filled by appointment for the unexpired portion of the term only. [C., '73, § 583; C., '97, § 1067; S., '13, §§ 207-a, 207-b; 40 Ex. G. A., S. F. 245, § 1.]

12818. Office—duties. The clerk of the supreme court shall have an office at the seat of government, keep a complete record of the proceedings of the court, and allow no opinion filed therein to be removed except by the re-

- 12820. Execution for fees.
- 12821. Deputy—qualification—duties.

porter, which opinions shall be open to examination and may be copied, and, upon request, shall be certified by him. He shall also, when required, make out and certify a copy thereof. He shall promptly announce by mail to one of the attorneys on each side any ruling made, or decision rendered, record every opinion rendered as soon as filed, and perform all other duties pertaining to his office. [C., '51, §§ 1564, 1565; R., '60, §§ 2647-2651; C., '73, §§ 146-149; C., '97, § 204.]

12819. Fees to be collected. The clerk shall collect the following fees and account for them as provided in section 143, and shall also keep account of and report in like manner all uncollected fees:

Upon filing each appeal, three dollars.

Upon entering judgment when the cause has been tried on its merits, two dollars.

Upon each continuance, one dollar.

Upon issuing each execution, one dollar and twenty-five cents.

Upon entering satisfaction of each judgment, fifty cents.

Upon each writ, rule, or order to be served upon any person not in court, twenty-five cents.

For copying an opinion to be transmitted to an inferior court upon reversal of a judgment or an order, to be paid by the party against whom the costs are adjudged, or for a copy of such opinion or any record made at the request of any person, for each hundred words, ten cents. [C., '51, § 2525; R., '60, §§ 2949, 4134; C., '73, § 3771; C., '97, § 205; S., '13, § 205; 39 G. A., ch. 209, § 12.]

12820. Execution for fees. If any of the foregoing fees of the clerk are not paid in ad-

vance, execution may issue therefor, except where the fees are payable by the county or the state. [C., '97, § 206.]

12821. Deputy—qualification—duties. The clerk of the supreme court may appoint, in writing, any person, except one holding a state office, as deputy, which appointment must be approved by the officer having the approval of the principal's bond, and such appointment may be revoked in the same manner, both the appointment and the revocation to be filed and kept in the office of the secretary of state. The deputy shall qualify by taking the oath of the principal, to be indorsed upon and filed with the certificate of appointment, and, when so qualified, he shall, in the absence or disability of the clerk, perform all of the duties of such clerk pertaining to his office. [C., '97, § 207; S. S., '15, § 207.]

CHAPTER 555

PROCEDURE IN THE SUPREME COURT IN CIVIL ACTIONS.

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12822. Appellate jurisdiction. The supreme court has appellate jurisdiction over all judgments and decisions of all courts of record, except as otherwise provided by law. [C., '51, § 1555; R., '60, § 2631; C., '73, § 3163; C., '97, § 4100.]

12823. Appeals from orders. An appeal may also be taken to the supreme court from:
1. An order made affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment from which an appeal might be taken.

2. A final order made in special actions affecting a substantial right therein, or made on a summary application in an action after judgment.

3. An order which grants or refuses, continues or modifies, a provisional remedy; grants or refuses, dissolves or refuses to dissolve, an injunction or attachment, or grants or refuses a new trial, or sustains or overrules a demurrer.

4. An intermediate order involving the merits or materially affecting the final decision.

5. An order or judgment on habeas corpus. [C., '51, § 1556; R., '60, § 2632; C., '73, § 3164; C., '97, § 4101.]

12824. From order made by judge. If any of the above orders or judgments are made or rendered by a judge, the same are reviewable the same as if made by a court. [R., '60, § 2633; C., '73, § 3165; C., '97, § 4102.]

12825. Other intermediate appeals. Such court, in its discretion, may also prescribe rules for allowing appeals on such other intermediate orders or decisions as are expedient, and for permitting such appeals to be taken and tried during the pendency of the action in the court below; but such an intermediate appeal shall not retard proceedings in the court from which the appeal is taken. [C., '51, § 1557; R., '60, § 2634; C., '73, § 3166; C., '97, § 4103.]

12826. Mistake of clerk below. A mistake of the clerk shall not be ground for an appeal until the same has been presented to and acted upon by the court below. [R., '60, § 3498; C., '73, § 3167; C., '97, § 4104.]

12827. Motion to correct error. A judgment or order shall not be reversed for an error which can be corrected on motion in an inferior court, until such motion has been there made and overruled. [R., '60, § 3545; C., '73, § 3168; C., '97, § 4105.]

12828. Motion for new trial. The supreme court on appeal may review and reverse any judgment or order of the municipal, superior, or district court, although no motion for a new trial was made in such court. [C., '73, § 3169; C., '97, § 4106; 40 Ex. G. A., H. F. 246, § 1.]

12829. Finding of facts—evidence certified. Where a cause is tried by the court, it shall not be necessary, in order to secure a review of the same in the supreme court, that there should have been any finding of facts or conclusions of law stated in the record, but the supreme court shall hear and determine the same when it appears from a certificate of the judge, agreement of parties, or their attorneys, or, if the record shows the evidence to consist wholly of written testimony, then from the certificate of the shorthand reporter or clerk, that the record contains all the evidence introduced by the parties in the trial

in the court below. [C., '73, § 3170; C., '97, § 4107.]

12830. Title of cause. The cause on appeal shall be docketed as it was in the court below, and the party taking the appeal shall be called the appellant, and the other party the appellee. [R., '61, § 3508; C., '73, § 3171; C., '97, § 4108.]

12831. Process. The court may issue all writs and processes necessary for the exercise and enforcement of its appellate jurisdiction. [C., '51, § 1558; R., '60, § 2635; C., '73, § 3172; C., '97, § 4109.]

12832. Time for appealing. Appeals from the district, superior, and municipal courts may be taken to the supreme court at any time within four months from the date of the entry of record of the judgment or order appealed from, and not afterwards; but, when a motion for new trial, or in arrest of judgment, or for judgment notwithstanding the verdict has been filed, such time for appeal shall be automatically extended so as to permit the same at any time within sixty days after the entry of the ruling upon such motion. [C., '51, § 1973; R., '60, § 3507; C., '73, § 3173; C., '97, § 4110; 40 Ex. G. A., H. F. 246, § 2.]

12833. Amount in controversy. No appeal shall be taken in any cause in which the amount in controversy between the parties as shown by the pleadings does not exceed one hundred dollars, unless the trial judge shall, during the term in which judgment or order is entered, certify that the cause is one in which the appeal should be allowed. Upon such certificate being filed the same shall be appealable regardless of the amount in controversy. Said limitation shall not affect the right of appeal in any action in which an interest in real estate is involved, nor shall the right of appeal be affected by the remission of any part of the verdict or judgment returned or rendered. [C., '73, § 3173; C., '97, § 4110; 40 Ex. G. A., H. F. 246, § 3.]

12834. Appeal by coparties. A part of several coparties may appeal, but in such case they must serve notice of such appeal upon those not joining therein, and file proof thereof with the clerk of the court from which the appeal is taken. [C., '51, § 1979; R., '60, § 3517; C., '73, § 3174; C., '97, § 4111; 40 Ex. G. A., H. F. 246, § 4.]

12835. Coparties not joining. Coparties, refusing to join in an appeal, can not afterwards appeal, or derive any benefit therefrom, unless from the necessity of the case, but they shall be held to have joined, and be liable for their proportion of the costs, unless they appear and object thereto. [C., '51, §§ 1980, 1981; R., '60, §§ 3518, 3519; C., '73, §§ 3175, 3176; C., '97, § 4112.]

12836. Appeal from part of judgment or order—effect. An appeal from part of an

order, or from one of the judgments of a final adjudication, or from part of a judgment, shall not disturb, delay, or affect the rights of any party to any judgment or order, or part of a judgment or order, not appealed from. [R., '60, § 3510; C., '73, § 3177; C., '97, § 4113.]

12837. Notice of appeal—service. An appeal is taken and perfected by the service of a notice in writing on the adverse party, his agent, or any attorney who appeared for him in the case in the court below, and also upon the clerk of the court wherein the proceedings were had, stating the appeal from the same, or from some specific part thereof, defining such part. [C., '51, § 1974; R., '60, § 3509; C., '73, § 3178; C., '97, § 4114; S., '13, § 4114.]

12838. Service fixed by court or judge. When such service can not be made the trial court or judge on application shall direct what notice shall be sufficient. [S., '13, § 4114.]

12839. Appeal prior to judgment entry—effect. Notice of appeal shall not be held insufficient because served before the clerk of the trial court has spread the judgment entry upon the court record if it shall appear that such entry has been made in proper form before the appellant's abstract was filed in the office of the clerk of the supreme court. [S., '13, § 4114.]

12840. Service and filing with trial clerk. A notice of appeal shall be served and return made thereon in the same manner as an original notice in a civil action, and filed in the office of the clerk of the court in which the judgment or order appealed from was rendered or made. [R., '60, § 3523; C., '73, § 3214; C., '97, § 4115; 40 Ex. G. A., H. F. 246, § 5.]

12841. Service and filing with appellate clerk. All other notices connected with or growing out of the appeal shall be served and the return made in like manner, and filed in the office of the clerk of the supreme court. [R., '60, § 3523; C., '73, § 3214; C., '97, § 4115; 40 Ex. G. A., H. F. 246, § 5.]

12842. Filed notices part of record. All notices provided for in the two preceding sections become a part of the record in the case on being filed. [C., '97, § 4115; 40 Ex. G. A., H. F. 246, § 5.]

12843. Docketing—assignment for each day. The clerk shall docket the causes as they are filed in his office and shall, under order of the chief justice, arrange and set a proper number for trial for each day of the term, placing together as far as practicable those from the same judicial district, and shall cause notice thereof to be published and distributed as the court may direct. [R., '60, § 3535; C., '73, § 3203; C., '97, § 4117; 40 Ex. G. A., H. F. 246, § 7.]

12844. Payment of fees. No case shall be docketed until the fees provided by law therefor have been paid. [C., '97, § 4121.]

12845. Abstracts—presumption. Printed abstracts of the record shall be filed in accordance with rules established by the supreme court, and shall be presumed to contain the record, unless denied or corrected by subsequent abstract. [C., '97, § 4118.]

12846. Unnecessary abstract or denial. If any denial or abstract is filed without good and sufficient cause, the costs of the same or any part thereof, and of any transcript thereby made necessary, shall be taxed to the party causing the same. [C., '97, § 4118.]

12847. Abstract—time of filing—hearing. An abstract of the record shall be filed in the office of the clerk of the supreme court thirty days before the second term after the appeal was taken. If the abstract is filed fifteen days before the first day of the next term of court the cause shall be placed on the calendar for that term and come on for hearing, unless otherwise ordered by the court. [C., '97, § 4119; 40 Ex. G. A., H. F. 246, § 6; 40 Ex. G. A., H. F. 331, § 1.]

12848. Dismissal or affirmance. If an abstract of the record is not filed by appellant thirty days before the second term after the appeal was taken, unless further time is given before the expiration of said time by the court or a judge thereof for good cause shown, the appellee may file an abstract of such matters of record as are necessary, or may file a copy of the final judgment or order appealed from, or other matters required, certified to by the clerk of the trial court, and cause the case to be docketed, and the appeal upon motion shall be dismissed, or the judgment or order affirmed. Denial of abstracts, additional abstracts, or transcripts may also be filed. [R., '60, §§ 3514, 3515; C., '73, §§ 3181, 3182; C., '97, § 4120; 40 Ex. G. A., H. F. 246, § 8; 40 Ex. G. A., H. F. 331, § 2.]

12849. Certification of record optional with party. Any party may cause a certified copy of the record in the lower court or any part of the same to be filed in the office of the clerk of the supreme court for its consideration. [C., '97, § 4122; 40 Ex. G. A., H. F. 246, § 9.]

12850. Certification on order of court. Upon application to the supreme court or any judge thereof, the clerk of the court from which appeal is taken may be ordered to file such certified copy. [C., '97, § 4122; 40 Ex. G. A., H. F. 246, § 9.]

12851. Transcript of evidence—certification and return. The original transcript of evidence may be sent up, but shall be returned to the clerk of the proper county after the cause has been determined by the supreme court. [C., '51, §§ 1975, 1976; R., '60, § 3511; C., '73, § 3179; C., '97, § 4122; 40 Ex. G. A., H. F. 246, § 9.]

12852. What sent up. When certification of the record is required, the designated papers, notices, shorthand reporter's trans-

lation of his report, depositions, exhibits identified as evidence, notices of appeal with return or acceptance of service thereon, and any other paper filed in the case, or any part thereof, may be transmitted to the supreme court in the original form, or by a transcript of the same, but all entries of record must be by transcript. [C., '51, § 1977; R., '60, § 3512; C., '73, § 3184; C., '97, § 4123.]

12853. Certification by clerk. The clerk of the trial court shall verify his return, whether it be of the record or transcription thereof, by his certificate, under seal, distinguishing between originals and transcripts, and such certification so made shall constitute a part of the record in the supreme court. [C., '51, § 1977; R., '60, § 3512; C., '73, § 3184; C., '97, § 4123.]

12854. Original papers—production. Where a view of an original paper or exhibit in the action may be important to a correct decision of the appeal, the court or any judge thereof may order the clerk of the court below to transmit the same, which he shall do in the manner provided for the transmission of certifications of the record. [R., '60, § 3525; C., '73, § 3209; C., '97, § 4124; 40 Ex. G. A., H. F. 246, § 10.]

12855. Transmission. The transcript of any paper or exhibit required for use in the supreme court may be transmitted thereto by the clerk of the trial court by express or other safe and speedy method, but not by a party or any attorney of a party. [C., '51, §§ 1975, 1976; R., '60, § 3511; C., '73, § 3179; C., '97, § 4125.]

12856. Return of original papers. If a new trial is granted by the supreme court, the clerk, as soon as the cause is at an end therein, shall transmit to the clerk of the court below all original papers or exhibits certified up from said court, and may at any time return any such papers when no new trial is awarded. [C., '97, § 4126.]

12857. Perfecting record. The lower court, the supreme court, or a judge of either court, may make any necessary orders to secure a perfect record or transcript thereof, upon a showing by affidavit or otherwise, and upon such notice as it or he may prescribe. [R., '60, § 3524; C., '73, § 3185; C., '97, § 4127.]

12858. Stay of proceedings—supersedeas bond. No proceedings under a judgment or order, or any part thereof, shall be stayed by an appeal, unless the appellant executes a bond with one or more sureties, to be filed with and approved by the clerk of the court in which the judgment or order was rendered or made, to the effect that he will pay to the appellee all costs and damages that shall be adjudged against him on the appeal; and will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the supreme court may render, or order to be rendered by the inferior court, not exceeding in amount or value the original

judgment or order, and all rents of or damages to property during the pendency of the appeal out of the possession of which the appellee is kept by reason of the appeal. [C., '51, § 1983; R., '60, §§ 3527, 3528; C., '73, § 3186; C., '97, § 4128.]

12859. Partial stay. If the bond is intended to stay proceedings on only a part of the judgment or order, it shall be varied so as to secure the part stayed alone. [R., '60, § 3528; C., '73, § 3186; C., '97, § 4128.]

12860. Order to stay. When thus filed and approved, the clerk shall issue a written order requiring the appellee and all others to stay all proceedings under such judgment or order, or so much thereof as is superseded thereby. [R., '60, § 3528; C., '73, § 3186; C., '97, § 4128.]

12861. Effect of stay. No appeal or stay shall vacate or affect such judgment or order. [C., '73, § 3186; C., '97, § 4128.]

12862. Execution on unstayed part of judgment. The taking of the appeal from part of a judgment or order, and the filing of a bond as above directed, does not stay execution as to that part of the judgment or order not appealed from. [C., '51, § 1985; R., '60, § 3532; C., '73, § 3191; C., '97, § 4129.]

12863. Execution recalled. If execution has issued prior to the filing of the bond, the clerk shall countermand the same. [C., '51, § 1987; R., '60, § 3533; C., '73, § 3192; C., '97, § 4130.]

12864. Surrender of property. Property levied upon and not sold at the time such countermand is received by the sheriff shall be at once delivered to the judgment debtor. [C., '51, § 1988; R., '60, § 3534; C., '73, § 3193; C., '97, § 4131.]

12865. Refusal to approve bond. If a party has perfected his appeal, and the clerk of the lower court refuses for any reason to approve the bond, or requires an excessive penalty, or unjust or improper conditions, he may apply to the district court or judge thereof, who shall fix the amount and conditions of the bond and approve the same. Pending the application, the judge may, by a written order, recall and stay all proceedings under the order or judgment appealed from until the decision of the application. The bond thus approved shall be filed with the clerk, who shall issue a written order to stay proceedings. [C., '73, § 3187; C., '97, § 4132.]

12866. Insufficient security—new bond. The appellee may move the court rendering the judgment or making the order appealed from, or the supreme court, or a judge of either court, if in vacation, upon ten days' notice in writing to appellant, to discharge the bond on account of defect in substance or insufficiency in security, which motion if well taken shall be sustained, unless appellant shall, within a day to be fixed in the order made and

filed therein, give a new and sufficient bond as required by said order. If the new bond is not given, proceedings shall be had in the lower court as though no bond had been given, but a new and sufficient bond may be given at any time with like effect and results as though given in the first instance. [R., '60, §§ 3529, 3530; C., '73, §§ 3188, 3189; C., '97, § 4133.]

12867. Penalty of bond. If the judgment or order is for the payment of money, the penalty shall be in at least twice the amount of the judgment and costs. If not for the payment of money, the penalty shall be sufficient to save the appellee harmless from the consequences of taking the appeal, but in no case shall the penalty be less than one hundred dollars. [C., '51, § 1984; R., '60, § 3531; C., '73, § 3190; C., '97, § 4134; S., '13, § 4134.]

12868. Bond for costs. The appellant may be required to give security for costs under the same circumstances and upon the same showing as plaintiffs in civil actions in the inferior court may be. [R., '60, § 3526; C., '73, § 3210; C., '97, § 4135.]

12869. Assignment of errors. No assignment of errors shall be required in any case at law or in equity docketed in the supreme court. [C., '97, § 4136; S., '13, § 4136.]

12870. Motion book. All motions must be in writing and entered upon the motion book, and be heard upon such notice and argument, if any, as the court by rule may prescribe, but no motion shall be submitted without being publicly called by the court, unless the parties otherwise agree. [R., '60, § 3547; C., '73, § 3208; C., '97, § 4138.]

12871. Arguments — submission — decision. The parties to an appeal may be heard orally and in writing, subject to such rules as the court may prescribe; and all causes docketed, not continued by consent or upon cause shown, shall be submitted in the order assigned, unless otherwise directed by the court or the judges thereof. The court may reverse, modify, or affirm the judgment, decree, or order appealed from, or render such as the inferior court should have done. No cause is decided until the written decision is filed with the clerk. [C., '51, § 1989; R., '60, §§ 3536, 3548, 3550; C., '73, §§ 3194, 3204, 3205; C., '97, § 4139; S., '13, § 4139.]

12872. Judgment against sureties on bond. The supreme court, if it affirms the judgment, shall also, if the appellee asks or moves therefor, render judgment against the appellant and his sureties on the appeal bond for the amount of the judgment, damages, and costs referred to therein in case such damages can be accurately known to the court without an issue and trial. [C., '51, § 1986; R., '60, § 3537; C., '73, § 3195; C., '97, § 4140.]

12873. Damages for delay. Upon the affirmation of any judgment or order for the payment of money, the collection of which in whole or

part has been stayed by an appeal bond, the court may award to the appellee damages upon the amount so stayed; and, if satisfied by the record that the appeal was taken for delay only, may award as damages a sum not exceeding fifteen per cent thereon. [C., '51, § 1990; R., '60, § 3538; C., '73, § 3196; C., '97, § 4141.]

12874. Costs taxed. The supreme court must provide by rule for taxing as costs all printing authorized upon the trial of appeals. The court shall also tax the costs of any translation of the shorthand notes filed as provided in this chapter, and also any translation of the shorthand notes which has been made of record in the court below, upon the certificate of the clerk of such court as to the amount of such costs. [C., '97, § 4142; S., '13, § 4142.]

12875. Remand — process. If the supreme court affirms the judgment or order, it may send the cause to the court below to have the same carried into effect, or may issue the necessary process for this purpose, directed to the sheriff of the proper county, as the party may require. [C., '51, § 1991; R., '60, § 3539; C., '73, § 3197; C., '97, § 4143.]

12876. Decision certified. If remanded to the inferior court to be carried into effect, such decision and the order of the court thereon, being certified thereto and entered on the records thereof, shall have the same force and effect as if made and entered during the session of that court. [R., '60, § 3551; C., '73, § 3206; C., '97, § 4144.]

12877. Restitution of property. If, by the decision of the supreme court, the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of such judgment or order, either the supreme court or the court below may direct execution or writ of restitution to issue for the purpose of restoring to him such property or its value. [C., '51, § 1992; R., '60, § 3540; C., '73, § 3198; C., '97, § 4145.]

12878. Title not affected. Property acquired by a purchaser in good faith under a judgment subsequently reversed shall not be affected thereby. [C., '51, § 1993; R., '60, § 3541; C., '73, § 3199; C., '97, § 4146.]

12879. Mandates enforced. The supreme court may enforce its mandates upon inferior courts and officers by fine and imprisonment, which imprisonment may be continued until obeyed. [R., '60, § 3542; C., '73, § 3200; C., '97, § 4147.]

12880. Petition for rehearing. If a petition for rehearing is filed, it shall suspend the decision, if the court or one of the judges upon its presentation so order, until after the final decision on the rehearing. [R., '60, § 3543; C., '73, § 3201; C., '97, § 4148.]

12881. Rehearing — notice. Written notice of intention to petition for a rehearing shall be served on the opposite party or his attorney

and the clerk of the supreme court within thirty days after the filing of the opinion, or within such time as the court may by rule prescribe. [R., '60, § 3544; C., '73, § 3202; C., '97, § 4149; 40 Ex. G. A., H. F. 246, § 11.]

12882. Petition for rehearing—service—time of filing. Such petition shall be printed, and, with proof of service thereof on the opposite party or his attorney, shall be filed with said clerk within sixty days after the opinion is filed. [C., '97, § 4149; 40 Ex. G. A., H. F. 246, § 12.]

12883. Petition may constitute brief and argument. The petition may be made the argument or a brief of authorities relied upon for rehearing. The adverse party may file a printed argument in response. If the party applying for a rehearing shall give notice of oral argument in his petition, then both parties shall be entitled to be heard orally, unless the party giving notice waives argument. [R., '60, § 3544; C., '73, § 3202; C., '97, § 4149; 40 Ex. G. A., H. F. 246, § 13.]

12884. Death of party—continuance. The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the district court, and the case may proceed. The court may also, in such case, grant a continuance when such a course will be calculated to promote the ends of justice. [R., '60, § 3520; C., '73, § 3211; C., '97, § 4150.]

12885. Objection to jurisdiction. All objections to the jurisdiction of the court to entertain an appeal must be made in printed form stating specifically the ground thereof and served upon the appellant or his attorney of record not less than ten days before the date assigned for the submission of the cause. [S., '13, § 4139.]

12886. Dismissal of appeal. Where appellant has no right, or no further right, to prosecute the appeal, the appellee may move to dismiss it, and if the grounds of the motion do not appear in the record, or by a writing purporting to have been signed by the appellant and filed, they must be verified by affidavit. [R., '60, § 3521; C., '73, § 3212; C., '97, § 4151.]

12887. Proceedings on motion to dismiss. The appellee may, by answer or abstract filed and verified by himself, agent, or attorney, plead any facts which render the taking of the appeal improper or destroy the appellant's right of further prosecuting the same, to which the appellant may file a reply or abstract likewise verified by himself, his agent, or attorney, and the question of law or fact therein shall be determined by the court upon such evidence and in such form as it may prescribe. [R., '60, § 3522; C., '73, § 3213; C., '97, § 4152.]

12888. Executions. Executions issued from the supreme court shall be like those from the district court, attended with the same consequences, and returnable in the same time. [R., '60, § 3552; C., '73, § 3215; C., '97, § 4153.]

TITLE XXXV

CRIMINAL LAW

CHAPTER 556

PUBLIC OFFENSES

12889. Classification.
12890. Felony defined.
12891. Misdemeanor defined.

12892. Manner of punishment.
12893. Prohibited acts—misdemeanors.
12894. Punishment for misdemeanors.

12889. **Classification.** Public offenses are divided into:

1. Felonies.
2. Misdemeanors. [C., '51, § 2816; R., '60, § 4428; C., '73, § 4103; C., '97, § 5092.]

12890. **Felony defined.** A felony is a public offense which is, or in the discretion of the court may be, punished by imprisonment in the penitentiary. [C., '51, § 2817; R., '60, § 4429; C., '73, § 4104; C., '97, § 5093.]

12891. **Misdemeanor defined.** Every other public offense is a misdemeanor. [C., '51, § 2818; R., '60, § 4430; C., '73, § 4105; C., '97, § 5094.]

12892. **Manner of punishment.** No person can be punished for a public offense except upon legal conviction in a court having juris-

diction thereof. [C., '51, § 2819; R., '60, § 4431; C., '73, § 4106; C., '97, § 5095.]

12893. **Prohibited acts—misdemeanors.** When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor. [C., '51, § 2675; R., '60, § 4302; C., '73, § 3966; C., '97, § 4905.]

12894. **Punishment for misdemeanors.** Every person who is convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute of this state, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. [C., '51, § 2676; R., '60, § 4303; C., '73, § 3967; C., '97, § 4906.]

CHAPTER 557

PRINCIPALS AND ACCESSORIES

12895. Distinction between principal and accessory.

12895. **Distinction between principal and accessory.** The distinction between an accessory before the fact and a principal is abrogated, and all persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense, or aid and abet its commission, though not present, must hereafter be indicted, tried, and

12896. Accessory after the fact.

punished as principals. [C., '51, § 2928; R., '60, § 4668; C., '73, § 4314; C., '97, § 5299.]

12896. **Accessory after the fact.** An accessory after the fact to the commission of a public offense may be indicted, tried, and punished, though the principal be neither tried nor convicted. [C., '51, § 2929; R., '60, § 4669; C., '73, § 4315; C., '97, § 5300.]

CHAPTER 558

TREASON AND OFFENSES AGAINST THE GOVERNMENT

12897. Treason.
 12898. Evidence necessary.
 12899. Misprision of treason.
 12900. Inciting insurrection.
 12901. Inciting treason—display of red flag.
 12902. Presumptive evidence.
 12903. Aggravated offense.

12897. Treason. Whoever, within the jurisdiction of the state, levies war against it or adheres to its enemies, giving them aid and comfort, is guilty of treason, and shall be punished by imprisonment in the penitentiary at hard labor for life. [C., '51, § 2565; R., '60, § 4188; C., '73, § 3845; C., '97, § 4724.]

12898. Evidence necessary. No person can be convicted of the crime of treason except upon the evidence of at least two witnesses to the same overt act, or on confession in open court. [C., '51, § 2567; R., '60, § 4190; C., '73, § 3847; C., '97, § 4726.]

12899. Misprision of treason. If any person have knowledge of the commission of said crime of treason, and does not as soon as may be disclose such offense to the governor or some judge within the state, he is guilty of misprision of treason, and shall be fined not exceeding one thousand dollars, or be imprisoned in the penitentiary not exceeding three years nor less than one year. [C., '51, § 2566; R., '60, § 4189; C., '73, § 3846; C., '97, § 4725.]

12900. Inciting insurrection. If any person shall excite an insurrection or sedition amongst any portion or class of the population of this state, or shall attempt by writing, speaking, or by any other means to excite such insurrection or sedition, the person or persons so offending shall be punished by imprisonment in the state penitentiary not exceeding twenty years and shall be fined not less than one thousand nor more than ten thousand dollars. [37 G. A., ch. 372, § 1.]

12901. Inciting treason—display of red flag. Any person who displays, carries, or exhibits any red flag, or other flag, pennant, banner, ensign, or insignia, or who aids, encourages, or advises such display, carriage, or exhibition, with the intent thereby to himself, or to induce others, to advocate, encourage, or incite anarchy or treason or hostility to the government of the United States or of the state of Iowa, or to insult or disregard the flag of the United States, shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars, or be imprisoned

12904. Inciting hostilities.
 12905. Organizations for inciting hostilities.
 12906. Criminal syndicalism.
 12907. Advocating criminal syndicalism.
 12908. Assemblages for promoting.
 12909. Use of buildings—punishment of owner or custodian.

not to exceed six months, or both. [38 G. A., ch. 199, § 1.]

12902. Presumptive evidence. In all prosecutions for violation of the preceding section, the display, carriage, or exhibition of such red flag, pennant, banner, ensign, or insignia in processions, parades, meetings, or assemblages, shall be presumptive evidence that the same was so displayed, carried, or exhibited with the intent thereby to advocate, teach, encourage, or incite anarchy or treason or hostility to the government of the United States or the state of Iowa, or with intent to insult or disregard the flag of the United States. [38 G. A., ch. 199, § 3.]

12903. Aggravated offense. If any person so violate the provisions of the second preceding section, and be then and there armed with a dangerous weapon, he shall be guilty of a felony and upon conviction shall be imprisoned not to exceed five years. [38 G. A., ch. 199, § 2.]

12904. Inciting hostilities. Any person who shall in public or private, by speech, writing, printing, or by any other mode or means advocate the subversion and destruction by force of the government of the state of Iowa or of the United States, or attempt by speech, writing, printing, or in any other way whatsoever to incite or abet, promote or encourage hostility or opposition to the government of the state of Iowa or of the United States, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail not less than six months nor more than one year and shall be fined not less than three hundred nor more than one thousand dollars. [37 G. A., ch. 372, § 2.]

12905. Organizations for inciting hostilities. Any person who shall become a member of any organization, society, or order organized or formed, or attend any meeting or council or solicit others so to do, for the purpose of inciting, abetting, promoting, or encouraging hostility or opposition to the government of the state of Iowa or to the United States, or who shall in any manner aid, abet, or encourage any such organization, society, order, or meeting in the propagation or advocacy of such

a purpose, shall be guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail not less than six months nor more than one year and shall be fined not less than three hundred nor more than one thousand dollars. [37 G. A., ch. 372, § 3.]

12906. Criminal syndicalism. Criminal syndicalism is the doctrine which advocates crime, sabotage, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political reform. The advocacy of such doctrine, whether by word of mouth or writing, is a felony punishable as provided in the three following sections. [38 G. A., ch. 382, § 1.]

12907. Advocating criminal syndicalism. Any person who:

1. By word of mouth or writing, advocates or teaches the duty, necessity, or propriety of crime, sabotage, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political reform; or

2. Prints, publishes, edits, issues, or knowingly circulates, sells, distributes, or publicly displays any book, paper, document, or written matter in any form, containing or advocating, advising, or teaching the doctrine that industrial or political reform should be brought about by crime, sabotage, violence, or other unlawful methods of terrorism; or

3. Openly, wilfully and deliberately justifies, by word of mouth or writing, the commission or the attempt to commit crime, sabotage, violence, or other unlawful methods of terrorism with intent to exemplify, spread, or advocate the propriety of the doctrines of criminal syndicalism; or

4. Organizes or helps to organize, or becomes a member of or voluntarily assembles with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism—

is guilty of a felony and punishable by imprisonment in the state penitentiary or reformatory for not more than ten years, or by a fine of not more than five thousand dollars, or both. [38 G. A., ch. 382, § 2.]

12908. Assemblages for promoting. Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal syndicalism as defined in the two preceding sections, such an assemblage is unlawful and every person voluntarily participating therein by his aid or instigation is guilty of a felony and punishable by imprisonment in the state penitentiary or reformatory for not more than ten years or by a fine of not more than five thousand dollars or both. [38 G. A., ch. 382, § 3.]

12909. Use of buildings—punishment of owner or custodian. The owner, agent, superintendent, janitor, caretaker, or occupant of any place, building, or room, who wilfully and knowingly permits therein any assemblage of persons prohibited by the provisions of the preceding section, or who, after notification by the sheriff of the county or the police authorities that the premises are so used, permits such use to be continued, is guilty of a misdemeanor and punishable by imprisonment in the county jail for not more than one year or by a fine of not more than five hundred dollars or both. [38 G. A., ch. 382, § 4.]

CHAPTER 559

HOMICIDE

12910. Murder.
 12911. First degree murder.
 12912. Second degree murder.
 12913. Degree determined.
 12914. Fixing punishment in first degree murder.
 12915. Assault with intent to murder.

12910. Murder. Whoever kills any human being with malice aforethought, either express or implied, is guilty of murder. [C., '51, § 2568; R., '60, § 4191; C., '73, § 3848; C., '97, § 4727.]

12911. First degree murder. All murder which is perpetrated by means of poison, or lying in wait, or any other kind of wilful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate any arson, rape, robbery, mayhem, or burglary, is murder in the first degree, and shall be punished with death, or imprisonment for life at hard labor in the penitentiary, as determined by the jury, or by the court if the

12916. Assault with dangerous weapon while masked.
 12917. Advising or inciting murder.
 12918. Poisoning food or drink with intent to kill.
 12919. Manslaughter.
 12920. Death from intoxicating liquors.

defendant pleads guilty. [C., '51, § 2569; R., '60, § 4192; C., '73, § 3849; C., '97, § 4728.]

12912. Second degree murder. Whoever commits murder otherwise than as set forth in the preceding section is guilty of murder in the second degree, and shall be punished by imprisonment in the penitentiary for life, or for a term of not less than ten years. [C., '51, § 2570; R., '60, § 4193; C., '73, § 3850; C., '97, § 4729.]

12913. Degree determined. Upon the trial of an indictment for murder, the jury, if it finds the defendant guilty, must inquire, and by its verdict ascertain and determine the degree; but

if the defendant is convicted upon a plea of guilty, the court must, by the examination of witnesses, determine the degree, and in either case must enter judgment and pass sentence accordingly. [C., '51, § 2571; R., '60, § 4194; C., '73, § 3851; C., '97, § 4730.]

12914. Fixing punishment in first degree murder. Upon the trial of an indictment for murder, the jury, if it finds the defendant guilty of murder in the first degree, must direct in its verdict whether the punishment shall be death or imprisonment for life at hard labor in the penitentiary, but if the defendant pleads guilty the court shall so direct, and in either case must enter judgment and pass sentence accordingly. [C., '97, § 4731.]

12915. Assault with intent to murder. If any person assault another with intent to commit murder, he shall be imprisoned in the penitentiary not exceeding thirty years. [C., '51, § 2591; R., '60, § 4214; C., '73, § 3872; C., '97, § 4768; S., '13, § 4768.]

12916. Assault with dangerous weapon while masked. Any person within this state, masked or in disguise, who shall assault another with a dangerous weapon shall be deemed guilty of assault with intent to commit murder and shall be punished by imprisonment in the penitentiary for a term not to exceed twenty years. [40 G. A., ch. 211, § 3.]

12917. Advising or inciting murder. Whoever shall within this state advise, counsel, encourage, advocate, or incite the unlawful killing within or without the state of any human being where no such killing takes place, shall be punished by imprisonment in the state penitentiary for not more than twenty years. [S., '13, § 4750-a.]

12918. Poisoning food or drink with intent to kill. If any person mingle any poison with any food, drink, or medicine, with intent to kill or injure any human being, or wilfully poison any spring, well, cistern, or reservoir of water, he shall be imprisoned in the penitentiary not exceeding ten years, and be fined not exceeding one thousand dollars. [C., '51, § 2596; R., '60, § 4219; C., '73, § 3877; C., '97, § 4773.]

12919. Manslaughter. Any person guilty of the crime of manslaughter shall be imprisoned in the penitentiary not exceeding eight years, and fined not exceeding one thousand dollars. [C., '51, § 2576; R., '60, § 4199; C., '73, § 3856; C., '97, § 4751.]

12920. Death from intoxicating liquors. Any person who sells, gives away, or otherwise furnishes intoxicating liquor contrary to law which causes the death of a human being is guilty of manslaughter and punishable accordingly. [40 G. A., ch. 210, § 2.]

CHAPTER 560

SELF-DEFENSE

12921. Lawful resistance in self-defense.
12922. Cases in which permitted.

12921. Lawful resistance in self-defense. Lawful resistance to the commission of a public offense may be made by the party about to be injured, or by others. [C., '51, § 2773; R., '60, § 4442; C., '73, § 4112; C., '97, § 5102.]

12922. Cases in which permitted. Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person.

12923. Persons aiding another.

2. To prevent an illegal attempt by force to take or injure property in his lawful possession. [C., '51, § 2774; R., '60, § 4443; C., '73, § 4113; C., '97, § 5103.]

12923. Persons aiding another. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the same. [C., '51, § 2775; R., '60, § 4444; C., '73, § 4114; C., '97, § 5104.]

CHAPTER 561

DUELING

12924. Killing in duel.
12925. Fighting duel—seconds—challenges.

12924. Killing in duel. Whoever fights a duel with deadly weapons, and inflicts a mortal wound on his antagonist, is guilty of murder in the first degree, and shall be punished accordingly. [C., '51, § 2572; R., '60, § 4195; C., '73, § 3852; C., '97, § 4747.]

12926. Accepting challenge—consenting to assist.
12927. Taunting for not accepting.

12925. Fighting duel—seconds—challenges. Any person who fights a duel with deadly weapons, or is present thereat as aid, second, or surgeon, or advises, encourages, or promotes the same, although no homicide ensue; and any person who challenges another to fight a duel,

or sends or delivers any verbal or written message purporting or intended to be such challenge, although no duel ensue, shall be fined in a sum not exceeding one thousand nor less than four hundred dollars, and imprisoned in the penitentiary not more than three nor less than one year. [C., '51, § 2573; R., '60, § 4196; C., '73, § 3853; C., '97, § 4748.]

12926. Accepting challenge—consenting to assist. Any person who accepts such challenge, or who consents to act as a second, aid, or surgeon on such acceptance, or who advises, encourages, or promotes the same, although no

duel ensue, shall be punished as prescribed in the preceding section. [C., '51, § 2574; R., '60, § 4197; C., '73, § 3854; C., '97, § 4749.]

12927. Taunting for not accepting. If any person post another, or in writing or print use any reproachful or contemptuous language to or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be fined not exceeding three hundred nor less than one hundred dollars, and shall be imprisoned in the county jail not more than six nor less than two months. [C., '51, § 2575; R., '60, § 4198; C., '73, § 3855; C., '97, § 4750.]

CHAPTER 562

MAYHEM

12928. Maiming or disfiguring.

12928. Maiming or disfiguring. If any person, with intent to maim or disfigure, cut or maim the tongue; cut out or destroy an eye; cut, slit, or tear off an ear; cut, bite, slit, or mutilate the nose or lip; cut off or disable a limb or any member of another person, he shall

be imprisoned in the penitentiary not more than five years, and fined not exceeding one thousand nor less than one hundred dollars. [C., '51, § 2577; R., '60, § 4200; C., '73, § 3857; C., '97, § 4752.]

CHAPTER 563

ASSAULTS

12929. Assault and battery.
12930. Pointing gun at another.
12931. Intimidation while masked.
12932. Assault while masked.
12933. Assault with intent to commit a felony.

12934. Assault with intent to inflict great bodily injury.
12935. Assault with intent to commit certain crimes.

12929. Assault and battery. Whoever is convicted of an assault, or an assault and battery, where no other punishment is prescribed, shall be imprisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C., '51, § 2597; R., '60, § 4220; C., '73, § 3878; C., '97, § 4774.]

12930. Pointing gun at another. If any person shall wilfully draw or point a pistol, revolver, or gun at another, he shall be guilty of a misdemeanor, and be fined not more than one hundred dollars or imprisoned in the county jail not more than thirty days; but this section shall not apply to police officers or other persons whose duty it is to execute process or warrants, or make arrests. [C., '73, § 3879; C., '97, § 4775; 40 Ex. G. A., S. F. 247, § 1.]

12931. Intimidation while masked. Any person, masked or in disguise, who shall prowl, travel, ride, or walk within this state to the disturbance of the peace or to the intimidation of any person, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county for

not less than thirty days nor more than six months, or by both such fine and imprisonment. [40 G. A., ch. 211, § 1.]

12932. Assault while masked. Any person, masked or in disguise, who shall enter upon the premises of another or demand admission into the house or inclosure of another with intent to inflict bodily injury or injury to property, shall be deemed guilty of assault with intent to commit a felony and such entrance or demand for admission shall be prima facie evidence of such intent and, upon conviction thereof, such person shall be punished by imprisonment in the penitentiary for a term of not more than ten years. [40 G. A., ch. 211, § 2.]

12933. Assault with intent to commit a felony. If any person assault another with intent to commit any felony or crime punishable by imprisonment in the penitentiary, where the punishment is not otherwise prescribed, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year. [C., '51, § 2595; R., '60, § 4218; C., '73, § 3876; C., '97, § 4772.]

12934. Assault with intent to inflict great bodily injury. If any person assault another with intent to inflict a great bodily injury, he shall be imprisoned in the county jail not exceeding one year, or be fined not exceeding five hundred dollars, or be imprisoned in the penitentiary not exceeding one year. [C., '51, § 2594; R., '60, § 4217; C., '73, § 3875; C., '97, § 4771; S., '13, § 4771.]

12935. Assault with intent to commit certain crimes. If any person assault another with intent to maim, rob, steal, or commit arson or burglary, he shall be imprisoned in the penitentiary not exceeding five years, or be fined not exceeding one thousand dollars, or both so fined and imprisoned, at the discretion of the court. [C., '51, § 2593; R., '60, § 4216; C., '73, § 3874; C., '97, § 4770.]

CHAPTER 564

CONCEALED WEAPONS, FIREARMS, AND TOY PISTOLS

- 12936. Carrying dangerous and concealed weapons.
- 12937. Punishment.
- 12938. Permit to carry concealed weapon.
- 12939. Application.
- 12940. Form of application.
- 12941. Issuance of permit.
- 12942. Name of holder—transferability.
- 12943. Authority granted by permit.
- 12944. General permits for certain companies.
- 12945. Duration of permit.
- 12946. Expiration of term of office—revocation.
- 12947. Duty to carry permit.

- 12948. Record of permits issued.
- 12949. Prima facie evidence of violation.
- 12950. Sale of dangerous weapons prohibited.
- 12951. Dealer's permit to sell.
- 12952. Record of permits to sell.
- 12953. Report and record of sales.
- 12954. Failure to make report.
- 12955. Purchasing under fictitious name.
- 12956. Wholesale dealers and jobbers excepted.
- 12957. Display of weapons prohibited.
- 12958. Selling firearms to minors.
- 12959. Sale of toy pistols and giant firecrackers.
- 12960. Punishment.

12936. Carrying dangerous and concealed weapons. It shall be unlawful for any person, except as hereinafter provided, to go armed with and have concealed upon his person a dirk, dagger, sword, pistol, revolver, stiletto, metallic knuckles, pocket billy, sandbag, skull cracker, slung shot, or other offensive and dangerous weapons or instruments concealed upon his person; provided that no person under fourteen years of age shall be allowed to carry firearms of any description. [S., '13, § 4775-1a.]

is granted, an application therefor shall be filed with the sheriff. Permits may be issued only on personal application therefor, except that:

1. Chiefs of police may make application for permits for members of their respective departments.

2. Owners, managing officers, or superintendents of banks, trust companies, mining, transportation, manufacturing, and mercantile companies or establishments may make such application for and in behalf of their employees. [S., '13, §§ 4775-4a, 4775-7a; 40 Ex. G. A., S. F. 247, § 5.]

12937. Punishment. Any person who shall violate any of the provisions of the preceding section shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the state prison not more than two years, or by both such fine and imprisonment in the discretion of the court, and in addition thereto may be required to enter into a recognizance with sufficient surety in such sum as the court may order, not exceeding one thousand dollars, to keep the peace and be of good behavior for a period not exceeding one year, provided that in case of the first offense the court may in its discretion reduce the punishment to imprisonment in the county jail to a term of not more than three months, or a fine of not more than one hundred dollars. [S., '13, § 4775-11a.]

12940. Form of application. The application shall be in writing and state the full name, residence, age, place and nature of the employment or business of the person to whom it is proposed to grant the permit. The application shall be signed by the person making application. [S., '13, § 4775-7a; 40 Ex. G. A., S. F. 247, § 5.]

12941. Issuance of permit. It shall be the duty of the sheriff to issue a permit to go armed with a revolver, pistol, or pocket billy to all peace officers and such other persons who, in the judgment of said official, should be permitted to go so armed. [S., '13, § 4775-3a; 37 G. A., ch. 171, § 1; 40 Ex. G. A., S. F. 247, § 2.]

12938. Permit to carry concealed weapon. The sheriff of any county may issue a permit, limited to the time which shall be designated therein, to carry concealed a revolver, pistol, or pocket billy. [S., '13, § 4775-3a; 37 G. A., ch. 171, § 1; 40 Ex. G. A., S. F. 247, § 2.]

12942. Name of holder—transferability. The permit shall be issued, except as otherwise provided in the second following section, to the individual whom it permits to go armed and shall not be transferable. [40 Ex. G. A., S. F. 247, § 5.]

12939. Application. Before any permit to go armed with a revolver, pistol, or pocket billy

12943. Authority granted by permit. Permits issued to peace officers or to employees of

railroad or express companies shall permit such persons to go armed anywhere within the state while in the discharge of their duties. [S., '13, § 4775-4a; 40 Ex. G. A., S. F. 247, § 2.]

12944. General permits for certain companies. Banks, trust companies, mining, transportation, manufacturing, and mercantile companies or establishments may obtain a general permit good for any of their employees, only while on duty, actually engaged in guarding any property or the transportation of moneys or other valuables. [S., '13, § 4775-4a; 40 Ex. G. A., S. F. 247, § 2.]

12945. Duration of permit. Each such permit shall, unless revoked by notice in writing sent by registered mail to the permit holder by the sheriff issuing same, expire on December thirty-first, following the issuance. [37 G. A., ch. 171, § 1; 40 Ex. G. A., S. F. 247, § 3.]

12946. Expiration of term of office—revocation. Whenever a permit is issued to any person to carry concealed weapons by virtue of such person being a peace officer, the right of such person to carry any of said weapons shall cease when said person ceases to be a peace officer. The sheriff may at any time revoke any permit issued by him. [S., '13, § 4775-6a; 40 Ex. G. A., S. F. 247, § 6.]

12947. Duty to carry permit. It shall be the duty of any person armed with a revolver, pistol, or pocket billy concealed upon his person to have in his immediate possession the permit provided for in this chapter and to produce same for inspection at the request of any peace officer. Failure to so produce such permit shall constitute a misdemeanor. [S., '13, § 4775-8a; 40 Ex. G. A., S. F. 247, § 7.]

12948. Record of permits issued. The sheriff shall keep a record showing the names and addresses of all persons to whom permits shall have been issued, together with the dates of issuance and expiration of such permits. [S., '13, § 4775-6a; 37 G. A., ch. 171, § 1; 40 Ex. G. A., S. F. 247, § 4.]

12949. Prima facie evidence of violation. In all prosecutions on the charge of carrying a concealed weapon without a permit, proof that no permit had been issued to the defendant in the county in which the offense was alleged to have been committed shall be prima facie evidence that the defendant had no permit to carry a concealed weapon. [S., '13, § 4775-8a; 40 Ex. G. A., S. F. 247, § 9.]

12950. Sale of dangerous weapons prohibited. It shall be unlawful to sell, to keep for sale, or offer for sale, loan, or give away, dirk, dagger, stiletto, metallic knuckles, sandbag, or skull cracker. The provisions of this section shall not prevent the selling or keeping for sale of hunting and fishing knives. [S., '13, § 4775-2a.]

12951. Dealer's permit to sell. It shall be unlawful for any person, firm, association, or corporation to engage in the business of sell-

ing, keeping for sale, exchange, or to give away to any person within the state, any revolver, pistol, or pocket billy, or other weapons of a like character which can be concealed on the person, without first securing a permit from the proper officials having authority to issue such permit. [S., '13, § 4775-9a.]

12952. Record of permits to sell. The chief of police, sheriff, or mayor shall have authority to issue permits to sell and shall keep a correct list of all persons to whom permits to sell are issued, together with the number of such permit and the date each is revoked, and furnish the county recorder a copy of all such permits issued and revocations made. [S., '13, § 4775-5a.]

12953. Report and record of sales. Every person selling revolvers, pistols, pocket billies, and other weapons of a like character which can be concealed on the person, whether such person is a retail dealer, pawnbroker, or otherwise, shall report within twenty-four hours to the county recorder the sale of any revolver, pistol, or pocket billy and in such report shall set forth the time of selling, age, occupation, place of employment or business, name and residence of such purchaser of said weapon or weapons, together with the number, make, and other marks of identification of such weapon or weapons, and the recorder on receipt of such information shall make a permanent record of the same in a book specially kept for that purpose. [S., '13, § 4775-10a; 40 Ex. G. A., S. F. 247, § 8.]

12954. Failure to make report. Every person who shall fail to make such report will be guilty of a misdemeanor, and on being convicted of a second offense his permit shall be revoked. [S., '13, § 4775-10a.]

12955. Purchasing under fictitious name. Any person purchasing a revolver, pistol, or a pocket billy according to the provisions in sections 12939, 12940, and 12953, and giving a fictitious name will be guilty of a misdemeanor. [S., '13, § 4775-10a.]

12956. Wholesale dealers and jobbers excepted. The provisions of the preceding sections of this chapter shall not affect in any respect wholesale dealers or jobbers. [S., '13, § 4775-12a.]

12957. Display of weapons prohibited. Any person, firm, or corporation or the agent thereof who shall display in any window facing a public street or alley any pistols, revolvers, blackjacks, slugs, billies, knuckles, daggers, stilettos, or bowie-knives, except war relics, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not to exceed thirty days. [37 G. A., ch. 87, § 1.]

12958. Selling firearms to minors. No person shall knowingly sell, present, or give any pistol, revolver, or toy pistol to any minor.

Any violation of this section shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days. [C., '97, § 5004.]

12959. Sale of toy pistols and giant firecrackers. No person shall use, sell, offer for sale, or keep for sale within this state any toy pistols, toy revolvers, caps containing dynamite, blank cartridges for toy revolvers or toy pistols, or firecrackers more than five inches in length

and more than three-fourths of an inch in diameter; provided caps containing dynamite may be used, kept for sale, or sold when needed for mining purposes, or for danger signals, or for other necessary uses. [S., '13, § 5028-p.]

12960. Punishment. Any person violating the provisions of the preceding section shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days. [S., '13, § 5028-q.]

CHAPTER 565

INJURIES BY EXPLOSIVES

12961. Death caused by high explosives.
12962. Injury to person.
12963. Injury to property.

12961. Death caused by high explosives. If any person wilfully deposits or throws in, under, or about any dwelling house, building, boat, vessel, or raft or other inhabited place, where its explosion will or is likely to destroy or injure the same, any dynamite, nitroglycerin, giant powder, or other material, and by reason of the explosion thereof any person is killed, he shall be guilty of murder. [C., '97, § 4796.]

12962. Injury to person. If any person wilfully deposits or throws any dynamite, nitroglycerin, or giant powder or other explosive material as provided in the preceding section, and by means of the explosion thereof any person is injured, he shall be guilty of an assault with intent to commit murder. [C., '97, § 4797.]

12963. Injury to property. If any person, with intent to destroy or injure any building, boat, vessel, or raft, any bridge, viaduct, or other structure not provided for in the preceding sections, deposits or throws in, under, or about such building, boat, vessel, raft, bridge, viaduct, or other structure any dynamite, nitroglycerin, giant powder, or other explosive material, by the explosion of which any such structure will or will be likely to be destroyed or injured, he shall be imprisoned in the pen-

12964. Putting out high explosives.
12965. Manufacture of gunpowder—public nuisance.

itentiary not more than fifteen years. [C., '97, § 4798.]

12964. Putting out high explosives. If any person, with intent to destroy or injure any inhabited dwelling house, building, boat, vessel, or raft, deposits or throws therein or thereunder, or elsewhere about the same, where its explosion will or is likely to destroy or injure the same, any dynamite, nitroglycerin, giant powder, or other explosive material, he shall be imprisoned in the penitentiary not more than twenty-five years. [C., '97, § 4795.]

12965. Manufacture of gunpowder—public nuisance. If any person carry on the business of manufacturing gunpowder, or of mixing or grinding the composition therefor, in any building erected at the time when such business may be commenced, the building in which such business is thus carried on is a public nuisance, and such person shall be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, and the court, with or without such fine, may order such nuisance abated, and issue a warrant as provided in chapter 528. [C., '51, §§ 2760, 2762; R., '60, §§ 4410, 4412; C., '73, §§ 4090, 4092; C., '97, §§ 5079, 5081; S., '13, § 5081.]

CHAPTER 566

RAPE

12966. Definition—punishment.
12967. Carnal knowledge of imbecile or insensible female.

12966. Definition—punishment. If any person ravish and carnally know any female of the age of sixteen years or over, by force or against her will, or if any person under the age of twenty-five years carnally know and abuse any female child under the age of sixteen years, or if any person over the age of

12968. Assault with intent to commit rape.

twenty-five years carnally know and abuse any female under the age of seventeen years, he shall be imprisoned in the penitentiary for life or any term of years. [C., '51, § 2581; R., '60, § 4204; C., '73, § 3861; C., '97, § 4756; 39 G. A., ch. 192, §§ 1, 3.]

12967. Carnal knowledge of imbecile or insensible female. If any person unlawfully have carnal knowledge of any female by administering to her any substance, or by any other means producing such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, or have such carnal knowledge of an idiot or female naturally of such imbecility of mind or weakness of body as to prevent effectual resistance, he shall be punished by imprisonment for life or any

term of years. [C., '51, § 2583; R., '60, § 4206; C., '73, § 3863; C., '97, § 4758; 40 G. A., ch. 212, § 1.]

12968. Assault with intent to commit rape. If any person assault a female with intent to commit a rape, he shall be imprisoned in the penitentiary not exceeding twenty years. [C., '51, § 2592; R., '60, § 4215; C., '73, § 3873; C., '97, § 4769.]

CHAPTER 567

FORCIBLE MARRIAGE AND DEFILEMENT

12969. Compelling to marry or be defiled.

12969. Compelling to marry or be defiled. If any person take any woman unlawfully and against her will, and by force, menace, or duress compels her to marry him or any other person, or to be defiled, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding ten years.

No person shall be convicted under the provisions of this section unless the evidence of the prosecuting witness be corroborated by other evidence tending to connect the defendant with the commission of the crime. [C., '51, § 2582; R., '60, § 4205; C., '73, § 3862; C., '97, § 4757.]

CHAPTER 568

SEDUCTION

12970. Definition—punishment.
12971. Marriage a bar to prosecution.

12972. Desertion after seduction and marriage.

12970. Definition—punishment. If any person seduce and debauch any unmarried woman of previously chaste character, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year. [C., '51, § 2586; R., '60, § 4209; C., '73, § 3867; C., '97, § 4762.]

endant marry the woman thus seduced, it is a bar to any further prosecution for the offense. [C., '51, § 2587; R., '60, § 4210; C., '73, § 3868; C., '97, § 4763.]

12971. Marriage a bar to prosecution. If, before judgment upon an indictment, the de-

12972. Desertion after seduction and marriage. Every man who shall marry any woman for the purpose of escaping prosecution for seduction, and shall afterwards desert her without good cause, shall be deemed guilty of a misdemeanor and shall be punished accordingly. [C., '97, § 4764.]

CHAPTER 569

ATTEMPT TO PRODUCE ABORTION

12973. Administration of drugs—use of instruments.

12973. Administration of drugs—use of instruments. If any person, with intent to produce the miscarriage of any woman, wilfully administer to her any drug or substance whatever, or, with such intent, use any instrument or other means whatever, unless such miscar-

riage shall be necessary to save her life, he shall be imprisoned in the penitentiary for a term not exceeding five years, and be fined in a sum not exceeding one thousand dollars. [R., '60, § 4221; C., '73, § 3864; C., '97, § 4759; S. S., '15, § 4759.]

CHAPTER 570

ADULTERY

12974. Punishment—prosecution.

12974. **Punishment — prosecution.** Every person who commits adultery shall be imprisoned in the penitentiary not more than three years, or be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year; and when the crime is

committed between parties only one of whom is married, both shall be punished. No prosecution therefor can be commenced except on the complaint of the husband or wife. [C., '51, § 2705; R., '60, § 4347; C., '73, § 4008; C., '97, § 4932.]

CHAPTER 571

BIGAMY

12975. Definition—punishment.
12976. Exceptions—absence of spouse.

12975. **Definition—punishment.** If any person who has a former husband or wife living marry another person, or continue to cohabit with such second husband or wife, he or she, except in the cases mentioned in the following section, is guilty of bigamy, and shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year. [C., '51, § 2706; R., '60, § 4348; C., '73, § 4009; C., '97, § 4933.]

12976. **Exceptions—absence of spouse.** The provisions of the preceding section do not extend to any person whose husband or wife has continually remained beyond seas, or who has voluntarily withdrawn from the other and remained absent, for the space of three years to-

12977. Knowingly marrying husband or wife of another.

gether, the party marrying again not knowing the other to be living within that time; nor to any person who has good reason to believe such husband or wife to be dead; nor to any person who has been legally divorced from the bonds of matrimony. [C., '51, § 2707; R., '60, § 4349; C., '73, § 4010; C., '97, § 4934.]

12977. **Knowingly marrying husband or wife of another.** Every unmarried person who knowingly marries the husband or wife of another, when such husband or wife is guilty of bigamy thereby, shall be imprisoned in the penitentiary not exceeding three years, or be fined not more than three hundred dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2708; R., '60, § 4350; C., '73, § 4011; C., '97, § 4935.]

CHAPTER 572

INCEST

12978. Definition—punishment.

12978. **Definition—punishment.** If any persons, being within the degrees of consanguinity or affinity in which marriages are declared by law to be void, carnally know each other, they shall be guilty of incest, and imprisoned in the

penitentiary not exceeding twenty-five years. [R., '60, §§ 4367-4369; C., '73, § 4030; C., '97, § 4936; S., '13, § 4936; 39 G. A., ch. 231, § 1; 40 Ex. G. A., H. F. 213, § 7.]

NOTE: For void marriages, see § 10445.

CHAPTER 573

SODOMY

12979. Definition.

12979. Definition. Whoever shall have carnal copulation in any opening of the body except sexual parts, with another human being, or shall have carnal copulation with a beast, shall be deemed guilty of sodomy. [S., '13, § 4937-a.]

12980. Punishment.

12980. Punishment. Any person who shall commit sodomy, shall be imprisoned in the penitentiary not more than ten years. [C., '97, § 4937; 39 G. A., ch. 231, § 2.]

CHAPTER 574

KIDNAPING

12981. Definition—punishment.

12982. Child stealing.

12981. Definition—punishment. If any person wilfully, and without lawful authority, forcibly or secretly confine or imprison any other person within the state against his will; or forcibly carry or send such person out of the state; or forcibly seize and confine or inveigle or kidnap any other person with the intent either to cause such person to be secretly confined or imprisoned in the state against his will, or to cause such person to be sent out of the state against his will, he shall be imprisoned in the penitentiary not more than five years, or fined not exceeding one thousand dollars, or be both so fined and imprisoned, at the discretion of the court. [C., '51, § 2588; R., '60, § 4211; C., '73, § 3869; C., '97, § 4765.]

12982. Child stealing. If any person maliciously, forcibly, or fraudulently take, decoy, or entice away any child under the age of sixteen years with intent to detain or conceal such child from its parents, guardian, or other person or institution having the lawful custody thereof, he shall be imprisoned in the penitentiary not more than ten years, or be

12983. Kidnaping for ransom.

imprisoned in the county jail not more than one year, or be fined not exceeding one thousand dollars. [S., '13, § 254-a46.]

12983. Kidnaping for ransom. Whoever kidnaps, takes, or carries away any person, or decoys or entices such person away from any place in this state for the purpose of or with the intention of receiving or securing from anyone any money, property, or thing of value as a ransom, reward, or price for the return of the person so kidnaped, taken, carried, decoyed, or enticed away, as aforesaid, or whoever shall imprison, detain, or hold any person at any place in this state for the purpose or with the intent of receiving or securing from anyone money, property, or thing of value as a ransom, reward, or price for the return, liberation, or surrender of the person so imprisoned, detained, or held, shall be deemed to be guilty of the crime of kidnaping for the purpose of ransom, and upon conviction thereof shall be imprisoned in the penitentiary during life. [S., '13, § 4750-b; 39 G. A., ch. 231, § 3.]

CHAPTER 575

ARSON

- 12984. Burning inhabited dwelling in nighttime.
- 12985. Burning inhabited dwelling in daytime.
- 12986. Burning uninhabited dwelling in nighttime.
- 12987. Burning uninhabited dwelling in daytime.
- 12988. Burning mills, locks, dams, and depots.

- 12989. Setting fire with intent to burn.
- 12990. Liability of married woman.
- 12991. Burning to injure insurers.
- 12992. Setting out fire.
- 12993. Allowing fire to escape.

12984. Burning inhabited dwelling in nighttime. If any person wilfully or maliciously burn in the nighttime the inhabited building, boat, or vessel of another, or wilfully and maliciously set fire to any other building, boat, or vessel owned by himself or another, by the burning whereof such inhabited building, boat, or vessel is burnt in the nighttime, he shall be imprisoned in the penitentiary for life or any term of years. [C., '51, § 2598; R., '60 § 4222; C., '73, § 3880; C., '97, § 4776.]

12985. Burning inhabited dwelling in daytime. If any person wilfully or maliciously burn in the daytime the inhabited building, boat, or vessel of another, or any building, boat, or vessel adjoining thereto; or wilfully and maliciously set fire to any building, boat, or vessel owned by himself or another, by the burning of which such inhabited building, boat, or vessel is burnt in the daytime; or in the daytime wilfully and maliciously set fire to any building, boat, or vessel owned by himself or another, by the burning of which any such inhabited building, boat, or vessel is burnt in the nighttime, he shall be imprisoned in the penitentiary for a term not exceeding thirty years. [C., '51, § 2599; R., '60, § 4223; C., '73, § 3881; C., '97, § 4777.]

12986. Burning uninhabited dwelling in nighttime. If any person wilfully and maliciously burn in the nighttime any uninhabited dwelling house, boat, or vessel belonging to another, or any courthouse, jail, college, church, or any building erected for public use; or any other building, boat, or vessel, by the burning whereof any building, boat, or vessel mentioned in this section is burnt in the nighttime, he shall be imprisoned in the penitentiary not exceeding twenty years. [C., '51, § 2600; R., '60, § 4224; C., '73, § 3882; C., '97, § 4778.]

12987. Burning uninhabited dwelling in daytime. If any person wilfully and maliciously burn in the daytime any building, boat, or vessel mentioned in the preceding section, he shall be imprisoned in the penitentiary not exceeding fifteen years. [C., '51, § 2601; R., '60, § 4225; C., '73, § 3883; C., '97, § 4779.]

12988. Burning mills, locks, dams, and depots. If any person wilfully and maliciously burn, either in the night or daytime, any ware-

house, store, manufactory, mill, railroad depot, barn, stable, shop, office, outhouse, or any building whatsoever of another, other than is mentioned in the preceding sections of this chapter, or any bridge, lock, dam or flume, he shall be imprisoned in the penitentiary not exceeding ten years. [C., '51, § 2602; R., '60, § 4226; C., '73, § 3884; C., '97, § 4780.]

12989. Setting fire with intent to burn. If any person set fire to any building, boat, or vessel mentioned in the preceding sections of this chapter, or to any material with intent to cause any such building, boat, or vessel to be burnt, he shall be imprisoned in the penitentiary not exceeding five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year. [C., '51, § 2603; R., '60, § 4227; C., '73, § 3885; C., '97, § 4781.]

12990. Liability of married woman. The preceding sections of this chapter and section 13084 extend to a married woman who commits either of the offenses therein described, though the property burnt or set fire to may belong partly or wholly to her husband. [C., '51, § 2605; R., '60, § 4229; C., '73, § 3887; C., '97, § 4783.]

12991. Burning to injure insurers. If any person wilfully burn any building, goods, wares, merchandise, or other chattels which are insured against loss or damage by fire, or wilfully cause or procure the same to be burned, with intent to injure the insurer, whether such person be the owner thereof or not, he shall be imprisoned in the penitentiary not exceeding ten years. [C., '51, § 2606; R., '60, § 4230; C., '73, § 3888; C., '97, § 4784.]

12992. Setting out fire. If any person wilfully, or without using proper caution, set fire to and burn, or cause to be burned, any prairie or timbered land, or any inclosed or cultivated field, or any road, by which the property of another is injured or destroyed, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year, or be both so fined and imprisoned in the discretion of the court. [C., '51, § 2607; R., '60, § 4231; C., '73, § 3889; C., '97, § 4785.]

12993. Allowing fire to escape. If any person, between the first day of September in any

year and the first day of May following, set fire to, burn, or cause to be burned, any prairie or timber land, and allow such fire to escape from his control, he shall be imprisoned in the county

jail not more than thirty days, or be fined not exceeding one hundred dollars. [C., '73, § 3890; C., '97, § 4786.]

CHAPTER 576

BURGLARY

12994. Definition—punishment.
12995. Aggravated offense.
12996. Burglary without aggravation.
12997. Burglary by means of explosives.
12998. Burglary by means of electricity.
12999. Punishment.

12994. Definition—punishment. If any person break and enter any dwelling house in the nighttime, with intent to commit any public offense; or, after having entered with such intent, break any such dwelling house in the nighttime, he shall be guilty of burglary, and shall be punished according to the aggravation of the offense, as is provided in the next two sections. [C., '51, § 2608; R., '60, § 4232; C., '73, § 3891; C., '97, § 4787.]

12995. Aggravated offense. If such offender, at the time of committing such burglary, is armed with a dangerous weapon, or so arm himself after having entered such dwelling house, or actually assault any person being lawfully therein, or has any confederate present aiding and abetting in such burglary, he shall be imprisoned in the penitentiary for life or any term of years. [C., '51, § 2609; R., '60, § 4233; C., '73, § 3892; C., '97, § 4788.]

12996. Burglary without aggravation. If such offender commit such burglary otherwise than is mentioned in the preceding section, he shall be imprisoned in the penitentiary not exceeding twenty years. [C., '51, § 2610; R., '60, § 4234; C., '73, § 3893; C., '97, § 4789.]

12997. Burglary by means of explosives. Any person who, with intent to commit crime, breaks and enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by use of nitroglycerin, dynamite, giant powder, gunpowder, or any other explosive material, shall be deemed guilty of burglary with explosives. [S., '13, § 4799-a; 37 G. A., ch. 169, § 1.]

12998. Burglary by means of electricity. Any person who, with intent to commit crime, breaks and enters, either by day or night, any building, whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by the use of electricity as a motive or burning or melting power or agency, or in any form, or by any electrical means whatsoever, or by the use of acetyline gas, or by oxyacetyline gas, or by any gas in any form whatsoever, shall be deemed guilty of burglary with electricity or gas, as the case may be. [S., '13, § 4799-a; 37 G. A., ch. 169, § 2.]

13000. Possession of burglar's tools—evidence.
13001. Other breakings and enterings.
13002. Entering bank with intent to rob.
13003. Attempting to break and enter.
13004. Breaking and entering car.

12999. Punishment. Any person duly convicted of burglary under the terms of the two preceding sections shall be imprisoned in the penitentiary not more than forty years. [S., '13, § 4799-a; 37 G. A., ch. 169, § 3.]

13000. Possession of burglar's tools—evidence. If any person be found having in his possession at any time any burglar's tools or implements, with intent to commit the crime of burglary, he shall be imprisoned in the penitentiary not more than fifteen years, or be fined not exceeding one thousand dollars. The court before whom such conviction is had shall order the retention by the sheriff of such tools or implements, to be used in evidence in any court in which such person is tried for the offense herein defined, or that of burglary, and the possession of such tools or implements shall be presumptive evidence of his intent to commit burglary. [C., '97, § 4790; S., '13, § 4790; 37 G. A., ch. 65, § 1.]

13001. Other breakings and enterings. If any person, with intent to commit any public offense, in the daytime break and enter, or in the nighttime enter without breaking, any dwelling house; or at any time break and enter any office, shop, store, warehouse, railroad car, boat, or vessel, or any building in which any goods, merchandise, or valuable things are kept for use, sale, or deposit, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year. [C., '51, § 2611; R., '60, § 4235; C., '73, § 3894; C., '97, § 4791.]

13002. Entering bank with intent to rob. If any person shall enter or attempt to enter the premises of a bank or trust company or banking association, with intent to hold up and rob any bank or trust company or any banking association, or any person or persons therein, or thought to be therein, of any money or currency or silver or gold or nickels or pennies or of anything of value belonging to said bank or trust company or banking association, or from any person or persons therein; or shall intimidate, injure, wound, or maim any person therein with intent to commit such holdup or "stick-up" or robbery, he shall, upon

conviction thereof, be imprisoned in the penitentiary at hard labor for life, or for any term not less than ten years. [37 G. A., ch. 247, § 1.]

13003. Attempting to break and enter. If any person, with intent to commit any public offense, shall attempt to break and enter any dwelling house, at any time, or to enter any dwelling house in the nighttime without breaking, or at any time to break and enter any office, shop, store, warehouse, railroad car, boat, vessel, or any building in which any goods, merchandise, or valuable things are kept for use, sale, or deposit, he shall be imprisoned in the penitentiary not more than

five years, or fined not exceeding three hundred dollars and imprisoned in the county jail not more than one year. [C., '97, § 4792.]

13004. Breaking and entering car. If any person unlawfully break and enter any freight or express car which is sealed or locked, in which any goods, merchandise, or valuable things are kept for use, deposit, or transportation, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year. [C., '97, § 4794.]

CHAPTER 577

LARCENY

- 13005. Definition.
- 13006. Punishment.
- 13007. Measure of value of stolen goods.
- 13008. Larceny in nighttime.
- 13009. Larceny in daytime.
- 13010. Larceny from building on fire or from the person.
- 13011. Larceny of motor vehicle.
- 13012. Motor vehicle defined.
- 13013. Jurisdiction.
- 13014. Larceny of electric current, water, steam, or gas.
- 13015. Larceny of poultry.

- 13016. Taking goods from officer.
- 13017. Custody of property levied on or deposited by officer.
- 13018. Appropriating found property.
- 13019. Larceny of logs or lumber.
- 13020. Punishment.
- 13021. Double damages for conversion of logs.
- 13022. Possession as evidence.
- 13023. Search for lost logs.
- 13024. Obstructing search—penalty.
- 13025. Taking property for boat or vessel.
- 13026. Common thief defined.

13005. Definition. If any person steal, take, and carry away of the property of another any money, goods, or chattels, including all domesticated or restrained animals; any writ, process, or public record; any bond, bank note, promissory note, bill of exchange or other bill, or order, or certificate; or any book of accounts respecting money, goods, or other things; or any deed or writing containing a conveyance of real estate; or any contract in force; or any receipt, release, or defeasance; or any instrument or writing whereby any demand, right, or obligation is created, increased, extinguished, or diminished, he is guilty of larceny. [C., '51, § 2612; R., '60, § 4237; C., '73, § 3902; C., '97, § 4831; 40 G. A., ch. 273, § 1.]

13006. Punishment. When the value of the property stolen exceeds twenty dollars, he shall be punished by imprisonment in the penitentiary not more than five years, or in the county jail not more than one year, or by fine of not more than one thousand dollars, or by both such fine and imprisonment; when the value does not exceed twenty dollars, by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days. [C., '51, § 2612; R., '60, § 4237; C., '73, § 3902; C., '97, § 4831; 40 G. A., ch. 273, § 1.]

13007. Measure of value of stolen goods. If the property stolen consists of any bank note, bond, bill, covenant, bill of exchange, draft, order, or receipt, or any evidence of debt whatever, or any public security, or any instrument

whereby any demand, right, or obligation may be assigned, transferred, created, increased, released, extinguished, or diminished, the money due thereon or secured thereby and remaining unsatisfied, or which in any event or contingency might be collected thereon, or the value of the property transferred or affected, as the case may be, shall be adjudged the value of the thing stolen. [C., '51, § 2625; R., '60, § 4250; C., '73, § 3914; C., '97, § 4849.]

13008. Larceny in nighttime. If any person in the nighttime commit larceny in any dwelling house, store, or any public or private building, or in any boat, vessel, or watercraft, when the value of the property stolen exceeds the sum of twenty dollars, he shall be imprisoned in the penitentiary not exceeding ten years; and when the value of the property stolen does not exceed twenty dollars, be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2613; R., '60, § 4238; C., '73, § 3903; C., '97, § 4832.]

13009. Larceny in daytime. If any person in the daytime commit larceny as defined in the preceding section, and the value of the property stolen exceeds twenty dollars, he shall be imprisoned in the penitentiary not more than five years; and when the value of the property stolen does not exceed twenty dollars, be fined not exceeding two hundred dollars and imprisoned in the county jail not exceed-

ing one year. [C., '51, § 2614; R., '60, § 4239; C., '73, § 3904; C., '97, § 4833.]

13010. Larceny from building on fire or from the person. If any person commit the crime of larceny by stealing from any building on fire, or by stealing any property removed in consequence of an alarm caused by fire, or by stealing from the person of another, he shall be imprisoned in the penitentiary not exceeding fifteen years. [C., '51, § 2615; R., '60, § 4240; C., '73, § 3905; C., '97, § 4837.]

13011. Larceny of motor vehicle. If any person steal, take, and carry away, irrespective of value, any motor vehicle; as defined in the next section, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine of not more than one thousand dollars, or by both such fine and imprisonment. [40 G. A., ch. 273, § 2.]

13012. Motor vehicle defined. The term "motor vehicle" as used in sections 13011 and 13013 includes any automobile, automobile truck, automobile wagon, automobile tractor, motorcycle, or any other self-propelled vehicle not designed for running on rails. [40 G. A., ch. 273, § 3.]

13013. Jurisdiction. Jurisdiction of such offense may be in the county where such motor vehicle was stolen, or through or into which it was taken, carried, or transported by the person or persons who committed the theft, or by any person or persons confederated with him or them in such theft. [40 G. A., ch. 273, § 4.]

13014. Larceny of electric current, water, steam, or gas. If any person wilfully, and with intent to defraud, in any manner take from the wires, pipes, meters, or any other apparatus of any electric motor, electric light, water, steam heating, or gas plant or works, any electric current, water, steam, steam heat, or gas, he shall be guilty of larceny and shall be punished accordingly. [S., '13, § 4852-c.]

13015. Larceny of poultry. Any person guilty of larceny of domestic fowl or poultry from any building, shed, coop, or inclosed premises shall, upon conviction thereof, be punished by imprisonment in the penitentiary not exceeding two years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars or by both fine and imprisonment in the county jail, as above provided, at the discretion of the court. [S., '13, § 4852-d.]

13016. Taking goods from officer. If any person, knowingly and without authority of law, take, carry away, secrete, or destroy any goods or chattels while the same are lawfully in the custody of any sheriff, coroner, marshal, constable, or other officer, and held by such officer by virtue of execution, writ of attachment, or other legal process, he shall be guilty of larceny, and, when the value of the property so taken, carried away, secreted, or destroyed

exceeds the sum of twenty dollars, be imprisoned in the penitentiary not more than one year; and when it does not exceed twenty dollars, be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. [R., '60, § 4251; C., '73, § 3915; C., '97, § 4850; S., '13, § 4850.]

13017. Custody of property levied on or deposited by officer. The possession or custody of goods and chattels by any person with whom the same have been left or deposited for safekeeping, to be returned for the purpose of being disposed of on legal process, shall be the possession and custody of the officer having or depositing the same and entitled to the custody thereof, and, in a prosecution under the preceding section, the property taken, carried away, secreted, or destroyed, as therein mentioned, may be laid in the officer entitled to the custody thereof at the time of the commission of the offense. [R., '60, § 4252; C., '73, § 3916; C., '97, § 4851.]

13018. Appropriating found property. If any person come by finding to the possession of any personal property of which he knows the owner, and unlawfully appropriate the same or any part thereof to his own use, he is guilty of larceny, and shall be punished accordingly. [C., '51, § 2617; R., '60, § 4242; C., '73, § 3907; C., '97, § 4839.]

13019. Larceny of logs or lumber. Whoever shall wilfully take, carry away, or otherwise convert to his own use, or sell or dispose of, without the consent of the owner or owners, any pile, logs, or cant suitable to be worked into plank, board, joist, shingles, or other lumber, the property of another, whether the owner thereof be known or unknown, lying or being in any lake, bay, or river in or bordering on this state, or in any tributary of such lake, bay, or river or tributary, or in or on any slough, ravine, island, bottom, or land adjoining any such lake, bay, or river or tributary, such property being so taken, carried away, or otherwise converted or sold or disposed of within this state, or taken possession of with intent to sell or dispose of as aforesaid; or cuts out, mutilates, destroys, or renders illegible the marks or mark thereon, destroying the identification thereof; or in any manner wilfully injures any such logs, not his own; or places upon such logs or pieces of timber any mark or device other than the original mark or device, shall be deemed guilty of the crime of larceny. [C., '97, § 4834.]

13020. Punishment. On conviction thereof, such person shall be fined not less than fifty dollars and be imprisoned in the county jail not less than three months; and, on a second conviction for a like crime, shall be fined not less than one hundred dollars and be imprisoned in the penitentiary not more than two years. [C., '97, § 4834.]

13021. Double damages for conversion of logs. Every person guilty of any of the offenses described in the second preceding section shall,

whether convicted thereof in a criminal prosecution or not, be liable to pay the owner or owners of such pile, log, cant, or other lumber respecting which the offense is committed, double the amount of the value of the same, to be recovered in an action therefor. [C., '97, § 4835.]

13022. Possession as evidence. In any prosecution under the three preceding sections, if any such pile, log, or cant shall be found in the possession of the defendant, either with or without the mark cut out or destroyed, or partly cut out or destroyed, or partly sawed or manufactured into lumber of any kind, fence posts, fence rails, or stovewood, such possession shall be presumptive evidence of his guilt. [C., '97, § 4836.]

13023. Search for lost logs. The owner of any such pile, log, cant, or other lumber may at any time lawfully, by himself or agent, enter in a peaceable manner into or upon any mill or mill boom or raft of logs, piles, cant, or other lumber, in any river or its tributaries in or bordering on this state, or on or near the banks of such lakes, bays, or rivers, or their tributaries, in search of any such pile, log, cant, or other lumber which he may have lost. [C., '97, § 4836.]

13024. Obstructing search—penalty. Any person who shall wilfully prevent or obstruct such search shall, upon conviction thereof, be liable to a penalty of not less than twenty dollars, nor more than fifty dollars, for every such offense. [C., '97, § 4836.]

13025. Taking property for boat or vessel. If any owner, master, clerk, or any other person having charge of or belonging to any boat, vessel, or raft take any cordwood or any other species of property from the owner or his agent, without the knowledge of such owner or agent, or without paying the customary price for the same, he shall be fined not exceeding two hundred dollars, or imprisoned in the county jail not exceeding six months. [C., '51, § 2689; R., '60, § 4329; C., '73, § 3988; C., '97, § 4830.]

13026. Common thief defined. If any person, having before been twice convicted within the state of larceny, is guilty of another crime of larceny, he shall be deemed a common thief, and imprisoned in the penitentiary not more than seven years, or fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year. [R., '60, § 4247; C., '97, § 4846.]

CHAPTER 578

EMBEZZLEMENT

- 13027. Embezzlement by public officers.
- 13028. Punishment.
- 13029. Funds received by virtue of office.
- 13030. Embezzlement by bailee.
- 13031. Embezzlement punished as larceny.
- 13032. Money converted by series of acts.
- 13033. Retaining money on account of commission.

- 13034. Retention of actual commission permitted.
- 13035. Embezzlement by carrier or persons intrusted.
- 13036. Embezzlement by executor, administrator, or guardian.
- 13037. Embezzlement of mortgaged property.

13027. Embezzlement by public officers. If any state, county, township, school, or municipal officer, or officer of any state institution, or other public officer within the state charged with the collection, safe-keeping, transfer, or disbursement of public money or property:

1. Fails or refuses to keep the same in any place of custody or deposit that may be provided by law for keeping such money or property until the same is withdrawn therefrom as authorized by law, or

2. Keeps or deposits such money or property in any other place than in such place of custody or deposit, or

3. Unlawfully converts to his own use in any way whatever, or uses by way of investment in any kind of property, or loans without the authority of law, any portion of the public money intrusted to him for collection, safe-keeping, transfer, or disbursement, or

4. Converts to his own use any money or property that may come into his hands by virtue of his office—
he shall be guilty of embezzlement to the amount of so much of said money or the value

of so much of said property as is thus taken, converted, invested, used, loaned, or unaccounted for. [C., '51, § 2618; R., '60, §§ 806, 807, 4243; C., '73, § 3908; C., '97, § 4840.]

13028. Punishment. Such officer shall be imprisoned in the penitentiary not exceeding ten years, and fined in a sum equal to the amount of money embezzled or the value of such property converted, and shall be forever after disqualified from holding any office under the laws of the state. [C., '51, § 2618; R., '60, § 4243; C., '73, § 3908; C., '97, § 4840.]

13029. Funds received by virtue of office. Any such officer who shall receive any money belonging to the state, county, township, school, or municipality, or state institution of which he is an officer shall be deemed to have received the same by virtue of his office, and in case he fails or neglects to account therefor upon demand of the person entitled thereto, he shall be deemed guilty of embezzlement, and shall be punished as above provided. [C., '51, § 2618; R., '60, §§ 806, 807, 4243; C., '73, § 3908; C., '97, § 4840.]

13030. Embezzlement by bailee. Whoever embezzles or fraudulently converts to his own use, or secretes with intent to embezzle or fraudulently convert to his own use, money, goods, or property delivered to him, or any part thereof, which may be the subject of larceny, shall be guilty of larceny and punished accordingly. [C., '97, § 4841.]

13031. Embezzlement punished as larceny. If any officer, agent, clerk, or servant of any corporation or voluntary association, or if any clerk, agent, or servant of any private person or copartnership, except persons under the age of sixteen years, or if any attorney at law, collector, or other person who in any manner receives or collects money or other property for the use of and belonging to another, embezzles or fraudulently converts to his own use, or takes and secretes with intent to embezzle or convert to his own use, without the consent of his employer, master, or the owner of the money or property collected or received, any money or property of another, or which is partly the property of another and partly the property of such officer, agent, clerk, servant, attorney at law, collector, or other person, which has come to his possession or under his care in any manner whatsoever, he is guilty of larceny. [C., '73, § 3909; C., '97, § 4842.]

13032. Money converted by series of acts. If money or property is so embezzled or converted by a series of acts during the same employment, the total amount of the money and the total value of the property so embezzled or converted shall be considered as embezzled or converted in one act, and he shall be punished accordingly. [C., '73, § 3909; C., '97, § 4842.]

13033. Retaining money on account of commission. In a prosecution under the two preceding sections, it shall be no defense that such officer, agent, clerk, servant, collector, attorney at law, or other person was entitled to a commission or compensation out of such money or property as compensation or commission for collecting or receiving the same for or on behalf of the owner thereof. [C., '73, § 3909; C., '97, § 4843.]

13034. Retention of actual commission permitted. It shall be lawful for such agent, clerk, servant, attorney at law, collector, or other person to retain his reasonable compensation or collection fee for collecting or receiving the same, but no attorney at law may retain any money or property as compensation, or as money and property on which he has an attorney's lien, after the filing of a bond as provided in regard to such liens. [C., '73, § 3909; C., '97, § 4843.]

13035. Embezzlement by carrier or persons intrusted. If any carrier or other person to whom any money, goods, or other property which may be the subject of larceny has been delivered to be carried for hire, or if any other person intrusted with such property, embezzle or fraudulently convert to his own use any such money, goods, or other property, either in the mass as the same were delivered or otherwise, and before the same were delivered at the place or to the person where and to whom they were to be delivered, he is guilty of larceny. [C., '51, § 2620; R., '60, § 4245; C., '73, § 3910; C., '97, § 4844.]

13036. Embezzlement by executor, administrator, or guardian. If any executor, administrator, or guardian embezzles or fraudulently converts to his own use any money or property collected or received by him or coming into his possession or under his control by virtue of his said office, he is guilty of larceny and the statute of limitations shall not begin to run as to such offense until the settlement of the estate or the attainment of majority by the ward, as the case may be. [S., '13, § 4852-e.]

13037. Embezzlement of mortgaged property. If any mortgagor of personal property or purchaser under a conditional bill of sale, while the mortgage or conditional bill of sale upon it remains unsatisfied, wilfully and with intent to defraud, destroys, conceals, sells, or in any manner disposes of the property covered by such mortgage or conditional bill of sale without the written consent of the then holder of such mortgage or conditional bill of sale, he shall be guilty of larceny and punished accordingly. [R., '60, § 4236; C., '73, § 3895; C., '97, § 4852; 38 G. A., ch. 313, § 1.]

CHAPTER 579

ROBBERY

13038. Definition—punishment.
13039. Robbery with aggravation.

13038. Definition—punishment. If any person, with force or violence, or by putting in fear, steal and take from the person of another any property that is the subject of larceny, he is guilty of robbery, and shall be punished according to the aggravation of the offense, as is provided in the two following sections. [C.,

13040. Robbery without aggravation.
13041. Train robbery.

'51, § 2578; R., '60, § 4201; C., '73, § 3858; C., '97, § 4753.]

13039. Robbery with aggravation. If such offender at the time of such robbery is armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed; or

if, being so armed, he wound or strike the person robbed; or if he has any confederate aiding or abetting him in such robbery, present and so armed, he shall be imprisoned in the penitentiary for a term of twenty-five years. [C., '51, § 2579; R., '60, § 4202; C., '73, § 3859; C., '97, § 4754; 39 G. A., ch. 231, § 4; 40 G. A., ch. 213.]

13040. Robbery without aggravation. If such offender commits the robbery otherwise than is mentioned in the preceding section, he shall be imprisoned in the penitentiary not exceeding ten years. [C., '51, § 2580; R., '60, § 4203; C., '73, § 3860; C., '97, § 4755; 39 G. A., ch. 231, § 5.]

13041. Train robbery. If any person shall:

1. Stop, or attempt to stop, any railway passenger train, with intent to rob any person thereon, or to rob any coach attached thereto, or to rob any mail pouch, express safe, or box on such train; or

2. Wreck, or attempt to wreck, derail, or attempt to derail, any such train, by any means whatever, with intent to commit such robbery; or

3. Obstruct or detain such train, or any loco-

motive, tender, coach, or car attached thereto, with such intent; or

4. Place upon any railway track, or under any engine, tender, coach, or car any explosive substance, with intent to obstruct, stop, detain, derail, or wreck such train, for the purpose of committing such robbery; or

5. Remove any spike, fishplate, frog, rail, switch, tie, stringer, or appliance used on such railway with intent to obstruct, stop, detain, derail, or wreck such train, for the purpose of committing such robbery; or

6. Enter any locomotive, tender, coach, or car attached to such train, and take or attempt to take possession thereof, for the purpose of committing such robbery; or

7. Rifle any coach, car, safe, box, or mail pouch on such train; or

8. Take and carry away, with force and arms, any valuable thing whatever from such train, or from any person thereon; or

9. Intimidate, injure, wound, or maim any person thereon, with intent to commit such robbery—

he shall, upon conviction thereof, be imprisoned in the penitentiary at hard labor, for life. [S., '13, § 4810-a; 39 G. A., ch. 231, § 6.]

CHAPTER 580

RECEIVING STOLEN GOODS

13042. Punishment.

13043. Second conviction.

13042. Punishment. If any person buy, receive, or aid in concealing any stolen money, goods, or property the stealing of which is larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, he shall, when the value of the property so bought, received or concealed by him exceeds the sum of twenty dollars, be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year; and when the value of the property so bought, received, or concealed by him does not exceed the sum of twenty dollars, be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C., '51, § 2621; R., '60, § 4246; C., '73, § 3911; C., '97, § 4845.]

NOTE: Receiving, concealing, or selling motor vehicle, see § 5092.

13044. Receiver convicted without principal.

13043. Second conviction. If any person, after having been convicted of the offense of buying, receiving, or aiding in the concealment of stolen money, goods, or any property the stealing of which is larceny, or property obtained by robbery or burglary, be again convicted of the like offense, he shall be punished as provided in section 13026. [C., '51, § 2623; R., '60, § 4248; C., '73, § 3912; C., '97, § 4847.]

13044. Receiver convicted without principal. In any prosecution for the offense of buying, receiving, or aiding in the concealment of stolen property, or property obtained by robbery or burglary, knowing the same was so obtained, it shall not be necessary to aver nor prove on the trial that the person who stole, robbed, or took the property has been convicted. [C., '51, § 2624; R., '60, § 4249; C., '73, § 3913; C., '97, § 4848.]

CHAPTER 581

FALSE PRETENSES, FRAUDS, AND OTHER CHEATS

13045. False pretenses.
 13046. Receiving goods by false personation—
 larceny.
 13047. False drawing or uttering of checks.
 13048. Evidence of violation.
 13049. Payment bar to prosecution.
 13050. Suppression or destruction of will.
 13051. Fraudulent conveyances.
 13052. Frauds upon hotel keepers.
 13053. Presumptive evidence of fraud.
 13054. Exception as to regular boarders.
 13055. Fitting out boat to defraud owner or in-
 surer.
 13056. Swindling in sale of grain or seed.
 13057. Dealing in certain instruments.
 13058. False warehouse receipts.
 13059. Making false bills of lading.
 13060. Making false affidavits or manifests.
 13061. Altering stamps or marks of public officer.
 13062. Counterfeiting mark of another.
 13063. Registration of bottles, boxes, and con-
 tainers.
 13064. Sale or use of registered containers.
 13065. Prima facie evidence of misuse—search
 warrants.
 13066. Fraudulently using stamped cask, package,
 or box.
 13067. Binder twine—label required.
 13068. Punishment.
 13069. Fraudulent advertisements.
 13070. Publishers acting in good faith.
 13071. False entries in corporation books.
 13072. Transacting business without license.
 13073. Unlawfully wearing military badges.
 13074. Three-card monte and other games.
 13075. Accessories in three-card monte.
 13076. Authority and duty to make arrests.
 13077. Ejection from public conveyances and
 places.
 13078. Posting copy of law.
 13079. Gross fraud or cheat at common law.

13045. False pretenses. If any person de-
 signedly and by false pretense, or by any privy
 or false token, and with intent to defraud,
 obtain from another any money, goods, or other
 property, or so obtain the signature of any
 person to any written instrument, the false
 making of which would be punished as forgery,
 he shall be imprisoned in the penitentiary not
 more than seven years, or be fined not exceed-
 ing five hundred dollars, or be imprisoned in
 the county jail not exceeding one year, or be
 punished by both such fine and imprisonment.
 [C., '51, § 2744; R., '60, § 4394; C., '73, § 4073;
 C., '97, § 5041.]

13046. Receiving goods by false personation
 —larceny. If any person falsely personate or
 represent another, and in such assumed char-
 acter receive any money or property intended
 to be delivered to the person so personated,
 with intent to convert the same to his own use,
 he is guilty of larceny, and shall be punished
 accordingly. [C., '51, § 2616; R., '60, § 4241;
 C., '73, § 3906; C., '97, § 4838.]

13047. False drawing or uttering of checks.
 Any person who shall make, draw, deliver,
 utter, or give any check, draft, or written order
 upon any bank, person, or corporation and
 who secures money, credit, or thing of value
 therefor, and who knowingly shall not have an
 arrangement, understanding, or funds with
 such bank, person, or corporation sufficient to
 meet or pay the same, shall be guilty of a mis-
 demeanor and, upon conviction thereof, shall
 be punished by a fine of not to exceed one hun-
 dred dollars, or by imprisonment in the county
 jail not to exceed thirty days. [37 G. A., ch.
 268, § 1.]

13048. Evidence of violation. The fact that
 payment of said check, draft, or written order
 when presented in the usual course of busi-
 ness shall be refused by the bank, person, or
 corporation upon which it is drawn, or that it
 be protested for nonpayment for lack of such
 arrangement, understanding, or funds with
 which to meet the same, shall be material and
 competent evidence of such lack of arrange-
 ment, understanding, or lack of funds. [37 G.
 A., ch. 268, § 1.]

13049. Payment bar to prosecution. Pay-
 ment upon demand by the drawee or within
 three days by the drawer shall prevent further
 prosecution under the second preceding sec-
 tion. [37 G. A., ch. 268, § 1.]

13050. Suppression or destruction of will.
 If any person, having in his possession or un-
 der his control any last will of any deceased
 person, wilfully suppress, secrete, deface, or
 destroy the same, or any codicil belonging
 thereto, with intent to injure or defraud any
 devisee, legatee, or other person, he shall be
 imprisoned in the penitentiary not more than
 seven years, or be fined not exceeding one
 thousand dollars, and imprisoned in the county
 jail not more than one year. [C., '51, § 2746;
 R., '60, § 4396; C., '73, § 4075; C., '97, § 5043.]

13051. Fraudulent conveyances. Any per-
 son who, knowingly being a party to any con-
 veyance or assignment of any estate or interest
 in lands, goods, or things in action, or of any
 rents or profits arising therefrom, or being a
 party to any charge on such estate, interest,
 rents, or profits, made or created with intent
 to defraud prior or subsequent purchasers, or
 to hinder, delay, or defraud creditors or other

persons, and every person who, being privy to or knowing of such fraudulent conveyance, assignment, or charge, puts the same in use as having been made in good faith, shall be imprisoned in the penitentiary not exceeding three years, or may be fined in the discretion of the court not exceeding one thousand dollars, or imprisoned in the county jail not more than one year. [C., '51, § 2745; R., '60, § 4395; C., '73, § 4074; C., '97, § 5042.]

13052. Frauds upon hotel keepers. Any person who shall obtain food, lodging, or other accommodation at any hotel, inn, or boarding or eating house, with intent to defraud the owner or keeper thereof, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding thirty days. [C., '97, § 5076.]

13053. Presumptive evidence of fraud. Proof that lodging, food, or other accommodation was obtained by false pretense, or by false or fictitious show or pretense of baggage, or that the party refused or neglected to pay for such food, lodging, or other accommodation on demand, or that he absconded or left the premises without paying or offering to pay for such food, lodging, or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, shall be presumptive evidence of the fraudulent intent mentioned in the preceding section. [C., '97, § 5077.]

13054. Exception as to regular boarders. The preceding section shall not apply to regular boarders, nor when there has been an agreement for delay in payment. [C., '97, § 5077.]

13055. Fitting out boat to defraud owner or insurer. If any person lade, equip, or fit out, or assist in lading, equipping, or fitting out, any raft, boat, or vessel, with intent that the same be cast away, burnt, sunk, or otherwise destroyed, to injure or defraud any owner or insurer thereof, or of any property laden on board the same, he shall be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2754; R., '60, § 4404; C., '73, § 4083; C., '97, § 5055.]

13056. Swindling in sale of grain or seed. Whoever, either for his own benefit or as the agent of any corporation, company, association, or person, obtains from any other person anything of value, or procures the signature of any such person as maker, indorser, guarantor, or surety thereon to any bond, bill, receipt, promissory note, draft, check, or any other evidence of indebtedness, as the whole or part consideration of any bond, contract, or promise given the vendee of any grain, seed, or cereal; binding the vendor or any other person, corporation, company, association, or the agent thereof, to sell for such vendee any grain, seed, or cereal at a fictitious price, or at a price equal to or more than four times the market price thereof, shall be imprisoned in the penitentiary not more than three years, or be fined not more than five hundred nor less than one hundred dollars, or both. [C., '97, § 5069.]

13057. Dealing in certain instruments. Whoever sells, barter, or disposes of, or offers to sell, barter, or dispose of, either for his own benefit or as the agent of any corporation, company, association, or person, any bond, bill, receipt, promissory note, draft, check, or other evidence of indebtedness, knowing the same to have been obtained as the whole or part consideration for any bond, contract, or promise given the vendee of any grain, seed, or cereal, binding the vendor or any other person, corporation, company, association, or the agent thereof, to sell for such vendee any grain, seed, or cereal at a fictitious price, or at a price equal to or more than four times the market price thereof, shall be imprisoned in the penitentiary not more than three years, or be fined not more than five hundred nor less than one hundred dollars, or both. [C., '97, § 5069.]

13058. False warehouse receipts. If any person sell, transfer, or dispose of any receipt or voucher, given or purporting to have been given by any person for property in store, knowing that such person has not in his possession such property, or any part thereof, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding five years. [C., '73, § 4088; C., '97, § 5068.]

13059. Making false bills of lading. If any owner of any boat or vessel, or of any property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of such boat or vessel, make out and exhibit, or cause to be made out and exhibited, any false estimate of any goods or property laden or pretended to be laden on board such boat or vessel, with intent to injure or defraud any insurer of such boat or vessel or property, or of any part thereof, he shall be fined not exceeding one thousand dollars, or imprisoned in the penitentiary not more than three years. [C., '51, § 2755; R., '60, § 4405; C., '73, § 4084; C., '97, § 5056.]

13060. Making false affidavits or manifests. If any master or other officer of any boat or vessel make, or cause to be made, any false affidavit or manifest, or if any owner or other person concerned in such boat or vessel, or in the goods or property laden on board the same, procure any such false affidavit or manifest to be made, or exhibit the same, with intent to injure, deceive, or defraud any insurer of such boat or vessel, or of the goods or property laden on board of the same, he shall be imprisoned in the penitentiary not exceeding five years, or be fined not exceeding three thousand dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2756; R., '60, § 4406; C., '73, § 4085; C., '97, § 5057.]

13061. Altering stamps or marks of public officer. If any person falsely alter any stamp, brand, or mark on any cask, package, box, or bale containing merchandise or produce, made by a public officer, appointed for that purpose, in order to denote the quality, weight, or quan-

tity of the contents thereof, with intent to defraud, he shall be fined not more than five hundred dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2749; R., '60, § 4399; C., '73, § 4078; C., '97, § 5046.]

13062. Counterfeiting mark of another. If any person counterfeit any mark, stamp, or brand of another, or falsely mark any cask, package, box, or bale as to quality or quantity, with intent to defraud, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not more than six months, or both. [C., '51, § 2750; R., '60, § 4400; C., '73, § 4079; C., '97, § 5047.]

13063. Registration of bottles, boxes, and containers. Persons engaged in the manufacture, bottling, or selling of soda water, mineral or aerated waters, cider, milk, cream, or other lawful beverages in bottles, boxes, casks, kegs, or barrels, with their names or other marks of ownership stamped or marked thereon, may file in the office of the recorder of the county in which such articles are manufactured, bottled, or sold a description of the name or marks so used by them, and cause notice thereof to be given by three consecutive publications in a weekly newspaper printed in the English language in said county. [C., '97, § 5052; S., '13, § 5052.]

13064. Sale or use of registered containers. It shall thereupon be unlawful for any person, without the written consent of the owner, to fill such bottles, boxes, casks, kegs, or barrels so marked or stamped, for the purpose of sale, or to sell, dispose of, buy, or traffic in or wantonly destroy the same, whether filled or not, and any violation of this section shall be a misdemeanor, and any person convicted thereof shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C., '97, § 5052; S., '13, § 5052.]

13065. Prima facie evidence of misuse-- search warrants. The using by any other person than the rightful owner, without written permission, of any such cask, barrel, keg, bottle, or box, as prohibited in the preceding section, or the possession thereof by any junk dealer, or dealer in such casks, barrels, kegs, bottles, or boxes, the same being marked or stamped and registered as herein required, shall be prima facie evidence that such use, and the sale or possession, is unlawful, and search warrants may be procured for the discovery and seizure of such bottles, boxes, casks, kegs, or barrels, as in other criminal cases. [C., '97, § 5052; S., '13, § 5052.]

13066. Fraudulently using stamped cask, package, or box. If any person, with intent to defraud, use any cask, package, box, or bale, marked, branded, or stamped by another, for the sale of merchandise or produce of an inferior quality or less in quantity or weight than is denoted by such mark, stamp, or brand, he shall be imprisoned in the county jail not more than one year, or fined not exceeding two hun-

dred dollars, or both. [C., '51, § 2751; R., '60, § 4401; C., '73, § 4080; C., '97, § 5048.]

13067. Binder twine -- label required. No binder twine shall be sold, exposed, or offered for sale within this state, except the same bears upon each ball a stamp or label truly stating the name of the manufacturer or importer and the number of feet to the pound in such ball; provided that a deficiency not exceeding five per cent in length stated on the stamp or label shall not be a violation hereof. [S., '13, § 5077-a25.]

13068. Punishment. Any person, firm, or corporation who violates the provisions of the preceding section shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars. [S., '13, § 5077-a26.]

13069. Fraudulent advertisements. Any person, firm, corporation, or association who, with intent to sell, or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes to be made, published, disseminated, circulated, or placed before the public in this state, either directly or indirectly, in a newspaper or other publication or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation, or statement of fact relating to said merchandise, securities, or service offered for sale, or relating to the sale thereof, which is untrue, deceptive, or misleading, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars or not more than one hundred dollars, or thirty days in jail for each offense. [S., '13, § 5051-a; 37 G. A., ch. 190, § 1.]

13070. Publishers acting in good faith. The provisions of the preceding section shall not apply to any owner, publisher, printer, agent, or employee of a newspaper or other publication, periodical, or circular who, in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published, or takes part in the publication of such advertisement. [S., '13, § 5051-a; 37 G. A., ch. 190, § 1.]

13071. False entries in corporation books. Any officer, agent, or employee of any corporation who shall knowingly make or knowingly authorize to be made false entries upon the books of such corporation, and any employee of another who shall knowingly make or cause to be made false entries upon the books of his

employer, shall be guilty of a felony, and, upon conviction, shall be punished by imprisonment not to exceed two years, or by a fine not to exceed five thousand dollars, or by both such fine and imprisonment. [38 G. A., ch. 210, § 1.]

13072. Transacting business without license. If any person carry on or transact any business or occupation without license therefor, when such license is required by any law of the state, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C., '51, § 2737; R., '60, § 4380; C., '73, § 4046; C., '97, § 5010.]

13073. Unlawfully wearing military badges. Any person who shall wilfully wear the badge or button of the grand army of the republic, or the insignia or rosette of the military order of the loyal legion of the United States, or use the same to obtain aid or assistance, unless entitled to wear the same under the rules and regulations or constitution of such organizations, shall be imprisoned not to exceed thirty days, or fined not to exceed twenty dollars. [C., '97, § 5071.]

13074. Three-card monte and other games. Whoever by means of three-card monte, so called, or any other form or device, sleight of hand, or other means whatever, by use of cards or instruments of like character, obtains from another person any money or other property, shall be guilty of swindling and be fined not less than two hundred nor more than two thousand dollars, or be imprisoned in the penitentiary not more than five years, or both. [C., '97, § 5072; 39 G. A., ch. 231, § 7.]

13075. Accessories in three-card monte. All persons aiding, encouraging, advising, or confederating with, or knowingly harboring or concealing, any such person or persons, or in any manner being accessory to the commission of the above described offense, or confederating together for the purpose of playing such games, shall be deemed principals therein, and punished accordingly. [C., '97, § 5072.]

13076. Authority and duty to make arrests. Any person may, and every conductor and other employee on any railroad car or train, every captain, clerk, and other employee on any boat, every station agent at any railway depot, the officers of any fair or fair grounds, and the proprietor of any place of public resort and his employees, shall, with or without warrant, arrest any person found in the act of committing any of the offenses mentioned in the two preceding sections, or any person whom he or they may have good reason to believe to be guilty of the commission of any such offense. [C., '97, § 5073.]

13077. Ejection from public conveyances and places. Any conductor, captain, hotel keeper, proprietor or manager of any public conveyance or place of public resort, and the officers of any fair or fair grounds, shall eject from his car, train, boat, hotel, public conveyance, fair grounds or place of public resort any person known to him or whom he has good reason to believe to be a three-card monte man, or who offers to wager or bet money or other valuable thing upon what is commonly known as three-card monte, or bet on any trick or game with cards or other gaming device, and any failure, neglect, or refusal to do so, or to suppress or prevent a violation of the third preceding section, shall be a misdemeanor. [C., '97, § 5074.]

13078. Posting copy of law. Any person or company operating any public conveyance by which passengers are carried shall keep posted up in such conveyance a copy of the four preceding sections. [C., '97, § 5075.]

13079. Gross fraud or cheat at common law. Every person who is convicted of any gross fraud or cheat at common law shall be fined not more than two hundred dollars or imprisoned in the county jail not more than one year, or both. [C., '51, § 2752; R., '60, § 4402; C., '73, § 4081; C., '97, § 5053.]

CHAPTER 582

MALICIOUS MISCHIEF AND WILFUL TRESPASS

13080. Malicious injury to buildings and fixtures.
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 13107. Injury to fire apparatus.
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13080. Malicious injury to buildings and fixtures. If any person maliciously injure, deface, or destroy any building or fixture attached thereto, or wilfully and maliciously destroy, injure, or secrete any goods, chattels, or valuable papers of another, he shall be imprisoned in the penitentiary not more than five years, or shall be imprisoned in the county jail not more than one year, or be fined not exceeding five hundred dollars, and be liable to the party injured in a sum equal to three times the value of the property so destroyed or injured. [C., '51, § 2686; R., '60, § 4326; C., '73, § 3985; C., '97, § 4822; S., '13, § 4822.]

13081. Injuring or terrorizing inhabitants of dwelling. If any person, with intent to injure or terrorize the inhabitants of any dwelling house, or other building used as a dwelling, or any inhabited boat, vessel, or raft, or with intent to injure or deface any such structure, throws at, against, or into the same any brick, stone, billet of wood, or other missile, or shoots thereat, with such intent, any gun, pistol, or revolver, he shall be imprisoned in the penitentiary not more than three years, or in the county jail not more than one year, or be fined not more than one thousand dollars. [C., '97, § 4799.]

13082. Defacing buildings. If any person wilfully write, make marks, or draw characters on the walls or any other part of any church, college, academy, schoolhouse, courthouse, or other public building, or on any furniture, apparatus, or fixtures therein; or wilfully injure or deface the same, or any wall or fence inclosing the same, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. [C., '51,

§ 2687; R., '60, § 4327; C., '73, § 3986; C., '97, § 4802.]

13083. Injury to fence, produce, or fixtures. If any person maliciously or mischievously break down, mar, deface, or injure any fence, hedge, or ditch inclosing lands belonging to another; or throw down or leave open any gate or bars not his own or under his charge, whereby an injury is done to another; or maliciously injure, destroy, or sever from the land of another any produce thereof or anything attached thereto, he shall be imprisoned in the county jail not more than one year, or be fined not exceeding five hundred dollars, or both. [C., '97, § 4825.]

13084. Burning or destroying lumber, fences, or grain. If any person wilfully and maliciously burn, destroy, or injure any pile or parcel of wood, boards, timber, or lumber, or any fence, bars, or gate, or any grain, hay, or other vegetable product severed from the soil, or any standing tree, grain, grass, or other standing product of the soil, the property of another, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2604; R., '60, § 4228; C., '73, § 3886; C., '97, § 4782.]

13085. Injury to sidewalks. Any person guilty of wilfully and unlawfully injuring or destroying any sidewalk made of wood, brick, stone, cement, or any other material, shall be fined not more than one hundred dollars or be imprisoned in the county jail not exceeding thirty days. [S., '13, § 4830-b.]

13086. Trespass by digging, cutting, or carrying away. If any person wilfully commit any trespass by cutting down or destroying any timber or wood standing or growing on the land of another; or by carrying away timber or wood being on such land; or by digging or carrying away any earth, stone, marble, slate, coal, copper, lead, iron ore, or any other ore or metal; or by taking and carrying from such land any grass, hay, corn, grain, fruit, or other vegetables; or carrying away from any wharf, street, or landing place, any goods whatever in which he has no interest, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year, or both at the discretion of the court. [C., '51, § 2684; R., '60, § 4324; C., '73, § 3983; C., '97, § 4829.]

13087. Value not in excess of fifty dollars. If in any case the value of the property so cut down, carried away, or otherwise taken shall not exceed the sum of fifty dollars, then the person so offending shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C., '73, § 3983; C., '97, § 4829.]

13088. Injury to fruit or ornamental tree. If any person maliciously or mischievously bruise, break, pull up, carry away, cut down, injure, destroy, or sever from the land any fruit, ornamental, or other tree, vine, or shrub standing or growing on the land of another for ornament or use, he shall upon conviction thereof be punished by imprisonment in the county jail not more than one year, or by fine of not more than five hundred dollars, or both. [C., '51, § 2682; R., '60, § 4322; C., '73, §§ 3899, 3981; C., '97, § 4826.]

13089. Stealing or knocking off fruit in daytime. If any person maliciously or mischievously enter the inclosure of another with intent to knock off, pick, destroy, or carry away, or, having lawfully entered, afterwards wrongfully knocks off, picks, destroys, or carries away any fruit or flower of any tree, shrub, bush, or vine, he shall be fined for the first offense not less than five nor more than one hundred dollars, with the costs of conviction, or be imprisoned in the county jail not exceeding thirty days; and for a second violation he shall be fined not less than ten dollars and costs of conviction, or be imprisoned as above provided. [C., '73, § 3897; C., '97, § 4827.]

13090. Stealing or knocking off fruit in nighttime. If any person maliciously or mischievously enter the inclosure of another in the nighttime and knock off, pick, destroy, or carry away any fruit or flower of any tree, shrub, bush, or vine, or if, having so entered with intent to knock off, pick, destroy, or carry away any fruit or flower as aforesaid, he be actually found therein, he shall be fined not less than twenty-five nor more than one hundred dollars and costs of conviction, or imprisoned in the county jail not exceeding thirty days. [C., '73, § 3898; C., '97, § 4828.]

13091. Injury to vehicle or harness. If any person maliciously, wilfully, and feloniously cut, break, sever, or unfasten any tug, strap, line, or other part of any harness attached to any horse or team, or maliciously and feloniously remove, break, unfasten, or injure any part of any vehicle, he shall be imprisoned in the penitentiary not to exceed one year, or be imprisoned in the county jail not to exceed six months, or be fined not to exceed five hundred dollars. [C., '97, § 4823; S., '13, § 4823.]

13092. Operating automobile without consent of owner. If any chauffeur or other person shall without the consent of the owner take, or cause to be taken, any automobile or motor vehicle, and operate or drive, or cause the same to be operated or driven, he shall be imprisoned in the penitentiary not to exceed one year, or be imprisoned in the county jail not to exceed six months, or be fined not to exceed five hundred dollars. [S., '13, § 4823.]

13093. Injury to rafts or boats. If any person maliciously cut away, let loose, injure, or destroy any boom or raft of wood, logs, or other lumber, or any boat or vessel fastened to any place, of which he is not the owner or legal possessor, he shall be fined not exceeding five hundred dollars, and imprisoned in the county jail not more than one year, and forfeit to the person injured double the amount of damages sustained. [C., '51, § 2681; R., '60, § 4321; C., '73, § 3980; C., '97, § 4824.]

13094. Fraudulent destruction of boats. If any person cast away, sink, or otherwise destroy any raft, boat, or vessel, within any county, with intent to defraud any owner or insurer thereof, or the owner or insurer of any property laden on board the same, or of any part thereof, he shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding two thousand dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2753; R., '60, § 4403; C., '73, § 4082; C., '97, § 5054.]

13095. Injury to public library books or property. Any person who shall wilfully, maliciously, or wantonly tear, deface, mutilate, injure, or destroy, in whole or in part, any newspaper, periodical, book, map, pamphlet, chart, picture, or other property belonging to any public library or reading room shall be deemed guilty of a misdemeanor and shall be fined not more than one hundred dollars, or imprisoned not more than thirty days. [S., '13, § 4830-a.]

13096. Injuries to monuments of state boundaries. If any person wilfully dig up, pull down, break, or destroy, or in any other manner injure or remove, any of the cast-iron pillars or other evidences planted and fixed in and along any part of the boundaries of this state, he shall be fined not less than fifty nor more than two hundred dollars, or be imprisoned in the penitentiary for a term of not less than six months, or both. [C., '51, § 2690; R., '60, § 4330; C., '73, § 3989; C., '97, § 4800.]

13097. Injury to boundary marks, mile-stones, and signboards. If any person maliciously take down, injure, or remove any monument erected or any tree marked as a boundary of any tract of land or city or town lot; or destroy, deface, or alter the marks of any such monument or tree made for the purpose of designating such boundary; or injure or deface any milestone, post, or guideboard erected on any public way; or remove, deface, or injure any signboard; or break or remove any lamp or lamp-post or extinguish any lamp on any bridge, way, street, or passage, he shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one year, or both, at the discretion of the court. [C., '51, § 2683; R., '60, § 4323; C., '73, § 3982; C., '97, § 4801.]

13098. Removal of safeguards or danger signals. Whoever shall, without the consent of the person in control thereof, wilfully remove, throw down, destroy, or carry away from any highway, street, alley, avenue, or bridge, any lamp, obstruction, guard, or other article or things, or extinguish any lamp or other light, erected or placed thereon for the purpose of guarding or inclosing unsafe or dangerous places in said highway, street, alley, avenue, or bridge, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail not exceeding one year. [S., '13, § 4830-c.]

13099. Defacing or destroying proclamations or notices. If any person intentionally deface, obliterate, tear down, or destroy in whole or in part any transcript or extract from or of any law of the United States or of this state, or any proclamation, advertisement, or notification, set up at any place within this state by authority of law or by order of any court, during the time for which the same is to remain set up, he shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days. [C., '51, § 2688; R., '60, § 4328; C., '73, § 3987; C., '97, § 4803.]

13100. Violating sepulcher. If any person, without lawful authority, wilfully dig up, disinter, remove, or carry away any human body, or the remains thereof, from its place of interment; or aid, assist, encourage, incite, or procure the same to be done or attempted; or wilfully receive, conceal, or dispose of any such human body or the remains thereof; or if any person, with the intent to commit any of the aforesaid acts, partially perform the same, he shall be imprisoned in the penitentiary not more than two years, or be fined not exceeding twenty-five hundred dollars, or both. [C., '51, § 2714; R., '60, § 4356; C., '73, § 4017; C., '97, § 4945.]

13101. Exposing dead bodies. If any person wilfully and unnecessarily, and in an improper manner, indecently expose, throw away, or abandon any human body, or the remains thereof, in any public place, or in any river,

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stream, pond, or other place, he shall be imprisoned in the penitentiary not more than two years, or be fined not exceeding twenty-five hundred dollars, or both. [C., '51, § 2714; R., '60, § 4356; C., '73, § 4017; C., '97, § 4945.]

13102. Injury to gravestones or property in cemetery. Any person who shall wilfully and maliciously destroy, mutilate, deface, injure, or remove any tomb, vault, monument, grave-stone, or other structure placed in any public or private cemetery in this state, or any fences, railing, or other work for the protection or ornamentation of said cemetery, or of any tomb, vault, monument, or gravestone, or other structure aforesaid, on any cemetery lot within such cemetery, or shall wilfully and maliciously destroy, cut, break, or injure any tree, shrub, plant, or lawn within the limits of said cemetery, or shall drive at an unusual and forbidden speed over the avenues or roads in said cemetery, or shall drive outside of said avenues and roads, and over the grass or graves of said cemetery, shall be guilty of a misdemeanor, and, upon conviction, punished accordingly, in the discretion of the court. [C., '51, § 2715; R., '60, § 4357; C., '73, § 4021; C., '97, § 588.]

13103. Civil liability. Such offender shall also be liable, in an action in the name of the person or corporation having the custody and control of said cemetery grounds, to pay all such damages as have been occasioned by his unlawful act or acts; which money, when recovered, shall be applied by said person or corporation to the reparation and restoration of the property so injured or destroyed, if the same can be so repaired or restored. [C., '97, § 588.]

13104. Hunting upon cultivated or inclosed land. Any person who shall hunt with dog or gun upon the cultivated or inclosed lands of another without first obtaining permission from the owner or occupant thereof, or his agent, shall for each offense be fined not more than ten dollars and costs of prosecution, and shall stand committed until such fine and costs are paid. [C., '97, § 4821; S., '13, § 4821.]

13105. Island in navigable stream. All islands in navigable streams bordering on the state shall be deemed inclosed lands without fences where the owners or lessees thereof post in plain view notices warning others not to trespass thereon. [S., '13, § 4821.]

13106. Prosecution. No prosecution shall be commenced under the two preceding sections except upon the information of the owner or occupant of such cultivated or inclosed lands, or his agent. [C., '97, § 4821; S., '13, § 4821.]

13107. Injury to fire apparatus. If any person wilfully destroy or injure any engine, hose carriage, hose, hook and ladder carriage, or other thing used and kept for the extinguishment of fires, he shall, upon conviction, be imprisoned in the penitentiary for a period of not less than one nor more than three years. [R., '60, § 1766; C., '73, § 1564; C., '97, § 2466.]

13108. Removal of fire apparatus. No person shall remove any engine or other apparatus for the extinguishment of fire from the house or other place where it is kept or deposited, except in time of fire or alarm thereof, unless authorized so to do by the president, director, or foreman of the company to whom the same shall belong. [R., '60, § 1767; C., '73, § 1565; C., '97, § 2467; S., '13, § 2467.]

13109. Punishment. Any person violating the provisions of the preceding section shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceed-

ing thirty days. [R., '60, § 1767; C., '73, § 1565; C., '97, § 2467; S., '13, § 2467.]

13110. False alarms of fire. No person or persons shall cause or give a false alarm of fire, by setting fire to any combustible material, or by crying or sounding an alarm, or by any other means, without cause. [R., '60, § 1768; C., '73, § 1566; C., '97, § 2468; S., '13, § 2468.]

13111. Punishment. Any person violating the provisions of the preceding section shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding thirty days. [R., '60, § 1768; C., '73, § 1566; C., '97, § 2468; S., '13, § 2468.]

CHAPTER 583

INJURIES TO INTERNAL IMPROVEMENTS AND COMMON CARRIERS

- 13112. Injury to dams, locks, mills, or machinery.
- 13113. Injury to levees.
- 13114. Obstructing public ditches or drains.
- 13115. Obstructing ditches and breaking levees.
- 13116. Draining meandered lakes.
- 13117. Obstructing or defacing roads.
- 13118. Placing glass in highways.
- 13119. Punishment.
- 13120. Injury to roads, railways, and other utilities.
- 13121. Tapping telegraph or telephone wires.

- 13122. Placing obstructions on railways.
- 13123. Shooting or throwing at train.
- 13124. Uncoupling locomotive or cars.
- 13125. Seizing and running locomotive.
- 13126. Conspiracy to seize locomotive.
- 13127. Wrongfully running hand car.
- 13128. Aggravated offense.
- 13129. Interference with air brake or bell rope.
- 13130. Power of trainmen to arrest.
- 13131. Jumping off cars in motion.

13112. Injury to dams, locks, mills, or machinery. If any person maliciously injure or destroy any dam, lock, canal, trench, or reservoir, or any of the appurtenances thereof, or any of the gear or machinery of any mill or manufactory; or maliciously draw off the water from any mill pond, reservoir, canal, or trench; or destroy, injure, or render useless any engine or the apparatus belonging thereto, prepared or kept for the extinguishing of fires, he shall be imprisoned in the county jail not exceeding one year and be fined not exceeding five hundred dollars. [C., '51, § 2679; R., '60, § 4319; C., '73, § 2978; C., '97, § 4806.]

13113. Injury to levees. If any person maliciously injure, break, or cause to be broken, any levee erected to prevent the overflow of land within the state, such person so offending shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [R., '60, § 4332; C., '73, § 3991; C., '97, § 4804.]

13114. Obstructing public ditches or drains. If any person place any obstruction in any of the public ditches or drains made for the purpose of draining any of the swamp lands in this state, he shall be compelled to remove the same, and be fined not less than five nor more than one hundred dollars, or be imprisoned in the county jail not more than thirty days. [C., '73, § 3992; C., '97, § 4805.]

13115. Obstructing ditches and breaking levees. Any person, firm, or corporation diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse, or breaking down any levee established, constructed, or maintained under any provision of law, shall be deemed guilty of a misdemeanor and punished accordingly. [S., '13, § 1989-a15.]

13116. Draining meandered lakes. Every person who shall drain or cause to be drained, or shall attempt to drain in any manner, any lake, pond, or body of water, which shall have been meandered and its metes and bounds established by the government of the United States in the survey of public lands, shall be guilty of a misdemeanor and be punished by a fine not exceeding one thousand dollars; provided this shall not apply where the drainage was or is authorized by law. [S. S., '15, § 2900-e.]

13117. Obstructing or defacing roads. If any person, without authority or permission from the board of trustees, shall in any manner obstruct, deface, or injure any public road by breaking up, plowing, or digging within the boundary lines thereof, he shall be fined not less than five nor more than twenty-five dollars, or be imprisoned in the county jail not more than thirty days, at the discretion of the court. [C., '97, § 4808; S., '13, § 4808.]

13118. Placing glass in highways. It shall be unlawful for any person or persons to place

or leave any broken glass, glass bottles, glass-ware, or glass of any kind in the highways, or in the streets and alleys of any city or town in such a manner as to interfere with safe travel, or in such manner as to injure horses or vehicles while being used or driven on said streets, alleys, and highways. [S., '13, § 4808-a.]

13119. Punishment. Any person violating any of the provisions of the preceding section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than one dollar, nor more than ten dollars for the first offense, and for each offense thereafter, shall be fined a sum of not less than five dollars nor more than twenty dollars. [S., '13, § 4808-b.]

13120. Injury to roads, railways, and other utilities. If any person maliciously injure, remove, or destroy any electric railway or apparatus belonging thereto, or any bridge, rail or plank road; or place, or cause to be placed, any obstruction on any electric railway, or on any such bridge, rail or plank road; or wilfully obstruct or injure any public road or highway; or maliciously cut, burn, or in any way break down, injure, or destroy any post or pole used in connection with any system of electric lighting, electric railway, or telephone or telegraph system; or break down and destroy or injure and deface any electric light, telegraph or telephone instrument; or in any way cut, break, or injure the wires of any apparatus belonging thereto; or shall wilfully tap, cut, injure, break, disconnect, connect, make any connection with, or destroy any of the wires, mains, pipes, conduits, meters, or other apparatus belonging to, or attached to, the power plant or distributing system of any electric light plant, electric motor, gas plant, or water plant; or shall aid or abet any other person in so doing, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year, or by both such fine and imprisonment, at the discretion of the court. [C., '51, § 2680; R., '60, § 4320; C., '73, § 3979; C., '97, § 4807; S., '13, § 4807.]

13121. Tapping telegraph or telephone wires. Any person who shall wrongfully or unlawfully tap or connect a wire with the telephone or telegraph wires of any person, company, or association engaged in the transmission of messages on telephone or telegraph lines between the states or in this state, shall be fined not more than five hundred dollars, or imprisoned in the county jail not exceeding six months. [C., '97, § 4816.]

13122. Placing obstructions on railways. If any person shall wilfully and maliciously place any obstruction on the track of any railroad in the state, or remove any rail therefrom, or in any other way injure such railroad, or do any other thing thereto whereby the life of any person is or may be endangered, he shall be imprisoned in the penitentiary for life, or

for any term not less than two years. [R., '60, § 4331; C., '73, § 3990; C., '97, § 4809.]

13123. Shooting or throwing at train. If any person throw any stone or other substance whatever, or present or discharge any gun, pistol, or other firearm at any railroad train, car, or locomotive engine, he shall be guilty of a misdemeanor. [C., '97, § 4810.]

13124. Uncoupling locomotive or cars. If any person shall wilfully and maliciously uncouple or detach the locomotive or tender or any of the cars of any railroad train, or in any manner aid, abet, or procure the doing of the same, such person shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding one thousand dollars, or both, at the discretion of the court. [C., '97, § 4812.]

13125. Seizing and running locomotive. If any person shall unlawfully seize upon any locomotive, with or without any express, mail, baggage, or other car attached thereto, and run the same upon any railroad, or aid, abet, or procure the doing of the same, such person shall be imprisoned in the penitentiary not exceeding ten years, or fined not exceeding two thousand dollars, or both fined and imprisoned. [C., '97, § 4813.]

13126. Conspiracy to seize locomotive. If any two or more persons maliciously and wilfully confederate together for the purpose of going upon or taking charge of any locomotive engine or car of any railroad company by force and without the consent of the person or persons in charge thereof, or if one or more persons shall go upon any locomotive engine or car of any railroad company armed with a dangerous or deadly weapon for the purpose of committing a public offense thereon, he shall be imprisoned in the penitentiary for not exceeding five years or pay a fine of not exceeding one thousand dollars. [37 G. A., ch. 355, § 1.]

13127. Wrongfully running hand car. If any person shall, without permission from the proper authority, wrongfully take or run any hand car upon any railroad in this state, he shall be guilty of a misdemeanor. [C., '97, § 4814.]

13128. Aggravated offense. If by such unlawful use of any hand car any locomotive or car is thrown from the track, or a collision produced, or any person injured, he shall be imprisoned in the penitentiary for a term of not more than five years; and if thereby any person is killed, such person so offending shall be guilty of manslaughter. [C., '97, § 4814.]

13129. Interference with air brake or bell rope. If any person not an employee upon the railroad shall wrongfully interfere with any automatic air brake or bell rope upon any railroad car, or use the same for the purpose of stopping or in any way controlling the movement of the train, he shall be subject to

the penalty provided in the two preceding sections. [C., '97, § 4815.]

13130. Power of trainmen to arrest. Any conductor or brakeman on a railroad train shall have power to arrest a person so offending and deliver him to some peace officer on the line of the railroad. [C., '97, § 4815.]

13131. Jumping off cars in motion. If any person not employed thereon, or not an officer of the law in the discharge of his duty, **without** the consent of the person having the **same** in

charge, get upon or off any locomotive engine or car of any railroad company while the same is in motion, or elsewhere than at the established depots of such company, or get upon, cling to, or otherwise attach himself to any such engine or car for the purpose of riding upon the same, intending to jump therefrom when such engine or car is in motion, or, for the purpose of riding thereon without the payment of the usual fare, he shall be guilty of a misdemeanor. [C., '97, § 4811; 37 G. A., ch. 125, § 1.]

CHAPTER 584

INJURIES TO ANIMALS

13132. Injuries to beasts.

13133. Impounding animals without food and water.

13134. Cruelty to animals.

13132. Injuries to beasts. If any person maliciously kill, maim, or disfigure any horse, cattle, or domestic beast of another, or maliciously administer poison to any such animal; or expose any poisonous substance with intent that the same should be taken by such animal, he shall be imprisoned in the penitentiary not exceeding five years, or imprisoned in the county jail not exceeding one year, or be fined not exceeding three hundred dollars. [C., '51, § 2678; R., '60, § 4318; C., '73, § 3977; C., '97, § 4818.]

13133. Impounding animals without food and water. If any person impound or confine, or cause to be impounded or confined, in any pound or other place, any creature, and fail to supply the same during such confinement with a sufficient quantity of food and water, he shall be guilty of a misdemeanor. [C., '73, § 4034; C., '97, § 4972.]

13134. Cruelty to animals. If any person torture, torment, deprive of necessary sustenance, mutilate, overdrive, overload, drive when overloaded, cruelly beat, or cruelly kill any animal, or unnecessarily fail to provide the same with proper food, drink, shelter, or protection from the weather, or drive or work the same when unfit for labor, or cruelly abandon the same, or carry the same or cause the same to be cruelly carried on any vehicle or otherwise or shall commit any other act or omission by which unjustifiable pain, distress, suffering, or death is caused or permitted to any animal or animals, whether the acts or omissions herein contemplated be committed either maliciously, wilfully, or negligently, and if any person shall knowingly permit such act or omission or shall cause or procure the same to be done he shall be imprisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C., '51, § 2716; R., '60, § 4358; C., '73, § 4031; C., '97, § 4969; S., '13, § 4969.]

13135. Docking horses prohibited—exceptions.

13136. Punishment.

13137. Disturbing stock with firearms or dogs.

13138. Driving away stock.

13135. Docking horses prohibited—exceptions. It shall be unlawful for any person or persons to dock the tail of any colt or horse of any age, other than horses and colts used for breeding and show purposes, or to procure the same to be done. [S., '13, § 4975-a; 37 G. A., ch. 341, § 1.]

13136. Punishment. Any person or persons violating any of the provisions of the preceding section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail not to exceed thirty days. [S., '13, § 4975-b.]

13137. Disturbing stock with firearms or dogs. Any person who knowingly discharges firearms of any description within, or in the immediate vicinity of, any inclosure where cattle, hogs, or sheep are being fed for the purpose of fattening the same; or any person who enters such inclosure with firearms or dog, unless such person shall be the owner of said stock, or have the control of the same, or shall have permission from such owner or the person having control thereof to enter said premises, shall be guilty of a misdemeanor. [C., '73, § 3900; C., '97, § 4820.]

13138. Driving away stock. If any person knowingly or wilfully drive off, or suffer or permit to be driven off, any stock of another to a distance exceeding one mile from the residence of the owner, or of his agent having charge of such stock, or the range in which such stock is usually in the habit of running, without the consent of such owner or agent, he shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days; and any justice of the peace in any county through which the stock thus driven off should pass, or in which it may be found, shall have jurisdiction of the offense. [C., '73, § 3896; C., '97, § 4819.]

CHAPTER 585

FORGERY AND COUNTERFEITING

13139. Forgery.
 13140. Uttering forged instrument.
 13141. Forgery or counterfeiting of public instruments.
 13142. Counterfeiting bills, notes, or drafts.
 13143. Possession of counterfeit papers.
 13144. Uttering counterfeit securities.
 13145. Second conviction.
 13146. Fraudulent alteration of instruments—forgery.
 13147. Affixing fictitious signatures.
 13148. Obliteration of records or instruments.
 13149. Second and third convictions.
 13150. Existence of corporation proved by reputation.
 13151. Making tools for counterfeiting.
 13152. Possession of tools for counterfeiting.
 13153. Counterfeiting coin.
 13154. Uttering or having in possession counterfeit coin.
 13155. Counterfeiting foreign coin.
 13156. Counterfeiting public seals.
 13157. Counterfeiting brands or stamps.
 13158. Possession of instruments for counterfeiting.
 13159. Circulation of foreign bank notes.
 13160. Allegations of indictment—proof.
 13161. Series of offenses—jurisdiction.

13139. Forgery. If any person, with intent to defraud, falsely make, alter, forge, or counterfeit any:

1. Public record; or
2. Process issued or purporting to be issued by any competent court, magistrate, or officer; or
3. Pleading or proceeding filed or entered in any court of law or equity; or
4. Attestation or certificate of any public officer, or other person, in relation to any matter wherein such attestation or certificate is required by law, or may be received or be taken as legal proof; or
5. Charter, deed, will, bond, writing obligatory, power of attorney, letter of credit, policy of insurance, bill of lading, bill of exchange, promissory note; or
6. Order, acquittance, discharge, or accountable receipt for money or other valuable thing; or
7. Acceptance of any bill of exchange or order; or
8. Indorsement or assignment of any bill of exchange, promissory note or order, or of any debt or contract; or
9. Instrument in writing, being, or purporting to be, the act of another, by which any pecuniary demand or obligation, or any right or interest in or to any property whatever, is or purports to be created, increased, transferred, conveyed, discharged, or diminished—he shall be imprisoned in the penitentiary not more than ten years or imprisoned in the county jail not exceeding one year, or fined not exceeding one thousand dollars. [C., '51, § 2626; R., '60, § 4253; C., '73, § 3917; C., '97, § 4853; S., '13, § 4853.]

13140. Uttering forged instrument. If any person utter and publish as true any record, process, certificate, deed, will, or any other instrument of writing mentioned in the preceding section, knowing the same to be false, altered, forged, or counterfeited, with intent to

defraud, he shall be imprisoned in the penitentiary not more than fifteen years, and fined not exceeding one thousand dollars. [C., '51, § 2627; R., '60, § 4254; C., '73, § 3918; C., '97, § 4854.]

13141. Forgery or counterfeiting of public instruments. If any person, with intent to defraud, falsely make, utter, forge, or counterfeit any note, certificate, state bond, warrant, or other instrument, being public security for money or other property, issued or purporting to be issued by authority of this state or any other of the United States; or any indorsement or other writing purporting to transfer the right or interest of any holder of such public security, he shall be imprisoned in the penitentiary not more than twenty years. [C., '51, § 2628; R., '60, § 4255; C., '73, § 3919; C., '97, § 4855; 39 G. A., ch. 231, § 8.]

13142. Counterfeiting bills, notes, or drafts. If any person make, alter, forge, or counterfeit any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company duly authorized for that purpose by any state of the United States, or any other government or country, with intent to injure or defraud, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding three hundred dollars, and imprisoned in the county jail not exceeding one year. [C., '51, § 2629; R., '60, § 4256; C., '73, § 3920; C., '97, § 4856.]

13143. Possession of counterfeit papers. If any person has in his possession any forged, counterfeited, or altered bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued as is mentioned in the preceding section, with intent to defraud, knowing them to be forged, counterfeited, or altered, he shall be imprisoned in the penitentiary not more than five years, or fined not exceeding two hundred dollars and imprisoned

in the county jail not exceeding one year. [C., '51, § 2630; R., '60, § 4257; C., '73, § 3921; C., '97, § 4857.]

13144. Uttering counterfeit securities. If any person utter, pass, or tender in payment as true any false, altered, forged, or counterfeited note, certificate, state bond, warrant, or other instrument of public security, or any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company, knowing the same to be false, altered, forged, or counterfeited, with the intent to injure or defraud, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2631; R., '60, § 4258; C., '73, § 3922; C., '97, § 4858.]

13145. Second conviction. If any person, having been convicted of any of the offenses described in the preceding section, afterward be convicted of a like offense, he shall be imprisoned in the penitentiary not more than ten years. [C., '51, § 2632; R., '60, § 4259; C., '73, § 3923; C., '97, § 4859; 39 G. A., ch. 231, § 9.]

13146. Fraudulent alteration of instruments—forgery. If any person fraudulently connect together different parts of several genuine bank bills, notes, or other instruments in writing, so as to produce one instrument; or alter any note or instrument in writing in a matter that is material, with intent to defraud, the same shall be forgery in like manner as if such bill or note or other instrument had been forged and counterfeited. [C., '51, § 2636; R., '60, § 4263; C., '73, § 3927; C., '97, § 4863.]

13147. Affixing fictitious signatures. If any fictitious or pretended signature of an officer or agent of any corporation be fraudulently affixed to any instrument of writing purporting to be a note, draft, or other evidence of debt issued by such corporation, with intent to utter or pass the same as true, it is a forgery, though no such person may ever have been an officer or agent of such corporation, nor such corporation have ever existed; and the person guilty thereof shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding three hundred dollars and imprisoned in the county jail not more than one year. [C., '51, § 2637; R., '60, § 4264; C., '73, § 3928; C., '97, § 4864.]

13148. Obliteration of records or instruments. The total or partial erasure or obliteration of any record, process, certificate, deed, will, or any other instrument in writing mentioned in this chapter, with the intent to defraud, shall be deemed forgery, and the offender shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2638; R., '60, § 4265; C., '73, § 3929; C., '97, § 4865.]

13149. Second and third convictions. If any person, having been convicted of either of the offenses mentioned in the preceding section, be afterward convicted of a like offense, he shall be imprisoned in the penitentiary not more than ten nor less than three years. [C., '51, § 2639; R., '60, § 4266; C., '73, § 3930; C., '97, § 4866.]

13150. Existence of corporation proved by reputation. On the trial of any person for forging or counterfeiting any bill, note or other evidence of debt purporting to be issued by any incorporated company; or for uttering, passing, or attempting to pass, or having in possession the same with intent to utter or pass, such bill, note or evidence of debt, it is not necessary to prove the incorporation by the charter or act thereof; but the same may be proved by general reputation, and persons of skill are competent witnesses to prove that such bill, note or evidence of debt is forged or counterfeit. [C., '51, § 3643; R., '60, § 4270; C., '73, § 3934; C., '97, § 4870.]

13151. Making tools for counterfeiting. If any person engrave, make, or mend, or begin to engrave, make, or mend, any plate, block, press, or other tool, instrument or implement, or make or provide any paper or other materials, adapted and designed for the forging or making any false and counterfeit note, certificate, state bond, warrant, or other instrument of public security for money or other property of this state or any other of the United States, or any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company, he shall be imprisoned in the penitentiary not more than five years. [C., '51, § 2633; R., '60, § 4260; C., '73, § 3924; C., '97, § 4860.]

13152. Possession of tools for counterfeiting. Every person who has in his possession any such plate or block engraved in any part, or any press or other tool, instrument, or implement, paper or other material, adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used, in forging or making any such false and forged certificates, notes, bonds, warrants, public securities, or evidences of debt, shall be imprisoned in the penitentiary not more than five years. [C., '51, § 2633; R., '60, § 4260; C., '73, § 3924; C., '97, § 4860; 39 G. A., ch. 231, § 10.]

13153. Counterfeiting coin. If any person forge or counterfeit any gold or silver coin, current by law or usage within this state, or if any person have in his possession at the same time five or more pieces of false money or coin counterfeited in the similitude of any gold or silver coin current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, he shall be imprisoned in the penitentiary not more than ten years. [C., '51, § 2634; R., '60, § 4261; C., '73, § 3925; C., '97, § 4861; 39 G. A., ch. 231, § 11.]

13154. Uttering or having in possession counterfeit coin. Any person who has in his possession any number of pieces less than five of the counterfeit coin mentioned in the preceding section, knowing the same to be false or counterfeit, with intent to utter or pass the same as true; and any person who utters, passes, or tenders in payment any false and counterfeit coin, knowing the same to be false and counterfeit, shall be imprisoned in the penitentiary not exceeding eight years, or fined not more than five hundred dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2635; R., '60, § 4262; C., '73, § 3926; C., '97, § 4862.]

13155. Counterfeiting foreign coin. If any person forge or counterfeit any gold or silver coin of any foreign government or country, with intent to export the same to injure or defraud any such government or the citizens thereof, he shall be imprisoned in the penitentiary not exceeding ten years. [C., '51, § 2641; R., '60, § 4268; C., '73, § 3932; C., '97, § 4868.]

13156. Counterfeiting public seals. Every person who is convicted of having forged, counterfeited, or falsely altered the great seal of the state; or the seal of any public office authorized by law; or the seal of any court, corporation, city, or county; or who falsely makes, forges, or counterfeits any impression purporting to be the impression of any such seal, with intent to defraud, shall be imprisoned in the penitentiary not exceeding ten years. [C., '51, § 2642; R., '60, § 4269; C., '73, § 3933; C., '97, § 4869.]

13157. Counterfeiting brands or stamps. If any person, with intent to defraud, falsely make, forge, or counterfeit any stamp or brand authorized by law to be affixed to any substance or thing whatever; or, knowing such stamp or brand to be counterfeit, use the same as genuine, with intent to defraud, he shall be imprisoned in the penitentiary not exceeding ten years. [C., '73, § 3935; C., '97, § 4871.]

13158. Possession of instruments for counterfeiting. If any person cast, stamp, engrave,

make, or amend, or have in his possession any mould, die, press, or other instrument or tool adapted and designed for the forging and counterfeiting of any coin before mentioned, with intent to use the same, or permit the same to be used, for that purpose, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year. [C., '51, § 2640; R., '60, § 4267; C., '73, § 3931; C., '97, § 4867.]

13159. Circulation of foreign bank notes. If any person pay out or offer to pay, or in any manner put in circulation or offer to put in circulation, any bank note, bill, or other instrument intended to circulate as money, issued or purporting to be issued by any bank, individual, or corporation elsewhere than in this state, excepting treasury notes, notes of any bank organized under the law of the United States, or any other description of currency issued by the authority of congress, he shall be fined the sum of five dollars for each note, bill or other instrument so paid out or offered to be paid out, put in circulation, or offered to be put in circulation. [C., '73, § 4047; C., '97, § 5011.]

13160. Allegations of indictment—proof. In prosecutions under the preceding section, it shall not be necessary to state in the indictment or information the name of the bank issuing the notes, nor to prove the existence of the bank or other person purporting to issue them; but it shall be sufficient to allege in general terms the fact of paying out, or attempting to pay out, as the case may be, of bank notes issued out of this state; and the proof may be made as if the particulars were alleged. [C., '73, § 4047; C., '97, § 5011.]

13161. Series of offenses—jurisdiction. Any number of offenses may be included in the same prosecution, and where the total fines shall not exceed one hundred dollars, the offense may be tried before a justice of the peace; but when they exceed one hundred dollars, it shall be within the jurisdiction of the district court. [C., '73, § 4047; C., '97, § 5011.]

CHAPTER 586

CONSPIRACY

13162. Conspiracy defined—common law.

13162. Conspiracy defined—common law. If any two or more persons conspire or confederate together with the fraudulent or malicious intent wrongfully to injure the person, character, business, property, or rights in property of another, or to do any illegal act injurious to the public trade, health, morals, or police, or to the administration of public justice, or to commit any felony, they are guilty of a conspiracy, and every such offender, and

13163. Conspiracy to prosecute.

every person who is convicted of a conspiracy at common law, shall be imprisoned in the penitentiary not more than three years. [C., '51, § 2758; R., '60, § 4408; C., '73, § 4087; C., '97, § 5059.]

13163. Conspiracy to prosecute. If two or more persons conspire or confederate together with intent, falsely and maliciously, to cause or procure another person to be indicted or in

any way impleaded or prosecuted for an offense of which he is innocent, whether such person be so impleaded, indicted, or prosecuted or not, they shall be guilty of a conspiracy, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than five years, or be

fined not exceeding one thousand nor less than one hundred dollars, and imprisoned in the county jail not exceeding one year. [C., '51, § 2757; R., '60, § 4407; C., '73, § 4086; C., '97, § 5058.]

CHAPTER 587

EXTORTION

13164. Malicious threats to extort.

13164. Malicious threats to extort. If any person, either verbally or by any written or printed communication, maliciously threaten to accuse another of a crime or offense, or to do any injury to the person or property of another, with intent to extort any money or pecuniary advantage whatever, or to compel the person so threatened to do any act against

his will, he shall be imprisoned in the penitentiary not more than five years or be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, or both such fine and imprisonment. [C., '51, § 2590; R., '60, § 4213; C., '73, § 3871; C., '97, § 4767; S., '13, § 4767.]

CHAPTER 588

PERJURY

13165. Definition—punishment.
13166. Subornation of perjury.

13165. Definition—punishment. If any person, on oath or affirmation lawfully administered, wilfully and corruptly swear or affirm falsely to any material matter in any proceeding in any court of justice, or before any officer thereof, or before any tribunal or officer created by law, or in any proceeding in regard to any matter or thing in or respecting which an oath or affirmation is or may be required or authorized by law, he is guilty of perjury, and shall, if the perjury was committed on the trial of a capital crime, be imprisoned in the penitentiary for life or any term not less than ten years; and if committed in any other case, not more than ten years. [C., '51, § 2644; R., '60, § 4271; C., '73, § 3936; C., '97, § 4872.]

13167. Attempt to suborn.

13166. Subornation of perjury. If any person procure another to commit perjury, he is guilty of subornation of perjury, and shall be punished as provided in the preceding section. [C., '51, § 2645; R., '60, § 4272; C., '73, § 3937; C., '97, § 4873.]

13167. Attempt to suborn. If any person endeavor to incite or procure another to commit perjury, though no perjury be committed, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year. [C., '51, § 2646; R., '60, § 4273; C., '73, § 3938; C., '97, § 4874.]

CHAPTER 589

COMPOUNDING FELONIES

13168. Compounding certain felonies.

13168. Compounding certain felonies. If any person, having knowledge of the commission of any offense punishable with imprisonment in the penitentiary for life, take any money or valuable consideration or gratuity, or any promise therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute the same, or not to give evidence thereof,

13169. Compounding lesser felonies.

he shall be imprisoned in the penitentiary not more than six years, or be fined not exceeding one thousand dollars. [C., '51, § 2659; R., '60, § 4286; C., '73, § 3951; C., '97, § 4889.]

13169. Compounding lesser felonies. If any person, having knowledge of the commission of any offense punishable by imprisonment in the penitentiary for a limited term of years, is

guilty of the offense described in the preceding section, he shall be imprisoned in the county jail not more than one year, and be fined not

exceeding four hundred dollars. [C., '51, § 2660; R., '60, § 4287; C., '73, § 3952; C., '97, § 4890.]

CHAPTER 590

OBSTRUCTING JUSTICE

13170. Interference with administration of justice.
13171. Injunction to prevent obstruction of justice.

13170. Interference with administration of justice. If any person attempt in any manner to improperly influence, intimidate, impede, or obstruct any petit juror, grand juror, or other officer in any civil or criminal action or proceeding, or any one drawn, summoned, appointed, or sworn as such juror or officer, or any arbitrator or referee, or any witness or any officer in, or of, any court or tribunal in relation to any cause or matter or proceeding pending in, or that may be brought before, such court or tribunal, for which such juror or other officer has been drawn, appointed or in which said witness has been, or may be, called to testify, or in regard to which such officer is, or may be, required to act in his official capacity, or, if any person shall intentionally, or by threat or force, or by any threatening letter or threatening communication, or by any public speech or in any other manner improperly influence, obstruct, or impede, or endeavor or attempt to improperly influence, obstruct, or impede the due administration of justice or the actions or conduct of any such jurors, witnesses, arbitrator, referee, or other officer, he shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the penitentiary not more than one year, or by both such fine and imprisonment.

13172. Unlawful solicitation and promotion of action.

[C., '51, § 2654; R., '60, § 4281; C., '73, § 3946; C., '97, § 4882; 37 G. A., ch. 383, § 1.]

13171. Injunction to prevent obstruction of justice. The commission, threat, or attempt to commit any of the acts or things hereinbefore referred to shall be held to be an injury to the general welfare and any person doing or threatening or attempting to do any such acts may be enjoined and restrained at the suit of the state upon the relation of the attorney general. [37 G. A., ch. 383, § 2.]

13172. Unlawful solicitation and promotion of action. It shall be unlawful for any person, with the intent, or for the purpose of instituting a suit thereon outside of this state, to seek or solicit the business of collecting any claim for damages for personal injuries sustained within this state or for death resulting therefrom, or in any way to promote the prosecution of a suit brought outside of this state for such damages, or to do any act or thing in furtherance thereof, in cases where such right of action rests in a resident of this state, or his legal representative, and is against a person, copartnership, or corporation subject to personal service within this state. [37 G. A., ch. 293, § 1.]

CHAPTER 591

PROSTITUTION

13173. Punishment.
13174. Soliciting.
13175. Keeping house of ill fame.
13176. Evidence—general reputation.
13177. Terminating lease after conviction.
13178. Leasing house for prostitution.

13173. Punishment. If any person, for the purpose of prostitution or lewdness, resorts to, uses, occupies or inhabits any house of ill fame or place kept for such purpose, or if any person be found at any hotel, boarding house, cigar store, or other place, leading a life of prostitution or lewdness, such person shall be imprisoned in the penitentiary not more than five years. [C., '97, § 4943.]

13174. Soliciting. Any person who shall ask, request, or solicit another to have carnal knowledge with any male or female for a con-

13179. Permitting minor females to be inmates.
13180. Detention of females for purpose of prostitution.
13181. Enticing to house of ill fame.
13182. Enticing female child for prostitution.

sideration or otherwise, shall be punished by imprisonment in the penitentiary not exceeding five years, or imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both such fine and jail imprisonment. [S., '13, § 4975-c.]

13175. Keeping house of ill fame. If any person keeps a house of ill fame, resorted to for the purpose of prostitution or lewdness such person shall be imprisoned in the penitentiary not more than five years. [C., '51, §

2710; R., '60, § 4352; C., '73, § 4013; C., '97, § 4939; 39 G. A., ch. 231, § 12.]

13176. Evidence—general reputation. The state, upon the trial of any person indicted for keeping a house of ill fame, may, for the purpose of establishing the character of the house kept by defendant, introduce evidence of the general reputation of such house as so kept. [C., '97, § 4944.]

13177. Terminating lease after conviction. When a tenant, or anyone claiming under him, is convicted of keeping a house of ill fame, the landlord of the premises may terminate the lease therefor, and recover possession thereof in the manner provided in case of violation of the provisions of title 6, relative to intoxicating liquors. [C., '51, § 2711; R., '60, § 4353; C., '73, § 4014; C., '97, § 4940.]

13178. Leasing house for prostitution. If any person let any house, knowing that the lessee intends to use it as a place or resort for the purpose of prostitution and lewdness, or knowingly permit such lessee to use the same for such purpose, he shall be fined not exceeding three hundred dollars, or imprisoned in the county jail not exceeding six months. [C., '51, § 2712; R., '60, § 4354; C., '73, § 4015; C., '97, § 4941.]

13179. Permitting minor females to be inmates. Whoever, being the keeper of a house of prostitution, or assignation house, building, or premises in this state where prostitution, fornication, or concubinage is allowed, or practiced, shall suffer or permit any unmarried female under the age of eighteen years to live, board, stop, or room in such house, building, or premises, shall, on conviction, be imprisoned in the penitentiary not less than one year nor more than five years. [S., '13, § 4944-i.]

13180. Detention of females for purposes of prostitution. Whoever shall unlawfully detain

or confine any female, by force, false pretense, or intimidation, in any room, house, building, or premises in this state, against the will of such female, for purposes of prostitution or with intent to cause such female to become a prostitute, and be guilty of fornication or concubinage therein, or shall by force, false pretense, confinement, or intimidation attempt to prevent any female so as aforesaid detained, from leaving such room, house, building, or premises, and whoever aids, assists, or abets by force, false pretense, confinement, or intimidation, in keeping, confining, or unlawfully detaining any female in any room, house, building, or premises in this state, against the will of such female, for the purpose of prostitution, fornication, or concubinage, shall, on conviction, be imprisoned in the penitentiary not more than ten years. [S., '13, § 4944-j; 39 G. A., ch. 231, § 13.]

13181. Enticing to house of ill fame. If any person inveigle or entice any female, before reputed virtuous, to a house of ill fame, or knowingly conceal or aid or abet in concealing such female so deluded or enticed, for the purpose of prostitution or lewdness, or entice back into a life of prostitution any female who has theretofore been guilty of prostitution and has abandoned it, he shall be imprisoned in the penitentiary not more than ten years. [C., '51, § 2713; R., '60, § 4355; C., '73, § 4016; C., '97, § 4942; 39 G. A., ch. 231, § 14.]

13182. Enticing female child for prostitution. If any person take or entice away any unmarried female under the age of eighteen years for the purpose of prostitution, he shall be imprisoned in the penitentiary not more than five years, or be fined not more than one thousand dollars and imprisoned in the county jail not more than one year. [C., '51, § 2584; R., '60, § 4207; C., '73, § 3865; C., '97, § 4760.]

CHAPTER 592

OBSCENITY AND INDECENCY

13183. Lewdness—indecent exposure.
 13184. Lascivious acts with children.
 13185. Immoral plays, exhibitions, and entertainments.
 13186. Exhibiting pictures of prize fights.
 13187. Use of buildings—punishment of owner.
 13188. Aiding in making exhibits.
 13189. Obscene books or pictures—printing or distributing.
 13190. Obscene literature—articles for immoral use.

13191. Circulating obscene matter.
 13192. Advertising drugs for venereal disease.
 13193. Giving or showing obscene literature to minors.
 13194. Warrants for search or seizure.
 13195. Exceptions—doctors—druggists—artists.
 13196. Obscene productions by phonograph.
 13197. Exhibition of deformed or abnormal persons.

13183. Lewdness—indecent exposure. If any man and woman not being married to each other, lewdly and viciously associate and cohabit together, or if any man or woman, married or unmarried, is guilty of open and gross lewdness, and designedly makes an open and

indecent or obscene exposure of his or her person, or of the person of another, every such person shall be imprisoned in the county jail not exceeding six months, or be fined not exceeding two hundred dollars. [C., '51, § 2709; R., '60, § 4351; C., '73, § 4012; C., '97, § 4938.]

13184. Lascivious acts with children. Any person over eighteen years of age who shall wilfully commit any lewd, immoral, or lascivious act in the presence, or upon or with the body or any part or member thereof, of a child of the age of sixteen years, or under, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, or of such child, or of corrupting the morals of such child, shall be punished by imprisonment in the penitentiary not more than three years, or by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars. [S., '13, § 4938-a; 40 G. A., chs. 214, 274.]

13185. Immoral plays, exhibitions, and entertainments. Any person who, as owner, manager, director, or agent, or in any other capacity, prepares, advertises, gives, presents, or participates in any obscene, indecent, immoral, or impure drama, play, exhibition, show, or entertainment, which would tend to the corruption of the morals of youth or others, and every person aiding or abetting such act and every owner or lessee or manager of any garden, building, room, place, or structure, who leases or lets the same or permits the same to be used for the purposes of any such drama, play, exhibition, show, or entertainment, or who assents to the use of the same for any such purpose, if it be so used, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [S., '13, § 4944-k.]

13186. Exhibiting pictures of prize fights. It shall be unlawful for any person, persons, or corporation to exhibit in this state by means of the photograph, kinetograph, or any kindred device or machine, any picture of any prize fight, glove contest, or other match between men or animals, that is prohibited by the laws of this state. [C., '97, § 4973.]

13187. Use of buildings—punishment of owner. Any person, persons, or corporation who shall grant, lease, let, or hire any theater, hall, room, building, roof-garden, or park for the exhibition of pictures such as are prohibited by the preceding section shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both fine and imprisonment, in the discretion of the court. [C., '97, § 4974.]

13188. Aiding in making exhibits. Whoever shall assist or aid in any manner any person, persons, or corporation in making exhibits of any such pictures as are prohibited in the second preceding section shall be punishable by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail not more than thirty days, for each offense, in the discretion of the court. [C., '97, § 4975.]

13189. Obscene books or pictures—printing or distributing. If any person import, print, publish, sell, or distribute any book, pamphlet, ballad, or any printed or written paper containing obscene language or obscene prints, pictures, or descriptions, manifestly tending to corrupt the morals of youth; or introduce into any family, school or place of education, or buy, procure, receive, or have in his possession any such book, pamphlet, ballad, printed or written paper, picture, or description, either for the purpose of loan, sale, exhibition, or circulation, or with intent to introduce the same into any family, school or place of education, he shall be imprisoned in the penitentiary not more than one year, or be fined not exceeding one thousand dollars. [C., '51, § 2717; R., '60, § 4359; C., '73, § 4022; C., '97, § 4951.]

13190. Obscene literature—articles for immoral use. Whoever sells, or offers for sale, or gives away, or has in his possession with intent to sell, loan, or give away any obscene, lewd, indecent, lascivious, or filthy book, pamphlet, paper, drawing, lithograph, engraving, picture, photograph, writing, card, postal card, model, cast, or any instrument or article of indecent or immoral use, or any medicine, article, or thing designed or intended for procuring abortion or preventing conception, or advertises the same for sale, or writes or prints any letter, circular, handbill, card, book, pamphlet, advertisement, or notice of any kind, giving information, directly or indirectly, when, where, how, or by what means any of the articles or things hereinbefore mentioned can be purchased, or otherwise obtained or made, shall be guilty of a misdemeanor and be fined not more than one thousand nor less than fifty dollars, or be imprisoned in the county jail not more than one year, or both. [C., '97, § 4952; S., '13, § 4952.]

13191. Circulating obscene matter. Whosoever deposits in any postoffice within this state, or places in charge of any person to be carried or conveyed, any of the articles or things named in the preceding section, or any circular, handbill, card, advertisement, book, pamphlet, or notice of any kind, giving information, directly or indirectly, when, how, where, or by what means any of the articles or things mentioned in the preceding section can be purchased or obtained, or knowingly or wilfully receives the same to carry or convey, or knowingly carries or conveys the same in any manner, except in the United States mail, shall be fined not more than one thousand dollars, nor less than fifty dollars, or be imprisoned in the county jail not more than one year, or both. [C., '97, § 4953.]

13192. Advertising drugs for venereal disease. Whoever prints or publishes, or causes to be printed or published, in any newspaper published or circulated in this state, any advertisement of medicine, drug, nostrum, or apparatus for the cure of private or venereal disease, or shall circulate or distribute any newspaper containing such an advertisement or notice, shall be guilty of a misdemeanor, and be fined not more than one thousand dollars nor

less than fifty dollars, or be imprisoned in the county jail not more than one year, or both. [C., '97, § 4954.]

13193. Giving or showing obscene literature to minors. Whoever sells, lends, gives away, or shows, or has in his possession with intent to sell, give away, or show, to any minor, any book, pamphlet, magazine, newspaper, story paper or other paper devoted to the publication, or principally made up of, criminal news, police reports, or accounts of criminal deeds, or pictures and stories of immoral deeds, lust or crime, or exhibits upon any street or highway, or any place within the view, or which may be within the view, of any minor, any of the above described books, papers, or pictures, or uses or employs any minor to give away, sell, or distribute, or who, having the care, custody, or control of any minor, permits him to sell, give away, or distribute, any such books, papers, or pictures, shall be fined not more than five hundred nor less than fifty dollars, or be imprisoned not more than six months in the county jail, or both. [C., '97, § 4955.]

13194. Warrants for search or seizure. Any magistrate or police judge is authorized, on complaint supported by oath or affirmation of one or more persons, to issue a warrant, directed to the sheriff of the county within which such complaint is made, or to any constable or police officer within said county, directing him or them, or any of them, to search for, seize and take possession of such books, papers, pictures, circulars, articles, and things named in this chapter; and said magistrate or police judge shall deliver personally, or shall transmit, inclosed and under seal, specimens thereof to the county attorney of his county, and shall deposit within the county jail of his county, or other secure place, as to him shall seem meet, inclosed and under seal, the remainder thereof, and shall, upon the conviction of the person or persons offending under the provisions of this

chapter, forthwith, in the presence of the person or persons upon whose complaint the seizure or arrest was made, if he or they shall elect to be present, destroy, or cause to be destroyed, the remainder thereof, and shall cause to be entered upon the record of his court the fact of such destruction. [C., '97, § 4956.]

13195. Exceptions — doctors — druggists — artists. Nothing in the five preceding sections shall be construed to affect teaching in regularly chartered medical colleges, or the publication or use of standard medical books, or the practice of regular practitioners of medicine or druggists in their regular business, or the possession by artists of models in the necessary line of their art. [C., '97, § 4957.]

13196. Obscene productions by phonograph. If any person exhibit through a phonograph, or any other instrument for receiving and reproducing the human voice, any story, song, or any other matter containing any obscene, indecent, or immoral language, he shall be imprisoned in the penitentiary not more than one year, or be fined not exceeding one thousand dollars. [C., '97, § 4958.]

13197. Exhibition of deformed or abnormal persons. Any person, firm, or corporation who shall exhibit, place on exhibition, or cause to be exhibited in any public place in the state, or in any tent, shed, booth, building, or in any theater, hall, or within any inclosure in the state, any deformed, maimed, idiotic, or abnormal person or human monstrosity, and receive any fee or compensation therefor, shall be deemed guilty of a misdemeanor and upon conviction shall pay a fine of not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail for a term not less than ten days nor more than thirty days, or be punished by both such fine and imprisonment. [S., '13, § 4975-1a.]

CHAPTER 593

GAMBLING

- 13198. Keeping gambling houses.
- 13199. Keeper defined.
- 13200. Search warrant.
- 13201. Destroying gambling devices.
- 13202. Gaming and betting defined.
- 13203. Wagers—forfeiture.
- 13204. Notice of seizure.
- 13205. Contents of notice.
- 13206. Hearing.
- 13207. Method of trial.
- 13208. Order.
- 13209. Disposition of funds.

- 13210. Possession of certain gambling devices prohibited.
- 13211. Search warrant.
- 13212. Serving warrant.
- 13213. Notice of seizure.
- 13214. Hearing.
- 13215. Destruction of devices.
- 13216. Pool selling—places used for.
- 13217. Bull fights and other contests—places used for.
- 13218. Lotteries and lottery tickets.
- 13219. Minors in billiard rooms—duty of owner.
- 13220. Punishment.

13198. Keeping gambling houses. If any person keep a house, shop, or place resorted to for the purpose of gambling, or permit or suffer any person in any house, shop, or other place under his control or care to play at cards,

dice, faro, roulette, equality, or other game for money or other thing, such offender shall be fined in a sum not less than fifty nor more than three hundred dollars, or be imprisoned in the county jail not exceeding one year, or

both. [C., '51, § 2721; R., '60, § 4363; C., '73, § 4026; C., '97, § 4962.]

13199. Keeper defined. In a prosecution under the preceding section, any person who has the charge of or attends to any such house, shop or place is the keeper thereof. [C., '51, § 2721; R., '60, § 4363; C., '73, § 4026; C., '97, § 4962.]

13200. Search warrant. If any person make oath before a magistrate that he has probable cause to suspect, and does suspect, that any house, building, or place, naming the house or place and the occupant, is unlawfully used as a gaming house or place for the purpose of gaming for money or other property, and that persons resort thereto for that purpose, whether they be known to the complainant or not, such magistrate may issue his warrant for the purpose of searching such house or building for and seizing the implements or gambling devices mentioned in the second preceding section, and for the apprehension of the occupant or keeper thereof; and the said implements and keeper shall be carried before such magistrate to be dealt with as provided by law. [C., '51, § 2722; R., '60, § 4364; C., '73, § 4027; C., '97, § 4963.]

13201. Destroying gambling devices. Any gambling device brought before the magistrate may be destroyed by him, and an entry thereof shall be made upon his docket. [C., '51, § 2722; R., '60, § 4364; C., '73, § 4027; C., '97, § 4963.]

13202. Gaming and betting defined. If any person play at any game for any sum of money or other property of any value, or make any bet or wager for money or other property of value, he shall be guilty of a misdemeanor. [C., '51, § 2723; R., '60, § 4365; C., '73, § 4028; C., '97, § 4964.]

13203. Wagers-forfeiture. Property, whether real or personal, offered as a stake, or any moneys, property, or other thing of value staked, paid, bet, wagered, laid, or deposited in connection with or as a part of any game of chance, lottery, gambling scheme or device, gift enterprise, or other trade scheme unlawful under the laws of this state shall be forfeited to the state and shall be seized by the sheriff or any other peace officer and shall be disposed of as provided in sections 13208 and 13209. [40 G. A., ch. 215, § 1.]

13204. Notice of seizure. The sheriff or other peace officer who has seized property under the provisions of the preceding section shall, within three days cause notice of such seizure to be given to the owner or person in possession of such property if known and to be found within the county; and if not known and if not found within the county, such notice shall be served by posting a copy thereof in three public places within the county, one copy of which, in cases of real property, shall be posted on the premises. [40 G. A., ch. 215, § 2.]

13205. Contents of notice. Such notice shall describe as nearly as may be the property seized and shall state that the matter of the disposition of said property will come on for hearing at the next term of the district court thereafter. [40 G. A., ch. 215, § 2.]

13206. Hearing. Any person owning or having an interest in any such property may appear on the day appointed for such hearing by the court and show that the property seized is not of the character described in section 13203. If such claim is established, such property shall be returned to the owner thereof and to the place from which taken. [40 G. A., ch. 215, § 3.]

13207. Method of trial. All proceedings shall be docketed in the name of the state against the property seized and shall be tried as an ordinary action, the county attorney appearing for the state. [40 G. A., ch. 215, § 3.]

13208. Order. If it is determined by the court that the property seized is of the character described in section 13203, it shall enter an order directing the immediate destruction of all such property which does not have a legitimate use and the sale of all property other than money which may be used legitimately. [40 G. A., ch. 215, § 3.]

13209. Disposition of funds. All moneys received under the provisions of the six preceding sections, either by seizure or as a result of sale, shall, after the payment of all costs, be paid into the school fund. [40 G. A., ch. 215, § 3.]

13210. Possession of certain gambling devices prohibited. No one shall, in any manner or for any purpose whatever, except under proceeding to destroy the same, have, keep, or hold in possession or control any roulette wheel, klondyke table, poker table, faro, or keno layouts. [S., '13, § 4965-a.]

13211. Search warrant. If any person make oath before a magistrate that he has probable cause to suspect and does suspect, that articles or things mentioned in the preceding section are stored or kept or had in possession at any place within the county in any house, building, or other place of any description whatever, describing the house or place as near as may be and naming the occupant thereof, if known, such magistrate shall issue his warrant for the purpose of searching such house or place for and seizing such articles or things. [S., '13, § 4965-b.]

13212. Serving warrant. Such warrant may be served at any time of the day or night. The officer may break open any part of a building, or anything therein in order to execute the warrant, if after notice of his authority and purpose he is refused admittance. Said articles or things shall be carried before such magistrate to be dealt with as provided in sections 13213 to 13215, inclusive. The officer shall make return at once after the warrant is served. [S., '13, § 4965-b.]

13213. Notice of seizure. Within three days after the return is made, notice shall be served upon the party from whose possession said articles or things were taken, if known, and if not known, said notice shall be posted on the premises from which the articles were taken, notifying the possessor of such seizure and that the matter of the destruction of said articles or things will come on for hearing at a certain time and place before the court or magistrate issuing the warrant, or in his absence or inability to serve, before the next nearest and accessible magistrate in the county, which time shall be within ten days after said notice is served or posted. [S., '13, § 4965-b.]

13214. Hearing. Any person may appear at said hearing and show that the articles or things seized are not of the character specified in section 13210 and if such claim is established, they shall be returned to the place from which taken. [S., '13, § 4965-b.]

13215. Destruction of devices. If the court finds that the articles or things seized are of the character mentioned in section 13210, it shall enter judgment commanding the immediate destruction of the same. Execution shall issue thereon accordingly. The officer shall forthwith carry out the orders of said execution and make immediate return thereon of his acts, which return shall be entered on the docket of said court. [S., '13, § 4965-b.]

13216. Pool selling—places used for. Any person who records or registers bets or wagers or sells pools upon the result of any trial or contest of skill, speed, or power of endurance of man or beast, or upon the result of any political nomination or election, and any person who keeps a place for the purpose of doing any such thing, and any owner, lessee, or occupant of any premises, who knowingly permits the same, or any part thereof, to be used for any such purpose, and any one who, as custodian or depository thereof, for hire or reward, receives any money, property, or thing of value

staked, wagered, or bet upon any such result, shall be fined not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year, or both. [C., '97, § 4966.]

13217. Bull fights and other contests—places used for. If any person keep or use, or in any way be connected with, or be interested in the management of, or receive money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, dog, cock, or other creature, or engage in, aid, abet, encourage, or assist in any bull, bear, dog, or cock fight, or a fight between any other creatures, he shall be guilty of a misdemeanor. [C., '73, § 4033; C., '97, § 4971.]

13218. Lotteries and lottery tickets. If any person make or aid in making or establishing, or advertise or make public any scheme for any lottery; or advertise, offer for sale, sell, negotiate, dispose of, purchase, or receive any ticket or part of a ticket in any lottery or number thereof; or have in his possession any ticket, part of a ticket, or paper purporting to be the number of any ticket of any lottery, with intent to sell or dispose of the same on his own account or as the agent of another, he shall be imprisoned in the county jail not more than thirty days, or be fined not exceeding one hundred dollars, or both. [C., '51, § 2730; R., '60, § 4377; C., '73, § 4043; C., '97, § 5000.]

13219. Minors in billiard rooms—duty of owner. No person who keeps a billiard hall, or nine or ten pin alley, or the agent, clerk, or servant of any such person, or any person having charge or control of any such hall, or alley, shall permit any minor to remain in such hall, or alley, or to take part in any of the games known as billiards or nine or ten pins. [C., '97, § 5002.]

13220. Punishment. A violation of the provisions of the preceding section shall be punished by a fine not less than five nor exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days. [C., '97, § 5002.]

CHAPTER 594

AFFRAYS AND PRIZE FIGHTING

- 13221. Affray defined.
- 13222. Engaging in prize fight.
- 13223. Aiding or abetting.

13221. Affray defined. If two or more persons voluntarily or by agreement engage in any fight, or use any blows or violence towards each other in an angry or quarrelsome manner, in any public place, to the disturbance of others, they are guilty of an affray, and shall be imprisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C., '51, § 2738; R., '60, § 4386; C., '73, § 4065; C., '97, § 5029.]

- 13224. Prevention of prize fights by peace officer.
- 13225. Boxing contest—sparring exhibition.

13222. Engaging in prize fight. Whoever engages as principal in any prize fight shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in the penitentiary for a term of not more than one year, or both. [C., '97, § 5036.]

13223. Aiding or abetting. Whoever aids or assists in any prize fight shall be fined not exceeding five hundred dollars, or imprisoned

in the county jail for not more than one hundred fifty days. [C., '97, § 5037.]

13224. Prevention of prize fights by peace officer. Any peace officer who has reason to believe that any persons are about to engage in a prize fight within the state shall make complaint before some justice of the peace of the county, or other authorized magistrate, and thereupon such justice of the peace or authorized magistrate shall proceed, under chapter 625, to make examination of the charges, and, if he shall find that there is just reason to fear the commission of such offense, he shall require security to keep the peace, to be given as therein provided. [C., '97, § 5038.]

13225. Boxing contest—sparring exhibition. Whoever engages in any boxing contest or sparring exhibition with or without gloves for a prize, reward, or anything of value, at which an admission fee is charged or received, either directly or indirectly, and whoever knowingly aids, abets, or assists in any such boxing contest or sparring exhibition, and any owner or lessee of any ground, lot, building, hall, or structure of any kind knowingly permitting the same to be used for such boxing contest or sparring exhibition, shall be fined not exceeding three hundred dollars, or imprisoned in the county jail not exceeding ninety days. [S., '13, § 5038-a.]

CHAPTER 595

PROFANITY

13226. Using blasphemous or obscene language.

13226. Using blasphemous or obscene language. If any person publicly use blasphemous or obscene language, to the disturbance of the public peace and quiet, he shall be im-

prisoned in the county jail not exceeding thirty days, or be fined not exceeding one hundred dollars. [C., '97, § 5034; S., '13, § 5034.]

CHAPTER 596

DESECRATION OF SABBATH

13227. Breach of Sabbath—exceptions.

13227. Breach of Sabbath—exceptions. If any person be found on the first day of the week, commonly called Sunday, engaged in carrying firearms, dancing, hunting, shooting, horse racing, or in any manner disturbing a worshipping assembly or private family, or in buying or selling property of any kind, or in any labor except that of necessity or charity, he shall be fined not more than five nor less than one dollar, and be imprisoned in the

county jail until the fine, with costs of prosecution, shall be paid; but nothing herein contained shall be construed to extend to those who conscientiously observe the seventh day of the week as the Sabbath, or to prevent persons traveling or families emigrating from pursuing their journey, or keepers of toll bridges, toll gates, and ferrymen from attending the same. [R., '60, §§ 4392, 4393; C., '73, § 4072; C., '97, § 5040.]

CHAPTER 597

DESECRATION OF DECORATION DAY

13228. Ball games and other sports on decoration day.

13228. Ball games and other sports on decoration day. It shall be unlawful to engage in ball games, horse racing, or sports or entertainments that will interfere with the proper observance of the day which is set apart as decoration day (May thirtieth), prior to the hour of three o'clock p. m. of said day. [S., '13, § 5040-a.]

13229. Punishment.

13229. Punishment. Any violation of the preceding section shall be punishable by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the county jail not to exceed thirty days in the discretion of the court. [S., '13, § 5040-a.]

CHAPTER 598

DESERTION AND ABANDONMENT OF WIFE AND CHILDREN

13230. Desertion defined.
 13231. Husband or wife may be witness.
 13232. Release on bond conditioned on support.
 13233. Annulment of bond.

13230. Desertion defined. Every person who shall, without good cause, wilfully neglect or refuse to maintain or provide for his wife, she being in a destitute condition, or who shall, without good cause, abandon his or her legitimate or legally adopted child or children under the age of sixteen years, leaving such child or children in a destitute condition, or shall, without good cause, wilfully neglect or refuse to provide for such child or children, they being in a destitute condition, shall be deemed guilty of desertion and, upon conviction, shall be punished by imprisonment in the penitentiary for not more than one year, or by imprisonment in the county jail for not more than six months. [S., '13, § 4775-a.]

13231. Husband or wife may be witness. In all prosecutions under this chapter, the husband or wife shall be a competent witness for the state and may testify to any relevant acts or communications between them, anything in previous statutes to the contrary notwithstanding, provided, however, that no husband or wife shall be called or compelled to testify against the other under this chapter except upon consent of such witness. [S., '13, § 4775-b.]

13232. Release on bond conditioned on support. If after arrest and before trial, or after conviction and before sentence, the party so arrested or convicted shall appear before the court in which the case is pending or the conviction had, and enter into a bond to the state in a sum to be fixed by the court, which in no event shall exceed the sum of one thousand dollars, with or without sureties as may be determined by the court, conditioned that such husband will furnish said wife with a necessary and proper home, food, care, and clothing, or that such parent will furnish his or her child or children with a necessary and proper

13234. Failure of undertaking—commitment—release.
 13235. Prima facie evidence.
 13236. Exposing and abandoning child.

home, food, care, and clothing, then said court may release the defendant. [S., '13, § 4775-c.]

13233. Annulment of bond. Said bond shall remain in force so long as the court deems the same necessary; and whenever it shall appear to said court by affidavit or otherwise that such husband or parent is in good faith furnishing his wife, child, or children with the necessary and proper home, food, care, and clothing, the court may annul the said bond. [S., '13, § 4775-c.]

13234. Failure of undertaking—commitment—release. Upon failure of said husband or parent to comply with his undertaking he or she may be arrested by the sheriff or other officer upon a warrant issued from the court in which the case is pending or the conviction was had and the court may thereupon order a forfeiture of the undertaking and that the defendant be tried or committed in execution of the sentence, or for good cause shown may release the defendant upon a new undertaking. [S., '13, § 4775-d.]

13235. Prima facie evidence. Proof of the desertion of wife, child, or children in destitute or necessitous circumstances or of neglect to furnish such wife, child, or children necessary and proper food, clothing, or shelter, shall be prima facie evidence that such desertion or neglect was wilful. [S., '13, § 4775-e.]

13236. Exposing and abandoning child. If the father or mother of any child under the age of six years, or any person to whom such child has been intrusted or confided, expose such child in any highway, street, field, house, or outhouse, or in any other place, with intent wholly to abandon it, he or she, upon conviction thereof, shall be imprisoned in the penitentiary not exceeding five years. [C., '51, § 2589; R., '60, § 4212; C., '73, § 3870; C., '97, § 4766.]

CHAPTER 599

PUBLIC HEALTH AND SAFETY

13237. Spreading infectious disease.
 13238. Putting infected person on public conveyance.
 13239. Throwing dead animals or refuse in stream.
 13240. Selling drugged liquors.

13237. Spreading infectious disease. If any person inoculate himself or any other person or suffer himself to be inoculated with the smallpox within the state, or come within the state with the intent to cause the prevalence or spread of this infectious disease, he shall be imprisoned in the penitentiary not more than three years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2729; R., '60, § 4375; C., '73, § 4039; C., '97, § 4977.]

13238. Putting infected person on public conveyance. If any person shall place or put, or aid or abet in placing or putting, any person upon any railroad car, steamboat, or other public conveyance, knowing such person to be infected with diphtheria, smallpox, or scarlet fever, he shall be fined not more than one hundred dollars, or be imprisoned in the county jail not more than thirty days. [C., '51, § 2729; R., '60, § 4375; C., '73, § 4039; C., '97, § 4978.]

13239. Throwing dead animals or refuse in stream. If any person throw, or cause to be thrown, any dead animal, night soil, or garbage into any river, well, spring, cistern, reservoir, stream, or pond, or in or upon any land adjoining, which is subject to overflow, he shall be imprisoned in the county jail not less than ten nor more than thirty days, or be fined not less than five nor more than one hundred dollars. [C., '73, § 4041; C., '97, § 4979; S., '13, § 4979.]

13240. Selling drugged liquors. If any person wilfully sell or keep for sale intoxicating, malt, or vinous liquors, which have been adulterated or drugged by admixture with any deleterious or poisonous substance, he shall be fined not exceeding five hundred dollars, or be

13241. Disposing of liquors to Indians.
 13242. Use of dangerous fluids forbidden.
 13243. Punishment.
 13244. Depositing samples on porches.
 13245. Punishment.

imprisoned in the penitentiary not exceeding two years. [R., '60, § 4376; C., '73, § 4040; C., '97, § 4980.]

13241. Disposing of liquors to Indians. If any person give, sell, or dispose of any spirituous or intoxicating drinks to any Indian within this state, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding one year, or both. [C., '51, § 2735; R., '60, § 4378; C., '73, § 4044; C., '97, § 5001.]

13242. Use of dangerous fluids forbidden. It shall be unlawful for any person to establish or operate any dye works, pantorium, or cleaning works, in which gasoline, benzine, naphtha, or other explosive or dangerous fluids are used for the purpose of cleaning or renovating wearing apparel or other fabrics, in any building any part of which is used as a residence or lodging house. [S., '13, § 4999-a13.]

13243. Punishment. Any person convicted of violating the provisions of the foregoing section shall be fined in a sum not exceeding fifty nor less than ten dollars. [S., '13, § 4999-a14.]

13244. Depositing samples on porches. It shall be unlawful for any person, firm, company, or corporation, either in person or by agent, to deposit any sample of any drugs or medicine upon any porch, lawn, in any vehicle, or any other place where such drugs or medicine might be picked up by children or other persons. [S., '13, § 4999-a42.]

13245. Punishment. Any person, firm, company, corporation, or agent thereof violating the provisions of the preceding section, shall be guilty of a misdemeanor. [S., '13, § 4999-a43.]

CHAPTER 600

DISEASED PLANTS

13246. Cultivating or selling diseased plants.
13247. Seizure of diseased plants.

13246. Cultivating or selling diseased plants. If any person use, transplant, cultivate, or sell, or bring into this state for the purpose of using, planting, cultivating, or selling, any hop roots, plants, or cuttings which may be diseased in any manner, or infected with lice or vermin of any kind, or which may be brought from any state or country in which the cultivation of hops has been retarded or impaired by the presence of any disease, lice, or vermin of a contagious character, he shall be fined not less than ten, nor more than one hundred dollars, and imprisoned not less than five nor more than twenty days. [C., '73, § 4060; C., '97, § 5022.]

13247. Seizure of diseased plants. If complaint is made before a justice of the peace by one or more responsible persons, that they have good reason to believe that hop roots have been introduced into or are being cultivated in the city or township where they reside, in violation

13248. Destruction of diseased plants.

of the preceding section, the justice before whom such complaint is made shall issue a warrant authorizing any peace officer to seize such roots, and they shall be held in charge by such officer until action has been brought against the person so offending, and the cause determined. [C., '73, § 4061; C., '97, § 5023.]

13248. Destruction of diseased plants. In case it is found that the said plants, roots, or cuttings are diseased, or are infected by lice or vermin of a contagious character, the officer before whom it is brought shall order the said roots, plants, or cuttings to be burned, charging the expense of doing the same as costs upon the party owning or cultivating the roots, plants, or cuttings; and in no case shall he allow them to be planted or delivered to a third party until the fact is established that they are not infected with any vermin or disease of a contagious character. [C., '73, § 4061; C., '97, § 5023.]

CHAPTER 601

DESTRUCTION OF FOOD PRODUCTS

13249. Waste of food products to increase price. 13250. Punishment.

13249. Waste of food products to increase price. It shall be unlawful for any person, firm, or corporation to wilfully destroy, or negligently suffer to go to waste, with intent to increase the price thereof, any food products of any nature or description, without the authority or consent of the local board of health or local health officer of the city, town, or township in which the food products are located. [38 G. A., ch. 179, § 1.]

13250. Punishment. Any person, firm, or corporation violating any of the provisions of the preceding section shall be guilty of a misdemeanor, and, upon conviction, shall pay a fine in a sum not more than one thousand dollars, or be imprisoned for any length of time not exceeding one year, or be punished by both such fine and imprisonment. [38 G. A., ch. 179, § 2.]

CHAPTER 602

INFRINGEMENT OF CIVIL RIGHTS

13251. Civil rights defined. 13252. Punishment.

13251. Civil rights defined. All persons within this state shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, restaurants, chophouses, eating houses, lunch

counters, and all other places where refreshments are served, public conveyances, barber shops, bathhouses, theaters, and all other places of amusement. [C., '97, § 5008.]

13252. Punishment. Any person who shall violate the provisions of the preceding section by denying to any person, except for reasons by law applicable to all persons, the full enjoyment of any of the accommodations, advantages, facilities, or privileges enumerated

therein, or by aiding or inciting such denial, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one hundred dollars or imprisonment in the county jail not to exceed thirty days. [C., '97, § 5008; 40 G. A., ch. 216.]

CHAPTER 603

BLACKLISTING EMPLOYEES

13253. Punishment.
13254. Blacklisting employees by agents—treble damages.

13255. False charges concerning honesty of employees.

13253. Punishment. If any person, agent, company, or corporation, after having discharged any employee from his or its service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company, or corporation, except by furnishing in writing on request a truthful statement as to the cause of his discharge, such person, agent, company, or corporation shall be punished by a fine not exceeding five hundred nor less than one hundred dollars, and shall be liable for all damages sustained by any such person. [C., '97, § 5027.]

13255. False charges concerning honesty of employees. Every person who shall by any letter, mark, sign, or designation whatever, or by any verbal statement, falsely and without probable cause, report to any railroad or any other company or corporation, or to any person or firm, or to any of the officers, servants, agents, or employees of any such corporation, person, or firm, that any conductor, brakeman, engineer, fireman, station agent, or any employee of such railroad company, corporation, person, or firm has received any money or thing of value for the transportation of persons or property or for other service for which he has not accounted to such corporation, person, or firm, or shall falsely and without probable cause report that any conductor, brakeman, engineer, fireman, station agent, or other employee of any railroad company, corporation, firm, or person, neglected, failed, or refused to collect any money or ticket for transportation of persons or property or other service when it was their duty so to do, shall, on conviction, be adjudged guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars or be imprisoned in the county jail for a period not exceeding thirty days. [S. S., '15, § 5028-w1.]

13254. Blacklisting employees by agents—treble damages. If any railway company or other company, partnership, or corporation shall authorize or allow any of its or their agents to blacklist any discharged employee, or attempt by word or writing or any other means whatever to prevent such discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with any other person or company, except as provided for in the preceding section, such company or copartnership shall be liable in treble damages to such employee so prevented from obtaining employment. [C., '97, § 5028.]

CHAPTER 604

LIBEL

13256. Libel defined.
13257. Punishment.
13258. Indictment for libel.
13259. Truth given in evidence.

13260. Publication.
13261. What constitutes publication.
13262. Jury determine law and fact.

13256. Libel defined. A libel is the malicious defamation of a person, made public by any printing, writing, sign, picture, representation, or effigy, tending to provoke him to wrath or expose him to public hatred, contempt, or ridicule, or to deprive him of the benefits of public confidence and social intercourse; or any malicious defamation, made public as aforesaid, designed to blacken and vilify the memory of one who is dead, and tending to

scandalize or provoke his surviving relatives or friends. [C., '51, § 2767; R., '60, § 4417; C., '73, § 4097; C., '97, § 5086.]

13257. Punishment. Every person who makes, composes, dictates, or procures the same to be done, or who wilfully publishes or circulates such libel, or in any way knowingly or wilfully aids or assists in making, publishing, or circulating the same, shall be imprisoned in the

county jail not more than one year, or be fined not exceeding one thousand dollars. [C., '51, § 2768; R., '60, § 4418; C., '73, § 4098; C., '97, § 5087.]

13258. Indictment for libel. An indictment for a libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter upon which the indictment is founded, but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial. [C., '51, § 2924; R., '60, § 4664; C., '73, § 4310; C., '97, § 5294.]

13259. Truth given in evidence. In all prosecutions or indictments for libel, the truth thereof may be given in evidence to the jury, and if it appear to them that the matter charged as libelous was true, and was published with good motives and for justifiable ends, the de-

fendant shall be acquitted. [C., '51, § 2769; R., '60, § 4419; C., '73, § 4099; C., '97, § 5088.]

13260. Publication. No printing, writing, or other thing is a libel unless there has been a publication thereof. [C., '51, § 2770; R., '60, § 4420; C., '73, § 4100; C., '97, § 5089.]

13261. What constitutes publication. The delivering, selling, reading, or otherwise communicating a libel, or causing the same to be delivered, sold, read, or otherwise communicated, to one or more persons or to the party libeled, is a publication thereof. [C., '51, § 2771; R., '60, § 4421; C., '73, § 4101; C., '97, § 5090.]

13262. Jury determine law and fact. In all prosecutions for libel, the jury, after having received the direction of the court, shall have the right to determine at its discretion the law and the fact. [C., '51, §§ 2772, 3015; R., '60, §§ 4422, 4811; C., '73, §§ 4102, 4438; C., '97, § 5091.]

CHAPTER 605

BRIBERY AND CORRUPTION IN ELECTIONS

- 13263. Bribing electors—fine.
- 13264. Bribe to refrain from voting—payment for work on election day.
- 13265. Accepting bribe.
- 13266. Exception.
- 13267. Services for hire.
- 13268. Exceptions.
- 13269. Voting more than once.
- 13270. Voting when not qualified.
- 13271. Voting when not resident of county.
- 13272. Voting when not resident of state.
- 13273. Counseling to vote when not qualified.
- 13274. Deceiving voter as to ballot.
- 13275. Duress to prevent voting.
- 13276. Bribing election officials.
- 13277. Procuring vote by duress.

- 13278. Judges or clerks doing unlawful acts.
- 13279. Illegally receiving or rejecting votes.
- 13280. Misconduct to avoid election.
- 13281. Failure to return poll books.
- 13282. Improper registry and false personation.
- 13283. Forgery of papers or ballots.
- 13284. Political advertisements.
- 13285. Exceptions.
- 13286. Illegal voting at primary election.
- 13287. Punishment.
- 13288. Prima facie evidence of illegal voting.
- 13289. Judges to examine voters—administer oaths.
- 13290. Perjury in examination.
- 13291. Exception—conventions under caucus system.

13263. Bribing electors—fine. Any person offering or giving a bribe to any elector for the purpose of influencing his vote at any election authorized by law, or any elector entitled to vote at such election receiving such bribe, shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding one year, or both. [C., '51, § 2691; R., '60, § 4333; C., '73, § 3993; C., '97, § 4914.]

13264. Bribe to refrain from voting—payment for work on election day. If any person shall make an agreement with another to pay him any sum of money or other valuable thing in consideration that such other person shall refrain from voting at any election, or shall induce other qualified electors to refrain from voting, or that such other person shall perform any service or labor on any election day in the interest of any candidate for any office who is to be voted for at such election, or in the interest of any measure or political party, he shall be fined in any sum not less than fifty nor more than three hundred dollars, or be imprisoned

in the county jail not exceeding ninety days. [C., '97, § 4915.]

13265. Accepting bribe. Any person who shall, in consideration of any sum of money or other valuable thing, agree to refrain from voting at any public election, or to induce or attempt to induce others to do so, or agree to perform on election day any service in the interest of any candidate, party, or measure in consideration of any money or other valuable thing, or who shall accept money or other valuable thing for such services performed in the interest of any candidate, political party or measure, shall be punished as provided in the preceding section. [C., '97, § 4916; 40 Ex. G. A., H. F. 272, § 1.]

13266. Exception. Nothing in the two preceding sections shall be so construed as to punish individuals or committees of any political party for making contracts in good faith for the conveyance of voters to and from polling places and the payment of any reasonable compensation for such service. [C., '97, § 4917.]

13267. Services for hire. Any person who shall agree to perform any services in the interest of any candidate in consideration of any money or other valuable thing, or who shall accept any money or other valuable thing for such services performed in the interest of any candidate, or any person paying or offering to pay or giving or offering to give money or other valuable things for such services, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail not exceeding ninety days. [S., '13, § 1087-a32.]

13268. Exceptions. Nothing in the preceding section shall be construed to prohibit any person from making contracts in good faith for the announcement of his candidacy in the newspapers and for securing the names of voters required to file preliminary nomination papers and the payment of any reasonable compensation for such services. [S., '13, § 1087-a32.]

13269. Voting more than once. If any elector unlawfully vote more than once at any election which may be held by virtue of any law of this state, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding one year [C., '51, § 2692; R., '60, § 4334; C., '73, § 3994; C., '97, § 4918.]

13270. Voting when not qualified. If any person, knowing himself not to be qualified, vote at any election authorized by law, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding six months. [C., '51, § 2693; R., '60, § 4335; C., '73, § 3995; C., '97, § 4919.]

13271. Voting when not resident of county. If any person go or come into any county of this state, and vote in such county, not being a resident thereof, he shall be fined not exceeding two hundred dollars, or be imprisoned in the county jail not exceeding one year. [C., '51, § 2694; R., '60, § 4336; C., '73, § 3996; C., '97, § 4920.]

13272. Voting when not resident of state. If any person wilfully vote who has not been a resident of this state for six months next preceding the election, or who, at the time of the election, is not twenty-one years of age, or who is not a citizen of the United States, or who is not qualified, by reason of other disability, to vote at the place where and time when the vote is to be given, he shall be fined in a sum not exceeding three hundred dollars, or imprisoned in the county jail not exceeding one year. [C., '51, § 2695; R., '60, § 4337; C., '73, § 3997; C., '97, § 4921.]

13273. Counseling to vote when not qualified. If any person procure, aid, assist, counsel, or advise another to give his vote, knowing that such person is disqualified, he shall be fined not exceeding five hundred nor less than fifty dollars, and be imprisoned in the county jail not exceeding one year. [C., '51, § 2696; R., '60, § 4338; C., '73, § 3998; C., '97, § 4922.]

13274. Deceiving voter as to ballot. If any judge or clerk of election furnish an elector with a ticket or ballot, informing him that it contains a name or names different from those which are written or printed therein, with an intent to induce him to vote contrary to his inclination, or fraudulently or deceitfully change a ballot of any elector, by which such elector is deprived of voting for such candidate or person as he intended, he shall be imprisoned in the county jail not exceeding two years, and be fined not exceeding one thousand dollars nor less than one hundred dollars. [C., '51, § 2697; R., '60, § 4339; C., '73, § 3999; C., '97, § 4923.]

13275. Duress to prevent voting. If any person unlawfully and by force, or threats of force, prevent, or endeavor to prevent, an elector from giving his vote at any public election, he shall be imprisoned in the county jail not exceeding six months, and fined not more than two hundred dollars. [C., '51, § 2698; R., '60, § 4340; C., '73, § 4000; C., '97, § 4924.]

13276. Bribing election officials. If any person give or offer a bribe to any judge, clerk, or canvasser of any election authorized by law, or any executive officer attending the same, as a consideration for some act done or omitted to be done contrary to his official duty in relation to such election, he shall be fined not exceeding seven hundred dollars, and imprisoned in the county jail not exceeding one year. [C., '51, § 2699; R., '60, § 4341; C., '73, § 4001; C., '97, § 4925.]

13277. Procuring vote by duress. If any person procure, or endeavor to procure, the vote of any elector, or the influence of any person over other electors, at any election, for himself, or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of debts, or bringing any civil or criminal action, or any other threat of injury to be inflicted by him or by his means, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not more than one year. [C., '51, § 2700; R., '60, § 4342; C., '73, § 4002; C., '97, § 4926.]

13278. Judges or clerks doing unlawful acts. If any judge or clerk of any election authorized by law knowingly make or consent to any false entry on the list of voters or poll books; or put into the ballot box, or permit to be so put in, any ballot not given by a voter; or take out of such box, or permit to be so taken out, any ballot deposited therein, except in the manner prescribed by law; or by any other act or omission designedly destroy or change the ballots given by the electors, he shall be fined not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding five years. [C., '51, § 2701; R., '60, § 4343; C., '73, § 4003; C., '97, § 4927.]

13279. Illegally receiving or rejecting votes. When anyone who offers to vote at any election is objected to by an elector as a person not

possessing the requisite qualifications, if any judge of such election unlawfully permit him to vote without producing proof of such qualification in the manner directed by law, or if any such judge wilfully refuse the vote of any person who complies with the requisites prescribed by law to prove his qualifications, he shall be fined not more than two hundred nor less than twenty dollars, or be imprisoned in the county jail not exceeding six months. [C., '51, § 2702; R., '60, § 4344; C., '73, § 4004; C., '97, § 4928.]

13280. Misconduct to avoid election. If any judge, clerk, or executive officer designedly omit to do any official act required by law, or designedly do any illegal act, in relation to any public election, by which act or omission the votes taken at any such election in any city, town, precinct, township, or district be lost, or the electors thereof be deprived of their suffrage at such election, or designedly do any act which renders such election void, he shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned in the county jail not more than one year, or both. [C., '51, § 2703; R., '60, § 4345; C., '73, § 4005; C., '97, § 4929.]

13281. Failure to return poll books. If any judge, clerk, or messenger, after having been deputed by the judges of the election to carry the poll books of such election to the place where by law they are to be canvassed, wilfully or negligently fail to deliver them within the time prescribed by law, safe, with the seal unbroken, he shall, for every such offense, be fined not more than five hundred nor less than fifty dollars. [C., '51, § 2704; R., '60, § 4346; C., '73, § 4006; C., '97, § 4930.]

13282. Improper registry and false personation. Any person who causes his name to be registered, knowing that he is not or will not become a qualified voter in the precinct where his name is registered previous to the next election, or who shall wrongfully personate any registered voter, and any person causing, or aiding or abetting any person in either of said acts, shall be, for each offense, imprisoned in the penitentiary not less than one year. [C., '73, § 4007; C., '97, § 4931.]

13283. Forgery of papers or ballots. Any person who shall falsely make, or wilfully destroy, any certificate of nomination or nomination papers, or any part thereof, or any letter of withdrawal, or file any certificate of nomination, or nomination papers, knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination, or nomination papers, or any part thereof, which have been duly filed, or forge or falsely make the official indorsement on any ballot, or substitute therefor any spurious or counterfeit ballot, or make, use, circulate, or cause to be made or circulated as an official ballot, any paper printed in imitation or resemblance thereof, or wilfully destroy or deface any ballot, or wilfully delay the delivery of any ballots,

shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the penitentiary not less than one nor more than five years, or by both fine and imprisonment. [C., '97, § 1136.]

13284. Political advertisements. Whoever writes, prints, posts, or distributes, or causes to be written, printed, posted, or distributed, a circular, poster, or advertisement which is designed to promote the nomination or election of a candidate for public office or to injure and defeat the nomination or election of any candidate for public office, or to influence the voters on any constitutional amendment, or to influence the vote of any member of the legislature, unless there appears upon such circular or poster or advertisement, in a conspicuous place, either the name of the chairman or secretary or of two officers of the organization issuing the same, or of the person who is responsible therefor, with his name and address, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not to exceed thirty days, or be punished by both such fine and imprisonment. [S. S., '15, § 4931-a.]

13285. Exceptions. Nothing in the preceding section shall apply to the editorial or news advertisements of any magazine or newspaper where the same is not a political advertisement, nor to cards, posters, lithographs, or circulars, issued by a candidate advertising his own candidacy. [S. S., '15, § 4931-a.]

13286. Illegal voting at primary election. Whenever any political party shall hold a primary election for the purpose of nominating a candidate for any public office or for the purpose of selecting delegates to any convention of such party, it shall be unlawful for any person not a qualified elector, or any qualified elector not at the time a member in good faith of such political party, to vote at such primary election. [S., '13, § 4919-a.]

13287. Punishment. Any person violating the provisions of the preceding section, and any person knowingly procuring, aiding, or abetting such violation, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days. [S., '13, § 4919-a.]

13288. Prima facie evidence of illegal voting. It shall be prima facie evidence of the violation of the second preceding section for any person who has participated in any primary election of one political party, to vote at a primary election held by another political party, to select candidates to be voted for at the same election; or to select delegates to any convention of the party holding such primary election. [S., '13, § 4919-b.]

13289. Judges to examine voters—administer oaths. Any judge of such primary election

shall have power to administer oaths to, and to examine under oath, any person offering to vote at such election, touching his qualifications to participate in such primary election, and it shall be the duty of such judge of election to so examine or cause to be examined any person challenged as to his right to vote. [S., '13, § 4919-c.]

13290. Perjury in examination. Any person testifying falsely as to any material matter,

touching his qualifications to participate in such primary election, shall be deemed guilty of perjury and punished accordingly. [S., '13, § 4919-c.]

13291. Exception—conventions under caucus system. Nothing in the five preceding sections shall be construed to apply to conventions held under the caucus system. [S., '13, § 4919-d.]

CHAPTER 606

BRIBERY AND CORRUPTION OF PUBLIC OFFICIALS

13292. Bribery of public officers.
13293. Acceptance of bribes.
13294. Disqualification for holding office.
13295. Corrupt solicitation of places of trust.
13296. Acceptance of reward for securing.
13297. Bribery of jurors or referees.

13292. Bribery of public officers. If any person give, offer, or promise to any executive or judicial officer or member of the general assembly, after his election or appointment, and either before or after he has qualified or has taken his seat, any valuable consideration, gratuity, service, or benefit whatever, with intent to influence his act, vote, opinion, or judgment in any matter, question, cause, or proceeding which may be pending, or which may legally come or be brought before him in his official capacity, he shall be imprisoned in the penitentiary not more than five years, or be fined not more than one thousand dollars and imprisoned in the county jail not more than one year. [C., '51, § 2647; R., '60, § 4274; C., '73, § 3939; C., '97, § 4875.]

13293. Acceptance of bribes. If any executive or judicial officer or member of the general assembly accept any valuable consideration, gratuity, service, or benefit whatever, or any promise to make the same or to do any act beneficial to such officer or member, under the agreement or with the understanding that his vote, opinion, decision, or judgment shall be given in any particular manner or upon any particular side of any question, cause, or other proceeding which is or may by law be brought before him in his official capacity, or that in such capacity he will make any particular nomination or appointment, he shall be imprisoned in the penitentiary not more than ten years, or be fined not more than two thousand dollars and imprisoned in the county jail not more than one year. [C., '51, § 2648; R., '60, § 4275; C., '73, § 3940; C., '97, § 4876.]

13294. Disqualification for holding office. Every person who is convicted under either of the two preceding sections shall forever afterwards be disqualified from holding any office under the laws of the state. [C., '51, § 2649; R., '60, § 4276; C., '73, § 3941; C., '97, § 4877.]

13298. Acceptance of bribes by such persons.
13299. Jurors acting corruptly.
13300. Sheriff or other officers receiving bribes.
13301. Accepting reward for public duty.
13302. Corruptly influencing officials.

13295. Corrupt solicitation of places of trust. If any person, directly or indirectly, give, offer, or promise any valuable consideration or gratuity to any other person not being such officer as is mentioned in the preceding section, with intent to induce such person to procure for him by his interest, influence, or any other means whatever any place of trust within this state, he shall be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2650; R., '60, § 4277; C., '73, § 3942; C., '97, § 4878.]

13296. Acceptance of reward for securing. If any person, not being such officer as is referred to in the preceding sections of this chapter, accept and receive of another any valuable consideration or gratuity whatever as a reward for procuring, or attempting to procure, any office or place of trust within the state for any person, he shall be fined not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2651; R., '60, § 4278; C., '73, § 3943; C., '97, § 4879.]

13297. Bribery of jurors or referees. If any person give, offer, or promise any valuable consideration or gratuity whatever to anyone summoned, appointed, or sworn as a juror, or appointed or chosen arbitrator, umpire, or referee, or to any master in chancery, or appraiser of real or personal estate, or auditor, with intent to influence the opinion or decision of any such person in any matter, inquest, or cause which may be pending or can legally come before him, or which he may be called on to decide in either of said capacities, he shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not more than one year. [C., '51, § 2652; R., '60, § 4279; C., '73, § 3944; C., '97, § 4880.]

13298. Acceptance of bribes by such persons. If any person summoned, appointed, or sworn as a juror, or appointed arbitrator, umpire, or referee, or master in chancery, or auditor, or appraiser, as aforesaid, take or receive any valuable consideration or gratuity whatever to give his verdict, award, or report in favor of any particular party, in a matter for the hearing or decision of which such person has been summoned, appointed, or chosen as aforesaid, he shall be imprisoned in the penitentiary not more than ten years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2653; R., '60, § 4280; C., '73, § 3945; C., '97, § 4881.]

13299. Jurors acting corruptly. If any person drawn, summoned, or sworn as a juror make any promise or agreement to give a verdict for or against any person in any civil or criminal action, or corruptly receive any paper, evidence or information from anyone in relation to any matter or cause for the trial of which he is sworn, without the authority of the court or officer before whom such cause or matter is then pending, he shall be fined not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months. [C., '51, § 2655; R., '60, § 4282; C., '73, § 3947; C., '97, § 4883.]

13300. Sheriff or other officers receiving bribes. If any sheriff, deputy sheriff, coroner, or constable, or any marshal, deputy marshal, policeman, or police officer of any city or town, receive from a defendant, or other person, any money or other valuable thing as a consideration or inducement for omitting or delaying to arrest any defendant or to carry him before a magistrate or to prison, or for postponing, delaying, or neglecting the sale of property on execution, or for omitting or delaying to per-

form any other duty pertaining to his office, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or both fined and imprisoned, at the discretion of the court. [C., '51, § 2656; R., '60, § 4283; C., '73, § 3948; C., '97, § 4884.]

13301. Accepting reward for public duty. If any state, county, township, city, school, or other municipal officer, not mentioned in this chapter, directly or indirectly accept any valuable consideration, gratuity, service, or benefit whatever, or the promise thereof, other than the compensation allowed him by law, conditioned upon said officer's doing or performing any official act, casting an official vote, making or procuring the appointment of any person to a place of trust or profit, or using his official influence or authority to give or procure for any person public employment, or conditioned upon said officer's refraining from doing or performing any of the foregoing acts or things, he shall be imprisoned in the penitentiary not exceeding two years, or in the county jail not exceeding one year, or fined in any sum not less than twenty nor more than three hundred dollars. [C., '97, § 4885.]

13302. Corruptly influencing officials. If any person, directly or indirectly, give, offer, or promise, or conspire with others to give, offer, or promise to any officer contemplated in the foregoing section any valuable consideration, gratuity, service, or benefit whatever, with a view or for the purpose of corruptly influencing said officer's official acts or votes, such person shall be imprisoned in the penitentiary not exceeding two years, or in the county jail not exceeding one year, or be fined in any sum not exceeding three hundred nor less than twenty dollars. [C., '97, § 4886.]

CHAPTER 607

MISCONDUCT OR NEGLIGENCE IN OFFICE

- 13303. Extortion.
- 13304. False certificate as to witness fees.
- 13305. Oppression in official capacity.
- 13306. Exercising office without authority or under color.
- 13307. Falsely assuming to be officer.
- 13308. Stirring up quarrels and suits.
- 13309. Officers failing to pay over fees.
- 13310. Misappropriating fees—removal.

13303. Extortion. If any person corruptly and wilfully demand and receive of another, for performing any service or official duty for which the fee or compensation is established by law, any greater fee or compensation than is allowed or provided for the same, he shall be fined not exceeding one hundred dollars for each offense, or imprisoned in the county jail not exceeding six months. [C., '51, § 2658; R., '60, § 4285; C., '73, § 3950; C., '97, § 4888.]

- 13311. False entries in relation to fees.
- 13312. Taking more than lawful fee.
- 13313. Failure to take official oath—unauthorized contract—failure to report.
- 13314. False entries, returns, certificates, or receipts.
- 13315. Solicitation of contributions for political purposes.
- 13316. Neglect of duty.

13304. False certificate as to witness fees. If any witness falsely and corruptly certify that as such he has traveled more miles or attended more days than he has actually traveled or attended, he shall be fined not exceeding one hundred dollars for each offense, or imprisoned in the county jail not exceeding six months. [C., '51, § 2658; R., '60, § 4285; C., '73, § 3950; C., '97, § 4888.]

13305. Oppression in official capacity. If any judge or other officer, by color of his office, wilfully and maliciously oppress any person under pretense of acting in his official capacity, he shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not more than one year, and be liable to the injured party for any damage sustained by him in consequence thereof. [R., '60, §§ 4305, 4306; C., '73, § 3969; C., '97, § 4908.]

13306. Exercising office without authority or under color. If any person take upon himself to exercise or officiate in any office or place of authority in this state without being legally authorized; or if any person, by color of his office, wilfully and corruptly oppress any person under pretense of acting in his official capacity, he shall be fined not exceeding one thousand dollars, or imprisoned in the county jail not more than one year, or be both fined and imprisoned. [C., '51, § 2672; R., '60, § 4299; C., '73, § 3963; C., '97, § 4902.]

13307. Falsely assuming to be officer. If a person falsely assume to be a judge, justice of the peace, magistrate, sheriff, deputy sheriff, coroner, or constable, and take upon himself to act as such, or require anyone to aid or assist him in any matter pertaining to the duty of any such officer, he shall be imprisoned in the county jail not more than one year, or be fined not exceeding three hundred dollars. [C., '51, § 2671; R., '60, § 4298; C., '73, § 3962; C., '97, § 4901.]

13308. Stirring up quarrels and suits. If any judge, justice of the peace, clerk of any court, sheriff, coroner, constable, attorney, or counselor at law, encourage, excite or stir up any action, quarrel, or controversy between two or more persons, with intent to injure such persons, he shall be fined not exceeding five hundred dollars, and shall be answerable to the party injured in treble damages. [C., '51, § 2673; R., '60, § 4300; C., '73, § 3964; C., '97, § 4903.]

13309. Officers failing to pay over fees. If any officer who by law is authorized to receive and required to pay over fees of office, or who is or may be authorized to impose or collect fines, shall fail, neglect, or refuse to pay over, as prescribed by law, all such fees and fines, he shall be guilty of a misdemeanor, besides being liable in a civil action for the amount of fines and fees illegally withheld or appropriated. [R., '60, § 4308; C., '73, § 3970; C., '97, § 4909.]

13310. Misappropriating fees—removal. Any officer who may be found guilty of the offense of appropriating to his own use fees of office or fines collected for violation of law, or of neglecting to pay over the same as prescribed by law, shall be removed from office by the court before or by whom the offense may be tried and judgment or conviction had; and every person so found guilty shall be fined not exceeding three hundred nor less than ten dollars, or imprisoned in the county

jail not exceeding one year, or be both fined and imprisoned, in the discretion of the court. [R., '60, § 4310; C., '73, § 3972; C., '97, § 4911.]

13311. False entries in relation to fees. If any officer who by law is authorized or required to keep a court docket, or who is required to keep an account of fees or fines, and pay over or in any way account for the same, shall in any manner falsify such docket or account, or shall fail, neglect, or refuse to make an entry upon such docket, or account for such fees and fines as are required to be paid over, he shall be guilty of a misdemeanor. [R., '60, § 4309; C., '73, § 3971; C., '97, § 4910.]

13312. Taking more than lawful fee. Any officer who wilfully takes higher or other fees than are allowed by law is guilty of a misdemeanor. [C., '51, § 2560; R., '60, § 4167; C., '73, § 3840; C., '97, § 1297.]

13313. Failure to take official oath—unauthorized contract—failure to report. If any officer or person wilfully fails to take the oath required by law before entering on the discharge of the duties of any office, trust, or station, or makes any contract which contemplates an expenditure in excess of the law under which he was elected or appointed, or fails to report to the proper officer, showing the expenditure of all public moneys with proper vouchers therefor, by the time required by law, he shall be fined not exceeding five thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both, at the discretion of the court. [R., '60, §§ 216, 2184; C., '73, § 3976; C., '97, § 4913.]

13314. False entries, returns, certificates, or receipts. If any public officer fraudulently make or give false entries, false returns, false certificates, or false receipts, in cases where entries, returns, certificates, or receipts are authorized by law, he shall be fined not exceeding one thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both. [C., '51, § 2677; R., '60, § 4304; C., '73, § 3968; C., '97, § 4907.]

13315. Solicitation of contributions for political purposes. Any person who demands or solicits, from any member, employee, or officer of the board of control, or from any officer or employee of any institution subject to this board, a contribution of money or other thing of value, for election purposes, or for the payment of the expenses of any political committee or organization, shall be deemed guilty of a misdemeanor and punished accordingly. [S., '13, § 2727-a36.]

13316. Neglect of duty. When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every wilful neglect to perform such duty, where no special provision has been made for the punishment of such delinquency, is a misdemeanor. [C., '51, § 2674; R., '60, § 4301; C., '73, § 3965; C., '97, § 4904.]

CHAPTER 608

GRATUITIES AND TIPS

13317. Accepting or giving.
 13318. Punishment.
 13319. Testimony tending to incriminate.
 13320. Immunity from prosecution.
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 13322. Institutional officers not to receive gratuities.
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 13325. State employees not to receive gratuities.
 13326. Punishment.
 13327. Interest in public contracts.
 13328. Accepting or soliciting gratuity or tip.
 13329. Giving or offering gratuity or tip.
 13330. Permitting violation of antitipping law.

13317. Accepting or giving. It shall be unlawful for any agent, representative, or employee, officer or any agent of a private corporation, or a public officer, acting in behalf of a principal in any business transaction, to receive, for his own use, directly or indirectly, any gift, commission, discount, bonus, or gratuity connected with, relating to, or growing out of such business transaction; and it shall be likewise unlawful for any person, whether acting in his own behalf or in behalf of any copartnership, association, or corporation, to offer, promise, or give directly or indirectly any such gift, commission, discount, bonus, or gratuity. [S., '13, § 5028-n.]

13318. Punishment. Any person violating the provisions of the preceding section or any of them shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. [S., '13, § 5028-n.]

13319. Testimony tending to incriminate. No person shall be excused from attending, testifying, or producing books, papers, contracts, agreements, and documents before any court in obedience to the subpoena of any court having jurisdiction of the misdemeanor on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture. [S., '13, § 5028-o.]

13320. Immunity from prosecution. No person shall be liable to any criminal prosecution, for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before said court or in obedience to its subpoena or in any such case or proceeding, provided that no person so testifying or producing any such books, papers, contracts, agreements, or documents shall be exempted from prosecution and punishment for perjury committed in so testifying. [S., '13, § 5028-o.]

13321. Exceptions. The four preceding sections shall not apply to those cases in which

the principals, being the contracting parties, have knowledge of and consent to the payment of a commission to an agent or representative. [S., '13, § 5028-o.]

13322. Institutional officers not to receive gratuities. No member of the board of control, or officer, agent, or employee thereof, and no superintendent, officer, manager, or employee of any of the institutions under the charge and control of said board, shall, directly or indirectly, for himself or any other person or for any institution under the charge of said board, receive or accept any gift or gratuity from any person or persons, firm, or corporation who are dealers in goods, merchandise, or supplies which may be used in any of said institutions, or from any employee, servant, or agent of such person or persons, firm, or corporation. [S., '13, § 2727-a33.]

13323. Punishment. Any person violating the provisions of the preceding section shall be deemed guilty of a misdemeanor, and such violation shall be cause for his removal from office. [S., '13, § 2727-a33.]

13324. State employees not to be interested in contracts. It shall be unlawful for any trustee, warden, superintendent, steward, or any other officer of any educational, penal, charitable, or reformatory institution, supported in whole or in part by the state, to be interested directly or indirectly in any contract to furnish or in furnishing provisions, material, or supplies of any kind, to or for the institution of which he is an officer; and it shall be unlawful for any such trustee, warden, superintendent, steward, or other officer of any state institution, to be directly or indirectly interested in any contract with the state to build, repair, or furnish any institution of which he may be an officer. [C., '73, § 1388; C., '97, § 189.]

13325. State employees not to receive gratuities. It shall be unlawful for any such trustee, warden, superintendent, steward, or other officer, directly, or indirectly, to receive in money or any valuable thing any commission, percentage, discount, or rebate on any provision, material, or supplies furnished for or to

any institution of which he is an officer. [C., '73, § 1388; C., '97, § 189.]

13326. Punishment. Any person violating the provisions of the two preceding sections shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, in the discretion of the court, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. [C., '97, § 190.]

13327. Interest in public contracts. Members of boards of supervisors and township trustees shall not buy from, sell to, or in any manner become parties, directly or indirectly, to any contract to furnish supplies, material, or labor to the county or township in which they are respectively members of such board of supervisors or township trustees. [S., '13, § 463-a.]

NOTE: For like provisions, see §§ 5324, 5331, and 5361.

13328. Accepting or soliciting gratuity or tip. Every employee of any hotel, restaurant, barber shop, or other public place, and every employee of any person, firm, partnership, or corporation, or of any public service corpora-

tion engaged in the transportation of passengers in this state, who shall accept or solicit any gratuity, tip, or other thing of value or of valuable consideration, from any guest or patron, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars, nor more than twenty-five dollars, or be imprisoned in the county jail for a period not exceeding thirty days. [S. S., '15, § 5028-u.]

13329. Giving or offering gratuity or tip. Every person who shall give or offer any tip or gratuity to any person or employee prohibited from receiving or soliciting the same by the provisions of the preceding section shall be guilty of a misdemeanor and be punished upon conviction as provided by the preceding section. [S. S., '15, § 5028-v.]

13330. Permitting violation of antitipping law. Any person who shall knowingly permit a violation of the two preceding sections in any place under his control or who shall fail to keep conspicuously posted in every said place under his control a notice bearing the words "No tipping allowed" shall be deemed guilty of a misdemeanor and be punished as provided in section 13328. [S. S., '15, § 5028-w.]

CHAPTER 609

RESISTANCE TO EXECUTION OF PROCESS

13331. Resisting execution of process.
13332. Calling out power of county.
13333. Refusing to assist officer.
13334. Certifying to court names of resisters.

13331. Resisting execution of process. If any person knowingly and wilfully resist or oppose any officer of this state, or any person authorized by law, in serving or attempting to execute any legal writ, rule, order, or process whatsoever, or shall knowingly and wilfully resist any such officer in the discharge of his duties without such writ, rule, order, or process, he shall be imprisoned in the county jail not exceeding one year, or be fined not exceeding one thousand nor less than fifty dollars, or be both fined and imprisoned, at the discretion of the court. [C., '51, § 2669; R., '60, § 4296; C., '73, § 3960; C., '97, § 4899.]

13332. Calling out power of county. When the sheriff or other officer authorized to execute process has reason to apprehend that resistance will be made, or finds that resistance is made, to the execution thereof, he may command as many male inhabitants of his county as he may think proper, and may call upon the governor for the assistance of the military force to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the resisters, their aiders, and abettors, to be held for punishment by law. [C., '51, § 2793; R., '60, § 4489; C., '73, § 4145; C., '97, § 5143; 39 G. A., ch. 163, § 2.]

13335. Refusing to assist.
13336. Calling out military force or posse.
13337. Armed forces under command of sheriff.
13338. Refusing to execute process.

13333. Refusing to assist officer. If any person, being lawfully required by any sheriff, deputy sheriff, coroner, constable, or other officer, wilfully neglect or refuse to assist him in the execution of his office in any criminal case, or in any case of escape or rescue, he shall be imprisoned in the county jail not more than six months, or be fined not more than one hundred dollars. [C., '51, § 2670; R., '60, § 4297; C., '73, § 3961; C., '97, § 4900.]

13334. Certifying to court names of resisters. The officers shall certify to the court from which the process issued the names of the resisters, their aiders, and abettors, to the end that they may be punished as for a contempt. [C., '51, § 2794; R., '60, § 4490; C., '73, § 4146; C., '97, § 5144.]

13335. Refusing to assist. Every person commanded by a public officer to assist him in the execution of process, as provided in this chapter, who, without lawful cause, refuses or neglects to obey such command, is guilty of a misdemeanor. [C., '51, § 2795; R., '60, § 4491; C., '73, § 4147; C., '97, § 5145.]

13336. Calling out military force or posse. If it appears to the governor that the power of any county is not sufficient to enable the

sheriff to execute process delivered to him, he may, on the application of the sheriff, order such posse or military force from any other county or counties as is necessary. [C., '51, § 2796; R., '60, § 4492; C., '73, § 4148; C., '97, § 5146.]

13337. Armed forces under command of sheriff. When such armed force is called out, it shall obey the commands of the sheriff or other person appointed by the governor for that purpose, or by a judge of the supreme, district, or superior court, or other magistrate in the order named, but such officer or person shall at all times be subject to the direction

of the governor. [C., '51, § 2802; R., '60, § 4498; C., '73, § 4154; C., '97, § 5152.]

13338. Refusing to execute process. If any officer authorized to serve process wilfully refuse to execute any lawful process to him directed, requiring him to apprehend or confine any person charged with or convicted of any public offense, or wilfully delay or omit to execute such process, whereby such person escape, he shall be imprisoned in the county jail not more than one year, or be fined not exceeding one thousand dollars, or both fined and imprisoned, at the discretion of the court. [C., '51, § 2657; R., '60, § 4284; C., '73, § 3949; C., '97, § 4887.]

CHAPTER 610

UNLAWFUL ASSEMBLY AND SUPPRESSION OF RIOTS

13339. Unlawful assembly.

13340. Riot defined.

13341. One person may be tried and convicted alone.

13342. Unlawful assemblages—dispersion.

13343. Arrest—aid of other persons.

13339. Unlawful assembly. When three or more persons in a violent or tumultuous manner assemble together to do an unlawful act, or, when together, attempt to do an act, whether lawful or unlawful, in an unlawful, violent, or tumultuous manner, to the disturbance of others, they are guilty of an unlawful assembly, and shall be imprisoned in the county jail not more than thirty days, or be fined not exceeding one hundred dollars. [C., '51, § 2739; R., '60, § 4387; C., '73, § 4066; C., '97, § 5030.]

13340. Riot defined. When three or more persons together and in a violent or tumultuous manner commit an unlawful act, or together do a lawful act in an unlawful, violent, or tumultuous manner, to the disturbance of others, they are guilty of a riot, and shall be punished as is provided in the preceding section. [C., '51, § 2740; R., '60, § 4388; C., '73, § 4067; C., '97, § 5031.]

13341. One person may be tried and convicted alone. Any person guilty of unlawfully assembling, or of a riot, may alone be tried and convicted thereof, but it must be alleged in the information and proved on the trial that three or more persons were engaged therein. [C., '51, § 2741; R., '60, § 4389; C., '73, § 4068; C., '97, § 5032.]

13342. Unlawful assemblages — dispersion. When persons to the number of twelve or more, armed with dangerous weapons, or persons to the number of thirty or more, whether armed or not, are unlawfully or riotously assembled in any city or town, any judge, sheriff, and his deputies if they be present, the mayor, aldermen, marshal, constables, and justices of the peace of such city or town must go among the persons assembled, or as near them as may

13344. Refusing to aid.

13345. Failure of duty.

13346. Calling aid—arrest of offenders.

13347. Riotous conduct—injury to person or property.

be safe, and command them, in the name of the state, immediately to disperse. [C., '51, § 2797; R., '60, § 4493; C., '73, § 4149; C., '97, § 5147.]

13343. Arrest—aid of other persons. If the persons assembled do not immediately disperse, the magistrate and officers must arrest them, and for that purpose may command the aid of all persons present or within the county. [C., '51, § 2798; R., '60, § 4494; C., '73, § 4150; C., '97, § 5148.]

13344. Refusing to aid. If any person commanded to aid the magistrate or officer neglect to do so without good cause, he is guilty of a misdemeanor. [C., '51, § 2799; R., '60, § 4495; C., '73, § 4151; C., '97, § 5149.]

13345. Failure of duty. If a magistrate or officer, having notice of an unlawful or riotous assembly as defined in section 13342, neglect to proceed to the place of assembly, or as near thereto as may be with safety, and exercise the authority with which he is invested for suppressing the same and arresting the persons, he is guilty of a misdemeanor. [C., '51, § 2800; R., '60, § 4496; C., '73, § 4152; C., '97, § 5150.]

13346. Calling aid—arrest of offenders. If the persons so assembled and commanded to disperse do not immediately obey, any two of the magistrates or officers before mentioned may command the aid of a sufficient number of persons, and proceed in such manner as in their judgment is necessary to disperse the assembly and arrest the offenders. [C., '51, § 2801; R., '60, § 4497; C., '73, § 4153; C., '97, § 5151.]

13347. Riotous conduct—injury to person or property. If any person or persons, unlaw-

fully or riotously assembled, pull down, injure, or destroy, or begin to pull down, injure, or destroy, any dwelling house or other building; or destroy or attempt to injure or destroy any boat or vessel; or perpetrate any premeditated injury on the person of another, not being a felony, he shall be imprisoned in the peniten-

tiary not more than five years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not more than one year, and shall also be answerable to any person injured to the full amount of the damages by him sustained. [C., '51, § 2743; R., '60, § 4391; C., '73, § 4070; C., '97, § 5035.]

CHAPTER '611

DISTURBING PUBLIC ASSEMBLIES

13348. Disturbance of peace.
13349. Disturbing congregations or other assemblies.

13348. Disturbance of peace. If any person make or excite any disturbance in a tavern, store, or grocery, or at any election or public meeting, or other place where the citizens are peaceably and lawfully assembled, he shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days. [C., '51, § 2742; R., '60, § 4390; C., '73, § 4069; C., '97, § 5033.]

13349. Disturbing congregations or other assemblies. If any person wilfully disturb any assembly of persons met for religious worship by profane discourse or rude and indecent behavior, or by making a noise, either within the place of worship or so near as to disturb the order and solemnity of the assembly, or if any person wilfully disturb or interrupt any

13350. Evading admission fee to entertainments.

school, school meeting, teachers' institute, lyceum, literary society, or other lawful assembly of persons, he shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars. [C., '51, § 2718; R., '60, § 4360; C., '73, § 4023; C., '97, § 4959.]

13350. Evading admission fee to entertainments. If any person wilfully enters any building or inclosure where any public entertainment or exhibition is being held at which an admission fee is charged, and without paying such fee, or without leave to so enter, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. [C., '97, § 4817.]

CHAPTER 612

ESCAPES

13351. Prison breach—escape—punishment.
13352. Actual breaking not necessary.
13353. Violation of parole.
13354. Jurisdiction.
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13351. Prison breach—escape—punishment. If any person committed to the penitentiary or to the men's or women's reformatory shall break such prison and escape therefrom or shall escape from or leave without due authority any building, camp, farm, garden, city, town, road, street, or any place whatsoever in which he is placed or to which he is directed to go or in which he is allowed to be by the warden or any officer or employee of the prison whether inside or outside of the prison walls, he shall be deemed guilty of an escape from said penitentiary or reformatory and shall be punished by imprisonment in said penitentiary or re-

formatory for a term not to exceed five years, to commence from and after the expiration of the term of his previous sentence. [S., '13, § 4897-a; 40 Ex. G. A., H. F. 278, § 1.]

13352. Actual breaking not necessary. In order to constitute an escape under the provisions of the preceding section, it is not necessary that the prisoner be within any walls or inclosure nor that there shall be any actual breaking nor that he be in the presence or actual custody of any officer or other person. [S., '13, § 4897-a.]

13353. Violation of parole. If any person having been paroled from the state penitentiary or state reformatory as provided by law, shall thereafter depart without the written consent of the board of parole from the territory within which by the terms of said parole he is restricted, he shall be deemed to have escaped from the custody within the meaning of section 13351 and shall be punished as therein provided. [S., '13, § 4897-a; 39 G. A., ch. 9, § 1.]

13354. Jurisdiction. The jurisdiction of an indictment for the crime of escape as defined in the three preceding sections is in the county in which is located the penitentiary or reformatory to which the person charged with such escape has been committed, or in the county in which is located the building, camp, farm, garden, city, town, road, street, or any place in which he is placed or to which he is directed to go or in which he is allowed to be by the warden or any officer or employee of the prison wherefrom he is charged with escaping. [S., '13, § 4897-a; 38 G. A., ch. 83, § 1.]

13355. Costs and fees. All costs and fees hereafter incurred in prosecutions for violations of the preceding sections of this chapter, being for breaking and escaping from the penitentiary, shall be paid out of the state treasury from the general fund, in any case where the prosecution fails, or where such fees and costs can not be made from the person liable to pay the same, the facts being certified by the clerk of the district court and verified by the county attorney of the county. [S., '13, § 4897-b.]

13356. Amount certified to auditor of state. The clerk of the district court, in which the case is prosecuted or tried, shall, under his seal of office, certify to the auditor of state a statement of the amount of fees or costs incurred in each case, and such statement shall be approved by the presiding judge in writing appended thereto or indorsed thereon. Should the cause be appealed to the supreme court, the costs there incurred shall be certified to the auditor of state by the clerk of that court, but no fees, in such case, for the clerk of either the district or supreme court shall be included or paid from the state treasury. [S., '13, § 4897-c.]

13357. Auditor to issue warrant. On such certificate being filed in the office of the auditor of state, the auditor shall issue his warrant on the state treasurer for the amount thereof, payable to the clerk of the district or supreme court, as the case may be, and the clerk shall pay the same to the persons entitled thereto. [S., '13, § 4897-d.]

13358. Breaking jail—escape. If any person confined in any jail upon any criminal charge, either before or after conviction for a criminal offense, break jail and escape therefrom, or escape from the custody of the officer charged with his keeping, he shall be imprisoned in such jail not exceeding one year, and

fined not exceeding three hundred dollars; but when such jail breaking, or escape from custody, occurs during incarceration after conviction, or before trial for a criminal offense whereof he is afterwards convicted, in either of such cases the sentence to commence from and after the expiration of the sentence upon the original charge. [C., '51, § 2668; R., '60, § 4295; C., '73, § 3959; C., '97, § 4898; S., '13, § 4898; 40 G. A., ch. 217.]

13359. Suffering life prisoners to escape. If any jailer or other officer voluntarily suffer any prisoner in custody upon a charge or conviction of a felony punishable by imprisonment for life to escape, he shall be imprisoned in the penitentiary not more than ten years. [C., '51, § 2661; R., '60, § 4288; C., '73, § 3953; C., '97, § 4891; 39 G. A., ch. 231, § 15.]

13360. Suffering other felons to escape. If any jailer or other officer voluntarily suffer any prisoner in his custody upon charge or conviction of any other felony to escape, he shall be imprisoned in the penitentiary not more than eight years, or be fined not more than one thousand dollars. [C., '51, § 2662; R., '60, § 4289; C., '73, § 3954; C., '97, § 4892.]

13361. Suffering other prisoners to escape. If any jailer or other officer suffer any prisoner in his custody upon charge or conviction of any public offense to escape, he shall be fined not exceeding one thousand dollars and be imprisoned in the penitentiary not exceeding five years. [C., '51, § 2663; R., '60, § 4290; C., '73, § 3955; C., '97, § 4893.]

13362. Assisting felon to escape. If any person by any means whatever aid or assist any prisoner lawfully detained in the penitentiary, or in any jail or place of confinement, for any felony, in an attempt to escape, whether such escape be effected or not, or forcibly rescue any person held in legal custody upon any criminal charge, he shall be imprisoned in the penitentiary not exceeding ten years, or be fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year. [C., '51, § 2664; R., '60, § 4291; C., '73, § 3956; C., '97, § 4894.]

13363. Assisting other prisoners to escape. Every person who by any means whatever aids or assists any prisoner lawfully committed to any jail or place of confinement, charged with or convicted of any criminal offense other than a felony, in an attempt to escape, whether such escape be effected or not; or who conveys into such jail or place of confinement any disguise, instrument, arms, or other things proper or useful to facilitate the escape of any prisoner so committed, whether such escape be effected or attempted or not, shall be imprisoned in the county jail not exceeding one year, or be fined not exceeding five hundred dollars, or be both fined and imprisoned, at the discretion of the court. [C., '51, § 2665; R., '60, § 4292; C., '73, § 3957; C., '97, § 4895.]

13364. Assisting escape from officer. Every person who aids or assists any prisoner in es-

caping, or attempting to escape, from the custody of any sheriff, deputy sheriff, marshal, constable, or other officer or person who has the lawful charge, with or without a warrant, of such prisoner upon any criminal charge, shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding five years. [C., '51, § 2666; R., '60, § 4293; C., '73, § 3958; C., '97, § 4896.]

13365. Aiding escapes—bringing liquor or drugs to inmates. Any person not authorized by law, who shall bring or pass or cause to be brought into any penitentiary, reformatory, workhouse, training school, institution for feeble-minded children, or hospital of the state, or onto the grounds thereof, or into any inclosure, building, camp, quarry, farm, garden, or other place used in connection with any such institution in which prisoners, patients, or other inmates are required or permitted to be, any opium, morphine, cocaine, or other narcotic, or any intoxicating liquor, or any firearm, weapon, or explosive of any kind, or any rope, ladder, or other instrument or device for use in making or attempting an escape, or shall in any manner aid in such an escape, shall be punished by imprisonment in the penitentiary or reformatory for a term not exceeding five years. [S., '13, § 4913-a; 38 G. A., ch. 217, § 1.]

13366. Placing drugs and articles near institutions. Any person not duly authorized by law who shall place or cause to be placed or aid in placing any of the drugs, liquors, weapons, explosives, or other articles hereinbefore enumerated in or near any road, park, path, walk, grove, hedge, or field where any prisoner, patient, or other inmate of the state institutions specified in the preceding section is, or is likely to be, with intent that the drug, liquor, weapon, explosive, or other article so placed shall be found by or shall pass into the possession of any such prisoner, patient, or other inmate, shall be punished by imprisonment in the penitentiary or reformatory for a term not exceeding five years, or by a fine of not more than one thousand dollars nor less than one hundred dollars. [S., '13, § 4913-a.]

13367. Presumptive evidence. The bringing or passing or causing to be brought into any of the places designated in sections 13365 and 13366, of any rope, ladder, or other instru-

ment or device adapted for use in making an escape, shall be presumptive evidence that it was so brought or passed for such use, and the leaving of any drug, liquor, weapon, explosive, or other article enumerated in said sections in or near any of the places specified in said sections with knowledge that any prisoner, patient, or other inmate is or is likely to be in such place, shall be presumptive evidence that such article was so left to be found by or to pass into the possession of such prisoner, patient, or other person in violation of said sections. [S., '13, § 4913-a.]

13368. Attempt to commit act. An attempt to do any of the acts prohibited by sections 13365 and 13366 shall be subject to the same punishment as the completed act. [S., '13, § 4913-a.]

13369. Aiding escapes—bringing liquor or drugs to inmates. Any person not authorized by law, who shall bring or pass or cause to be brought into the institution for feeble-minded children, or the hospital for epileptics and school for feeble minded, or any state hospital for the insane, or the training school for boys, or the training school for girls, or the juvenile home, or the women's reformatory, or the men's reformatory, or the state penitentiary, or onto the grounds thereof, or into any inclosure, building, camp, quarry, farm, garden, or other place used in connection with any such institution in which prisoners, patients, or inmates are required or permitted to be, any opium, morphine, cocaine, or other narcotics, or any intoxicating liquor, or any firearm, weapon, or explosive of any kind, or any rope, ladder, or other instrument or device for use in making or attempting an escape, or shall in any manner aid in such an escape, or who shall knowingly conceal such inmate after escape, shall be punished by imprisonment in the penitentiary or reformatory for a term not exceeding five years. [C., '73, § 1663; C., '97, § 2712; S. S., '15, § 2713-n16; 37 G. A., ch. 54, § 1; 38 G. A., ch. 217, § 1; 40 Ex. G. A., H. F. 84, § 89-a1.]

13370. Aiding escape. Whoever aids or assists an inmate to escape from any institution for the feeble minded, or from any hospital for the insane, or knowingly conceals an inmate after such escape, shall be punished by a fine not exceeding one thousand dollars or imprisonment in the penitentiary not exceeding five years. [40 Ex. G. A., H. F. 84, §§ 190-a1, 227-a1.]

CHAPTER 613

VAGRANCY

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13371. Vagrants defined. The following persons are vagrants:

1. All common prostitutes and keepers of bawdy houses or houses for the resort of common prostitutes.
2. All habitual drunkards, gamesters, or other disorderly persons.
3. All persons wandering about and lodging in barns, outbuildings, tents, wagons, or other vehicles, and having no visible calling or business to maintain themselves.
4. All persons begging in public places, or from house to house, or inducing children or others to do so.
5. All persons representing themselves as collectors of alms for charitable institutions under any false or fraudulent pretenses.
6. All persons playing or betting in any street or public or open place at any game, or pretended game, of chance, or at or with any table or other instrument of gaming.
7. All persons camping on any public highway for the purpose of trading horses. [C., '51, § 3310; R., '60, § 4470; C., '73, § 4130; C., '97, § 5119; S., '13, § 5119.]

13372. Tramp defined. Any male person sixteen years of age or over, physically able to perform manual labor, who is wandering about, practicing common begging, or having no visible calling or business to maintain himself, and is unable to show reasonable efforts in good faith to secure employment, is a tramp, and any person convicted of being a tramp shall be punished by imprisonment at hard labor in the county jail not exceeding ten days, or by imprisonment in such jail in solitary confinement not exceeding five days. [C., '97, § 5134.]

13373. Intimidation or other misconduct. Any tramp who shall wantonly or maliciously, by means of violence, threats or otherwise, put in fear any inhabitant of this state, or shall enter any public building, or any house, barn, or outbuilding belonging to another, with intent to commit an unlawful act, or shall carry

any firearm or other dangerous weapon, or indecently expose his person, or be found drunk and disorderly, or shall commit any offense against the laws of the state for which no greater punishment is provided, shall be guilty of a misdemeanor. [C., '97, § 5135.]

13374. Entering unoccupied public building—nuisance. If any tramp or vagrant, without permission, enter any schoolhouse or other public building in the nighttime, when the same is not occupied by another or others having proper authority to be there, or, having entered the same in the daytime, remain in the same at night when not occupied as aforesaid, or at any time commit any nuisance, use, misuse, destroy, or partially destroy any private or public property therein, he shall be imprisoned in the penitentiary not more than three years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year. [C., '97, § 4793.]

13375. Complaint—arrest. Upon complaint made on oath to any magistrate against any person as being such vagrant within his jurisdiction, he may issue a warrant for the arrest of such person, and his examination, and the complaint, warrant, and arrest shall be governed by the provisions of chapter 625, as nearly as practicable, except as herein provided. [C., '51, § 3311; R., '60, § 4471; C., '73, § 4131; C., '97, § 5120.]

13376. Arrest. Peace officers shall arrest any vagrant whom they may find at large, and not in the care of some discreet person, and take him before some magistrate of the county, city, or town in which the arrest is made. [R., '60, § 4472; C., '73, § 4132; C., '97, § 5121.]

13377. Taking before magistrate. If such arrest is made during the night, the officer may keep the person arrested in confinement until the next morning, unless bail be given, and if made within the jurisdiction of a police court, he must be taken before such court, unless

the judge is absent. [R., '60, § 4473; C., '73, § 4133; C., '97, § 5122.]

13378. Security for good behavior. If it appear by the confession of such person, or by competent testimony, that the person arrested is a vagrant, the magistrate may require an undertaking, with sufficient surety, for good behavior for the term of one year thereafter. [R., '60, § 4474; C., '73, § 4134; C., '97, § 5123.]

13379. Record of conviction—commitment. The magistrate shall make up, sign, and file with the clerk of the district court of the county, a record of conviction of such person as a vagrant, specifying generally the nature and circumstances of the charge, and shall, in default of such security being given, commit such vagrant to the jail of the county, city, or town, as the case may be, until such security is given or such vagrant discharged according to law. [C., '51, § 3312; R., '60, § 4475; C., '73, § 4135; C., '97, § 5124.]

13380. Breach of undertaking. The committing of any of the acts which constitute such person so bound a vagrant shall be a breach of the condition of the undertaking. [C., '51, § 3313; R., '60, § 4476; C., '73, § 4136; C., '97, § 5125.]

13381. New security. On a recovery upon the undertaking, the court before which such recovery is had may, in its discretion, require new sureties for good behavior, or commit such vagrant to the county jail for any time not exceeding six months. [C., '51, § 3314; R., '60, § 4477; C., '73, § 4137; C., '97, § 5126.]

13382. Discharge of bail. Any person committed to jail on account of failing to furnish undertaking for good behavior may be discharged by any magistrate upon giving the same as was originally required. [C., '51, § 3315; R., '60, § 4478; C., '73, § 4138; C., '97, § 5127.]

13383. Hearing—jury. The district court to which the papers are returned shall, on demand of the defendant, impanel a jury to inquire into and determine the truth of the charge made against him, and the rules of practice applicable to trials of misdemeanors shall govern such trial. [C., '51, § 3316; R., '60, § 4479; C., '73, § 4139; C., '97, § 5128.]

13384. Judgment. If no jury is demanded, the district court may revise such conviction and discharge such vagrant from the undertaking or confinement absolutely, or upon sureties for good behavior, in its discretion. [C., '51, § 3317; R., '60, § 4480; C., '73, § 4140; C., '97, § 5129.]

13385. Imprisonment. Such district court may, in its discretion, order any such vagrant to be kept in the common jail for any time, not exceeding six months, at hard labor. [C., '51, § 3318; R., '60, § 4481; C., '73, § 4141; C., '97, § 5130.]

13386. Expenses. The expenses incurred in pursuance of such order shall be audited by the board of supervisors of the county and paid out of the county treasury. [C., '51, § 3320; R., '60, § 4483; C., '73, § 4143; C., '97, § 5132.]

13387. Employed while confined—supplies. Such vagrants may be employed at hard labor as provided in chapter 281, or the court may direct the keeper thereof to furnish them such employment as it shall specify, and for that purpose he may purchase any necessary raw materials and implements, not exceeding such amount as the court shall prescribe, and compel such persons to perform such work as shall be allotted to them. [C., '51, § 3319; R., '60, § 4482; C., '73, § 4142; C., '97, § 5131.]

13388. Employment when sentenced to hard labor. The sheriff or keeper of any jail, under the direction of the board of supervisors shall keep all persons sentenced to imprisonment at hard labor in such jail, under the provisions of this chapter, at such work as the board of supervisors may provide, and shall appoint or detail any deputy or other police officer to guard them while at work, or he may turn them over to the municipal authorities of any city or town, to be worked on the streets, or at such labor as may be provided. [C., '97, § 5140.]

13389. Solitary confinement for refusing to work. Any tramp sentenced to hard labor, who wantonly or wilfully refuses to work, shall be punished by such jailer while so refusing by imprisonment in solitary confinement in the county jail not exceeding ten days, during which time he shall be fed on bread and water; but such punishment shall not exceed the time for which he is sentenced. [C., '97, § 5141.]

13390. Method of imprisonment. No sheriff or keeper of any jail shall permit any person convicted of being a tramp to have any tobacco, intoxicating liquors, sporting or illustrated newspaper, cards, or other article of amusement or pastime, or permit such person to be kept or fed otherwise than stated in the commitment, and any person who knowingly violates this section shall be fined not exceeding one hundred nor less than twenty-five dollars. [C., '97, § 5138.]

13391. Proceeds of labor. One-half of the net proceeds of such labor shall be paid to the person earning the same, upon his discharge from imprisonment, and the other half shall be paid into the county treasury for the use of the county. [C., '51, § 3321; R., '60, § 4484; C., '73, § 4144; C., '97, § 5133.]

13392. Tried jointly. If two or more tramps assemble or congregate together, they shall be tried jointly by the court before whom they are brought, and such court shall be entitled only to fees as for the arrest and trial of one person. [C., '97, § 5136.]

13393. Fees of officers. The board of supervisors shall, at any regular or special session, fix the compensation to be allowed the officers

in each case under this chapter; to the trial magistrate, not exceeding one dollar; to the peace officer, for all services, not more than one dollar, and mileage as now allowed by law. [C., '97, § 5137.]

13394. Unlawful fees. Any officer or magistrate who shall conspire with any person for the purpose of increasing the emoluments of his office, or to evade the provisions of this chapter, or who shall, with such intent, in any manner or by any means, encourage a tramp to remain within his jurisdiction or come within the same, shall be fined not exceeding one hundred dollars, and stand committed until

the fine and costs are paid, not to exceed thirty days. [C., '97, § 5139.]

13395. Compensation for keeping. No sheriff or jailer shall receive, and no board of supervisors allow, any compensation for keeping or boarding any tramp in the jail or other place in the county, unless such tramp has been duly arrested or committed under the provisions of this chapter, except the board of supervisors of each county may furnish one night's lodging for apparently deserving persons, and those who are sick or disabled may be cared for as the necessities of the case demand. [C., '97, § 5142.]

CHAPTER 614

HABITUAL CRIMINALS

13396. Third conviction of felony.
13397. Fourth conviction of petty larceny.
13398. Evidence.
13399. Duties of jury and judge.

13400. Habitual criminal defined.
13401. Evidence.
13402. Pardon for former crime.

13396. Third conviction of felony. Whenever any person has been twice convicted of either of the crimes of burglary, robbery, forgery, counterfeiting, larceny where the value of the property stolen exceeded twenty dollars, or of breaking and entering, with intent to commit a public offense, any dwelling house, office, shop, store, warehouse, railroad car, boat, vessel, or building, in which goods, merchandise, or valuable things, were kept for use, sale, or deposit, or has been convicted of two or more of said crimes, and shall thereafter be convicted of any one of such crimes, committed after such conviction, he shall be imprisoned in the penitentiary for any term not more than forty years, provided such former judgments shall be referred to in the indictment, stating the court, date, and place of rendition. [S., '13, § 4871-a; 39 G. A., ch. 231, § 16.]

13397. Fourth conviction of petty larceny. Any person over the age of eighteen years who has been three times convicted of larceny where the value of the property stolen did not exceed twenty dollars, upon being convicted the fourth time of said offense shall be imprisoned in the penitentiary not exceeding three years, provided such former judgments shall be referred to in the indictment, stating the court, date, and place of rendition. [S., '13, § 4871-b.]

13398. Evidence. On the trial of any of said offenses named in the two preceding sections, a duly authenticated copy of the record of the former judgment in any court wherein said conviction was had, for either of said crimes against the party indicted, shall be prima facie evidence of such former conviction and may be used in evidence against said party. [S., '13, § 4871-c.]

13399. Duties of jury and judge. Upon any trial when the indictment refers to former convictions of the defendant, the jury, if it finds the defendant guilty, and the court, if the de-

fendant is convicted on a plea of guilty, must also find and determine specially whether the defendant had previously been convicted of either of the crimes referred to in the indictment, and the number of times so convicted. [S., '13, § 4871-d.]

13400. Habitual criminal defined. Whoever has been twice convicted of crime, sentenced, and committed to prison, in this or any other state, or by the United States, or once in this state and once at least in any other state, or by the United States, for terms of not less than three years each shall, upon conviction of a felony committed in this state after the taking effect of this section, be deemed to be an habitual criminal, and shall be punished by imprisonment in the penitentiary for a term of not more than twenty-five years, provided that no greater punishment is otherwise provided by statute, in which case the law creating the greater punishment shall govern. [S., '13, § 5091-a; 39 G. A., ch. 231, § 17.]

13401. Evidence. On the trial of any cause, under the provisions of the preceding section, a duly authenticated copy of the former judgment and commitment, from any court in which such judgment and commitment was had, for either of the said crimes formerly committed by the party indicted under the preceding section, shall be competent and prima facie evidence of such former judgment and commitment, and may be used in evidence upon the trial of said cause. [S., '13, § 5091-b.]

13402. Pardon for former crime. If the person so convicted shall show, to the satisfaction of the court before whom such conviction was had, that he was released from imprisonment, upon either of said sentences, upon a pardon granted for the reason that he was innocent, such conviction and sentence shall not be considered as such under the second preceding section. [S., '13, § 5091-a.]

TITLE XXXVI

CRIMINAL PROCEDURE

CHAPTER 615

MAGISTRATES, PEACE OFFICERS, AND SPECIAL AGENTS

- 13403. Magistrates defined.
- 13404. Power of magistrates.
- 13405. Peace officer defined.
- 13406. Officers of justice defined.
- 13407. Agents of the department of justice—tenure—salary.
- 13408. Expenses.

13403. Magistrates defined. The term “magistrate” includes:

1. All judges of the supreme, district, superior, or municipal courts, throughout the state.

2. All justices of the peace, mayors, and judges of the police court, within their respective counties. [C., '51, §§ 2778, 2823; R., '60, §§ 4439, 4447; C., '73, § 4108; C., '97, § 5097; 40 Ex. G. A., H. F. 250, § 1.]

13404. Power of magistrates. Magistrates have power to hear complaints, or preliminary informations, issue warrants, order arrests, require security to keep the peace, make commitments, and take bail, as provided by law. [C., '51, § 2778; R., '60, § 4439; C., '73, § 4108; C., '97, § 5098; 40 Ex. G. A., H. F. 250, § 2.]

13405. Peace officer defined. The following are “peace officers”:

- 1. Sheriffs and their deputies.
- 2. Constables.
- 3. Marshals and policemen of cities and towns.

4. All special agents of the department of justice.

5. Such persons as may be otherwise so designated by law. [C., '51, § 2830; R., '60, § 4440; C., '73, § 4109; C., '97, § 5099; 40 Ex. G. A., H. F. 250, § 3.]

13406. Officers of justice defined. Magistrates and peace officers are sometimes designated as “officers of justice”. [R., '60, § 4441; C., '73, § 4110; C., '97, § 5100; 40 Ex. G. A., H. F. 250, § 4.]

13407. Agents of the department of justice—tenure—salary. The attorney general may appoint such number of persons as special agents of the department of justice as, in his judgment, is necessary to effect the capture,

- 13409. Bonds.
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- 13411. Power of governor and attorney general.
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detention, arrest, and prosecution of persons violating the laws of the state. Such agents shall act under the direction, and at the pleasure, of the attorney general, and at such salary as he may fix, but the expenditure for salaries and expenses shall not exceed the appropriation therefor. [37 G. A., ch. 231, § 1; 40 Ex. G. A., H. F. 250, § 5.]

13408. Expenses. All special agents of the department of justice shall be paid their actual and necessary expenses incurred in the discharge of their duties. [S. S., '15, § 65-c; 40 Ex. G. A., H. F. 250, § 6.]

13409. Bonds. All person appointed to the position of special agents of the department of justice shall give bond in the sum of five thousand dollars, which bond shall be approved by the appointing officer. [38 G. A., ch. 327, § 2; 40 Ex. G. A., H. F. 250, § 7.]

13410. Powers. All special agents of the department of justice shall have, throughout the state, the same power to make arrests and file informations, and otherwise enforce the law, as possessed by county attorneys and peace officers within their respective counties. They shall have the right to demand and receive, in the discharge of their duties, the assistance of any county attorney or peace officer within their respective counties. [S. S., '15, § 65-b; 40 Ex. G. A., H. F. 250, § 8.]

13411. Power of governor and attorney general. The governor and attorney general shall each have the power to call to their aid in the enforcement of the law any peace officer; and when such officers are so called upon it shall be their duty faithfully to render such assistance as may be required, in any part of the state, and such peace officers while so acting shall have the same powers throughout the

state as possessed by the sheriff of the county in which such peace officer is acting. [37 G. A., ch. 231, § 1; 40 Ex. G. A., H. F. 250, § 9.]

13412. Governor to appoint special agents—number. The governor is hereby authorized to appoint not more than four special agents, whose duty it shall be, under the direction of the governor, to aid in the capture, detention, arrest, and prosecution of persons committing crime or violating the laws of this state. [S. S., '15, § 65-a.]

13413. Power of special agents. Special agents appointed by the governor shall have

the rights and powers possessed by special agents of the department of justice appointed by the attorney general, and shall give bond in the same amount. [S. S., '15, § 65-b; 38 G. A., ch. 327, § 2; 40 Ex. G. A., ch. 4, § 115.]

13414. Salary and expenses. Special agents appointed by the governor shall be paid their actual and necessary expenses incurred in the discharge of their duties, and such salary as the executive council shall fix. Not more than one special agent may be employed by the governor for a period in excess of thirty days without the consent of the executive council. [S. S., '15, § 65-c; 40 Ex. G. A., ch. 4, § 116.]

CHAPTER 616

BUREAU OF CRIMINAL INVESTIGATION

13415. Establishment of bureau.
13416. Criminal identification.

13417. Maintenance of bureau.

13415. Establishment of bureau. The attorney general may establish in his office a bureau of criminal investigation. The officers of such bureau of criminal investigation shall be the peace officers provided for by sections 13407 and 13412. From such officers the attorney general may select a chief who shall be the chief of the bureau. [39 G. A., ch. 186, § 1.]

13416. Criminal identification. The attorney general may provide in his department a system of criminal identification. He may

adopt rules and regulation for the same. The sheriff of each county and the chief of police of each city and town shall furnish to the department criminal identification records and other information as directed by the attorney general. [39 G. A., ch. 186, § 2.]

13417. Maintenance of bureau. The attorney general is authorized to pay from the contingent fund provided for the office of attorney general such expenses as may be necessary in establishing the bureau. [39 G. A., ch. 186, § 3.]

CHAPTER 617

SEARCH WARRANTS

13418. Definition.
13419. Grounds for warrant.
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13439. Officer exceeding authority.
13440. Searching person charged with felony.
13441. Seizure of other property—disposition.

13418. Definition. A search warrant is an order in writing, in the name of the state, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate. [C., '51, § 3291; R., '60, § 5024; C., '73, § 4629; C., '97, § 5545.]

13419. Grounds for warrant. It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled, in which case it may be taken on the war-

rant from any house or other place in which it is concealed, or from the possession of any person in whose possession it may be.

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of any person in whose possession it may be.

3. When it is in the possession of any person with the intent to use it as the means of com-

mitting a public offense, or in the possession of another to which he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, from a house or other place occupied by him, or under his control. [C., '51, § 3292; R., '60, § 5025; C., '73, § 4630; C., '97, § 5546.]

13420. Probable cause—affidavit. No search warrant can be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched. [C., '51, § 3293; R., '60, § 5026; C., '73, § 4631; C., '97, § 5547.]

13421. Applicant examined. The magistrate must, before issuing a warrant, examine on oath the applicant therefor, and any witnesses he may produce, and take their affidavits. [C., '51, § 3294; R., '60, § 5027; C., '73, § 4632; C., '97, § 5548.]

13422. Facts stated in affidavit. The affidavit must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist. [C., '51, § 3295; R., '60, § 5028; C., '73, § 4633; C., '97, § 5549.]

13423. Issuance of warrant. If the magistrate is satisfied of the existence of the grounds of the application, or there is probable cause to believe their existence, he shall issue a search warrant, signed by him with his name of office, directed to any peace officer in the county, commanding him forthwith to search the person or place named for the property specified, and bring it before him. [C., '51, § 3296; R., '60, § 5029; C., '73, § 4634; C., '97, § 5550.]

13424. Form of warrant. The warrant may be, substantially, in the following form:

County of....., }
The State of Iowa. }

To any peace officer of said county:

Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken) that (stating the particular grounds of the application as above provided; or, if the affidavit be not positive, that there is probable cause for believing that—stating the ground of the application in the same manner), you are therefore commanded, in the daytime (or at any time of the day or night, as provided in this chapter) to make immediate search on the person of C..... D....., or in the house situated (describing it or any other place to be searched, with reasonable particularity, as the case may be), for the following property (describing it with reasonable particularity), and if you find the same, or any part thereof, to bring it forthwith before me at (stating the place).

Dated at....., this.....day of.....A.
D.

E..... F..... (with official title).
[R., '60, § 5031; C., '73, § 4636; C., '97, § 5551.]

13425. Service of warrant. A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requisition, he being present and acting in its execution. [C., '51, § 3297; R., '60, § 5032; C., '73, § 4637; C., '97, § 5552.]

13426. Breaking in to execute warrant. The officer may break open any outer or inner door or window of a house, or any part thereof, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. [C., '51, § 3298; R., '60, § 5033; C., '73, § 4638; C., '97, § 5553.]

13427. Liberating person assisting in execution. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or, when necessary, for his own liberation. [R., '60, § 5034; C., '73, § 4639; C., '97, § 5554.]

13428. Served in daytime. The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavit be positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it may be served at any time of the day or night. [R., '60, § 5035; C., '73, § 4640; C., '97, § 5555.]

13429. Return of warrant. A search warrant must be executed and returned to the magistrate who issued it within ten days after its date. After the expiration of such time the warrant, unless executed, is void. [C., '51, § 3299; R., '60, § 5036; C., '73, § 4641; C., '97, § 5556.]

13430. Receipt for property. When the officer takes any property under the warrant, he must give to the person from whom it was taken, or in whose possession it was found, or in the absence of the person, must leave in the place where he found the property, an itemized receipt therefor. [C., '51, § 3300; R., '60, § 5037; C., '73, § 4642; C., '97, § 5557.]

13431. Return with inventory. The officer must forthwith return the warrant to the magistrate, with a complete inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, verified by the affidavit of the officer at the foot of the inventory and taken before the magistrate, to the following effect: "I, the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant." [C., '51, § 3301; R., '60, § 5038; C., '73, § 4643; C., '97, § 5558.]

13432. Copy of inventory. The magistrate, if required, must deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for

the warrant. [C., '51, § 3302; R., '60, § 5039; C., '73, § 4644; C., '97, § 5559.]

13433. Hearing. If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto. [C., '51, § 3303; R., '60, § 5040; C., '73, § 4645; C., '97, § 5560.]

13434. Evidence reduced to writing. The testimony given by each witness must be reduced to writing and authenticated by the magistrate. [C., '51, § 3304; R., '60, § 5041; C., '73, § 4646; C., '97, § 5561.]

13435. Property restored in certain cases. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken. [C., '51, § 3305; R., '60, § 5042; C., '73, § 4647; C., '97, § 5562.]

13436. Disposition by magistrate. If the property taken by virtue of a search warrant was stolen or embezzled, it must be restored to the owner, upon his making satisfactory proof to the magistrate of his ownership thereof or of his right of possession thereto, as provided in chapter 516. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section 13419, the magistrate must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court having jurisdiction to try the offense which the property taken was used as a means of committing, or so intended to be. [C., '51, § 3306; R., '60, § 5043; C., '73, § 4648; C., '97, § 5563.]

13437. Disposition of papers. When returned to a magistrate, he must annex together the affidavits taken before the issuing of the warrant, the warrant, the return and the inventory, and return them to the next district

court of the county, at or before its opening on the first day of the next term thereof. [C., '51, § 3307; R., '60, § 5044; C., '73, § 4649; C., '97, § 5564.]

13438. Maliciously suing out warrant. Whoever maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a misdemeanor. [C., '51, § 3308; R., '60, § 5045; C., '73, § 4650; C., '97, § 5565.]

13439. Officer exceeding authority. A peace officer who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor. [R., '60, § 5046; C., '73, § 4651; C., '97, § 5566.]

13440. Searching person charged with felony. When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or evidence to be retained, subject to his order, or the order of the court in which the defendant may be tried. [C., '51, § 3309; R., '60, § 5047; C., '73, § 4652; C., '97, § 5567.]

13441. Seizure of other property—disposition. When any officer in the execution of a search warrant shall find any stolen or embezzled property, or shall seize any other things for which a search warrant is allowed by this chapter, all the property and things so seized shall be safely kept, by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced as evidence on any trial; and as soon as may be afterwards all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant may be destroyed under the direction of the court or magistrate. [R., '60, § 5048; C., '73, § 4653; C., '97, § 5568.]

CHAPTER 618

LIMITATION OF CRIMINAL ACTIONS

13442. Actions for murder.

13443. Eighteen months limitation.

13444. Three year limitation.

13442. Actions for murder. A prosecution for murder may be commenced at any time after the death of the person killed. [C., '51, § 2811; R., '60, § 4513; C., '73, § 4165; C., '97, § 5163.]

13443. Eighteen months limitation. An indictment for a public offense must be found within eighteen months after its commission, in the following cases, and not after:

1. Taking or enticing away an unmarried female under the age of consent, for the purpose of marriage or prostitution.

13445. One year limitation.

13446. Absence from state deducted.

13447. Time of finding indictment.

2. Seducing or debauching an unmarried female of previously chaste character.

3. For rape or adultery.

4. For an assault with intent to commit a rape. [C., '51, § 2812; R., '60, § 4514; C., '73, § 4166; C., '97, § 5164.]

13444. Three year limitation. In all other cases an indictment for a public offense must be found within three years after the commission thereof, and not afterwards. [C., '51,

§ 2813; R., '60, § 4515; C., '73, § 4167; C., '97, § 5165.]

13445. One year limitation. A prosecution for a misdemeanor triable before a justice of the peace, or violation of an ordinance of a city or town, must be commenced within one year after the commission thereof, and not after. [C., '73, § 4168; C., '97, § 5166.]

13446. Absence from state deducted. If, when the offense is committed, the defendant is out of the state, the indictment or prosecution may be found or commenced within the time herein limited after his coming into the

state, and no period during which the party charged was not publicly resident within the state is a part of the limitation. [C., '51, § 2814; R., '60, § 4516; C., '73, § 4169; C., '97, § 5167.]

NOTE: When statute commences to run against executor, administrator, or guardian, see § 13036.

13447. Time of finding indictment. An indictment is found, within the meaning of this chapter, when it is duly presented by the grand jury in open court and there filed. [C., '51, § 2815; R., '60, § 4517; C., '73, § 4170; C., '97, § 5168.]

CHAPTER 619

JURISDICTION OF PUBLIC OFFENSES

13448. Persons subject to laws of state.
13449. Jurisdiction of district court.
13450. Offenses consummated within the state.
13451. Offenses partly in county.
13452. Offenses near boundary of two counties.
13453. Offenses on trains or boats.

13448. Persons subject to laws of state. Every person, whether an inhabitant of this state or any other state or country, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States. [C., '51, § 2803; R., '60, § 4500; C., '73, § 4155; C., '97, § 5153.]

13449. Jurisdiction of district court. The local jurisdiction of the district court is of offenses committed within the county in which it is held, and of such other cases as are or may be provided by law. [R., '60, § 4502; C., '73, § 4156; C., '97, § 5154.]

NOTE: Prison breach, see § 13354.

13450. Offenses consummated within the state. When the commission of a public offense, committed without the state, is consummated within its boundaries, the defendant is liable to punishment therefor, though he was without the state at the time of its consummation, if he committed the offense through the intervention of an agent within the state, or by any other means proceeding directly from himself.

Jurisdiction thereof is in the county in which the offense is completed. [C., '51, § 2804; R., '60, § 4505; C., '73, § 4157; C., '97, § 5155.]

13451. Offenses partly in county. When a public offense is committed partly in one county and partly in another, or when the acts or effects constituting or requisite to the consummation of the offense occur in two or more counties, jurisdiction is in either county, except as otherwise provided by law. [C., '51,

13454. Jurisdiction in any county in certain cases.
13455. Jurisdiction of bigamy.
13456. Fighting duel without the state—death within state.
13457. Conviction or acquittal bars action.

§ 2806; R., '60, § 4507; C., '73, § 4159; C., '97, § 5157.]

13452. Offenses near boundary of two counties. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county, except as otherwise provided by law. [C., '51, § 2807; R., '60, § 4508; C., '73, § 4160; C., '97, § 5158.]

13453. Offenses on trains or boats. When an offense is committed within the jurisdiction of the state on any railroad car while passing over any railroad, or any boat, raft, or vessel navigating a river, lake, or canal, or lying therein in the prosecution of her voyage, the jurisdiction is in any county through which it passes in the course of its trip or voyage, or in the county where the trip or voyage shall begin or terminate. [C., '51, § 2808; R., '60, § 4509; C., '73, § 4161; C., '97, § 5159.]

13454. Jurisdiction in any county in certain cases. The jurisdiction of an indictment for the crime:

1. Of forcibly and without lawful authority seizing and confining another, or kidnaping him with intent, against his will, to cause him to be confined or imprisoned within the state, or to be sent out of the state, or

2. Of taking or enticing a child under the age of fifteen years away from the parents, guardian, or other person having the legal charge of the person, with intent to detain or conceal such child, or

3. Of taking or enticing away an unmarried female of previously chaste character under the age of consent, for the purpose of prostitution, or

4. Of taking any woman unlawfully and against her will or by force, menace, or duress, and compelling her to marry against her will, or

5. Of seducing and debauching any unmarried woman of previously chaste character—is in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed may, in the prosecution of the offense, have been brought, or in which an act is done by the offender in instigating, procuring, promoting, aiding in, or being an accessory to the commission thereof, or in abetting the parties concerned therein. [C., '51, § 2809; R., '60, § 4510; C., '73, § 4162; C., '97, § 5160.]

13455. Jurisdiction of bigamy. When the offense of bigamy is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county. [C., '51,

§ 2810; R., '60, § 4511; C., '73, § 4163; C., '97, § 5161.]

13456. Fighting duel without the state—death within state. When an inhabitant or resident of the state, by previous appointment or engagement, fights a duel, or is concerned as second therein, without the jurisdiction of the state, and in such duel a wound is inflicted upon any person whereof he dies within the state, the jurisdiction of the offense is in the county where the death occurs. [C., '51, § 2805; R., '60, § 4506; C., '73, § 4158; C., '97, § 5156.]

13457. Conviction or acquittal bars action. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another. [R., '60, § 4512; C., '73, § 4164; C., '97, § 5162.]

CHAPTER 620

PRELIMINARY INFORMATION AND WARRANTS OF ARREST

- 13458. Definition.
- 13459. Form.
- 13460. Filing—issuing warrant.
- 13461. Form of warrant.

13458. Definition. A complaint or preliminary information is a statement in writing, under oath or affirmation, made before a magistrate, of the commission or threatened commission of a public offense, and accusing someone thereof. [C., '51, § 2822; R., '60, § 4530; C., '73, § 4111; C., '97, § 5101.]

13459. Form. The information may be substantially in the form required in criminal actions triable before a justice of the peace. [C., '73, § 4185; C., '97, § 5182.]

13460. Filing—issuing warrant. When a preliminary information is made before a magistrate, charging the commission of some designated public offense triable on indictment in the county in which such magistrate has local jurisdiction, by some person named therein, he may issue a warrant for the arrest of such person. [C., '73, § 4185; C., '97, § 5182.]

13461. Form of warrant. The warrant of arrest on a preliminary information must be substantially in the following form:

State of Iowa, }
 County of }
 To any peace officer of the state:
 Preliminary information upon oath having been this day filed with me, charging that the crime (naming it) has been committed and accusing A..... B..... thereof:
 You are commanded forthwith to arrest the said A..... B..... and bring him before me at (naming the place), or, in case of

- 13462. Directed to peace officer—contents.
- 13463. Order for bail—indorsed on warrant.
- 13464. Manner of executing warrant.

my absence or inability to act, before the nearest or most accessible magistrate in this county.
 Dated at this day of,
 A. D.
 C..... D..... (with official title).
 [C., '51, § 2827; R., '60, § 4534; C., '73, § 4186; C., '97, § 5183.]

13462. Directed to peace officer—contents. The warrant must be directed to any peace officer in the state; give the name of the defendant, if known to the magistrate; if unknown, may designate him by any name, and must state by name or general description an offense which authorizes a warrant to issue, the time of issuing it, the county, city, town, village, or township where issued, and be signed by the magistrate, with his name of office. [C., '51, §§ 2828, 2829; R., '60, §§ 4535, 4536; C., '73, §§ 4187, 4188; C., '97, § 5184.]

13463. Order for bail—indorsed on warrant. If the offense stated in the warrant be a misdemeanor, the magistrate issuing it must make an indorsement thereon as follows: "Let the defendant, when arrested, be admitted to bail in the sum of dollars", stating the amount in which bail may be taken. [R., '60, § 4537; C., '73, § 4189; C., '97, § 5185.]

13464. Manner of executing warrant. The warrant may be delivered to any peace officer for execution, and served in any county in the state. [R., '60, § 4538; C., '73, § 4190; C., '97, § 5186.]

CHAPTER 621

ARREST: GENERAL PROVISIONS

13465. Arrest defined—time of making.
 13466. Acts necessary.
 13467. Persons authorized to make.
 13468. Arrests by peace officers.
 13469. Arrests by private persons.
 13470. Arrests on oral order.
 13471. Manner of making.
 13472. Resistance to arrest—use of force.
 13473. Breaking and entering premises.
13474. Breaking out after lawful entrance.
 13475. Summoning aid—refusing to assist.
 13476. Taking weapons—delivery to magistrate.
 13477. Escape after arrest—recapture.
 13478. Arrests by private person—disposition of prisoner.
 13479. Conveying prisoner to jail—fees and expenses.

13465. Arrest defined—time of making. Arrest is the taking of a person into custody when and in the manner authorized by law, and may be made at any time of any day or night. [C., '51, §§ 2837, 2850; R., '60, §§ 4545, 4551; C., '73, §§ 4197, 4203; C., '97, § 5193.]

13466. Acts necessary. An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest. No unnecessary force or violence shall be used in making the same, and the person arrested shall not be subjected to any greater restraint than is necessary for his detention. [C., '51, § 2838; R., '60, §§ 4557-4559; C., '73, §§ 4209-4211; C., '97, § 5194.]

13467. Persons authorized to make. An arrest may be made by a peace officer or by a private person. [R., '60, § 4546; C., '73, § 4198; C., '97, § 5195.]

13468. Arrests by peace officers. A peace officer may make an arrest in obedience to a warrant delivered to him; and without a warrant:

1. For a public offense committed or attempted in his presence.

2. Where a public offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it. [C., '51, § 2840; R., '60, §§ 4547, 4548; C., '73, §§ 4199, 4200; C., '97, § 5196.]

13469. Arrests by private persons. A private person may make an arrest:

1. For a public offense committed or attempted in his presence.

2. When a felony has been committed, and he has reasonable ground for believing that the person to be arrested has committed it. [C., '51, § 2846; R., '60, § 4549; C., '73, § 4201; C., '97, § 5197.]

13470. Arrests on oral order. A magistrate may orally order a peace officer or a private person to arrest anyone committing or attempting to commit a public offense in the presence of such magistrate, which order shall authorize

the arrest. [C., '51, § 2845; R., '60, § 4550; C., '73, § 4202; C., '97, § 5198.]

13471. Manner of making. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of arrest, of his authority to make it, and that he is a peace officer, if such be the case, and require him to submit to his custody, except when the person to be arrested is actually engaged in the commission of or attempt to commit an offense, or escapes, so that there is no time or opportunity to do so; if acting under the authority of a warrant, he must give information thereof and show the warrant, if required. [C., '51, §§ 2839, 2841, 2847; R., '60, § 4552; C., '73, § 4204; C., '97, § 5199.]

13472. Resistance to arrest—use of force. When the arrest is being made by an officer under the authority of a warrant, if, after information of the intention to make the arrest, the person to be arrested attempts to escape or forcibly resists, the officer may use all necessary means to effect the arrest. [C., '51, § 2844; R., '60, § 4553; C., '73, § 4205; C., '97, § 5200.]

13473. Breaking and entering premises. To make an arrest for any public offense, a peace officer, acting with or, when authorized, without a warrant, may break into a house or other building in which the person to be arrested may be, or in which the officer has reasonable grounds for believing he is, after having demanded admittance and explained the purpose for which admittance is desired. In case of a felony, a private person may use like means to make an arrest. [C., '51, §§ 2843, 2848; R., '60, § 4554; C., '73, § 4206; C., '97, § 5201.]

13474. Breaking out after lawful entrance. Any person who has lawfully entered a house for the purpose of making an arrest, under the provisions of the preceding section, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself; and an officer may do the same when necessary for the purpose of liberating a person who, acting in his aid and by his

command, lawfully entered for the purpose of making an arrest, and is detained therein. [R., '60, § 4555; C., '73, § 4207; C., '97, § 5202.]

13475. Summoning aid—refusing to assist. Any person making an arrest may orally summon as many persons as he finds necessary to aid him in making the arrest, and all persons failing to obey such summons shall be guilty of a misdemeanor. [R., '60, § 4556; C., '73, § 4208; C., '97, § 5203.]

13476. Taking weapons—delivery to magistrate. He who makes an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken, to be disposed of according to law. [R., '60, § 4560; C., '73, § 4212; C., '97, § 5204.]

13477. Escape after arrest—recapture. If a person after being arrested escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him in any part of the state, and may use the same means to retake as are authorized for an arrest; and this may be done at any time

under the original warrant or commitment, when there is one. [C., '51, § 2851; R., '60, § 4561; C., '73, § 4213; C., '97, § 5205.]

13478. Arrests by private person—disposition of prisoner. A private person who has arrested another for the commission of an offense must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer, who may take the arrested person before a magistrate, but the person making the arrest must also accompany the officer before the magistrate. [C., '51, §§ 2842, 2849; R., '60, §§ 4562-4564; C., '73, §§ 4214-4216; C., '97, § 5206.]

13479. Conveying prisoner to jail—fees and expenses. Every officer or person who shall arrest anyone with a warrant or order issued by any court or officer, or who shall be required to convey a prisoner from a place distant from the county jail to such jail on an order of commitment, shall be allowed the same fees and expenses as provided for in case of such services by the sheriff. [C., '73, § 3820; C., '97, § 1292.]

CHAPTER 622

ARREST BY WARRANT

- 13480. Disposition of prisoner.
- 13481. In case of arrest for felony.
- 13482. In case of arrest for misdemeanor.
- 13483. Order for discharge.

13480. Disposition of prisoner. An officer making an arrest in obedience to a warrant shall proceed with the person arrested as commanded by the warrant or as provided by law. [R., '60, § 4565; C., '73, § 4217; C., '97, § 5207.]

13481. In case of arrest for felony. If the offense stated in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued it at the place mentioned in the command thereof, or, in the event of his absence or inability to act, before the nearest or most accessible magistrate in the county in which it was issued. [C., '51, § 2831; R., '60, § 4539; C., '73, § 4191; C., '97, § 5187.]

13482. In case of arrest for misdemeanor. If the offense stated in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate or the clerk of the district court of the same county in which he was arrested, for the purpose of giving bail, and the magistrate or clerk before whom he is taken in such county must take bail from him, in the sum indorsed upon the warrant, for his appearance at the district court of the county in which the warrant was issued, on the first day of the following term. [C., '51, § 2832; R., '60, § 4540; C., '73, § 4192; C., '97, § 5188.]

- 13484. Discharge—delivery of warrant and papers.
- 13485. Failure to give bail.
- 13486. Proceedings after arrest.
- 13487. Hearing before another magistrate.

13483. Order for discharge. On taking bail in the case provided for in the preceding section, the magistrate or clerk taking the same must indorse on the warrant his official order for the discharge of the defendant, substantially as follows:

State of Iowa, }
 County of..... }

To the officer (naming him and his official title, thus A..... B....., sheriff of county) having in custody C..... D....., (naming him):

The defendant named in the within warrant of arrest, now in your custody under the authority thereof for the offense therein designated, having given sufficient bail to answer the same by the undertaking herewith delivered to you, you are commanded forthwith to discharge him from custody, and, without unnecessary delay, deliver this order, together with the said undertaking of bail, to the clerk of the district court of..... county, on or before the first day of the next term thereof.

Dated at....., this..... day of....., A. D.....

E..... F..... (with official title).
 [C., '51, § 2833; R., '60, § 4541; C., '73, § 4193; C., '97, § 5189.]

13484. Discharge—delivery of warrant and papers. He must deliver the warrant with the

order thereon, together with the undertaking of bail, to the officer having the defendant in custody, who shall forthwith discharge him from arrest, and at once inform the magistrate issuing the warrant of his doings; and the magistrate or clerk, on or before the first day of the next term of the court at which the defendant is required to appear, must deliver or transmit by mail, or otherwise, the warrant with the order thereon, together with the undertaking of bail, to the clerk of the court at which the defendant is required to appear, who shall forthwith file the same in his office. The magistrate who issued the warrant shall return to the clerk, on or before the first day of the next term of the court, the affidavits of the informant and his witnesses upon which the warrant was issued, who shall file all of the same in his office. [C., '51, § 2833; R., '60, § 4541; C., '73, § 4193; C., '97, § 5189.]

13485. Failure to give bail. If bail be not forthwith given by the defendant as above provided, the magistrate or clerk must redeliver to the officer the warrant, and the officer must take the defendant before the magistrate who

issued it at the place mentioned in the command thereof, or, if he be absent or unable to act, before the nearest or most accessible magistrate in the county in which the warrant was issued. [C., '51, § 2834; R., '60, § 4542; C., '73, § 4194; C., '97, § 5190.]

13486. Proceedings after arrest. In all cases the defendant, when arrested, must be taken before the magistrate or clerk without unnecessary delay, and the officer must at the same time deliver to the magistrate or clerk the warrant, with his return thereon indorsed and subscribed by him with his official title. [C., '51, § 2835; R., '60, § 4543; C., '73, § 4195; C., '97, § 5191.]

13487. Hearing before another magistrate. If the defendant be taken before a magistrate in the county in which the warrant was issued, other than the magistrate who issued it as hereinbefore provided, the affidavits on which the warrant was issued must be sent to such magistrate, or if they can not be procured, the informant and his witnesses must be subpoenaed to make new affidavits. [C., '51, § 2836; R., '60, § 4544; C., '73, § 4196; C., '97, § 5192.]

CHAPTER 623

ARREST WITHOUT WARRANT

13488. Disposition of prisoner.
13489. Hearing before magistrate.
13490. Transfer for convenience.
13491. Proceedings—same as under warrant.
13492. Offense triable in another county—transfer.

13493. Bail—commitment—discharge.
13494. Proceedings in case of transfer.
13495. Proper magistrate to conduct hearing—bail.
13496. Officer's return.

13488. Disposition of prisoner. When an arrest is made without a warrant, the person arrested shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and the grounds on which the arrest was made shall be stated to the magistrate by affidavit, subscribed and sworn to by the person making the statement, in the same manner as upon a preliminary information, as nearly as may be. [R., '60, § 4566; C., '73, § 4218; C., '97, § 5208.]

13489. Hearing before magistrate. If the magistrate believes from the statements in the affidavit that the offense charged is triable in the county in which the arrest was made, and there is sufficient ground for a trial or preliminary examination, as the case may require, and it will not be inconvenient for the witnesses on the part of the state that it should be had before him, he shall proceed as if the person arrested had been brought before him on arrest under a warrant, and, if the case be one within his jurisdiction to try and determine, shall order an information to be filed against him. [R., '60, § 4567; C., '73, § 4219; C., '97, § 5209.]

13490. Transfer for convenience. If the magistrate finds that it will be more convenient for the witnesses on the part of the state that such trial or examination should be had before some other magistrate in the county, he shall, by a written order, commit the person arrested to a peace officer, to be by him taken before the other magistrate, together with the order of commitment and affidavits, unless the person arrested give bail, when authorized, for his appearance, as in case of arrest under a warrant. [R., '60, § 4568; C., '73, § 4220; C., '97, § 5209.]

13491. Proceedings—same as under warrant. Unless bail is given, the peace officer shall take the arrested person before the designated magistrate, and in any case shall deliver to him the affidavits and order of commitment, and when the person arrested is brought or appears before him, he shall proceed as on an arrest under a warrant, and, when necessary, shall order an information to be filed against the person arrested. [R., '60, § 4568; C., '73, § 4220; C., '97, § 5210.]

13492. Offense triable in another county—transfer. If the magistrate believes from the

statements in the affidavit that the offense charged is triable in a county different from that in which the arrest is made, and there is sufficient ground for a trial or preliminary examination, he shall, by a written order, commit the person arrested to a peace officer, to be by him taken before a magistrate in the county in which the offense is triable, and if the offense be a misdemeanor triable on indictment, shall fix in the order the amount of bail which the person arrested may give for his appearance at the district court of the county (naming it) in which the offense is indictable, on the first day of the next term thereof, to answer to an indictment. If the offense charged be a bailable crime, the arrested person may give bail, conditioned as above provided, before a clerk of the district court. [R., '60, § 4569; C., '73, § 4221; C., '97, § 5211.]

13493. Bail — commitment — discharge. If bail be given before a magistrate, as provided in the preceding section, it may be either before the magistrate making the order, or the magistrate in the county in which the offense is triable before whom he is taken under the order, or a magistrate of any county through which he passes in going from the county in which the arrest was made to that in which the offense is triable, or, in any bailable case, before the clerk of the district court of either of said counties; and, when given, the magistrate or clerk taking the same shall make, on the order of commitment, an order for the discharge of the person arrested from custody, who shall forthwith be discharged, and shall transmit by mail, or otherwise, to the clerk of the district court of the county at which the person arrested is bound to appear, on or before the first day of the next term thereof and as soon as it can be conveniently done after taking the bail, the affidavits, the order of commitment, and discharge, together with the undertaking of bail, and he shall file the same together in his office. [R., '60, § 4570; C., '73, § 4222; C., '97, § 5212.]

13494. Proceedings in case of transfer. If bail be not given as above provided, or if the offense charged is a felony not bailable, or a misdemeanor triable on information, the magistrate must deliver the affidavits and order of commitment to a peace officer, who shall proceed with the person arrested as directed by the order or provided by law; and the magistrate in the county in which the offense is triable, when the person arrested is brought before him, shall proceed as on an arrest under a warrant, and if the case be within his jurisdiction to try and determine, shall order an information to be filed against the person arrested. [R., '60, § 4571; C., '73, § 4223; C., '97, § 5213.]

13495. Proper magistrate to conduct hearing—bail. In the cases contemplated in the three preceding sections, the officer having the person arrested in custody, under the order, shall take him before the proper magistrate, in the county in which the offense is triable, which is most convenient for the witnesses on the part of the state; unless, in case of a misdemeanor triable on indictment as hereinbefore provided, the person arrested desires to give bail, in which case he shall take him before the most convenient magistrate in the county in which the offense with which he is charged is triable, or any county through which he passes in going from the county in which the arrest was made to the county in which the offense is triable, or before the clerk of the district court of either of said counties, for the purpose of giving bail. [R., '60, § 4572; C., '73, § 4224; C., '97, § 5214.]

13496. Officer's return. In all cases, the peace officer, when he takes a person committed to him under an order as provided in this chapter before a magistrate or clerk of the district court, either for the purpose of giving bail, if bail be taken, or for trial or preliminary examination, must make his return on such order, and sign such return with his name of office, and deliver the same to the magistrate or clerk. [R., '60, § 4573; C., '73, § 4225; C., '97, § 5215.]

CHAPTER 624

FUGITIVES FROM JUSTICE

- 13497. Agents in extradition cases.
- 13498. Fees and expenses.
- 13499. Payment of claims.
- 13500. Additional compensation prohibited.
- 13501. Sworn evidence and copy of indictment necessary.
- 13502. Warrant of arrest.
- 13503. Filing complaint and issuance of warrant.
- 13504. Bail—except when charged with murder.

- 13505. Failure to give bail—commitment.
- 13506. Forfeiture of bail.
- 13507. Discharge.
- 13508. Arrest on warrant of governor.
- 13509. Liability of complainant—costs.
- 13510. Arrest without expense to state.
- 13511. Expenses paid by state.
- 13512. Peace officers of foreign state.

13497. Agents in extradition cases. The governor, in any case authorized by the constitution and laws of the United States, may appoint agents to demand of the executive authority of another state or territory, or from the executive authority of a foreign government, any fugitive from justice charged with

treason or felony. [C., '51, § 3282; R., '60, § 4518; C., '73, § 4171; C., '97, § 5169; 37 G. A., ch. 88, § 1; 38 G. A., ch. 131, § 1.]

13498. Fees and expenses. The expenses to be allowed such agent shall be: fees paid the officers of the state upon whose governor the

requisition is made; all necessary and actual traveling expenses paid on account of the agent and fugitive, including the necessary and actual railroad fare of the agent and that paid for transportation of the fugitive. [C., '51, § 3282; R., '60, § 4518; C., '73, § 4171; C., '97, § 5169; 37 G. A., ch. 88, § 1; 38 G. A., ch. 131, § 1.]

13499. Payment of claims. Bills for such expenses shall be made out, itemized so as to show each day's expenses, sworn to and filed with the county auditor of the proper county, the county making application for the requisition, and shall be by said county auditor audited and paid out of the county treasury. [C., '51, § 3282; R., '60, § 4518; C., '73, § 4171; C., '97, § 5169; 37 G. A., ch. 88, § 1; 38 G. A., ch. 131, § 1.]

13500. Additional compensation prohibited. No compensation, fee, or reward of any kind can be paid to or received by a public officer of the state for a service rendered, or expense incurred, in procuring from the governor the demand mentioned in section 13497, or the surrender of the fugitive, or for conveying him into the state, or detaining him therein, except as provided by law; a violation of this section is a misdemeanor. [R., '60, §§ 4519, 4520; C., '73, §§ 4172, 4173; C., '97, § 5170.]

13501. Sworn evidence and copy of indictment necessary. No executive warrant for the arrest and surrender of a person demanded by the executive authority of another state or territory, as a fugitive from the justice of such state or territory, and no requisition upon the executive authority of another state or territory for the surrender of any person as a fugitive from the justice of this state, shall be issued, unless the requisition from the executive authority of such other state or territory, or the application for such requisition upon the executive authority of such other state or territory, is accompanied by sworn evidence that the party charged is a fugitive from justice, and by a duly attested copy of an indictment, preliminary information, or complaint, made before the court or magistrate authorized to receive the same. [R., '60, § 4521; C., '73, § 4174; C., '97, § 5171.]

13502. Warrant of arrest. Whenever a demand is made upon the governor by the executive of another state or territory, in any case authorized by the constitution and laws of the United States, for the delivery of a person charged in such state or territory with a crime, if such person is not held in custody or under bail to answer for an offense against the laws of the United States or of this state, he shall issue his warrant, under the seal of the state, authorizing the agent who makes such demand, forthwith, or at such time as may be designated in the warrant, to take and transport such person to the line of this state at the expense of such agent, and may also, by such warrant, require all peace officers to afford all needful assistance in the execution thereof. [C., '51,

§ 3283; R., '60, § 4522; C., '73, § 4175; C., '97, § 5172.]

13503. Filing complaint and issuance of warrant. If any person is found in the state charged with a crime committed in another state or territory, and liable by the constitution and laws of the United States to be delivered over upon the demand of the governor thereof, any magistrate may, upon complaint on oath setting forth the offense, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant for the arrest of such person. [C., '51, § 3284; R., '60, § 4523; C., '73, § 4176; C., '97, § 5173.]

13504. Bail—except when charged with murder. If, upon examination, it appears that there is reasonable cause to believe the complaint true, and that such person may be lawfully demanded of the governor, he shall, if not charged with murder, be required to enter into an undertaking, with sufficient surety in a reasonable sum, to appear before such magistrate at a future day, allowing reasonable time to obtain the warrant from the governor, and abide the order of such magistrate in the premises. [C., '51, § 3285; R., '60, § 4524; C., '73, § 4177; C., '97, § 5174.]

13505. Failure to give bail—commitment. If such person does not give bail, he must be committed to prison and there detained until such day in like manner as if the offense charged had been committed within the state. [C., '51, § 3286; R., '60, § 4525; C., '73, § 4178; C., '97, § 5175.]

13506. Forfeiture of bail. A failure of such person to attend before the magistrate at the time and place mentioned in the undertaking is a forfeiture thereof. [C., '51, § 3287; R., '60, § 4526; C., '73, § 4179; C., '97, § 5176.]

13507. Discharge. If such person appear before the magistrate upon the day ordered, he must be discharged, unless he is demanded by some person authorized by the warrant of the governor to receive him, or unless the magistrate finds good cause to commit him, or to require him to enter into a new undertaking for his appearance at some other day to await a warrant from the governor. [C., '51, § 3288; R., '60, § 4527; C., '73, § 4180; C., '97, § 5177.]

13508. Arrest on warrant of governor. Whether the person so charged be bound to appear, be committed, or discharged, any person authorized by the warrant of the governor may at any time take him into custody, and the same is a discharge of the undertaking, if there be one, unless a forfeiture thereof has been previously entered of record. [C., '51, § 3829; R., '60, § 4528; C., '73, § 4181; C., '97, § 5178.]

13509. Liability of complainant—costs. The complainant in any such case is answerable for all the costs and charges, and for the support in prison of any person so committed; and the magistrate, before issuing his warrant or hearing the cause, must require the complainant to give security for the payment of

all such costs, or may require them in advance. [C., '51, § 3290; R., '60, § 4529; C., '73, § 4182; C., '97, § 5179.]

13510. Arrest without expense to state. Upon the application for the appointment of an agent for the arrest of a fugitive from justice under the provisions of this chapter, the governor may make the appointment and the issuance of the writ conditional that the same be executed without expense to the state. [C., '73, § 4183; C., '97, § 5180.]

13511. Expenses paid by state. When, in the opinion of the governor, expenses incurred in the arrest of fugitives from justice should be paid by the state, the claim therefor shall be itemized and sworn to, and approved by him and at least two other members of the exec-

utive council, and, when so approved, be audited and paid out of the general revenue of the state. [C., '73, § 4184; C., '97, § 5181.]

13512. Peace officers of foreign state. Any peace officer or extradition agent of another state bringing any person within this state or transporting such person through the state under a warrant of arrest or extradition warrant issued in another state, or the officer of any penal institution of another state conveying or transporting a prisoner of such institution into or through this state, shall have the same authority as to the custody and restraint of such person while in the state of Iowa, as duly constituted peace officers of this state have in making an arrest under process issued by the courts of this state. [40 G. A., ch. 218.]

CHAPTER 625

SECURITY TO KEEP THE PEACE

- 13513. Public offense threatened—complaint—arrest.
- 13514. Proceedings before magistrate.
- 13515. Change of venue—examination.
- 13516. Discharge ordered—costs.
- 13517. Defendant bound over—sureties.
- 13518. Committed to jail.
- 13519. Disposition of papers.

13513. Public offense threatened—complaint—arrest. When complaint is made before a magistrate that any person has threatened to commit any public offense punishable by law, and such magistrate is satisfied that there is reason to fear the commission thereof, he may issue a warrant for the arrest of the person complained of; and the officer to whom the same shall be delivered for service shall forthwith arrest and bring the accused before such magistrate, or, in case of his absence or inability to act, before the nearest and most accessible magistrate of the same county. When the name of the person complained of is unknown, he may be designated in the warrant by any name, and the warrant issued in pursuance hereof may be executed by any peace officer in any county of the state. [R., '60, §§ 4447-4454; C., '73, § 4115; C., '97, § 5105.]

13514. Proceedings before magistrate. When the person arrested is taken before a magistrate other than the one who issued the warrant, the peace officer who executed the same and who has charge of the person arrested must, at the same time, deliver to the magistrate before whom the person arrested is taken, the warrant, with his return indorsed and subscribed by him. The complaint and other affidavits, if any, on which the warrant was issued must be sent to the magistrate before whom the person arrested is taken, and, if they can not be procured, the complainant and his witnesses, if any, must be subpoenaed, if necessary, by the magistrate before whom the person arrested is taken, to appear before him

- 13520. Assault in presence of court or magistrate.
- 13521. Bond required on conviction.
- 13522. Appearance—time of—forfeiture.
- 13523. Hearing—judgment—costs.
- 13524. Breach of bond.
- 13525. Suit brought by county attorney.
- 13526. Record of conviction must be alleged—evidence.

and make a new complaint and affidavits. [R., '60, § 4455; C., '73, § 4116; C., '97, § 5106.]

13515. Change of venue—examination. When the person complained of is brought before the magistrate, if the charge be controverted, a change of venue may be had as in preliminary examinations, and at the hearing the magistrate must take the testimony in relation thereto, which must be reduced to writing and subscribed by the witnesses. [R., '60, § 4456; C., '73, § 4117; C., '97, § 5107.]

13516. Discharge ordered—costs. If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged, and the complainant may be ordered to pay the costs of the proceeding if the magistrate regards the complaint as unfounded and frivolous, and, unless when the proceeding is before a judge of the supreme, district, or superior court, may issue execution therefor; and when the proceeding is before a judge of the supreme, district, or superior court, he shall transmit the complaint, affidavits, warrant, and order to the clerk of the district court of the county, who shall file the same, make a memorandum thereof in the judgment docket, and issue execution therefor immediately. [R., '60, § 4457; C., '73, § 4118; C., '97, § 5108.]

13517. Defendant bound over—sureties. If there be just reason to fear the commission of the offense, the person complained of shall be required to enter into an undertaking, in such sum as the magistrate may direct, with

one or more sufficient sureties, to abide the order of the district court of the county at the next term thereof, and in the meantime to keep the peace towards the people of the state, and particularly towards the person against whom or whose property there is reason to fear the offense may be committed. [R., '60, § 4458; C., '73, § 4119; C., '97, § 5109.]

13518. Committed to jail. If the undertaking required by the preceding section be given, the party complained of must be discharged; if not, the magistrate must commit him to prison, specifying in the warrant the requirements to give security, the amount thereof, and the omission to give the same; if committed for not giving such undertaking, he may be discharged by a magistrate upon giving the required bonds. [R., '60, §§ 4459, 4460, 4464; C., '73, §§ 4120, 4121; C., '97, § 5110.]

13519. Disposition of papers. The undertaking, together with the complaints, affidavits, if any, and other papers in the proceeding, must be returned by the magistrate to the district court of the county by the first day of the next term thereof. [R., '60, § 4461; C., '73, § 4122; C., '97, § 5111.]

13520. Assault in presence of court or magistrate. Any person who, in the presence of a court or magistrate, shall assault or threaten to assault another, or to commit an offense against the person or property of another, or contends with another with angry words, may be ordered, without process, to enter into an undertaking to keep the peace for a period of time not extending beyond the next term of the district court of the county, as hereinbefore provided, and in case of his omission to comply with said order, he may be committed accordingly. [R., '60, § 4462; C., '73, § 4123, C., '97, § 5112.]

13521. Bond required on conviction. The district court, upon the conviction of any person for an offense against the person or property of another, when necessary for the public good, may require the defendant to enter into an undertaking to keep the peace, as hereinbefore provided, and, on his omission to do so, may commit him accordingly. [R., '60, § 4463; C., '73, § 4124; C., '97, § 5113.]

13522. Appearance—time of—forfeiture. A person who has entered into an undertaking to keep the peace, when required by a magistrate as hereinbefore provided, must appear on the first day of the next term of the district court of the county, and if the complainant appear and the person bound by the undertaking does not appear, the court may forfeit his undertaking and order the same to be prosecuted, unless his default be excused. [R., '60, § 4465; C., '73, § 4125; C., '97, § 5114.]

13523. Hearing — judgment — costs. If the principal in the undertaking appear, and the complainant does not appear, or if neither of the parties appear, the court shall enter an order discharging the undertaking; but if both parties appear, the court shall hear their proofs, and may require a new undertaking in such sum as it shall prescribe, for a period not exceeding one year, and may commit the defendant until the same be given. Judgment shall be entered against the party held to keep the peace for all the costs of the proceeding, but if it is made to appear to the court that the proceeding was instituted without probable cause, the court may render judgment against the complainant for such costs. [R., '60, § 4466; C., '73, § 4126; C., '97, § 5115.]

13524. Breach of bond. An undertaking to keep the peace is broken by the forfeiture of the same by order of the court, as hereinbefore provided, or upon the conviction of the party bound for a breach of the peace. [R., '60, § 4467; C., '73, § 4127; C., '97, § 5116.]

13525. Suit brought by county attorney. Upon the county attorney's producing evidence of such conviction to the district court to which the undertaking is returned, the court must order the enforcement of the undertaking, and the county attorney must thereupon commence an action upon it. [R., '60, § 4468; C., '73, § 4128; C., '97, § 5117.]

13526. Record of conviction must be alleged—evidence. In such action, the record of forfeiture or conviction must be alleged as the breach of the undertaking, and is conclusive evidence thereof. [R., '60, § 4469; C., '73, § 4129; C., '97, § 5118.]

CHAPTER 626

PRELIMINARY EXAMINATIONS

- 13527. Procedure—waiver.
- 13528. Change of venue—grounds.
- 13529. Procedure on change.
- 13530. Examinations—adjournments.
- 13531. Commitment or bail.
- 13532. Absence of jail.
- 13533. Witnesses.
- 13534. Depositions.
- 13535. Cross-interrogatories.
- 13536. Order for taking.
- 13537. Exclusion of deposition.
- 13538. Witnesses separated.
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- 13540. Minutes of examination.
- 13541. Taken in shorthand.
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- 13543. Discharge—indorsement on minutes.
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- 13545. Order as to bail.
- 13546. Warrant of commitment.
- 13547. Witnesses bound.
- 13548. Security for appearance.
- 13549. Minors and married women may be bound.
- 13550. Witness committed.
- 13551. Return to district court.
- 13552. Nonindictable offense—information.
- 13553. Lack of jurisdiction—trial transferred.
- 13554. Witnesses bound—papers transferred.
- 13555. Liability of informant—costs.
- 13556. Evidence taken in writing.

13527. Procedure — waiver. When the arrested person is brought before the magistrate, with or without a warrant, upon preliminary information, the magistrate must immediately inform him of the offense with which he is charged, and of his right to counsel in every stage of the proceedings, and must allow him a reasonable time to send for counsel, and, if necessary, adjourn for that purpose. After waiting a reasonable time for or on the appearance of counsel for defendant, the magistrate shall immediately proceed with the preliminary examination, or may allow the defendant to waive the same. [C., '51, §§ 2852-2854; R., '60, §§ 4575-4577; C., '73, §§ 4226-4228; C., '97, § 5216.]

13528. Change of venue—grounds. Before any evidence is heard, the defendant may have a change of venue, upon filing an affidavit that the magistrate is prejudiced against him, or is a material witness for either party, or that the defendant can not obtain justice before him, as affiant verily believes. [C., '73, § 4228; C., '97, § 5217.]

13529. Procedure on change. On filing such an affidavit a change of venue must be allowed, and the magistrate must immediately transmit all original papers, and a transcript of the entire record in the case, to the nearest magistrate in the township, if there be one; if not, to the nearest magistrate in the county, who shall proceed with said examination as herein-after provided; but one such change shall be allowed. [C., '51, § 2854; R., '60, § 4577; C., '73, § 4228; C., '97, § 5217.]

13530. Examinations — adjournments. The examination must be terminated at one session unless the magistrate, for good cause shown, adjourn it; but it shall not be adjourned for a longer period than thirty days. [C., '51, §§ 2855, 2856; R., '60, §§ 4578, 4579; C., '73, §§ 4229, 4230; C., '97, § 5218.]

13531. Commitment or bail. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination, or require him to give ample bail for his appearance at the time and place to which the examination is adjourned. [C., '51, § 2857; R., '60, § 4580; C., '73, § 4231; C., '97, § 5219.]

13532. Absence of jail. If there is no jail in the county, the sheriff must retain the defendant in his custody until the examination. [C., '51, § 2859; R., '60, § 4582; C., '73, § 4232; C., '97, § 5220.]

13533. Witnesses. The magistrate must issue subpoenas for any witnesses required by the state or defendant, and those who appear must be examined in the presence of the defendant. [C., '51, § 2860; R., '60, § 4583; C., '73, § 4233; C., '97, § 5221.]

13534. Depositions. The deposition of a witness who resides out of the county in which the examination is had may be taken on application of the defendant, on the order of the magistrate, before any officer authorized to take depositions in civil actions; which order shall not be made until three days after the filing with the magistrate of the written interrogatories to be propounded to the witness, nor until three days after the service of notice on the state, or on the attorney who appears for the state, of the filing of such interrogatories. [C., '73, § 4234; C., '97, § 5222.]

13535. Cross-interrogatories. Before the order to take deposition is made, the state may file cross-interrogatories to be propounded to the witness, which shall be answered by him in the deposition. [C., '73, § 4235; C., '97, § 5223.]

13536. Order for taking. At the expiration of three days from the filing of the interrogatories and the service of the notice thereof on the state as above provided, the magistrate

may order the testimony of the witness to be taken in answer to the interrogatories and cross-interrogatories, if any, on file. [C., '73, § 4236; C., '97, § 5224.]

13537. Exclusion of deposition. The deposition thus taken may be read in evidence on the examination; nor shall the same be excluded because of any irregularity in the taking of it, if the magistrate is satisfied that the irregularity complained of could work no substantial prejudice to the opposite party. [C., '73, § 4236; C., '97, § 5224.]

13538. Witnesses separated. While a witness is under examination before the magistrate he may exclude all others who have not been examined, and may cause the witnesses to be kept separate, that they may not converse with each other until the examination is closed. [C., '51, § 2867; R., '60, § 4591; C., '73, § 4239; C., '97, § 5225.]

13539. Private hearing. The magistrate must also, upon request of the defendant, exclude from hearing the examination all persons except the magistrate, his clerk, the peace officer who has the custody of the defendant, the attorney or attorneys representing the state, the defendant and his counsel. [R., '60, § 4592; C., '73, § 4240; C., '97, § 5226.]

13540. Minutes of examination. The magistrate shall, in the minutes of the examination, write out or cause to be written out the substance of the testimony given on the examination by each witness, the name, place of residence, business or profession of each witness, and the amount he is entitled to for mileage and attendance. [C., '51, § 2868; R., '60, § 4593; C., '73, § 4241; C., '97, § 5227.]

13541. Taken in shorthand. By agreement of parties or their attorneys, the magistrate may order the examination taken down in shorthand and certified substantially in the manner provided for taking depositions by a stenographer, but the cost thereof shall not be taxed against the county. [C., '97, § 5227.]

13542. Certification of proceedings. After the examination is closed, the magistrate must attach together the complaint, the warrant or order of commitment, if any, under which the defendant was brought before him, the minutes of the examination, including all depositions used, and annex thereto his certificate, which must set forth, in substance, the time and place of examination, and that the minutes thereof are true, which certificate must be officially signed by the magistrate. [C., '51, §§ 2869, 2870; R., '60, § 4594; C., '73, § 4242; C., '97, § 5228.]

13543. Discharge—indorsement on minutes. If after hearing the testimony it appears to the magistrate that a public offense has not been committed, or that there is no sufficient reason for believing the defendant guilty thereof, he must order him discharged, and such order must be indorsed on the minutes of the exami-

nation, or annexed thereto and signed by the magistrate, to the following effect: "There being no sufficient cause for believing the defendant guilty of the offense herein mentioned, I order him to be discharged". [C., '51, § 2871; R., '60, § 4595; C., '73, § 4243; C., '97, § 5229.]

13544. Commitment—indorsement on minutes. If it appears from the examination that a public offense, triable on indictment, has been committed, and there is sufficient reason for believing the defendant guilty thereof, the magistrate shall in like manner indorse on or annex to the minutes of the examination an order signed by him to the following effect: "It appearing to me by the within minutes that an offense, triable on indictment (stating generally the nature thereof), has been committed, and that there is sufficient cause for believing the defendant guilty thereof, I order that he be held to answer the same". [C., '51, § 2872; R., '60, § 4596; C., '73, § 4244; C., '97, § 5230.]

13545. Order as to bail. The order shall either state, "and I have admitted him to bail to answer thereto by the bail bond hereto annexed"; or, if bail is not given, "and that he be committed to the county jail until he give bail in the sum of..... dollars (naming it)"; but if the offense is not bailable, the order of commitment shall state, "without bail". [C., '51, §§ 2873, 2874; R., '60, §§ 4598, 4599; C., '73, §§ 4245, 4246; C., '97, § 5230.]

13546. Warrant of commitment. If the magistrate order the defendant to be committed, he shall make out a warrant of commitment, officially signed, and deliver it, with the defendant, to the officer to whom he is committed; or, if the officer be not present, to a peace officer, who shall deliver the defendant into the proper custody, together with the warrant of commitment, which may be in the following form:

The State of Iowa,
To the Sheriff of..... County:
An order having been this day made by me that A..... B..... (the name of the defendant) be held to answer upon a charge of (state the offense), you are commanded to receive him into your custody and detain him in the jail of the county until he be legally discharged.

Dated at.... this.... day of...., A. D.
G..... H..... (with official title).
[C., '51, § 2875; R., '60, § 4600; C., '73, § 4247; C., '97, § 5231.]

13547. Witnesses bound. On holding the defendant to answer, the magistrate may take from each material witness examined by him on the part of the state a written undertaking, to the effect that he will appear and testify at the court to which the defendant is bound to answer, when required in the further progress of the cause, and that he will not evade or attempt to evade the service of a subpoena, or will forfeit the sum of one hundred dollars.

[C., '51, § 2876; R., '60, § 4601; C., '73, § 4248; C., '97, § 5232.]

13548. Security for appearance. When the magistrate is satisfied by oath or otherwise that there is reason to believe any witness will not fulfill his undertaking and appear and testify unless surety be required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper for his appearance. [C., '51, § 2877; R., '60, § 4602; C., '73, § 4249; C., '97, § 5233.]

13549. Minors and married women may be bound. Minors and married women who are material witnesses against the defendant may in like manner be required to procure sureties for their appearance as provided in the preceding section. [C., '51, § 2878; R., '60, § 4603; C., '73, § 4250; C., '97, § 5234.]

13550. Witness committed. If a witness required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for the purpose, the magistrate must commit him until he comply or be legally discharged. [C., '51, § 2879; R., '60, § 4604; C., '73, § 4251; C., '97, § 5235.]

13551. Return to district court. When a magistrate has discharged a defendant, or held him to answer an indictment, he must return to the district court of the county, on or before its opening, on the first day of the next term thereof, and as soon after the closing of the examination as practicable, all the papers filed in the proceeding, including therewith the minutes of the evidence, together with the undertaking of bail for the appearance of the defendant, and the undertakings of the witnesses or for them, taken by him. [C., '51, § 2880; R., '60, § 4605; C., '73, § 4252; C., '97, § 5236.]

13552. Nonindictable offense—information. If it appear from the examination that a public offense has been committed which is not triable on indictment, but on information only, and there is sufficient reason for believing the defendant guilty thereof, the magistrate shall retain all the papers, and forthwith order an information to be filed against the defendant, before him. [R., '60, § 4607; C., '73, § 4253; C., '97, § 5237.]

13553. Lack of jurisdiction—trial transferred. If he have not jurisdiction to try and

determine the same, he shall indorse on or annex to the minutes of the examination an order, signed by him, to the following effect: "It appearing to me by the within minutes that the offense of (here state its name or nature generally) has been committed and that there is sufficient reason for believing the defendant guilty thereof, I order that an information be filed against him therefor before (here name some magistrate who is the nearest and most accessible in the same county, giving the name of office), and that the defendant be committed to any peace officer to be taken before such magistrate". [R., '60, § 4607; C., '73, § 4253; C., '97, § 5237.]

13554. Witnesses bound—papers transferred. The magistrate shall thereupon cause each material witness on the part of the state to enter into a written undertaking, to the effect that he will appear forthwith before the magistrate before whom the defendant is to be taken, or he will forfeit the sum of fifty dollars, and deliver the undertaking, with all the other papers, to a peace officer, who shall forthwith take the defendant before such magistrate, and deliver all the papers with the undertakings of the witnesses to the magistrate directed in the order, and make his return thereto, and sign the same with his name of office, and the magistrate before whom he is taken shall thereupon proceed accordingly. [R., '60, § 4607; C., '73, § 4253; C., '97, § 5237.]

13555. Liability of informant—costs. When the defendant is discharged, the justice shall, if he is satisfied that the prosecution is malicious or without probable cause; or if the person commencing the prosecution by filing the information fail to appear by himself, agent, or attorney to prosecute the same or give evidence, and the accused is discharged by reason thereof, the magistrate in his discretion may tax the costs and render a judgment therefor against such person, subject to the right of appeal therefrom in the manner provided for appeals by prosecuting witnesses in cases of acquittal upon trial. [C., '73, § 4254; C., '97, § 5238.]

13556. Evidence taken in writing. On the demand of the county attorney, the magistrate shall take the evidence in writing of the state's witnesses, notwithstanding he has permitted the defendant to waive the preliminary examination. [C., '97, § 5239.]

CHAPTER 627

TRIAL OF NONINDICTABLE OFFENSES

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13557. Jurisdiction. Justices of the peace have jurisdiction of, and must hear, try, and determine all public offenses, less than felony, committed within their respective counties, in which the punishment prescribed by law does not exceed a fine of one hundred dollars or imprisonment thirty days. [C., '51, § 3322; R., '60, § 5055; C., '73, § 4660; C., '97, § 5575.]

13558. Information. Criminal actions for the commission of a public offense must be commenced before a justice of the peace by an information, subscribed and sworn to, and filed with the justice. [C., '51, § 3323; R., '60, § 5056; C., '73, § 4661; C., '97, § 5576.]

13559. Contents of information. Such information must contain:

1. The name of the county and of the justice where the information is filed.
2. The names of the parties, if the defendants be known, and if not, then such names as may be given them by the complainant.
3. A statement of the acts constituting the offense, in ordinary and concise language, and the time and place of the commission of the offense, as near as may be. [C., '51, § 3324; R., '60, § 5057; C., '73, § 4662; C., '97, § 5577.]

13560. Form of information. The information may be substantially in the following form:

.....County:
 The State of Iowa }
 against } Before justice....
 A... B..., defendant. } (here insert the
 name of the justice).

The defendant is accused of the crime (here name the offense).

For that the defendant, on the day of, A. D., at the (here name the city, town, or township), in the county aforesaid (here state the act or omission constituting the offense as in an indictment). [C., '51, § 3325; R., '60, § 5058; C., '73, § 4663; C., '97, § 5578.]

13561. Filing of information. The justice must file such information and mark thereon the time of filing the same. [C., '51, § 3326; R., '60, § 5059; C., '73, § 4664; C., '97, § 5579.]

13562. Warrant of arrest. Immediately upon the filing of such information, the justice may, in his discretion, issue a warrant for the arrest of the defendant, directed in the same manner as a warrant of arrest upon a preliminary information, which may be served in like manner. [C., '51, § 3327; R., '60, § 5060; C., '73, § 4665; C., '97, § 5580.]

13563. Service of warrant. The officer who receives the warrant must serve the same by arresting the defendant, if in his power, and bringing him without unnecessary delay before the justice who issued the same. [C., '51, § 3328; R., '60, § 5061; C., '73, § 4666; C., '97, § 5581.]

13564. Service against corporation. If defendant is a corporation, it may be proceeded against upon notice as in case of indictment. [C., '97, § 5581.]

13565. Appearance of defendant. When the defendant is brought before the justice, the charge against him must be distinctly read to him, and he shall be asked whether he is presented by his right name, and be required to plead. [C., '51, § 3329; R., '60, § 5062; C., '73, § 4667; C., '97, § 5582.]

13566. Wrong name—waiver. If he objects that he is wrongly named in the information, he must give his right name, and if he refuses to do so, or does not object that he is wrongly named, the justice shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection. [C., '51, § 3329; R., '60, § 5062; C., '73, § 4667; C., '97, § 5582.]

13567. Pleadings of defendant. The defendant may plead the same as upon an indictment, orally or in writing, and such pleas shall be entered on the docket of the justice. [C., '51, § 3330; R., '60, § 5063; C., '73, § 4668; C., '97, § 5583.]

13568. Trial. Upon a plea other than that of guilty, if the defendant does not demand a trial by jury, the justice must proceed to try the issue, unless a change of venue be applied for by the defendant. [C., '51, § 3331; R., '60, § 5064; C., '73, § 4669; C., '97, § 5584.]

13569. Change of venue—grounds. Before any testimony is heard, a change of place of trial may be applied for by an affidavit filed, stating that the justice is prejudiced against the defendant, or is of near relation to the prosecutor upon the charge or the party injured or interested, or is a material witness for either party, or that the defendant can not obtain justice before him, as the affiant verily believes. [R., '60, § 5065; C., '73, § 4670; C., '97, § 5585.]

13570. Change allowed—transmission of papers. If such affidavit be filed, the change of place of trial must be allowed, and the justice must immediately transmit all the original papers, and a transcript of all his docket entries in the case, to the next nearest justice in the township, unless said justice be a party to the action, or is related to either party by consanguinity, or affinity within the fourth degree, or where he has been attorney for either party in the action or proceeding; and in such case the justice before whom such action or proceeding is commenced shall transmit all the original papers, together with a transcript of all his docket entries, to the next nearest justice in the county against whom none of the above objections exist, who shall proceed with the case as provided in this chapter, but no more than one change of place of trial in the same case shall be allowed. [R., '60, § 5066; C., '73, § 4671; C., '97, § 5586.]

13571. Jury trial. Before the justice has heard any testimony upon the trial, the defendant may demand a jury. [C., '51, § 3332; R., '60, § 5067; C., '73, § 4672; C., '97, § 5587.]

13572. Jury—how obtained. If a trial by jury is demanded, the justice shall direct any peace officer of the county to make out a list of eighteen inhabitants of the county having the qualifications of jurors in the district court, from which list the prosecutor and defendant may each strike out three names. [C., '51, § 3333; R., '60, § 5068; C., '73, § 4673; C., '97, § 5588.]

13573. Striking names—issue of venire. In case the prosecutor or the defendant neglect or refuse to strike out such names, the justice shall direct some disinterested person to strike them out for either of the parties so neglecting or refusing, and, it being done, he must issue a venire, directed to any peace officer of the county, requiring him to summon the twelve persons whose names remain upon the list to appear before him at the time and place named therein, to make a jury for the trial of the cause. [C., '51, § 3334; R., '60, § 5069; C., '73, § 4674; C., '97, § 5589.]

13574. Jurors summoned. The officer to whom such venire is delivered must forthwith summon such jurors, and return the venire to the justice within the time therein specified, naming the persons summoned and the manner of service. [C., '51, § 3335; R., '60, § 5070; C., '73, § 4675; C., '97, § 5590.]

13575. Failure to return—new venire. If the officer by whom the venire is received does not return it as required, he may be punished by the justice as for contempt, and a new venire shall issue for the summoning of the same jurors, which shall be served as above provided. [C., '51, § 3340; R., '60, § 5075; C., '73, § 4680; C., '97, § 5591.]

13576. Names of jurors for drawings. The names of the persons returned as jurors shall be written on separate ballots, folded each in the same manner as nearly as possible, and so that the name is not visible, and shall, under the direction of the justice, be deposited in a box or other convenient thing. [C., '51, § 3336; R., '60, § 5071; C., '73, § 4676; C., '97, § 5592.]

13577. Drawing jurors. The justice must then draw out six of the ballots successively, and if any of the persons whose names are drawn do not appear, or are challenged, or are set aside, such further number must be drawn as will make a jury of six, after all challenges have been allowed. [C., '51, § 3337; R., '60, § 5072; C., '73, § 4677; C., '97, § 5593.]

13578. Challenges. The same challenges may be taken by either party to any individual juror as on the trial of an indictment for a misdemeanor, but no challenge to the panel is allowed. [C., '51, § 3338; R., '60, § 5073; C., '73, § 4678; C., '97, § 5594.]

13579. Bystanders summoned. If any of the jurors named in the venire can not be found, or do not attend, or are challenged by either party, so that a sufficient number can not be obtained, the justice may direct the officer to summon any bystander or others who may be

competent, and against whom no sufficient cause of challenge appears, to act as jurors. [C., '51, § 3339; R., '60, § 5074; C., '73, § 4679; C., '97, § 5595.]

13580. Jury of six. When six jurors appear and are accepted, they shall constitute the jury. [C., '51, § 3341; R., '60, § 5076; C., '73, § 4681; C., '97, § 5596.]

13581. Oath of jurors. The justice must thereupon administer to them the following oath or affirmation: "You do swear (or, you do solemnly affirm, as the case may be) that you will well and truly try the issue between the state of Iowa and the defendant, and a true verdict give according to the law and evidence". [C., '51, § 3342; R., '60, § 5077; C., '73, § 4682; C., '97, § 5597.]

13582. Proceedings before jury. After the jurors are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public. After which, they may either decide in court or retire for consideration. [C., '51, § 3343; R., '60, § 5078; C., '73, § 4683; C., '97, § 5598.]

13583. Retirement for consideration—oath. If they do not immediately agree, they must retire with the officer, who shall take the following oath: "You do swear that you will keep the jury together in some private and convenient place, without food or drink, water excepted, unless otherwise ordered by the court; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them if they have agreed upon a verdict, and that you will return them into court when they have so agreed". [C., '51, § 3344; R., '60, § 5079; C., '73, § 4684; C., '97, § 5599.]

13584. Verdict. When the jury have agreed upon a verdict, they must deliver it publicly to the justice, who shall enter it on his docket. [C., '51, § 3345; R., '60, § 5080; C., '73, § 4685; C., '97, § 5600.]

13585. Jury kept together. The jury must be kept together after the cause is submitted to them until they have agreed upon and rendered a verdict, unless, for good cause, the justice sooner discharge them. [C., '51, § 3346; R., '60, § 5081; C., '73, § 4686; C., '97, § 5601.]

13586. Jury discharged. If the jury is discharged as provided in the preceding section, the justice may proceed again to the trial in the same manner as upon the first, and so on till a verdict is rendered. [C., '51, § 3347; R., '60, § 5082; C., '73, § 4687; C., '97, § 5602.]

13587. Judgment—rules. When the defendant pleads guilty or is convicted, either by the justice or by a jury, the justice shall render judgment thereon of fine or imprisonment, as the case may require, being governed by the rules prescribed for the district court, as far as the same are applicable, in rendering such judgment. [C., '51, § 3348; R., '60, § 5083; C., '73, § 4688; C., '97, § 5603.]

13588. Imprisonment for nonpayment of fine. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied. [C., '51, § 3349; R., '60, § 5084; C., '73, § 4689; C., '97, § 5604.]

13589. Defendant discharged. When the defendant is acquitted, either by the justice or by a jury, he must be immediately discharged. [C., '51, § 3350; R., '60, § 5085; C., '73, § 4690; C., '97, § 5605.]

13590. Costs taxed to prosecutor. If the prosecuting witness fails to appear by himself, agent, or attorney to prosecute or give evidence on the trial, and defendant is discharged on account of such nonappearance, the justice may, in his discretion, tax the costs of the proceeding against such prosecuting witness and render judgment therefor; and if defendant is acquitted, the justice shall, if satisfied that the prosecution is malicious or without probable cause, so tax the costs and render judgment therefor. [R., '60, § 5086; C., '73, § 4691; C., '97, § 5606.]

13591. Appeal. In either case the prosecuting witness may appeal from such judgment to the district court, by giving notice thereof as provided in this chapter with reference to appeals by defendant, and the fact of the giving of such notice shall be entered by the justice on his record. [C., '73, § 4691; C., '97, § 5606.]

13592. Transcript of record. If notice of an appeal is given, the justice shall, without delay, make out, sign, and file in the office of the clerk of the district court a full and true statement of all the testimony admitted on the trial, and on which he bases his finding that the prosecution was malicious or without probable cause, and a transcript of his docket entries, and all other papers on file in the case, and such appeal shall stand for hearing in said court at the term thereof commencing next after said papers are filed. [C., '73, § 4691; C., '97, § 5606.]

13593. Correction of record. The court shall have full power to compel the correction by said justice of any error made apparent in his transcript, statement of testimony, or in any papers returned by him, or may make the necessary correction itself, and, on the papers, may affirm or reverse the judgment of the justice, or render such judgment as he should have done. [C., '73, § 4691; C., '97, § 5606.]

13594. Certificate of conviction. When a conviction is had upon a plea of guilty, or upon trial, the justice must make and officially sign a certificate thereof, in which it shall be sufficient briefly to state the offense charged, the conviction and judgment thereon, and, if any fine has been collected, the amount thereof. [C., '51, § 3351; R., '60, § 5087; C., '73, § 4692; C., '97, § 5607.]

13595. Judgment—how executed. The judgment shall be executed by a peace officer of

the county where the conviction is had, by virtue of a warrant under the hand of the justice, specifying the particulars of such judgment. [C., '51, § 3354; R., '60, § 5090; C., '73, § 4693; C., '97, § 5608.]

13596. Fine—payment to justice. If a fine is imposed, and paid before commitment, it shall be received by the justice and paid over to the county treasurer within thirty days after the receipt thereof. [C., '51, § 3355; R., '60, § 5091; C., '73, § 4694; C., '97, § 5609.]

13597. Payment to sheriff. If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county, but to no other person, who must in like manner, within thirty days after the receipt thereof, pay it into the county treasury. [C., '51, § 3356; R., '60, § 5092; C., '73, § 4695; C., '97, § 5610.]

13598. Receipt for fine. If the fine, or any part thereof, is paid to the justice or sheriff, he must execute duplicate receipts therefor, one of which he must file without delay with the county auditor. [C., '51, § 3357; R., '60, § 5093; C., '73, § 4696; C., '97, § 5611.]

13599. Appeal—how taken. The justice rendering a judgment against the defendant must inform him of his right to an appeal therefrom, and make an entry on the docket of the giving of such information, and the defendant may thereupon take an appeal, by giving notice orally to the justice that he appeals, or by delivering to the justice, not later than twenty days thereafter, a written notice of his appeal, and in either case the justice must make an entry on his docket of the giving of such notice. [C., '51, § 3358; R., '60, § 5095; C., '73, § 4697; C., '97, § 5612.]

13600. Bail on appeal—form of bond. The justice must thereupon enter an order on his docket, fixing the amount in which bail may be given by the defendant, and the execution of the judgment against the defendant shall not be stayed unless bail in that amount be put in, by an undertaking substantially in the following form:

County of:
A..... B..... having been convicted before C..... D....., a justice of the peace of said county, of the crime of (here designate it generally as in the information), by a judgment rendered on the day of, A. D., and having appealed from said judgment to the district court of said county:
We, A..... B....., and E..... F....., hereby undertake that the said A..... B..... will appear in the district court of said county, at the term thereof to which the appeal is returnable, and submit to the judgment of said court, and not depart without leave of the same, or that we (or I, as the case may be) will pay to the state of Iowa the sum of dollars (the amount of bail fixed).

A..... B.....
E..... F.....

Accepted by me, at....., in the township of, this.... day of....., A. D.

C..... D.....

Justice of the peace.

[C., '51, § 3359; R., '60, § 5096; C., '73, § 4698; C., '97, § 5613.]

13601. Qualification of surety. The bail must possess the qualifications, justify, and be taken in the manner prescribed in chapter 628, and the same proceedings had in all respects, as far as applicable, except as in this chapter otherwise provided. [R., '60, § 5097; C., '73, § 4699; C., '97, § 5614.]

13602. Officers authorized to take bail. Bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit to bail, or by the district court or the clerk thereof. [R., '60, § 5098; C., '73, § 4700; C., '97, § 5615.]

13603. Witnesses bound over. When an appeal is taken, the justice must cause all material witnesses to enter into an undertaking, as in a case where a defendant is held to answer on a preliminary examination, to appear and testify on the trial of the appeal in the district court, at the term at which it is returnable, and shall, as soon as practicable, and at least ten days before the first day of such term of the district court of the county, file in the office of the clerk thereof a certified copy of the entries on his docket, together with all the undertakings and papers in the case. [C., '51, § 3360; R., '60, § 5099; C., '73, § 4701; C., '97, § 5616.]

13604. Trial on appeal—procedure. The cause shall stand for trial anew in the district court in the same manner that it should have been tried before the justice, and as nearly as practicable as an issue of fact upon an indictment, without regard to technical errors or defects which have not prejudiced the substantial rights of either party; and the court has full power over the case, the justice of the peace, his docket entries, and his return, to administer the justice of the case according to the law, and shall give judgment accordingly. [C., '51, §§ 3661-3664; R., '60, § 5100; C., '73, § 4702; C., '97, § 5617.]

13605. Dismissal of appeals prohibited. No appeal from the judgment of a justice of the peace in a criminal case shall be dismissed. [R., '60, § 5101; C., '73, § 4703; C., '97, § 5618.]

13606. Judgment—enforcement. If any proceedings are necessary to carry the judgment upon the appeal into effect, they shall be had in the district court. [R., '60, § 5102; C., '73, § 4704; C., '97, § 5619.]

13607. Appeal to supreme court—procedure. Either party may appeal from the judgment of the district court to the supreme court in the same manner as from a judgment in a prosecution by indictment, and the defendant may be admitted to bail in like manner, and similar proceedings shall be had on the appeal in all

respects, as far as applicable. [C., '51, § 3366; R., '60, § 5103; C., '73, § 4705; C., '97, § 5620.]

13608. Judgment upon appeal—execution. The same proceedings shall be had to carry

into effect the judgment of the supreme court upon the appeal as if it had been taken from a judgment prosecuted by indictment. [C., '51, § 3367; R., '60, § 5104; C., '73, § 4706; C., '97, § 5621.]

CHAPTER 628

BAIL

- 13609. Bailable offenses.
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- 13621. Examination as to sufficiency.
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- 13623. Discharge of defendant.
- 13624. Disallowance.

13609. Bailable offenses. All defendants are bailable both before and after conviction, by sufficient surety, except for offenses punishable with death under the laws of the state when the proof is evident or the presumption great. [C., '51, § 2565; R., '60, § 4188; C., '73, § 4107; C., '97, § 5096; S., '13, § 5096.]

and judgment of said court, and not depart without leave of the same, or, if he fail to perform either of these conditions, that we will pay to the state of Iowa the sum of dollars (inserting the sum in which the defendant is admitted to bail).

13610. Nonbailable offenses. No defendant convicted of murder in the first degree, or of the crime of treason shall be admitted to bail. [C., '51, § 2565; R., '60, § 4188; C., '73, § 3845; C., '97, § 5096; S., '13, § 5096.]

E..... F.....
G..... H.....

Accepted by me as, in the township of, in the county of, this ... day of, A. D.

13611. Bail on commitment to answer. When a defendant has been held to answer for any bailable offense, sufficient bail must be taken by the magistrate who held him to answer, by any judge of the supreme, or district court, or by the court to which the papers on the preliminary examination are to be returned by the magistrate who held him to answer, or by the clerk thereof, or by any magistrate of the county in which the offense is triable. [C., '51, §§ 3216-3218; R., '60, § 4967; C., '73, § 4573; C., '97, § 5500.]

I..... J.....(with official title).
[C., '51, § 3219; R., '60, § 4968; C., '73, § 4574; C., '97, § 5501.]

13612. Form of bail bond. Bail is put in by a written undertaking, executed by one or more sufficient securities (with or without the defendant, in the discretion of the court, clerk, or magistrate), accepted by the court, clerk, or magistrate taking the same, and may be substantially in the following form:

13613. Indictment for misdemeanor. When the offense charged in an indictment is a misdemeanor, the officer serving the warrant, if bail is authorized, must take the defendant before a magistrate in the county in which it was issued, or in which he is arrested, or before the clerk of the district court of either of such counties, for the purpose of giving bail. [C., '51, § 3227; R., '60, § 4976; C., '73, § 4582; C., '97, § 5502.]

County of

13614. Felony. If the offense charged in the indictment be a felony, the officer arresting the defendant must deliver him into custody according to the command of the warrant. [C., '51, § 3228; R., '60, § 4977; C., '73, § 4583; C., '97, § 5503.]

An order having been made on the day of, A. D., by A..... B....., a justice of the peace (or other magistrate), of the township of, (or as the case may be) that C..... D..... be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been duly admitted to bail, in the sum of dollars.

13615. Officers required to take bail. When the defendant is so delivered into custody, if the felony charged be bailable, bail must be taken by that court, or its clerk, or by any magistrate in the same county. [C., '51, § 3229; R., '60, § 4978; C., '73, § 4584; C., '97, § 5504.]

We, E..... F..... and G..... H....., hereby undertake that the said C..... D....., shall appear at the district court of the county of, at the next term thereof, and answer said charge, and submit to the orders

13616. Form of bail bond. The bail must be put in by a written undertaking, executed by one sufficient surety, with or without the defendant, in the discretion of the court, clerk, or magistrate, acknowledged before and accepted by the court, clerk, or magistrate taking the same, and may be substantially in the following form:

County of
An indictment having been found in the district court of the county of, on

the day of, A. D., charging A..... B..... with the crime of (designating it as in the warrant), and he having been duly admitted to bail in the sum of dollars:

We, A..... B..... and C..... D....., hereby undertake that the said A..... B..... shall appear and answer the said indictment, and submit to the orders and judgment of said court, and not depart without leave of the same, or, if he fail to perform either of these conditions, that he will pay to the state of Iowa the sum ofdollars (inserting the sum in which the defendant is admitted to bail).

A..... B.....
C..... D.....
E..... F.....

Acknowledged before and accepted by me, at, in the township of, in the county of, this day of, A. D.

G..... H..... (with official title).
[R., '60, § 4979; C., '73, § 4585; C., '97, § 5505.]

13617. Bail on appeal—conditions. After conviction, upon an appeal to the supreme court, the defendant must be admitted to bail, if it be from a judgment imposing a fine, upon the undertaking of bail that he will, in all respects, abide the orders and the judgment of the supreme court upon the appeal; if from a judgment of imprisonment, upon the undertaking of bail that the defendant will surrender himself in execution of the judgment and direction of the supreme court, and in all respects abide the orders and judgment of the supreme court upon the appeal. [R., '60, § 4966; C., '73, § 4587; C., '97, § 5506.]

13618. By whom taken. The bail may be taken, either by the court where the judgment was rendered, or the district court of the county in which he is imprisoned, or by the supreme court, or a judge or clerk of any of such courts. [R., '60, § 4981; C., '73, § 4587; C., '97, § 5506.]

13619. Qualifications of surety. The surety must be a resident and householder or freeholder within the state, worth the amount specified in the undertaking, exclusive of property exempt from execution. In taking bail each signer may justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to one sufficient bail. [C., '51, § 3220; R., '60, § 4969; C., '73, § 4575; C., '97, § 5507.]

13620. Affidavit by surety. The surety must in all cases justify by affidavit taken before an officer authorized to administer oaths, and the affidavit must state that each possesses the qualifications prescribed in the preceding section. [C., '51, § 3221; R., '60, § 4970; C., '73, § 4576; C., '97, § 5508.]

13621. Examination as to sufficiency. The court in which the action is pending, or the clerk thereof, or the county attorney, or magistrate may require the personal appearance of sureties offered, and may thereupon further examine them upon oath concerning their sufficiency, and may also receive other evidence for or against the sufficiency of the bail. [C., '51, §§ 3222, 3223; R., '60, §§ 4971, 4972; C., '73, §§ 4577, 4578; C., '97, § 5509.]

13622. Order of allowance. When the examination is closed the court, clerk, or magistrate must make an order, either allowing or disallowing the bail, and forthwith cause the same, with the affidavits of justification and the undertaking of bail, to be filed with the clerk of the court to which the papers on the preliminary examination are required to be sent. [C., '51, § 3224; R., '60, § 4973; C., '73, § 4579; C., '97, § 5510.]

13623. Discharge of defendant. Upon the allowance of bail and the execution of the undertaking, the court, clerk, or magistrate must make an order, signed officially, for the discharge of the defendant, to the following effect:

The State of Iowa,
To the sheriff of the county of

C..... D....., who is detained by you on commitment (or indictment or conviction, as the case may be) for the offense of (here designate it generally), having given sufficient bail to answer the same, you are commanded forthwith to discharge him from custody.

Dated at, in the township (town or city) of, in the county of, this day of, A. D.

K..... L..... (with official title).
[C., '51, § 3225; R., '60, § 4974; C., '73, § 4580; C., '97, § 5511.]

13624. Disallowance. If the bail be disallowed, the defendant must be detained in custody until other bail is put in and justified. [C., '51, § 3226; R., '60, § 4975; C., '73, § 4581; C., '97, § 5512.]

CHAPTER 629

UNDERTAKINGS OF BAIL AS LIENS

13625. When lien on real estate.

13625. When lien on real estate. Undertakings of bail, immediately after filing by the clerk of the district court, shall be docketed and entered upon the lien index as required for judgments in civil cases, and, from the time of such entries, shall be liens upon real estate of the persons executing the same, with like effect as judgments in civil actions. [R., '60, §§ 5000, 5001; C., '73, §§ 4606, 4607; C., '97, § 5513.]

13626. Attested copies filed in proper counties.

13626. Attested copies filed in proper counties. Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated, in the same manner and with like effect as attested copies of judgments, and shall be immediately docketed and indexed in the same manner. [R., '60, § 5002; C., '73, § 4608; C., '97, § 5514.]

CHAPTER 630

CASH BAIL

13627. Deposit in lieu of bail.

13628. Cash substituted for bail.

13627. Deposit in lieu of bail. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the clerk of the district court to which the undertaking is required to be sent, the sum mentioned in the order, and, upon delivering to the officer in whose custody he is, a certificate under seal from said clerk of the deposit, he must be discharged from custody. [C., '51, § 3232; R., '60, § 4983; C., '73, § 4589; C., '97, § 5524.]

13628. Cash substituted for bail. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the undertaking, and, upon the deposit being made, the bail shall be exonerated. [C., '51, § 3233; R., '60, § 4984; C., '73, § 4590; C., '97, § 5525.]

13629. Bail substituted for cash. If money is deposited as provided in the preceding section, bail may be given in the same manner as

13629. Bail substituted for cash.

13630. Disposition of deposited money.

if it had been originally given, upon the order for admission to bail at any time before the forfeiture of the deposit. The court or magistrate before whom the bail is taken shall thereupon direct, in the order of allowance, that the money deposited be refunded by the clerk to the defendant, and it shall be done. [C., '51, § 3234; R., '60, § 4985; C., '73, § 4591; C., '97, § 5526.]

13630. Disposition of deposited money.

When money has been deposited by the defendant, if it remain on deposit at the time of a judgment against him, the clerk, under the direction of the court, shall apply the money in satisfaction of so much of the judgment as requires the payment of money, and shall refund the surplus, if any, to him, unless an appeal be taken to the supreme court, and bail put in, in which case the deposit shall be returned to the defendant. [C., '51, § 3235; R., '60, § 4986; C., '73, § 4592; C., '97, § 5527.]

CHAPTER 631

FORFEITURE OF BAIL

- 13631. Entry.
- 13632. Notice to show cause.
- 13633. Judgment.

- 13634. Forfeiture in justice of the peace court.
- 13635. Clerk to retain funds.
- 13636. Judgment set aside.

13631. Entry. If the defendant fails to appear for arraignment, trial, or judgment, or at any other time when his personal appearance in court is lawfully required, or to surrender himself in execution of the judgment, the court must at once direct an entry of such failure to be made of record, and the undertaking of his bail, or the money deposited instead of bail, is thereupon forfeited. [R., '60, § 4990; C., '73, § 4596; C., '97, § 5515; 40 G. A., ch. 219, § 1.]

13632. Notice to show cause. As a part of the entry of forfeiture as herein provided, the court shall direct the sheriff of the county to give ten days' notice in writing, or otherwise, as directed by the court, to the defendant and his sureties to appear and show cause, if any, why judgment should not be entered for the amount of such bail, or money deposited instead of bail. [40 G. A., ch. 219, § 2.]

13633. Judgment. If the defendant and his sureties fail to appear, judgment shall be entered by the court. If such defendant and his sureties shall appear at the time fixed and offer objections to the entering of such judgment, the court shall set the case down for immediate hearing as an ordinary action; in such hearing the state shall be plaintiff and the defendant and his sureties defendants. The judgment entered by the court either on default or upon trial shall have the same force and effect as any other judgment of such court. [R., '60, §§ 4991-4994; C., '73, §§ 4597-4600; C., '97, §§ 5516, 5517; 40 G. A., ch. 219, § 2.]

13634. Forfeiture in justice of the peace court. Where forfeiture is entered before a justice of the peace, or a court of limited jurisdiction, or before an examining magistrate,

such court or officer, upon the forfeiture of the undertaking, shall within ten days file the same, with a copy of all official entries in relation thereto, in the office of the clerk of the district court of the county; and thereupon it shall be the duty of the clerk of the district court to direct the sheriff to give notice as herein prescribed for appearance before the district court at the date fixed in such notice, and the district court shall then proceed in the same manner as though such forfeiture had occurred in such court. [C., '73, § 4599; C., '97, § 5518; S., '13, § 5518; 40 G. A., ch. 219, § 3.]

13635. Clerk to retain funds. Where a forfeiture and judgment have been entered as herein provided and the amount of the judgment has been paid to the clerk, he shall hold the same as funds of his office for a period of sixty days from the date of judgment. [40 G. A., ch. 219, § 4.]

13636. Judgment set aside. Such judgment shall never be set aside unless, within sixty days from the date thereof, the defendant shall voluntarily surrender himself to the sheriff of the county, or his bondsmen shall, at their own expense, deliver him to the custody of the sheriff within said time, whereupon the court may, upon application, set aside the judgment and in such event the original appearance bond shall stand and the court may order refund of the amount of the judgment paid in to the office of the clerk of the court. Such judgment, however, shall not be set aside unless as a condition precedent thereto the defendant and his sureties shall have paid all costs incurred in connection therewith. [R., '60, § 4994; C., '73, § 4600; C., '97, § 5519; 40 G. A., ch. 219, § 4.]

CHAPTER 632

RECOMMITMENT AFTER BAIL

- 13637. Grounds for recommitment.
- 13638. Contents of order of recommitment.

- 13639. Arrest of defendant.
- 13640. Commitment—in what cases.

13637. Grounds for recommitment. The district court in which a criminal action is pending, or during the pendency of an appeal from its judgment therein, or in which a judgment is to be carried into effect, may, by an order

entered on the record, direct the defendant to be arrested and committed to jail until legally discharged, after he has given bail, or deposited money instead thereof, in the following cases:

1. When by reason of his failure to appear he has incurred a forfeiture of his bail, or money deposited instead thereof.

2. When it satisfactorily appears to the court that his bail, either by reason of the death of one or more of them, or from any other cause, is insufficient, or have removed from the state.

3. When, after the filing of an indictment, the court finds the bail taken by or money deposited with the committing magistrate insufficient. [C., '51, § 3243; R., '60, § 4995; C., '73, § 4601; C., '97, § 5520.]

13638. Contents of order of recommitment. The order for recommitment must recite generally the facts upon which it is founded, and must direct that the defendant be arrested and committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to

be detained until legally discharged. [C., '51, § 3244; R., '60, § 4996; C., '73, § 4602; C., '97, § 5521.]

13639. Arrest of defendant. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county in the state. [C., '51, § 3245; R., '60, § 4997; C., '73, § 4603; C., '97, § 5522.]

13640. Commitment—in what cases. If the order recite, as the ground on which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirements of the order; if made for any other cause and the offense is bailable, the court must cause a direction to be inserted in the order that the defendant be admitted to bail, in a sum to be stated in the order. [C., '51, §§ 3246, 3247; R., '60, §§ 4998, 4999; C., '73, §§ 4604, 4605; C., '97, § 5523.]

CHAPTER 633

SURRENDER OF DEFENDANT

13641. Manner of surrendering defendant.
13642. Arrest of defendants by bail.

13641. Manner of surrendering defendant. At any time before the forfeiture of their undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of bail must be delivered to the officer, who shall detain the defendant in his custody thereon as upon a commitment, and must, by a certificate in writing, acknowledge the surrender.

2. Upon the undertaking and the certificate of the officer, the court in which the indictment is pending, or was tried, at the next term after the surrender, or, if during term time, at the same term, and upon three clear days' notice thereof to the county attorney, with a copy of the undertaking and certificate, may order the bail to be exonerated. [C., '51, § 3236; R., '60, § 4987; C., '73, § 4593; C., '97, § 5528.]

13642. Arrest of defendants by bail. For the purpose of surrendering the defendant, the

13643. Return of money deposited.

bail, at any time before they are finally charged, and at any place within the state, may themselves arrest him, or, by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so. [C., '51, § 3237; R., '60, § 4988; C., '73, § 4594; C., '97, § 5529.]

13643. Return of money deposited. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was made or directed in the manner prescribed in this chapter, the court in which the indictment is pending, or was tried, at the next term after the surrender, or, if during the term, at the same term, must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon three clear days' notice to the county attorney, with a copy of the certificate. [C., '51, § 3238; R., '60, § 4989; C., '73, § 4595; C., '97, § 5530.]

CHAPTER 634

INFORMATION BY COUNTY ATTORNEY

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13644. Offenses prosecuted on information—jurisdiction. Criminal offenses in which the punishment exceeds a fine of one hundred dollars or exceeds imprisonment for thirty days may be prosecuted to final judgment, either on indictment, as is now or may be hereafter provided, or on information as herein provided, and the district and supreme courts shall possess and exercise the same power and jurisdiction to hear, try, and determine prosecutions on information, as herein provided, for all such criminal offenses, to issue writs and process, and do all other acts therein, as they possess and may exercise in cases of like prosecutions upon indictment. [S., '13, § 5239-a.]

13645. Filing by county attorney. The county attorney may, at any time when the grand jury is not actually in session, file in the district court, either in term time or in vacation, an information charging a person with an indictable offense. [S., '13, § 5239-b; 40 Ex. G. A., H. F. 134, § 3.]

13646. Indorsement. Such information shall be indorsed, "a true information", which indorsement shall be signed by the county attorney. [S., '13, § 5239-c.]

13647. Names of witnesses—minutes of evidence. The county attorney shall, at the time of filing such information, indorse or cause to be indorsed thereon the names of the witnesses whose evidence he expects to introduce and use on the trial of the same, and shall also file with such information a minute of the evidence relating to the guilt of the accused of the offense charged of each witness whose name is so indorsed upon the information. [S., '13, § 5239-d.]

13648. Additional witnesses. Should the county attorney desire to use on the trial witnesses in addition to those whose names are so indorsed, he shall proceed in the same manner as is provided in such cases in trials on indictment. [S., '13, § 5239-d.]

13649. Verification by oath. Such information shall be sworn to by the county attorney before some officer authorized by the laws of Iowa to administer oaths. [S., '13, § 5239-e; 39 G. A., ch. 204.]

13650. Approval by judge. The information, before being filed, shall be presented to some judge of the district court of the county having jurisdiction of the offense, which judge shall indorse his approval or disapproval thereon. If the information receive the approval of the judge, the same shall be filed. If not approved, the charge shall be presented to the next grand jury for consideration. [S., '13, § 5239-e.]

13651. Information set aside. At any time after the approval of an information, and prior to the commencement of trial, the court, or any judge thereof, on its own motion may order said information set aside and said cause submitted to the grand jury. [S., '13, § 5239-e.]

13652. Copy to accused or attorney. The clerk of the district court shall cause a copy of the information and minutes of evidence to be delivered to the accused, or to his attorney, at or prior to the time of arraignment. [S., '13, § 5239-f.]

13653. Filing by private prosecutor—indorsement—costs. If the information is filed at the instance of a private prosecutor, the county attorney may indorse such fact upon

the information and sign such indorsement, and, in such case, the costs may be taxed in the same manner and under the same limitations as in case of indictments. [S., '13, § 5239-g.]

13654. Amendments. An information may be amended in the same manner and to the same extent that an indictment may be amended. [S., '13, § 5239-h; 40 Ex. G. A., H. F. 274, § 8.]

13655. Statutes applicable. The information shall be drawn and construed, in matter of substance, as indictments are required to be drawn and construed. All provisions of law applying to prosecutions on indictments and relating to the issuance of warrants, the correction of the name of the accused, the issuing of process, the giving of bail, arraignments, pleadings, trials, change of place of trials, return of verdicts, the taking of exceptions, new trials, arrest of judgments, the entering of judgments and the execution thereof, appeals, except as modified or otherwise provided for in this chapter, and all other proceedings in cases of indictments, whether in the court of original or appellate jurisdiction, shall in the same manner and to the same extent, as nearly as may be, apply to information and all prosecutions and proceedings thereon. [S., '13, § 5239-i.]

13656. Warrant for arrest—bail. Upon the filing of such information the clerk shall issue a warrant for the arrest of the accused, and the court or any judge thereof shall fix the bail, if bail is allowable, and in vacation or in the absence of the judge in term time, the clerk of the court shall fix such bail, the action of the clerk being reviewable by the court or judge thereof. [S., '13, § 5239-j.]

13657. Assistant county attorney may act. Wherever the words county attorney appear in this chapter, the same shall be construed to mean county attorney or the assistant county attorney. [S., '13, § 5239-k.]

13658. Time of commencing prosecutions. The time in which criminal prosecutions may be commenced by information shall be the same as in cases of prosecutions by indictment, which time shall be computed from the date of the filing of the initial information. [S., '13, § 5239-l.]

13659. Motion to set aside—grounds. A motion to set aside the information may be made on one or more of the following grounds:

1. When it is not indorsed "a true information", and the indorsement signed by the county attorney.

2. When the minutes of evidence have not been filed with the information.

3. When the names of the witnesses named in such minutes of evidence are not indorsed on the information.

4. When the information has not been verified or filed in the manner herein required.

5. When the information has not been approved as required. [S., '13, § 5239-m; 40 Ex. G. A., H. F. 134, § 4.]

13660. Time of making motion—rulings of court. Such motion must be made before a plea is entered by the accused. If not so made, the objection shall be deemed waived. If an objection is shown to be true, the court shall sustain said motion, unless the defects are corrected within such time as the court may order. [S., '13, § 5239-m; 40 Ex. G. A., H. F. 134, § 5.]

13661. Testimony. The clerk of the district court, on application of the county attorney, shall issue subpoenas for such witnesses as the county attorney may require, and in such subpoenas shall direct the appearance of said witnesses before the county attorney at a specified time and place; provided that no subpoena shall issue unless an order authorizing same shall have been first made by the court or a judge thereof. [40 Ex. G. A., H. F. 134, § 6.]

13662. Oath. The county attorney shall have authority to administer oaths to said witnesses. [40 Ex. G. A., H. F. 134, § 7.]

13663. Refusal. In case a witness refuses to appear in obedience to said subpoena, or refuses to testify, the county attorney shall cause said witness to be taken before some judge of the district court of the county who shall proceed with such refusal as though the said refusal had occurred before said judge in a trial in said court. [40 Ex. G. A., H. F. 134, § 8.]

13664. Clerk of grand jury. The county attorney, in the taking of testimony, shall be entitled to the services of the clerk of the grand jury in those counties in which such clerk is regularly employed. [40 Ex. G. A., H. F. 134, § 9.]

13665. Witness fees. The witnesses aforesaid shall receive the same fees and mileage as are allowed witnesses in the district court, and shall be paid in the same manner in which witnesses before the grand jury are paid except that such fees and mileage shall be certified only by the county attorney. [40 Ex. G. A., H. F. 134, § 10.]

13666. Arraignments—pleas. An accused prosecuted on information may, in vacation, be arraigned by any judge of the district court, and, in vacation, be required to plead to the information before any such judge. [S., '13, § 5239-n; 38 G. A., ch. 229, § 1.]

13667. Place of arraignment. Arraignments can be made and pleas required, in vacation, only before such judge sitting in chambers at the usual place of holding court in the county in which the information was filed, or in any other county of the judicial district, or in any county to which the cause may be sent on change of venue. [S., '13, § 5239-n; 38 G. A., ch. 229, § 1.]

13668. Record required. The proceedings with reference to arraignments and the taking of pleas, in vacation, shall be signed by the judge and filed with the clerk of the court of the county where the information was filed and

entered at length in the records of the court with the same force and effect as if made and entered in term time. [S., '13, § 5239-n; 38 G. A., ch. 229, § 1.]

13669. Judgments on written pleas. Judgments may be rendered in vacation on written pleas of guilty of the offense charged, or of any degree or grade thereof, or of any offense included therein, with the same force and effect as though rendered in term time. [S., '13, § 5239-o; 38 G. A., ch. 229, § 2.]

13670. Entry and execution. Said written plea of guilt, together with the judge's entry of judgment in reference thereto, shall be forthwith filed with the clerk of the court of the county wherein the information was filed and entered at length in the records of said court, and, after such entry, be executed as in case of judgments on indictment. [S., '13, § 5239-o; 38 G. A., ch. 229, § 2.]

13671. Place of rendition. Judgments in vacation can only be rendered by a judge of the district court sitting in chambers at the usual place of holding court in the county where the information was filed, or in any other county of the judicial district, or in any county to which the cause may be transferred on change of venue. [S., '13, § 5239-o; 38 G. A., ch. 229, § 2.]

NOTE: Court may call special term for purpose of receiving plea and rendition of judgment, see § 10732.

13672. Transfer of record of proceedings. A record of the proceedings and judgment in the six preceding sections when signed by the judge shall be sent to the clerk of the district court of the county in which the information was filed, which shall be entered at length in the records of the court and shall have the same force and effect as if made and entered by the court in said county, and the commitment or subsequent proceedings shall be had upon the judgment and record from that county. [S., '13, § 5239-o; 38 G. A., ch. 229, § 2.]

13673. Bail—construction. Whenever an accused shall be held to answer to the grand jury for an offense and shall give bail, such bail shall be construed as conditioned to answer to any indictment for said offense returned by the grand jury, to which the accused is legally held to answer, and to any information charging said offense filed by the county attorney. [S., '13, § 5239-p.]

13674. Form of information. Information shall be, substantially, in the following form:

IN THE DISTRICT COURT OF.....COUNTY.
THE STATE OF IOWA, }
vs. } INFORMATION.
A..... B..... }

Comes now, as county attorney of county, state of Iowa, and in the name and by the authority of the state of Iowa accuses A..... B..... of the crime of (here insert the name of the offense), committed as follows:

The said A..... B....., on or about the day of, A. D. (inserting the year) in the county of, and state of Iowa, (here insert the acts or omissions constituting the offense).

.....
County Attorney.
STATE OF IOWA, }
.....COUNTY } ss.

I,, being first duly sworn, do depose and say, that I have made full and careful investigation of the facts upon which the above charge is based, and that the allegations contained in the above and foregoing information are true, as I verily believe.

Subscribed and sworn to by before me, the undersigned, this day of, A. D.

(Here insert title of official before whom verification is made.)

Upon the information shall be indorsed the following:

(a) A true information.
.....
County Attorney.

(b) Names of witnesses:
.....
.....
.....

(c) On this day of, A. D., being satisfied from the showing made herein that this cause should (or should not, as the case may be) be prosecuted by information, the same is approved (or disapproved and the charge is ordered submitted to the next grand jury, as the case may be).

.....
Judge of District Court.
(d) This information duly filed in the district court, this day of, A. D.

.....
(Clerk of the District Court of
... County, State of Iowa.)

By
Deputy Clerk.

(e) Bail is hereby fixed on the within information in the sum of \$.....

.....
(Here insert official title of judge or clerk, as case may be.)

[S., '13, § 5239-q.]

13675. Absence of county attorney—substitute—compensation. In case of absence, sickness, or disability of the county attorney and his deputies, the court before whom it is his duty to appear, and in which there may be business requiring his attention, may appoint an attorney to act as county attorney, by order to be entered upon the records of the court, and he shall receive out of the compensation allowed to the county attorney, when such appearance is before a justice of the peace, such sum as the board of supervisors shall determine to be reasonable for the services rendered, and, when it is before a court of record, such sum as the

judge shall determine to be a reasonable compensation, and, while acting under said appointment, he shall have all the authority and be subject to all the responsibilities herein conferred upon county attorneys. [C., '97, § 304; 40 Ex. G. A., H. F. 134, § 12.]

13676. Substitute—notice before appointment. In criminal cases less than a felony, a justice of the peace or magistrate can not appoint an attorney at the expense of the county or county attorney; and no justice of the peace shall appoint an attorney to act as county attorney in any case wherein a felony is charged, unless reasonable notice in writing has been given the county attorney that his services will be required before such justice at a time therein named, and he has failed to appear in response thereto. [C., '97, § 304; 40 Ex. G. A., H. F. 134, § 13.]

13677. County attorney—prohibitions—disqualified assistants. No county attorney shall accept any fee or reward from or on behalf of anyone for services rendered in any prosecution or the conduct of any official business, nor shall he, or any member of a firm with which he may be connected, be directly or indirectly engaged as an attorney or otherwise for any party other than the state or county in any action or proceeding pending or arising in his county, based upon substantially the same facts upon which a prosecution or proceeding has been commenced or prosecuted by him in the name of the county or state; nor shall any attorney be allowed to assist the county attorney in any criminal action, where such attorney is interested in any civil action brought or to be commenced, in which a recovery is or may be asked upon the matters and things involved in such criminal prosecution. [C., '97, § 305; 40 Ex. G. A., H. F. 134, § 14.]

CHAPTER 635

IMPANELING GRAND JURY

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13678. Drawing grand jurors. At the term of court at which grand jurors are required to appear, the names of the twelve persons constituting the panel of the grand jury shall, on the second day of each term of court, unless otherwise ordered by the court or judge, be placed by the clerk in a box, and after thoroughly mixing the same, he shall draw therefrom seven names, and the persons so drawn shall constitute the grand jury for that term. Should any of the persons so drawn be excused or fail to attend on said second day of the court, the clerk shall draw other names until the seven grand jurors are secured. [C., '51, § 2881; R., '60, §§ 4608-4610; C., '73, §§ 4255-4257; C., '97, § 5240; S., '13, § 5240.]

13679. Additional drawings. If, for any reason, the number of grand jurors required is not secured from the twelve persons so constituting such panel, the clerk shall draw from the grand jury box such number of names as the court may direct, and from the persons whose names are so drawn the panel of the grand jury for the term shall be filled, and the court shall issue a venire to secure their attendance. [C., '51, § 2881; R., '60, §§ 4609, 4610; C., '73, §§ 4256, 4257; C., '97, § 5240; S., '13, § 5240; 40 Ex. G. A., H. F. 266, § 61.]

13680. Challenge to panel—motion. A defendant held to answer for a public offense may, before the grand jury is sworn, challenge the panel, only for the reason that it was not selected, drawn, or summoned as prescribed by law. A defendant indicted not having been held to answer, or having been so held after the impaneling of the grand jury, may for the same reasons object to the panel by motion, but the right to make such motion is waived by entering a plea to an indictment. [C., '51, §§ 2882, 2883, 2890; R., '60, §§ 4611, 4612, 4619; C., '73, §§ 4258, 4260, 4266; C., '97, § 5241.]

13681. Joinder in challenges. When several persons are held to answer for one and the same offense, no challenge to the panel can be made unless they all join therein. [C., '51, § 2890; R., '60, § 4619; C., '73, § 4266; C., '97, § 5242.]

13682. Grounds of challenge. A challenge to an individual grand juror may be made before the grand jury is sworn as follows:

By the state or the defendant, because the grand juror does not possess the qualifications required by law.

By the state only because:

1. He is related either by affinity or consanguinity nearer than in the fifth degree, or stands in the relation of agent, clerk, servant, or employee, to any person held to answer for a public offense, whose case may come before the grand jury.

2. He is bail for anyone held to answer for a public offense, whose case may come before the grand jury.

3. He is defendant in a prosecution similar to any prosecution to be examined by the grand jury.

4. He is, or within one year preceding has been, engaged or interested in carrying on any business, calling, or employment the carrying on of which is a violation of law, and for which the juror may be indicted by the grand jury.

By the defendant only because:

1. He is a prosecutor upon a charge against the defendant.

2. He has formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent him from rendering a true verdict upon the evidence submitted on the trial. [C., '51, §§ 2882, 2884, 2890; R., '60, §§ 4611, 4613, 4619; C., '73, §§ 4258, 4259, 4261, 4266; C., '97, § 5243.]

13683. Decided by the court. Challenges to the panel or to an individual grand juror must be decided by the court. [C., '51, § 2886; R., '60, § 4615; C., '73, § 4262; C., '97, § 5244.]

13684. Effect of allowing challenge to panel. If a challenge to the panel be allowed, the grand jury is prohibited from inquiring into the charge against the defendant by whom it was interposed, and, if it does so and finds an indictment, the court must set it aside. [C., '51, § 2887; R., '60, § 4616; C., '73, § 4263; C., '97, § 5245.]

13685. Dismissal of jurors—new panels. If a challenge to an individual grand juror be allowed, he shall not be present at or take any part in the consideration of the charge against the defendant. If a challenge to the panel is allowed, or if by reason of challenges to individual grand jurors being allowed, or if for any cause at any time, the grand jury is reduced to a less number than seven, a new grand jury shall be impaneled to inquire into the charge against the defendant in whose behalf the challenge to the panel has been allowed, or the panel of the jury so reduced below the number required by law shall be filled as the case may be. If a challenge is allowed to the panel, the names of jurors required to impanel a new jury shall be drawn from the grand jury list. [C., '51, § 2888; R., '60, § 4617; C., '73, § 4264; C., '97, § 5246; S., '13, § 5246.]

13686. Summoning additional jurors. If such grand jury has been reduced to a less number than seven by reason of challenges to individual jurors being allowed, or from any other cause, the additional jurors required to fill the panel shall be summoned, first, from such of

the twelve jurors originally summoned which were not drawn on the grand jury as first impaneled, or excused, and if they are exhausted, the additional number required shall be drawn from the grand jury list and the court shall, when necessary, issue a venire to secure the attendance of such additional jurors. The persons so summoned shall serve only in the case, or cases, in which, by reason of challenges, or other causes, the regular panel is set aside or is insufficient in number to find an indictment. [C., '97, § 5246; S., '13, § 5246.]

13687. Effect of violation. The grand jury must inform the court of any violation of the two preceding sections, which offense shall be punished as a contempt. [C., '51, § 2889; R., '60, § 4618; C., '73, § 4265; C., '97, § 5247.]

13688. Refilling panel. If for any cause the number of grand jurors is reduced below twelve, the court or judge may order the clerk to immediately draw from the grand jury list sufficient additional names to fill the panel, and such new grand jurors so drawn may, if so ordered by the court, serve as regular grand jurors for the county in which they are drawn for the remainder of the year. [40 G. A., ch. 220.]

13689. Foreman appointed. From the persons impaneled as grand jurors the court must appoint a foreman, or when the foreman already appointed is discharged, excused, or from any cause becomes unable to act, before the grand jury is finally discharged. [C., '51, § 2891; R., '60, § 4620; C., '73, § 4267; C., '97, § 5248.]

13690. Oath of foreman. The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury, shall diligently inquire and true presentment make of all public offenses against the people of this state, triable on indictment within this county, of which you have or can obtain legal evidence; you shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding". [C., '51, § 2892; R., '60, § 4621; C., '73, § 4268; C., '97, § 5249.]

13691. Oath of members. The following oath must thereupon be administered to the other grand jurors: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part". [C., '51, § 2893; R., '60, § 4622; C., '73, § 4269; C., '97, § 5250.]

13692. General charge of court. The grand jury, being impaneled and sworn, may be charged by the court, who shall give them such information as may be proper as to the nature of their duties, and any charges for public offenses returned to the court or likely to come

before that body. [C., '51, § 2894; R., '60, § 4623; C., '73, § 4270; C., '97, § 5251.]

13693. Special charge of court. The court shall specially give in his charge the provisions of the law regulating the accounting by public officers for fines and fees collected by them, and those providing for the suppression of intemperance. [C., '51, § 2894; R., '60, § 4623; C., '73, § 4270; C., '97, § 5251.]

13694. Clerk—oath. The court may appoint as clerk of the grand jury, a competent person who is not a member thereof. The following oath must be administered to him: "You solemnly swear that you will faithfully and impartially perform the duties of clerk of the grand jury, that you will not reveal to anyone its proceedings or the testimony given before it and will abstain from expressing any opinion upon any question before it, to or in the presence or hearing of the grand jury or any member thereof". [C., '51, § 2895; R., '60, §§ 4624, 4629; C., '73, § 4275; C., '97, § 5256; S., '13, § 5256.]

13695. Expression of opinion—presence before jury. Such clerk shall strictly abstain from expressing an opinion upon any question before the body, either to or in the presence or hearing of it or any member thereof, and shall not be present when any vote is being taken upon the finding of an indictment. [C., '97, § 5256; S., '13, § 5256.]

13696. Compensation. Such clerk shall receive compensation at the rate of two dollars per day for time actually and necessarily employed in the performance of the duties prescribed in this chapter. [C., '97, § 5256; S., '13, § 5256.]

13697. Shorthand reporter as clerk. In all counties having a population of more than fifty thousand inhabitants, the court may, if it

deems it necessary, appoint as clerk of the grand jury a competent shorthand reporter. [S., '13, § 5256.]

13698. Compensation. Such clerk shall receive such compensation as may be fixed by the court at the time of the appointment, but said compensation, in counties having a population of less than seventy-five thousand inhabitants, shall not exceed four dollars per day for each day actually and necessarily employed in the performance of the duties herein defined.

In all counties having a population of more than seventy-five thousand inhabitants and less than one hundred twenty thousand inhabitants, such clerk shall receive as compensation an annual salary of not to exceed fifteen hundred dollars.

In counties having a population of one hundred twenty thousand and over, such clerks shall receive an annual salary of twenty-two hundred dollars. [S., '13, § 5256; 38 G. A., ch. 254, § 1.]

13699. Assistant clerk. In addition thereto the court may, in counties having a population of one hundred twenty thousand inhabitants and over, if it deems it necessary, appoint an assistant clerk of the grand jury and fix his salary therefor. [38 G. A., ch. 254, § 1.]

13700. Member appointed clerk. If no such appointment is made by the court, the grand jury shall appoint as its clerk one of its own number who is not its foreman. [R., '60, § 4629; C., '73, § 4275; C., '97, § 5257.]

13701. Discharge of grand jury. The grand jury, on the completion of its business, shall be discharged by the court, but, whether its business be completed or not, it is discharged by the final adjournment thereof. [C., '51, § 2896; R., '60, § 4625; C., '73, § 4271; C., '97, § 5252.]

CHAPTER 636

DUTIES OF GRAND JURY

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13702. Indictable offenses. The grand jury shall inquire into all indictable offenses which may be tried within the county, and present them to the court by indictment. [C., '51, § 2897; R., '60, § 4626; C., '73, § 4272; C., '97, § 5253.]

13703. Special duties. It is made the special duty of the grand jury to inquire into:

1. The case of every person imprisoned in the jail of the county on a criminal charge and not indicted.

2. The condition and management of the public prisons within the county.

3. The wilful and corrupt misconduct in office of all county officers.

4. The obstruction of highways. [C., '51, § 2902; R., '60, § 4632; C., '73, § 4278; C., '97, § 5261.]

13704. Access to county jails and public records. The grand jury is entitled to free access at all reasonable times to the county jails, and to the examination without charge of all public records within the county. [C., '51, § 2904; R., '60, § 4634; C., '73, § 4280; C., '97, § 5263.]

13705. Duty of court and county attorney. The grand jury may at all reasonable times ask the advice of the county attorney or the court. [C., '51, § 2905; R., '60, § 4635; C., '73, § 4281; C., '97, § 5264.]

13706. Right of county attorney to appear. The county attorney shall be allowed at all times to appear before the grand jury on his own request for the purpose of giving information relative to any matter cognizable by it, and for the purpose of examining witnesses, when necessary. [C., '51, §§ 2905, 2906; R., '60, §§ 4635, 4636; C., '73, §§ 4281, 4282; C., '97, § 5264.]

13707. Secrecy of vote. Neither the county attorney nor any other officer or person except the grand jury must be present when the question is taken upon the finding of an indictment. [C., '51, § 2906; R., '60, § 4636; C., '73, § 4282; C., '97, § 5265.]

13708. Subpoenas. The clerk of the court must, when required by the foreman of the grand jury or county attorney, issue subpoenas for witnesses to appear before the grand jury. [C., '51, § 2903; R., '60, § 4633; C., '73, § 4279; C., '97, § 5262.]

13709. Failure to obey. If a witness fails to attend before the grand jury in obedience to a subpoena issued for that purpose and duly served, the court shall, upon the application of the county attorney or foreman of the grand jury, coerce the attendance of the witness by attachment, and may punish his disobedience as in the case of a witness failing to attend on the trial. [R., '60, § 4642; C., '73, § 4288; C., '97, § 5271.]

13710. Administering oath. The foreman of the grand jury may administer the oath to all witnesses produced and examined before it. [R., '60, § 4628; C., '73, § 4274; C., '97, § 5255.]

13711. Refusal of witness to testify. When a witness under examination before the grand jury refuses to testify or to answer a question put to him, it shall proceed with the witness into open court, and the foreman shall then distinctly state to the court the question and the refusal of the witness, and if upon hearing the witness the court shall decide that he is bound

to testify or answer the question propounded, he shall inquire of the witness if he persists in his refusal, and, if he does, shall proceed with him as in cases of similar refusal in open court. [R., '60, § 4641; C., '73, § 4287; C., '97, § 5270.]

13712. Minutes to be kept. The clerk of the grand jury shall take and preserve minutes of the proceedings and of the evidence given before it, except the votes of its individual members on finding an indictment. [R., '60, § 4629; C., '73, § 4275; C., '97, § 5258; S., '13, § 5258.]

13713. Minutes read—signing by witness. When the evidence is taken, it shall be read over to and signed by the witness. [C., '97, § 5258; S., '13, § 5258.]

13714. Evidence returned and filed. When an indictment is found, all minutes and exhibits relating thereto shall be returned therewith and filed by the clerk of the court. [C., '73, § 4275; C., '97, § 5258; S., '13, § 5258.]

13715. Member as witness. If a member of the grand jury knows or has reason to believe that a public offense has been committed, triable in the county, he must declare the same to his fellow jurors, and be sworn as a witness upon the investigation before them. [C., '51, § 2901; R., '60, § 4631; C., '73, § 4277; C., '97, § 5260.]

13716. Evidence for defendant. The grand jury is not bound to hear evidence for defendant, but may do so, and must weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge, it may order the same produced. [C., '51, § 2900; R., '60, § 4630; C., '73, § 4276; C., '97, § 5259.]

13717. Evidence sufficient for indictment. An indictment should be found when all the evidence, taken together, is such as in the judgment of the grand jury, if unexplained, would warrant a conviction by the trial jury; otherwise it should not. [R., '60, § 4637; C., '73, § 4283; C., '97, § 5266.]

13718. Kind of evidence required. An indictment can be found only upon evidence given by witnesses produced, sworn, and examined before the grand jury, or furnished by legal documentary evidence, or upon the minutes of evidence given by witnesses before a committing magistrate. [C., '51, §§ 2898, 2899; R., '60, § 4627; C., '73, § 4273; C., '97, § 5254.]

13719. Minutes of preliminary examination. All papers and other matters of evidence relating to the arrest and preliminary examination of the charge against defendants who have been held to answer, returned to the court by magistrates, shall be laid before the grand jury, and shall be competent evidence upon which an indictment may be found. [R., '60, § 4643; C., '73, § 4289; C., '97, § 5272.]

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13720. When presence of witnesses unnecessary. The grand jury need not have before it for examination any witness who was examined before the committing magistrate, and whose evidence is returned by such magistrate in the minutes, unless requested by the county attorney. [C., '97, § 5272.]

13721. Minutes of testimony before magistrate. If an indictment was found in whole or in part upon the minutes of evidence taken before a committing magistrate, the clerk of the grand jury shall write out a brief minute of the substance of such evidence, and the same shall be returned to the court with the indictment. [C., '97, § 5272.]

13722. No indictment found—effect. If, upon investigation, the grand jury refuses to find an indictment, it shall return all of said papers to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed, and thereupon the court must order the discharge of the defendant from custody if in jail, and the exoneration of bail if bail be given, unless the court, upon good cause shown, direct that the charge should again be submitted to the grand jury, in which case the defendant may be continued in custody, or on bail, until the next term of court. [R., '60, § 4643; C., '73, § 4289; C., '97, § 5272.]

13723. Effect of dismissal. Such dismissal of the charge does not prevent the same from being submitted to a grand jury as often as the court may direct; but without such direction it can not be again submitted. [R., '60, § 4644; C., '73, § 4290; C., '97, § 5273.]

13724. Proceedings secret—disclosure of action. Every member of the grand jury must

keep secret the proceedings of that body and the testimony given before it, except as provided in the following section; nor shall any grand juror or officer of the court disclose the fact that an indictment for a felony has been found against a person not in custody or under bail, otherwise than by presenting the same in court or issuing or executing process thereon, until such person has been arrested. A violation of this section is a misdemeanor. [C., '51, § 2907; R., '60, § 4638; C., '73, § 4284; C., '97, § 5267.]

13725. Disclosure required. Any member of the grand jury and the clerk thereof, and any officer of the court, may be required by the court or any legislative committee duly authorized to inquire into the conduct or acts of any state officer which might be the basis for impeachment proceedings, to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that given by him before the court or legislative committee, or to disclose the same upon a charge of perjury against the witness, or when in the opinion of the court or legislative committee such disclosure is necessary in the administration of justice. [C., '51, § 2908; R., '60, § 4639; C., '73, § 4285; C., '97, § 5268; 38 G. A., ch. 63, § 1.]

13726. Privilege of jurors. No grand juror shall be questioned for anything he may say or any vote he may give in the grand jury relative to a matter legally pending before it, except for perjury of which he may have been guilty in making an accusation, or in giving testimony to his fellow jurors. [C., '51, § 2909; R., '60, § 4640; C., '73, § 4286; C., '97, § 5269.]

CHAPTER 637

FINDING AND PRESENTATION OF INDICTMENT

13727. Vote necessary—indorsement.

13728. Indictment at instance of private prosecutor.

13727. Vote necessary—indorsement. An indictment can not be found without the concurrence of five grand jurors. Every indictment must be indorsed "a true bill" and the indorsement signed by the foreman of the grand jury. [C., '51, § 2910; R., '60, § 4645; C., '73, § 4291; C., '97, § 5274; S., '13, § 5274-a.]

13728. Indictment at instance of private prosecutor. When an indictment is found at the instance of a private prosecutor, the following must be added to the indorsement required by the preceding section, "found at the instance of" (here state the name of the person) and, in such case, if the prosecution fails, the court trying the cause may tax the costs against him, if satisfied from all the circumstances that the prosecution was malicious or without probable cause. [R., '60, § 4646; C., '73, § 4292; C., '97, § 5275.]

13729. Names of witnesses indorsed.

13730. Minutes of evidence not public—copy.

13731. Minutes used on resubmission.

13729. Names of witnesses indorsed. When an indictment is found, the names of all witnesses on whose evidence it is found must be indorsed thereon before it is presented in the court, and must be, with the minutes of the evidence of such witnesses, presented to the court by the foreman in the presence of the grand jury, and all of the same marked "filed" by the clerk, as provided in the chapter relating to the duties of the grand jury, and shall remain in his office as a record. [C., '51, §§ 2913, 2914; R., '60, §§ 4647, 4648; C., '73, §§ 4293, 4294; C., '97, § 5276.]

13730. Minutes of evidence not public—copy. Such minutes of evidence shall not be open for the inspection of any person except the judge of the court, the county attorney or his assistant or clerk, the defendant and his counsel, or the assistant or clerk of such coun-

sel. The clerk of the court must, within two days after demand made, furnish the defendant or his counsel a copy thereof without charge, or permit the defendant's counsel, or the clerk of such counsel, to take a copy. [C., '51, § 2913; R., '60, § 4647; C., '73, § 4293; C., '97, § 5277.]

13731. Minutes used on resubmission. When an indictment is held insufficient, and an order is made to resubmit the case to the same or another grand jury, or where the grand jury has ignored a bill and the same has been or-

dered back to the same or another grand jury for further investigation, it shall be unnecessary to summon the witnesses again before such jury in such cases, but the minutes of the testimony returned with the defective indictment or ignored bill or information shall be detached and returned to the grand jury; and thereupon, without more, such grand jury may find a bill and attach said minutes of the evidence thereto, and return said indictment therewith into court in the usual manner, and may, in either case take additional testimony. [C., '97, § 5278.]

CHAPTER 638

INDICTMENT

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13732. Definition. An indictment is an accusation in writing, found and presented by a grand jury legally impaneled and sworn to the court in which it is impaneled, charging that a person therein named has done some act, or been guilty of some omission, which by law is a public offense, punishable on indictment. [C., '51, § 2915; R., '60, § 4649; C., '73, § 4295; C., '97, § 5279.]

tent to kill a human being") committed as follows:

The said A..... B....., on the day of A. D., in the county aforesaid (here insert the act or omission constituting the offense).

County attorney of county.
[R., '60, § 4651; C., '73, § 4297; C., '97, § 5281.]

13733. Contents of indictment. The indictment must contain:

1. The title of the action, giving the name of the court to which it is presented, and the names of the parties.
2. A statement of the facts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended. [R., '60, § 4650; C., '73, § 4296; C., '97, § 5280.]

13735. Indictment must be direct and certain. The indictment must be direct and certain as regards:

1. The party charged.
2. The offense charged.
3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense. [R., '60, § 4652; C., '73, § 4298; C., '97, § 5282.]

13734. Form of indictment. It shall be substantially in the following form:

District court of the county of
THE STATE OF IOWA, }
vs. }
A..... B..... }

13736. Fictitious name—correction. When a defendant is indicted by a fictitious or erroneous name, and in any subsequent stage of the proceedings, before execution, his true name is discovered, an entry shall be made in the record of the proceedings of his true name, referring to the fact of his being indicted by the name mentioned in the indictment, and the subsequent proceedings shall be in the true name substantially as follows:

THE STATE OF IOWA, }
vs. }
A..... B....., indicated by the name }
of C..... D..... }
[R., '60, § 4653; C., '73, § 4299; C., '97, § 5283.]

The grand jury of the county of in the name of the state of Iowa, accuses A..... B..... of the crime of (here insert the name of the offense if it have one, such as treason, manslaughter, robbery, larceny, or the like, or if it have no general name, then a brief general description of it as given by law, such as "mingling poison with food, with in-

13737. Charging but one offense. The indictment must charge but one offense, but it may be charged in different forms to meet the testimony, and, if it may have been committed in different modes and by different means, may allege the modes and means in the alternative. [C., '51, § 2917; R., '60, § 4654; C., '73, § 4300; C., '97, § 5284.]

13738. Charging several offenses. In case of compound offenses where in the same transaction more than one offense has been committed, the indictment may charge the several offenses and the defendant may be convicted of any offense included therein. [R., '60, § 4654; C., '73, § 4300; C., '97, § 5284.]

13739. Exact time of offense. The precise time at which the offense was committed need not be stated in the indictment, but it is sufficient if it allege that it was committed at any time prior to the time of the finding thereof, except where the time is a material ingredient of the offense. [R., '60, § 4655; C., '73, § 4300; C., '97, § 5285.]

13740. Name of person injured. When an offense involves the commission of or an attempt to commit an injury to person or property, and is described in other respects with sufficient certainty to identify the act, an erroneous allegation as to the name of the person injured or attempted to be injured is not material. [R., '60, § 4656; C., '73, § 4302; C., '97, § 5286.]

13741. Construction. The words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. [R., '60, § 4657; C., '73, § 4303; C., '97, § 5287.]

13742. Words of statute. Words used in a statute to define a public offense need not be strictly pursued in an indictment, but other words conveying the same meaning may be used. [C., '51, § 2919; R., '60, § 4658; C., '73, § 4304; C., '97, § 5288.]

13743. Rule of sufficiency. The indictment is sufficient if it can be understood therefrom:

1. That it was found by a grand jury of the county impaneled in the court having authority to receive it, though the name of the court is not actually stated.
2. That the defendant is named, or if his true name is unknown to the grand jury, such fact is stated, and that he is described by a fictitious name.
3. That the offense is triable within the jurisdiction of the court.
4. That the offense was committed prior to the time of the finding of the indictment.
5. That the act or omission charged as the offense is stated in ordinary and concise language, with such certainty and in such manner as to enable a person of common understanding to know what is intended, and the court to pronounce judgment according to law upon a conviction.

6. That, when material, the name of the person injured or attempted to be injured be set forth when known to the grand jury, or, if not known, that it be so stated in the indictment. [C., '51, § 2916; R., '60, § 4659; C., '73, § 4305; C., '97, § 5289; S., '13, § 5289; 40 Ex. G. A., H. F. 274, § 1.]

13744. Amendment. The court may, on motion of the state, and before or during the trial, order the indictment so amended as to correct errors or omissions:

1. In matters of form, or
2. In the name of any person, or
3. In the description of any person or thing, or
4. In the ownership of property. [S., '13, § 5289; 40 Ex. G. A., H. F. 274, § 2.]

13745. Amendment before trial. If the application for an amendment be made before the commencement of the trial, the application and a copy of the proposed amendment shall be served upon the defendant, or upon his attorney of record, and an opportunity given the defendant to resist the same. [S., '13, § 5289; 40 Ex. G. A., H. F. 274, § 3.]

13746. Amendment during trial. If the application be made during the trial, the application and the amendment may be dictated into the record in the presence of the defendant or of his counsel, and such record shall constitute sufficient notice to the defendant. [40 Ex. G. A., H. F. 274, § 3.]

13747. Nonpermissible amendment. Such amendment shall not prejudice the substantial rights of the defendant, or charge him with a different crime or different degree of crime from that charged in the original indictment returned by the grand jury. [S., '13, § 5289; 40 Ex. G. A., H. F. 274, § 4.]

13748. Continuance. No continuance or delay in trial shall be granted because of such amendment unless it is made to appear that defendant should have additional time to prepare for trial because of such amendment. [S., '13, § 5289; 40 Ex. G. A., H. F. 274, § 5.]

13749. Immaterial matters. No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of any of the following matters:

1. For the want of an allegation of the time or place of any material fact, when the time and place have been once stated.
2. For the omission of any of the following allegations, namely, "with force and arms", "contrary to the form of the statute, or of the statutes", or "against the peace and dignity of the state".
3. For the omission to allege that the grand jury was impaneled, sworn, or charged.
4. For any surplusage or repugnant allegation, or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged.
5. For any other matter which was formerly deemed a defect or imperfection, but which

does not tend to prejudice the substantial rights of the defendant upon the merits. [C., '51, § 2920; R., '60, § 4660; C., '73, § 4306; C., '97, § 5290.]

13750. Presumptions and judicial notice. Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment. [C., '51, § 2921; R., '60, § 4661; C., '73, § 4307; C., '97, § 5291.]

13751. Pleading judicial proceedings. In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated in the indictment. It is sufficient to state that the judgment or determination was duly made, or the proceedings duly had, before such court or officer; but such jurisdictional facts must be established on the trial. [C., '51, § 2922; R., '60, § 4662; C., '73, § 4308; C., '97, § 5292.]

13752. Pleading private statute. In pleading a private statute or right derived therefrom, it is sufficient to refer to the same by its title and the day of its approval, and the court must thereupon take judicial notice thereof. [C., '51, § 2923; R., '60, § 4663; C., '73, § 4309; C., '97, § 5293.]

13753. Instrument destroyed or withheld. When an instrument which is the subject of an indictment has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial. [C., '51, § 2925; R., '60, § 4665; C., '73, § 4311; C., '97, § 5295.]

13754. Perjury. In an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer the same, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is con-

nected, nor the commission or the authority of the court or person before whom the perjury was committed. [C., '51, § 2926; R., '60, § 4666; C., '73, § 4312; C., '97, § 5296.]

13755. Conspiracy—overt act. In an indictment for conspiracy, where an overt act is required by law to constitute the offense, the defendant can not be convicted unless one or more overt acts be expressly alleged therein. [C., '51, § 2996; R., '60, § 4790; C., '73, § 4425; C., '97, § 5297.]

NOTE: Proof of overt acts, see § 13902.

13756. Intent to defraud. In any case where an intent to defraud is required to constitute the offense, it shall be sufficient to allege in the indictment an intent to defraud, without naming the particular person or body corporate intended to be defrauded; and on the trial of such indictment it is sufficient if there appear to be an intent to defraud the United States or any state, county, city, township, body corporate, officer in his official capacity, copartnership or member thereof, or any particular person. [C., '51, § 2927; R., '60, § 4667; C., '73, § 4313; C., '97, § 5298.]

13757. Compounding offense. A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or engagement or promise therefor, upon agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense has not been indicted or tried. [C., '51, § 2930; R., '60, § 4670; C., '73, § 4316; C., '97, § 5301.]

13758. Embezzlement. In an indictment for the embezzlement or fraudulent conversion of money, it shall be sufficient to allege the embezzlement or fraudulent conversion to have been of money generally, without designating its particular species; and proof that the defendant embezzled or fraudulently converted any money or bank note will be sufficient to support the averment, although the particular species be not proved. [R., '60, § 4671; C., '73, § 4317; C., '97, § 5302.]

CHAPTER 639

PROCESS AFTER INDICTMENT

- 13759. Bench warrant.
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- 13762. Form in case of felony.
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- 13769. Defendant returned—how punished.

13759. Bench warrant. The process upon an indictment for the arrest of an individual shall be a warrant. [R., '60, § 4672; C., '73, § 4318; C., '97, § 5303.]

13760. Warrant ordered—bail fixed. When an indictment is filed by the clerk of the court against a defendant not in custody nor under bail, or who has not deposited money instead of bail, the judge of the court shall make an order on the indictment, which shall be signed by him with his name of office, that a warrant issue for the arrest of the defendant, and, if the offense charged be bailable, fix the amount in which bail may be taken. [R., '60, § 4673; C., '73, § 4319; C., '97, § 5304.]

13761. Issuance of warrant. The clerk on the application of the county attorney shall at any time after the making of the order of the judge, whether the court be in session or not, issue a warrant into one or more counties. [R., '60, § 4674; C., '73, § 4320; C., '97, § 5305.]

13762. Form in case of felony. A warrant, if the offense be a felony, shall be substantially in the following form:

THE STATE OF IOWA,
 County of }
 To any peace officer in the state:
 An indictment having been found in the district court of said county on the day of, A. D., (the day on which the indictment is marked filed by the clerk of the court) charging A. B. with the crime of (here designate the offense by the name, if it have one, or by a brief general description of it, substantially as in the indictment).
 You are hereby commanded to arrest the said A. B. and bring him before said court to answer said indictment, if the said court be then in session in said county, or if not then in session in said county, that you deliver him into the custody of the sheriff of said county.
 Given under my hand and the seal of said court at my office in the county aforesaid, this day of, A. D.

[Seal] Clerk.
 By order of the judge of the court.
 [R., '60, § 4675; C., '73, § 4321; C., '97, § 5306.]

13763. Form in case of misdemeanor. If the offense be a misdemeanor, the warrant may be in a similar form, adding to the body thereof a direction substantially to the following effect: "Or, if the said A. B. require it, that you take him before a magistrate or the clerk of the district court in said county, or in the county in which you arrest him, that he may give bail to answer the said indictment", and the clerk must make an indorsement thereon to the following effect: "The defendant is to be admitted to bail in the sum of dollars" (the amount fixed by the judge and indorsed on the indictment). The warrant may be served in any county in the state. [C., '51, § 2935; R., '60, §§ 4676-4678; C., '73, §§ 4322-4324; C., '97, § 5307.]

13764. Proceedings as to bail. If the defendant, when arrested, is brought before a magistrate or the clerk of the district court of any county for the purpose of giving bail, the same proceedings must be had in all respects as if he had been arrested on a warrant of arrest issued by a magistrate on a preliminary information, as nearly as may be. [R., '60, § 4679; C., '73, § 4325; C., '97, § 5308.]

13765. Process against corporation. The process on an indictment against a corporation shall be a notice under the seal of the court, which shall be issued by the clerk, at any time after the filing of the indictment in his office, on the application of the county attorney, and shall substantially notify the defendant of the finding of the indictment, of the nature of the offense charged, and that it must forthwith appear and answer the same. [C., '73, § 4326; C., '97, § 5309.]

13766. Service and return. Said notice may be served by any peace officer in any county in the state on any officer or agent of the defendant, by reading the same to him and leaving with him a copy thereof, and shall be returned to the clerk's office without delay, with proper return of its service. [C., '73, § 4326; C., '97, § 5309.]

13767. When defendant deemed present. From and after two days from the time of the making of such service, the defendant shall

be considered in court, and present to all proceedings had on the indictment. [C., '73, § 4326; C., '97, § 5309.]

13768. Indictment against convict in penitentiary. Upon the return of an indictment or upon the filing of a trial information for any offense which may be punished by death or life imprisonment, against any person confined in the penitentiary or men's reformatory, the court to which such indictment is returned may enter an order directing that such person be produced before it for trial. The sheriff shall

execute such order by serving a copy thereof on the warden having such accused person in custody and thereupon such person shall be delivered to such sheriff and conveyed to the place of trial. [S., '13, §§ 5718-b, 5718-c; 40 Ex. G. A., H. F. 84, § 468.]

13769. Defendant returned—how punished. If the defendant be found not guilty, he shall be returned to the institution from which he was taken; if convicted he shall be punished as provided by law. [S., '13, § 5718-d; 40 Ex. G. A., H. F. 84, § 469.]

CHAPTER 640

ARRAIGNMENT OF DEFENDANT

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- 13771. Personal presence—when necessary.
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- 13773. Right to counsel.
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- 13777. Arraignment—how made.
- 13778. Incorrect name—estoppel.
- 13779. Entry of true name.
- 13780. Answer—time granted.

13770. Time of arraignment—waiver—corporation. As soon as practicable after an indictment is found, the defendant must be arraigned thereon, unless he waive the same. Where a corporation is defendant, arraignment shall not be required. [C., '51, § 2931; R., '60, § 4680; C., '73, § 4327; C., '97, § 5310.]

13771. Personal presence—when necessary. A person charged with a felony, or in custody without an attorney, must be personally present for arraignment, but in other cases he may appear therefor by counsel. [C., '51, § 2932; R., '60, §§ 4681, 4682; C., '73, §§ 4328, 4329; C., '97, § 5311.]

13772. Out on bail—failure to appear—arrest. If the defendant is at large on bail or deposit of money, and fails to appear for arraignment, or when his personal presence is necessary, the court shall, in addition to the forfeiture of the undertaking of bail or money deposited, enter an order directing the clerk at any time, upon the application of the county attorney, to issue a warrant into one or more counties for his arrest. [C., '51, §§ 2933, 2934; R., '60, §§ 4683, 4684; C., '73, §§ 4330, 4331; C., '97, § 5312.]

13773. Right to counsel. If the defendant appears for arraignment without counsel, he must, before proceeding therewith, be informed by the court of his right thereto, and be asked if he desires counsel; and if he does, and is unable to employ any, the court must allow him to select or assign him counsel, not exceeding two, who shall have free access to him at all reasonable hours. [C., '51, § 2936; R., '60, § 4685; C., '73, § 4332; C., '97, § 5313.]

13774. Fee for attorney defending. An attorney appointed by the court to defend a person indicted for homicide, or any offense the punishment of which may be life imprisonment,

shall receive from the county treasury a fee of twenty dollars per day for time actually occupied in court in the trial of defendant. If the prosecution be for any other felony, he shall receive the sum of ten dollars in full for services. Such attorney need not follow the case into another county or into the supreme court, but if he does so shall receive an enlarged compensation on a scale corresponding to that fixed by this section. Only one attorney in any one case shall receive such compensation. [C., '51, §§ 2561-2563; R., '60, §§ 1578, 4168-4170; C., '73, §§ 3829-3831; C., '97, § 5314.]

13775. Affidavit required. To be entitled to such compensation, the attorney must file with the court his affidavit that he has not directly or indirectly received, or entered into a contract to receive, any compensation for such services from any source. [C., '51, § 2563; R., '60, § 4170; C., '73, § 3831; C., '97, § 5314.]

13776. Arraignment—by whom made. The arraignment may be made by the court, or by the clerk or county attorney under its direction. [C., '51, § 2937; R., '60, § 4686; C., '73, § 4333; C., '97, § 5315.]

13777. Arraignment—how made. Arraignment consists in reading the indictment to the defendant, and, unless previously done, delivering to him a copy thereof and the indorsements thereon, and informing him that, if the name by which he is indicted is not his true name, he must then declare what his true name is, or be proceeded against by the name in the indictment, and asking him what he answers to the indictment. [C., '51, § 2938; R., '60, § 4686; C., '73, § 4333; C., '97, § 5315.]

13778. Incorrect name—estoppel. If he gives no other name or gives his true name, he is thereafter precluded from objecting to the indictment upon the ground of being therein

improperly named. [C., '51, § 2939; R., '60, § 4687; C., '73, § 4334; C., '97, § 5316.]

13779. Entry of true name. If he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by

which he is indicted. [C., '51, § 2940; R., '60, § 4688; C., '73, § 4335; C., '97, § 5317.]

13780. Answer—time granted. In answer to the arraignment, the defendant may move to set aside the indictment, or demur or plead to it, and is entitled to one day after arraignment, if he demand it, in which to do so. [C., '51, §§ 2941, 2942; R., '60, §§ 4689, 4690; C., '73, § 4336; C., '97, § 5318.]

CHAPTER 641

SETTING ASIDE INDICTMENT

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13782. Correction of indictment.

13783. Objections to selection of grand jury.

13784. Hearing on motion.

13785. Motion overruled—defendant must answer.

13786. Motion sustained—defendant discharged.

13787. Resubmission—bail.

13788. Order to set aside—effect.

13781. Grounds for setting aside indictment. The motion to set aside the indictment can be made, before a plea is entered by the defendant, on one or more of the following grounds, and must be sustained:

1. When it is not indorsed "a true bill" and the indorsement signed by the foreman of the grand jury as prescribed by this code.

2. When the names of all witnesses examined before the grand jury are not indorsed thereon.

3. When the minutes of the evidence of the witnesses examined before the grand jury are not returned therewith.

4. When it has not been presented and marked "filed" as prescribed by this code.

5. When any person other than the grand jurors was present before the grand jury when the question was taken upon the finding of the indictment.

6. When any person other than the grand jurors was present before the grand jury during the investigation of the charge, except as required or permitted by law.

7. That the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law. [C., '51, § 2943; R., '60, § 4691; C., '73, § 4337; C., '97, § 5319.]

13782. Correction of indictment. A motion to set aside the indictment on the ground that the names of all the witnesses examined before the grand jury are not indorsed thereon; or that the name of any other witness than those so examined is indorsed thereon as prescribed in the second subdivision of the preceding section, shall not be sustained if the indorsement is corrected by the insertion or striking out of such names or name by the county attorney or the clerk of the court, under the direction of the court, so as to correspond with the minutes required to be kept by the clerk of the grand jury, and returned and preserved with the indictment to the court. [R., '60, § 4692; C., '73, § 4338; C., '97, § 5320.]

13783. Objections to selection of grand jury. The ground of the motion to set aside the indictment mentioned in the seventh subdivision of section 13781 is not allowed to a defendant who has been held to answer before indictment. [R., '60, § 4693; C., '73, § 4339; C., '97, § 5321.]

13784. Hearing on motion. The motion must be heard when it is made, unless for good cause the court postpone the hearing to another time. [C., '51, § 2945; R., '60, § 4695; C., '73, § 4340; C., '97, § 5322.]

13785. Motion overruled—defendant must answer. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto. [C., '51, § 2946; R., '60, § 4696; C., '73, § 4341; C., '97, § 5323.]

13786. Motion sustained—defendant discharged. If the motion be granted, the court must order the defendant, if in custody, to be discharged; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the money deposited be refunded to him, unless the court direct that the case be resubmitted to the same or another grand jury. [C., '51, § 2947; R., '60, § 4697; C., '73, § 4342; C., '97, § 5324.]

13787. Resubmission—bail. If the court direct that the case be resubmitted, the defendant, if already in custody, must so remain unless he be admitted to bail; or, if already admitted to bail, or money had been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment, if a resubmission has been ordered. [C., '51, § 2948; R., '60, § 4698; C., '73, § 4343; C., '97, § 5325.]

13788. Order to set aside—effect. An order to set aside the indictment, as provided in this chapter, shall be no bar to a future prosecution for the same offense. [C., '51, § 2949; R., '60, § 4699; C., '73, § 4344; C., '97, § 5326.]

CHAPTER 642

PLEADINGS OF DEFENDANT

- 13789. Demurrer or plea.
- 13790. Grounds of demurrer.
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13789. Demurrer or plea. The only pleading on the part of the defendant is a demurrer or plea. [C., '51, § 2950; R., '60, § 4700; C., '73, § 4345; C., '97, § 5327.]

13790. Grounds of demurrer. The defendant may demur to the indictment when it appears upon its face, either:

1. That it does not substantially conform to the requirements of this code, or
2. That the indictment contains matter which, if true, would constitute a legal defense or bar to the prosecution. [C., '51, § 2952; R., '60, § 4707; C., '73, § 4352; C., '97, § 5328; 40 Ex. G. A., H. F. 274, § 6.]

13791. Failure to demur—waiver. All objections to the indictment relating to matters of substance and form which might be raised by demurrer shall be deemed waived if not so raised by the defendant before the jury is sworn on the trial of the case. [S., '13, § 5289; 40 Ex. G. A., H. F. 274, § 7.]

13792. Method of demurring. A demurrer to the indictment may be filed with the clerk or made in open court, and shall be entered of record substantially in the following form: "The defendant demurs to the indictment". [C., '51, § 2951; R., '60, §§ 4701, 4708; C., '73, §§ 4346, 4353; C., '97, § 5330.]

13793. Issues—by whom tried. An issue of law arises upon a demurrer to the indictment, which must be tried by the court, but no joinder is necessary. [R., '60, §§ 4702, 4703; C., '73, §§ 4347, 4348; C., '97, § 5329.]

13794. Time of hearing demurrer. When a demurrer is filed or entered of record, it must be heard immediately, or at such time as the court may appoint. [C., '51, § 2954; R., '60, § 4709; C., '73, § 4354.]

13795. Jurisdiction in another county—procedure. If a demurrer is sustained on the ground that the offense charged was within the exclusive jurisdiction of another county in this state, the same proceedings shall be had

as provided in case of the discharge of a jury for want of jurisdiction of the offense charged. [R., '60, § 4710; C., '73, § 4355.]

13796. Absolute discharge. If a demurrer is sustained because the indictment contains matter which is a legal defense or bar to the indictment, the judgment shall be final and the defendant must be discharged. [R., '60, § 4711; C., '73, § 4356.]

13797. Resubmission. If a demurrer is sustained on any other ground, the defendant must be discharged and his bail exonerated, if bail has been given, unless the court is of opinion, on good cause shown, that the objection can be remedied or avoided in another indictment, in which case the court may order the cause to be resubmitted to the same or another grand jury, and the defendant may be held in custody, if not at large on bail, in which case the undertaking given shall remain in force. [R., '60, § 4712; C., '73, § 4357; C., '97, § 5331.]

13798. Pleading over—final judgment. If the demurrer is overruled, the defendant has a right to plead to the indictment; if he fails to do so, final judgment may be rendered against him on the demurrer, and, if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense. [C., '51, § 2955; R., '60, § 4713; C., '73, § 4358; C., '97, § 5332.]

13799. Pleas to the indictment. There are but three pleas to the indictment—(1) guilty, (2) not guilty, or (3) of a former judgment of conviction or acquittal of the offense charged. [C., '51, § 2957; R., '60, § 4714; C., '73, § 4359; C., '97, § 5333.]

13800. Plea of guilty—form—entry. The plea of guilty can only be made in open court and by the defendant himself, in substantially the following form: "The defendant pleads that he is guilty of the offense charged in the indictment", and shall be entered of record. [R., '60, §§ 4715, 4716; C., '73, §§ 4360, 4361; C., '97, § 5334.]

13801. Other pleas—form—entry. The other pleas may be in writing, filed with the clerk, or made in open court, in substantially the following form: "The defendant pleads that he is not guilty of the offense charged in the indictment", or, "The defendant pleads that he has formerly been convicted (or acquitted, as the case may be) of the offense charged in the indictment by the judgment of the..... court of.....(naming it), rendered on theday of....., A. D." (naming the time), which may be pleaded alone or with the plea of not guilty. The pleas shall be entered of record. [C., '51, § 2957; R., '60, §§ 4714, 4715; C., '73, §§ 4359, 4360; C., '97, § 5335.]

13802. Failure to plead. If the defendant fails or refuses to plead to the indictment by demurrer or plea, a plea of not guilty must be entered by the court. [C., '51, § 2963; R., '60, § 4722; C., '73, § 4367; C., '97, § 5336.]

13803. Withdrawal of plea of guilty. At any time before judgment, the court may permit the plea of guilty to be withdrawn and other plea or pleas substituted. [C., '51, § 2961; R., '60, § 4717; C., '73, § 4362; C., '97, § 5337.]

13804. Issues of fact—trial. An issue of fact arises on a plea of not guilty or of former conviction or acquittal, and no further pleading is necessary. Issues of fact must be tried by a jury. [R., '60, §§ 4702, 4704, 4705; C., '73, §§ 4347, 4349, 4350; C., '97, § 5338.]

13805. Plea of not guilty—evidence admissible. The plea of not guilty is a denial of every

material allegation in the indictment, and all matters of fact may be given in evidence under it, except a former conviction or acquittal. [C., '97, § 5338.]

13806. Personal presence at trial. If a felony is charged, the defendant must be personally present at the trial, but the trial of a misdemeanor may be had in his absence, if he appears by counsel. [R., '60, § 4706; C., '73, § 4351; C., '97, § 5338.]

13807. Conviction or acquittal—when a bar. A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment on which the conviction or acquittal took place. [R., '60, § 4719; C., '73, § 4364; C., '97, § 5339.]

13808. Prosecutions barred. When a defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former or for any lower degree of that offense, or for an offense necessarily included therein. [R., '60, § 4720; C., '73, § 4365; C., '97, § 5340.]

13809. Other judgments—when a bar. Except where otherwise provided, the judgment for a defendant on a demurrer, or on an objection to its form or substance taken on the trial, or for variance between the indictment and the proof, shall not bar another prosecution for the same offense, if a resubmission has been ordered. [R., '60, § 4721; C., '73, § 4366; C., '97, § 5341.]

CHAPTER 643

CHANGE OF VENUE

- 13810. Right to change.
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13810. Right to change. In all criminal cases which may be pending in any of the district courts, any defendant therein, or the state, in cases where defendant is charged with felony, may petition the court for a change of place of trial to another county. [R., '51, § 3270; R., '60, § 4727; C., '73, § 4368; C., '97, § 5342; 40 G. A., ch. 221, § 1.]

13811. Petition by defendant. Such petition, when filed by the defendant, must set forth the nature of the prosecution, the court where the same is pending, and that such defendant can not receive a fair and impartial trial owing to the prejudice of the judge, or to excitement or prejudice against the defendant in such county, and be verified on information

and belief by the affidavit of the defendant. [R., '51, § 3271; R., '60, § 4728; C., '73, § 4369; C., '97, § 5343; 40 G. A., ch. 221, § 2.]

13812. Additional verification. When the ground alleged in the petition filed by the defendant is excitement or prejudice against him in the county, it must be verified by the affidavit of three disinterested persons, residents of the county from which the change is sought, in addition to the affidavit of the petitioner himself. [R., '60, § 4729; C., '73, § 4370; C., '97, § 5344; 40 G. A., ch. 221, § 3.]

13813. Petition by state. Such petition, when filed by the state, shall set forth the nature of the prosecution, the court where the

same is pending, and that the state cannot receive a fair and impartial trial in said county owing to excitement or prejudice in such county against the prosecution, and be verified on information and belief by the affidavit of the county attorney or his assistant. [40 G. A., ch. 221, § 4.]

13814. Petition for second change. When a change in place of trial has been granted to one party to the prosecution, the other party thereto to whom no change has been granted, may, in the county to which the case has been sent, petition for a change in the same manner as though said county was the county in which the case was first pending. In such case, if the change be granted, the case shall not be sent to the county in which it was originally pending. [40 G. A., ch. 221, § 5.]

13815. General terms sufficient. The petition need not state the facts upon which the belief of the petitioner or other person verifying the same is founded, but may allege the belief of the particular ground thereof in general terms. [R., '60, § 4730; C., '73, § 4371; C., '97, § 5345.]

13816. Additional testimony. When the alleged ground in the petition is excitement or prejudice in the county against the petitioner, the court may receive additional testimony by affidavits only, either on the part of the defendant or the state. [R., '60, § 4731; C., '73, § 4372; C., '97, § 5346.]

13817. Filed with clerk. The petition and affidavits must be filed with the clerk, and are parts of the record. [R., '60, § 4732; C., '73, § 4373; C., '97, § 5347.]

13818. Discretion of court. The court, in the exercise of a sound discretion, must, when fully advised, decide the matter of the petition according to the very right of it. [C., '51, § 3272; R., '60, § 4733; C., '73, § 4374; C., '97, § 5348.]

13819. Order of change of venue. If sustained, the court must, if the ground alleged be the prejudice of the judge, order the change of venue to the most convenient county in an adjoining district to which no objection exists. If sustained on the ground of excitement and prejudice in the county, it must be awarded to such county in the same district in which no such objection exists. [C., '51, § 3272; R., '60, §§ 4734, 4735; C., '73, §§ 4375, 4376; C., '97, § 5349.]

13820. Transmission of papers. Upon the change of place of trial to another county, if there be but one defendant in the case, or if all have joined in the petition, the clerk must make out and certify a transcript of all papers

on file in the case, including the indictment, and file the same in his office; and all the original papers on file, with a certified copy of all record entries therein, must be without unnecessary delay transmitted to the clerk of the court to which the change is ordered. [C., '51, § 3273; R., '60, § 4736; C., '73, § 4377; C., '97, § 5350.]

13821. Several defendants—transcripts. If there be more than one defendant in such case, and all the defendants have not joined in the petition, the clerk must, without unnecessary delay, make out and certify a transcript of all entries appearing on the record, and of all the papers on file in the case, including the indictment, and transmit the same to the clerk of the court to which the change of place of trial is ordered, retaining the originals. [R., '60, § 4737; C., '73, § 4378; C., '97, § 5351.]

13822. Delivery of accused. When a change of place of trial to another county has been ordered, if the defendant is in custody, the sheriff of the county from which the change is granted must, on the order of the court, deliver him to the sheriff of the county to which such change is allowed, and upon such delivery, with a certified copy of the order therefor, the sheriff last mentioned must receive and detain the defendant in his custody until legally discharged therefrom, and give a certificate of such delivery. [C., '51, § 3274; R., '60, § 4738; C., '73, § 4379; C., '97, § 5352.]

13823. Proceedings after change. The court to which the change is granted must take cognizance of the cause, and proceed therein to trial, judgment, and execution, in all respects as if the indictment had been found by the grand jury impaneled in such court. [C., '51, § 3275; R., '60, § 4739; C., '73, § 4380; C., '97, § 5353.]

13824. Cost attending change. When the place of trial is changed under the provisions of this chapter, the county from which the change was taken shall pay the expenses and charges of removing, delivering, and keeping the defendant, and all other expenses and costs necessary and consequent upon such change and trial, which shall be audited and allowed by the court trying the case; and all such expenses and costs may be recovered by the county to which the trial is changed in an action against the county in which the prosecution was commenced. [C., '51, § 3276; R., '60, §§ 4740, 4745; C., '73, §§ 4381, 4386; C., '97, § 5354.]

13825. Sheriff's fees. For delivering prisoners under the provisions of this chapter, sheriffs are entitled to the same fees as are allowed for the conveyance of convicts to the penitentiary. [C., '51, § 3277; R., '60, § 4741; C., '73, § 4382; C., '97, § 5355.]

CHAPTER 644

TRIAL JURY

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13826. Rules for drawing. The rules for drawing the jury shall be the same as those provided in civil procedure. [R., '60, § 4751; C., '73, § 4389; C., '97, § 5356.]

13827. Completion of panel. If for any reason the regular panel is exhausted without a jury being selected, it shall be completed in the manner provided in the chapter upon selecting, drawing, and summoning juries. [C., '51, § 2970; R., '60, § 4758; C., '73, § 4396; C., '97, § 5357.]

13828. Challenges to the panel. All the provisions of law relating to challenges to the panel of trial jurors in civil procedure, the grounds therefor, the manner of exercising the same, and the effect thereof, shall apply to the panel of trial jurors in criminal cases. [C., '51, §§ 2972-2977; R., '60, §§ 4760-4765; C., '73, §§ 4398-4403; C., '97, § 5358.]

13829. Challenges to individual juror. A challenge to an individual juror is an objection which may be taken orally, and is either for cause or peremptory. [C., '51, § 2978; R., '60, § 4766; C., '73, § 4404; C., '97, § 5359.]

13830. Challenges for cause. A challenge for cause may be made by the state or defendant, and must distinctly specify the facts constituting the causes thereof. It may be made for any of the following causes:

1. A previous conviction of the juror of a felony.

2. A want of any of the qualifications prescribed by statute to render a person a competent juror.

3. Unsoundness of mind, or such defects in the faculties of the mind or the organs of the body as render him incapable of performing the duties of a juror.

4. Affinity or consanguinity, within the ninth degree, to the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or to the defendant, to be computed according to the rule of the civil law.

5. Standing in the relation of guardian and ward, attorney and client, master and servant,

or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose preliminary information, or at whose instance, the prosecution was instituted, or in his employ on wages.

6. Being a party adverse to the defendant in a civil action, or having been the prosecutor against or accused by him in a criminal prosecution.

7. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment.

8. Having served on a trial jury which has tried another defendant for the offense charged in the indictment.

9. Having been on a jury formerly sworn to try the same indictment and whose verdict was set aside, or which was discharged without a verdict after the cause was submitted to it.

10. Having served as a juror, in a civil action brought against the defendant, for the act charged as an offense.

11. Having formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent him from rendering a true verdict upon the evidence submitted on the trial.

12. Because of his being bail for any defendant in the indictment.

13. Because he is defendant in a similar indictment, or complainant or private prosecutor against the defendant or any other person indicted for a similar offense.

14. Because he is, or within a year preceding has been, engaged or interested in carrying on any business, calling, or employment, the carrying on of which is a violation of law, where the defendant is indicted for a like offense.

15. Because he has been a witness, either for or against the defendant, on the preliminary trial or before the grand jury.

16. Having requested, directly or indirectly, that his name be returned as a juror for the regular biennial period.

17. Having served in the district court as a grand or petit juror during the last preceding calendar year. [C., '51, §§ 2982-2986; R., '60,

§§ 4767-4771; C., '73, § 4405; C., '97, §§ 337, 5360; S., '13, § 337; 37 G. A., ch. 267, § 6; 40 Ex. G. A., H. F. 266, § 62.]

13831. Examination of jurors. Upon the trial of a challenge to an individual juror, the juror challenged shall be sworn, if demanded by either party, and examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry thereon, but his answer shall not afterwards be testimony against him. [C., '51, § 2988; R., '60, § 4773; C., '73, § 4407; C., '97, § 5361.]

13832. Examination of other witnesses. Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge, and the court shall determine the law and the fact, and must allow or disallow the challenge. [C., '51, §§ 2989, 2990; R., '60, §§ 4774, 4775; C., '73, §§ 4408, 4409; C., '97, § 5362.]

13833. Order of challenges for cause. The state shall first complete its challenge for cause, and the defendant afterwards, until sixteen jurors have been obtained against whom no cause of challenge has been found to exist. [R., '60, §§ 4776, 4777; C., '73, §§ 4410, 4411; C., '97, § 5363; 38 G. A., ch. 40, § 1.]

13834. Order of challenges in general. The challenges of either party need not be all taken at once, but separately, in the following order, including in each challenge all the causes of challenge belonging to the same class: to the panel; to an individual juror for cause; to an individual juror peremptorily. [R., '60, § 4781; C., '73, § 4415; C., '97, § 5367.]

13835. Peremptory challenges. Peremptory challenges shall be exercised in the same manner as is provided in the trial of civil actions. [R., '60, § 4780; C., '73, § 4414; C., '97, § 5364.]

13836. Peremptory challenges—number. If the offense charged in the indictment or information is or may be punishable with death or imprisonment for life, the state and defendant shall each have the right to peremptorily challenge eight jurors and shall strike two jurors.

If the offense charged be any other felony, or if it be a misdemeanor involving a violation of the statutes relative to intoxicating liquors, the state and the defendant shall each have the right to peremptorily challenge four jurors and shall strike two jurors.

If the offense charged be a misdemeanor other than that specified above, the state and the defendant shall each have the right to peremptorily challenge two jurors and shall strike two jurors. [R., '60, § 4779; C., '73, § 4413; C., '97, § 5365; 38 G. A., ch. 40, § 2; 40 Ex. G. A., H. F. 282, § 1.]

13837. Clerk to prepare list—procedure. The clerk shall prepare a list of jurors called; and, after all challenges for cause are exhausted or waived, the parties, commencing with the state, shall alternately challenge peremptorily or waive by indicating any such challenge upon the list opposite the name of the juror challenged, or by indicating the number of waiver elsewhere on the list. [R., '60, § 4780; C., '73, § 4414; C., '97, § 5363; 38 G. A., ch. 40, § 2; 40 Ex. G. A., H. F. 282, § 2.]

13838. Vacancy filled. After each challenge, sustained for cause, or made peremptorily as indicated on the list, another juror shall be called and examined for challenge for cause before a further challenge is made; and any new juror thus called may be challenged for cause and shall be subject to peremptory challenge or to being struck from the list as other jurors. [R., '60, § 4782; C., '73, § 4416; C., '97, § 5366; 38 G. A., ch. 40, § 3.]

13839. Reading of names. After all challenges have thus been exercised or waived and four jurors have been struck from the list the clerk shall read the names of the twelve jurors remaining who shall constitute the jury selected. [38 G. A., ch. 40, § 3.]

13840. Bias in favor of party—waiver. Bias in a juror against either party is no cause of challenge by the other, and may be waived by the party against whom it exists. [R., '60, § 4784; C., '73, § 4418; C., '97, § 5368.]

13841. Jurors sworn. When twelve jurors are accepted they shall be sworn to try the issues. [R., '60, § 4783; C., '73, § 4417; C., '97, § 5369.]

CHAPTER 645

TRIAL

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13842. Joint indictment—separate trials. When two or more defendants are jointly indicted for felony, any defendant requiring it may be tried separately; in other cases defendants jointly indicted may be tried separately or jointly, in the discretion of the court. [C., '51, § 2992; R., '60, § 4789; C., '73, § 4424; C., '97, § 5375.]

13843. Continuances. The provisions of the code of civil procedure relative to the continuances of the trial of civil causes shall apply to the continuance of criminal actions, but no judgment for costs shall be rendered against a defendant on account thereof, except as in this code otherwise provided. [C., '73, § 4419; C., '97, § 5370.]

13844. Time to prepare for trial. The defendant shall, if he demands it upon entering his plea, be entitled to three days in which to prepare for trial. [C., '73, § 4419; C., '97, § 5370.]

13845. Mode and manner of trial. All the provisions relating to mode and manner of the trial of civil actions, report thereof, translation of the shorthand reporter's notes, the making such report and translation a part of the record, and in all other respects, apply to the trial of criminal actions. [R., '60, § 4809; C., '73, § 4436; C., '97, § 5371.]

13846. Order of trial. The jury having been impaneled and sworn, the trial must proceed in the following order:

1. *Reading indictment and plea.* The clerk or county attorney must read the indictment and state the defendant's plea to the jury.

2. *Statement of state's evidence.* The county attorney may briefly state the evidence by which he expects to sustain the indictment.

3. *Statement of defendant's evidence.* The attorney for the defendant may then briefly state his defense, and the evidence by which he expects to sustain it.

4. *Offer of state's evidence.* The state may then offer the evidence in support of the indictment.

5. *Offer of defendant's evidence.* The defendant or his counsel may then offer his evidence in support of his defense.

6. *Rebutting or additional evidence.* The parties may then, respectively, offer rebutting evidence only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original case. [C., '51, § 2991; R., '60, § 4785; C., '73, § 4420; C., '97, § 5372.]

13847. Arguments. When the evidence is concluded, unless the case is submitted to the jury on both sides without argument, the county attorney must commence, the defendant follow by one or two counsel, at his option, unless the court permit him to be heard by a larger number, and the county attorney conclude, confining himself to a response to the arguments of the defendant's counsel. Where two or more defendants are on trial for the same offense, they may be heard by one counsel each. [R., '60, § 4785; C., '73, § 4420.]

13848. Closing argument by defendant. When the affirmative of the issue is with the defendant, the court may, in its discretion, award to the defendant the last argument. [R., '60, § 4785; C., '73, § 4420.]

13849. Time for argument. The court shall not restrict counsel as to time in their arguments to the jury. [R., '60, § 4788; C., '73, § 4423.]

13850. Instructions. Upon the conclusion of the arguments, the court shall charge the jury in writing, without oral explanation or qualification, stating the law of the case. [R., '60, § 4785; C., '73, § 4420; C., '97, § 5372.]

13851. Notice of additional testimony. The county attorney, in offering the evidence in support of the indictment in the order prescribed in section 13846, shall not be permitted to introduce any witness who was not examined before a committing magistrate or the grand jury, and the minutes of whose testimony were not presented with the indictment to the court, unless he shall have given to the defendant, or his attorney of record if the defendant be not found within the county, a notice in writing stating the name, place of residence, and occupation of such witness, and the substance of what he expects to prove by him on the trial, at least four days before the commencement of such trial. [R., '60, § 4786; C., '73, § 4421; C., '97, § 5373; S., '13, § 5373.]

13852. Insufficient time for notice—motion. Whenever the county attorney desires to introduce evidence to support the indictment, of which he shall not have given said four days' notice because of insufficient time therefor since he learned said evidence could be obtained, he may move the court for leave to introduce such evidence, giving the same particulars as in the former case, and showing diligence such as is required in a motion for a continuance, supported by affidavit. [R., '60, § 4786; C., '73, § 4421; C., '97, § 5373; S., '13, § 5373.]

13853. Election as to continuance. If the court sustains said motion, the defendant shall elect whether said cause shall be continued on his motion, or the witness shall then testify. [C., '97, § 5373; S., '13, § 5373.]

13854. Examination—limitation. If said defendant shall not elect to have said cause continued, the county attorney may examine said witness in the same manner and with the same effect as though four days' notice had been given defendant or his attorney as hereinbefore provided, except the county attorney, in the examination of witnesses, shall be strictly confined to the matters set out in his motion. [C., '97, § 5373; S., '13, § 5373.]

13855. Former conviction or acquittal—order of trial. When the defendant's only plea is a former conviction or acquittal, the order prescribed in sections 13846 to 13848, inclusive, shall be reversed, and the defendant shall first offer his evidence in support of his defense. [R., '60, § 4787; C., '73, § 4422; C., '97, § 5374.]

13856. View of premises by jury. When the court is of the opinion that it is proper the jury should view the place in which the

offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which shall be shown them by a person appointed by the court for that purpose. [C., '51, § 3009; R., '60, § 4800; C., '73, § 4432; C., '97, § 5380.]

13857. Officer sworn. The officers must be sworn to suffer no person to speak to or communicate with the jury on any subject connected with the trial, nor to do so themselves, except the person appointed by the court for that purpose, and that only to show the place to be viewed, and to return them into court without unnecessary delay at a specified time. [R., '60, § 4800; C., '73, § 4432; C., '97, § 5380.]

13858. Juror as witness—grounds to set aside verdict. If a juror have personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial, and if, during the retirement of the jury, a juror declares any fact which could be evidence in the cause, as of his own knowledge, the jury must return into court, and the juror must be sworn as a witness and examined in the presence of the parties, if his evidence be admissible; and in support of a motion to set aside a verdict, proof of such declaration may be made by any juror. [C., '51, § 3010; R., '60, § 4801; C., '73, § 4433; C., '97, § 5381.]

13859. Sickness of juror. If before the conclusion of a trial a juror becomes sick so as to be unable to perform his duty, the court may order him to be discharged, and in such case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled. [C., '51, § 3013; R., '60, § 4804; C., '73, § 4443; C., '97, § 5388.]

13860. Separation of jury. The jurors sworn to try an indictment, in the discretion of the court, at any time before the final submission of the cause to them, may be permitted to separate, except where one of the parties objects thereto, or be kept together in charge of proper officers. [C., '51, § 3011; R., '60, § 4802; C., '73, § 4434; C., '97, § 5382.]

13861. Officer sworn. The officers must be sworn to keep the jury together during the adjournment of the court, and to suffer no person to speak to or communicate with them on any subject connected with the trial, nor do so themselves, and to return them into court at the time to which it adjourns. [R., '60, § 4802; C., '73, § 4434; C., '97, § 5382.]

13862. Admonition as to communications. The jury, whether permitted to separate, or kept together in charge of sworn officers, must be admonished by the court that it is their duty not to permit any person to speak to or communicate with them on any subject connected with the trial, and that any and all attempts to do so should be immediately re-

ported by them to the court, and that they should not converse among themselves on any subject connected with the trial, or form or express an opinion thereon, until the cause is finally submitted to them. [C., '51, § 3012; R., '60, § 4803; C., '73, § 4435; C., '97, § 5383.]

13863. Admonition repeated. Said admonition must be given or referred to by the court at each adjournment during the progress of the trial previous to the final submission of the cause to the jury. [R., '60, § 4803; C., '73, § 4435; C., '97, § 5383.]

13864. Questions of law and fact. On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, saving the right of the defendant and the state to except; questions of facts are to be tried by jury. [C., '51, § 3016; R., '60, § 4812; C., '73, § 4439; C., '97, § 5385.]

13865. Jury bound by instructions. Although the jury has the power to find a general verdict which includes questions of law as well as fact, it is bound, nevertheless, to receive as law what is laid down as such by the court. [C., '51, § 3016; R., '60, § 4812; C., '73, § 4439; C., '97, § 5385.]

13866. Higher offense proved—procedure. If it appears by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the court may direct the jury to be discharged and all proceedings on the indictment to be suspended, and order the defendant to be committed or continued on bail to answer any new indictment which may be found against him for the higher offense. [C., '51, § 3000; R., '60, § 4791; C., '73, § 4430; C., '97, § 5378.]

13867. New indictment not found—procedure. If the indictment for the higher offense be not found and presented at or before the next term, the court must proceed to try the defendant on the original indictment. [C., '51, § 3001; R., '60, § 4792; C., '73, § 4431; C., '97, § 5379.]

13868. Lack of jurisdiction—no offense charged. The court may also discharge the jury where it appears that it has not jurisdiction of the offense, or that the facts as charged in the indictment do not constitute an offense punishable by law. [C., '51, § 3002; R., '60, § 4793; C., '73, § 4444; C., '97, § 5389.]

13869. Crime committed in another state. If the jury be discharged because the court has not jurisdiction of the offense charged in the indictment, and it appear that it was committed out of the jurisdiction of this state, the defendant must be discharged, or ordered to be retained in custody a reasonable time until the county attorney shall have a reasonable opportunity to inform the chief executive of the state in which the offense was committed of the facts, and for said officer to require the delivery of the offender. [C., '51, § 3003; R., '60, § 4794; C., '73, § 4445; C., '97, § 5390.]

13870. Crime committed in another county. If the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as shall be reasonable to await a warrant from the proper county for his arrest, or, if the offense be bailable, he may be admitted to bail in an undertaking with sufficient sureties that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly designated in the undertaking, to surrender himself upon the warrant, if issued, or that the bail will forfeit such sum as the court may fix, to be mentioned in the undertaking. [C., '51, § 3004; R., '60, § 4795; C., '73, § 4446; C., '97, § 5391.]

13871. Papers transmitted to proper county. In such case, the clerk must transmit, forthwith, a certified copy of the indictment, and all the papers in the action filed with him, except the undertaking mentioned in the preceding section, to the county attorney of the proper county. [C., '51, § 3005; R., '60, § 4796; C., '73, § 4447; C., '97, § 5392.]

13872. Defendant discharged—procedure. If the defendant be not arrested on a warrant from the proper county, he shall be discharged from custody, and his bail, if any, exonerated, or money deposited instead of bail refunded, as the case may be, and the sureties in the undertaking must be discharged. [C., '51, § 3006; R., '60, § 4797; C., '73, § 4448; C., '97, § 5393.]

13873. Defendant arrested—procedure. If he be arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate. [C., '51, § 3007; R., '60, § 4798; C., '73, § 4449; C., '97, § 5394.]

13874. No offense charged—resubmission. If the jury be discharged because the facts set forth do not constitute an offense punishable by law, the court must order the defendant discharged and his bail, if any, exonerated, or, if he has deposited money instead of bail, that the money deposited be refunded, unless in its opinion a new indictment can be framed upon which the defendant can be legally convicted, in which case the court may direct that the case be submitted to the same or another grand jury. [C., '51, § 3008; R., '60, § 4799; C., '73, § 4450; C., '97, § 5395.]

13875. Defendant committed during trial. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after such appearance, order him committed to the custody of the proper officer to abide the judgment or further order of the court; and he shall be committed and held in custody accordingly. [C., '51, § 3020; R., '60, § 4816; C., '73, § 4451; C., '97, § 5396.]

13876. Instructions. The rules relating to the instruction of juries in civil cases shall be applicable to the trial of criminal prosecutions. [C., '51, §§ 3017, 3018; R., '60, §§ 4813, 4814; C., '73, §§ 4440, 4441; C., '97, § 5386.]

13877. Decision in court—retirement. After hearing the charge, the jury may either decide in court or retire for deliberation. [C., '51, § 3019; R., '60, § 4815; C., '73, § 4442; C., '97, § 5387.]

13878. Officers sworn. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private

and convenient place without food or drink, water excepted, unless directed by the court, and not to suffer any person to speak to or communicate with them, nor speak to or communicate with them themselves except to ask them whether they have agreed upon their verdict, and not to communicate to anyone the state of their deliberation or the verdict agreed upon, until after the same shall have been declared in open court, and received by the court, and to return them into court when they shall have so agreed upon their verdict, unless, by permission of the court, they be sooner discharged. [C., '51, § 3019; R., '60, § 4815; C., '73, § 4442; C., '97, § 5387.]

CHAPTER 646

WITNESSES

- 13879. Subpoenas for witnesses.
- 13880. Defense witnesses at expense of state.
- 13881. Witnesses for defendant—form of subpoena.
- 13882. Witnesses for defendant in criminal cases.
- 13883. Service of subpoena.
- 13884. Breaking in to serve subpoena.
- 13885. Disobedience of witness.
- 13886. Civil liability.
- 13887. Forfeiture of bond.

13879. Subpoenas for witnesses. A magistrate in a criminal action before him, and the clerk of court in any criminal action pending therein, shall issue blank subpoenas for witnesses, signed by him, with the seal of the court if by the clerk, and deliver as many of them as requested to the defendant or his attorney or the attorney for the state. They may be served in any part of the state. [C., '51, §§ 3168, 3170; R., '60, §§ 4950, 4951, 4958; C., '73, §§ 4561, 4562, 4569; C., '97, § 5492.]

13880. Defense witnesses at expense of state. Witnesses for the defense shall be subpoenaed at the expense of the county only upon the order of the court or judge thereof before which the case is pending, made upon a satisfactory showing that the witnesses are material and necessary for the defense, which order may be made at the time of the trial or other disposition of the case. The board of supervisors shall not allow any claims for fees of witnesses not thus authorized. [C., '73, § 3818.]

13881. Witnesses for defendant—form of subpoena. Subpoenas for defendant's witnesses shall show whether they are summoned on the order of the court. [C., '51, § 3170; R., '60, § 4950; C., '73, § 4562; C., '97, § 5492.]

13882. Witnesses for defendant in criminal cases. Witnesses subpoenaed for the defendant in criminal cases may demand their fees in advance as in civil cases, unless the subpoena shows that it is issued under the order of the judge. [C., '97, § 1298; 40 Ex. G. A., H. F. 40, § 3.]

NOTE: Fees in advance in civil cases, see § 11331.

- 13888. Depositions.
- 13889. Perpetuating testimony.
- 13890. Defendant as witness.
- 13891. Failure to testify—effect.
- 13892. Cross-examination.
- 13893. Attendance of witnesses outside state.
- 13894. Costs—paid in advance.
- 13895. Order to enforce attendance.
- 13896. Fees advanced—protection from service of process.

13883. Service of subpoena. A peace officer must serve without delay within his county, city, or town any subpoena issued in a criminal action, delivered to him for service, and make written return thereof, stating the time, place, and manner of service, but a subpoena may be served by any other adult person. Service thereof is made by delivering a copy and showing the original to the witness. [C., '51, §§ 3171, 3172; R., '60, §§ 4952, 4953; C., '73, §§ 4563, 4564; C., '97, § 5493.]

13884. Breaking in to serve subpoena. If a witness conceal himself to avoid the service of a subpoena, the officer may break open doors or windows for the purpose of making service. [C., '51, § 3176; R., '60, § 4954; C., '73, § 4565; C., '97, § 5494.]

13885. Disobedience of witness. Disobedience to a subpoena, or refusal to be sworn or to answer as a witness, may be punished by the court or magistrate as a contempt, as provided in the civil procedure. [C., '51, § 3174; R., '60, § 4955; C., '73, § 4566; C., '97, § 5495.]

13886. Civil liability. A witness wilfully disobeying a subpoena in a criminal case without good cause shall be liable to the party injured for the amount of the damages sustained by such party. [C., '51, § 3175; R., '60, § 4956; C., '73, § 4567; C., '97, § 5496.]

13887. Forfeiture of bond. The undertakings of witnesses in criminal cases may be forfeited and enforced like the undertaking of bail. [R., '60, § 4957; C., '73, § 4568; C., '97, § 5497.]

13888. Depositions. A defendant in a criminal case, either after preliminary information, indictment, or information, may examine witnesses conditionally or on notice or commission, in the same manner and with like effect as in civil actions. [R., '60, § 4960; C., '73, § 4571; C., '97, § 5498.]

13889. Perpetuating testimony. A person apprehensive of a criminal prosecution may perpetuate testimony in his favor in the same manner, and with like effect, as may be done in apprehension of any civil action. [R., '60, § 4961; C., '73, § 4572; C., '97, § 5499.]

13890. Defendant as witness. Defendants in all criminal proceedings shall be competent witnesses in their own behalf, but can not be called as witnesses by the state. [C., '51, § 2388; R., '60, § 3978; C., '73, § 3636; C., '97, § 5484.]

13891. Failure to testify—effect. Should a defendant not elect to become a witness, that fact shall not have any weight against him on the trial, nor shall the attorney or attorneys for the state during the trial refer to the fact that the defendant did not testify in his own behalf; and should they do so, such attorney or attorneys will be guilty of a misdemeanor, and defendant shall for that cause alone be entitled to a new trial. [C., '97, § 5484.]

13892. Cross-examination. When the defendant testifies in his own behalf, he shall be subject to cross-examination as an ordinary witness, but the state shall be strictly confined therein to the matters testified to in the examination in chief. [C., '73, § 4238; C., '97, § 5485.]

13893. Attendance of witnesses outside state. When a petition is filed in the office of a clerk of the district court upon the relation and oath of a prosecuting attorney in another state, which, by its laws, has heretofore or may hereafter make provision for commanding persons within its borders to attend and testify in a criminal action in this state, setting forth that there is a criminal action pending in the courts of such state wherein a person residing or being

within the county wherein said court is held is a material witness for the state in such action, to which there is attached a certified copy of the indictment therein, a judge of said court shall issue an order fixing a time and place for a hearing on said petition, which may be during a session of court or in vacation, and thereupon the clerk shall prepare a notice requiring the said witness to appear before the said judge at the time and place specified in said order to make defense thereto and shall deliver the same to the sheriff of said county for service upon said person. [S., '13, § 5499-b.]

13894. Costs—paid in advance. All costs of said proceeding, which shall be estimated by the clerk, shall be paid to the clerk at the time said petition is filed. [S., '13, § 5499-c.]

13895. Order to enforce attendance. If it shall be shown upon said hearing that the said person is a material and necessary witness for the prosecution in said case, the court shall enter an order commanding said person to appear and testify in said cause in the court in which such criminal action is pending at a certain named time and place, of which order the said person shall take notice. [S., '13, § 5499-d.]

13896. Fees advanced—protection from service of process. If any person on whom such order has been made, having been tendered by the party asking for the order ten cents for each mile traveled to and from such court, and the sum of five dollars for each day that his attendance is required, including the time going to and returning from the place of trial, the number of days to be specified in such order, shall unreasonably neglect to attend and testify in such court, he shall be punished in the manner provided for the punishment of disobedience of any order issued from the office of the clerk of the district court; provided, however, that the laws of the state in which the trial is to be held give to persons coming into the state, under such order, protection from the service of papers and arrest. [S., '13, § 5499-e.]

CHAPTER 647

EVIDENCE

13897. Rules of evidence.
13898. Obstructing highway by railroad.
13899. Rape—actual penetration.
13900. Corroboration in rape, seduction, and other crimes.

13901. Corroboration of accomplice.
13902. Proof of overt acts.
13903. Confession of defendant.
13904. Photographs—measurements—Bertillon system.

13897. Rules of evidence. The rules of evidence prescribed in civil procedure shall apply to criminal proceedings as far as applicable and not inconsistent with the provisions of this chapter. [R., '60, § 4805; C., '73, §§ 4426, 4556; C., '97, § 5483.]

13898. Obstructing highway by railroad. In a prosecution against a railway company for obstructing a highway or any private way, proof that any such way is in an unsafe condition, or that it is inconvenient for travel at the place of its intersection with such railway,

shall be presumptive evidence that such company has obstructed such way. [C., '73, § 4557; C., '97, § 5486.]

13899. Rape—actual penetration. Proof of actual penetration into the body is sufficient to sustain an indictment for rape. [C., '51, § 2997; R., '60, § 4101; C., '73, § 4558; C., '97, § 5487.]

13900. Corroboration in rape, seduction, and other crimes. The defendant in a prosecution for rape, or assault with intent to commit rape, or enticing or taking away an unmarried female of previously chaste character for the purpose of prostitution, or aiding or assisting therein, or seducing and debauching any unmarried woman of previously chaste character, can not be convicted upon the testimony of the person injured, unless she be corroborated by other evidence tending to connect the defendant with the commission of the offense. [C., '51, § 2999; R., '60, § 4103; C., '73, § 4560; C., '97, § 5488.]

13901. Corroboration of accomplice. A conviction can not be had upon the testimony of an accomplice, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely show the commission of the offense or the circumstances thereof. [C., '51, § 2998; R., '60, § 4102; C., '73, § 4559; C., '97, § 5489.]

13902. Proof of overt acts. Upon a trial for conspiracy, a defendant can not be con-

victed unless one or more overt acts alleged in the indictment are proved, when required by law to constitute the offense, but other overt acts not alleged in the indictment may be given in evidence. [C., '51, § 2996; R., '60, § 4790; C., '73, § 4425; C., '97, § 5490.]

NOTE: Allegation of overt acts, see § 13755.

13903. Confession of defendant. The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the offense was committed. [R., '60, § 4806; C., '73, § 4427; C., '97, § 5491.]

13904. Photographs — measurements — Bertillon system. It shall be lawful for the sheriff of any county or the chief of police in any city in this state, to take or procure the taking of the photograph of any person held to answer on a charge of any felony, such person being in the custody of such officer, or to make and record any measurements of such prisoner, by the Bertillon or other system, and to exchange such photographs, or measurements, or copies of the same, with other sheriffs and police officers, or to distribute the same by mail for the purpose of securing evidence for the identification of such person held to answer, if the identity and past record of the said person are unknown to him; and the cost of such photographs and measurements, and of distributing the same, may be allowed by the court as a part of the costs in the case. [S., '13, § 5499-a.]

CHAPTER 648

INSANITY OF DEFENDANT DURING TRIAL

13905. Doubt as to sanity—procedure.

13906. Method of trial.

13907. Finding of insanity—discharge or commitment.

13905. Doubt as to sanity—procedure. If a defendant appears in any stage of the trial of a criminal prosecution, and a reasonable doubt arises as to his sanity, further proceedings must be suspended and a trial had upon that question. [C., '51, §§ 3260, 3261; R., '60, §§ 5015, 5016; C., '73, §§ 4620, 4621; C., '97, § 5540.]

13906. Method of trial. Such trial shall be conducted in all respects, so far as may be, as the prosecution itself would be, except the defendant shall hold the burden of proof, and first offer his evidence and have the opening and closing argument. [R., '60, § 5017; C., '73, § 4622; C., '97, § 5541.]

13907. Finding of insanity — discharge or commitment. If the accused shall be found insane, no further proceedings shall be taken under the indictment until his reason is restored, and, if his discharge will endanger the public peace or safety, the court must order

13908. Restored to reason—returned to custody—expense.

13909. Insanity after commitment to jail.

him committed to the department for the criminal insane at Anamosa until he becomes sane; but if found sane, the trial upon the indictment shall proceed, and the question of the then insanity of the accused can not be raised therein. [C., '51, §§ 3262, 3263; R., '60, §§ 5018, 5019; C., '73, §§ 4623, 4624; C., '97, § 5542.]

13908. Restored to reason — returned to custody—expense. If the accused is committed to the department for the criminal insane, as soon as he becomes mentally restored, the person in charge shall at once give notice to the sheriff and county attorney of the proper county of such fact, and the sheriff, without delay, must receive and hold him in custody until he is brought to trial or judgment, as the case may be, or is legally discharged, the expense for conveying and returning him, or any other, to be paid in the first instance by the county from which he is sent, but such county may recover the same from his estate,

or a relative, or another county or municipal body bound to provide for or maintain him elsewhere, and the sheriff shall be allowed for his services the same fees as are allowed for conveying convicts to the penitentiary. [C., '51, §§ 3264-3267; R., '60, §§ 5020-5023; C., '73, §§ 4625-4628; C., '97, § 5543.]

13909. Insanity after commitment to jail. If, after conviction for a misdemeanor and

judgment of imprisonment in jail, the defendant is suspected of being insane, the same proceedings shall be taken as is provided in chapters 176 to 178, inclusive, and, if found insane, he shall be committed to the department for the criminal insane at Anamosa, and all subsequent proceedings shall be as provided in the preceding section. [C., '97, § 5544.]

CHAPTER 649

JURY AFTER SUBMISSION

13910. Papers taken by jury.
13911. Report for information.
13912. Discharge of jury—grounds.

13913. Retrial—when allowed.
13914. Adjournment pending deliberation—effect.

13910. Papers taken by jury. Upon retiring for deliberation, the jury may take with it all papers which have been received in evidence, except depositions, and copies of such parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession, also any notes of the testimony or other proceedings taken in the trial by themselves or any of them. [C., '51, §§ 3021, 3022; R., '60, §§ 4817, 4818; C., '73, §§ 4452, 4453; C., '97, § 5397.]

13911. Report for information. After the jury has retired for deliberation, if there be any disagreement as to any part of the testimony, or if it desires to be informed on any point of law arising in the cause, it must require the officer to conduct it into court, and, upon its being brought in, the information required must be given as provided by law, in the presence of or after oral notice to the county attorney and defendant's counsel. [C., '51, § 3023; R., '60, § 4819; C., '73, § 4454; C., '97, § 5398.]

13912. Discharge of jury—grounds. If, after retirement, one of the jury is taken sick so as to prevent further deliberation, or any other accident or cause occurs to prevent its being kept together, the court may discharge

it; otherwise the jury can not be discharged after the cause is submitted to it until it has agreed upon its verdict and rendered it in open court, unless, by the consent of both parties entered upon the record, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that it can agree. [C., '51, §§ 3024, 3025; R., '60, §§ 4820, 4821; C., '73, §§ 4455, 4456; C., '97, § 5399.]

13913. Retrial—when allowed. In all cases where a jury is discharged or prevented from giving a verdict, except where the defendant is discharged during the progress of the trial, or after submission to it, the cause may be again tried at the same or another term of the court. [C., '51, § 3026; R., '60, § 4822; C., '73, § 4457; C., '97, § 5400.]

13914. Adjournment pending deliberation—effect. While the jury is absent, the court may adjourn from time to time as to other business, but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury is discharged, but a final adjournment of the court discharges the jury. [C., '51, §§ 3027, 3028; R., '60, §§ 4823, 4824; C., '73, §§ 4458, 4459; C., '97, § 5401.]

CHAPTER 650

VERDICT

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13915. General and special verdicts. The jury must render a general verdict of “guilty” or “not guilty”, which imports a conviction or acquittal on every material allegation in the indictment, except upon a plea of former conviction or acquittal of the same offense, in which case it shall be “for the state” or “for the defendant”, and except in cases submitted to determine the grade of the offense and, when authorized, fixing the punishment therefor. [C., '51, §§ 3032-3037; R., '60, §§ 4828-4833; C., '73, §§ 4463, 4464, 4474-4477; C., '97, § 5405.]

13916. Answers to interrogatories. It must also return with the general verdict answers to special interrogatories submitted by the court upon its own motion, or at the request of the defendant in prosecutions where the defense is an affirmative one, or it is claimed any witness is an accomplice, or there has been a failure to corroborate where corroboration is required. [C., '97, § 5405.]

13917. Reasonable doubt. Where there is a reasonable doubt of the defendant being proven to be guilty, he is entitled to an acquittal. [R., '60, § 4807; C., '73, § 4428; C., '97, § 5376.]

13918. Reasonable doubt as to degree. Where there is a reasonable doubt of the degree of the offense of which the defendant is proven to be guilty, he shall only be convicted of the lower degree. [R., '60, § 4808; C., '73, § 4429; C., '97, § 5377.]

13919. Finding offense of different degree. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offense, if punishable by indictment. [C., '51, § 2918; R., '60, § 4835; C., '73, § 4465; C., '97, § 5406.]

13920. Finding included offense. In all other cases, the defendant may be found guilty of any offense the commission of which in necessarily included in that with which he

is charged in the indictment. [C., '51, § 3039; R., '60, § 4836; C., '73, § 4466; C., '97, § 5407.]

13921. Verdict against one of several. On an indictment against several, if the jury can not agree upon a verdict as to all, it may render a verdict as to those in regard to whom it does agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury. [C., '51, § 3040; R., '60, § 4837; C., '73, § 4467; C., '97, § 5408.]

13922. Verdict as to several defendants. Upon an indictment against several defendants, any one or more may be convicted or acquitted. [C., '51, § 3014; R., '60, § 4810; C., '73, § 4437; C., '97, § 5384.]

13923. Return of jury—roll call. When the jury has agreed upon its verdict, it must be conducted into court by the officer having it in charge; the names of the jurors must then be called, and if all do not appear the rest must be discharged without giving a verdict; in such case, the cause may again be tried at the same or another term. [C., '51, § 3029; R., '60, § 4825; C., '73, § 4460; C., '97, § 5402.]

13924. Presence of defendant—when necessary. If the indictment be for a felony, the defendant must be present at the rendition of the verdict; if it be for a misdemeanor, it may be rendered in his absence. [C., '51, § 3030; R., '60, § 4826; C., '73, § 4461; C., '97, § 5403.]

13925. Verdict rendered. When the members of the jury have answered to their names, the court or the clerk shall ask them whether they have agreed upon the verdict, and if the foreman answers in the affirmative they must declare the same. [C., '51, § 3031; R., '60, § 4827; C., '73, § 4462; C., '97, § 5404.]

13926. Verdict insufficient — reconsideration. If the jury renders a verdict which is neither a general nor special one, the court may direct it to reconsider it, and it shall not be recorded until it is rendered in some form from which the intent of the jury can be clearly understood, whether to render a general verdict,

or to find the facts specially and leave the judgment to the court. [C., '51, §§ 3038, 3041; R., '60, §§ 4834, 4838; C., '73, §§ 4468, 4478; C., '97, § 5409.]

13927. Informal verdict. If the jury persists in finding an informal verdict, from which, however, it can be understood that the intention is to find for the defendant upon the issue, it shall be entered in the terms in which it is found, and the court must give judgment of acquittal. [C., '51, § 3042; R., '60, § 4839; C., '73, § 4469; C., '97, § 5410.]

13928. Certainty in verdict required. No judgment of conviction can be given unless the jury expressly finds against the defendant upon the issue, or judgment is given against him upon a special verdict. [C., '51, § 3042; R., '60, § 4839; C., '73, § 4469; C., '97, § 5410.]

13929. Jury polled. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party; in which case each member thereof shall be asked whether it is his verdict, and if any one answers in the negative the jury must be sent out for further deliberation. [C., '51, § 3043; R., '60, § 4840; C., '73, § 4470; C., '97, § 5411.]

13930. Reading and entry of verdict—disagreement. When the verdict is given and is

such as the court may receive, the clerk may immediately enter it in full upon the record, and must read it to the jury, and inquire of the members thereof whether it is their verdict. If any juror disagrees, the fact must be entered upon the record and the jury again sent out. But if no disagreement is expressed, the verdict is complete and the jury must be discharged from the case. [R., '60, § 4841; C., '73, § 4471; C., '97, § 5412.]

13931. Defendant discharged on acquittal. If judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given. [C., '51, § 3045; R., '60, § 4843; C., '73, § 4473; C., '97, § 5413.]

13932. Acquittal on ground of insanity—commitment. If the defense is insanity of the defendant, the jury must be instructed, if it acquits him on that ground, to state that fact in its verdict. The court may thereupon, if the defendant is in custody, and his discharge is found to be dangerous to the public peace and safety, order him committed to the insane hospital, or retained in custody, until he becomes sane. [C., '51, § 3044; R., '60, § 4842; C., '73, § 4472; C., '97, § 5414.]

CHAPTER 651

EXCEPTIONS

13933. Bill of exceptions—purpose.
 13934. What constitutes record—exceptions unnecessary.
 13935. Grounds for exceptions.
 13936. Action affecting substantial right.

13937. Bill by judge.
 13938. Bill by bystanders.
 13939. Time to approve bill.
 13940. Modification of bill.
 13941. Time allowed to prepare bill.

13933. Bill of exceptions — purpose. The office of a bill of exceptions is to make the proceedings or evidence appear of record which would not otherwise so appear. [R., '60, § 4846; C., '73, § 4481; C., '97, § 5416.]

13934. What constitutes record—exceptions unnecessary. All papers pertaining to the cause and filed with the clerk, and all entries made by him in the record book pertaining to them, and showing the action or decision of the court upon them or any part of them, and the judgment, are to be deemed parts of the record, and it is not necessary to except to any action or decision of the court so appearing of record. [R., '60, § 4847; C., '73, § 4482; C., '97, § 5417.]

13935. Grounds for exceptions. On the trial of an indictment, exceptions may be taken by the state or by the defendant to any decision of the court upon matters of law, in any of the following cases:

1. In disallowing a challenge to an individual juror.
2. In admitting or rejecting witnesses or evidence on the trial of any challenge.

3. In admitting or rejecting witnesses or evidence.

4. In deciding any matter of law, not purely discretionary on the trial of the issue. [C., '51, § 3046; R., '60, § 4844; C., '73, § 4479; C., '97, § 5415.]

13936. Action affecting substantial right. Exceptions may also be taken to any action or decision of the court which affects any other material or substantial right of either party, whether before or after the trial of the indictment, or on the trial. [R., '60, § 4845; C., '73, § 4480; C., '97, § 5415.]

13937. Bill by judge. Either party may take an exception to any decision or action of the court, in any stage of the proceedings, not required to be and not entered in the record book, and reduce the same to writing, and tender the same to the judge, who shall sign it if true, and if signed it shall be filed with the clerk and become a part of the record of the cause. [C., '51, § 3047; R., '60, § 4848; C., '73, § 4483; C., '97, § 5418.]

13938. Bill by bystanders. If the judge refuses to sign it, such refusal must be stated at the end thereof, and it may then be signed by two or more attorneys or officers of the court or disinterested bystanders, and sworn to by them, and filed with the clerk, and it shall thereupon become a part of the record of the cause. [R., '60, § 4848; C., '73, § 4483; C., '97, § 5418.]

13939. Time to approve bill. The judge shall be allowed one clear day to examine the bill of exceptions, and the party excepting shall be allowed three clear days thereafter to pro-

cure the signatures and file the same. [R., '60, § 4849; C., '73, § 4484; C., '97, § 5419.]

13940. Modification of bill. If the judge and the party excepting can agree in modifying the bill of exceptions, it shall be modified accordingly. [R., '60, § 4850; C., '73, § 4485; C., '97, § 5420.]

13941. Time allowed to prepare bill. Time must be given to prepare the bill of exceptions when it is necessary; if it can reasonably be done, it shall be settled at the time of taking the exception. [R., '60, § 4851; C., '73, § 4486; C., '97, § 5421.]

CHAPTER 652

NEW TRIAL

13942. Definition.

13943. Application—when made.

13942. Definition. A new trial is a re-examination of the issue in the same court before another jury, after a verdict has been given. [C., '51, § 3050; R., '60, § 4852; C., '73, § 4487; C., '97, § 5422.]

13943. Application—when made. The application for a new trial can be made only by the defendant, and must be made before judgment. [C., '51, § 3053; R., '60, § 4855; C., '73, § 4490; C., '97, § 5425.]

13944. Grounds. The court may grant a new trial for the following causes, or any of them:

1. When the trial has been had in the absence of the defendant, if the indictment be for a felony.

2. When the jury has received any evidence, paper, or document out of court not authorized by the court.

3. When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and due consideration of the case.

13944. Grounds.

13945. Effect of a new trial.

4. When the verdict has been decided by lot, or by means other than a fair expression of opinion on the part of all the jurors.

5. When the court has misdirected the jury in a material matter of law.

6. When the verdict is contrary to law or evidence; but no more than two new trials shall be granted for this cause alone.

7. When the court has refused properly to instruct the jury.

8. When from any other cause the defendant has not received a fair and impartial trial. [C., '51, § 3052; R., '60, § 4854; C., '73, § 4489; C., '97, § 5424.]

NOTE: Knowledge on the part of a juror as grounds to set aside verdict, see § 13858.

13945. Effect of a new trial. The granting of a new trial places the parties in the same position as if no trial has been had; all the testimony must be produced anew and the former verdict can not be used or referred to either in the evidence or in argument. [C., '51, § 3051; R., '60, § 4853; C., '73, § 4488; C., '97, § 5423.]

CHAPTER 653

ARREST OF JUDGMENT

13946. Motion in arrest defined—grounds.

13947. Time of making motion.

13946. Motion in arrest defined—grounds. A motion in arrest of judgment is an application to the court in which the trial was had, on the part of the defendant, that no judgment be rendered upon a verdict against him, or on a plea of guilty, and shall be granted:

1. Upon any ground which would have been ground of demurrer.

2. When upon the whole record no legal judgment can be pronounced. [C., '51, §

13948. On motion of court.

13949. Defendant held to answer.

3054; R., '60, § 4856; C., '73, § 4491; C., '97, § 5426.]

13947. Time of making motion. The motion may be made at any time before or after judgment, during the same term. [R., '60, § 4859; C., '73, § 4494; C., '97, § 5429.]

13948. On motion of court. The court may also, upon its own observation of any of these

grounds, arrest the judgment on its own motion. [C., '51, § 3055; R., '60, § 4857; C., '73, § 4492; C., '97, § 5427.]

13949. Defendant held to answer. If the court is of opinion from the evidence on the

trial that the defendant is guilty of a public offense of which no legal conviction can be had on the indictment, he may be held to answer the offense in like manner as upon a preliminary examination. [C., '51, § 3057; R., '60, § 4858; C., '73, § 4493; C., '97, § 5428.]

CHAPTER 654

JUDGMENT

- 13950. Judgment of acquittal—time for.
- 13951. Judgment of conviction—time for.
- 13952. Presence of defendant.
- 13953. Forfeiture of bail—warrant of arrest.
- 13954. Defendant arrested.
- 13955. Appearance for judgment—showing of cause.
- 13956. What may be shown for cause.
- 13957. Insanity.
- 13958. New trial—motion in arrest.

- 13959. Cumulative sentences.
- 13960. Indeterminate sentences.
- 13961. Sentences for two or more offenses.
- 13962. Discretion as to sentence.
- 13963. Place of commitment.
- 13964. Imprisonment for fine.
- 13965. Commitment to jail of another county.
- 13966. Allowance of bail upon appeal.
- 13967. Costs—when payable by county.
- 13968. Costs—when payable by state.

13950. Judgment of acquittal—time for. Upon a verdict of not guilty for the defendant, or special verdict upon which a judgment of acquittal must be given, the court must render judgment of acquittal immediately. [R., '60, § 4860; C., '73, § 4495; C., '97, § 5430.]

13951. Judgment of conviction—time for. Upon a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction must be rendered, the court must fix a time for pronouncing judgment, which must be at least three days after the verdict is rendered, if the court remains in session so long, or, if not, as remote a time as can reasonably be allowed; but in no case can it be pronounced in less than six hours after the verdict is rendered, unless defendant consent thereto, [C., '51, § 3058; R., '60, §§ 4861, 4862; C., '73, § 4496; C., '97, § 5431.]

13952. Presence of defendant. When judgment is pronounced, if the conviction be for a felony, the defendant must be personally present; if for a misdemeanor, he need not. [C., '51, § 3059; R., '60, § 4863; C., '73, § 4497; C., '97 § 5432.]

13953. Forfeiture of bail—warrant of arrest. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail or money deposited, may make an order directing the clerk, on the application of the county attorney at any time thereafter, to issue a warrant into one or more counties for his arrest, which may be substantially in the following form:

County of }
 THE STATE OF IOWA. {
 To any peace officer in the state:
 A..... B....., having been duly convicted on the.....day of....., A. D., in the district court of.....county, of the

crime of (here designate it generally, as in the indictment).

You are hereby commanded to arrest the said A..... B..... and bring him before said court for judgment, if it be then in session, or, if not, to deliver him into the custody of the sheriff of said county.

Given under my hand and seal of said court, at my office in....., in said county, this.....day of....., A. D.

[Seal.]
Clerk.

The warrant may be served in any county in the state. [C., '51, §§ 3061-3063; R., '60, §§ 4865-4868; C., '73, §§ 4498-4501; C., '97, § 5433.]

13954. Defendant arrested. The officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant. [C., '51, § 3064; R., '60, § 4869; C., '73, § 4502; C., '97, § 5434.]

13955. Appearance for judgment—showing of cause. When the defendant appears for judgment, he must be informed by the court, or the clerk under its direction, of the nature of the indictment, his plea, and the verdict, if any, thereon, and be asked whether he has any legal cause to show why judgment should not be pronounced against him. [C., '51, § 3065; R., '60, § 4870; C., '73, § 4503; C., '97, § 5435.]

13956. What may be shown for cause. He may show for cause against the judgment that he is insane, or any sufficient ground for a new trial, or in arrest of judgment. [R., '60, § 4871; C., '73, § 4504; C., '97, § 5436.]

13957. Insanity. If the court is of opinion that there is reasonable ground for believing him insane, the question of his insanity shall be determined as provided in this code, and if he is found to be insane, such proceedings shall be had as are herein directed. [R., '60, § 4872; C., '73, § 4505; C., '97, § 5437.]

13958. New trial—motion in arrest. If he moves for a new trial, or in arrest of judgment, the court shall defer the judgment and proceed to hear and decide the motions. If no sufficient cause is shown why judgment should not be pronounced, and none appears to the court upon the record, judgment shall be rendered. [C., '51, § 3066; R., '60, §§ 4873, 4874; C., '73, §§ 4506, 4507; C., '97, § 5438.]

13959. Cumulative sentences. If the defendant is convicted of two or more offenses, the punishment of each of which is or may be imprisonment, the judgment may be so rendered that the imprisonment upon any one shall commence at the expiration of the imprisonment upon any other of the offenses. [C., '51, § 3070; R., '60, § 4880; C., '73, § 4508; C., '97, § 5439.]

13960. Indeterminate sentences. When any person over sixteen years of age is convicted of a felony, except treason or murder, the court imposing a sentence of confinement in the penitentiary shall not fix the limit or duration of the same, but the term of such imprisonment shall not exceed the maximum term provided by law for the crime of which the prisoner was convicted. [S., '13, § 5718-a13.]

13961. Sentences for two or more offenses. If a person be sentenced for two or more separate offenses and the second or further term is ordered to begin at the expiration of the first and such succeeding term of sentence is specified in the order of commitment, the several terms shall for the purpose of the preceding section be construed as one continuous term of imprisonment. [S., '13, § 5718-a13.]

13962. Discretion as to sentence. Where one is convicted of a felony that is punishable by imprisonment in the penitentiary, or by fine, or by imprisonment in the county jail, or both, the court may impose the lighter sentence if it shall so elect. [S., '13, § 5718-a13.]

13963. Place of commitment. Any male person who shall be committed to the penitentiary, except those convicted of murder, treason, sodomy, or incest, and who at the time of commitment is between the ages of sixteen and thirty years, and who has never before been convicted of a felony, shall be confined in the men's reformatory; provided, however, that persons between the ages of sixteen and thirty years convicted of rape, robbery, or of breaking and entering a dwelling house in the nighttime with intent to commit a public offense therein, may, as the particular circumstances may warrant, in the discretion of the court,

be committed to either the men's reformatory at Anamosa, or the penitentiary at Fort Madison. [S., '13, § 5718-a5.]

13964. Imprisonment for fine. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which shall not exceed one day for every three and one-third dollars of the fine. [C., '51, § 3071; R., '60, § 4881; C., '73, § 4509; C., '97, § 5440.]

13965. Commitment to jail of another county. When a person is to be committed to jail, if there is no jail or no sufficient one in the county where the party would be committed under the ordinary provisions of law, the court or magistrate committing may order him to be committed to the jail of some other county, which shall be the one which is most convenient and safe, and the county to which the cause originally belonged shall be liable for all the expenses thereof. [C., '51, § 3073; R., '60, § 4884; C., '73, § 4510; C., '97, § 5441.]

13966. Allowance of bail upon appeal. In all cases, except murder in the first degree and treason, the court rendering judgment must make an order fixing the amount in which bail must be taken, and there shall be no execution of the judgment until such order is made. [R., '60, § 4885; C., '73, § 4511; C., '97, § 5442.]

13967. Costs—when payable by county. In all criminal cases where the prosecution fails, or where the money can not be made from the person liable to pay the same, the facts being certified by the clerk or justice as far as their knowledge extends, and verified by the affidavit of the sheriff, the fees allowed by law in such cases shall be audited by the county auditor and paid out of the county treasury. [C., '51, § 2537; R., '60, § 4146; C., '73, § 3790; C., '97, § 512; 37 G. A., ch. 311, § 1.]

13968. Costs—when payable by state. All costs and fees incurred in any criminal case brought against an inmate of any state institution for a crime committed while confined in such institution shall be paid out of the state treasury from the general fund in case the prosecution fails, or where such costs and fees can not be made from the person liable to pay the same, the facts being certified by the clerk of the district court under his seal of office to the auditor of state, including a statement of the amount of fees or costs incurred, such statement to be approved by the presiding judge in writing appended thereto or indorsed thereon. [37 G. A., ch. 311, § 1.]

CHAPTER 655

LIEN OF JUDGMENTS AND STAY OF EXECUTIONS

13969. Fines lien on real estate.

13969. Fines lien on real estate. Judgments for fines, in all criminal actions rendered, are liens upon the real estate of the defendant, and shall be entered upon the lien index in the same manner and with like effect as judgments in civil actions. [R., '60, § 5003; C., '73, § 4609; C., '97, § 5531.]

13970. Stay of execution.

13970. Stay of execution. The defendant may have a stay of execution for the same length of time and in the same manner as provided by law in civil actions, and with like effect, and the same proceedings may be had therein. [R., '60, § 5004; C., '73, § 4610; C., '97, § 5532.]

CHAPTER 656

EXECUTIONS

13971. Copy of judgment as execution.
13972. Executions within county of trial.
13973. Executions outside county of trial.
13974. Record of discharge.

13971. Copy of judgment as execution. When a judgment of imprisonment, either in the penitentiary or county jail, is pronounced, an execution, consisting of a certified copy of the entry thereof in the record book, must be forthwith furnished to the officer whose duty it is to execute the same, who shall proceed and execute it accordingly, and no other warrant or authority is necessary to justify or require its execution. [C., '51, § 3074; R., '60, § 4886; C., '73, § 4512; C., '97, § 5443.]

13972. Executions within county of trial. A judgment for imprisonment, or for imprisonment until a fine is paid, to be executed in the county where the trial is had, shall be executed by the sheriff thereof, and return made upon the execution, which shall be delivered to and filed by the clerk of said court. [C., '51, §§ 3075-3077; R., '60, §§ 4897-4899; C., '73, §§ 4513-4515; C., '97, § 5444.]

13973. Executions outside county of trial. Under all other judgments for imprisonment, the sheriff shall deliver a certified copy of the execution with the body of the defendant to the keeper of the jail or penitentiary in which the defendant is to be imprisoned in execution of the judgment, and take his receipt therefor on a duplicate copy thereof, which he must forthwith return to the clerk of the court in which the judgment was rendered, with his return thereon, and a minute of said return shall be entered by the clerk as a part of the record of the proceedings in the cause in which the execution issued. [C., '51, § 3077; R., '60, §§ 4898, 4899, 4901; C., '73, §§ 4514, 4515; C., '97, § 5444.]

13975. Preventing escape—recapture.
13976. Execution for fine.
13977. Execution for abatement of nuisance.

13974. Record of discharge. When such defendant is discharged from custody, the jailer or warden of the penitentiary shall make return of such fact to the proper court, and an entry thereof shall be made by its clerk as is required in the first instance. [C., '97, § 5444.]

13975. Preventing escape—recapture. The sheriff, or his deputy, while conveying the defendant to the proper prison, has the same authority to require the assistance of any citizen of the state in securing the defendant, and retaking him if he escapes, as if he was in his own county; and every person who neglects or refuses to assist him when so required shall be punishable accordingly. [C., '51, § 3078; R., '60, § 4900; C., '73, § 4516; C., '97, § 5445.]

13976. Execution for fine. Upon a judgment for a fine, an execution may be issued as upon a judgment in a civil case, and return thereof shall be made in like manner. [R., '60, § 4902; C., '73, § 4518; C., '97, § 5446.]

13977. Execution for abatement of nuisance. When the judgment is for the abatement or removal of a nuisance, or for anything other than the payment of money by the defendant, an execution consisting of a certified copy of the entry of such judgment, delivered to the sheriff of the proper county, shall authorize and require him to execute such judgment, and he shall return the same, with his doings under the same thereon indorsed, to the clerk of the court in which the judgment was rendered, within seventy days after the date of the certificate of such certified copy, except as hereinbefore provided for. [R., '60, § 4903; C., '73, § 4519; C., '97, § 5447.]

CHAPTER 657

EXECUTION OF DEATH PENALTY

- 13978. Time of execution.
- 13979. Record sent governor.
- 13980. Copy of judgment authority for execution.
- 13981. Reprieve or suspension.
- 13982. Insanity or pregnancy.
- 13983. Finding of commissioners.
- 13984. Execution suspended.
- 13985. Executive warrant of execution.
- 13986. Time and manner of execution.

- 13987. Witnesses to execution.
- 13988. Certificate of execution.
- 13989. Certificate filed and published.
- 13990. Stay of execution by appeal.
- 13991. Proceedings on appeal.
- 13992. Proceedings on affirmance — issuance of warrant.
- 13993. Execution of warrant.

13978. Time of execution. When the court or jury shall direct that a defendant be punished by death, the court pronouncing judgment shall fix the day of the execution thereof, which shall not be less than one year after the day on which the judgment is rendered, and not longer than fifteen months, during which time the defendant shall be imprisoned in the penitentiary. [C., '97, § 4732.]

13979. Record sent governor. Immediately after entry of judgment of death, the court rendering the same must transmit by mail to the governor a copy of the indictment, plea, verdict, judgment, and testimony in the case. [C., '97, § 4733.]

13980. Copy of judgment authority for execution. When a judgment of death is pronounced, a certified copy of the entry thereof in the record book must be furnished to the officer whose duty it is to execute the same, who shall proceed accordingly, and no other warrant or authority is necessary to require or justify the execution. [C., '97, § 4734.]

13981. Reprieve or suspension. The only officers who shall have power to reprieve or suspend the execution of a judgment of death are the governor and, as provided in this chapter, the warden of the penitentiary, except in cases of appeal to the supreme court. [C., '97, § 4735.]

13982. Insanity or pregnancy. When the warden of the penitentiary is satisfied that there are reasonable grounds for believing that a defendant in his charge under sentence of death is insane or pregnant, he shall notify the commissioners of insanity of the county wherein the penitentiary is located, who shall be sworn by the warden well and truly to inquire into the facts as to the insanity or pregnancy of the defendant, as the case may be, and return a true report of their findings. [C., '97, § 4736.]

13983. Finding of commissioners. The commissioners, after being sworn, shall examine the defendant and hear any evidence that may

be presented, and may examine the medical attendants at the penitentiary, if necessary, to ascertain the facts, and make report thereon in writing, signed by not less than a majority of them, finding as to the fact of insanity or pregnancy. [C., '97, § 4737.]

13984. Execution suspended. If the report does not show the defendant to be insane or pregnant, the warden shall not suspend the execution; but if it does, he shall suspend the execution, and immediately transmit the report to the governor. [C., '97, § 4738.]

13985. Executive warrant of execution. When a judgment of death from any cause has not been executed on the day appointed by the court therefor, the governor, by a warrant under the seal of the state, shall fix the day of execution, which warrant shall be obeyed by the sheriff, and no one but the governor can then suspend its execution. [C., '97, § 4739.]

13986. Time and manner of execution. A judgment of death must be executed by the sheriff of the county in which the judgment was rendered, or his deputy, within the walls of the penitentiary where the defendant is confined, or within a yard or inclosure adjoining thereto, on the day fixed in the judgment, between sunrise and sunset, by hanging by the neck until dead. [C., '97, § 4740.]

13987. Witnesses to execution. The sheriff or his deputy must, at least three clear days before executing a judgment of death, notify the judge of the district court who tried the case, or, if he be not in office, another judge of such court, the county attorney and the clerk of the district court of the county in which the judgment was rendered, the sheriff of the county in which the offense was committed, if other than that in which judgment was rendered, and two physicians and twelve respectable citizens of the state to be selected by him, to be present as witnesses at such execution. He must also, at the request of the defendant, permit one or more ministers of the gospel, named by him, and any of his relatives, to attend the execution, and also such magistrates, peace officers,

and guards as the sheriff shall deem proper, but no minor, and no person other than those herein authorized, shall be present. [C., '97, § 4741.]

13988. Certificate of execution. The sheriff or his deputy executing the judgment of death must prepare and sign with his name of office a certificate, setting forth the time and place of the execution, and that judgment was executed upon the defendant according to the foregoing provisions, and cause the certificate to be signed by the public officers, and at least twelve persons, not relations of the defendant, who witnessed the same. [C., '97, § 4742.]

13989. Certificate filed and published. The sheriff or his deputy executing such judgment must cause the certificate to be filed in the office of the clerk of the district court of the county in which the judgment was rendered, and cause a copy thereof to be published in one newspaper printed at the capital of the state, and in one in his county. [C., '97, § 4743.]

13990. Stay of execution by appeal. An appeal from a judgment of death shall stay the infliction of that punishment, but the defendant is to be retained in custody without bail to abide the judgment thereon. [C., '97, § 4744.]

13991. Proceedings on appeal. When an appeal is taken from a judgment of death, the clerk of the district court in which it was ren-

dered shall at once give the defendant or his attorney a certificate, under the seal of the court, certifying that fact, and the sheriff or other officer having the defendant in custody must, upon the delivery to him of the certificate, suspend further proceedings on the judgment until final judgment on the appeal is certified to him by the clerk of the supreme court. [C., '97, § 4745.]

13992. Proceedings on affirmance—issuance of warrant. When such judgment is affirmed, the supreme court must cause a copy of its judgment to be delivered to the governor, and to the sheriff whose duty it is to execute such judgment, signed by the clerk thereof and under seal of the court, and the governor shall issue a warrant of execution under the seal of the state, and transmit it by messenger or mail to the sheriff whose duty it is to execute the judgment, directing him, on a day and at an hour therein named, not earlier than the day fixed by the district court, to execute such judgment in the manner required by law. [C., '97, § 4746.]

13993. Execution of warrant. The sheriff shall execute such warrant in the manner provided in this chapter, and report his doings to the governor and the district court whose judgment was appealed from, and make the publication of his doings in the manner provided for in this chapter. If from any cause the judgment is not executed on the day named in the warrant, the governor may appoint another, and so on until it is done. [C., '97, § 4746.]

CHAPTER 658

APPEALS

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13994. Office of appeal—who may appeal. The mode of reviewing in the supreme court any judgment, action, or decision of the district court in a criminal case is by appeal. Either the defendant or state may appeal. [R., '60, §§ 4904, 4905; C., '73, §§ 4520, 4521; C., '97, § 5448; S., '13, § 5448.]

13995. Time of taking—from final judgment only. An appeal can only be taken from the final judgment, and within sixty days thereafter. [R., '60, § 4906; C., '73, § 4521; C., '97, § 5448; S., '13, § 5448; 40 G. A., ch. 222, § 1.]

13996. Joinder. When several defendants are indicted and tried jointly, any one or more of them may join in taking the appeal, but those of their codefendants who do not join shall take no benefit therefrom, yet they may appeal afterwards. [R., '60, § 4917; C., '73, § 4526; C., '97, § 5451.]

13997. Taking and perfecting. An appeal is taken and perfected by the party or his attorney serving on the adverse party or his attorney of record in the district court at the time of the rendition of the judgment, and on

the clerk of such court, a notice in writing of the taking of the appeal, and filing the same with such clerk, with evidence of service thereof indorsed thereon or annexed thereto. [R., '60, §§ 4907, 4908; C., '73, §§ 4523, 4524; C., '97, § 5449.]

13998. Duty of clerk when appeal is taken. When an appeal is taken, the clerk of the court in which the judgment was rendered shall:

1. Forthwith prepare and transmit to the attorney general a certified copy of the notice of appeal, together with the date of the service and filing thereof.

2. Promptly prepare and transmit to the clerk of the supreme court a transcript of all record entries in the cause, together with copies of all papers in the case on file in his office, except those returned by the examining magistrate on the preliminary examination, all duly certified under the seal of his court. [R., '60, § 4909; C., '73, § 4525; C., '97, § 5450; 40 Ex. G. A., H. F. 252, § 1.]

13999. Duties of county attorney. The county attorney shall:

1. When an appeal is taken by the state, at least forty days prior to the term at which the cause is to be heard, prepare and deliver to the attorney general a typewritten manuscript for the abstract of record in the cause.

2. When an appeal is taken by the defendant, prepare and transmit to the attorney general a typewritten manuscript covering all matters which may be required to be embraced in any amended abstract which should be filed by the state in order to properly present said appeal.

Such manuscripts shall be prepared in ample time so that the same may be printed and filed within the time and in the manner prescribed by law and the rules of the supreme court. [C., '97, § 301; S. S., '15, § 301; 40 Ex. G. A., H. F. 252, § 2.]

14000. Transcript at expense of county. If a defendant in a criminal cause has perfected an appeal from a judgment against him and shall satisfy a judge of the district court from which the appeal is taken that he is unable to pay for a transcript of the evidence, such judge may order the same made at the expense of the county where said defendant was tried. [C., '73, § 3777; C., '97, § 254; S. S., '15, § 254-a2.]

14001. Appeal by state—effect. An appeal taken by the state in no case stays the operation of a judgment in favor of the defendant. [R., '60, § 4911; C., '73, § 4527; C., '97, § 5452.]

14002. Appeal by defendant—effect. An appeal taken by the defendant does not stay the execution of the judgment, unless bail is put in; but where the judgment is imprisonment in the penitentiary, and an appeal is taken within the time provided after judgment is rendered, and the defendant is unable to give bail, and that fact is satisfactorily shown to the court, or judge thereof, it may, in its dis-

cretion, order the sheriff or officer having the defendant in custody to detain him in custody, without taking him to the penitentiary, to abide the judgment on the appeal, if the defendant desires it. [R., '60, §§ 4914, 4915; C., '73, §§ 4528, 4529; C., '97, § 5453; 40 G. A., ch. 222, § 1.]

14003. Bail—proceedings when given. When an appeal is taken by the defendant, and bail is given, the clerk must give to the defendant, or his attorney, a certificate, under the seal of the court, that an appeal has been taken and bail given, and the sheriff or other officer having the defendant in custody must, upon receiving it, discharge the defendant from custody and cease all further proceedings in execution thereof, and forthwith return to the clerk of the court who issued it the execution under which he acted, with his return thereon; and if it has not been issued, it shall not be until after final judgment on the appeal. [R., '60, § 4916; C., '73, § 4530; C., '97, § 5454.]

14004. Title of case—how docketed. The party appealing is the appellant, the adverse party the appellee, but the title of the action shall not be changed on the appeal, and the cause shall be so docketed at the commencement of the period assigned for trying causes from the judicial district from which the appeal comes, which causes shall take precedence of all other business, be tried at the term at which the transcript is filed, unless continued for cause or by consent of the parties, and be decided, if practicable, at the same term. [R., '60, §§ 4818, 4819; C., '73, §§ 4531, 4532; C., '97, § 5455.]

14005. Personal appearance of defendant. The personal appearance of the defendant in the supreme court on the trial of an appeal is in no case necessary. [R., '60, § 4920; C., '73, § 4533; C., '97, § 5456.]

14006. Informality or defect. An appeal shall not be dismissed for any informality or defect in taking it, if corrected in a reasonable time; and the supreme court must direct how it shall be corrected. [R., '60, § 4921; C., '73, § 4534; C., '97, § 5457.]

14007. Assignment of error. No assignment of error is necessary. [R., '60, § 4922; C., '73, § 4535; C., '97, § 5458.]

14008. Closing argument. The defendant is entitled to close the argument. [R., '60, § 4923; C., '73, § 4536; C., '97, § 5459.]

14009. Rules of procedure. The record and case may be presented in the supreme court by printed abstracts, arguments, motions, and petitions for rehearing as provided by its rules; and the provisions of law in civil procedure relating to certification of the record and the filing of decisions and opinions of the supreme court shall apply in such cases. [C., '97, § 5461.]

14010. Decision of supreme court. If the appeal is taken by the defendant, the supreme

court must examine the record, without regard to technical errors or defects which do not affect the substantial rights of the parties, and render such judgment on the record as the law demands; it may affirm, reverse, or modify the judgment, or render such judgment as the district court should have done, or order a new trial, or reduce the punishment, but can not increase it. [C., '51, §§ 3097, 3098; R., '60, § 4925; C., '73, § 4538; C., '97, § 5462.]

14011. Costs on reversal. In case the judgment of the trial court is reversed or modified in favor of the defendant, on the appeal of defendant, he shall be entitled to recover the cost of printing abstract and briefs, not exceeding one dollar for each page thereof, to be paid by the county from which the appeal was taken. [C., '97, § 5462.]

14012. Decisions in appeals by state. If the state appeals, the supreme court can not reverse or modify the judgment so as to increase the punishment, but may affirm it, and shall point out any error in the proceedings or in the measure of punishment, and its decision shall be obligatory as law. [R., '60, § 4926; C., '73, § 4539; C., '97, § 5463.]

14013. Reversal—effect. If a judgment against the defendant is reversed, such reversal shall be deemed an order for a new trial, unless the supreme court shall direct that the defendant be discharged and his bail exonerated, or if money be deposited instead, that it be refunded to him. [C., '51, § 3099; R., '60, § 4927; C., '73, § 4540; C., '97, § 5464; 38 G. A., ch. 117, § 1.]

14014. Affirmance—effect. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the supreme court shall direct, except as

otherwise provided. [C., '51, § 3100; R., '60, § 4928; C., '73, § 4541; C., '97, § 5465.]

14015. Opinion of supreme court. The opinion of the supreme court must be in writing, filed with its clerk, and recorded. [R., '60, § 4924; C., '73, § 4537; C., '97, § 5460.]

14016. Decision recorded and transmitted. The decision of the supreme court, with any opinion filed or judgment rendered, must be recorded by its clerk, and, after the expiration of the period allowed for a rehearing, or as ordered by the court or provided by its rules, a certified copy of the decision and opinion shall be transmitted to the clerk of the trial court, filed and entered of record by him, and thereafter the jurisdiction of the supreme court shall cease, and all proceedings necessary for executing the judgment shall be had in the trial court, or by its clerk. [C., '51, §§ 3101, 3102; R., '60, §§ 4929, 4930; C., '73, §§ 4542, 4543; C., '97, § 5466.]

14017. Judgment enforced. Unless some proceeding in the district court is directed, a copy of the judgment of the trial court and decision on appeal, or of the judgment and decision on appeal certified by the clerk of the trial court, shall be delivered to the sheriff, or other proper officer, as an execution, and shall authorize him to execute the judgment of the court, or take any steps required to bring the action to a conclusion. [R., '60, § 4931; C., '73, § 4544; C., '97, § 5467.]

14018. Time of imprisonment deducted. If a defendant, imprisoned during the pendency of an appeal, upon a new trial ordered by the supreme court is again convicted, the period of his former imprisonment shall be deducted from the period of imprisonment to be fixed on the last verdict of conviction. [R., '60, § 4933; C., '73, § 4545; C., '97, § 5468.]

CHAPTER 659

COMPROMISING CERTAIN OFFENSES

14019. Compromisable offenses.

14020. Procedure.

14019. Compromisable offenses. When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the following section, except when it was committed:

1. By or upon an officer while in the execution of the duties of his office;
2. Riotously; or,
3. With an intent to commit a felony. [R., '60, § 5106; C., '73, § 4708; C., '97, § 5622.]

14020. Procedure. If the party injured in such a case appear before the court to which the papers on a preliminary examination are

14021. Discharge—effect.

14022. Limitation.

returned, at any time before trial on an indictment for the offense, or the trial of an appeal in the district court, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. In that case the reasons for the order must be set forth therein and entered upon the minutes. [R., '60, § 5107; C., '73, § 4709; C., '97, § 5623.]

14021. Discharge—effect. The order authorized by the preceding section is a bar to another prosecution for the same offense. [R., '60, § 5108; C., '73, § 4710; C., '97, § 5624.]

14022. Limitation. No public offense can be compromised, nor can any proceedings for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in this chapter. [R., '60, § 5109; C., '73, § 4711; C., '97, § 5625.]

CHAPTER 660

DISMISSAL OF CRIMINAL ACTIONS

14023. Failure to indict.

14024. Delay in trial.

14025. Discharge on undertaking.

14023. Failure to indict. When a person is held to answer for a public offense, if an indictment be not found against him at the next regular term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown. [C., '51, § 3248; R., '60, § 5007; C., '73, § 4613; C., '97, § 5535.]

14024. Delay in trial. If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next regular term of the court in which the indictment is triable after the same is found, the court must order it to be dismissed, unless good cause to the contrary be shown. [C., '51, § 3249; R., '60, § 5008; C., '73, § 4614; C., '97, § 5536.]

14025. Discharge on undertaking. If the defendant be not indicted or tried as above provided, and sufficient reason therefor is shown, the court may order the prosecution continued from term to term, and discharge the defendant from custody on his own undertaking, or on the undertaking of bail for his appearance to answer the charge at the time

14026. Discharge on dismissal.

14027. Dismissal by court—effect.

to which the same is continued, but no continuance under this section shall be extended beyond the following three terms of the court. [C., '51, § 3250; R., '60, § 5009; C., '73, § 4615; C., '97, § 5537.]

14026. Discharge on dismissal. If the court direct the prosecution to be dismissed, the defendant, if in custody, must be discharged, or his bail, if any, exonerated, and if money has been deposited instead of bail, it must be refunded to him. [R., '60, § 5010; C., '73, § 4616; C., '97, § 5538.]

14027. Dismissal by court—effect. The court, upon its own motion or the application of the county attorney, in the furtherance of justice, may order the dismissal of any pending criminal prosecution, the reasons therefor being stated in the order and entered of record, and no such prosecution shall be discontinued or abandoned in any other manner. Such a dismissal is a bar to another prosecution for the same offense if it is a misdemeanor; but it is not a bar if the offense charged be a felony. [C., '51, §§ 3251, 3252; R., '60, §§ 5011-5013; C., '73, §§ 4617-4619; C., '97, § 5539.]

STATUTES AND RULES
REGULATING PRACTICE AND PROCEDURE
IN THE
SUPREME COURT OF IOWA

NOTE: These rules shall take effect and apply to all cases in this court after the January 1925 term.

ORGANIZATION

CODE SEC. 12801. The supreme court shall consist of seven judges, four of whom shall constitute a quorum to hold court, but one alone thereof may adjourn from day to day or to a certain day or until the next term.

DIVISION OF COURT

CODE SEC. 12802. The court may be divided into two sections, the chief justice presiding in open court with each of said sections. The said sections may hold open court separately and cases may be submitted to each section separately * * *.

RULE 1. The supreme court shall be divided into two divisions, to be known as the first and the second. Each division shall consist of three judges and the chief justice, who shall sit with each division in the consideration of all matters coming before such division. The personnel of the division shall not be permanent, but may be changed from time to time by the chief justice, as exigencies may arise, or by affirmative vote of a majority of the judges. The personnel of the divisions shall be changed at least once a year.

RULE 2. Each division shall, except as hereinafter provided, hear and determine all motions and cases submitted to it, and all petitions for rehearing in cases decided by it, including motions for decrees to retax costs, and all other interlocutory matters.

RULE 3. All cases or other matters passed to another period shall go to and be heard by the division to which the cause was originally assigned; and causes or other matters "passed to last period" shall also be heard by the division to which the case was originally assigned, save where the matter is for the full bench, when it shall be passed to the last period and be heard at that time. Cases passed from one period to another of the term waive oral argument.

RULE 4. Should there be a difference of opinion among the members of either division as to how a case should be decided, or as to the facts or the rules of law applicable thereto, any member of that division, or the chief justice, on his own motion, may call in the other division and the division thus

called in shall consider the case and take part in the decision.

RULE 5. Should a member of a division get behind with his work for any reason, or be disqualified from sitting in any cause, the chief justice may call in a judge from another division who is up with his work to sit in place of the one who is behind or disqualified, and may also, in the event an entire division gets behind, make such a division of the cases for any period as will equalize matters between the two divisions.

RULE 6. Consultation may be had between the divisions at any time upon cases pending on motion, for original submission, or upon petitions for rehearing, upon request of any member of the court.

RULE 7. Where a chief justice retires and is re-elected, he shall take his place with the division from which his successor comes, and, if a new man takes his place, he too shall be assigned to the division from which the then chief justice is taken.

FULL BENCH

RULE 8. All cases involving constitutional questions shall be heard by the full bench; and the chief justice may order any case to be so submitted.

RULE 9. Upon call of the docket for any period or any division thereof, or at any time prior thereto, when it becomes apparent that any matter is for hearing by the full bench, any cause or any motion or other matter, may be assigned for the last period of that term.

RULE 10. Assignment shall also be made of all motions, cases for original submission, and petitions for rehearing which are to go to the full bench, all under the orders and directions of the chief justice.

CHIEF JUSTICE

CODE SEC. 12804. Of the judges whose terms of office first expire, the senior in time of service shall be chief justice for one year, and, if there be but two of them, the junior for one year, and so on in rotation. If two or more are equal in time of service, then the right to the position and the order in which they serve shall be determined by seniority in age. And

at the last term in each year, the supreme court shall determine and enter of record, who, under these rules, shall be chief justice for the year next ensuing; and at the session of the supreme court next preceding the commencement of the first of the said two years, the supreme court shall cause a record to be made as to who shall be the chief justice for the year next ensuing.

JURISDICTION

CONST., ART. V, SEC. 4. The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may by law prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior judicial tribunals throughout the state.

CODE SEC. 12822. The supreme court has appellate jurisdiction over all judgments and decisions of all courts of record, except as otherwise provided by law.

CODE SEC. 12823. An appeal may also be taken to the supreme court from:

1. An order made affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment from which an appeal might be taken.

2. A final order made in special actions affecting a substantial right therein, or made on a summary application in an action after judgment.

3. An order which grants or refuses, continues or modifies, a provisional remedy; grants or refuses, dissolves or refuses to dissolve, an injunction or attachment, or grants or refuses a new trial, or sustains or overrules a demurrer.

4. An intermediate order involving the merits or materially affecting the final decision.

5. An order or judgment on habeas corpus.

CODE SEC. 12824. If any of the above orders or judgments are made or rendered by a judge, the same are reviewable the same as if made by a court.

CODE SEC. 12831. The court may issue all writs and processes necessary for the exercise and enforcement of its appellate jurisdiction.

CODE SEC. 12879. The supreme court may enforce its mandates upon inferior courts and officers by fine and imprisonment, which imprisonment may be continued until obeyed.

CODE SEC. 12885. All objections to the jurisdiction of the court to entertain an appeal must be made in printed form stating specifically the ground thereof and served upon the appellant or his attorney of record not less than ten days before the date assigned for the submission of the cause.

TERMS

CODE SEC. 12805. The supreme court shall be held at the seat of government, and shall convene and hold three regular terms each

year. The first term shall begin with the second Tuesday of January and end with the first Monday of May; the second shall begin with the first Tuesday after the first Monday of May and end with the third Monday of September; and the third shall begin with the first Tuesday after the third Monday of September and end with the third Saturday of December.

CODE SEC. 12806. Each of said terms of court shall be for the submission and determination of causes, and for the transaction of such other business as shall properly come before the court. All causes on the docket shall be heard at each term, unless continued or otherwise disposed of by order of the court. The court shall remain in session, so far as practicable, until it is determined what the opinion of the court shall be in all causes submitted to it, except in causes where reargument is ordered. Judgments of affirmance, rulings, and orders in causes submitted, and orders authorized by law may be made and entered by the court at any time, regardless of the terms of court.

RULE 11. Each term shall be so divided into periods that the last shall be for the consideration, by the full bench, of all motions, cases on original submission, petitions for rehearing, and other matters properly referable thereto; and all other periods shall be so divided that one division shall sit on the first Tuesday of the period for the submission of such motions, cases, and petitions for rehearing and other matters, as may be assigned to it, and the other shall sit for the hearing of matters assigned to it, on the second Tuesday of each period. And, to equalize the work, cases assigned for each period shall be divided, as nearly as practicable, into two equal parts, save that all cases and other matters for consideration by the entire bench shall be assigned for the last period of the term.

APPEALS IN CIVIL CASES

CODE SEC. 12832. Appeals from the district, superior, and municipal courts may be taken to the supreme court at any time within four months from the date of the entry of record of the judgment or order appealed from, and not afterwards; but, when a motion for new trial, or in arrest of judgment, or for judgment notwithstanding the verdict has been filed, such time for appeal shall be automatically extended so as to permit the same at any time within sixty days after the entry of the ruling upon such motion.

CODE SEC. 12833. No appeal shall be taken in any cause in which the amount in controversy between the parties as shown by the pleadings does not exceed one hundred dollars, unless the trial judge shall, during the term in which judgment or order is entered, certify that the cause is one in which the appeal should be allowed. Upon such certificate being filed the same shall be appealable regardless of the amount in controversy. Said limitation shall not affect the right of appeal in any action in which an interest in real estate is involved, nor shall the right of appeal be affected by the remission of any part of the verdict or judgment returned or rendered.

CODE SEC. 12828. The supreme court on appeal may review and reverse any judgment or order of the municipal, superior, or district court, although no motion for a new trial was made in such court.

CODE SEC. 12834. A part of several coparties may appeal, but in such case they must serve notice of such appeal upon those not joining therein, and file proof thereof with the clerk of the court from which the appeal is taken.

CODE SEC. 12835. Coparties, refusing to join in an appeal, can not afterwards appeal, or derive any benefit therefrom, unless from the necessity of the case, but they shall be held to have joined, and be liable for their proportion of the costs, unless they appear and object thereto.

CODE SEC. 12884. The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the district court, and the case may proceed. The court may also, in such case, grant a continuance when such a course will be calculated to promote the ends of justice.

CODE SEC. 12837. An appeal is taken and perfected by the service of a notice in writing on the adverse party, his agent, or any attorney who appeared for him in the case in the court below, and also upon the clerk of the court wherein the proceedings were had, stating the appeal from the same, or from some specific part thereof, defining such part.

CODE SEC. 12838. When such service can not be made the trial court or judge on application shall direct what notice shall be sufficient.

CODE SEC. 12839. Notice of appeal shall not be held insufficient because served before the clerk of the trial court has spread the judgment entry upon the court record if it shall appear that such entry has been made in proper form before the appellant's abstract was filed in the office of the clerk of the supreme court.

CODE SEC. 12840. A notice of appeal shall be served and return made thereon in the same manner as an original notice in a civil action, and filed in the office of the clerk of the court in which the judgment or order appealed from was rendered or made.

CODE SEC. 12841. All other notices connected with or growing out of the appeal shall be served and the return made in like manner, and filed in the office of the clerk of the supreme court.

CODE SEC. 12842. All notices provided for in the two preceding sections become a part of the record in the case on being filed.

RULE 12. The attorneys and guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties respectively in this court until others are retained or appointed and notice thereof served on the adverse party.

SUPERSEDEAS BONDS

CODE SEC. 12858. No proceedings under a judgment or order, or any part thereof, shall be stayed by an appeal, unless the appellant executes a bond with one or more sureties, to be filed with and approved by the clerk of the court in which the judgment or order was rendered or made, to the effect that he will pay to the appellee all costs and damages that shall be adjudged against him on the appeal; and will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the supreme court may render, or order to be rendered by the inferior court, not exceeding in amount or value the original judgment or order, and all rents of or damages to property during the pendency of the appeal out of the possession of which the appellee is kept by reason of the appeal.

CODE SEC. 12859. If the bond is intended to stay proceedings on only a part of the judgment or order, it shall be varied so as to secure the part stayed alone.

CODE SEC. 12860. When thus filed and approved, the clerk shall issue a written order requiring the appellee and all others to stay all proceedings under such judgment or order, or so much thereof as is superseded thereby.

CODE SEC. 12861. No appeal or stay shall vacate or affect such judgment or order.

CODE SEC. 12865. If a party has perfected his appeal, and the clerk of the lower court refuses for any reason to approve the bond, or requires an excessive penalty, or unjust or improper conditions, he may apply to the district court or judge thereof, who shall fix the amount and conditions of the bond and approve the same. Pending the application, the judge may, by a written order, recall and stay all proceedings under the order or judgment appealed from until the decision of the application. The bond thus approved shall be filed with the clerk, who shall issue a written order to stay proceedings.

CODE SEC. 12866. The appellee may move the court rendering the judgment or making the order appealed from, or the supreme court, or a judge of either court, if in vacation, upon ten days' notice in writing to appellant, to discharge the bond on account of defect in substance or insufficiency in security, which motion if well taken shall be sustained, unless appellant shall, within a day to be fixed in the order made and filed therein, give a new and sufficient bond as required by said order. If the new bond is not given, proceedings shall be had in the lower court as though no bond had been given, but a new and sufficient bond may be given at any time with like effect and results as though given in the first instance.

CODE SEC. 12867. If the judgment or order is for the payment of money, the penalty shall be in at least twice the amount of the judgment.

ment and costs. If not for the payment of money, the penalty shall be sufficient to save the appellee harmless from the consequences of taking the appeal, but in no case shall the penalty be less than one hundred dollars.

CODE SEC. 12872. The supreme court, if it affirms the judgment, shall also, if the appellee asks or moves therefor, render judgment against the appellant and his sureties on the appeal bond for the amount of the judgment, damages, and costs referred to therein in case such damages can be accurately known to the court without an issue and trial.

DOCKETING OF CAUSES

CODE SEC. 12847. An abstract of the record shall be filed in the office of the clerk of the supreme court thirty days before the second term after the appeal was taken. If the abstract is filed fifteen days before the first day of the next term of court the cause shall be placed on the calendar for that term and come on for hearing, unless otherwise ordered by the court.

CODE SEC. 12830. The cause on appeal shall be docketed as it was in the court below, and the party taking the appeal shall be called the appellant, and the other party the appellee.

CODE SEC. 12843. The clerk shall docket the causes as they are filed in his office and shall, under order of the chief justice, arrange and set a proper number for trial for each day of the term, placing together as far as practicable those from the same judicial district, and shall cause notice thereof to be published and distributed as the court may direct.

CODE SEC. 12844. No case shall be docketed until the fees [\$3.00] provided by law therefor have been paid.

CODE SEC. 1456. An appeal may be taken to the supreme court [in a workmen's compensation case] from any final order, judgment, or decree of the district court, but such appeal shall be docketed, placed upon the term calendar, and submitted in the same time and manner as criminal cases in said court.

RULE 13. Immediately after the time expires during which causes may be docketed for trial at a term of court, the clerk shall make and cause to be printed, without delay, the docket for the term, which shall give all causes, whether continuances or appearances, for trial at such term, and which shall designate the number, the party appealing, the court and county from which the appeal is brought, the counsel of the parties, the period for which each cause is assigned for trial, whether noticed for oral argument, and such other matter for the information of the court and attorneys as may be conveniently given, and so assign motions and petitions for rehearing as that the same will be submitted to and reach the proper divisions. He shall forward to each judge of the court, to each attorney having causes at the term, and to the clerk of the district, municipal, and superior courts of each county, a copy of said docket.

ADVANCING CAUSES

RULE 14. If a cause involves the decision of a question of public importance, or rights which are

likely to be lost or greatly impaired by delay, the court will, in its discretion, upon motion supported by affidavit duly served, order the submission of the cause at a term in advance of that at which it would otherwise be submitted.

ABSTRACTS

CODE SEC. 12845. Printed abstracts of the record shall be filed in accordance with rules established by the supreme court, and shall be presumed to contain the record, unless denied or corrected by subsequent abstract.

RULE 15. At least forty days before the first day of the term for which the cause is to be docketed for trial, appellant shall serve upon each appellee, or his attorney, a printed abstract of so much of the record as may be necessary to a full understanding of the questions presented for decision, which abstract shall be prepared as required by these rules. Appellant shall also, thirty days before the first day of said term, file with the clerk twelve copies of said abstract. No cause shall be heard until forty days after such service and thirty days after such filing with the clerk, unless advanced by order of the court. In case of cross-appeals the party first giving notice of appeal shall, under this rule, be considered the appellant.

RULE 16. If it appear from an inspection of the abstract that the appellant has negligently or intentionally failed to comply with the rule requiring only so much of the record as may be necessary to a full understanding of the question presented for decision to be included therein, the court may, in its discretion, order a new abstract prepared in conformity with such rule or affirm the judgment of the lower court without considering the appeal.

RULE 17. Every denial shall point out as specifically as the case will permit the defects alleged to exist in the abstract. A denial by appellee shall be taken as true unless the appellant sustains his abstract by a certification of the record. Should the appellee deem the appellant's abstract incorrect or unfair he may prepare such additional abstract as he shall deem necessary to a full understanding of the questions presented to the court for decision. A denial by the appellant of such additional abstract, if not confessed, will be disregarded unless sustained by a certification of the record. The appellee shall serve one printed copy of his additional abstract or denial on each appellant or his attorney and deliver twelve printed copies thereof to the clerk within fifteen days after receiving appellant's argument, and a denial by the appellant shall be served on the appellee and twelve printed copies thereof delivered to the clerk within five days after service of the additional abstract.

RULE 18. Abstracts of record shall be made in substantially the following form:

IN THE SUPREME COURT OF IOWA
JANUARY TERM, 19...

RICHARD ROE, *Appellee*, }
vs. } "In Equity" or "At Law."
JOHN DOE, *Appellant*. }
Appeal from Van Buren District Court.
JOHN SMITH, Judge.

J. C. K., of Des Moines, for the Appellant.
H. H. S., of Chicago, Ill., for the Appellee.

APPELLANT'S ABSTRACT OF RECORD

Due, timely, and legal service of the within abstract is hereby acknowledged this ... day of, 19...

.....
Attorneys for Appellee

On the day of, 19. . . ., the plaintiff filed in the Van Buren district court a

PETITION

stating his cause of action as follows:

[Set out all of petition necessary to an understanding of the questions to be presented to this court, and no more. In setting out exhibits, omit all merely formal irrelevant parts, as, for example, if the exhibit be a deed or mortgage and no question is raised as to the acknowledgment, omit the acknowledgment. When the defendant has appeared it is useless to encumber the record with the original notice or the return of the officer.]

On the day of, 19. . . ., the defendant filed a

DEMURRER

to said petition setting up the following grounds:

[State only the grounds of demurrer, omitting the formal parts. If the pleading was a motion and the ruling therein is one of the questions to be considered, set it out in the same way and continue.]

And on the day of, 19. . . ., the same was submitted to the court, and the court made the following ruling thereon:

[Here set out the ruling. In every instance let the abstract be made in the chronological order of the events in the case; let each ruling appear in the proper connection. If the defendant pleaded over, and thereby waived his right to appeal from these rulings, no mention of them should be made in the abstract but it should continue.]

And on the day of, 19. . . ., the defendant filed his

ANSWER

to the petition, setting up the following defenses:

[Here set out the defenses, omitting all formal parts. If motions or demurrers were interposed to this pleading, proceed as directed with reference to the petition. Frame the record so that it will properly present all questions to be reviewed and raised before issue is joined. When the abstract shows issue joined, proceed.]

EVIDENCE

On the day of, 19. . . ., said cause was tried to a jury (or the court, as the case may be) and on the trial the following proceedings were had:

[Here set out so much of the evidence and proceedings as is necessary to show the rulings of the court to which exceptions were taken during the progress of the trial.]

INSTRUCTIONS

After the evidence and the arguments of counsel were concluded the plaintiff (or defendant, as the case may be) asked the court to give each of the following instructions to the jury:

[Set out instructions referred to, and continue.]

Which the court refused as to each instruction, to which several rulings the plaintiff (or defendant) excepted as follows:

[Set out the exceptions.]

And thereupon the court gave the following instructions to the jury:

[Set out the instructions.]

To the giving of those numbered (give the numbers) and to the giving of each thereof the plaintiff (or defendant) excepted, as follows:

[Set out the exceptions.]

VERDICT

On the day of, 19. . . ., the jury returned into court with the following verdict:

[Set out the verdict.]

MOTION FOR NEW TRIAL

On the day of, 19. . . ., the plaintiff (or defendant) filed a motion praying the court to set aside the verdict and grant a new trial upon the following grounds:

[Set out the grounds aforesaid for the new trial.]

On the day of, 19. . . ., the court made the following ruling upon said motion:

[Set out the record of the ruling.]

To which the plaintiff (or defendant) at the time excepted.

JUDGMENT

On the day of, 19. . . ., the following judgment was rendered and entered of record:

[Set out the judgment entry appealed from.]

NOTICE OF APPEAL

On the day of, 19. . . ., the plaintiff perfected an appeal to the supreme court of the state of Iowa, by serving upon the defendant and the clerk of the district court of Van Buren county a notice of appeal.

[If supersedeas bond was filed, state the fact.]

INDEX

Abstracts and all amendments thereto must be accompanied by a complete index of their contents, which must be arranged in alphabetical order and refer to exhibits by brief description of same.

This outline is presented for the purpose of indicating the character of the abstract contemplated by the rule, which like all the rules, is to be substantially complied with. Of course, no formula can be laid down applicable to all cases. The rule to be observed in abstracting a case is: Preserve everything material to the questions to be decided and omit everything else.

CERTIFICATION OF RECORD

CODE SEC. 12849. Any party may cause a certified copy of the record in the lower court or any part of the same to be filed in the office of the clerk of the supreme court for its consideration.

CODE SEC. 12850. Upon application to the supreme court or any judge thereof, the clerk of the court from which appeal is taken may be ordered to file such certified copy.

CODE SEC. 12851. The original transcript of evidence may be sent up, but shall be returned to the clerk of the proper county after the cause has been determined by the supreme court.

CODE SEC. 12854. Where a view of an original paper or exhibit in the action may be important to a correct decision of the appeal, the court or any judge thereof may order the clerk of the court below to transmit the same, which he shall do in the manner provided for the transmission of certifications of the record.

CODE SEC. 12857. The lower court, the supreme court, or a judge of either court, may make any necessary orders to secure a perfect record or transcript thereof, upon a showing by affidavit or otherwise, and upon such notice as it or he may prescribe.

DISMISSAL OF APPEALS, OR AFFIRMANCE OF JUDGMENTS

CODE SEC. 12848. If an abstract of the record is not filed by appellant thirty days before the second term after the appeal was taken, unless further time is given before the expiration of said time by the court or a judge thereof for good cause shown, the appellee may file an abstract of such matters of record as are necessary, or may file a copy of the final judgment or order appealed from, or other matters required, certified to by the clerk of the trial court, and cause the case to be docketed, and the appeal upon motion shall be dismissed, or the judgment or order affirmed. Denial of abstracts, additional abstracts, or transcripts may also be filed.

CODE SEC. 12886. Where appellant has no right, or no further right, to prosecute the appeal, the appellee may move to dismiss it, and if the grounds of the motion do not appear in the record, or by a writing purporting to have been signed by the appellant and filed, they must be verified by affidavit.

CODE SEC. 12887. The appellee may, by answer or abstract filed and verified by himself, agent, or attorney, plead any facts which render the taking of the appeal improper or destroy the appellant's right of further prosecuting the same, to which the appellant may file a reply or abstract likewise verified by himself, his agent, or attorney, and the question of law or fact therein shall be determined by the court, upon such evidence and in such form as it may prescribe.

MOTIONS

CODE SEC. 12870. All motions must be in writing and entered upon the motion book, and be heard upon such notice and argument, if any, as the court by rule may prescribe, but no motion shall be submitted without being publicly called by the court, unless the parties otherwise agree.

RULE 19. Motions must be served by copy of the same and of all affidavits or documents upon which they are based, upon the opposite party or attorney, ten days before the morning on which the causes for the district are set for hearing. Such opposite party shall then have five days to file papers in resistance to the same, copies of which must be served upon the other party or attorney, and no papers will be regarded which do not appear to have been so served. This rule shall not apply to motions the causes whereof arise after the filing of the abstract, but in such cases timely notice of such motions shall be given to the opposite attorneys. Nor shall this rule apply, as to time of service, to motions for continuance, or to advance.

RULE 20. Motions made in a cause after judgment rendered by the supreme court, or after the time assigned for the hearing of causes from the district from which it was appealed, will be heard only upon proof of service of reasonable notice of such motion upon the adverse party or his attorney. Service of all other motions shall be such as is prescribed by the court or a judge thereof.

RULE 21. Arguments in support of motions, if any, must be in writing or print, and shall be filed

before the morning of the day set for the hearing of the cause, and served by copy upon the opposite party or attorney when the motion is served; and arguments in resistance, if any, must be in writing or print and filed before the morning of the day set for the hearing of the cause, and served by copy on the opposite party or attorney when the papers in resistance are served.

RULE 22. If a difference of opinion should arise upon the disposition of a motion, the chief justice shall call in the other division, which shall take part in the determination thereof.

RULE 23. Tuesday of each period shall be "motion day" for the submission of motions to the proper division of the court, or to the full bench.

BRIEFS AND ARGUMENTS

CODE SEC. 12871. The parties to an appeal may be heard orally and in writing, subject to such rules as the court may prescribe; and all causes docketed, not continued by consent or upon cause shown, shall be submitted in the order assigned, unless otherwise directed by the court or the judges thereof * * *.

RULE 24. When the appeal presents only questions of law upon rulings of the court below, appellant shall open and close the argument, and must, at least forty days before the day assigned for the hearing of the case, serve upon an attorney for each appellee copies of his brief of points, authorities and argument. If appellee desires to be heard, he shall, at least fifteen days prior to the time set for hearing, serve upon an attorney for each appellant copies of his brief or argument; and the printed reply, if any, shall be served at least three days before the case is to be finally submitted. If the trial in the supreme court is *de novo*, and appellant has the burden, he shall observe the foregoing rules. If appellee has the burden, he may waive his right to open the argument; and if he fails to serve and file his brief within the time hereinbefore provided, he shall be held to have waived the right. Appellant will then be entitled to open the argument, and must serve copies of his brief upon an attorney for each appellee fifteen days before the hearing. Appellee may then, and at least three days before the submission, serve upon an attorney for each appellant copies of his argument, which must be strictly confined to matters in reply to appellant's argument. A failure to comply with the above requirements will entitle the party not in default, unless the court shall, for sufficient cause, otherwise order, to a continuance or to have the case submitted at his option upon the briefs and arguments on file when the default occurred.

RULE 25. All printed briefs and arguments, except upon motions, shall be prepared as required by these rules, and each party shall file with the clerk twelve printed copies of each brief or argument, together with proper evidence of service of the same upon opposing attorneys. The clerk shall note upon his docket the date of the service and filing of all abstracts and arguments, and no brief or argument not served or filed within the time prescribed by these rules will be transmitted to the judges or considered by them in disposing of the case. No cause will be entered as submitted until the arguments are finally and actually concluded.

RULE 26. Notice in writing, or in print, of intention to argue a case orally, shall be served upon an attorney for the adverse party and filed with the clerk of this court twenty days before the first day of the term, and the party who fails to serve and

file such notice shall not be entitled to argue orally, except in reply to an oral argument for the adverse party.

RULE 27. If the case is triable upon errors assigned and not *de novo* and appellant has given notice of oral argument, he will be entitled to open and close. If appellee alone gave the notice he will be entitled to open the argument and appellant must confine his remarks strictly to a reply. If the case is triable *de novo* the party upon whom rests the burden of the proof may, if he has given the requisite notice, open and close the argument. If he has not given notice he will be confined strictly to an answer to the argument for the other side. No oral argument shall exceed one-half hour in length, unless an extension of time be granted before the argument is commenced or it becomes apparent during the course of the argument that more time is necessary, whereupon the court may grant additional time. On original submission two attorneys may be heard on each side; but in the event counsel opening the argument is not entitled to reply, but one attorney shall be heard for either party. Reply arguments shall be limited to fifteen minutes. On petitions for rehearing only one attorney shall be heard for either party, the petitioner to have not exceeding twenty and the respondent not more than fifteen minutes, unless extensions be granted by the court.

RULE 28. Oral argument shall be confined to a discussion of the proposition and authorities contained in the briefs. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver of such points, but they will be fully considered in determining the cause.

RULE 29. Before taking up the assignment for the several periods a preliminary call of all causes included in that assignment will be made; but the submission of a cause shall not be taken on this call if any party thereto objects. The court will hear all causes included in the assignment and take the submission thereof in the order in which they are assigned, excepting those which have been continued or otherwise disposed of.

RULE 30. The brief of appellant shall contain a short and clear statement showing:

First. The nature of the action, as for example, "A suit on a promissory note."

Second. The nature of the defense, as for example, "A plea of payment."

Third. How the case was decided.

Fourth. A brief statement of the main facts as claimed by appellant.

Fifth. The errors relied upon for a reversal.

Sixth. Numbered propositions of law stated concisely, and without argument or elaboration, together with the authorities relied on in support thereof.

Seventh. An argument in support of appellant's contention, respecting the errors relied upon for reversal.

In citing cases reference must be made to the official reports of this court; the names of parties must be given, and when textbooks are cited the number and date of the edition must be given with the proper volume and page.

Any error relied upon for reversal, not argued in the argument in chief, shall be deemed to have been waived.

The argument on questions of law shall be confined to a discussion and elaboration of the points contained in the brief in the order stated.

RULE 31. The brief of appellee shall point out any omissions or inaccuracies in appellant's state-

ment of the record, and shall contain a short and clear statement of the propositions by which counsel seek to meet the alleged errors, or by which such errors are obviated. Following this statement, the brief shall contain the points and authorities relied on in like manner as required in appellant's brief. The brief of appellee on cross-appeals shall be prepared in the manner required of an appellant's brief. The brief of appellant, in answer to the cross-assignment of errors, shall be prepared in the manner required of appellee's answer to appellant's assignments of error. Reply briefs may be filed.

APPEALS IN CRIMINAL ACTIONS

CODE SEC. 13994. The mode of reviewing in the supreme court any judgment, action, or decision of the district court in a criminal case is by appeal. Either the defendant or state may appeal.

CODE SEC. 13995. An appeal can only be taken from the final judgment, and within sixty days thereafter.

CODE SEC. 13997. An appeal is taken and perfected by the party or his attorney serving on the adverse party or his attorney of record in the district court at the time of the rendition of the judgment, and on the clerk of such court, a notice in writing of the taking of the appeal, and filing the same with such clerk, with evidence of service thereof indorsed thereon or annexed thereto.

CODE SEC. 13996. When several defendants are indicted and tried jointly, any one or more of them may join in taking the appeal, but those of their codefendants who do not join shall take no benefit therefrom, yet they may appeal afterwards.

CODE SEC. 13998. When an appeal is taken, the clerk of the court in which the judgment was rendered shall:

1. Forthwith prepare and transmit to the attorney general a certified copy of the notice of appeal, together with the date of the service and filing thereof.

2. Promptly prepare and transmit to the clerk of the supreme court a transcript of all record entries in the cause, together with copies of all papers in the case on file in his office, except those returned by the examining magistrate on the preliminary examination, all duly certified under the seal of his court.

CODE SEC. 14000. If a defendant in a criminal cause has perfected an appeal from a judgment against him and shall satisfy a judge of the district court from which the appeal is taken that he is unable to pay for a transcript of the evidence, such judge may order the same made at the expense of the county where said defendant was tried.

CODE SEC. 14001. An appeal taken by the state in no case stays the operation of a judgment in favor of the defendant.

CODE SEC. 14002. An appeal taken by the defendant does not stay the execution of the judgment, unless bail is put in; but where the

judgment is imprisonment in the penitentiary, and an appeal is taken within the time provided after judgment is rendered, and the defendant is unable to give bail, and that fact is satisfactorily shown to the court, or judge thereof, it may, in its discretion, order the sheriff or officer having the defendant in custody to detain him in custody, without taking him to the penitentiary, to abide the judgment on the appeal, if the defendant desires it.

CODE SEC. 14003. When an appeal is taken by the defendant, and bail is given, the clerk must give to the defendant, or his attorney, a certificate, under the seal of the court, that an appeal has been taken and bail given, and the sheriff or other officer having the defendant in custody must, upon receiving it, discharge the defendant from custody and cease all further proceedings in execution thereof, and forthwith return to the clerk of the court who issued it the execution under which he acted, with his return thereon; and if it has not been issued, it shall not be until after final judgment on the appeal.

CODE SEC. 14004. The party appealing is the appellant, the adverse party the appellee, but the title of the action shall not be changed on the appeal, and the cause shall be so docketed at the commencement of the period assigned for trying causes from the judicial district from which the appeal comes, which causes shall take precedence of all other business, be tried at the term at which the transcript is filed, unless continued for cause or by consent of the parties, and be decided, if practicable, at the same term.

CODE SEC. 14005. The personal appearance of the defendant in the supreme court on the trial of an appeal is in no case necessary.

CODE SEC. 14006. An appeal shall not be dismissed for any informality or defect in taking it, if corrected in a reasonable time; and the supreme court must direct how it shall be corrected.

CODE SEC. 14007. No assignment of error is necessary.

CODE SEC. 14008. The defendant is entitled to close the argument.

CODE SEC. 14009. The record and case may be presented in the supreme court by printed abstracts, arguments, motions, and petitions for rehearing as provided by its rules; and the provisions of law in civil procedure relating to certification of the record and the filing of decisions and opinions of the supreme court shall apply in such cases.

RULE 32. Criminal actions shall be presented in the supreme court, on printed abstracts, denials, arguments, and petitions for rehearing, as required by the rules applicable to civil actions, provided that the defendant shall be entitled to close the arguments. The provisions of the code and rules of this court in civil procedure relating to the printing, serving, and filing of abstracts, denials, arguments, petitions for rehearing, notice thereof

and of oral arguments, motions and resistances thereto, the certification of the record and the filing of decisions and opinions shall apply in criminal cases, save that appellant need not serve his abstract, brief, and argument more than 30 days before the day assigned for the hearing of the cause.

CODE SEC. 14010. If the appeal is taken by the defendant, the supreme court must examine the record, without regard to technical errors or defects which do not affect the substantial rights of the parties, and render such judgment on the record as the law demands; it may affirm, reverse, or modify the judgment, or render such judgment as the district court should have done, or order a new trial, or reduce the punishment, but can not increase it.

CODE SEC. 14011. In case the judgment of the trial court is reversed or modified in favor of the defendant, on the appeal of defendant, he shall be entitled to recover the cost of printing abstract and briefs, not exceeding one dollar for each page thereof, to be paid by the county from which the appeal was taken.

CODE SEC. 14012. If the state appeals, the supreme court can not reverse or modify the judgment so as to increase the punishment, but may affirm it, and shall point out any error in the proceedings or in the measure of punishment, and its decision shall be obligatory as law.

CODE SEC. 14013. If a judgment against the defendant is reversed, such reversal shall be deemed an order for a new trial, unless the supreme court shall direct that the defendant be discharged and his bail exonerated, or if money be deposited instead, that it be refunded to him.

CODE SEC. 14014. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the supreme court shall direct, except as otherwise provided.

CODE SEC. 14016. The decision of the supreme court, with any opinion filed or judgment rendered, must be recorded by its clerk, and, after the expiration of the period allowed for a rehearing, or as ordered by the court or provided by its rules, a certified copy of the decision and opinion shall be transmitted to the clerk of the trial court, filed and entered of record by him, and thereafter the jurisdiction of the supreme court shall cease, and all proceedings necessary for executing the judgment shall be had in the trial court, or by its clerk.

CODE SEC. 14017. Unless some proceeding in the district court is directed, a copy of the judgment of the trial court and decision on appeal, or of the judgment and decision on appeal certified by the clerk of the trial court, shall be delivered to the sheriff, or other proper officer, as an execution, and shall authorize him to execute the judgment of the court, or take any steps required to bring the action to a conclusion.

CODE SEC. 14018. If a defendant, imprisoned during the pendency of an appeal, upon a new trial ordered by the supreme court is again convicted, the period of his former imprisonment shall be deducted from the period of imprisonment to be fixed on the last verdict of conviction.

CONSTRUCTION AND MODIFICATION OF RULES

RULE 33. When, by reason of peculiar circumstances, the foregoing rules relating to the abstract, preparation, and argument of causes, ought to be waived or modified in any case, the party desiring such waiver or modification may, upon reasonable notice to the adverse party, apply to any judge of this court in vacation, or to the court in term time, for an order directing the waiver or modification desired. The application shall be in writing, shall set out the peculiar facts relied upon by the applicant, and shall be verified by the party or person having knowledge of the facts, and certified by counsel as being true and made in good faith. The order upon such application shall be in writing, and shall be filed with the clerk of this court. In no case will these rules be waived or modified upon agreement of counsel alone.

PRINTING ABSTRACTS, BRIEFS, ARGUMENTS, AND PETITIONS FOR REHEARING

RULE 34. All abstracts, denials of abstracts, briefs, arguments, and petitions for rehearing shall be printed upon unruled, unglazed writing paper, with type commonly known as small pica, leaded lines, the printed page to be four inches wide by seven inches long, with a margin of two inches; but the type in which extracts are printed may be small pica solid or brevier with leaded lines. The lines of abstracts must be numbered consecutively on each page.

CONTINUANCES

RULE 35. Causes not fully argued at the period of the term to which they are assigned may be continued on the court's own motion. Causes may also be continued upon stipulation of parties. If notice of oral argument has been given, the same will be for oral argument at the term to which continued.

DECISIONS AND OPINIONS

CODE SEC. 12871. * * * The court may reverse, modify, or affirm the judgment, decree, or order appealed from, or render such as the inferior court should have done. No cause is decided until the written decision is filed with the clerk.

CODE SEC. 12810. When the court is equally divided in opinion, the judgment of the court below shall stand affirmed, but the decision is of no further force or authority, but in such cases opinions may be filed.

CODE SEC. 12813. The decisions of the court on all questions passed upon by it, including motions and points of practice, shall be specifically stated, and shall be accompanied with an opinion upon all such as are deemed of sufficient importance, together with any dissent therefrom, which dissent may be stated with or without an opinion. All decisions and opinions shall be in writing and filed with the

clerk, except that rulings upon motions may be entered upon the announcement book.

CODE SEC. 12814. The records and reports must in all cases show whether a decision was made by a full bench, and whether any, and if so which, of the judges dissented from the decision.

RULE 36. Each and every opinion filed shall show, on its face, what judges participated therein.

RULE 37. No *procedendo* shall issue in any case until the expiration of thirty days from the filing of the opinion, except upon an order of the court, or a judge thereof, upon cause shown, and except in criminal cases and cases where petitions for rehearing have been overruled.

REHEARINGS

CODE SEC. 12881. Written notice of intention to petition for a rehearing shall be served on the opposite party or his attorney and the clerk of the supreme court within thirty days after the filing of the opinion, or within such time as the court may by rule prescribe.

CODE SEC. 12882. Such petition shall be printed, and, with proof of service thereof on the opposite party or his attorney, shall be filed with said clerk within sixty days after the opinion is filed.

CODE SEC. 12883. The petition may be made the argument or a brief of authorities relied upon for rehearing. The adverse party may file a printed argument in response. If the party applying for a rehearing shall give notice of oral argument in his petition, then both parties shall be entitled to be heard orally, unless the party giving notice waives argument.

CODE SEC. 12880. If a petition for rehearing is filed, it shall suspend the decision, if the court or one of the judges upon its presentation so order, until after the final decision on the rehearing.

RULE 38. The petition shall include a copy of the opinion or decision of the court to which objection is made, or reference to the volume and page of the *Northwestern Reporter* in which it has been printed.

RULE 39. If there be a printed argument in resistance to the petition, a copy thereof shall be served upon the attorney for the petitioner, and filed, ten days before the day fixed for the hearing of the cause, and twelve copies shall be delivered to the clerk of this court.

RULE 40. The cause shall be placed on the docket for hearing on the first day of the next period commencing not less than twenty days after the service and filing of the petition.

EXECUTIONS

CODE SEC. 12875. If the supreme court affirms the judgment or order, it may send the cause to the court below to have the same carried into effect, or may issue the necessary process for this purpose, directed to the sheriff of the proper county, as the party may require.

CODE SEC. 12876. If remanded to the inferior court to be carried into effect, such decision and the order of the court thereon, being certified thereto and entered on the records thereof, shall have the same force and effect as if made and entered during the session of that court.

CODE SEC. 12877. If, by the decision of the supreme court, the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of such judgment or order, either the supreme court or the court below may direct execution or writ of restitution to issue for the purpose of restoring to him such property or its value.

CODE SEC. 12888. Executions issued from the supreme court shall be like those from the district court, attended with the same consequences, and returnable in the same time.

DISTRIBUTION OF PRINTED MATTER

RULE 41. The clerk shall make the following distribution of all printed abstracts, denials of abstracts, briefs, and arguments received under the foregoing rules: One copy to each judge of the court, one copy to the state library, one copy to the law department of the state university, one copy to the law department of Drake university, and the remainder shall be placed in his office, one copy of which shall remain permanently among the files.

RETURN OF PAPERS AND EXHIBITS

CODE SEC. 12856. If a new trial is granted by the supreme court, the clerk, as soon as the cause is at an end therein, shall transmit to the clerk of the court below all original papers or exhibits certified up from said court, and may at any time return any such papers when no new trial is awarded.

RULE 42. If decree is entered in this court, either party desiring to withdraw any of the said files may, by motion, showing proper grounds therefor, and upon five days' notice to the other party or his attorney, secure an order from the court or a judge thereof, allowing him to do so upon filing a receipt for the same with the clerk of this court.

COSTS

CODE SEC. 12874. The supreme court must provide by rule for taxing as costs all print-

ing authorized upon the trial of appeals. The court shall also tax the costs of any translation of the shorthand notes filed as provided in this chapter, and also any translation of the shorthand notes which has been made of record in the court below, upon the certificate of the clerk of such court as to the amount of such costs.

CODE SEC. 12846. If any denial or abstract is filed without good and sufficient cause, the costs of the same or any part thereof, and of any transcript thereby made necessary, shall be taxed to the party causing the same.

RULE 43. When the parties or their attorneys shall furnish printed abstracts, denials of abstracts, amendments, briefs, arguments, or petitions for rehearing in conformity to these rules, the clerk will tax the actual cost of printing the same, which shall not exceed one dollar for each page embraced in a single copy thereof, and when not so prepared and printed shall not exceed the sum of one dollar for every three hundred and seventy-five words, which in no event shall exceed one dollar per page, against the unsuccessful party not furnishing the document, to be collected and paid to the successful party as other costs. It is made the duty of every party who files any printed matter for which cost of printing is claimed, to state at the end of the document in writing or in print and have certified by his attorney as being correct, the true and actual cost of the printing of the same and no costs will be taxed for such printing unless this statement and certificate be made.

RULE 44. Whenever the translation of the shorthand notes is required to be filed in this court, the clerk shall tax as part of the costs in the case the expense of procuring the same, which shall not exceed the rate of five cents per hundred words. If the amount paid or agreed to be paid is not stated in the translation so filed, the clerk shall tax at the statutory rate.

RULE 45. All other taxable fees and costs shall abide the result of the appeal and be taxed to the unsuccessful party, unless otherwise ordered.

ADMISSION OF ATTORNEYS

NOTE.—The statutes of the state relating to this subject are not included nor are the rules made by the board of law examiners. The latter may be obtained upon application to the attorney general or clerk of this court.

INDEXER'S PREFATORY NOTE

The index herewith submitted follows no "scientific" principles of construction: It has been prepared on the general assumption that its users have never taken a course of training in the manipulation of indexes. As far as was reasonably possible, the compiler has tried to insure searchers for the law against the necessity of minutely analyzing and classifying the law before consulting the index. To light the searcher on his way, numerous cross references have been inserted and the following simple rules are also offered:

1. Large subjects like Cities, Railroad Corporations, Taxation, and many others have been divided whenever possible and appear consecutively under separate index heads. Examples: CITIES AND TOWNS, CITY ATTORNEY, CITY OR TOWN BONDS, CITY OR TOWN BUILDINGS AND GROUNDS, CITY OR TOWN FUNDS, CITY OR TOWN ORDINANCES, CITY OR TOWN TREASURER, and the like; RAILROAD CORPORATIONS, RAILROAD CROSSINGS, RAILROAD RATES AND CHARGES, RAILROAD SHIPMENTS, and RAILROAD TRAINS; TAX ASSESSMENTS, TAX COLLECTIONS BY COUNTY TREASURER, TAX DEEDS, TAX EXEMPTIONS, TAX LEVIES OF CITIES AND TOWNS, TAX LEVIES OF COUNTIES, and TAX LIENS.

2. Civil Procedure and Criminal Procedure have been broken up into their elements and presented under appropriate heads throughout the index. Examples: CHANGE OF VENUE, CONTINUANCES, INSTRUCTIONS TO JURY, JOINDER OF ACTIONS, MOTIONS, PARTIES TO ACTIONS, PLEADINGS, TRIAL OF CIVIL ACTIONS, VERDICTS, WITNESSES, and the like.

3. The headings are in general stated in the form of nouns, the suggestive word coming first. Examples: DEAF, SCHOOL FOR; EDUCATION, STATE BOARD OF.

4. Adjectives appear first only when they are the significant or key words of the matter looked for. Examples: ORIGINAL NOTICE, CITY OR TOWN CLERK, COUNTY AUDITOR, DISTRICT COURT, SCHOOL DIRECTORS, INSURANCE DEPARTMENT, DISTRIBUTIVE SHARE.

5. All law applicable to special charter cities is grouped under one head, CITIES UNDER SPECIAL CHARTERS.

6. Criminal law appears under such particular index heads as ARSON, MURDER, and the like; also under such heads as DAIRY PRODUCTS, subhead "Penal provisions"; EMPLOYERS, subhead "Penal offenses"; CORPORATIONS, subhead "Penal offenses".

If any matter is found to be too deeply submerged in this index and can be made more readily accessible or if errors are discovered, kindly notify the code editor whose duty it is to prepare and publish a new code index every four years. Constructive criticism and concrete suggestions are invited and needed in order to have a better index in the future.

J. VAN DER ZEE

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[Arabic numbers refer to code sections; Roman numerals followed by Arabic numbers refer to the state constitution.]

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