LAWS OF IOWA

Relating to Insurance

ALSO TO

Corporations for Pecuniary Profit

ANNOTATED

1915

EMORY H. ENGLISH
Commissioner of Insurance

DES MOINES
ROBERT HENDERSON, STATE PRINTER
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CORPORATION LAW.

CORPORATION LAW OF IOWA.

CHAPTER 1, TITLE IX OF CODE.

CORPORATIONS FOR PECUNIARY PROFIT.

Section **1607. Who may incorporate.** Any number of persons may become incorporated for the transaction of any lawful business but such incorporation confers no power or privilege not possessed by natural persons, except as hereinafter provided. [22 G. A., ch. 86, § 2; C. '73, § 1058; R., § 1150; C. '51, § 673.]

Under this section any number of people may become incorporated for the transaction of any legal business, including business as a mutual insurance company. *Corey v. Sherman*, 96-114.

Any number of persons may unite to form a corporation for carrying on any lawful business. *Lewis v. Omaha & C. B. S. R. Co.*, 157-138.

The statute authorizes an incorporation for any lawful business, and held that a corporation may properly engage in the sale of intoxicating liquors under the provisions of the mulct law. (But now see 33 G. A., ch. 143, supp. §§ 2383-a–2383-e.) *State v. Delahoyde*, 147-327.

Sec. **1608. Single Person.** Except as otherwise provided by law, a single person may incorporate under the provisions of this chapter, thereby entitling himself to all the privileges and immunities provided herein, but if he adopts the name of an individual or individuals as that of the corporation, he must add thereto the word "incorporated." [C. '73, § 1088; R., § 1179; C. '51, § 702.]

Sec. **1609. Powers.** Among the powers of such corporations are the following:

1. To have perpetual succession;
2. To sue and be sued by its corporate name;
3. To have a common seal, which it may alter at pleasure;
4. To render the interests of the stockholders transferable;
5. To exempt the private property of its members from liability for corporate debts, except as otherwise declared;
6. To make contracts, acquire and transfer property,—possessing the same powers in such respects as natural persons;
7. To establish by-laws, and make all rules and regulations necessary for the management of its affairs. [C. '73, § 1059; R. § 1151; C. '51, § 674.]

Par. 2. Name: To make notice to a corporation which is named only by the initials of its corporate name sufficient it must appear that at the time such notice was given the corporation was commonly known and customarily referred to by such abbreviations. *Chicago, B & Q. R. Co. v. Kelley*, 105-106.

Par. 5. Exemption of property: The provisions of the articles in a particular case held sufficient to exempt private property of the stockholders in a mutual insurance company from liability for debts of the corporation, although there was a provision by which such property should be liable for money advanced to creating a guaranty fund. *Smith v. Sherman*, 113-601.

Corporations may be legally organized whose articles do not exempt private property of its stockholders from liability for corporate debts. *Berkson v. Anderson*, 115-674.

Par. 6. Powers: The powers given by statute to corporations are not required to be enumerated in its articles, and an omission to claim any such powers in the articles would not leave the corporation without such powers. *Sioux City Terminal R. & W. Co. v. Trust Co.*, 82 Fed., 124.

When the state courts have determined the extent of the powers and liabilities of corporations created under the state law, their decision is conclusive in the federal courts in cases involving no question of general or commercial law and no federal question. *Ibid.*

A corporation is itself a franchise, and the different powers which may be exercised by the corporation are also franchises. Thus, the right given to a corporation to supply a city with water and of occupying the streets for that purpose, may be spoken of as a franchise. But such a privilege is not in the strict sense of the word a corporate franchise. *Cedar Rapids Water Co. v. Cedar Rapids*, 118-234.

One who becomes shareholder in a corporation thereby assents to the transaction of business expressly or impliedly authorized by its charter. *Traer v. Lucas Prospecting Co.*, 124-107.

The corporation does not necessarily have all the powers which by statute are within the scope of corporate powers, but only such powers within the statutory scope as are given by the articles of incorporation. *Ibid.*

Whatever may fairly be regarded as incidental to and consequental upon those things which are authorized by the charter of a corporation will not be held *ultra vires* unless it is specially prohibited. *Marshalltown Stone Co. v. Des Moines Brick Mfg. Co.*, 149-141.

While as a general rule a corporation may not sell any part or all of its property for other than a cash consideration unless authorized by charter, yet where the company was authorized by its articles to purchase, sell and deal in corporate stocks of corporations authorized to conduct mining operations, but had not power to carry on business of mining, the power to exchange its property or sell it for stock in a corporation which should engage in the business of mining was clearly implied. *Ibid.*

A trading corporation unless prohibited by its charter may buy and sell the stock of another corporation. *Ibid.*

The articles contain the terms of agreement between the company and its stockholders and are to be construed in accordance with the general laws relating to charter grants and legislative power. By accepting stock in the corporation, the stockholder assents to the terms and conditions found in the articles. *Dempster Mfg. Co. v. Downs*, 126-80.

A corporation may hold real or personal property in trust for any purpose that is not foreign to the business for which it was created, and a court of equity will enforce such trust. *State v. Higby Co.*, 130-69.

Par. 7. By-laws. By-laws may be binding on a corporation, although informally adopted, if recognized and acted upon by it. *Smith v. Sherman*, 113-601.

A corporation is presumed to be clothed with the usual powers necessary and proper to enable it as such to carry out the purposes of its existence. *Home Ins. Co. v. Northwestern Packet Co.*, 32-223.

Therefore held, that an insurance company had authority to acquire, by assignment, the claims of a shipper of goods insured by it against the common carrier in whose hands they were destroyed. *Ibid.*

Corporations are invested with such powers only as are expressly conferred upon them and such other powers as are necessary to carry out those powers expressly granted. *Teachout v. Des Moines Broad Gauge St. R. Co.*, 75-722.

For the purpose of effecting the objects of a corporation its powers are as broad and comprehensive as those of an individual, unless the exercise

of the asserted power is expressly prohibited. *Thompson v. Lambert*, 44-239.

One who has notice of a by-law, as for instance an officer of the corporation, is bound thereby. *Des Moines Nat. Bank v. Warren County Bank*, 97-204.

Where an agricultural society was organized for the proper objects of such a corporation, the power to borrow money and execute notes and mortgages not being expressly assumed or prohibited, held, that it had by implication authority to exercise such powers as to indebtedness created for the necessary and proper purposes of carrying out the objects of the corporation. *Ibid.*

The simple act of going surety for another is out of the line of the prosecution of any business. *Lucas v. White Line Transfer Co.*, 70-541.

For a proper purpose a corporation has power to borrow money by executing notes and mortgages. *Thompson v. Lambert*, 44-239.

The power to mortgage the property of the corporation is incident to the ordinary powers of such corporation. *Dunham v. Isett*, 15-284.

And where the power to borrow money may necessarily be implied, it may be exercised by issuance of negotiable bonds. *Des Moines Gas Co. v. West*, 50-16.

Under a charter by which a corporation had authority to purchase, etc., "any real estate or other property," etc., held, that it was not beyond its power to purchase its own stock. *Iowa Lumber Co. v. Foster*, 49-25.

A corporation having the general powers provided for in this section has the right to deal in, acquire and possess shares of stock in another corporation. *Calumet Paper Co. v. Stotts Investment Co.*, 96-147.

Where the articles of incorporation of a college did not expressly give it power to raise and control funds by taking endowment notes, held, by a divided court, that it had the power to accept and enforce payment of such notes. *Simpson Centenary College v. Bryan*, 50-293.

Unless restrained by statute, a corporation may sell or dispose of its property, and one corporation may purchase property from another corporation, both possessing in this respect the same power as individuals. It will not, therefore, constitute fraud upon creditors that the property of the corporation is conveyed by it to another corporation in which its stockholders own stock. *Warfield v. Marshall County Canning Co.*, 72-666.

A stockholder in a corporation may maintain an action to restrain the corporation from acts in excess of its corporate power. *Teachout v. Des Moines Broad Gauge St. R. Co.*, 75-722.

Corporations of all kinds may be bound by contracts not under seal. They may make a binding contract in writing not under seal, and may also be held liable under verbal contracts. So, also, they may ratify and adopt as their own a contract made by an officer out of the usual scope of his duties. *Merrick v. Burlington, etc., Plank Road Co.*, 11-74.

The recital as to the making of a contract, not entered on the record at the time it was originally written, by the secretary, but at a subsequent meeting directed to be entered on the record, will not be receivable as against the other party to such contract. *Colfax Hotel Co. v. Lyon*, 69-683.

Where a party with the knowledge and consent of the directors of a corporation borrowed money on his individual note for the use of the corporation, which money was used by it in paying its debts, held, that the corporation was bound to repay to such party the money so borrowed by him. *Humphrey v. Patrons, etc., Assn.*, 50-607.

Corporations may ratify contracts made without their authority and thus become bound thereby like natural persons. Thus an acceptance of payment for services rendered under a contract and in accordance with its terms may amount to a ratification of such contract. *Athearn v. Independent Dist.*, 33-105.

Where a corporation became the successor to an individual in the manufacture and sale of buggies, held, that it had authority to accept

from the individual whom it succeeded an order accepted by him upon particular terms. *Cook Mfg. Co. v. Randall*, 62-244.

Held, that a corporation organized for the manufacture and sale of musical instruments, and not having the power to engage in the business of loaning money, might still take from its agent, in payment of an indebtedness due from him, the note of a third party belonging to him. *Western Organ Co. v. Reddish*, 51-55.

Corporations can make contracts and transfer property, possessing the same powers in such respects as private individuals. A corporation has therefore the right to prefer one creditor to another, and the fact that the preference is exercised in favor of a shareholder or director is immaterial, although the shareholder or director may have voted for the proposition, and the security given was to secure an indebtedness to himself. *Warfield v. Marshall County Canning Co.*, 72-666.

The power of a railway corporation to whom public lands are granted to hold such lands is a question between the corporation and the government, and cannot be raised as against the corporation by a third party in an action by the company for possession of the lands so granted. *Chicago, B. & Q. R. Co. v. Lewis*, 53-101.

The grant by the law under which a corporation is organized, of the power to make contracts gives it the power to make a sale of its real property and convey the same. *Buell v. Buckingham*, 16-284.

A limitation upon the power to sell operates also as a limitation on the power to convey. *Middleton Savings Bank v. Dubuque*, 15-394.

The corporation may exempt the private property of its members from liability for corporate debts. *Spense v. Iowa Valley Const. Co.*, 36-407; *Larson v. Dayton*, 52-597.

The only case in which the private property of members becomes liable for corporate debts is that specified in the statute relating to failure to take proper steps in organizing (§1616). *First Nat. Bank v. Davies*, 43-424, 436.

A stockholder can be made liable to the creditors of a corporation only to the extent of his unpaid subscription to the capital stock. *Warfield v. Marshall County Canning Co.*, 72-666.

Where a statute exempted from liability for corporate debts stockholders in corporations organized under the general incorporation laws, held, that in order that the stockholders of the corporation should be exempt from liability it must appear that the corporation was organized under such general statute. *Kaiser v. Lawrence Savings Bank*, 56-104.

A provision in articles of a mutual insurance company relieving members from liability for corporation debts is not applicable with reference to their liability for assessments, the assessments in such case not being a debt of the corporation but a debt of the individual members *Montgomery County Farmers' Mut. Ins. Co. v. Milner*, 90-685.

Where a corporation is stockholder in another corporation, the stockholders of the former are not thereby individually stockholders in the latter, and cannot be held liable as such. *Langan v. Iowa & M. Const. Co.*, 49-317.

A corporation must sue and be sued in its corporate name. *Chicago, D. & M. R. Co. v. Keisel*, 43-39.

A variance from the true style of a corporation will not have the effect to defeat its contract if it appears that the corporation was intended to be bound by and described in the instrument. *Athearn v. Independent Dist.*, 33-105.

Where a note was made payable to the order of "The Equitable Life Insurance Company of Iowa at its office," and was dated at the "Office of the Equitable Life Insurance Company, Des Moines, Iowa," held, that although the two names were not identical, yet it was reasonably apparent that they referred to the same corporation. *Equitable L. Ins. Co. v. Gleason*, 56-47.

Where the name of the corporation consists of a number of words, the omission, alteration or transposition of any of the words in the name used, if the words in the name used are synonymous with the true name of the corporation, is not a misnomer. *Martin v. Central Iowa R. Co.*, 59-411.

The use of the word "railroad" instead of "railway" in naming a corporation in an indictment for embezzling the funds of such corporation, held not to be material. *State v. Goode*, 68-593.

A railroad company cannot, in a legal proceeding, be properly designated by the initial letters of the words constituting its name, even though it may be possible to show that it is popularly known by its initial letters. *Accola v. Chicago, B. & Q. R. Co.*, 70-185.

Where a note given in aid of a corporation operating a college provided that upon the payment of a proportion of the note a scholarship in the college should be issued, and afterwards the corporate name of the institution was changed, held, that the new corporation succeeding to the rights of the old might sue upon such note, and the maker would be entitled to a scholarship therein according to the same terms. *Trustees of Northwestern College v. Schwagler*, 37-577.

The corporate name is that which is adopted in the articles of incorporation. If the name is changed it must be done by changing the articles and the best evidence as to the contents of the articles is the articles themselves; therefore held, that parole evidence of a change of name was not sufficient. *Chicago, D. & M. R. Co. v. Keisel*, 43-39.

Sec. 1610. **Articles adopted and recorded—approval—fees—index book of county recorder.** Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators, recorded in the office of the recorder of deeds of the county where the principal place of business is to be, in a book kept therefor; and the recorder must, within five days thereafter, indorse thereon the time when the same were filed and the book and page where the record will be found. Said articles thus indorsed shall then be forwarded to the secretary of state, and be by him recorded in a book kept for that purpose.

The county recorder shall keep in his office an index book for articles of incorporation, which shall be ruled and headed substantially after the following form, and shall make entries therein in the order in which they are filed in his office.

INDEX TO ARTICLES OF INCORPORATION.

Name	Place of Business	Date of Filing			Date of Inst.			Where Recorded		Capital Stock	Remarks
		Mo.	Day	Yr.	Mo.	Day	Yr.	Bk.	Pg.		

Such corporation shall pay to the secretary of state, before a certificate of incorporation is issued a fee of twenty-five dollars, and, for all authorized stock in excess of ten thousand dollars, an additional fee of one dollar per thousand. Should any cor-

poration increase its capital stock, it shall pay a fee to the secretary of state of one dollar for each one thousand dollars of such increase, and a recording fee of ten cents per one hundred words, no recording fee to be less than fifty cents. Farmers' mutual coöperative creamery associations, whose articles of incorporation provide that the business of the association be conducted on a purely mutual and coöperative plan, without capital stock, and whose patrons shall share equally in expense and profits, domestic and domestic local building and loan associations [and] incorporations organized for the manufacture of sugar from beets grown in the state of Iowa, shall be exempt from the payment of the incorporation filing fee provided herein in excess of twenty-five dollars. When articles of incorporation are presented to the secretary of state for the purpose of being filed, if he is satisfied that they are in proper form to meet the requirements of law, that their object is a lawful one and not against public policy, that their plan for doing business, if any be provided for, is honest and lawful, he shall file them; but if he is of the opinion that they are not in proper form to meet the requirements of the law, or that their object is an unlawful one, or against public policy, or that their plan for doing business is dishonest or unlawful, he shall refuse to file them. Should a question of doubt arise as to the legality of the articles, he shall submit them to the attorney-general whose duty it shall be to forthwith examine and return them with an opinion in writing touching the point or points concerning which inquiry has been made of him. If such opinion is in favor of the legality of the articles, and no other objections are apparent, they shall then, upon payment of the proper fee, be filed and otherwise dealt with as the law provides. If, however, such opinion be against their legality they shall not be filed. Upon the rejection of any articles of incorporation by the secretary of state, except for the reason that they have been held by the attorney-general to be illegal, they shall, if the person or persons presenting them so request, be submitted to the executive council, which shall, as soon as practicable, consider the said articles and if the council determines that the articles are in proper form, of honest purpose, not against public policy, nor otherwise objectionable, it shall so advise the secretary of state in writing, whereupon he shall, upon the payment of the proper fees, file the same and proceed otherwise as the law directs; but if the council sustains the previous action of the secretary of state in rejecting said articles, such decision by the council shall be reported to the secretary of state in writing, and he shall then return said articles to the person or persons presenting them with such explanation as shall be proper in the case. Nothing in this act shall be construed as repealing or modifying any statute now in force in respect to the approval of articles of incorporation relating to insurance companies, building and loan associations

or investment companies. [35 G. A., ch. 135, § 1; 34 G. A., ch. 73, § 1; 33 G. A., ch. 104, § 1; 32 G. A., ch. 70; 29 G. A., ch. 66, § 1; 27 G. A., ch. 41, § 1, 27 G. A., ch. 40, §§ 1, 2; 26 G. A., ch. 98; 17 G. A., ch. 23; C. '73, § 1060; R. 1152; C. '51, § 675.]

It is not specifically required that the acknowledgment shall be in the same form as that required for conveyances of real property, and therefore, if the venue is given at the beginning of the certificate, and the officer taking the acknowledgment subscribes as "notary public" without reciting that he is a notary public in and for the county named, the acknowledgment is sufficient, it being presumed that the officer acts only within the scope of his authority. *Smith v. Sherman*, 113-601.

The object of requiring the filing and recording of articles of incorporation is to give them the same publicity as nearly as may be as statutory charters, and their provisions are binding on all who deal with the stock of the corporation. *Dempster Mfg. Co. v. Downs*, 126-80.

A corporation cannot be held for the acts of those purporting to be its officers prior to its incorporation without some acceptance of or acquiescence in such acts evidenced by its articles or the acts of those formally elected to represent it. *Middle Branch Mut. Tel. Co. v. Jones*, 137-396.

One who does not become a member of a corporation at its organization or afterwards cannot be charged with the expense of such organization. *Ibid.*

A failure to file the articles of incorporation in the office of the secretary of state does not, under § 1616, render the stockholders individually liable (the section being discussed in the opinions of a divided court). *First Nat. Bank v. Davies*, 43-424; followed in *Eisfeld v. Kenworth*, 50-389.

Where a corporation failed to record its articles of incorporation as required by statute, and the directors borrowed money in excess of the capital stock, giving their note for the name, which, when the company became insolvent, they paid, in an action by the directors against the other shareholders for an accounting and for contribution of their *pro rata* share of the debt paid by plaintiffs, held, that, as between themselves, their contractual relation was to be determined by what they had adopted as their agreement, and therefore, though the articles of incorporation were unrecorded, its provisions were binding upon them; and where one of the articles limited the amount of indebtedness to sixty-five per cent of the capital stock, the directors who violated this agreement were in no position to demand contribution from the shareholders. *Heard v. Owen*, 79-23.

One of the incorporators cannot rely by way of defense in an action against him for the assessment upon his stock, that the articles were not recorded in the office of the secretary of state. *State Bank Building Co. v. Peirce*, 92-668.

It is not specifically required that the acknowledgment shall be in the same form as that required for conveyances of real property, and therefore, if the venue is given at the beginning of the certificate and the officer taking the acknowledgment subscribes as "notary public," without reciting that he is a notary public in and for the county named, the acknowledgment is sufficient, it being presumed that the officer acts only within the scope of his authority. *Smith v. Sherman*, 113-601.

The object of requiring the filing and recording of articles of incorporation is to give them the same publicity as nearly as may be as statutory charters, and their provisions are binding on all who deal with the stock of the corporation. *Dempster Mfg Co. v. Downs*, 126-80.

Sec. 1611. **Limit of indebtedness.** Such articles must fix the highest amount of indebtedness or liability to which the corporation is at any one time to be subject, which in no case, except

risks of insurance companies, and liabilities of banks not in excess of their available assets, not including their capital, shall exceed two-thirds of its capital stock. But the provisions of this section shall not apply to the bonds or other railway or street railway securities, issued or guaranteed by railway or street railway companies of the state, in aid of the location, construction and equipment of railways or street railways, to an amount not exceeding sixteen thousand dollars per mile of single track, standard gauge, or eight thousand dollars per mile of single track, narrow gauge, lines of road for each mile of railway or street railway actually constructed and equipped. Nor shall the provisions of this section apply to the debentures or bonds of any company incorporated under the provisions of this chapter, the payment of which shall be secured by an actual transfer of real estate securities for the benefit and protection of purchasers thereof; such securities to be at least equal in amount to the par value of such bonds or debentures, and to be first liens upon unincumbered real estate worth at least twice the amount loaned thereon. Nor to debentures or bonds issued by any corporation organized under this chapter for the purpose of manufacturing or selling gas, heat, steam or electricity, or constructing or operating interurban or street railways, or for any one or more of said purposes, when such debentures or bonds are not issued in an amount exceeding twice the amount of the paid up capital stock of such corporation. [36 G. A., S. F. 532, § 1; 21 G. A., ch. 57; 20 G. A., ch. 22; C. '73, § 1061; R., § 1153; C. '51, § 676.]

It is doubtful whether an insurance company is required to recite the limit of indebtedness which it may incur by its policies of insurance. At any rate, if the amount of indebtedness is reasonably ascertainable the requirements of the statute have been complied with. *Smith v. Sherman*, 113-601.

A debt contracted in excess of the maximum limitation stated in the charter is not void, but is enforceable against it, corporation and parties holding under it, and gives rise only to a right of action on the part of the state because of the violation of statute, and perhaps also a liability on the officers of the corporation for the excessive debt so contracted. *Sioux City Terminal R. & W. Co. v. Trust Co.*, 173 U. S., 109; S. C. 82 Fed., 124.

A mortgage given by a debtor corporation on its own property is not intended to be governed by the last sentence of this section (embodying a proviso added to § 1061 of the Code of '73 by chap. 22 of 20 G. A.). This sentence applies to the class and not the condition. It singles out this particular kind of corporation, and it is not meant to point out such a state of affairs which it was thought might exist with any corporation. *Beach v. Wakefield*, 107-567.

The corporation having received the full benefit of the consideration for indebtedness contracted in excess of the limitation of its indebtedness, it cannot question the validity of indebtedness thus incurred. And it is immaterial that money borrowed in excess of the limitation of indebtedness is used for an *ultra vires* purpose. *Truer v. Lucas Prospecting Co.*, 124-107.

The incurring of liabilities greater than herein provided does not render the stockholders individually liable. *Langan v. Iowa & M. Const. Co.*, 49-317.

A private corporation is liable, at least to the extent of the consideration received, for indebtedness contracted in excess of the limit imposed by the articles of incorporation. In such case the corporation is estopped from setting up the limit. *Humphrey v. Patrons' etc., Assn.*, 50-607.

The debt of a corporation beyond the limits of its indebtedness is not invalid even though held by the director of the corporation. The director in this respect occupies no different position from that of any other creditor, if the debt was contracted in good faith. *Garrett v. Burlington Plow Co.*, 70-697; *Warfield v. Marshall County Canning Co.*, 72-666.

The theory of this section seems to be that if bonds of the corporation are secured upon real estate worth at least twice the amount loaned thereon, they will be paid out of this security, and thus there will be left for the benefit of other creditors the security derived from the capital stock of the corporation. *First Nat. Bank v. Sioux City Terminal R. & W. Co.*, 69 Fed., 441.

Failure to make in the articles a statement of the highest amount of indebtedness to which the corporation may be subjected is such a failure to comply with the requisites in relation to the organization of the company as to render the stockholders liable under § 1616. *Heuer v. Carmichael*, 82-288.

It is a sufficient compliance with the requirements of this section that the articles provide the limit of indebtedness, except as shall be determined by a majority of the stockholders at a meeting. *Thornton v. Balcom*, 85-198.

The provisions of this section limiting the indebtedness of a railroad enlarge instead of limit the power of railway corporations in the matter of incurring indebtedness for construction, and such corporations may contract an indebtedness for that purpose to the extent of $16,000 per mile of single track notwithstanding the provision of code § 2049 that such corporation may issue bonds to refund indebtedness or improve its property. *Barnes v. Eastern Iowa R. Co.*, 155-721.

Sec. 1612. **Place of business—how changed—notice or process—upon whom and how served.** Any corporation organized under the laws of this state shall fix upon and designate in its articles of incorporation its principal place of business which must be in this state, and if outside the limits of a city or town then its post-office address must be given. The place of business so designated shall not be changed except through an amendment to its articles of incorporation. Its place of business shall be in charge of an agent of the corporation and shall be the place where it shall hold its meetings, keep a record of its proceedings and its stock and transfer books. Provided that any corporation organized under the laws of this state that does not maintain an office in the county of its organization, or transact business in this state, shall file with the secretary of state a written instrument duly signed and sealed, authorizing the secretary of state to acknowledge service of notice or process for and in behalf of such corporation in this state, and consenting that service of notice or process may be made upon the secretary of state, and when so made shall be taken and held as valid as if served according to the laws of this state, and waiving all claim or right

or error by reason of such acknowledgment of service. Such notice or process, with a copy thereof, may be mailed to the secretary of state at Des Moines, Iowa, in a registered letter addressed to him by his official title, and he shall immediately upon its receipt acknowledge service thereon in behalf of the defendant corporation by writing thereon, giving the date thereof, and shall immediately return such notice or process in a registered letter to the clerk of the court in which the suit is pending, addressed by his official title, and shall also forthwith mail such copy, with a copy of his acknowledgment of service written thereon, in a registered letter addressed to the corporation or person who shall be named or designated by the corporation in such written instrument. If any such corporation shall fail to file with the secretary of state the power and authority to acknowledge service as herein provided on or before July first, nineteen hundred and six, it shall be the duty of the secretary of state to notify such corporation to file such power and authority within thirty days thereafter, and in case of failure to comply with such notice it shall be the duty of the attorney-general of the state to proceed against such corporation to forfeit its charter and wind up its affairs. [33 G. A., ch. 105, § 10; 33 G. A., ch. 104, § 2; 31 G. A., ch. 64.]

Sec. **1613. Notice published—what to contain.** A notice must be published once each week for four weeks in succession in some newspaper as convenient as practicable to the principal place of business, which must contain:

1. The name of the corporation and its principal place of business;
2. The general nature of the business to be transacted;
3. The amount of capital stock authorized and the times and conditions on which it is to be paid in;
4. The time of the commencement and termination of the corporation;
5. By what officers or persons its affairs are to be conducted, and the times when and manner in which they will be elected;
6. The highest amount of indebtedness to which it is at any time to subject itself;
7. Whether private property is to be exempt from corporate debts.

Proof of such publication, by affidavit of the publisher of the newspaper in which it is made, shall be filed with the secretary of state, and shall be evidence of the fact [29 G. A., ch. 67, § 1; C. '73, §§ 1062-3; R., §§ 1154-5; C. '51, §§ 677-8.]

For publication form see appendix.

As corporations may be legally organized in whose articles there is no limitation which exempts the individual property of its stockholders, the requirements that the notice make disclosure on this question is important, and where the publication is in an obscure newspaper, published at a place remote from that of the principal place of business, such publication does not meet the requirements of the statute. *Berkson v. Anderson*, 115-674.

The publication of notice in a newspaper published at a place remote from the principal place of business is not sufficient compliance with the statute. *Clinton Novelty Iron Works v. Neiting*, 134-311.

It is not essential to state in the notice of incorporation the terms and conditions on which the amount of stock authorized to be issued in the future, in excess of that provided to be issued on organization, shall be paid. *Brinkley Car Works & Mfg. Co. v. Curfman*, 136-476.

Where the notice indicates that stockholders are not to be liable in suits against the corporation it sufficiently complies with the requirement that it shall state whether private property is to be exempt from corporation debts. *Commercial Nat. Bank v. Gilinsky*, 142-178.

The requirement that the affidavit for publication be filed with the secretary of state is not mandatory. If the form of notice is sufficient and it is published as required, the requirements as to publicity have substantially been complied with. *Ibid.*

It seems that acts of a corporation will not be valid as corporate acts unless publication of notice of the organization is made as required by law. *Eisfeld v. Kenworth*, 50-389.

A failure to publish the statutory notice of incorporation does not invalidate indebtedness created within the statutory limits, but only renders the stockholders individually liable. *First Nat. Bank v. Sioux City Terminal R. & W. Co.*, 69 Fed., 441.

Failure to state in the published notice the highest amount of indebtedness for which the corporation may be rendered liable is such a failure to comply with the law in regard to publicity as to render the stockholders liable under the provisions of § 1616. *Heuer v. Carmichael*, 82-288.

Where a notice specified that the indebtedness of the corporation should not exceed a certain sum, while the articles provided that it should not exceed that sum except as authorized by a vote of the majority of the stockholders at a meeting, held, that such notice was sufficient. *Thornton v. Balcom*, 85-198.

A statement that the limit of the company's indebtedness shall be "two-thirds of the amount of the capital stock prescribed" is a sufficient statement of the highest amount of indebtedness to which the corporation is at any time to subject itself. *Park v. Zwart*, 92-37.

The publication of the articles themselves is a sufficient compliance with this section if the articles contain all the required statements. *Ibid.*

Where the articles of incorporation did not state the principal place of business, or the time of commencement of business, held, that the publication of such articles was not sufficient notice, and that there was such failure to comply with this section as to render the stockholders individually liable under § 1616. *Clegg v. Grange Co.*, 61-121.

As to contracts in excess of the limit of indebtedness, see notes to § 1611.

Sec. **1613-a. Defective publication—legalized.** That each corporation heretofore incorporated under the laws of the state of Iowa which have [has] caused notice of their [its] incorporation to be published once each week for four consecutive weeks in some daily, semiweekly or triweekly newspaper, instead of causing the same to be published in each issue of such newspaper for four consecutive weeks are hereby legalized and are declared legal incorporations the same as though the law had been complied with in all respects in regard to the publication of notice. [29 G. A., ch. 226, § 1.]

Sec. **1614. May begin business.** The corporation may commence business as soon as the certificate is issued by the secretary of state, and its acts shall be valid if the publication in a news-

paper is made within three months from the date of such certificate. [17 G. A., ch. 23; C. '73, § 1064; R., § 1156; C. '51, § 679.]

Failure to file articles in the office of secretary of state within three months does not render the acts of the corporation void, nor deprive it of its franchises without proceedings being instituted for that purpose. *First Nat. Bank v. Davies*, 43-424.

A corporation may lawfully commence business on compliance with the terms of this section. Its authority to do so is not made dependent upon all of its stock being subscribed. *Johnson v. Kessler*, 76-411.

The rights of parties are not made dependent upon the publication of notice required upon the filing of the articles. If the publication is inserted in a newspaper within three months, it seems that it ought not to be held a failure to substantially comply with the statute, though the last publication is not made within that time. *Thornton v. Balcom*, 85-198.

The filing with the secretary of state of the proof of publication of notice is not essential to the authority of the corporation to do business. *Commercial Nat. Bank v. Gilinsky*, 142-178.

Where the publication is made within three months after the date of the certificate of incorporation the stockholders will not be liable for any indebtedness contracted in the interval. *Lowden Sav. Bank v. Neiting*, 147-119.

Sec. **1614-a. When time limit for publication has expired—legalized.** That in all instances where the incorporators of corporations for pecuniary profit have omitted to publish notice of incorporation within three months from the date of the certificate of incorpation issued by the secretary of state, but have published notice thereafter, in manner and form as by law required, such notices are hereby legalized and shall have the same force and effect as though published within said period of three months, as to all acts of said corporation from the date of said completed publication. [33 G. A., ch. 272, § 1.]

Sec. **1614-b. Pending litigation—not affected.** Nothing herein contained shall be construed as to affect pending litigation. [33 G. A., ch. 272, § 2.]

Sec. **1614-c. Annual report—what shown.** Any corporation, organized under the laws of this state or under the laws of any other state, territory or any foreign country, which has complied with the laws of this state relating to the organization of corporations and secured a certificate of incorporation or permit to transact business in this state, and any corporation that may hereafter organize and become incorporated under the laws of this state, and shall secure a certificate of incorporation or permit to transact business in this state, and any foreign corporation that may hereafter comply with the laws of this state relating to foreign corporations and secure a permit to transact business within this state, shall, between the first day of July and the first day of August of each year, make an annual report to the secretary of state, said report to be in such form as he may prescribe, upon a blank to be prepared by him for that

purpose, and such report shall contain the following information:

1. Name and post-office address of the corporation;
2. The amount of capital stock authorized;
3. The amount of capital stock actually issued and outstanding;
4. Par value of such stock, designating whether preferred or common stock, and amount of each kind;
5. The names and post-office addresses of its officers and directors and whether any change of place of business has been made during the year previous to making said report. [33 G. A., ch. 105, § 1.]

Sec. **1614-d. Signature and oath—by whom—permit—exemption.** The report required by section one of this act shall be signed and sworn to by an officer of the corporation and when filed with the secretary of state shall be accompanied by the fee required in section three hereof and also by an application for a permit to be issued to said corporation under the provisions of this act; said permit to be in such form as the secretary of state may prescribe and which shall be in force and effect for one year from and after the first day of July of the year in which it is issued, except that where the term of a corporate existence shall expire in less than a year from the first day of July aforesaid, then said permit shall be issued for such unexpired term only, provided, however, that any corporation organized under the laws of this state, and any foreign corporation filing a certified copy of its articles of incorporation after the first day of April of any year, shall be exempt from the provisions of this act for the period ending one year from the first day of July following, after which it shall be subject to all the provisions of this act. [33 G. A., ch. 105, § 2.]

Sec. **1614-e. Annual fee.** Every corporation whose corporate period has not expired, which has heretofore obtained, or may hereafter obtain, a certificate of incorporation or permit under the provisions of chapter one of title nine of the code to transact business in this state as a corporation, whether the same be a domestic or a foreign corporation, shall pay to the secretary of state an annual fee in the sum of one dollar. [33 G. A., ch. 105, § 3.]

Sec. **1614-f. Failure to make report and pay fee—penalties—list of delinquents—action to collect.** Any corporation organized under the laws of this state, and any foreign corporation authorized to do business in this state, which shall fail to make the report and pay the annual fee provided for in this act, and within the time required in section one hereof, shall incur the following penalties beginning with the month of September and dating from the first day thereof, to wit: For the month of September the sum of two dollars, for the month of October the sum of four dollars, for the month of November the sum of six

dollars, for the month of December the sum of eight dollars, and for each month thereafter the sum of ten dollars. If on the first day of May following, such corporation shall not have filed the annual report and paid the annual fee, together with all monthly penalties due at the time of filing said report and paying said fee, the secretary of state shall furnish to the attorney-general a list of delinquent domestic corporations and he may direct the country attorney of the county in which the corporation has its principal place of business to bring suit for the collection of the fee and penalties then due, or may bring such action himself. Any domestic corporation may, prior to the first day of May, nineteen hundred ten, and the first day of May of any subsequent year, escape the payment of fee and penalties by dissolving the corporation and filing with the secretary of state a proof of publication of notice of dissolution. Any foreign corporation that shall fail to make the annual report and pay the annual fee and penalties that may be due shall thereby forfeit its right to do business within this state. [33 G. A., ch. 105, § 4.]

Sec. **1614-g. Notice of delinquency.** During the month of August of each year the secretary of state shall prepare a list of all delinquent corporations and file the same in his office, and on or before the first day of September he shall send by registered mail to each delinquent a notice of such delinqueney and of the penalties provided in section four of this act, and that if the annual report required is not filed and the annual fee paid, together with penalties due, on or before the last day of April, that on the first day of May following, notice of such delinqueney will be filed with the attorney-general who may cause action to be brought for the collection of the fee and penalties due the state. [33 G. A., ch. 105, § 5.]

Sec. **1614-h. Forfeiture of permit—entry of cancellation.** On the first day of May following the date of the notice provided for in section five of this act, all foreign corporations that have not complied with the provisions of this act shall forfeit the right to transact business in this state and a declaration of forfeiture and cancellation shall be entered upon the margin of the record of the certified copy of the articles of incorporation of such company in the office of the secretary of state or in such other record as the secretary of state may provide. [33 G. A., ch. 105, § 6.]

Sec. **1614-i. Certain corporations exempted.** Nothing in this chapter shall be construed as imposing an annual fee or requiring a report from any corporation organized for religious, educational, scientific or charitable purposes or other corporations organized under chapter two of title nine of the code, or of any corporation engaged in the banking business, nor to insur-

ance companies or associations who have paid the taxes provided in sections thirteen hundred thirty-three and thirteen hundred thirty-three-d of the supplement to the code, 1907, and received a certificate of authority from the commissioner of insurance. [34 G. A., ch. 18, § 20; 33 G. A., ch. 105, § 7.]

Sec. **1614-j. Complying corporations listed with county recorder.** After the first day of November and not later than the first day of January of each year, the secretary of state shall compile an alphabetical list of the domestic and foreign corporations that have complied with the provisions of this act, together with post-office address, and mail a copy thereof to each county recorder in this state, who shall file the same in his office. [33 G. A., ch. 105, § 8.]

Sec. **1614-k. Annual notice of requirements by Secretary of state.** It shall be the duty of the secretary of state between the first day of May and the first day of July of each year to notify all corporations whose corporate period has not expired, or that have not dissolved according to law, that are subject to the provisions of this act, of the requirements herein made, enclosing therewith a blank form of report and application as herein provided; and the mailing of said notice at Des Moines, Iowa, addressed to the corporation at its post-office address as shown by the records of his office shall be deemed a full, complete and legal notice for the purpose of this act. [33 G. A., ch. 105, § 9.]

Sec. **1615. Change of articles—fees.** Amendments to articles of incorporation making changes in any of the provisions of the articles may be made at any annual meeting of the stockholders or special meeting called for that purpose, and they shall be valid only when recorded, approved and published as the original articles are required to be. If no increase is made in the amount of capital stock, a certificate fee of one dollar and a recording fee of ten cents per one hundred words must be paid; no recording fee less than fifty cents. Where capital stock is increased the certificate fee shall be omitted but a filing fee of one dollar per thousand dollars of such increase together with a recording fee of ten cents per one hundred words shall be paid. Such amendments need only be signed and acknowledged by such officers of the corporation as may be designated by the stockholders to perform such act. [33 G. A., ch. 104, § 5; 22 G. A., ch. 88; C. '73, § 1065; R., §1157; C. '51, § 680.]

Where a renewal of the corporate franchise is authorized it may be effected by amendment of the articles as provided in this section. *Lamb v. Dobson*, 117-124.

A change in the articles made in the manner therein provided, and properly recorded and published, is as binding upon stockholders who do not as upon those who do consent thereto. *Burlington & M. R. R. Co., v. White*, 5-409.

If a corporation procures an alteration to be made in its charter by which a new and different business is superadded to that originally contemplated, such of the stockholders as do not assent to the alteration will be absolved from liability on their subscriptions to the capital stock. *Ibid.*

But where a change in the charter merely related to the time of payment of installments of subscriptions to stock, held, that by the subscription under the charter the subscriber assented to the change afterward made in pursuance of such provisions. *Ibid.*

Where the corporation has assumed to make a contract authorized by its amended articles, and has received the consideration therefor, it cannot escape liability upon the ground that such amended articles had not been recorded. *Humphrey v. Patron's, etc., Assn.*, 50-607.

Articles of incorporation of a company organized for pecuniary profit can be amended only by an instrument signed and acknowledged by the person or persons duly authorized so to do and recorded. *Day v. Mill Owners' Mut. F. Ins. Co.*, 75-694.

A material or radical change in the objects of a corporation will release the subscriber of stock from liability thereon, but immaterial changes which cannot possibly prejudice such subscriber will not affect him. *Union Ag'l, etc., Assn. v. Neill*, 31-95.

An amendment to a charter not materially changing the original purposes of the corporation, held not sufficient to excuse stockholder from liability for stock subscribed. *Peoria & R. I., R. Co. v. Preston*, 35-115.

Amendments to the articles of incorporation of a college in accordance with provisions made therein for amendment, affecting the method in which trustees were to be appointed, but not the general purposes and objects of the corporation, held not sufficient to release the maker of a scholarship note from his liability thereon. *Washington College v. Duke*, 14-14.

Sec. 1616. **Individual property liable.** A failure to substantially comply with the foregoing requirements in relation to organization and publicity shall render the individual property of the stockholders liable for the corporate debts; but corporators and stockholders in railway and street railway companies shall be liable only for the amount of stock held by them therein. [C. '73, § 1068; R., §§ 1166, 1338; C. '51, § 689.]

Aside from statute, stockholders of a *de facto* corporation cannot be held liable as partners on account of irregularities, omissions or mistakes in incorporating or organizing the corporation. The statute does not create a contract liability. Therefore, those dealing with a corporation having actual notice of the articles, and after publication of the notice required by statute, cannot hold the stockholders individually liable because of irregularity in the organization and publication. *Scaton v. Grimm*, 110-145.

Stockholders who participated in the organization of the company and became responsible to the same extent as other stockholders for failure to have notice published, cannot hold such other stockholders liable individually on the ground that there was not a proper publication of notice. *Ibid.*

"Organization and publicity" should be construed "organization or publicity." *Ibid.*

A subscriber to stock may disaffirm his contract on account of defects in the organization of the company, where it has been represented to him that the organization was legal and complete, and is not bound to go to the records or other sources of information before relying upon such representation. *Maine v. Midland Inv. Co.*, 132-272.

Whether one who buys stock in a defectively organized corporation incurs liability, in virtue of the statutory provision, for debts of the corporation incurred prior to the date of the purchase, is an open question in this state. *Houts v. Sioux City Brass Works*, 134-484.

One who becomes a stockholder within the three months allowed for the publication of notice is liable for the debts incurred after he became a stockholder, if he has knowledge of the facts connected with the organization of the corporation at the time he became a member or when the indebtedness was contracted. It is immaterial that he was not in any way responsible for the failure of the corporation to give proper notice of its organization. *Clinton Novelty Iron Works v. Neiting*, 134-311.

Under this section, held, that a failure to file the articles did not alone render the stockholders individually liable. *First Nat. Bank v. Davies*, 43-424; *Eisfeld v. Kenworth*, 50-389; *Stokes v. Findlay*, 4-205.

Failure to state in the articles and in the published notice the highest amount of indebtedness or liability to which a corporation may be subjected will render the stockholders liable to a creditor under the provisions of this section. *Heuer v. Carmichael*, 82-288.

In the clause "in relation to organization *and* publicity," the word "and" should be construed as "or." A failure in either respect will render the stockholders individually liable. *Eisfeld v. Kenworth*, 50-389.

So held in case of a failure to publish any notice whatever. *Ibid; Marshall v. Harris*, 55-182.

Failure to publish the statutory notice renders stockholders individually liable, but does not invalidate indebtedness created. *First Nat. Bank v. Sioux City Terminal R. & W. Co.*, 69 Fed., 441.

The statement of the articles duly published that the indebtedness of the corporation shall not exceed "two-thirds of the amount of capital stock prescribed" is a sufficient compliance with the provisions of § 1613 to relieve the stockholder from liability under the provisions of this section. *Park v. Zwart*, 92-37.

The fact that a creditor has sought relief against the corporation on his claim will not estop him from recovering against the stockholders under the provisions of this section. These provisions are not limited to cases where the corporation has not a legal existence as such. After recovering a judgment against the corporation the creditor may pursue his remedy as against the stockholders. *Heuer v. Carmichael*, 82-288.

In case of suit against individuals claiming exemption from liability on the ground of their having become a corporation under a general statute, a stricter measure of compliance with the statutory requirements must be shown than in case the plea of *nul tiel corporation* is set up in a suit between the corporation and the stockholder or other individual, on liability contracted. *Ibid.*

Where a contract is made with an unincorporated association, or a part of the members thereof, the other contracting party is bound thereby. *Reding v. Anderson*, 72-498.

Stockholders in railway companies are, by express provision, not liable beyond the amount of stock held by them in such companies. *First Nat. Bank v. Davies*, 43-424.

A construction company having power under its articles to construct and operate a railway is a railway corporation within the meaning of the statute. *Ibid.; Langan v. Iowa & M. Const. Co.*, 49-317.

A provision in the articles as to the indebtedness for which the corporation may be made liable excepting "by a majority vote of the stockholders present" at a meeting is a sufficient statement under § 1611, and will not render the stockholders liable under this section. *Thornton v. Balcom*, 85-198.

Failure to secure subscriptions for stock to the full amount authorized by the articles will not render the stockholders liable where there is no requirement in the articles that all the stock shall be subscribed before the company commences business, nor that any definite sum shall be subscribed. *Ibid.*

But such a condition is precedent to the right to commence business and incur debts, unless it is provided in the articles that the corporation may do so when a specified amount of stock is subscribed. The fact that the stock is not all subscribed does not constitute a failure to comply substantially with the requirements in relation to organization and publicity. *Sweney v. Talcott*, 85-103.

Where the articles of incorporation did not state the principal place of business or the time of commencement of business, held, that the publication of such articles was not sufficient notice, and that there was such failure to comply with the requirements as to notice as to render the stockholders individually liable. *Clegg v. Grange Co.*, 61-121.

Failure to comply with the statutory requirements as to posting a copy of the by-laws and a statement of the amount of capital stock subscribed, etc., will not render the stockholders liable. *Langan v. Iowa & M. Const. Co.*, 49-317; *McKellar v. Stout*, 14-359.

A failure to properly keep the books, as required by statute, does not render the stockholders individually liable. If the books are fraudulently kept, those guilty of participation in the fraud may be held liable. *Langan v. Iowa & M. Const. Co.*, 49-317.

Nor does the incurring of liabilities greater than allowed by statute render the stockholders individually liable. *Ibid.*

While there may be irregularities or omissions to comply with provisions merely directory, which would be sufficient to sustain an action brought to declare a forfeiture, but are insufficient to sustain an action to enforce individual liability of a stockholder, yet if the attempt to incorporate is under a general law, and there is a material non-compliance therewith, then there is such want of incorporation that exemption from individual liability is not secured. *Kaiser v. Laurence Savings Bank*, 56-104.

Substantial compliance with the statute as to giving notice of organization is sufficient and irregularities which are purely technical and not likely to work appreciable injury to one dealing with the corporation will not have the effect of charging stockholders with personal liability for the corporate debts; and held that failure to state in the published notice the times and condition of payment of that portion of the capital stock authorized but not proposed to be at once issued was not such failure to comply with the statute as to render the stockholders individually liable. *Brinkley Car Works & Mfg. Co. v. Curfman*, 136-476.

The personal liability statute has no application to errors arising out of the subsequent conduct of the business of the corporation either as between the corporation and its stockholders or between the corporation and the general public. *Ibid.*

Defects in the proceeding for incorporation do not deprive the corporation of a *de facto* existence and are not grounds for winding up the corporation so long as it remains solvent and able to pay its obligations. *Troutman v. Council Bluffs Street Fair, etc. Co.*, 142-140.

Parties who associate themselves together as a company but who do not attempt to incorporate or exercise corporate functions are not held liable under this section. *Schumacher v. Sumner Telephone Co.*, 161-326.

Sec. **1617. Dissolution—notice of.** A corporation may be dissolved prior to the period fixed in the articles of incorporation, by unanimous consent, or in accordance with the provisions of its articles, and notice thereof must be given in the same manner and for the same time as is required for its organization. [C. '73, §§ 1066-7; R., §§ 1159-60; C. '51, §§ 682-3.]

The sale of the corporation business will not necessarily operate as a dissolution of the corporation, and if good ground for such sale exists it may be made by act of the majority of the stockholders and will not

be restrained on a complaint of the minority. *Price v. Holcomb*, 89-123.

A sale of the assets of a corporation is not necessarily equivalent to a dissolution, and there is no statute denying such power of sale. *Beidenkopf v. Des Moines L. Ins. Co.*, 160-629.

It is doubtful whether a dissolution by unanimous consent of the stockholders, without the notice contemplated in this section, is valid. *United States Gypsum Co. v. Hoxie*, (C. C.) 172 Fed. 504.

This section is more liberal in its terms than Sec. 1066 of the Code of 1873, and the business of a corporation may be sold, good cause existing, upon the consent of a majority of the stockholders. *Beidenkopf v. Des Moines Life Ins. Co.*, 160-629.

Sec. 1618. **Duration—renewal—certificate and articles to be recorded—fees—notice—proof filed—exemptions.** Corporations for the construction and operation, or the operation alone, of steam railways, interurban railways and street railways, for the establishment and conduct of savings banks, or for the transaction of the business of life insurance, may be formed to endure fifty years; those for other purposes, not to exceed twenty years; but in either case they may be renewed from time to time for the same or shorter periods, within three months before or after the time for the termination thereof, if a majority of the votes cast at any regular election, or special election called for that purpose, be in favor of such renewal, and if those voting for such renewal will purchase at its real value the stock voted against such renewal. Such renewals shall date from the expiration of the corporate period which it succeeds and shall be limited in duration to a period not exceeding the time allowed by law to the same class of corporations. Within five days after the said action of the stockholders for the renewal of any corporation, a certificate, showing the proceedings resulting in such renewal, sworn to by the president and secretary of the corporation, or by such other officers as may be designated by the stockholders, together with the articles of incorporation, which may be the original articles of incorporation or amended and substituted articles, shall be filed for record in the office of the recorder of the county in which the principal place of business of said corporation is situated, and the same shall be recorded. Upon filing with the secretary of state the said certificate and articles of incorporation, within ten days after they are filed with the recorder, and upon the payment to the secretary of state of a fee of twenty-five dollars, together with a recording fee of ten cents per one hundred words and an additional fee of one dollar per thousand for all authorized stock in excess of ten thousand dollars, the secretary of state shall record the said certificate and the said articles of incorporation in a book to be kept by him for that purpose, and shall issue a proper certificate for the renewal of the corporation. Within three months after the filing of the certificate and articles of incorporation with the secretary of state, the corporation so renewed shall publish a notice of renewal. Said notice shall be published once each week for four

weeks in succession in a newspaper as convenient as practicable to the principal place of business of the corporation, and proof of publication filed in the office of the secretary of state, and shall contain the matters and things required to be published by section sixteen hundred thirteen of the code, relating to original incorporation. Farmers' mutual cooperative creamery associations, domestic and domestic local building and loan associations, and corporations organized for the manufacture of sugar from beets grown in the state of Iowa, shall be exempt from the payment of the incorporation fee, provided herein. [34 G. A., ch. 74, § 1; 34 G. A., ch. 73, § 2; 33 G. A., ch. 104, § 3; 30 G. A., ch. 2, § 13; 29 G. A., ch. 66, § 2; 28 G. A., ch. 56, § 1; C. '73, § 1069; R. § 1158; C. '51, § 681.]

Where a corporation has reincorporated with the same membership and for the purpose of carrying on the same business and assuming the obligations of the old company, the new company is liable on the contracts of the old. *Benesh v. Mill Owners' Mut. F. Ins. Co.*, 103-465.

A corporation which took proper steps for renewal and tendered to the secretary of state the fees required at the time, held not subject to the provisions of the amending statute requiring higher fees in cases of renewal. *Lamb v. Dobson*, 117-124.

The renewal of a corporation may be made by an amendment of its articles as provided in Code § 1615. *Benesh v. Mill Owners' Mut. F. Ins. Co.*, 103-465.

Whether the provisions of this section as to renewal are applicable to such corporations as are described in § 1642, *quaere*. *Byers v. McCoy*, 62-339.

Sec. 1618-a. **Renewal of corporate existence.** The corporate existence of any state or savings bank may be renewed or extended, from time to time, for a period not longer than the time for which such banks may organize, by an affirmative vote of two thirds of the shareholders thereof, at a stockholders' meeting held for that purpose, within three months before or after the time of the expiration of its charter as shown by its certificate of incorporation issued by the secretary of state. Such meeting shall be called upon a notice signed by at least two of the officers of the bank and by a majority of its directors, specifying the object of the meeting, and the time and place thereof, published once a week for four consecutive weeks before the time at which the same is to be held, in some newspaper in the county wherein the bank is located. If at such meeting the required vote is given, a certificate of the proceedings showing compliance with the foregoing provisions and the time to which the corporate period is to be continued, shall be signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the board of directors, and together with the articles of incorporation, as they exist at the date of the meeting, shall be recorded in the office of the recorder of deeds of the proper county and filed, recorded and fees paid, as provided in section sixteen hundred eighteen of the code and shall be

by the secretary of state certified to the auditor of state. When the meeting is held previous to the expiration of the charter of the bank, such amendments may be made to the articles of incorporation, subject to the provisions thereof, as may be deemed necessary and whether held before or after the extension of the corporate period, such changes may be made in the articles as are necessary to show the time to which the corporate period is extended and the names of the officers and directors at the time of the renewal or extension. When the above has been complied with, the auditor of state shall issue to such bank a certificate as provided in section eighteen hundred forty-three of the code, notice of which shall be published as required by the provisions of said section. [31 G. A., ch. 65.]

[The above section is made applicable to §§ 1889-d to 1889-n by § 1889-m]

[Sec. 1618-b was repealed by 33 G. A., ch. 104, § 6.]

Sec. **1618-1a. Renewals legalized.** That in all instances where proper action has been taken prior to February 1, 1915, by the stockholders for renewal of any corporation for pecuniary profit and the certificate showing such proceedings together with the articles of incorporation have been filed and recorded in the office of the county recorder and later in the office of the secretary of state, although there has been failure to file such certificates and articles of incorporation in either or both of the said offices within the time specified therefor by law; such renewals are hereby legalized and shall be held to have the same force and effect as though the filings of the said documents in the said offices had been made within the periods prescribed by the statute. [36 G. A., H. F. 124, § 1.]

Sec. **1618-1b. Pending litigation.** This act shall not affect pending litigation. [36 G. A., H. F. 124, § 2.]

Sec. **1619. Legislative control.** The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged, or set aside by law, and every franchise obtained, used or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good. [C. '73, § 1090.]

The provisions of this section do not authorize a city council to amend or repeal an ordinance granting a franchise in the streets of the city for a public purpose. *Levis v. Newton*, 75 Fed., 884.

While the power to regulate corporate franchises is here provided for yet it seems that such regulation must be reasonable or they will be invalid. *Des Moines v. Des Moines Water Works Co.*, 95-348.

A statute imposing upon a street railway company additional burdens in regard to paving its tracks is not unconstitutional. *Sioux City St. R. Co. v. Sioux City*, 78-742; *S. C.*, 78-367; affirmed, 138 U. S., 98.

By express provision of the statute, building and loan associations are subject to legislative control. *Wood v. Iowa Bldg. & Loan Assn.*, 126-464.

A franchise granted to a street railway company is subject to subsequent modification. *Marshalltown Light, P. & R. Co. v. Marshalltown*, 127-637.

While the legislature cannot by the amendment of a corporate charter render invalid a contract executed by a corporation, it may require that the corporation continue in business only on compliance with new conditions imposed, even though that involves a modification of its contract rights. *St. John v. Iowa Business Men's B. & L. Assn.*, 136-448.

Sec. **1620. Fraud—penalty for.** Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall be a misdemeanor, and shall subject those guilty thereof to fine and imprisonment, or both, at the discretion of the court. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud. [C. '73, § 1071; R., § 1163; C. '51, § 686.]

To render stockholders liable for fraud in deceiving the public as to the means or liabilities of the corporation, there must be something done with the fraudulent intention of deceiving. The intention to deceive is not sufficient. There must be some act fraudulently done. *Miller v. Bradish*, 69-278.

Fraud in such cases is not to be presumed. The fact that a person is a stockholder in an insolvent corporation does not, of itself, render him liable. *Spense v. Iowa Valley Coal Co.*, 36-407.

Where it is sought to recover from individual officers of a corporation the amount of a judgment against the corporation, under a claim that such officers have rendered themselves liable by fraud, proof of absence of intentional fraud and diversion of assets to their own use will relieve defendants from liability. This section applies only to officers or others guilty of intentional fraud. *Hoffmann v. Dickey*, 54-135.

And held, that in an action for damages under this section, the particular respects in which there was a failure to comply with the articles, etc., resulting in damage to plaintiff, or the particular act of deception, etc., must be specified. *White v. Hosford*, 37-566.

The rule that, when there is no principal who can be made legally responsible, the agent who attempts to act for and bind the principal will himself be personally chargeable, applied to the case of officers of a bank illegally organized. *Allen v. Pegram*, 16-163.

Where the directors of a mutual benefit association, without authority, merged the same into another association of the same character, it appearing that such directors had a reserve fund and also received money from the other company for such consolidation, held, that a certificate-holder in the original company could recover by way of damages from such directors the amount paid in on such certificate, but not the prospective value thereof. *Grayson v. Willoughby*, 78-83.

The fact that officers of an incorporation incur indebtedness in excess of the limit prescribed in the articles or published notice does not constitute such fraud as to render them liable to the persons giving such credit. The officers of the corporation are not agents or trustees of the creditors in such sense as to be answerable to them either for the management of the affairs of the company or the disposition of its property. *Frost Mfg. Co. v. Foster*, 76-535.

The fact that after credit is extended the officers mismanaged the corporate affairs so as to render it insolvent does not make them answerable to the creditors therefor. *Ibid.*

These provisions authorize the winding up of all such associations as are engaged in the issuance of investment securities on the installment plan provided they do not comply with the provisions of § 1920-k. *State v. Syndicate Land Co.*, 142-22.

Where a creditor of a corporation sues in his own personal right to recover from an officer losses which he has sustained by extending credit to the corporation, his action must be founded on deceit and not upon negligence and it must ordinarily be brought at law and not in equity. *U. S. Fidelity & Guar. Co. v. Corning State Sav. Bank*, 154-588.

Sec. 1621. **Diversion of funds.** The diversion of the funds of the corporation to other objects than those mentioned in its articles and in the notice published, if any persons be injured thereby, and the payment of dividends which leaves insufficient funds to meet the liabilities thereof, shall be such fraud as will subject those guilty thereof to the penalties of the preceding section; and such dividends, or their equivalent, in the hands of stockholders, shall be subject to such liabilities. If the directors or other officers or agents of any corporation shall declare and pay any dividend when such corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers or agents knowingly consenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, but dividends made in good faith before knowledge of the occurring of losses shall not come within the provisions of this section. [C. '73, §§ 1072-3; R., §§ 1164-5; C. '51, §§ 687-8.]

It is only persons injured by the diversion of funds who are deemed to be defrauded thereby. One who is not a creditor at the time of the diversion is not injured thereby. *Benge v. Eppard*, 110-86.

As to one who is a creditor at the time of the diversion there is no liability if, notwithstanding the diversion, the corporation had sufficient property remaining to pay all debts. *Ibid.*

To render officers liable for diversion of funds or paying dividends so as to leave insufficient funds to meet liabilities, it must appear that the entire property of the corporation is not sufficient to pay its indebtedness. A dividend may lawfully be declared although the corporation does not have cash on hand sufficient to pay all its liabilities. *Miller v. Bradish*, 69-278.

The word "liability" as used in this section means existing indebtedness the payment of which can be enforced, and does not include the corporate liability for payment of capital stock, such liability being remote and contingent. The amount of the capital stock is therefore not to be included in determining whether the liabilities of the corporation exceed its funds so as to render the declaration of a dividend illegal. *Ibid.*

If the corporation has sufficient assets to pay all its debts at the time a dividend is paid, then the payment of such dividend cannot be held illegal, nor a diversion of the funds to objects other than those authorized. *Ibid.*

As mutual insurance company funds are raised and to be used for specific purposes it cannot by contract with a similar company agree to use its funds for the payment of losses in such other company even by arrange-

ment by which it is to acquire the membership of such other company. *Twiss v. Guaranty Life Assn.*, 87-733.

In the absence of express statutory authority courts of equity do not have jurisdiction to dissolve corporations or wind up their affairs and the statutory provisions in this state give no such express authority. *Wallace v. Pierce-Wallace Pub. Co.*, 101-213.

There are cases in which a receiver will be appointed for the property of the corporation, as for instance where the officers have been guilty of the misappropriation of the funds or a breach of trust in the discharge of official duties, but in general a receiver of a corporation will not be appointed while it is solvent and a going concern, merely on the ground of dissensions among the stockholders. *Ibid.*

The officers or agents of an insolvent corporation who have absorbed its property may be made co-defendants with the corporation in an action to recover a debt due by the corporation; and it is not necessary in such case to show that the assets of the corporation have been exhausted nor that its liability has already been adjudicated. *Swartley v. Oak Leaf Creamery Co.*, 135-573.

The stockholders of a corporation cannot divide its property or assets among themselves without first paying the corporate debts. *Luedecke v. Des Moines Cabinet Co.*, 140-223.

In a particular case held that what was relied upon as diversion of funds did not result in injury to creditors, being nothing more than a retirement of outstanding stock. *Commercial Nat. Bank v. Gilinsky*, 142-178.

The manifest object of these provisions is to enforce diligence and fidelity on the part of corporate officers and afford a prompt and efficient remedy to creditors who have been injuriously affected thereby. *Wisconsin & Ark. Lumber Co. v. Cable*, 159-81.

Corporate creditors are entitled in equity to the payment of their debts before any distribution of corporate property is made among the stockholders. *Ibid.*

Sec. **1622. Forfeiture.** Any intentional violation by the board of directors or the managing officers of the corporation of the provisions of the two preceding sections shall work a forfeiture of the corporate privileges, to be enforced as provided by law. If the indebtedness of any corporation shall exceed the amount of indebtedness permitted by law, the directors and officers of such corporation knowingly consenting thereto shall be personally and individually liable to the creditors of such corporation for such excess. [C. '73, §§ 1074-5; R., §§ 1167-8; C. '51, §§ 690-1.]

Sec. **1623. Keeping false accounts.** The intentional keeping of false books or accounts shall be a misdemeanor on the part of any officer, agent or employe of the corporation guilty thereof, or of any one whose duty it is to see that such books or accounts are correctly kept. [Same.]

Sec. **1624. By-laws posted.** A copy of the by-laws of the corporation, with the names of all its officers, must be posted in the principal places of business subject to public inspection. [C. '73, § 1076; R., § 1161; C. '51, § 684.]

The statutory requirements that the corporation shall keep posted a copy of its by-laws and a statement of the amount of capital stock subscribed and the amount of indebtedness, is primarily for the benefit of the public, to be enforced by mandamus at the suit of a party injured. *Boardman v. Marshalltown Grocery Co.*, 105-445.

By-laws not posted as required by statute are not binding on a stranger without actual notice, but failure to post as required does not constitute a failure to adopt such by-laws. *Fee v. National Masonic Acc. Assn.*, 110-271.

This provision is for the benefit of the public and it is the duty of the corporation to comply with it for the protection of persons who might be affected by the by-laws. Therefore, held, that a purchaser of corporate stock, having no notice of a by-law providing that the corporation should have a lien on the stock for any indebtedness due from the stockholder, was not bound by such provision in a by-law when not posted as required by this section, even though such transfer was not entered on the books of the company, and the certificate of stock recited that it was subject to the by-laws and articles of incorporation of the company. *Des Moines Nat. Bank v. Warren County Bank*, 97-204.

Sec. 1625. **Statement of stock and indebtedness.** A statement of the amount of capital stock subscribed, the amount of capital actually paid in, and the amount of the indebtedness in a general way, must also be kept posted in like manner, which shall be corrected as often as any material change takes place in relation to any part of the subject-matter thereof. [C. '73, § 1077; R., § 1162; C. '51, § 685.]

[A failure to comply with this, or with the preceding section, does not render the private property of stockholders liable. See notes to § 1616.]

Sec. 1626. **Transfer of shares.** The transfer of shares is not valid, except as between the parties thereto, until regularly entered upon the books of the company, showing the name of the person by and to whom transferred, the numbers or other designation of the shares, and the date of the transfer; but such transfer shall not exempt the person making it from any liability of said corporation created prior thereto. Its books must be so kept as to show the original stockholders, their interests, the amount paid on their shares, and all transfers thereof; which books, or a copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same. When any shares of stock shall be transferred to any person, firm or corporation, as collateral security, such person, firm or corporation may notify in writing the secretary of the corporation whose stock is transferred as aforesaid, and from the time of such notice, and until written notice that said stock shall have ceased to be held as collateral security, said stock so transferred and noticed as aforesaid shall be considered in law as transferred on the books of the corporation which issued said stock without any actual transfer on the books of such corporation of such stock. In such case, it shall be the duty of the secretary or cashier of the corporation or of the person or firm to which such stock shall have been transferred as collateral security at once, upon its ceasing to be so held, to inform the secretary of the corporation issuing such stock of such fact. The secretary of the company whose stock is transferred as collateral shall keep a record showing such notice of transfer as collateral

and notice of discharge as collateral, subject to public inspection. No holder of stock as collateral security shall be liable for assessments on the same. [26 G. A., ch. 81; C. '73, § 1078; R., § 1169; C. '51, § 692.]

A transfer of stock not made upon the books of the company as required by statute will not be effectual as against an attachment of such stock for debts of the person who appears from the books to be the owner. Knowledge on the part of the attaching creditor or the officer of the transfer of the stock will not defeat the lien of the attachment. *Ottumwa Screen Co. v. Stodghill*, 103-437; *Perkins v. Lyons*, 111-192.

A stipulation for an assignment of shares of stock, actually in the custody of the transferee, implies an obligation to have a formal and effectual transfer thereof made on the books of the corporation. *First Nat. Bank v. Park*, 117-552.

The holder of stock as collateral has authority to have proper entry of transfer of such stock made upon the company's books. *Ibid.*

A person who is entitled to have shares of stock issued to him, or to have stock owned by him transferred on the books of the company, may maintain an action of mandamus to compel the proper issuance or transfer. *Hair v. Burnell*, 160 Fed., 280.

So long as the stock stands on the books in the name of the judgment debtor it can be levied on and sold, although the creditor has actual notice of a transfer thereof by the debtor. *Ibid.*

One who has purchased stock which is subject to assessment to the corporation, is not liable for the payment of such assessment until the stock has been transferred to him, and any person who has without right paid for such stock and had it transferred to himself on the books of the company, and has made payment of such assessment, has no claim on the stock except for the repayment of the assessment. *Loetscher v. Dillon*, 119-202.

The transferee of shares of stock takes subject to any lien thereon created by the articles in favor of the corporation as against a prior holder and such lien attaches also to dividends declared during its existence. *Dempster Mfg. Co. v. Downs*, 126-80.

These provisions relate to corporations organized under the laws of the state and doing business in the state, and the books referred to are required to be kept within the state where they can be inspected. *Perkins v. Lyons*, 111-192.

In a particular case held that a pencil notation on the stub of the stock book, made long prior to a levy on the stock, although not dated, was sufficient to constitute a transfer. *Ibid.*

The provisions of this section relating to transfer of stock as collateral security held not to be retroactive. *Ibid.*

A private individual cannot require that the books of the company be at all times kept open for public inspection. His right to inspect, if any, is personal. Neither can he have an order with reference to future inspection. *Boardman v. Marshalltown Grocery Co.*, 105-445.

The provision of statute as to the transfer of shares is intended as a protection to the company, and only applies where the sale or transfer in some way conflicts with the interests of the corporation. *Mooar v. Walker*, 46-164.

The transfer may between the parties be valid without it. No statute gives to the bank a lien upon its stock for liability of the stockholder and if such a provision is made by the by-laws it will be valid only where the by-laws are posted, as is required by § 1624. *Des Moines Nat. Bank v. Warren County Bank*, 97-204.

A transfer of stock is not valid as against the levy of an execution until it is regularly entered upon the books of the company. *Moore v. Marshalltown Opera House Co.*, 81-45.

But in a particular case, held, that the transfer was sufficient to preclude an execution creditor from afterwards acquiring rights against the assignee, such transfer having been made before the written notice of the levy was served on the officers of the company. *Ibid.*

A provision of the by-laws of a corporation that no transfer of stock shall be valid unless approved by the board of directors, may be enforced to protect the rights of the corporation, but cannot be used to defeat the rights of others and operate as a restraint upon the disposition of the stock. The transferee may hold the stock and enforce a transfer thereof in proper form in the absence of any right or lien of the company to or upon such stock. *Farmers', etc., Bank v. Wasson*, 48-336.

In the absence of any contract and provisions of the charter and by-laws, a corporation has no implied lien upon the shares of a stockholder indebted to it to secure such indebtedness, and a transfer of stock by such stockholder to secure his individual debt will not be fraudulent as to the corporation in the event that he is indebted to it, and will be valid, although not assented to and approved by its directors as required by its by-laws. *Ibid.*

This section refers to the liability of the corporation for debts created prior to the transfer. It is not the liability of the stockholder under § 1631 which is intended. Therefore a stockholder is liable to corporate creditors after the corporate property is exhausted for corporate debts already incurred, to the amount remaining unpaid on his stock at the time of the transfer thereof. *White v. Greene*, 105-176.

Bonds of the corporation not matured at the time of the transfer are nevertheless to be treated as liabilities of the corporation in determining the obligations of the stockholders. *Ibid.*

Where the corporation has not reserved any lien on stock for the indebtedness due from a stockholder it does not acquire priority over a pledgee of such stock by taking a subsequent assignment thereof, even though the first transfer by way of pledge is not entered on the transfer book. In such case the second assignment to the corporation would entitle it only to a surplus after satisfying the claim of the pledgee under the first assignment. *Des Moines Loan & Trust Co. v. Des Moines Nat. Bank*, 97-668.

Although the by-laws may give the corporation a lien on stock for indebtedness due from the stockholder yet such lien may be waived by the acts of officers of the corporation in allowing a third person to acquire a lien on such stock without asserting the claims of the corporation. *Ibid.*

Shares in the capital stock of the corporation are the property of and under the control of the shareholder. Even though the by-laws of the association require that in order to constitute a valid transfer the same must be entered upon the stock book, yet this does not limit the absolute right of sale and alienation by the stockholder. *Hershire v. First Nat. Bank*, 35-272.

The written assignment and delivery of the certificates of stock, coupled with authority to transfer the same upon the books of the company, is sufficient to vest in the transferee the right to the stock. *Courtright v. Deeds*, 37-503.

The transfer of stock on the books of a corporation upon surrender of a previous certificate, without the issuance of a stock certificate in conformity therewith, is sufficient to bind the corporation and third persons to such transfer. *First Nat. Bank v. Gifford*, 47-575.

Although a transfer not entered on the books of the company is valid as between the parties thereto, it will not be valid as against an attaching creditor, who proceeds in the manner provided by § 3894, to attach the stock as the property of the person who appears on the books to be the owner thereof. If the attaching creditor or a purchaser had knowledge of the transfer it may be that a court of equity would protect the transferee's rights. *Ft. Madison Lumber Co. v. Batavian Bank*, 71-270.

Where a valid title to corporate stock has been acquired by attachment levied thereon and sale under execution, a transferee whose title does not appear on the books of the company cannot defeat it; but if it appears that the title asserted under the execution sale is not valid, the transfer may be good as between the parties thereto. *Commercial Nat. Bank v. Farmers', etc., Nat. Bank*, 82-192.

Where plaintiff agreed to purchase shares of stock in a corporation of a stockholder, and gave his promissory note for the same, and the certificate of stock was placed in the hands of a third party to be delivered to plaintiff when the note was paid, and where it appeared that the note had never been paid or the stock transferred, held, that while plaintiff had an interest in the stock, he never owned it, and was not liable to the corporation for unpaid assessments made on account of it. *Connae v. Western White Bronze Co.*, 77-32.

A failure to properly keep the books, as here provided, does not render the stockholders individually liable. If the books are fraudulently kept those guilty of participation in the fraud may be held liable under § 1620. *Langan v. L. & M. Const. Co.*, 49-317.

A stockholder is entitled to the inspection of the original record, and transfer books and the record of the financial condition of the company and to have his attorney and the clerk of such attorney assist him in making an examination of such books at reasonable times. *Ellsworth v. Dorwart*, 95-108.

A transfer of stock not made upon the books of the company as required by statute will not be effectual as against an attachment of such stock for debts of the person who appears from the books to be the owner. Knowledge on the part of the attaching creditor or the officer of the transfer of the stock will not defeat the lien of the attachment. *Ottumwa Screen Co. v. Stodghill*, 103-437; *Perkins v. Lyons*, 111-192.

The design of this section is to enable stockholders to hypothecate their shares of stock without cancellation thereof and the issuance of new stock and yet protect the pledgee against the claims of the pledgor and purchaser without notice. *Tierney v. Ledden*, 143-286.

In a particular case, held that the evidence did not show that the notice, herein contemplated, had been given. *First National Bank v. Way*, 167 Ia.—

Sec. 1627. **Amount paid in.** No certificate or shares of stock shall be issued, delivered or transferred by any corporation, officer or agent thereof, or by the owner of such certificate or shares, without having indorsed on the face thereof what amount or portion of the par value has been paid to the corporation issuing the same, and whether such payment has been in money or property. Any person violating the provisions of this section, or knowingly making a false statement on such certificate, shall be fined not less than one hundred dollars nor more than five hundred dollars, and shall stand committed to the county jail until such fine and costs are paid. This section shall not apply to railway or quasi public corporations organized before the first day of October, eighteen hundred ninety-seven. [28 G. A., ch. 57, § 1.]

Failure to endorse on a certificate of stock the amount and manner of payment therefor will not render a contract in relation to such stock void, especially where it appears that full value in property was paid for the stock, and that such endorsement would not have altered the situation of the parties. *French v. Northwestern Laundry*, 132-81.

Sec. **1628. Non-user.** Any corporation organized under this chapter shall cease to exist by non-user of its franchise for two years at any one time, but omission to elect officers or hold meetings at any time prescribed by its articles or by-laws shall not work a forfeiture, if such election is held within two years of the time appointed therefor. [C. '73, § 1079; R., § 1170; C. '51, § 693.]

Where a railroad company did not commence to build its road for more than two years after its incorporation, and the stockholders did not pay up their subscriptions or take certificates of stock, but during the time the company expended money and made persistent and continuous efforts to procure additional means to construct the road, held, that these acts were such an exercise of its franchises as to prevent a forfeiture. *Young v. Webster City & S. W. R. Co.*, 75-140.

Nonuser of the franchises does not operate as a forfeiture in such sense as to prevent corporations doing business for the purpose of winding up their affairs. *Commercial Nat. Bank v. Gilinsky*, 142-178.

A corporate "life" is not absolutely terminated by (a) insolvency or (b) failure to elect officers or hold meetings for two years. The life at least continues for the purpose of closing up the affairs, making distribution among stockholders, etc. *Cownie v. Dodd*, 167 Ia.—

Sec. **1629. Expiration.** Corporations whose charters expire by limitation or the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their affairs. [C. '73, § 1080; R., § 1171; C. '51, § 694.]

The fact that the charter of the corporation has expired will not show that it cannot be the owner of property. After the expiration of the term of the charter the corporation continues to live for the purpose of discharging its obligations and disposing of its property. *State v. Fogerty*, 105-32.

The corporate existence may continue after the period limited in the charter for the purpose of winding up the corporate affairs. *Rogers v. Western Mut. Life Assn.*, 123-722.

The statute contemplates the continuance of the liability of stockholders until the business of the corporation is wound up at least so far as valid indebtedness has been contracted while the corporation has a legal existence. The liability of stockholders does not become that of partners after the expiration of the period fixed by the charter. *Elson v. Wright*, 134-634.

It is only corporations whose charters expire by limitation, or the voluntary act of the stockholders, which continue for the purpose of winding up their affairs. Corporations dissolved by action of court have no further legal existence, and cannot be represented by officers or agents. *State v. Fidelity L. & T. Co.*, 113-439.

A court of equity may wind up the affairs of a corporation whose charter has expired, if internal dissensions in the corporation make it necessary. This section only authorizes continuance of the business by the corporation managers for the amicable settlement of its affairs. But a corporation whose charter has not expired will not be dissolved at the suit of a stockholder, and it is error to direct a sale of its property in such suit. *Stewart v. Pierce*, 116-733.

A corporation will be kept alive by statute for the purpose of discharging its contracts and disposing of its property. *Muscatine Western R. Co. v. Horton*, 38-33, 45.

The voluntary dissolution of a corporation does not take away its power to act for the purpose of winding up its affairs, nor affect the right of a creditor, in equity at least, to be released from the inequitable consequences of such dissolution. *Muscatine Turnverein v. Funk*, 18-469.

The forfeiture of the corporate franchise does not of itself create of the stockholders a partnership nor does the transaction of business in the name of the corporation create a liability against the stockholders other than those who participate therein. *Commercial Nat. Bank v. Gilinsky*, 142-178.

A corporation cannot by its own voluntary dissolution and distribution of its property or assets among its stockholders relieve such property and assets from liability for unliquidated demands. *Wisconsin & Ark. Lumber Co. v. Cable*, 159-81.

After dissolution of a corporation by unanimous consent of the stockholders, it still continues to exist for the purpose of winding up its affairs, and to this end it may rightly maintain actions at law or suits in equity to preserve or recover its property. *United States Gypsum Co. v. Hoxie* (C. C.) 172 Fed., 504.

Sec. **1630. Sinking fund.** For the purpose of repairs, rebuilding, enlarging, or to meet contingencies, or for the purpose of creating a sinking fund, the corporation may set apart a sum which it may loan, and take proper securities therefor. [C. '73, § 1081; R., § 1176; C. '51, § 699.]

Sec. **1631. Liability of stockholders.** Neither anything in this chapter contained, nor any provisions in the articles of corporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors; and execution against the company may, to that extent, be levied upon the private property of any such individual. In none of the cases contemplated in this chapter can the private property of the stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and he neglects to point out any such property. In suits by creditors to recover unpaid installments upon shares of stock against any person who has in any manner obtained such stock of the corporation, the stockholder shall be liable for the difference between the amount paid by him to the corporation for said stock and the face value thereof. [C. '73, § 1082; R., § 1172; C. '51, § 695.]

Although a certificate of stock recites that it is fully paid, yet if it expressly declares that it is subject to assessment for purposes named such an assessment will be valid and can be enforced against the holder of the stock. *Western Imp. Co. v. Des Moines Nat. Bank*, 103-455.

Such stock is not fully paid up stock and the holder thereof is individually liable under statutory provisions, even if the articles of incorporation provide otherwise. *Ibid.*

The corporation may maintain an action against the stockholder for an assessment lawfully made and it is not necessary that it shall appear that the corporation is insolvent. *Ibid.*

Where a call for an assessment on stock does not specify the time, place, or person to whom payment is to be made it will be presumed that the assessment is payable on demand at the place of business of the corporation and to the officer authorized to receive money due to it. *Ibid.*

The stockholder after the transfer of his stock remains liable for indebtedness of the corporation existing at the time of such transfer. *White v. Green*, 105-176; *White v. Marquardt*, 105-145.

One who in fact becomes a holder of stock incurs the liability of a stockholder for unpaid installments, although the transfer of the stock to him is not recorded in the books of the company; and upon a subsequent transfer of the stock by him effected by means of a transfer at his instance directly from the original holder to the last purchaser, he nevertheless remains liable in the same way that other holders of stock remain liable after transfer for liabilities of the corporation existing at the time of such transfer. *White v. Marquardt*, 105-145.

Indebtedness of the corporation not matured at the time of the transfer of stock is nevertheless a liability for which the stockholder remains liable to the extent of the unpaid installments of his stock. *White v. Greene*, 105-176.

Property may be accepted in exchange for stock, providing it is taken at its true value. The parties have the right in good faith to agree on the value of the property taken, but this should not be speculative or fictitious. *State Trust Co. v. Turner, et al.*, 111-664.

But a creditor of the corporation, who has become such with knowledge that stock, although issued as fully paid, has not in fact been paid for, cannot enforce his claim against the holders of such stock, nor can his assignee do so. *Ibid.*

In an action against a stockholder for an unpaid subscription, the burden is on the creditor seeking to enforce payment by the stockholder to prove that payment by the stockholder has not been made. *Merrill v. Timbrell*, 123-375.

In a proceeding by the auditor of state to wind up a bank and distribute its assets among the creditors, the receiver may have an order for the assessment of stockholders based on an estimate of the amount for which they will be liable under the statutory provision for double liability, and the stockholders may be compelled to pay such assessment before the assets of the bank are distributed, subject to the right to a return of any assets left undisposed of after the debts are all paid. *State ex rel. v. Union Stock Yards State Bank*, 103-549; and see *Elson v. Wright*, 134-634.

In an action by a creditor of the corporation against a stockholder to compel payment of the balance due on stock, held, that under an allegation that the plaintiff was enforcing his claim unequally against different stockholders, and accepting settlements with others without crediting the payment thereof upon his claim, a receiver should be appointed and the prosecution of plaintiff's action be enjoined until the amounts due from all the stockholders could be ascertained and reported so that a *pro rata* apportionment might be made. *Hablitzel v. Latham*, 35-550.

The officers of the corporation cannot issue to a creditor stock of the corporation to be accepted by him at less than its par value in payment of his claim, with the agreement that it is to be paid up stock, and the creditor thus accepting stock becomes liable as the holder of unpaid stock to the extent that the par value exceeds the debt for which it is taken. *Jackson v. Tracr*, 64-469.

A creditor thus accepting stock becomes a stockholder although he has not subscribed for stock. A subscription for stock is only necessary to render a person a stockholder, where the stock is not delivered. *Ibid.*

The fact that the stock was, at the time of its issuance and acceptance, worthless, would not relieve a stockholder, accepting it, from liability. *Ibid.*

A corporation may dispose of its stock to a creditor for less than its par value in full payment of his debt without any liability on his part to other creditors for the excess of the par value above the amount of his debt. (Disapproving *Jackson v. Tracr*, 64-469); *Clark v. Bever*, 139 U. S., 96; *S. C.*, 31 Fed., 670.

The officers of a corporation cannot, without express authority, sell the stock of the corporation at a less rate than its par value as fixed by the charter. *Oliphant v. Woodburn Coal, etc., Co.*, 63-332.

A creditor who accepts stock issued to him by the officers of the corporation below par in payment of his debt holds the same as unpaid stock to the extent that its par value exceeds his claim. *Jackson v. Tracr*, 64-469.

The public has a right to assume, where the stock of a company has all been issued as full-paid stock, that it has been paid for in full, either in money or in property at a fair value; but while the fact that full-paid stock has been issued upon a partial payment of its face might be ground for proceeding in the interest of the public to wind up the company, it is not a ground upon which the stockholder who has received paid-up stock can object to the validity of the contract for the purchase of such stock. *Goff v. Hawkeye Pump, etc., Co.*, 62-691.

Where all the capital stock of a corporation outstanding was such as had been issued to stockholders who had conveyed to the corporation the patent-right for an article which the corporation was authorized to manufacture, and such patent-right had become worthless, held, that such stockholders could not claim that their stock was paid up, and were liable for the amount of their stock. *Chrisholm v. Forney*, 65-333.

An action against a stockholder, even after the corporation has ceased to exist, need not be brought in equity, but may be brought at law. *Tama Water Power Co. v. Hopkins*, 79-653.

An action against a stockholder for an unpaid installment of stock is properly maintained at law and in such action the corporation, its creditors and other stockholders are not necessary parties. *National Park Bank v. Peavey*, 64 Fed., 912.

In an action by creditors of a bank located in South Dakota, brought in Iowa to charge defendants with a balance of unpaid stock of said bank, owned by them, it was held that as the statute of South Dakota fixed the liability of holders for unpaid stock, and did not provide a special remedy for enforcing such liability, such liability might be enforced in the courts of this state against persons over whom they have jurisdiction. *Latimer v. Citizens State Bank*, 102-162.

Officers of the corporation cannot, by agreement with a stockholder, release him to the prejudice of creditors, from his obligation to pay his subscription, unless the transaction is characterized by the utmost fairness. Therefore held, that conveyances of real estate made to a corporation by directors and other stockholders in full payment of their stock, at a price largely in excess of its real value, did not release such stockholders from liability for the excess of their subscriptions over the real value of the property conveyed, even to creditors becoming such after the conveyance. *Osgood v. King*, 42-478.

Where the president of a corporation gave a mortgage to the corporation in payment of shares of stock to the amount of such mortgage, and the same was included in the statement of the company's assets, held, that he could not afterward surrender such stock and receive back the mortgage after insolvency of the company. *Burnham v. Northwestern Ins. Co.*, 36-632.

Although the mortgage in such case provided that it was payable in the capital stock certificates of the company, yet, held, that as those doing business with the company had not an opportunity to know the terms of the mortgage, it could not be discharged as to the creditors of the company

by surrender of the identical shares of stock which had been issued therefor. *Ibid.*

It is not necessary to show a subscription for stock in the corporation to render an individual liable as a stockholder. It is sufficient if stock has been actually issued to him, even though issued to be held as collateral security. *Calumet Paper Co. v. Stotts Investment Co.*, 96-147.

Under the national banking act making stockholders liable, in case of failure of the bank, in an amount equal to the amount of stock held by them, a holder of stock at the time of the dissolution of the bank becomes liable for the indebtedness thus arising upon such stock, although he holds the shares as collateral security, or as a trustee. *Hale v. Walker*, 31-344.

The fact that a subscription for stock was to be paid in property instead of money does not relieve the subscriber from liability, if the property was not turned over as agreed. The company cannot, by any arrangement or action upon its part, release the subscriber from his liability. *Singer v. Given*, 61-93.

The subscriber cannot, as between himself and the creditor, set up claims for services, or for use of property, for which the corporation is indebted to him. *Ibid.*

A railroad corporation may make, if acting in good faith, a valid and binding contract, releasing a stockholder from liability upon his subscription to the stock of the corporaton, either with or without the consent of the creditors and stockholders. *Gelpcke v. Blake*, 19-263.

An execution against the company can only be levied on the private property of a stockholder after a judgment has been obtained against him as provided in § 1632. *Bayliss v. Swift*, 40-648; and see *Hampson v. Weare*, 4-13; *Bailey v. Dubuque Western R. Co.*, 13-97.

The primary object of these provisions is to protect creditors of the company. Where by agreement between the company and the stockholders shares of stock were sold at much less than their par value and upon conditions by which the stockholders were not to be liable to any additional amount, and one of such stockholders became a creditor of the company for services rendered, and assigned his claim to plaintiff, on which plaintiff got judgment against the company, held, that plaintiff was not entitled to enforce, as against another of such conditional stockholders, payment on his stock contrary to the conditions on which it was purchased. The liability of the plaintiff's assignor on the stock held by him being as great as that of any other stockholder, his assignee should not be allowed to compel payment of the entire liability from the holders of stock. *Callanan v. Windsor*, 78-193.

Where there is a failure to comply with the requirements of the statute with reference to organization and publicity, such as to render the stockholder individually liable, he becomes primarily liable, and may be sued in the first instance. His relation to the creditor is not different from what it would have been if no attempt had been made at incorporation. *Marshall v. Harris*, 55-182.

Where stock is issued to a promoter and organizer for property which is taken at a gross overvaluation the transaction is fraudulent against creditors of the corporation if it be insolvent, and the stockholder who receives such stock with knowledge of the consideration paid for it will be liable to such creditors as to the stock he holds for the difference between its par value and the amount actually paid to the corporation for it, and this rule is applicable to those who acquire stock with knowledge of the facts as well as to the original stockholders. *Wishard v. Hansen*, 99-307.

In a particular case, held, that statements on the back of the stock certificate showing that the stock was still subject to assessments although it purported to be fully made up, were sufficient to put the holder on inquiry. *Ibid.*

In a particular case, held, that although it appeared that stock was issued as fully paid up to a stockholder for property transferred to the corporation, nevertheless as a matter of fact the value of the property was under-

stood to be only one-third of the par value of the stock issued, and that therefore the stockholder was liable to creditors of the corporation for the unpaid balance on his stock. *Boulton Carbon Co. v. Mills*, 78-460.

Where the stockholder has become a creditor of the corporation he cannot set off as against claims of other creditors for the unpaid balance due on his stock the amount of indebtedness of the corporation to him. *Ibid.*

When property is received by the corporation in payment of stock at an excessive valuation it is to be considered as constituting payment only to the extent of its real value and the owners of such stock are liable to creditors for the difference between the actual value of the property and the face value of the stock. *Stout v. Hubbell*, 104-499.

It is immaterial that the articles of incorporation show that certain shares of stock have been issued as fully paid up in exchange for property. Creditors have a right to presume in such case that the property received is of the actual value of the face of the stock, and if it is of less value the holder of such stock is liable to the creditors for the difference. *Ibid.*

The stockholder after the transfer of his stock remains liable for indebtedness of the corporation existing at the time of such transfer. *White v. Green*, 105-176; *White v. Marquardt*, 105-145.

One who in fact becomes a holder of stock incurs the liability of a stockholder for unpaid installments, although the transfer of the stock to him is not recorded in the books of the company; and upon a subsequent transfer of the stock by him effected by means of a transfer at his instance directly from the original holder to the last purchaser, he nevertheless remains liable in the same way that other holders of stock remain liable after transfer for liabilities of the corporation existing at the time of such transfer. *White v. Marquardt*, 105-145.

Indebtedness of the corporation not matured at the time of the transfer of stock is nevertheless a liability for which the stockholder remains liable to the extent of the unpaid installments of his stock. *White v. Green*, 105-176.

Property may be accepted in exchange for stock, providing it is taken at its true value. The parties have the right in good faith to agree on the value of the property taken, but this should not be speculative or fictitious. *State Trust Co. v. Turner*, 111-664.

But a creditor of the corporation who has become such with knowledge that stock, although issued as fully paid, has not in fact been paid for, cannot enforce his claim against the holders of such stock, nor can his assignee do so. *Ibid.*

In an action against a stockholder for an unpaid subscription, the burden is on the creditor seeking to enforce payment by the stockholder to prove that payment by the stockholder has not been made. *Merrill v. Timbrell*, 123-375.

In a proceeding by the auditor of state to wind up a bank and distribute its assets among the creditors, the receiver may have an order for the assessment of stockholders based on an estimate of the amount for which they will be liable under the statutory provision for double liability, and the stockholders may be compelled to pay such assessment before the assets of the bank are distributed, subject to the right to a return of any assets left undisposed of after the debts are all paid. *State ex rel. v. Union Stock Yards State Bank*, 103-549.

The court in a receivership proceeding may order an assessment against stockholders not made parties. *Elson v. Wright*, 134-634; *Paine v. Mueller*, 150-340.

The promoters of the corporation cannot purchase property and sell to the corporation at an advanced price unless the corporation has full and complete knowledge and consents thereto. *Caffee v. Berkley*, 141-344.

Sec. **1632. Corporate property exhausted.** Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against him, in

any stage of which he may point out corporate property subject to levy; and, upon his satisfying the court of the existence of such property, by affidavit or otherwise, the cause may be continued, or execution against him stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but if a demand of property has been made as contemplated in the preceding section, the costs of said action shall, in any event, be paid by the company or the defendant therein, but he shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion. [C. '73, §§ 1083-4; R., §§ 1173-4; C. '51, §§ 696-7.]

The fact of demand and refusal may be shown by the official return upon the execution. Such return, as between the corporation and the creditor, must be regarded as conclusive. Evidence may be introduced to show that no such return was made, but it is not competent to dispute it by showing that no demand was made as therein stated. *Singer v. Given*, 61-93.

Where the corporation is notoriously insolvent, and its assets have been seized upon legal process, and it had ceased to do business, creditors are not required to exhaust their remedy against it before pursuing their remedy against the stockholders. *Latimer v. Citizens' State Bank*, 102-162.

An execution against the company can only be levied on the private property of a stockholder after a judgment has been obtained against him as provided by statute. *Bayliss v. Swift*, 40-648; and see *Hampson v. Weare*, 4-13; *Bailey v. Dubuque Western R. Co.*, 13-97.

The action against the stockholder, here contemplated, is an ordinary action, followed by an ordinary judgment; after which an execution against the corporation may, to the extent of such judgment, be levied upon the private property of the stockholder, as provided in § 1631. *Bayliss v. Swift*, 40-648.

An action against the stockholder to enforce in behalf of a creditor his liabilities for unpaid installments of stock is properly brought by ordinary proceedings. *Calumet Paper Co. v. Stotts Investment Co.*, 96-147.

Where there had been a defective organization and an indebtedness incurred and subsequently a regular organization of the corporation, held, that judgment against the corporation was proper and was binding upon the stockholders. *Ibid.*

This section contemplates the rendition of a judgment against the stockholder, and not merely the awarding of an execution against him. *Singer v. Given*, 61-93.

A prior statute upon the same subject considered. *Donworth v. Coolbaugh*, 5-300.

To charge a stockholder it must appear that there was a valid claim against the corporation. *Corse v. Sanford*, 14-235.

Sec. 1633. **Indemnity—contribution.** When the property of a stockholder is taken for a corporate debt, he may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution. [C. '73, § 1085; R., § 1175; C. '51, § 698.]

A stockholder who has been compelled to pay more than his just proportion of unpaid subscriptions to the capital stock may enforce contribution from the other stockholders who have not paid their just proportion, and this rule is applicable to a case where a stockholder has voluntarily paid more than his just proportion, but liability in this respect may be determined by the contract between the parties, and if the stockholders pay creditors, knowing that the other stockholders have an agreement by which their stock is to be treated as fully paid up, he cannot recover against them for contribution. *Eagen v. Smith*, 113-25.

Sec. **1634. Franchise sold on execution.** The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraisement. [C. '73, § 1086; R., § 1177; C. '51, § 700.]

It seems that this provision has reference to the franchise of a corporation obtained by the adoption of the articles of incorporation and not to a special franchise granted to a corporation, as for instance, a privilege of maintaining and operating waterworks in a city. A franchise of the latter character could be sold or transferred without statutory provision. *Farmers Loan & Trust Co. v. Iowa Water Co.*, 78 Fed., 881.

Sec. **1635. Production of books.** In proceedings by or against a corporation or a stockholder to charge his private property, or the dividends received by him, the court may, upon motion of either party, upon cause shown for that purpose, compel the officers or agents of the corporation to produce the books and records of the corporation. [C. '73, § 1087; R., § 1178; C. '51, § 701.]

Sec. **1636. Estoppel.** No person or persons acting as a corporation shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with such an acting corporation, or sued for an injury to its property, or a wrong done to its interests, be permitted to set up a want of such legal organization in his defense. [C. '73, § 1089; R., § 1181; C. '51, § 704.]

In an action brought by a corporation to protect its property from wrongful acts the defendant cannot set up want of legal organizaton as a defense. *State Security Bank v. Hoskins*, 130-339.

A party contracting with a corporation cannot deny its corporate existence. *Howe Machine Co. v. Snow*, 32-433; *Courtright v. Deeds*, 37-503, 511.

A person sued upon such contract cannot set up want of legal organization, etc. *Washington College v. Duke*, 14-14.

Among acts which would constitute acting as a corporation, such as by statute would prevent the corporation from denying its legal existence, would be the adoption and use of a corporate seal, the taking of subscriptions and the issue of certificates of stock; but the acts of persons as members of a religious society in holding business meetings, and acquiring property, receiving and paying out money, appointing agents to make settlements, etc., held not sufficient to constitute such "acting as a cor-

poration"; also held, that the passage of by-laws is not an assumption of distinctive corporate powers; nor is the attempt to incorporate. *Kirkpatrick v. United Presb. Church*, 63-372.

Where the corporation has assumed to make a contract authorized by its amended articles, and has received the consideration therefor, it cannot escape liability upon the ground that such amended articles had not been recorded. *Humphrey v. Patrons', etc., Assn.*, 50-607.

The fact that a member of the board of directors has been irregularly elected constitutes no defense in an action against the corporation for indebtedness created. *Carrothers v. Newton Mineral Spring Co.*, 61-681.

When a corporation seeks to enforce the bequests in a will, duly admitted to probate, its claims cannot be resisted on the ground that it has not been legally organized. Such objection can be taken only by a proceeding by *quo warranto*. *Quinn v. Shields*, 62-129.

The estoppel provided for by this section certainly applies only to a body of men acting as a corporation for pecuniary profit. Whether the section can be applied to persons acting as a corporation other than for pecuniary profit, *quaere*. *Kirkpatrick v. United Presb. Church*, 63-372.

Sec. 1637. **Foreign corporation—filing articles—process—application—increase of capital—fees.** Any corporation for pecuniary profit, other than for carrying on mercantile or manufacturing business as clearly defined and restricted by its articles of incorporation, organized under the laws of another state, or of any territory of the United States, or of any foreign country, which has transacted business in the state of Iowa since the first day of September, eighteen hundred eighty-six, or desires hereafter to transact business in this state, and which has not a permit to do such business, shall file with the secretary of state a certified copy of its articles of incorporation, duly attested by the secretary of state or other state officer in whose office the original articles were filed, accompanied by a resolution of its board of directors or stockholders authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this state; said application to contain a stipulation that such permit shall be subject to the provisions of this chapter. Said application shall also contain a statement subscribed and sworn to by at least two of the principal officers of the corporation, setting forth the following facts, to wit:

1. The total authorized capital of the corporation;
2. The total paid up capital of the corporation;
3. The total value of all assets of the corporation, including money and property other than money, represented by capital, surplus, undivided profits, bonds, promissory notes, certificates of indebtedness, or other designation, whether carried as money on hand or in bank, real estate or personal property of any description;
4. The total value of money and all other property the corporation has in use or held as investment in the state of Iowa, at the time the statement is made (if any);
5. The total value of money and all other property the corporation proposes or expects to make use of in the state of Iowa, during the ensuing year;

The secretary of state can make such independent and further investigation as to the property within this state owned by any such corporation as he may desire, and upon the true facts determine the value thereof, and fix the fee to be paid by such company. Before a permit is issued authorizing such corporation to transact business in the state of Iowa, said corporation shall pay to the secretary of state a fee of ten cents per one hundred words for recording the certified copy of the articles of incorporation, with resolution and statement as previously set forth, and a filing fee of twenty-five dollars upon ten thousand dollars or less of money and property of such company actually within the state of Iowa, and of one dollar for each one thousand dollars of such money or property within this state in excess of ten thousand dollars. If from time to time the amount of money or other property in use in the state of Iowa by said foreign corporation is increased, said corporation shall at the time of said increase, or at the time of making annual report to the secretary of state, in July of each year, file with the secretary of state a sworn statement showing the amount of such increase, and shall pay a filing fee thereon of one dollar for each one thousand dollars or fraction thereof of such increase, together with a recording fee of ten cents per one hundred words, but not less than fifty cents. The secretary of state shall upon request furnish a blank upon which to make report of such increase of capital in use within the state. Any corporation transacting business in this state prior to the first day of September, eighteen hundred eighty-six, shall be exempt from the payment of the fees required under the provisions of this section. The secretary of state shall thereupon issue to such corporation a permit, in such form as he may prescribe, for the transaction of the business of such corporation, and upon the receipt of such permit said corporation shall be permitted and authorized to conduct and carry on its business in this state. Nothing in this section shall be construed to prevent any foreign corporation from buying, selling and otherwise dealing in notes, bonds, mortgages and other securities. [34 G. A., ch. 75, § 1; 33 G. A., ch. 104, § 7; 21 G. A., ch. 76, §1.]

It is within the power of the state to prescribe the method by which corporations doing business within its jurisdiction may be brought into court and to designate the officer or agent of such corporation upon whom the process necessary to commence an action may be served. *Green v. Equitable Mut. L. & End. Assn.*, 105-628.

The permit here required is not necessary to enable a foreign corporation to purchase property in this state and transport the same through the state. *Ware Cattle Co. v. Anderson*, 107-231.

The fact that statutory requirements as to foreign corporations have not been complied with by the corporation cannot be taken advantage of by one who has received the benefits of a contract with such corporation. *Spinney v. Miller*, 114-210.

The exception as to the doing business in the state by foreign corporations covers the transaction of receiving and accepting a note and mortgage for a valid consideration when such transaction is independent of and not connected with any form of business which the company is prohibited from transacting without a permit. *Prudential Ins. Co. v. Cushman*, 130-378.

A mortgagor who has received and retained the benefits of the transaction in which the mortgage is given cannot be heard to assert its invalidity on the ground that the mortgagee is a forgien corporation which has failed to comply with the statutes prescribing the terms upon which such corporations may do business in the state, the state alone being entitled to take advantage of the failure of the corporation to comply with the statute. *Ibid.*

It is no defense to a contract entered into by a foreign corporation that when the contract was made it did not have a permit to do business in the state. *Iowa Lillooet Gold Mining Co. v. United States F. & G. Co.*, 146 Fed., 437.

In a direct action by the state to oust a foreign corporation from doing business therein without a permit, a judgment of ouster will not be awarded if the corporation complies with the law within a reasonable time. *Ibid.*

Although this section and the sections following by their terms exclude a manufacturing corporation, yet they are applicable to foreign corporations organized to improve water power for the purpose of producing and transmitting electricity. *Hagerla v. Mississippi River Power Co.* (D. C.) 202 Fed. 776.

Where a foreign corporation has been recognized by the secretary of state as entitled to comply with these statutory provisions, its right to do so is not to be questioned in the courts. *Ibid.*

Sec. **1638. Permit.** No foreign corporation which has not in good faith complied with the provisions of this chapter and taken out a permit shall possess the right to exercise the power of eminent domain, or exercise any of the rights and privileges conferred upon corporations, until it has so complied herewith and taken out such permit. [21 G. A., ch. 76, § 2.]

The provisions of code § 1319 as to taxation of manufacturing corporations are applicable only to domestic corporations of that character. But the provisions of that section, such as those considered, do not amount to a discrimination between foreign and domestic manufacturing corporations. *Morril v. Bentley*, 150-677.

A foreign corporation, having complied with the statutory provisions, may proceed to condemn land for proper purposes. *Hagerla v. Mississippi River Power Co.* (D. C.) 202 Fed. 776.

Sec. **1639. Penalty.** Any foreign corporation that shall carry on its business in violation of the provisions of this chapter, in the state of Iowa, by its officers, agents or otherwise, without having complied with this statute and taken out and having a valid permit, shall forfeit and pay to the state, for each and every day in which such business is transacted and carried on, the sum of one hundred dollars, to be recovered by suit in any court having jurisdiction; and any agent, officer or employe who shall knowingly act or transact such business for such corporation, when it has no valid permit as provided herein, shall be guilty of a misdemeanor, and for such offense shall be fined not to exceed one

hundred dollars, or be imprisoned in the county jail not to exceed thirty days, or by both such fine and imprisonment, and pay all costs of prosecution. Nothing contained in this chapter shall relieve any person, company, corporation, association or partnership from the performance of any duty or obligation now enjoined upon or required of it, or from the payment of any penalty or liability created by the statutes heretofore in force, and all foreign corporations, and the officers and agents thereof, doing business in this state shall be subject to all the liabilities, restrictions and duties that are or may be imposed upon corporations of like character organized under the general laws of this state, and shall have no other or greater powers. [21 G. A., ch. 76, § 4.]

Where an Iowa corporation and a Nebraska corporation were organized to operate a joint enterprise and the Iowa corporation transferred its interest in the enterprise to the Nebraska corporation, which continued to operate the business in Nebraska and Iowa, held, that the Nebraska corporation was guilty of a violation of this statute in failing to procure a license under which to carry on the enterprise in Iowa, but that in view of the fact that it appeared not to have acted in bad faith it should have a reasonable time in which to comply with the statute before being ousted of its privileges and franchises. *State v. Omaha & C. B. R. & B. Co.*, 91-517.

The original statute containing a provision that the license should be forfeited on removal of a suit by the corporation to a federal court, held unconstitutional for the reason that it made the stipulation not to remove cases to the federal courts a condition for obtaining the permit to do business. *Barron v. Burnside*, 121 U. S., 186.

Sec. **1640. Dissolution—receiver.** Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the state of Iowa. An action therefor may be instituted by the attorney-general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them.

From the time of entry of dissolution by the court in a proper case the corporation is dead and cannot be represented by officers or agents. Therefore held that where the decree contained an order of dissolution, the corporation, without appealing from that portion of the decree, could not ask relief with reference to other orders in the same decree. *State v. Fidelity L. & T. Co.*, 113-439.

The "good cause shown" referred to in the first sentence of this section is such cause as prior to the adoption of the code would have been a ground for dissolution of the corporation by a court of equity. The substantial effect of the section is to authorize the attorney-general to maintain a suit in equity to wind up the corporation on account of some violation by it of the laws of the state or other such action as involves a violation of this chapter of the code. A court of equity is not authorized on complaint of the minority stockholders to dissolve the corporation on the grounds of lack of success in the business and mismanagement of its affairs by its officers. *Platner v. Kirby*, 138-259.

The attorney-general is authorized to maintain a suit in equity in the name of the state to wind up the corporation on account of some violation by it of the laws of the state. The remedy of the stockholder is not enlarged by these provisions. *State v. Syndicate Land Co.*, 142-22.

So long as the corporation is acting within the scope of its authority and is solvent a minority stockholder cannot institute proceedings to have it dissolved because he is dissatisfied with the method in which it is being conducted. *Troutman v. Council Bluffs Street Fair, etc., Co.*, 142-140.

A court of equity will not entertain a suit by stockholders to wind up the affairs of a corporation and distribute its assets in the absence of allegations of mismanagement and fraud on the part of the officers or insolvency, unless authorized to do so by statute. Mere difference among stockholders as to the advisability of the continuance of the corporate existence will not justify the appointment of a receiver. *Stockholders v. Jefferson County Agr. Assn.*, 155-634.

Sec. **1641. Ownership of property.** Corporations organized in any foreign country or corporations organized in this country, the stock of which is owned in whole or in part by nonresident aliens, shall have the same rights, powers and privileges with regard to the purchase and ownership of real estate in this state as are granted to nonresident aliens in section twenty-eight hundred ninety of the code. [30 G. A., ch. 54.]

Sec. **1641-a. Right to vote stock—attachment.** Every executor, administrator, guardian or trustee shall represent the stock in his hands at all corporate meetings, and may vote the same as a stockholder; and every person who shall pledge his stock, in the absence of a written agreement to the contrary, may represent the same at all such meetings and vote accordingly. The owner of corporate stock levied upon by attachment or other proceeding shall have the right to vote the same at all corporate meetings, until such time as that he shall have been divested of his title thereto by execution sale. But nothing contained in this section shall in any manner conflict with any provision in the articles of incorporation, or the by-laws of the corporation issuing the stock. [30 G. A., ch. 55.]

Sec. **1641-b. Capital stock—how issued—executive council to fix value—certain elements of value considered.** That from and after the passage of this act no corporation organized under the laws of the state of Iowa, except building and loan associations as defined and provided for in chapter thirteen, title nine of the code, shall issue any capital stock or any certificate or certificates of shares of capital stock, or any substitute therefor, until the corporation has received the par value thereof. If it is proposed to pay for said capital stock in property or in any other thing than money, the corporation proposing the same must, before issuing capital stock in any form, apply to the executive council of the state of Iowa for leave so to do. Such application shall state the amount of capital stock proposed to be issued for a consideration other than money, and set forth specifically the

property or other thing to be received in payment for such stock. Thereupon, it shall be the duty of the executive council to make investigation, under such rules as it may prescribe, and to ascertain the real value of the property or other thing which the corporation is to receive for the stock; and shall enter its finding, fixing the value at which the corporation may receive the same in payment for capital stock; and no corporation shall issue capital stock for the said property or thing in a greater amount than the value so fixed and determined by the executive council. Provided that for the purpose of encouraging the construction of new steam or electric railways, and manufacturing industries within this state, the labor performed in effecting the organization and promotion of such corporation, and the reasonable discount allowed or reasonable commission paid in negotiating and effecting the sale of bonds for the construction and equipment of such railroad or manufacturing plant, shall be taken into consideration as elements of value in fixing the amount of capital stock that may be issued. [34 G. A., ch. 76, § 1; 32 G. A., ch. 71, § 1.]

Sec. **1641-c. Certificate filed with secretary of state.** It shall be the duty of every corporation to file a certificate under oath with the secretary of state, within ten days after the issuance of any capital stock, stating the date of issue, the amount issued, the sum received therefor, if payment be made in money, or the property or thing taken, if such be the method of payment. [32 G. A., ch. 71, § 2.]

The foregoing sections are made applicable to certain public utility corporations by § 1641-l herein.

Sec. **1641-d. Cancellation of stock—reimbursement.** That section sixteen hundred forty-one-d of the supplement to the code, 1907, be and the same is hereby repealed and the following enacted in lieu thereof:

"The capital stock of any corporation issued in violation of the terms and provisions hereof shall be void, and in a suit brought by the attorney-general on behalf of the state of Iowa in any court having jurisdiction, a decree of cancellation shall be entered; and if the corporation has received any money or thing of value for the said stock, such money or thing of value shall be returned to the individual, firm, company or corporation from whom it was received, and if represented by labor or other service of intangible nature, the value thereof shall constitute a claim against the corporation issuing stock in exchange therefor." [33 G. A., ch. 104, § 4; 32 G. A., ch. 71, § 3.]

The mere issuance of certificates of stock constitutes a representation that the corporation has received par value therefor and a misrepresentation in this respect constitutes deceit for which the corporation and the officers in issuing such stock may be liable. *Sykes v. Pure Food Cider Co.*, 157, 157-601.

The corporation and its officers are not only responsible to the persons dealing directly with them in the issuance of stock but to all who deal with the stock in reliance on the representations made. *Ibid.*

Sec. **1641-e. Dissolution of corporation—distribution of assets.** Any corporation violating the provisions hereof shall, upon the application of the attorney-general, in behalf of the state, made to any court of competent jurisdiction, be dissolved, its affairs wound up, and its assets distributed among the stockholders other than those who have received the stock so unlawfully issued. [32 G. A., ch. 71, § 4.]

Sec. **1641-f. Penalty.** Any officer, agent or representative of a corporation who violates any of the provisions hereof shall, upon conviction, be fined not less than two hundred dollars nor more than ten hundred dollars, and be imprisoned in the county jail for not less than thirty days nor more than six months. [32 G. A., ch. 71, § 5.]

Sec. **1641-g. False statements—penalty.** Every director, officer or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing or posting, either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or wilfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not to exceed one year, or by imprisonment in the county jail not to exceed six months or a fine not exceeding five hundred dollars. [32 G. A., ch. 72.]

Sec. **1641-h. Political contributions prohibited.** It shall be unlawful for any corporation doing business within the state, or any officer, agent or representative thereof acting for such corporation, to give or contribute any money, property, labor or thing of value, directly or indirectly, to any member of any political committee political party, or employe or representative thereof, or to any candidate for any public office or candidate for nomination to any public office or to the representative of such candidate, for campaign expenses or for any political purpose whatsoever, or to any person, partnership or corporation for the purpose of influencing or causing such person, partnership or corporation to influence any elector of the state to vote for or against any candidate for public office or for nomination for public office

or to any public officer for the purpose of influencing his official action, but nothing in this act shall be construed to restrain or abridge the liberty of the press or prohibit the consideration and discussion therein of candidacies, nominations, public officers or political questions. [32 G. A., ch. 73, § 1.]

Sec. **1641-i. Solicitation from corporations prohibited.** It shall be unlawful for any member of any political committee, political party, or employe or representative thereof, or candidate for any office or the representative of such candidate, to solicit, request or knowingly receive from any corporation or any officer, agent or representative thereof, any money, property or thing of value belonging to such corporation, for campaign expenses or for any political purpose whatsoever. [32 G. A., ch. 73, § 2.]

Sec. **1641-j. Testimony—immunity from prosecution.** No person, and no agent or officer of any corporation within the purview of this act shall be privileged from testifying in relation to anything herein prohibited; and no person having so testified shall be liable to any prosecution or punishment for any offense concerning which he is required to give his testimony, provided that he shall not be exempted from prosecution and punishment for perjury committed in so testifying. [32 G. A., ch. 73, § 3.]

Sec. **1641-k. Penalty.** Any person convicted of a violation of any of the provisions of this act shall be punished by imprisonment in the county jail not less than six months or more than one year and in the discretion of the court, by fine not exceeding ten hundred dollars. [32 G. A., ch. 73, § 4.]

Sec. **1641-l. Capital stock of foreign public utility corporations —how issued—laws made applicable.** Section sixteen hundred forty-one-b of the supplement to the code, 1907, as amended by chapter seventy-six of the acts of the thirty-fourth general assembly of Iowa, section sixteen hundred forty-one-e of the supplement to the code, 1907, and section sixteen hundred thirty-seven of the code as amended by chapter one hundred and four of the acts of the thirty-third general assembly of Iowa and by chapter seventy-five of the acts of the thirty-fourth general assembly of Iowa, are hereby made applicable to any foreign corporation which directly or indirectly owns, uses, operates, controls or is concerned in the operation of any public gasworks, electric light plant, heating plant, waterworks, interurban or street railway located within the state of Iowa or the carrying on of any gas, electric light, electric power, heating business, waterworks, interurban or street railway business within the state of Iowa or that owns or controls directly or indirectly, any of the capital stock of any corporation which owns, uses, operates or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, inter-

urban or street railway located within the state of Iowa or any foreign corporation that exercises any control in any way or in any manner over any of said works, plants, interurban or street railways or the business carried on by said works, plants, interurban or street railways by or through the ownership of the capital stock of any corporation or corporations or in any other manner whatsoever, and the ownership, operation or control of any such works, plants, interurban or street railways or the business carried on by any of such works or plants or the ownership or control of the capital stock in any corporation owning or operating any of such works, plants, interurban or street railways by any foreign corporation in violation of the provisions of this act is hereby declared to be unlawful. [35 G. A., ch. 136, § 1.]

Sec. **1641-m. Holding companies—provisions made applicable to.** The provisions hereof are hereby made applicable to all corporations, including so-called "holding companies" which by or through the ownership of the capital stock in any other corporation or corporations or a series of corporations owning or controlling the capital stock of each other can or may exercise control over the capital stock of any corporation which owns, uses, operates or is concerned in the operation of any public gasworks, electric light plant, electric power plant, heating plant, waterworks, interurban or street railway located in the state of Iowa, or the business carried on by such works or plants. [35 G. A., ch. 136, § 2.]

Sec. **1641-n. Annual report—fee.** All corporations subject to the provisions of this act are hereby required to pay the annual fee and to make the annual report in the form and manner and at the time as specified in chapter one hundred and five of the acts of the thirty-third general assembly of Iowa. [35 G. A., ch. 136, § 2-a.]

Sec. **1641-o. Sale of capital stock—obligations.** The provisions of this act are hereby made applicable to the sale of its own capital stock by any corporation subject to the provisions of this act, whether said capital stock has been heretofore issued by said corporation or not including the sale of so-called "treasury stock" or stock of the corporation in the hands of a trustee or where the corporation participates in any way or manner in the benefits of said sales, and also to the sale of any of the obligations of any corporation subject to the provisions of this act, the payment of which is secured by the deposit or pledge of any of the capital stock of said corporation. [35 G. A., ch. 136, § 3.]

Sec. **1641-p. Violations—stock void.** Shares of capital stock of any corporation owned or controlled in violation of the provisions of this act shall be void and the holder thereof shall not be entitled to exercise the powers of a shareholder of said corporation or permitted to participate in or be entitled to any of the benefits accruing to shareholders of said corporation, and section sixteen hundred thirty-nine of the code is hereby made applicable to violations of the provisions of this act; and courts and juries shall construe this act so as to prevent evasion and to accomplish the intents and purposes hereof. [35 G. A., ch. 136, § 4.]

Sec. **1641-q. Dissolution—powers of courts of equity—receiver.** Courts of equity shall have full power to dissolve, close up or dispose of any business or property owned, operated or controlled in violation of the provisions of this act; to dissolve any corporation owning or controlling the capital stock of any other corporation in violation of the provisions of this act and to close up or dispose of the business or property of said corporation; and if the court finds that, in order to carry out the purposes of this act, it is necessary so to do, it may dissolve the corporation issuing the stock which is owned in violation of the provisions of this act, close up the business of said corporation and dispose of its property, and the court may also appoint a receiver who shall be a resident of Iowa for any business or for any corporation which has violated the provisions of this act or of the corporation issuing the stock which is held in violation of this act. Any action to enforce the provisions of this act may be instituted by the attorney-general in the name of the state of Iowa or by a citizen in the name of the state of Iowa at his own proper cost and expense, reserving, however, to the stockholders owning capital stock not held in violation of this act all rights possessed by them. [35 G. A., ch. 136, § 5.]

Sec. **1641-r. Repeals all conflicting acts.** [35 G. A., ch. 136, § 6.]

Sec. **1641-r1. Co-operative plan authorized.** Any number of persons, not less than five, may associate themselves as a co-operative association, society, company or exchange, for the purpose of conducting any agricultural, dairy, mercantile, mining, manufacturing or mechanical business on the co-operative plan. For the purposes of this act, the words "association," "company," "corporation," "exchange," "society," or "union," shall be construed to mean the same. [36 G. A. (H. F. 367, § 1.)]

Sec. **1641-r2. Articles of incorporation—what to state.** They shall sign and acknowledge written articles which shall contain the name of said association and the names and residences of the persons forming the same. Such articles shall also contain

a statement of the purposes of the association, and shall designate the city, town or village where its principal place of business shall be located. Such articles shall state the amount of capital stock, the number of shares, and the par value of each. [36 G. A. (H. F. 367, § 2.)]

Sec. **1641-r3. Filing—certificate of incorporation.** The original articles of incorporation of associations organized under this act, or a true copy thereof, verified as such by the affidavits of two of the signers thereof, shall be filed with the secretary of state. A like verified copy of such articles and certificates of the secretary of state, showing the date when such articles were filed with and accepted by the secretary of state, shall, within thirty days of such filing and acceptance, be filed and recorded with the recorder of deeds of the county in which the principal place of business of the corporation is to be located, and no corporation shall have legal existence until such articles be left for record. The recorder shall forthwith transmit to the secretary of state a certificate stating the time when such copy was recorded. Upon receipt of such certificate, the secretary of state shall issue a certificate of incorporation. [36 G. A. (H. F. 367, § 3.)]

Sec. **1641-r4. Fee for recording.** For filing the articles of incorporation of association organized under this act, there shall be paid to the secretary of state ten dollars, and for the filing of an amendment to such articles, five dollars; provided, that when the capital stock of such corporation shall be less than five hundred dollars, such fee for filing either the articles of incorporation or amendments thereto shall be one dollar. For recording copy of such articles, the recorder of deeds shall receive the usual fee for recording. [36 G. A. (H. F. 367, § 4.)]

Sec. **1641-r5. Board of directors—election—removal—officers.** Every such association shall be managed by a board of not less than five directors, who shall be elected by and from the stockholders at such time and for such term of office as the by-laws may prescribe, and shall hold office for the time for which elected and until their successors are elected and qualify; but a majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director or officer so removed, shall cease to be a director or officer of said corporation. The officers of every such association shall be a president, one or more vice-presidents, a secretary and a treasurer, who shall be elected annually by the directors, and each of said officers must be a director of the association. The offices of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer. [36 G. A. (H. F. 367, § 5.)]

Sec. **1641-r6. Amending articles.** The association may amend its articles of incorporation by a majority vote of its stockholders at any regular stockholders' meeting, or at any special stockholders' meeting called for that purpose, on ten days notice to all stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares. Provided, the amount of the capital stock shall not be diminished below the amount of paid-up capital at the time the amendment is adopted. Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state and of the recorder of deeds of the county where its principal place of business is located. [36 G. A. (H. F. 367, § 6.)]

Sec. **1641-r7. Powers.** An association created under this act shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the co-operative plan, and may buy, sell and deal in the products of any other co-operative company heretofore or hereafter organized under the provisions of this act. [36 G. A. (H. F. 367, § 7.)]

Sec. **1641-r8. Ownership of shares limited.** No stockholder in any such association shall own shares of a greater aggregate par value than one thousand dollars, except as hereinafter provided, nor shall he be entitled to more than one vote. [36 G. A. (H. F. 367, § 8.)]

Sec. **1641-r9. Association may hold shares in other like associations.** At any regular meeting, or any regularly called special meeting, at which at least a majority of all its stockholders shall be present, or represented, an association organized under this act, may by a majority vote of the stockholders present or represented, subscribe for shares and invest its reserve fund, not to exceed twenty-five per cent of its capital, in the capital stock of any other co-operative association. [36 G. A. (H. F. 367, § 9.)]

Sec. **1641-r10. May issue its own shares in payment.** Whenever an association created under this act shall purchase the business of another association, person or persons, it may pay for the same in whole or in part by issuing to the selling association or person shares of its capital stock to an amount, which at par value would equal the fair market value of the business so purchased, and in such case the transfer to the association of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued. [36 G. A. (H. F. 367, § 10.)]

Sec. **1641-r11. May act as trustee—stock to be fully paid before certificate issued.** In case the cash value of such purchased

business exceeds one thousand dollars, the directors of the association are authorized to hold the shares in excess of one thousand dollars in trust for the vendor, and dispose of the same to such persons, and within such times, as may be mutually satisfactory to the parties in interest, and to pay the proceeds thereof as currently received to the former owner of said business. Certificates of stock shall be issued to any subscriber until fully paid, but the by-laws of the association may allow subscribers to vote as stockholders; provided, part of the stock subscribed for has been paid in cash. [36 G. A. (H. F. 367, § 11.)]

Sec. **1641-r12. Voting by mail authorized.** At any regularly called general or special meeting of the stockholders, a written vote received by mail from any absent stockholder, and signed by him, may be read in such meeting, and shall be equivalent to a vote of each of the stockholders or signing; provided, he has been previously notified in writing by the secretary of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by him. [36 G. A. (H. F. 367, § 12.)]

Sec. **1641-r13. Apportionment of earnings.** The directors, subject to revisions by the association at any general or special meeting, shall apportion the earnings by first setting aside not less than ten per cent of the net profits for a reserve fund, until an amount has accumulated in said reserve fund equal to fifty per cent of the paid-up capital stock, and five per cent thereof for an educational fund to be used in teaching co-operation, and a dividend upon the paid-up capital stock to be determined by the board of directors not exceeding ten per cent and the remainder of said net profits by uniform dividend upon the amount of purchases of shareholders, and upon the wages and salaries of employes; but in productive association such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons. [36 G. A. (H. F. 367, § 13.)]

Sec. **1641-r14. Dividends—when distributed—dissolution for failure to declare dividend.** The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the by-laws shall prescribe, which shall be as often as once in twelve months. If such associations, for five consecutive years, shall fail to declare a dividend upon the shares of its paid-up capital, five or more stockholders, by petition, setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state, for its dissolution. If, upon hearing, the allegations of the petition are

found to be true, the court may adjudge a dissolution of the association. [36 G. A. (H. F. 367, § 14.)]

Sec. **1641-r15. Annual report—contents.** Every association organized under the terms of this act shall annually, on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, amount of capital stock subscribed for and paid in, number of stockholders, total expense of operation, amount of indebtedness for liabilities, and its profits and losses. [36 G. A. (H. F. 367, § 15.)]

Sec. **1641-r16. Benefits of act extended to former co-operative companies.** All co-operative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all the provisions of this act and be bound thereby, on filing with the secretary of state a written declaration, signed and sworn to by the president and secretary, to the effect that said co-operative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions of this act. [36 G. A. (H. F. 367, § 16.)]

Sec. **1641-r17. Use of term "co-operative" restricted.** No corporation or association hereafter organized shall be entitled to use the term "co-operative" as part of its corporate or other business name or title, unless it has complied with the provisions of this act, and any corporation or association violating the provisions of this act may be enjoined from doing business under such name at the instance of any stockholder of any association legally organized under the provisions of this act. [36 G. A. (H. F. 367, § 17.)]

Sec. **1641-r18. Funds—use of restricted.** None of the funds of any association organized under the provisions of this act shall be used in the payment of any promotion; as commissions, salaries or expenses of any kind, character or nature whatsoever. [36 G. A. (H. F. 367, § 18.)]

Sec. **1641-r19. Private property exempt.** The private property of the stockholders shall be exempt from execution from the debts of the corporation. [36 G. A. (H. F. 367, § 19.)]

Sec. **1641-r20. Limit of indebtedness.** The highest amount of indebtedness the corporation may contract shall not exceed two-thirds of its capital stock. [36 G. A. (H. F. 367, § 20.)]

See appendix for incorporation fees, forms for articles, amendments and suggestions as to procedure in preparing incorporation papers.

INSURANCE LAW.

INSURANCE LAW OF IOWA.

CHAPTER 3-A, TITLE IX, CODE.

COMMISSIONER OF INSURANCE AND DEPARTMENT OF INSURANCE.

Section 1683-r. **Appointment by governor—confirmation by senate—term—bond—compensation.** That there is hereby created and established a department to be known as the insurance department of Iowa. The chief officer of said department shall be styled "commissioner of insurance," and shall be appointed by the governor on or before the first day of July, nineteen hundred fourteen, said officer to serve until February first, nineteen hundred fifteen. On or before the date of the expiration of the term of office of the commissioner hereby provided for, the governor shall nominate, and with the consent of two-thirds of the members of the senate in executive session, appoint a person for commissioner, who shall be selected solely with regard to his qualifications and fitness to discharge the duties of this position. No nomination shall be considered by the senate until the same shall have been referred to a committee of five, not more than three of whom shall belong to the same political party, to be appointed by the president of the senate without formality of a motion, which committee shall report to the senate in executive session, which report shall be made at any time when called for by the senate. The consideration of nominations by the senate shall not be had on the same legislative day that the nominations are so referred. Subsequent appointments shall be made as above provided and, except to fill vacancies, shall be for a period of four years. He shall be subject to removal only under and according to the provisions of chapter seventy-eight of the acts of the thirty-third general assembly, as amended. The governor shall fill as in the first instance any vacancy which may arise in this office. Before entering upon the discharge of the duties of his office, the commissioner of insurance shall give a bond in the penal sum of twenty-five thousand dollars, conditioned as provided for in section eleven hundred eighty-three of the code, the same to be approved by the executive council and filed in the office of the secretary of state. He shall devote his entire time to the duties of his office and shall receive an annual salary of three thousand dollars. [35 G. A., ch. 146, § 1.]

Sec. 1683-r1. **Office—equipment and supplies.** The executive council shall provide the insurance department of Iowa with suitable quarters at the seat of government and shall furnish said

department with furniture, books, supplies, printing and stationery necessary to carry out the provisions of this act. All desks, chairs, filing cases and other furniture, and all books, papers, records and securities of whatsoever kind, and all other property of every character now in the office of the auditor of state and relating to or connected with the business and supervision of insurance in this state shall be transferred, delivered and surrendered to the commissioner of insurance upon the second secular day of January, nineteen hundred fifteen. [35 G. A., ch. 146, § 2.]

Sec. 1683-r2. **Deputy—bond—examiners—assistants—clerks—compensation.** The commissioner of insurance is hereby directed to appoint a deputy commissioner to assist him in his work, who shall serve during the pleasure of the commissioner of insurance and receive an annual salary of eighteen hundred dollars. Before entering upon the duties of his office, the deputy commissioner shall give a bond in the penal sum of ten thousand dollars conditioned as provided in section eleven hundred eighty-three of the code, the same to be approved by the executive council and filed with the secretary of state. The commissioner of insurance is also empowered and directed to appoint two insurance examiners and the necessary assistant examiners, all as referred to and provided for in section eighteen hundred twenty-one-e, supplement to the code, 1907, as amended by chapter eighty, acts of the thirty-fourth general assembly; also a security clerk with an annual salary of sixteen hundred [dollars]; a fee clerk with an annual salary of fourteen hundred dollars; a general insurance clerk with an annual salary of twelve hundred dollars; two stenographers with an annual salary of nine hundred dollars each; and such other clerks and assistants as shall be needed in the performance of the duties of his office; and he may contract such expenses as may be necessary in the performance of his official duties, including all actual and necessary expenses incurred in attending meetings of the insurance commissioners and such other expense as shall be approved by the executive council; but the total amount to be so expended for such contingent expenses shall not exceed the sum of ten hundred dollars annually; and there is hereby appropriated out of any funds in the state treasury not otherwise appropriated two thousand dollars annually or so much thereof as may be necessary to meet the expenses thus incurred. All salaries herein provided for shall be paid in the same manner as are the salaries of other state officers out of the general revenues of the state and on the first day of each month all such salaries and other expenses as are indicated herein shall be paid by warrant drawn by the auditor of state upon the treasurer of state. [35 G. A., ch. 146, § 3.]

Sec. **1683-r3. Powers and duties of commissioner.** The commissioner of insurance shall be the head of the insurance department of Iowa and shall have general control, supervision and direction of all insurance business transacted in the state of Iowa and shall be charged with the execution of the laws of this state relating to insurance; and all powers now vested in and all duties imposed upon the auditor of this state relating in any way to insurance matters, shall, from and after the taking effect of this act, be vested in and made incumbent upon the commissioner of insurance herein provided for. [35 G. A., ch. 146, § 4.]

Sec. **1683-r4. Documents and records—auditor shall deliver.** All books, records, files, documents, reports, and securities and all papers of every kind and character relating to the business of insurance and now enjoined and required by law to be delivered to or to be filed or be deposited with the auditor of state shall, from and after the taking effect of this act, be delivered to and filed or deposited with the said commissioner of insurance. [35 G. A., ch. 146, § 5.]

Sec. **1683-r5. Fees.** All fees and charges of every character whatsoever which are now required by law to be paid to the auditor of state by insurance companies and associations shall from and after the taking effect of this act be payable to the insurance commissioner whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner as now provided for by law for the auditor of state. [35 G. A., ch. 146, § 6.]

Sec. **1683-r6. Acts in conflict repealed.** All acts or parts of acts in so far as they are in conflict herewith are hereby repealed. [35 G. A., ch. 146, § 7.]

CHAPTER 4, TITLE IX, CODE.

INSURANCE OTHER THAN LIFE.

Section **1684. Proceedings for incorporation.** Corporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chapter one of this title, except as modified by the provisions of this chapter. [C. '73, § 1122.]

Number 1607; Powers 1609; Procedure 1610; Begin business 1614; Change in articles 1615; Duration 1618; Stock 1625-26-27.

Sec. **1685. Articles—approval.** Each such organization shall present to the commissioner of insurance its articles of incorporation, which shall show its name, objects, location of its principal place of business and amount of its capital stock, who shall

submit it to the attorney-general for examination, and if found by him to be in accordance with the provisions of this title, the laws of the United States, and the constitution and laws of the state, he shall certify such fact thereon and return the same to the commissioner of insurance, and no articles shall be approved by the commissioner of insurance or recorded unless accompanied with such certificate. [Same.]

Applicable to Associations 1759c, Life 1768-85, Fraternals 1832.

Sec. **1686. Certificate—recording.** If the commissioner of insurance approves them, he shall so certify, and the articles with the certificates of approval shall be recorded in the office of the secretary of state as articles of other corporations are, who shall indorse thereon his certificate thereof, as is required in case of other corporations for pecuniary profit. [C. '73, § 1123.]

Sec. **1687. Name.** If the commissioner of insurance finds the name of the company to be so similar to one already appropriated by a corporation of the same character as to be likely to mislead the public or to cause inconvenience, he shall refuse his certificate to its articles on that ground. [C. '73, § 1122.]

Applicable to life companies. See 1786.

An insurance company, although authorized to do business by the auditor of state [commissioner of insurance], may be enjoined from using a name which is so similar to the name of a foreign insurance company authorized to do business in the state that it is calculated to deceive the public. *Atlas Assurance Co. v. Atlas Insurance Co.*, 138-278.

Sec. **1688. Recording with commissioner of insurance.** The articles when thus certified by the secretary of state as recorded in his office, or a copy thereof certified by him as such, shall be filed in the office of the commissioner of insurance and remain therein. [C. '73, § 1123.]

Sec. **1689. Kind of company.** Every insurance company organized as provided in this chapter shall, if it be a mutual company, embody the word "mutual" in its title, which must appear upon the first page of every policy and renewal receipt; and every company doing business as a stock company shall, upon the face of its policies, express in some suitable manner that such policies are issued by a stock company. Provided that from and after July 4, 1906, no company shall be organized upon the mutual plan under the provisions of this chapter, for the purpose of transacting the business specified in subdivision one (1) and four (4) of section seventeen hundred and nine (1709) of the supplement to the code. [31 G. A., ch. 68; C. '73, § 1140.]

Mutuals other than life 1690-92, 1704-5-21-33-59a. Life 1770-83d. **Premium notes** 1692-93, 1704-8-17-26-27. Life 1771-72.

The provisions as to mutual benefit associations are distinct from those for the incorporation of mutual companies, and the statutory requirement that the word "mutual" shall be included in the name of the company

organized under the latter provisions has no application to such a society. *Moore v. Union Fraternal Acc. Assn.*, 103-421.

Sec. 1690. **Stock or mutual.** No company shall be organized to do business upon both stock and mutual plans; nor shall a company organized as a stock company do business upon the plan of a mutual company; nor shall a company organized upon a mutual plan do business or take risks upon the stock plan. [C. '73, § 1159.]

A mutual company cannot issue policies upon the stock plan, and such policies, if issued, are illegal and void. *Smith v. Sherman*, 113-601.

A company issuing a policy on the stock plan will be presumed to have authority to issue such a policy until the contrary appears. One contracting with the company is not bound to know at his peril whether the company has complied with the condition authorizing it to do a stock insurance business. *Harris-Emery Co. v. Pitcairn*, 122-595.

Where a company organized on a mutual plan issued policies of insurance on the stock plan, *held*, that such policies were invalid and that members of the company were not subject to assessment for losses under such policies. *Cory v. Sherman*, 96-114.

Sec. 1691. **Capital required.** No stock company shall be incorporated under the provisions of this chapter with a less capital than fifty thousand, nor larger than one million dollars, as may be specified in the articles of incorporation, which stock shall be divided into shares of one hundred dollars each, of which capital not less than twenty-five per cent, and in no case less than twenty-five thousand dollars, shall be paid up in cash. The balance of the capital may consist in the bonds or notes of solvent stockholders. [C. '73, § 1124.]

Capital, other than life, 1693-94-99, 1701-10-21-32-39. Life 1769-71-72-83e, f, g. **Stock** 1690-1713-17-34. Applicable 1821e.

Sec. 1692. **Premium notes of mutual company.** No mutual company shall commence business until agreements have been entered into for insurance with at least two hundred applicants, the premiums upon which shall amount to not less than twenty-five thousand dollars, of which at least five thousand dollars shall have been paid in cash, the balance of which may be in cash or secured notes or bonds in the possession of the company, which notes or bonds shall be of solvent parties, founded upon actual applications for insurance made in good faith. No one of the notes so received shall be for more than five hundred dollars, and no two thereof for the same risk, or made by the same person or firm, except where the whole amount does not exceed the sum of five hundred dollars; nor shall any note be regarded or represented as assets unless a policy be issued upon the same within thirty days after the organization of the company, taking the same upon a risk for no shorter period than twelve months. Each of said notes shall be payable, in whole or in part, at any time when the directors shall find the same necessary for the payment of losses and such incidental expenses as may be necessary for transacting the business of the company. [Same.]

While it is improper and unauthorized in a mutual company to make contributors to a guarantee fund members of the corporation and require directors to be selected from their number, yet it is not in itself illegal to create a guaranty fund and provide for the repayment of money so advanced by the contributors to such fund when it can be raised by assessments on the members, and the invalid provisions making such guarantors members of the company will not render the guaranty fund notes given by them void. *Berry v. Anchor Mut. F. Ins. Co.*, 94-135.

Failure of a party giving such guaranty note to pay an assessment thereon without notice may by the terms of the contract forfeit prior payments made and credits received by him and defeat his right to recover such payments from the company. *Ibid.*

Sec. **1693. Certificate as to notes.** No note shall be accepted as part of the capital of a stock company nor as a premium note taken for the purpose of organization of a mutual company, unless accompanied by a certificate of the clerk of the district court or other court of record of the county in which the person executing it resides, to the effect that the person making it is in his opinion pecuniarily good and responsible therefor in property not exempt from execution. [Same.]

Sec. **1694. Subscriptions of stock—applications.** Having published the notice of incorporation contemplated by chapter one of this title, and filed the publisher's affidavit thereof with the commissioner of insurance, together with the articles of incorporation as required in this chapter, the persons named in such articles as incorporators, or a majority of them, shall be authorized to open books for the subscription of stock to the company, if a stock company, or to take applications and premiums or premium notes for insurance, if a mutual company, to the extent hereinbefore required, at such times and places as to them may seem convenient, and keep them open until the full amount required is subscribed or taken. [C. '73, § 1125.]

Sec. **1695. Directors.** The affairs of a company organized under the provisions of this chapter shall be managed by not less than five nor more than twenty-one directors, all of whom shall be stockholders therein, if a stock company, or policy holders, if a mutual company. Within thirty days after the subscription book shall have been filled, if a stock company, or after applications and premiums or premium notes for insurance, if a mutual company, shall have been taken to the extent hereinbefore required, a majority of the subscribers, or policy holders if a mutual company, shall hold a meeting for the election of directors, each share of stock or policy of insurance on separate property, as the case may be, entitling the holder thereof to one vote, and the directors then elected shall continue in office until their successors have been duly chosen and accepted the trust. [C. '73, § 1126.]

Sec. **1696. Annual meetings.** The annual meetings for the election of directors shall be held during the month of January, at

such time as the by-laws of the company may direct; but if for any cause no election is held, or there is a failure to elect at any annual meeting, then a special meeting for that purpose shall be held on the call of a majority of the directors, or of those persons holding a majority of the stock, or of a majority of policy holders if a mutual company, by giving thirty days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located, and the directors chosen at any such annual or special meeting shall continue in office until the next annual meeting, and until their successors are elected and have accepted. [C. '73, § 1127.]

Representation 1821v w. Associations 1759o.

Sec. **1697. Powers of directors—president.** The directors shall elect by ballot from their own number a president, and fill all vacancies occurring in the board or presidency thereof; and the board of directors thus constituted, or a majority of them, when convened at the office of the company, shall be competent to exercise all the powers vested in them by this chapter. [C. '73, § 1128.]

Sec. **1698. Secretary and other officers—by-laws—records.** The board of directors shall have power to appoint a secretary and any other officers or agents necessary for transacting the business of the company, paying such salaries and taking such security of them as is reasonable; it may adopt such by-laws and regulations not inconsistent with law as shall appear to them necessary for the regulation and conduct of the business, and shall keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders if a stock company, or policy holders if a mutual company, and to the inspection of persons invested by law with the right thereof. [C. '73, § 1129.]

While members of a mutual company may be bound by by-laws adopted after they become members, nevertheless the terms of a policy of insurance will be presumed to be governed by the by-laws in force when it is issued, and not to be affected by those subsequently adopted. *Farmers' Mut. Hail Ins. Assn. v. Slattery*, 115-410.

By-laws duly adopted, but not posted as required by law, are valid and controlling as to all persons informed of their existence, the posting being required for the sole purpose of imparting constructive notice, and if the existence of the by-laws is expressly recognized, the person who receives such certificate is bound thereby. *Fee v. National Masonic Acc. Assn.*, 110-271.

The directors of an insurance company organized under this chapter, whether doing business under the ordinary or mutual plan, have the right to ordain and establish by-laws and regulations. The parties may by contract mutually agree to the waiver of a by-law. *Houdeck v. Merchants' and Bankers' Ins. Co.*, 115-410.

Sec. **1699. Funds invested.** Any company organized under this chapter shall invest its capital and funds in the following described securities and no other:

1. The bonds of the United States.

2. The bonds of this state or any other state when such bonds are at or above par.

3. Bonds or other evidences of indebtedness of any county, city, town or school district within the state or any other state, drainage district bonds of this state, improvement certificates issued by any municipal corporation of this state, such certificates being a first lien upon real estate within the corporate limits of the municipality issuing the same, where such bonds, or other evidences of indebtedness are issued by authority of and according to law and bearing interest.

4. Bonds and mortgages and other interest bearing securities being first liens upon real estate within this state or any other state worth at least double the amount loaned thereon and secured thereby exclusive of improvements, or two and one-half times such amount including the improvements thereon, but no such improvements shall be considered in estimating the value unless the owner shall contract to keep the same insured during the life of the loan, in some reliable fire insurance company or companies authorized to do business in the state, other than the company making the investment, in a sum at least double the excess of the loan above one-half the value of the ground exclusive of the improvements, the insurance to be made payable in case of loss to the company or association investing its funds, as its interest may appear at the time of loss; except that the surplus funds may be invested in stocks other than bank stock or in bonds or other evidences of indebtedness of any solvent dividend paying corporation organized under the laws of any of the states, or the United States, or may be loaned thereon upon pledge thereof, at not exceeding eighty per cent of their current market value but no investment shall be made in the companies own stock. [34 G. A., ch. 18, § 3; 33 G. A., ch. 111, § 1; C. '73, § 1139.]

While as between the state and the company the investment of its surplus in bank stock may be unauthorized, such a transaction entered into by the officers for the purpose of avoiding loss to the company may be so ratified by the directors in taking advantage of the benefits thereof as to estop the corporation from treating the transaction as *ultra vires*. *Fidelity Ins. Co. v. German Sav. Bank*, 127-591.

Life 1778-91, applicable 1806-7. Fraternals 1839-1.

Sec. **1700. Examination by commissioner of insurance—statement.** Upon receiving notification that the requirements of the preceding sections have been complied with, the commissioner of insurance shall make or cause to be made by some disinterested person by him appointed an examination, and if it shall be found that the capital or assets herein required of the company named, according to the nature of the business proposed to be transacted by such company, have been paid in, and are possessed by it in money or such stock, notes, bonds and mortgages as are required by the preceding sections of this chapter, he shall so certify; but if the examination is made by another than the commissioner, the certificate shall be by him, and under oath. Corporators or officers of any such company or proposed company shall be required to state to the commissioner of insurance under oath, that the capital or assets exhibited to the persons making the examination were actually and in good faith the property of the company examined. The certificate of examination of a mutual company shall be to the effect that it has received and is in the actual possession of the cash premiums,

premium notes, actual contracts of insurance and other securities, as the case may be, to the extent and value hereinbefore required. The corporators or officers of such mutual company shall file the statement under oath required of stock companies, which shall also show the name and residence of the maker and amount of each premium note forming part of its proposed assets. The certificate and statement above contemplated shall be filed in the commissioner's office, who shall thereupon deliver to the company a certified copy of the same, with his written permission for it to commence the business proposed in its articles of incorporation, which permission, being recorded by the recorder of the county in which the company is to be located, in the book provided for the recording of articles of incorporation, shall be its authority to commence business and issue policies. Such permission shall be renewed and recorded annually on the first day of March, a copy of which certified by the commissioner, shall be admissible in evidence for or against a company with the same effect as the original. [C. '73, § 1131.]

Capital. See also 1691, 1721-32-23. Life 1769-72-83e, f, g. Examination 1731-55. Life 1777. Applicable 1821a to g. Fraternals 1839b, c.

Sec. 1701. **Capital increased.** When the directors of a stock company with less than the maximum capital allowed in this chapter desire to increase the amount, they shall, if authorized by the holders of a majority of the stock to do so, file with the commissioner of insurance an amendment of its articles authorizing such increase, not exceeding the maximum authorized capital, and thereupon shall be entitled to have the increased amount of capital fixed by such amendment, and the examination of securities constituting the increased capital stock shall be made in the same manner as provided for the original capital stock. [C. '73, § 1135.]

Sec. 1702. **Dividends.** The directors or managers of a stock company incorporated under the laws of this state shall make no dividends, except from the profits arising from their business; and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent of the amount received as premiums on unexpired risks and policies, which amount so reserved shall be unearned premiums; and there shall also be reserved all sums due the corporation on bonds and mortgages, bonds, stocks and book account, of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and on which interest has not been paid; and such judgment with the interest due or accrued thereon and remaining unpaid, shall also

be reserved. Any dividend made contrary to these provisions shall subject the company making it to forfeiture of its franchise. [C. '73, § 1136.]

See also Sec. 1714 sixth, sub-div. 8.

Sec. **1703. May own real estate. No company organized** under this chapter shall purchase, hold or convey any real estate, save for the purpose and in the manner herein set forth:

1. Such as shall be required for the transaction of its business;
2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for money due;
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company, or for money due;
4. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debt, or obtained by redemption as junior judgment creditor or mortgagee; but it may convey real estate which shall be found in the course of its business not necessary therefor, and all such last mentioned real estate shall be sold and conveyed within three years after the same has been determined, by the commissioner of insurance, unnecessary, unless the company shall procure a certificate from him that the interest of the company will materially suffer by a forced sale, in which event the sale may be postponed for such period as he may direct in such certificate. [C. '73, § 1137.]

Life companies and associations 1803. Fraternals 1839k.

Sec. **1704. Premium notes in mutual company.** All premium notes deposited with any mutual insurance company at the time of its organization, as above provided, shall remain as security for all losses and claims until the accumulation of the profits from investments allowed by this chapter shall equal the amount of cash capital required to be possessed by stock companies organized thereunder, unless the obligation of the maker thereof, under the terms of the contract of insurance in said company, shall have sooner expired. [C. '73, § 1138.]

See 1692-93, 1708-17-26-27. Life companies 1771-72.

Sec. **1705. Policy holders members.** The directors of any mutual company shall have the right to determine the amount of the note to be given, in addition to the cash premium, by any person insured therein, and every person effecting such insurance, and his heirs, administrators and assigns continuing to be insured, shall be members of the company during the period of insurance, and bound to pay for losses and necessary expenses accruing to the company in proportion to his or their premium note. [Same.]

Sec. **1706. Settlement of losses.** The directors shall as often as necessary, after receiving notice of any loss or damage, determine the sums to be paid by the several members thereof as their respective portions of such loss, assess the same against them, respectively, and notify them thereof in such manner as

they shall determine or the by-laws prescribe; but the sum to be paid by each member shall always be in proportion to the original amount of his premium note, and be paid to the officers of the company within thirty days after the giving of said notice. [C. '73, § 1139.]

See also 1742 and 1744.

The authority of making assessments conferred on the directors is exclusive and cannot be exercised by other officers under the direction of such directors. *Farmers' Milling Co. v. Mill Owners' Mut. Fire Ins. Co.*, 127-314.

Sec. 1707. **Failure to pay assessments.** If any member shall neglect or refuse to pay the sum assessed upon him as his proportion of any loss, as provided in the preceding section, for thirty days after demand has been made by registered letter or personal notice, the directors may sue and recover the amount due from the member under such assessment. The bringing of such suit or the recovery of judgment thereunder shall not affect the liability of the member under his premium note for other assessments to pay subsequent losses, but no such member shall be held liable in the aggregate by assessments in a sum exceeding the amount of his premium note, and if from an assessment made to pay any particular loss sufficient is not realized therefor, the claimant for the loss shall receive only the proportional amount due under his policy, which the sum realized shall be sufficient to pay. It may be provided by the by-laws of the company that the failure to pay an assessment under the provisions of this section shall operate as a forfeiture of the insurance of the member failing to make such payment. But the premium notes given at the organization of the company, and estimated in determining whether such company is entitled to commence business, shall not be cancelled or released within one year, and until all losses accruing during the continuance of the note are paid. [Same.]

See also 1727-59h, k, l. Life 1784-88-98a. Fraternals 1823.

Sec. 1708. **Cash premiums.** Any mutual company organized under the provisions of this chapter may accept cash premiums in place of premium notes for any term of insurance not exceeding one year, the amount of cash to be paid to be determined by the directors of the company.

See also 1692-93, 1704-17-26-27. Life 1771-72.

Sec. 1709. **Kinds of insurance—limitation of risk.** Any company organized under this chapter or authorized to do business in this state may:

1. [**Fire.**] Insure houses, buildings, and all other kinds of property against loss or damage by fire, sprinkler leakage or other casualty, and make all kinds of insurance on goods; mer-

chandise, moneys and securities or other property in the course of transportation, whether on land or water, or any vessel or boat wherever the same may be; and insure against loss of rents or use of buildings, when such loss or use is caused by fire, lightning, windstorms, cyclones or tornadoes; [35 G. A., ch. 144, § 1; 34 G. A., ch. 18, § 4; 31 G. A., ch. 72, §§ 1, 2; C. '73, § 1132.]

See also Hail, Plate Glass, Cyclone, etc., 1759a. Life 1783d.

2. [**Fidelity.**] Insure the fidelity of persons holding places of private or public trust, or execute as surety any bond or other obligation required or permitted by law to be made, given or filed, except bonds required in criminal causes. None but stock companies shall engage in fidelity and surety business; [C. '73, § 1132.]

See also 360, 361 and 362 Appendix.

3. [**Safe deposits.**] Insure the safe keeping of books, papers, moneys, stocks, bonds and all kinds of personal property, and receive them on deposit; [C. '73, § 1132.]

4. [**Live stock.**] Insure horses, cattle and other live stock against loss or damage by accident, theft or any unknown or contingent event which may be the subject of legal insurance, and stock companies may insure horses and registered cattle against loss by death from disease or accident; [31 G. A., ch. 69; C. '73, § 1132.]

5. [**Health—accident—liability.**] Insure the health of persons and against personal injuries, disablement or death resulting from traveling or general accidents by land or water, insure against loss or damage to property caused by the accidental discharge or leakage of water from automatic sprinkling systems, and insure employers against loss in consequence of accidents or casualties of any kind to employes or other persons, or to property resulting from any act of an employe, or any accident or casualty to persons or property, or both, occuring in or connected with the transaction of their business, or from the operation of any machinery connected therewith; and insure against liability for loss or expense arising or resulting from accidents occurring by reason of the ownership, maintenance or use of automobiles or other conveyances, resulting in personal injuries or death, or damage to property belonging to others, or both. Provided that should an execution on a judgment against the owner of any such automobile or conveyance be returned unsatisfied in an action by a person who is injured or whose property is damaged by the use of such automobile or other conveyance, and such owner has insured his liability for such personal injury or property damage, the judgment creditor shall have a right of action against the insurer to the same extent that such owner could have enforced his claim against such insurer had such owner

paid said judgment; [35 G. A., ch. 143, § 1; 31 G. A., ch. 71, § 1; 31 G. A., ch. 70, § 1; 29 G. A., ch. 70, § 1; 25 G. A., ch. 32, § 1; 24 G. A., ch. 29, § 1; C. '73, § 1132.]

Life companies may write 1783d, Associations 1784, Fraternals 1822.

An association organized by a railroad company for the benefit of employes who participate therein by payment of indemnity in case of accident or death is not within the provisions of the statutes as to insurance. *Maine v. Chicago, R. & Q. R. Co.*, 109-260.

An accident within the meaning of a policy of insurance which provides that the injury must occur "through external, violent, and accidental means," is a result, the inducing cause for which was not put in motion by the voluntary and unintentional act of the person injured. *Payne v. Frat. Acc. Assn.*, 119 Iowa, 342.

In ordinary usage, "casualty" is commonly applied to losses and injuries which happen suddenly and unexpectedly, not in the usual course of events, and without any design on the part of the person suffering the injury, although the result is brought about by the conscious or intended act of another. *Bankers' Mut. Cas. Co. v. First National Bank*, 131-456.

The first clause of subdivision 5 of this section authorizes insurance against accidents that result in personal injury to the insured and not indemnity insurance against liability that may be imposed by law for some negligent or wrongful act of the insured. The second clause provides for liability insurance but limits it to employers. Therefore the second does not authorize the issuing of a policy to indemnify the owner of an automobile against liability that may be imposed upon him by law. *American Fidelity Co. v. Bleakley*, 157-442.

Foreign corporations are only permitted to do such insurance business in this state as is prescribed by statute. *Ibid.*

It would not be against public policy to permit indemnity insurance to owners of automobiles against liability that may be imposed upon them by law, if the statute should so provide. *Ibid.*

6. [**Steam boilers.**] Insure against loss or injury to person or property, or both, growing out of explosion or rupture of steam boilers;

7. [**Burglary, robbery, theft.**] Any insurance company organized and incorporated on the stock or mutual plan may insure against loss or damage resulting from burglary or robbery, or attempt thereat. A mutual company organized under this subdivision shall not issue any policy to any person, firm, or corporation other than banks, bankers, loan companies, trust companies, and county treasurers. Provided, also, that companies organized to transact business as provided by this subdivision seven may hold their annual meetings in the month of July instead of January; [31 G. A., ch 72, § 1; 28 G. A., ch. 60, § 1.]

See sub-sec. 9, relating to theft from automobiles.

8. [**Credit.**] Insure or guarantee and indemnify merchants, traders and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them, which business shall be known as credit insurance; [29 G. A., ch. 71, § 1.]

9. [**Automobile—marine.**] Insure vessels, freights, goods, merchandise, specie, bullion, jewels, profits, commissions, bank notes, bills of exchange and other evidences of debt, bottomry and respondentia interests and every insurance appertaining to or connected with marine risks of transportation and navigation, and insurance upon automobiles against loss or damage by fire from any cause whatsoever, explosion, self-ignition, lightning, salvage, theft, robbery, pilferage, collision, or marine or railroad perils. [33 G. A., ch. 112, § 2.]

See Sec. 1758a, Standard Fire Policy.

Sec. 1710. **Kinds of risks—limitation.** No company organized by either of the methods provided in this chapter, or authorized to do business in this state, shall issue policies of insurance for more than one of the nine purposes mentioned in the preceding section, or expose itself to loss on any one risk or hazard, to an amount exceeding ten per cent. of its paid up capital, unless the excess shall be reinsured in some other good and reliable company *authorized to do business in the state, provided that in no case the excess reinsured shall exceed ten per cent of the capital of the reinsuring company and provided further that a certificate of such reinsurance shall be furnished to the insured*, except as in this section provided, as follows: Any stock company organized under the laws of this state, or authorized to do business in this state for the purpose of transacting the business specified in subdivision one of the preceding section, and whose charter will permit, is authorized, in addition to insuring against the casualties specified in subdivision one, to also insure against the casualties specified in subdivision nine of the preceding section. Any stock company organized under the laws of this state for the purpose of transacting the business specified in subdivision five of the preceding section with one hundred fifty thousand dollars capital stock, seventy-five thousand dollars of which is paid in cash, may in addition to insuring against the casualties specified in subdivision five, also insure against injury or loss to persons or property or both, growing out of explosion, or rupture of steam boilers and insure plate glass against breakage from accident; and any stock company organized under the laws of any other state, or nation, and authorized under the laws of this state to transact the business specified in subdivision five of the preceding section, may if it has a paid up capital of two hundred fifty thousand dollars, in addition to insuring against the casualties specified in subdivison five of the preceding section, also insure against the casualties specified in subdivision six or insure plate glass against breakage from accident, or if such company is possessed of a paid up capital of three hundred thousand dollars, it may, in addition to insuring against the casualties specified in subdivision five,

insure against the casualties specified in subdivision six and also insure plate glass against breakage from accident; and if said company is possessed of a paid up capital of five hundred thousand dollars, it may in addition to insuring against the casualty specified in subdivision five, insure against the casualty specified in subdivisions two and six and also insure plate glass against breakage from accident; provided further, however, that any stock company now or hereafter authorized under the laws of this state to transact the business described in [sub]division two or subdivision five of the preceding section shall, in addition to such insurance, also be authorized to insure against loss, or damage, resulting from theft, larceny, burglary, robbery, or attempt thereat. The restrictions as to the amount of risk a company may assume shall not apply to companies that receive on deposit and guarantee the safe keeping of books, papers, moneys, and other personal property. [34 G. A., ch. 78, § 1; 34 G. A., ch. 18, § 21; 33 G. A., ch. 112, § 3; 31 G. A., ch. 71, § 2; 31 G. A., ch. 70, § 2; 29 G. A., ch. 72, § 1; 28 G. A., ch. 61, § 1; C. '73, § 1132.]

[The words in italic were added by Sub-Sec. 21, Ch. 18, 34 G. A., and approved by the governor. Because in the opinion of the editor the enactment was irregular, the provision was omitted from Code Supplement, 1913.]

For an analysis of Sec. 1710 see Appendix.

Sec. **1711. Loans—reinsurance.** Such company may lend money on bottomry or respondentia, and cause itself to be insured in companies only authorized to do business in this state, against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property on account of any such loan, and generally to do and perform all other matters and things proper to promote these objects. [34 G. A., ch. 18, § 5; C. '73, § 1132.]

Sec. **1712. Policies.** All policies or contracts of insurance made or entered into by the company may be made either with or without the seal of said company, but shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and be attested by the secretary thereof. [C. '73, § 1133.]

See also 1727-30. Standard Fire Policy 1758a.

Sec. **1713. Transfer of stock.** Transfers of stock made by any stockholder or his legal representative shall be subject to the provisions of chapter one of this title relative to transfer of shares, and to such restrictions as the directors shall establish in their by-laws, except as hereinafter provided. [C. '73, § 1134.]

Sec. **1714. Annual statement.** The president or the vice-president and secretary of each company organized or authorized to do business in the state shall annually, on the first day of Jan-

uary of each year or within thirty days thereafter, prepare under oath and file with the commissioner of insurance, a full, true and complete statement of the condition of such company on the last day of the preceding month, which shall exhibit the following items and facts:

First—The amount of capital stock of the company;
Second—The names of the officers;
Third—The name of the company and where located;
Fourth—The amount of its capital stock paid up;
Fifth—The property or assets held by the company, specifying:
1. The value of real estate owned by the company;
2. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank deposited;
3. The amount of cash in the hands of agents and in the course of transmission;
4. The amount of loans secured by first mortgage on real estate, with the rate of interest thereon;
5. The amount of all other bonds and loans and how secured, with the rate of interest thereon;
6. The amount due the company on which judgment has been obtained;
7. The amount of bonds of the state, of the United States, of any county or municipal corporation of the state, and of any other bonds owned by the company, specifying the amount and number thereof, and par and market value of each kind;
8. The amount of bonds, stock and other evidences of indebtedness held by such company as collateral security for loans, with amount loaned on each kind, and its par and market value;
9. The amount of assessments on stock and premium notes, paid and unpaid;
10. The amount of interest actually due and unpaid;
11. All other securities and their value;
12. The amount for which premium notes have been given on which policies have been issued;
Sixth—Liabilities of such company, specifying:
1. Losses adjusted and due;
2. Losses adjusted and not due;
3. Losses unadjusted;
4. Losses in suspense and the cause thereof;
5. Losses resisted and in litigation;
6. Dividends in scrip or cash, specifying the amount of each, declared but not due;
7. Dividends declared and due;
8. The amount required to reinsure all outstanding risks on the basis of forty per cent of the premiums on all unexpired risks;
9. The amount due banks or other creditors;
10. The amount of money borrowed and the security therefor;
11. All other claims against the company;
Seventh—The income of the company during the previous year, specifying:
1. The amount received for premiums, exclusive of premium notes;
2. The amount of premium notes received;
3. The amount received for interest;
4. The amount received for assessments or calls on stock notes, or premium notes;
5. The amount received from all other sources;
Eighth—The expenditures during the preceding year, specifying:
1. The amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the

preceding statement, and the amount at which such losses were estimated in such statement;

2. The amount paid for dividends;

3. The amount paid for commissions, salaries, expenses and other charges of agents, clerks and other employes;

4. The amount paid for salaries, fees and other charges of officers and directors;

5. The amount paid for local, state, national and other taxes and duties;

6. The amount paid for all other expenses, including printing, stationery, rents, furniture, or otherwise;

Ninth—The largest amount insured in any one risk;

Tenth—The amount of risks written during the year then ending;

Eleventh—The amount of risks in force having less than one year to run;

Twelfth—The amount of risks in force having more than one and not over three years to run;

Thirteenth—The amount of risks having more than three years to run;

Fourteenth—The dividends if any, declared on premiums received for risks not terminated;

Fifteenth—Each accident insurance company, or company insuring against accidents, shall keep a register of tickets sold or policies issued by its officers or agents, which register shall show the name and residence of the person insured, the amount of insurance, the date of issue of such ticket or policy, and the time the same will remain in force; and the annual statement of each such company shall show the number of tickets sold and policies issued by it during the year, and the aggregate amount of insurance evidenced by such tickets and policies, classified as to the length of time for which such insurance is given. [C. '73, § 1141.]*

Foreign 1716. Ass'ns 1759d. Life 1773-90-95. App. 1799. Frat. 1830-36.

The statement required as to the financial condition of an insurance company is intended not alone for the information of the auditor [commissioner of insurance], to enable him to determine whether he should issue a certificate, but also by way of information to the public. The fact that such statement is required to be published indicates such legislative intention. Therefore not only one who contracts for insurance, but also one who becomes a purchaser of stock of the company, is entitled to rely upon such statements, and a purchaser of stock may recover damages against an officer of a company for an intentional false statement which has operated to his prejudice. *Warfield v. Clark*, 118-69.

The provision that the statement shall show expenditures for the preceding year, and also the amount of losses paid during that time, how much subsequent to the date of the preceding statement, and the amount at which such losses were estimated in such statement, implies that some of the matters to be included in the statement are to be given by way of estimate. *Ibid.*

The sworn statement of the financial condition of an insurance company, filed with the auditor [commissioner of insurance], is for the protection of the public, and one purchasing stock has a right to rely thereon and may maintain an action for deceit against the officer making the same for damages caused by a false statement made therein. *Ibid.*

Sec. 1715. **Certificate refused.** The commissioner of insurance shall withhold his certificate or permission of authority to do business from any company neglecting or failing to comply with the provisions of this chapter.

See 1724-35-47-55. Ass'ns 1759c. Life 1796. App. 1821d. Frat. 1832-39d.

Sec. 1716. **Annual statements of foreign company.** The annual statement of foreign companies doing business in this state shall also show, in addition to the foregoing matters, the amount of losses incurred and premiums received in the state during the preceding period, so long as such company continues to do business in this state. [C. '73, § 1146.]

See also 1759g, relating to assessment associations.

Sec. 1717. **Statement of stock and premium notes.** The statement of any stock company the capital of which is composed in whole or in part of notes shall, in addition to the foregoing, exhibit the amount of said notes originally forming the capital, and also what proportion of said notes is still held by such company and considered capital. Each mutual company shall in its annual statement show the aggregate amount of premium notes held by it on which assessments may be made. [C. '73, § 1143.]

Sec. 1718. **Inquiry by commissioner.** The commissioner of insurance shall address any inquiries to any insurance company in relation to its doings and condition, or any other matter connected with its transactions, which he may deem necessary for the public good, or for a proper discharge of his duties, and any company so addressed shall promptly reply in writing thereto. [C. '73, § 1142.]

See also 1759g, inquiry as to assessment associations.

Sec. 1719. **Statements published—printed forms.** He shall cause to be prepared and furnished to each company organized under the laws of this state, and to the attorney or agent of each company incorporated in other states and foreign governments, who may apply therefor, printed forms of statements required by this chapter, and may from time to time make such changes in the forms as shall seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore enumerated. [C. '73, § 1157.]

Sec. 1720. **Commissioner's annual report.** He shall cause the information contained in the statements required of the companies organized or doing business in the state to be arranged in detail, and prepare the same for printing which report shall be made to the governor on or before the first day of May of each year. [28 G. A., ch. 62, § 1; 16 G. A., ch. 164; C. '73, § 1158.]

Applicable also to Life companies. See 1781.

Sec. 1721. **Foreign companies—capital required.** No insurance company, association or partnership incorporated, associated or organized under or by the laws of any other state or any foreign government, for the purposes specified in this chapter, shall directly or indirectly take risks or transact any business

of insurance in the state, unless possessed of two hundred thousand dollars of actual paid up capital, exclusive of any assets deposited in other states and territories for the special benefit or security of the insured therein; but the provisions of this section shall not apply to mutual insurance companies or associations specifically organized for the purpose of and insuring a single class of property only or mutual companies organized for the purpose of insuring the owners of automobiles against claims for damages to the person or property of others arising from the ownership or operation of an automobile providing such companies are possessed of a surplus in an amount to be approved by the commissioner of insurance; and companies organized to insure plate glass exclusively are not required to have a greater capital than one hundred thousand dollars; but such companies organized to insure the health of persons and against personal injuries, disablement or death resulting from traveling or general accidents by land or water, having an actual paid up capital of one hundred thousand dollars and surpus to be approved by the commissioner of insurance, exclusive of any assets deposited in other states and territories for the special benefit or security of the insured therein, shall be deemed sufficient within the meaning of this section. [36 G. A., H. F. 429, § 1; 34 G. A., ch. 18, § 6; 21 G. A., ch. 145; 16 G. A., ch. 60; 15 G. A., ch. 55; C. '73, § 1144.]

Mutuals 1723. Foreign 1723-35. Life 1772. Associations 1794. Fraternals 1829.

Sec. 1722. **Service of process—statement.** Any foreign company desiring to transact the business of insurance under this chapter, by an agent or agents in the state, shall file with the commissioner of insurance a written instrument, duly signed and sealed, authorizing such commissioner to acknowledge service of notice or process for and in behalf of such company in this state, and consenting that service of notice or process may be made upon the commissioner of insurance, and when so made shall be taken and held as valid as if served upon the company according to the laws of this or any other state, and waiving all claim or right or error by reason of such acknowledgment of service. Such notice or process with a copy thereof may be mailed to the commissioner of insurance at Des Moines, Iowa, in a registered letter addressed to him by his official title, and he shall immediately upon receipt acknowledge service thereon on behalf of the defendant foreign insurance company by writing thereon, giving the date thereof, and shall immediately return such notice or process in a registered letter to the clerk of the court in which the suit is pending, addressed to him by his official title, and shall also forthwith mail such copy, with a copy of his acknowledgment of service written thereon, in a registered letter addressed to the person or corporation who shall be named or des-

ignated by such company in such written instrument. And such company shall also file with the commissioner a certified copy of its charter or deed of settlement, together with a statement under oath of the president or vice-president or other chief officer and the secretary of the company for which they may act, stating the name of the company, the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this state, and a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by liabilities as specified in this chapter to the extent of twenty per cent thereof, while such deficiency shall continue. [C. '73, § 1144.]

Applicable Life 1808. Fraternals 1831. See 3530 Appendix.

It is the written consent of the corporation, and not the statute itself, which confers on the auditor [commissioner of insurance] power to acknowledge service. *Greaves v. Posner*, 111-651.

Where a state prescribes conditions upon which a foreign corporation may do business within it, such corporation thereafter doing business in the state will be presumed to have assented to the conditions prescribed and will be bound accordingly: *Fred Miller Brewing Co. v. Council Bluffs Ins. Co.*, 95-31.

It is within the power of a state to prescribe the method by which corporations doing business within its jurisdiction may be brought into court and to designate the officer or agent of such corporation upon whom the process necessary to commence an action may be served: *Ibid.*

The fact that a policy is issued and accepted in violation of a law prohibiting a company from doing business which has not complied with certain statutory requirements will not be void as between insured and the company, the latter not being allowed to take advantage of such objection, the penalty for violation of the law being imposed upon the company alone: *Pennypacker v. Capital Ins. Co.*, 80-56.

A foreign company has no right to take risks in this state without complying with the requirements of the law whether the contract for such risks are made in this state or not: *Seamans v. Zimmerman*, 91-363.

Premium notes taken by a company not authorized to do business in this state can not be enforced in an action by a foreign receiver of such company in the courts of this state: *Parker v. Lamb*, 99-265.

A company which has transacted business in the state cannot question the validity of service of notice upon it on the ground that it had not appointed agents, etc., as required by the statute. *Sparks v. National Masonic Acc. Assn.*, 100-458.

By complying with these provisions as to the designation of an agent upon whom service may be made, the corporation becomes subject to the laws of the state, and to treatment in many respects as a domestic corporation, and liable to be sued in all respects as such a corporation would be: *German Bank v. American F. Ins. Co.*, 83-491.

Service of process may be made upon any agent of the company within the state: *Niagara Inc. Co. v. Rodecker*, 47-162.

It is the written consent of the corporation, and not the statute itself, which confers on the auditor [commissioner of insurance] power to acknowledge service. *Greaves v. Posner*, 112-651.

Sec. **1723. Foreign mutual companies.** Any foreign mutual company possessed of cash assets safely invested, amounting to

at least two hundred thousand dollars over and above all its liabilities, including the reserve for reinsurance required by the laws of the state, shall be held to be possessed to two hundred thousand dollars of actual paid up capital, within the meaning of the two preceding sections, and may be authorized to take risks and transact the business of insurance in the state on complying with the provisions of law applicable to them and relating to foreign insurance companies. [Same.]

See also 1721-35. Life 1772. Associations 1794. Fraternals 1829.

Sec. **1724. Certificate.** When any foreign company has fully complied with the requirements of law and become entitled to do business, the commissioner of insurance shall issue to such company a certificate of that fact, which certificate shall be renewed annually on the first day of March, if the commissioner is satisfied that the capital, securities and investments of such company remain unimpaired, and the company has complied with the provisions of law applicable thereto. [C. '73, § 1146.]

See 1715-25-47-55. Ass'ns. 1759c. Life 1796. App. 1821d. Frat. 1832-39d.

The power to exclude foreign corporations includes the right to preclude such corporations from continuing in business without complying with the provisions imposed by statute. *Manchester Ins. Co. v. Herriott*, 91 Fed., 711.

It is only upon compliance with statutory requirements that foreign companies become entitled to do business within the state. *Hartman v. Hallowell*, 126-643.

Sec. **1725. Agent to have certificate of authority.** No agent shall directly or indirectly act for any insurance company referred to in this chapter, in taking risks or transacting business of insurance in the state, without procuring from the commissioner of insurance a certificate of authority to the effect that such company has complied with all the requirements of this chapter. [C. '73, § 1145.]

Agents 1749-50. Life 1800-14-15-21f, k, l. Fraternal 1833-37. **Certificate** 1715-24-25-47-55. Life 1796. Applicable 1800-1-21d. Fraternal 1832-39d.

An agent procuring insurance for his principal in a company not authorized to do business in the state becomes liable to the principal for any loss resulting from the failure to procure valid insurance. *Hartman v. Hollowell*, 126-643.

Sec. **1726. Insurance notes.** All notes taken for policies of insurance in any company doing business in the state shall state upon their face that they have been taken for insurance, and shall not be collectable unless the company and its agents have fully complied with the laws of the state relative to insurance. [C. '73, § 1146.]

See also 1692-93, 1704-8-17-27. Life 1771.

A negotiable note which does not state upon its face that it has been taken for insurance will not be subject, in the hands of an innocent holder, to the defense here indicated. The maker must have that fact appear upon the face of the note if he desires to rely upon such defense. *Cook v. Weirman*, 51-561.

The provisions of this section with reference to notes given for policies of insurance are not applicable to the premium notes taken by a mutual benefit company for policies of insurance issued by them. *Corey v. Sherman*, 96-114.

Sec. 1727. **Forfeiture of policies.** No policy or contract of insurance provided for in this chapter shall be forfeited or suspended for non-payment of any premium, assessment or installment provided for in the policy, or in any note or contract for the payment thereof, unless within thirty days prior to or on or after the maturity thereof the company shall serve notice in writing upon the insured that such premium, assessment or installment is due or to become due, stating the amount, and the amount necessary to pay the customary short rates, up to the time fixed in the notice when the insurance will be suspended, forfeited or canceled, which shall not be less than thirty days after service of such notice, which may be made in person, or by mailing in a registered letter addressed to the insured at his postoffice as given in or upon the policy, and no suspension, forfeiture or cancellation shall take effect until the time thus fixed and except as herein provided, anything in the policy, application or a separate agreement to the contrary notwithstanding. [18 G. A., ch. 210, §§ 1, 2.]

This section was designed to give to the assured at least thirty days from the mailing of the notice in which to make the payment to which the notice refers, and the time cannot be shortened by a direction on the envelope containing the notice that it shall be returned if not delivered within fifteen days. *Smith v. Continental Ins. Co.*, 108-382.

Where such notice treats two policies as one, although they are separate and distinct, it should specify the amount required to cancel each policy, and also the amount of the premium about to become due on account thereof. *Ibid. Born v. Home Ins. Co.*, 110-379.

Forfeitures are not favored and the provisions of this section are mandatory and must be strictly followed. *McDonald v. Anchor Mut. Ins. Co.*, 116-371.

Error in stating the amount of the short rate, as fixed by the auditor under the provisions of Code § 1729, will defeat the forfeiture. *Ibid.*

The provisions of Sec. 1727, as to notice of forfeiture for non-payment of premium note had no application to a forfeiture of membership in a mutual association for failure to pay assessments. *Beeman v. Farmers' Pioneer Mut. Ins. Assn.*, 104-83.

It appears that the legislature intended to provide for constructive notice by mail, to be completed either when the registered letter is mailed or as soon thereafter as it shall be received at the office of its destination by due course of mail. *McKenna v. State Ins. Co.*, 73-453.

The time when the service of notice of forfeiture is complete is the time of mailing the letter in accordance with the provisions of the statute, and not the time when such letter would in due course of mail have reached its destination (*arguendo*). *Ross v. Hawkeye Ins. Co.*, 83-586; and see *Holbrook v. Mill Owners' Mut. Ins. Co.*, 86-255.

Notwithstanding the proper notice of forfeiture for failure to pay a premium note the failure in that respect will not defeat recovery under the policy if a copy of the note is not attached to the policy as a part of the application in which the provision as to forfeiture is contained. *Robey v. State Ins. Co.*, 146-23.

The notice is complete when registration of the letter is made under the rules of the postoffice department which require that not only shall receipt have been given therefor, but that it shall have been numbered. *Ross v. Hawkeye Ins. Co.*, 83-586; 93-222.

A notice which did not advise the insured that if the payment was not made the policy would be suspended, *held* not sufficient to entitle the company to take advantage of a forfeiture on account of such non-payment. *Marden v. Hotel Owners' Ins. Co.*, 85-584.

An insurance company seeking to declare a forfeiture of a policy by reason of the non-payment of the premium note must not only give the maker notice of the proposed suspension of his policy on account of such non-payment, but must also notify him of the amount necessary to pay the customary short rates, including the expense of taking the risk, up to the time the policy will be suspended, in order to cancel the policy. *Boyd v. Cedar Rapids Ins. Co.*, 70-325.

In a particular case, *held*, that an application by insured for extension of time, and the fact that it was not granted, did not waive the provision as a notice just referred to. *Ibid.*

The condition in a policy that it shall be suspended on failure of assured to pay the premium note cannot be disregarded except as provided by statute. This statutory provision simply prevents such condition taking effect until thirty days after the specified notice has been given. *Harle v. Council Bluffs Ins. Co.*, 71-401.

In general as to these provisions, see *Lewis v. Burlington Ins. Co.*, 71-97.

Sec. 1728. **Cancellation of policy.** At any time after the maturity of a premium, assessment or installment, provided for in the policy, or any note or contract for the payment thereof, or after the suspension, forfeiture or cancellation of any policy or contract of insurance, the insured may pay to the company the customary short rates and costs of action, if one has been commenced or judgment rendered thereon, and may then, if he so elect, have his policy and all contracts or obligations connected therewith, whether in judgment or otherwise, canceled, and they and each of them thereafter shall be void; and in case of suspension, forfeiture or cancellation of any policy or contract of insurance, the assured shall not be liable for any greater amount than the short rates earned at the date of such suspension, forfeiture or cancellation and the costs herein provided. The policy may be canceled by the insurance company by giving five days' notice of such cancellation, in which event it may retain only the pro rata premium. [34 G. A., ch. 18, § 7; 18 G. A., ch. 210, § 3.]

See Standard Fire Policy 1758a, XI. Assessment Associations 1759m.

An association purporting to be organized under the provisions of § 1160 of the Code of 1873, but in fact exacting premium notes instead of assessments from its members, thereby subjected itself to the requirements of 18 G. A., chap. 210 (Code § 1727), as to giving notice of forfeiture on account of non-payment of such notes. *Bradford v. Mut. Ins. Co.*, 112-495.

The right of assured to cancel the policy and recover back premiums paid in excess of customary short rates cannot be exercised by assigning to another the right to cancel such policy and collect the unearned premium. The assignment would avoid the policy and terminate the right to recover. Nor can such unearned premium be recovered after the policy has been rendered void by taking other insurance. *Colby v. Cedar Rapids Ins. Co.*, 66-577.

If the company elects to enforce a premium note instead of cancelling the policy for non-payment as herein provided, it thereby waives a stipulation in the policy that the insurance shall be forfeited on failure to pay the note as agreed. By accepting payment in pursuance of legal proceedings, even after the loss the company waives the right to avail itself of the condition of forfeiture. *Bloom v. State Ins. Co.*, 94-359.

It is optional with the company to allow a policy to remain uncancelled, and to accept payments when made, without waiving its right to insist upon prompt payment at any time thereafter. *Morrow v. Des Moines Ins. Co.*, 84-256.

Sec. **1729. Short rates.** The auditor of state shall prepare and publish a table of short rates provided for in the two preceding sections, which, when published, shall be for the guidance of all companies covered in this chapter, and the rate to be given in the notice therein provided, and no greater sum than thus fixed shall be demanded or collected. A copy of said short rates shall be printed on or attached to each policy.

For Short Rate Table see Appendix.

Sec. **1730. Policy restored—contract not valid.** At any time before cancellation of the policy for non-payment of any premium, assessment or installment provided for therein, or in any note or contract for the payment thereof, or after action commenced or judgment rendered thereon, the insured may pay to the insurer the full amount due, including court costs if any, and from the date of such payment, or the collection of the judgment, the policy shall revive and be in full force and effect provided such payment is made during the term of the policy and before a loss occurs. No provision, stipulation or agreement to the contrary in or independent of the policy or contract of insurance shall avoid or defeat the right of any insured to pay short rates and costs of action, if any, and have the policy and all contracts connected therewith, including judgments rendered thereon, canceled. [18 G. A., ch. 210, § 3.]

Sec. **1731. Examination—dissolution.** The commissioner of insurance shall, when he finds it expedient, appoint one or more persons, not officers, agents or stockholders of any insurance company doing business in the state, to examine into the affairs and conditions of any such company incorporated or doing business therein, or make such examination himself, and the officers or agents thereof shall produce their books for the inspection of the examiners and otherwise assist therein, so far as they can do so; and in conducting the investigation they may examine under oath the officers or agents of any company, or others, relative to the

business and condition of the company, and the result thereof shall be published in one or more papers of the state, when the commissioner believes the public interest requires it. When it appears to the commissioner from such examination that the assets and funds of any company incorporated in this state are reduced or impaired by its liabilities, as defined under the head of liabilities in the statement required by this chapter, more than twenty per cent below the paid up capital stock required, he shall direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney-general, who shall apply to the district court or if in vacation to one of the judges thereof, for an order requiring the company to show cause why its business shall not be dissolved. The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, it or he shall decree a dissolution of said company and a distribution of its effects, and appoint a receiver therefor. The application of the attorney-general may be by the court or judge sent to a referee to inquire into and report upon the facts stated therein, which report shall be made to the court or judge. [C. '73, § 1149.]

See 1700-53-55. Life 1777. Applicable 1821 a to g. Fraternal 1839b, c.
An insurance company may enforce assessments for the purpose of making good a depletion of its capital, without a requisition from the auditor of state [commissioner of insurance] directing such assessment. *Iowa National Bank v. Cooper*, 131-556.

Sec. 1732. **Requisition on stockholders.** Any company receiving such a requisition from the commissioner of insurance shall forthwith call upon its stockholders for such amounts as will make its paid up capital equal to the amount fixed by this chapter or the articles of incorporation of said company; and in case any stockholder shall refuse or neglect to pay the amount called for after notice personally given, or by advertisement in such time and manner as the commissioner shall approve, it shall be lawful for the company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of the said company may be found to bear to its original capital, the value of such shares for which new certificates shall be issued to be ascertained under the direction of the commissioner, the company paying for the fractional parts of shares, and the directors of such company may issue new stock and dispose of the same, and issue new certificates therefor, to an amount sufficient to make up the original capital

of the company. In the event of additional losses accruing upon new risks, taken after the expiration of the period limited by the commissioner in the aforesaid requisition for filling up of the deficiency in the capital of such company, and before such deficiency shall have been made up, the directors shall be individually liable to the extent thereof. [C. '73, § 1150.]

See 1691, 1701-21-39. Life 1769-72-83e, f, g.

Sec. **1733. Mutual companies—dissolution.** If, upon such examination, it shall appear to the commissioner of insurance that the assets of any company organized or operating upon the plan of mutual insurance under this chapter are insufficient to justify the continuance of such company in business, he shall proceed in relation to such company in the same manner as herein required in regard to stock companies; and the trustees or directors of such company are made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by the commissioner for filling up the deficiency in the assets or premium notes, and before such deficiency shall have been made up. [C. '73, § 1151.]

See also 1689-90, 1721. Life 1770.

Sec. **1734. Transfers of stock pending investigation.** Any transfer of the stock of any company organized under this chapter, made pending any investigation above required, shall not release the party making the transfer from any liability for losses which may have accrued previous to such transfer. [Same.]

Sec. **1735. Revocation of certificate of foreign company.** The commissioner of insurance shall be authorized to examine into the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under its laws, or cause such examination to be made by some person or persons appointed by him having no interest in any insurance company; and when it shall appear to his satisfaction that the affairs of any such company are in an unsound condition, he shall revoke the certificates granted in its behalf and cause a notification thereof to be published in some newspaper of general circulation, published at the seat of government, and no agent or agents of such company after such notice shall issue policies or renew any previously issued. [C. '73, § 1152.]

See 1721-23, Life 1772. Associations 1794. Fraternals 1829.

Sec. **1736. Laws of other states—reciprocity.** When, by the laws of any other state, any taxes, fines, penalties, licenses, fees, deposits of money, securities or other obligations or prohibitions are imposed, or would be imposed, on insurance companies of this state doing or that might seek to do business in such other state, or upon their agents therein, so long as such laws continue in

force the same obligations and prohibitions of whatever kind shall be imposed upon all insurance companies of such other state doing business in this state or upon their agents here. [C. '73, § 1154.]

Applicable to Life Companies. See 1810, also 1821.
Section applied. *State v. Fidelity & Casualty Co.*, 77-648.

Sec. **1737. Certificates of compliance—how published.** The commissioner of insurance shall annually, as soon as practicable after the first of March, publish in two newspapers of general circulation, a statement made up from the annual report of every insurance company of the character provided for in this chapter and doing business in this state whether organized under the laws of this or any other state, which statements shall contain a synopsis of the company's annual report and shall show that the company has in all respects complied with the laws of the state relating to insurance and is authorized to transact business in the state. One publication as above contemplated, shall be made at the seat of government, and in case of companies organized in this state and located elsewhere than in the city of Des Moines, the other shall be made in the county in which the home office of the company is located. The fee for each publication shall be six dollars, which shall be paid to the commissioner of insurance at the time and in the manner provided for in section seventeen hundred fifty-two, supplement to the code, [1902] and shall be by him paid to the papers making the publication upon receipt of a bill for same, together with an affidavit by the publisher or foreman showing that such publication has been properly made, the same to be filed within thirty days from the date of such publication. [31 G. A., ch. 73; C. '73, § 1155.]

Sec. **1738. False statement of assets.** No company transacting the business of fire insurance within the state shall state or represent by advertisement in any newspaper, magazine or periodical, or by any sign, circular, card, policy of insurance or renewal certificate thereof or otherwise, any funds or assets to be in its possession and held available for the protection of holders of its policies unless so held, except the policy of insurance or certificate of renewal thereof may state as a single item the amount of capital set forth in the charter or articles of incorporation or association or deed of settlement under which it is authorized to transact business. [17 G. A., ch. 111, §§ 1, 3.]

Sec. **1739. Statement of capital and surplus.** Every advertisement or public announcement, and every sign, circular or card issued or published by any foreign company transacting the business of fire insurance in the state, or by any officer, agent or representative thereof, which shall purport to make known its financial standing, shall exhibit the capital actually paid in in cash, and the amount of net surplus of assets over all its liabili-

ties actually held and available for the payment of losses by fire and for the protection of holders of fire policies, and shall also exhibit the amount of net surplus of assets over all liabilities in the United States actually available for the payment of losses by fire and held in the United States for the protection of holders of fire policies in the United States, including in such liabilities the fund reserved for reinsurance of outstanding risks, and the same shall correspond with the latest verified statement made by the company or association to the commissioner of Insurance. No such company shall write, place or cause to be written or placed any policy or contract for insurance upon property situated or located in this state except through is resident agent or agents. [Same, § 2.]

See 1691, 1701-21-32. Life 1769-72-83e, f, g.

Sec. **1740. Penalty.** Any violation of the provisions of the two preceding sections shall for the first offense subject the company, association or individual guilty thereof to a penalty of five hundred dollars, to be recovered in the name of the state, with costs, in an action instituted by the county attorney, either in the county in which the company, association or individual is located or transacts business, or in the county where the offense is committed, and such penalty, when recovered, shall be paid into the school fund of the county in which action is brought. Every subsequent violation of said sections shall subject the company, association or individual to a penalty of one thousand dollars, to be sued for, recovered and disposed of in like manner. [Same, § 4.]

Sec. **1741. Copy of application.** All insurance companies or associations shall, upon the issue or renewal of any policy, attach to such policy, or indorse thereon, a true copy of any application or representation of the assured which, by the terms of such policy, are made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy. The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of this section it shall forever be precluded from pleading, alleging or proving any such application or representations, or any part thereof, or falsity thereof, or any parts thereof, in any action upon such policy, and the plaintiff in any such action shall not be required in order to recover against such company or association, either to plead or prove such application or representation, but may do so at his option. [18 G. A., ch. 211, § 2.]

Applicable to life 1819. Assessment Associations and Fraternals. See Supreme Court opinions to 1741 and 1819. See also 1826.

The provisions of sections 1741 to 1744, inclusive, apply to mutual assessment insurance associations organized under chapter 5, title IX

of the code, as well as to insurance companies organized under chapter 4, title IX. *Corson v. Iowa Mut. Fire Ins. Assn.*, 115-485.

The fact that the application is not embodied in or attached to the policy does not preclude proof of the terms of the application in a suit by the insured against members and officers of a mutual benefit association to compel the payment of the assessment, where such evidence is sought to be introduced for the purpose of showing that the assured knew that the company was conducted on the assessment plan. *Moore v. Union Fraternal Acc. Assn.*, 103-424.

The purpose of the statutory provisions under which it is necessary to set the application out in or attach it to the policy is, that when the application is made a part of the contract a true copy must be attached to the policy, so that the writings composing the contract may all appear together and that the insured may be in possession of the evidence of what his contract is. Therefore, held, that the statute contemplates more than a mere substantial copy of the application and yet not a true likeness or *fac-simile*. The copy must be so exact and accurate as that upon comparison it can be said to be a true copy without resorting to construction. *Johnson v. Des Moines L. Assn.*, 105-273.

Where a copy of an application attached to or incorporated in the policy is defective and incomplete, the company is precluded from proving the falsity of the representations in the application as a defense to an action on the policy. *Corson v. Anchor Mut. F. Ins. Co.*, 113-641.

Where the copy of an application attached to the policy is totally defective and insufficient, the company cannot show misrepresentations or breach of conditions contained in such application. *Corson v. Iowa Mut. Fire Ins. Assn.*, 115-485.

The provisions of this section are applicable to mutual companies, notwithstanding the provisions of Code § 1759. *Ibid.*

A premium note, non-payment of which will by the terms of the application render the policy void, must be set out as a part of the application under the provisions of this section. (Following *Lewis v. Burlington Ins. Co.*, 71-97; s. c. 80-259). *Summers v. Des Moines Ins. Co.*, 116-593.

The examiners' report on an application for life insurance is not a part of the application or representation of the assured, and is not required to be included in the copy of the application. The same is true as to notes of instructions given for making the application and answers and notes and indorsements upon the back of the application made for mere convenience. *Johnson v. Des Moines L. Assn.*, 105-273.

Where the copy of the application attached to the policy indicated that it had been signed, but did not show a copy of the signature, held, that it was not such copy as required by the statute, and the terms of the application could not be considered in an action on the policy. *Seiler v. Economic L. Assn.*, 105-87.

It is the application or representations of the assured only that is required to be attached to or indorsed upon the policy. It is not necessary to indorse thereon provisions found in the by-laws of a mutual company by which the policy is issued. *Fitzgerald v. Metropolitan Acc. Assn.*, 106-457.

Endorsement of a copy of the application upon the policy, or its attachment thereto, is a necessary foundation for pleading the falsity of statements made therein. *Parker v. Des Moines L. Assn.*, 108-117.

The statutory provisions requiring insurance companies to attach a copy of the application to each policy of insurance is applicable to fidelity insurance companies. *United States F. & G. Co. v. Egg Shippers' Strawboard & F. Co.*, 148 Fed., 353.

The provisions of this section are applicable to all kinds of insurance and policies, including those issued by benefit associations upon the mutual assessment plan. *Newman v. Covenant Mut. Ins. Assn.*, 76-56; *McConnell v. Iowa Mut. Aid Assn.*, 79-757. (See now § 1819.)

The requirements of this section as to attaching the application to or indorsing it upon the policy are applicable to fraternal association acting

in a dual character involving the element of insurance, as well as mutual benefit associations. *Grimes v. Northwestern Legion of Honor.* (See now § 1826.) 97-315.

This and the preceding section of this act apply to all kinds of insurance and not merely to fire insurance. *Cook v. Federal L. Assn.*, 74-746.

It is incompetent, in defense to an action upon a policy, to plead or prove statements made in the application, where such statements are not reduced to writing and a copy thereof is not attached to or indorsed upon the policy. *Ellis v. Council Bluffs Ins. Co.*, 64-507. And see *Wallace v. Council Bluffs Ins. Co.*, 66-139.

Where one premium note was given for two policies on the same property, one against loss by fire and lightning, and one against loss by tornado, and a copy of the note was attached to the former and not to the latter, held, that in an action on the tornado policy, non-payment of the premium note as required could not be relied on. *Lewis v. Burlington Ins. Co.*, 80-259.

Where answers in the application are filled up by the agent taking such application from his own knowledge, the fact that a copy of the application is attached to the policy which is delivered to insured will not bind him to statements thus made, although he fails to notify the company of their falsity. The assured is not required to prove the statements made in the application to be true, and he is therefore not required to examine the copy of the application indorsed on the policy. *Donnelly v. Cedar Rapids Ins. Co.*, 70-693; and see *Bennett v. Council Bluffs Ins. Co.*, 70-600.

The conditions of the policy itself may be shown, although they are not contained in an application a copy of which is attached to the policy. Thus a failure to disclose the state of the title may be a representation appearing in the policy itself and may be shown though not appearing in the application attached to the policy. *McKinnon v. Mutual F. Ins. Co.*, 89-170.

The provisions of this section are broad enough to cover any renewal or reinstatement of the policy of insurance which has become invalid. *Goodwin v. Provident Savings Life Assurance Society*, 97-226.

Where a copy of an application attached to or incorporated in the policy is defective and incomplete, the company is precluded from proving the falsity of the representations in the application as a defense to an action on the policy. *Corson v. Anchor Mut. F. Ins. Co.*, 113-641.

Where the copy of an application attached to the policy is totally defective and insufficient, the company cannot show misrepresentations or breach of conditions contained in such application. *Corson v. Iowa Mut. Fire Ins. Assn.*, 115-485.

The provisions of section 1741 held applicable to fraternal societies issuing certificates on lives of members. *Stork v. Supreme Lodge K. of P.*, 113-724.

The provisions of ch. 211, acts of 18 G. A., embodied in this section, held applicable to fraternal societies issuing certificates on lives of members. *Stork v. Supreme Lodge K. of P.*, 113-724.

The fact that warranties and representations embodied in the application cannot be proven because no copy of such application was attached to the policy, does not prevent the company from relying on such warranties and representations as are included in the policy itself. *Kirkpatrick v. London Guar. & Acc. Co.*, 139-370.

Where no copy of the application is indorsed on the policy the defense of false representation in the application cannot be relied upon. *Salzman v. Machinery Mut. Ins. Assn.*, 142-99.

Where the provision as to forfeiture for nonpayment of premium note is contained in the application, failure to attach copy of application to the policy will prevent reliance on default in the payment of a premium note as a defense although notice of such default has been duly given. *Robey v. State Ins. Co.*, 146-23.

The statute does not require that a copy of any agreement made subsequently to the issuance or renewal of the policy shall be attached. *Wilson v. Royal Union Mut. Life Ins. Co.*, 137-184.

Sec. **1742. Evidence of value—proofs—action.** In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as *prima facie* evidence of the insurable value of the property at the date of the policy: *provided*, the insurance company or association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said insurance company or association shall be liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount stated in the policy. And in an action on such policy it shall only be necessary for the assured to prove the loss of the building insured, and that he has given the company or association notice in writing of such loss, accompanied by an affidavit stating the facts as to how the loss occurred, so far as they are within his knowledge, and the extent of his loss. [Same, § 3.]

See also 1706. Applicable 1744. Applicable to state and county associations operating under chapter 5. *Corson v. Iowa Mutual Fire Ins. Assn.*, 115-485.

The statute does not attempt to fix, as the measure of recovery in case of the destruction of buildings, any other than the actual value of the building at the time of loss. If, after the *prima facie* showing made by proof of the amount of insurance, the company shall offer evidence to show the actual value to be less, then the amount of recovery becomes a question for the jury, and the actual value is as the jury shall find it. The parties may, by contract, stipulate for the ascertainment of this actual value by appraisers as a condition precedent to the right of action. *Zalesky v. Home Ins. Co.*, 108-341.

Whether the latter part of this section is applicable in case of loss of personal property covered by the policy, *quaere*. *Westenhaver v. German-American Ins. Co.*, 113-726.

Where a policy for $4,000 was issued under an arrangement with the soliciting agent that total insurance to the extent of $7,000 should be procured on the property, held that in an action on the $4,000 policy the total amount of insurance contemplated was *prima facie* the value of the property insured. *Wensel v. Property Mutual Ins. Assn.*, 129-295.

It is error to instruct the jury with reference to the *prima facie* fact of the value of the property as stated in the policy, as applicable to personal property. *Warshawky v. Anchor Mut. F. Ins. Co.*, 98-221.

A policy is not *prima facie* evidence as to the value of personal property insured. The provisions of this section as to presumption of value are applicable only to buildings. *Joy v. Security F. Ins. Co.*, 83-12; *Martin v. Capital Ins. Co.*, 85-643.

As to buildings covered by the insurance the burden is on the company to show that the property was not worth the amount for which it was insured. *Des Moines Ice Co. v. Niagara F. Ins. Co.*, 99-193.

The law fixes *prima facie* the measure of recovery in case of loss of a building, and it is immaterial in making out plaintiff's case to show what the kind of building was or the material of which it was constructed or how long it had been in use. *Davis v. Anchor Mut. F. Ins. Co.*, 96-70.

The policy being *prima facie* evidence of the value of the insured building, it is not incumbent upon the plaintiff in the first instance to prove such value, but evidence in respect to the value being introduced by the defendant, plaintiff may introduce evidence on that point in rebuttal. *Martin v. Capital Ins. Co.*, 85-643.

Under particular facts, held, that the evidence as to the value of the property was sufficient, in connection with the *prima facie* evidence supplemented by the valuation stated in the policy, to support the recovery. *Hagan v. Merchants', etc., Ins. Co.*, 81-321.

It seems that an appraisement agreement relating exclusively to the value of buildings cannot be relied on by reason of the terms of this statute to prevent the bringing of suit on the policy. *Harrison v. German-American F. Ins. Co.*, 67 Fed., 577.

Waiver or proofs of loss cannot be shown under an allegation that they have been furnished. *Welsh v. Des Moines Ins. Co.*, 71-337.

Under an allegation of the furnishing of proofs of loss evidence of the waiver of such proofs is not admissible. *Heusinkveld v. St. Paul F. & M. Ins. Co.*, 96-224; 106-229.

Where insured was told by the secretary on requesting blank proofs of loss that such proofs were unnecessary and that there was nothing more for the owner to do but wait until he heard from the company, held, that this constituted a waiver of proofs of loss. *Scott v. Security F. Ins. Co.*, 98-67.

Requirements of the statute and of policies of insurance as to notice and proof of loss may be waived by the insurer through its authorized agents. Held, under the facts of this case, that the adjuster of the company bound the company by his acts and statements so far as they were authorized. The general manager of an insurance company, having full charge of its business in certain territory, may waive proofs of loss and notice, and also may waive a written indorsement required by the terms of the policy. *Ruthven v. American F. Ins. Co.*, 92-316; 102-550.

By furnishing proofs of loss the insured does not waive or abandon the right to rely on an alleged waiver of such proofs. He may plead both the fact of furnishing proofs and the fact of waiver, and rely upon whichever defense the evidence establishes. *Warshawsky v. Anchor Mut. F. Ins Co.*, 98-221.

Good faith requires that upon receipt of proofs of loss if the company is not satisfied therewith it should specify its objections thereto to the end that the proofs may be perfected if possible, and if the company falls to specify the objections at a time when they might be remedied it should not afterward be heard to urge them. *Dyer v. Des Moines Ins. Co.*, 103-524.

The action of the company in asking for an arbitration to determine the amount to be paid is a waiver of defects in the proofs or notice of loss known to the company before the arbitration took place. *Dee & Sons Co. v. Key City F. Ins. Co.*, 104-167.

Notwithstanding a provision in the policy that none of its terms or conditions can be waived by any person except in writing by the secretary of the company, and that no agent has any authority to waive or modify any printed conditions of the policy, an adjusting agent having power to determine what proofs are satisfactory may waive those proofs which are regarded unimportant, although certain specified proofs are required by the policy. *Brock v. Des Moines Ins. Co.*, 106-30.

Failure to object to the proofs of loss because not accompanied with affidavit, as required, amounts to a waiver of objection on this ground. *Pringle v. Des Moines Ins. Co.*, 107-742.

Where the company refuses payment on the ground that the policy has been suspended in consequence of failure to pay an installment of premium, waiver of proofs of loss may be inferred. *Pray v. Life Indemnity & Security Co.*, 104-114; *Smith v. Continental Ins. Co.*, 108-382.

Unqualified refusal to pay constitutes a waiver on the part of the insurance company of proofs of death, where something purporting to be proofs of death has been received by the company, and not objected to. *Stephenson v. Bankers Life Assn.*, 108-637.

An agent having power to adjust a loss has authority to waive formal proofs of loss. *Lake v. Farmers' Ins. Co.*, 110-473.

Where the adjuster requires the procurement of duplicate invoices, which are prepared at considerable expense, the company cannot afterwards object that the proofs of loss are not sufficient. If the conduct of the company is such as to induce the insured to rest, in good faith, under the well founded belief of strict compliance, and that the conditions will not be insisted on, it cannot afterwards set up non-performance of such conditions as a bar to recovery. *Ibid.; Corson v. Anchor Mut. F. Ins. Co.*, 113-641.

The promise to the company to pay is as effective as the waiver of proofs, as a denial of liability and the promise of settlement is inconsistent with insistence on strict compliance with the conditions of the contract. *Lake v. Farmers' Ins. Co.*, 110-473.

Proofs of loss furnished to the company are only admissible in evidence in the first instance to establish the fact that they were so furnished. If a schedule attached to such proofs is referred to by a witness as furnishing a correct statement of the items of property destroyed and the value thereof, it may be introduced in evidence in connection with such testimony, but the two purposes should be kept distinct. *Names v. Union Ins. Co.*, 104-612.

Under previous statutory provisions, held that proofs of death in a particular case were not sufficient. *Stephenson v. Bankers' Life Assn.*, 108-637.

Proofs of loss in a particular case which did not give an account of the loss nor state how the fire originated nor state the actual cash value of the property destroyed were held not to constitute such proofs of loss as were required by the statute or by the terms of the policy. *Brock v. Des Moines Ins. Co.*, 96-39; 106-30.

While it may be sufficient in a suit on a policy to allege in general the performance of the conditions of such policy (see §§ 3626, 3628) and the failure to perform any particular condition must then be specifically alleged by defendant, yet if the plaintiff sets out specifically the furnishing of the proofs required, and the defendant denies in general the allegations of the petition an issue as to the sufficiency of the proofs is raised. *Ibid.*

Where a policy of insurance required that, if loss should occur, the assured should give the company immediate notice of the fact, and that as soon as possible after the fire proofs of loss under oath should be prepared and sent to the company, and in an action on the policy the petition showed that the proof of loss was not given within the time or in the manner required by statute, held, that a demurrer to the petition should have been sustained. *Von Genechtin v. Citizens' Ins. Co.*, 75-544.

Where the agent of an insurance company informed the assured that the loss would be adjusted, but it was not shown that such agent had any authority to adjust losses or bind the defendant in the adjustment of losses, held, that the promise of the agent that the loss would be adjusted was not a waiver of the condition as to proofs of loss. *Ibid.*

In an action upon a policy of insurance where the petition did not show the lapse of time for the maturity of the claim required by the policy nor that required by the statute, held, that it was sufficient ground for demurrer. *Ibid.*

An instruction that the jury must find that the notice of loss was given to the company within a reasonable time, although the policy required the notice to be given forthwith, held not erroneous, the terms being so nearly synonymous that no prejudice could have resulted therefrom. *Pennypacker v. Capital Ins. Co.*, 80-56.

The proofs of loss are not admissible on the trial to establish the facts connected with the loss; but in a particular case, held, that they were admissible to prove by an indorsement thereon the time of their receipt by the company. *Lewis v. Burlington Ins. Co.*, 80-259.

Formal proof of service of the proofs of loss is not required. All that is necessary is that they be given or rendered to the company; and if found in the possession of the company and produced by it upon the trial that is sufficient. *Runkle v. Hartford Ins. Co.*, 99-414.

Where there is an issue as to whether notice and proofs of loss were given and there is no evidence in behalf of plaintiff on such question, it is error to submit the question to the jury. *Heusinkveld v. St. Paul F. & M. Ins. Co.*, 96-224.

Under an allegation that proofs of loss have been furnished, it is not competent to introduce evidence showing the waiver of such proofs. *Heusinkveld v. Capital Ins. Co.*, 95-504.

The provisions as to the *prima facie* effect of the value of buildings as stated in the policy is applicable in cases where there has been a waiver of proofs of loss as well as where proofs of loss have been made. *Scott v. Security F. Ins. Co.*, 98-67.

It may be that notice can be given to the agent who issued the policy, but such an agent would not have authority to waive the affidavit of loss. *Ruthven v. American F. Ins. Co.*, 92-316.

A special agent authorized to adjust losses could not delegate his authority to an adjuster of another company so that a waiver by the latter of proofs would be binding. *Ibid.*

Proofs of loss which comply with the requirements of the statute are sufficient, although they do not meet the requirements of the policy. Technical objections founded upon unreasonable requirements in the policy will not be considered. *Warshawsky v. Anchor Mut. F. Ins. Co.*, 98-221.

Where the policy required the giving of notice to the secretary, held, that a notice to the company was a sufficient compliance. *Lewis v. Burlington Ins. Co.*, 80-259.

Evidence that notice and proofs of loss were deposited in the mail is admissible as showing that they were received, although their receipt is denied by the officers of the company. *Pennypacker v. Capital Ins. Co.*, 80-56.

The notice and affidavit required by this section are solely for the benefit of the insurer; and if, without objection to the sufficiency thereof, the company advises insured that it will proceed to settle the loss, it thereby waives any objection on account of defects in such proofs. *Harris v. Phoenix Ins. Co.*, 85-238.

Where insured stated by letter to the company that he had no knowledge of the particulars of the fire and its origin, but did not comply with the requirement as to the proof by affidavit, and the company made no objection on that ground, held, that it thereby waived its right to further proof. *Green v. Des Moines F. Ins. Co.*, 84-135.

It is not necessary that the notice and affidavit shall be attached together and delivered at the same time, but it is sufficient that they shall be both in the hands of the company within the time prescribed for giving notice. *Russell v. Fidelity F. Ins. Co.*, 84-93.

As to whether a stipulation in the policy requiring an appraisement as a condition precedent to the bringing of an action thereunder would be valid, in view of the statute, *quaere*. *Zalesky v. Home Ins. Co.*, 102-613; 108-341; 114-516.

The place where an agreement was finally consummated is the place of the contract, and unless it be shown that it was the intention of the parties that it should be performed at some other place, it will ordinarily be governed by the law of the place of execution. *Born v. Home Ins. Co.*, 110-379; 120-299.

Where an insurance agent who took an application for a policy had full knowledge of the exact condition of applicant's title, the company was bound thereby. *Ibid.*

Where a proposal for insurance contained in an application therefor was accepted by an insurance company, there was a valid contract of insurance, though no policy was issued. *Herring v. American Ins. Co.*, 123-533.

Where a railway company, by the operation of its trains, destroys by fire insured property situated on its right of way, the liability of the railway company to the assured is primary and that of the insurance company is secondary. *Kennedy Bros. v. Iowa State Ins. Co.*, 119-29.

Where the assured has contracted away the right of the insurance company to subrogation without its knowledge, he cannot recover in case of loss upon the policy. *Ibid.*

An instruction directing the jury that the law presumes the building to have been of the value for which it was insured instead of saying that the amount stated in the policy should be received as prima facie evidence of the insurable value of the property, held not erroneous, where the verdict was for less than half of the amount of the insurance. *Walrod v. Des Moines F. Ins. Co.*, 159-121.

There is no statutory requirement of proof of loss as a condition precedent to the maintenance of an action for benefit or indemnity against a mutual assessment association. *Brinsmaid v. Iowa State Trav. Men's Assn.*, 152-134.

Sec. **1742-a. Proofs of loss.** In furnishing proofs of loss under any contract of insurance for damages or loss of personal property, it shall only be necessary for the assured, within sixty days from the time the loss occurs, to give notice in writing to the company issuing such contract of insurance accompanied by an affidavit, stating the facts as to how the loss occurred, so far as same are within his knowledge, and the extent of the loss, any agreement or contract to the contrary notwithstanding. [29 G. A., ch. 73, § 1.]

The provisions of the policy relating to proofs of loss are superseded by the statutory provisions so far as they are inconsistent. *American Cereal Co. v. Western Assur. Co.*, 148 Fed., 77.

An action is premature and abatable when brought within forty days after service of the notice of loss and proof thereof under a mutual policy of insurance issued under Ch. 5, Title 9, Supp. Code, 1913, even though the company during said forty days denies all liability under the policy. *Salmon v. Farm Property Mut. Ins. Assn.*, 168 Ia.—

Sec. **1743. Conditions.** Any condition or stipulation in an application, policy or contract of insurance, making the policy void before the loss occurs, shall not prevent recovery thereon by the insured, if it shall be shown by the plaintiff that the failure to observe such provision or the violation thereof did not contribute to the loss: provided, however, that any condition or stipulation referring to any other insurance, valid or invalid, or to vacancy of the insured premises or the title or ownership of the property insured, or to lien, or incumbrances thereon created by voluntary act of the insured and within his control, or to the suspension or forfeiture of the policy during default or failure to pay any written obligation given to the insurance company for the premium, or to the assignment or transfer of such policy of insurance before loss without the consent of the insurance company, or to the removal of the property insured, or to a change in the occupancy or use

of the property insured, if such change or use makes the risk more hazardous, or to the fraud of the insured in the procurement of the contract of insurance, shall not be changed or affected by this provision. No recovery on a policy or contract of insurance shall be defeated for failure of the insured to comply, after a loss occurs, with any arbitration or appraisement stipulation as to fixing value of property. No arbitration shall take place except where the property was situated at the time of loss. Any agreement, stipulation or condition in any policy or contract of insurance by which any insurance company reserves or has the right to rebuild shall be void and of no effect in case of total loss, or where the amount of loss, upon the request of the insurance company, has been submitted to arbitration. Nothing herein shall be construed to change the limitations or restrictions respecting the pleading or proving of any defense by any insurance company to which it is subject by law. The provisions of this section shall apply to all contracts of insurance on real and personal property. [32 G. A., ch. 75; 28 G. A., ch. 64, § 1; 28 G. A., ch. 63, § 1.]

This provision has no application to the failure of the insured to comply with a condition precedent to the taking effect of the policy. *Banco De Sonora v. Bankers' Mut. Casualty Co.*, 124-576.

A breach of warranty or condition constitutes, generally speaking, no defense if it appears that such breach did not occasion or contribute to the loss; but the defense based on change in use or occupancy is good if such change makes the risk in fact more hazardous. *Krell v. Chickasaw Farmers' Mut. Fire Ins. Co.*, 127-748.

The burden is on the insured suing on the policy to show that change in use or occupancy in violation of the provisions of the policy did not contribute to the loss. *Ibid.*

The question whether a change in occupancy without consent increases the risk is for the jury. *Nicholas v. Iowa Merch. Mut. Ins. Co.*, 125-262.

The fact that the furniture in a dwelling house is insured after taking a policy on the house itself does not in the absence of fraud or over-insurance constitute an increase of hazard as to the building. *Ibid.*

Breach of an agreement to keep a set of books in an iron safe will not defeat recovery for a loss under the policy unless it is pleaded and proven that such breach contributed to the loss. *Johnson v. Farmers' Ins. Co.*, 126-565.

A provision in the policy that the removal of the property shall be deemed an increase of the risk as a matter of law is void in view of the statutory provision that the breach of the condition as to removal shall not affect the validity of the policy unless it increases the risk. The burden is on the insured to show that the removal, in violation of the terms of the policy, did not cause or contribute to the loss, but the burden is on the company to show, as a matter of defense, that it increased the risk. *Adams v. Atlas Mut. Ins. Co.*, 135-299.

This section does not apply to forfeitures accrued under policies previously issued. *Elliott v. Farmers' Ins. Co.*, 114-153.

This section does not apply to provisions making void the policy for vacancy or unoccupancy. *Cone v. Century Fire Ins. Co.*, 139-205.

The burden is on the plaintiff to show that a change of occupancy, if any, in violation of the provisions of the policy did not cause or contribute to the fire, and the burden is on the defendant to show that such change, if any, increased the risk. *Seaman v. Anchor Fire Ins. Co.*, 149-583.

This section has relation to cases where there is provision in the policy prohibiting the act complained of. Where there is no such provision, the burden does not rest on the plaintiff to show that there was in fact not an increase of hazard. When it is shown that the insured has done some act prohibited by the policy, then the burden rests on him to show that the violation did not increase the hazard. *Kinney v. Farmers' Mut. F. Ins. Soc'y*, 159-490.

From the provision of this section it is evident that it was not intended by code § 1750 to invalidate a provision in a policy that the agent shall bind the company only in writing. *Mulrooney v. Royal Ins. Co.*, (C. C.) 157 Fed. 598.

Sec. **1744. Notice and proof of loss—time of bringing action—provisions not affected by contract.** The notice of loss and proof thereof required in section seventeen hundred forty-two hereof, and the notice and proof of loss under oath in case of insurance on personal property, shall be given within sixty days from the time loss occurred, and no action for such loss shall be begun within forty days after such notice and proofs have been given to the company, nor shall the time within which action shall be brought be limited to less than one year from the time when a cause of action for the loss accrues. No provisions of any policy or contract to the contrary shall affect the provisions of this and the three preceding sections. [27 G. A., ch. 44, § 1; 18 G. A., ch. 211, § 3.]

See also 1742; also 1706.

The statutory requirement as to notice and proofs of loss is all that can be made essential by the contract. A notice and affidavit are sufficient to constitute the proof required. The sufficiency of the document is not dependent on the intent, but on the contents. *Parks v. Anchor Mut. F. Ins. Co.*, 106-402.

This statute concerning proofs of loss supersedes the provisions of a policy of insurance with relation to the same matter. *Washburn-Halligan Coffee Co. v. Merchants' etc. Fire Ins. Co.*, 110-423.

Stipulations in a policy that no officer or agent shall have power to waive any provision or condition of the policy, except such as by the terms of the policy may be subject of agreement endorsed thereon or added thereto, do not prevent waiver of proofs of loss by an officer or agent having general authority to do so. Such a stipulation relates to the conditions and provisions of the policy and not to their performance. *Ibid*, and *Lake v. Farmers' Ins. Co.*, 110-473.

The provisions of 18 G. A., ch. 211, § 3, relating to proofs of loss, as originally enacted, held applicable to mutual benefit associations as well as fire insurance companies. *Parsons v. A. O. U. W.*, 108-6.

The legislature provides the character and kind of proofs that shall be made upon the happening of a loss, and no greater proof can be exacted; but the company may stipulate for less than is required by the statute in this respect. *Kinney v. Farmers' Mut. F. Ins. Soc'y*, 159-490.

Good faith requires that upon receipt of proofs of loss, if the company is not satisfied therewith, it should specify its objections thereto to the end that the proofs may be perfected if possible, and if the company fails to specify the objections at a time when they might be remedied it should not afterwards be heard to urge them. *Dyer v. Des Moines Ins. Co.*, 103-524.

The action of the company in asking for an arbitration to determine the amount to be paid is a waiver of defects in the proofs or notice of loss known to the company before the arbitration took place. *Dee & Sons Co. v. Key City F. Ins. Co.*, 104-167.

Notwithstanding a provision in the policy that none of its terms or conditions can be waived by any person except in writing by the secretary of

the company, and that no agent has any authority to waive or modify any printed conditions of the policy, an adjusting agent having power to determine what proofs are satisfactory, may waive those proofs which are regarded unimportant, although certain specified proofs are required by the policy. *Brock v. Des Moines Ins. Co.*, 106-30.

Failure to object to the proofs of loss because not accompanied by affidavit, as required, amounts to a waiver of objection on this ground. *Pringle v. Des Moines Ins. Co.*, 107-742.

Where the company refuses payment on the ground that the policy has been suspended in consequence of failure to pay an installment of premium, waiver of proofs of loss may be inferred. *Pray v. Life Indemnity & Security Co.*, 104-114; *Smith v. Continental Ins. Co.*, 108-382.

Unqualified refusal to pay constitutes a waiver on the part of the insurance company of proofs of death where something purporting to be proofs of death has been received by the company and not objected to. *Stephenson v. Bankers' Life Assn.*, 108-637.

The promise of the company to pay is as effective as the waiver of proofs, as a denial of liability and the promise of settlement is inconsistent with insistence on strict compliance with the conditions of the contract. *Lake v. Farmers' Ins. Co.*, 110-473.

Telegrams from insured advising the company of the loss and giving it all information which the insured could be supposed to have may constitute sufficient proof of the loss and by failing to object for want of an affidavit to such proofs, the company waives the requirement. *Nicholas v. Iowa Merch. Mut. Ins. Co.*, 125-262.

An agent having power to adjust a loss has authority to waive formal proofs of loss. *Lake v. Farmers' Ins. Co.*, 110-473.

Where the adjuster requires the procurement of duplicate invoices, which are prepared at considerable expense, the company cannot afterwards object that the proofs of loss are not sufficient. If the conduct of the company is such as to induce the insured to rest, in good faith, under the well founded belief of strict compliance and that the conditions will not be insisted on, it cannot afterwards set up nonperformance of such conditions as a bar to recovery. *Ibid. Corson v. Anchor Mut. F. Ins. Co.*, 113-641.

Where action is prematurely brought because of failure of Insured to demand an appraisement he cannot cure the defect in his proceeding by subsequently demanding such appraisal and setting out the fact in the supplemental petition. *Zalesky v. Home Ins. Co.*, 102-613.

The statutory provision cannot be waived and an action brought in less than ninety days after notice of loss or a waiver of notice and proof is premature. *Blood v. Hawkeye Ins. Co.*, 103-728.

Although in the second action it is claimed that the first action was not prematurely brought, this will not sustain the second action brought after the period of limitation under the policy has expired. *Wilhelmi v. Des Moines Ins. Co.*, 103-532.

Where the first action for a loss under a policy was prematurely brought and subsequently another action was brought after the time limited in the policy for bringing action, held, that the second action was not to be deemed a continuation of the first action under the provisions of code § 3455. *Harrison v. Hartford F. Ins. Co.*, 67 Fed., 298.

The provisions of 18 G. A., ch. 211, as to time of bringing action were not applicable to associations organized under § 1160 of the code of '73, but associations collecting premiums instead of assessments from members were not properly organized under that section, and therefore were subject to the provisions of said act of 18 G. A. *Bradford v. Mutual Fire Ins. Co.*, 112-495.

Where the policy limited the time of bringing action to six months next after the fire, held that the six months commenced to run, not from the time of the fire, but from the time when the loss became payable, that is,

sixty days after the notice and proof of loss were furnished. *Read v. State Ins. Co.*, 103-307.

The provision of this section as to time of bringing suit held applicable to a loss occurring prior to the taking effect of the code, when the statute provided that suit should not be brought within ninety days. Such a statutory provision relates to the remedy and is not part of the contract. *Jones v. German Ins. Co.*, 110-75.

The defense that action on a policy is not brought within the statutory period specified in the contract is one which must be affirmatively introduced, otherwise it will be deemed waived. *Miller Brewing Co. v. Capital Ins. Co.*, 111-590.

Prior to the adoption of this section it was lawful for the parties to create a contract limitation which would be binding on the courts, and under this section the parties may contract as before, provided the limitation fixed by them is not less than one year. *Farmers' Co-op. Creamery Co. v. Iowa State Ins. Co.*, 112-608.

The change in the statute is not applicable to contract limitations under a policy executed before the change in the statute, and which were valid when made. *Ibid.*

The time within which action on a policy may be brought cannot by stipulation be limited to less than one year from the time when a cause of action has accrued. *Kenny v. Bankers' Acc. Ins. Co.*, 136-140.

An action is premature and abatable when brought within forty days after service of the notice of loss and proof thereof under a mutual policy of insurance issued under Ch. 5, Title 9, Supp. Code, 1913, even though the company during said forty days denies all liability under the policy. *Salmon v. Farm Property Mut. Ins. Assn.*, 168 Ia—

The limitation contained in this section as to the time for bringing the action pertains to the remedy, and cannot be controlled by stipulations in the policy of insurance. *Vore v. Hawkeye Ins. Co.*, 76-548; *Wilhelmi v. Des Moines Ins. Co.*, 86-326; *Worley v. State Ins. Co.*, 91-150.

These provisions as to the time when action may be brought for the loss, are applicable to actions for loss of goods as well as for loss by reason of damages to the realty. *Wilhelmi v. Des Moines Ins. Co.*, 86-326.

Action cannot be brought before the expiration of the time fixed, even on the refusal of the company to pay. *Quinn v. Capital Ins. Co.*, 71-615; *Finster v. Merchants' & Bankers' Ins. Co.*, 97-9.

Making proofs and giving notice within the prescribed time constitute conditions precedent to the right of action. *Ruthven v. American F. Ins. Co.*, 92-316.

The requirement of the statute as to the time within which an action on the policy may not be brought cannot be waived and a suit within the prescribed period is premature. *Blood v. Hawkeye Ins. Co.*, 103-728.

The effect of this provision as to the time when action may not be brought is to fix the time when the loss becomes due and payable. It does not affect the maturity of the contract, but is a legislative prohibition of the action before the time specified, and if action is brought before the expiration thereof it is prematurely brought and must fail. The objection may be raised by motion in arrest of judgment, without being pleaded as a defense. *Taylor v. Merchants' & Bankers' Ins. Co.*, 83-402.

Where an amended petition properly setting out the cause of action, was filed before the expiration of the time for bringing action and demurred to, held, that the company had sufficient notice of the amendment so that the cause of action set up therein must be deemed to have been brought within the proper time. *Jamison v. State Ins. Co.*, 85-229.

This section with reference to time after which action may be brought is applicable to life insurance. *Christie v. Life Indemnity, etc., Co.*, 82-360.

Therefore held, that an action commenced on a certificate in a benefit company within sixty days after presenting notice of loss was prematurely brought and would be abated. *Ibid.*

Also held, that these provisions were not unconstitutional on the ground that the subject matter was not expressed in the title or that the act embraced more than one subject, or that it was not of uniform operation. *Ibid.*

If defendant claims that by reason of the proofs of loss not being sufficient the action is prematurely brought, he should set that out in a distinct division of his answer and not in connection with the defense that the defendant cannot recover by reason of defective proofs. *McComb v. Council Bluffs Ins. Co.*, 83-247.

The fact that a suit had been prematurely brought and is subsequently dismissed on that ground, does not entitle the plaintiff to institute another suit after the time limited statutory provision as to the time in which action may be brought. *Vore v. Hawkeye Ins. Co.*, 76-548.

The fact that another action on the policy would be barred by reason of limitations in the policy as to time of bringing action will not estop the company from insisting that an action commenced within the prescribed period is prematurely brought, and that plaintiff cannot recover therein. *Ibid.*

The person who thus maintains an action prematurely brought is negligent, within the provisions of § 3455. *Wilhelmi v. Des Moines Ins. Co.*, 86-326.

Where an action was brought in proper time upon a policy of insurance, but subsequently, on discovery that the property was misdescribed, such action was dismissed and an action in equity to reform the policy and recovery thereunder was commenced within a reasonable time, held, that such second action would not be barred under the provisions of the policy with reference to time for bringing action thereon. *Jacobs v. St. Paul F. & M. Ins. Co.*, 86-145.

The objection that the suit was prematurely brought may be raised by motion in arrest of judgment and is not waived by failure to interpose it earlier in the progress of the case. *Woodcock v. Hawkeye Ins. Co.*, 97-562.

A provision in the policy for arbitration in case of disagreement as to the amount of loss does not make an arbitration a condition precedent to the bringing of an action. *Lesure Lumber Co. v. Mutual F. Ins. Co.*, 101-514.

But as to whether appraisement may be made an absolute condition to the right of action, *quaere. Zalesky v. Home Ins. Co.*, 102-613; 108-341; 114-516.

Where the court acquired jurisdiction of the action only by appearance of the defendant, held, that the action was to be deemed commenced only when defendant appeared. *Lesure Lumber Co. v. Mutual F. Ins. Co.*, 101-514.

The notice of proofs of loss herein contemplated include the affidavits showing the facts in regard to the loss which must accompany such notice and proofs and mere notice is not sufficient to determine the commencement of the period within which suit cannot be brought. *Wilhelmi v. Des Moines Ins. Co.*, 86-326.

Where a petition in an action on a policy of fire insurance stated that the loss occurred "on or about April 14, 1886," and that notice and proofs of loss were given "on or about June 19, 1886," held, that the petition did not show that more than sixty days had intervened between the loss and the notice and proof thereof. *District Tp. v. Des Moines Ins. Co.*, 75-647.

The time of limitation fixed by the policy is not extended where proofs are neither furnished nor waived. *Cornett v. Phenix Ins. Co.*, 67-388.

The statutory requirement as to notice and proofs of loss is all that can be made essential by the contract. A notice and affidavit are sufficient to constitute the proof required. The sufficiency of the document is not dependent on the intent but on the contents. *Parks v. Anchor Mut. F. Ins. Co.*, 106-402.

The defense that action on a policy is not brought within the statutory period specified in the contract is one which must be affirmatively intro-

duced, otherwise it will be deemed waived. *Miller Brewing Co. v. Capital Ins. Co.*, 111-590.

The provision of this section as to time of bringing suit held applicable to a loss occurring prior to the taking effect of the Code, when the statute provided that suit should not be brought within ninety days. Such a statutory provision relates to the remedy, and is no part of the contract. *Jones v. German Ins. Co.*, 110-75.

Where the policy limited the time of bringing action to six months next after the fire, held, that the six months commenced to run, not from the time of the fire, but from the time when the loss became payable, that is, sixty days after the notice and proof of loss were furnished. *Read v. State Ins. Co.*, 103-307.

The statutory provision cannot be waived and an action brought in less than ninety days after notice of loss or a waiver of notice and proof is premature. *Blood v. Hawkeye Ins. Co.*, 103-728.

Prior to the adoption of this section it was lawful for the parties to create a contract limitation which would be binding on the courts, and under this section the parties may contract as before, provided the limitation fixed by them is not less than one year. *Farmers' Co-op. Creamery Co. v. Iowa State Ins. Co.*, 112-608.

The change in the statute is not applicable to contract limitations under a policy executed before the change in the statute, and which were valid when made. *Ibid.*

Where action is prematurely brought because of failure of insured to demand an appraisement he cannot cure the defect in his proceeding by subsequently demanding such appraisal and setting out the fact in the supplemental petition. *Zalesky v. Home Ins. Co.*, 102-613.

Although in the second action it is claimed that the first action was not prematurely brought, this will not sustain the second action brought after the period of limitation under the policy has expired. *Wilhelmi v. Des Moines Ins. Co.*, 103-532.

Where the first action for a loss under a policy was prematurely brought and subsequently another action was brought after the time limited in the policy for bringing action, held, that the second action was not to be deemed a continuation of the first action under the provisions of Code § 3455. *Harrison v. Hartford F. Ins. Co.*, 67 Fed., 298.

The provisions of 18 G. A., chap. 211, as to the time of bringing action, were not applicable to associations organized under § 1160 of the Code of '73, but associations collecting premiums instead of assessments from members were not properly organized under that section, and therefore were subject to the provisions of said act of 18 G. A. *Bradford v. Mutual Ins Co.*, 112-495.

Sec. **1745. Forms of policies.** The form of all policies or permits issued or proposed to be issued by any insurance company doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance who shall refuse to authorize it to do business or to renew its permission to do business when the form of policy issued or proposed to be issued does not provide for the cancellation of the same at the request of the insured upon equitable terms, and the return to the insured of any premium paid in excess of the customary short rates for the insurance up to the time of cancellation, or the release of the insured from any liability beyond such short rates, or for losses after the cancellation of the policy if the insurance be in a mutual company; and in case any company or association shall issue any policies not containing such provision,

it shall be the duty of the commissioner to revoke the authority of such company or association to do business. [34 G. A., ch. 18, § 8; 17 G. A., ch. 39, § 1.]

Form of Standard Fire Policy 1758a. Life 1783a. Association 1759c Cancellation Standard Fire Policy, 1758a, XI. Associations 1759m.

The provision of a policy for cancellation by the insured should not be construed as requiring repayment of premiums by the company before such cancellation can become effective. *Parsons v. Northwestern Nat. Ins. Co.*, 133-532.

The language of the policy of insurance is to be given its ordinary and popular signification rather than its technical meaning, and that, when capable of two constructions, it is to be given that which is most favorable to the insured. *Vorse v. The Jersey Plate Glass Ins. Co.*, 119-555.

The provisions of a policy for cancellation by the insured should not be construed as requiring repayment of premiums by the company before such cancellation can become effective. *Parsons v. Northwestern Nat. Ins. Co.*, 133-532.

An insurance company cannot reduce the amount of a policy issued to assured by merely writing him a letter stating that it was obliged to reduce its risk from $1,250 to $500, and enclosing a slip to that effect, with a request that it be attached to the policy, without proof that after the receipt of such letter the insured acquiesced in such reduction. *McLean v. American Mut. Fire Ins. Co.*, 122-355.

Sec. **1746. Other insurance—coinsurance clause—prorating.** Any provision, contract or stipulation contained in any policy of insurance, issued by any insurance company doing business in the state under the provisions of this chapter, providing or stipulating that the insured shall maintain insurance on any property covered by such policy to any extent, or shall to any extent be an insurer of the property insured in such policy, or shall bear any portion of the loss on the property insured, shall be void; and the commissioner of insurance shall refuse to authorize any such company to do business or to renew the authority or the certificate of any such company when the form of policy issued or proposed to be issued contains any such provision, contract or stipulation; provided, that upon the written request of any person desiring insurance, a rider providing for coinsurance may be attached to and become a part of the policy, but in no case shall such rider apply to dwellings or farm property, nor to any risk where the total value of the property to be insured is less than twenty-five thousand dollars, except as to grain elevators and grain warehouses and their contents. The request for the application of the coinsurance clause or rider to any policy of insurance shall be written or printed on a single sheet of paper which shall contain nothing but the request hereinafter set out, and said request must be signed by the insured and a copy thereof be left with him by the agent at the time the insurance is applied for. No form of request for coinsurance except the following shall be used by any company doing business within this state:

REQUEST FOR THE APPLICATION OF THE COINSURANCE CLAUSE.

In consideration of a reduction from the established rate of.....per cent. to..... per cent. in premiums to be paid to the ..... insurance company for insurance upon the following described property

.....

.....,

I hereby request that a coinsurance rider be attached to the policy to be issued by said company and hereby agree, that during the life of the policy I will maintain insurance on said property to the extent of at least ..... dollars, (or) .....per cent. (whichever may be agreed upon) of the actual cash value thereof at the time of fire, and that failing to do so, I shall become a coinsurer to the extent of such deficit.

Before signing this request or the coinsurance rider to be attached to the policy to be issued I carefully read each of them and fully understand that in case I shall fail to maintain insurance on the previously described property to the extent above provided, then in the event of loss or damage this company shall not be liable for a greater per cent. of the loss or damage to said property than:

1. The total amount of insurance maintained bears to ..... dollars, or:
2. The total amount of insurance maintained bears to ..... per cent. of the actual cash value of the property insured at the time of fire.

Date ..... Insured.

The coinsurance rider to be used shall be signed by both the agent and the insured and a copy thereof shall be left with the insured at the time the application is made for insurance. The rider shall be in form and restrictions as follows:

IOWA COINSURANCE AND REDUCED RATE CLAUSE.

(This clause must be signed by both the insured and the agent.)

In consideration of the acceptance by the insured of a reduction in premiums from the established rate of .....per cent. to .....per cent., it is hereby agreed that the insured shall maintain insurance during the life of this policy upon the property insured:

1. To the extent of .....dollars, or
2. To the extent of at least .....per cent. of the actual cash value thereof at the time of fire (whichever may be agreed upon) and, that failing to do so the insured shall be a coinsurer to the extent of such deficit.

This clause, at the request of the insured, is attached to and forms part of policy number ..... of the ..... insurance company of ..... and shall in no case apply to dwellings or farm property, nor to any risk wherein the total value of the property shall be less than twenty-five thousand dollars, except grain elevators and grain warehouses, and the contents of the same.

.....Insured.

....Agent.

Date .....

No condition or stipulation in a policy of insurance fixing the amount of liability or recovery under such policy with reference to prorating with other insurance on property insured shall be valid except as to other valid and collectible insurance, any agreement to the contrary notwithstanding. [34 G. A., ch. 79, § 1; 25 G. A., ch. 31.]

A stipulation to include a void policy in determining the prorata liability of the company cannot be enforced, and the fact that the company issuing the void policy may have treated it as valid, cannot affect the liability of the company issuing a subsequent policy. *Gurnett v. Atlas Mut. Ins. Co.*, 124-547.

This section does not prohibit the use of the "average clause" where several distinct items of property are covered by one policy. *Dahms v. German F. Ins. Co.*, 153-168.

A stipulation in a fire insurance policy, in so far as it undertook to include invalid insurance in the matter of prorating, was unenforceable, though a company which had issued invalid insurance regarded its policy as valid, or paid something on the loss to avoid litigation. *Gurnett v. Atlas Mut. Ins. Co.*, 124-547.

"While this writing, so attached, does not expressly authorize such additional insurance without consent, yet it does, by necessary implication, authorize the same, and makes it an object for the plaintiff to take additional insurance, until the 80 per cent of the actual cash value of the property should be obtained." *Pool v. Milwaukee Mechanics Ins. Co.*, 65 N. W. 54 (Wisconsin).

The reverse of above is held in *Cutter v. Royal Insurance Co.*, 70 Conn. 566.

Sec. **1747. Doing business without compliance.** Every insurance company organized under the laws of or doing business in this state shall conform to all the provisions of this chapter and to other laws of this state, whether now existing or hereafter enacted, applicable thereto, and when necessary any existing company shall change its charter and by-laws so as to conform thereto, by a vote of a majority of its board of directors. Any officer, manager or agent of any insurance company or association who, with knowledge that it is doing business in an unlawful manner, or is insolvent, solicits insurance with said company or association, or receives applications therefor, or does any other act or thing towards procuring or receiving any new business for such company or association, shall be guilty of a misdemeanor and for every such act, on conviction thereof, shall be adjudged to pay a fine of not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not exceeding one year, or be punished by both such fine and imprisonment. [C. '73, § 1147.]

See 1715-24-25-55. Associations 1759c. Life 1796. Applicable 1821d. Fraternal 1832-37-39d.

This does not prevent the officers of a company which has not complied with the law from reinsuring their risks in another company and transferring to such company the premium notes received therefor. *Davenport F. Ins. Co. v. Moore*, 50-619.

See Sec. 1711 as amended by 34 G. A., Ch. 18, § 5.

Sec. **1748. Officers punished.** Any president, secretary or other officer of any company organized under the laws of this state, or any officer or person doing or attempting to do business in this state for any insurance company organized either within or without this state, failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall

be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail for a period not less than thirty days nor more than six months. [Same.]

Sec. 1749. **Advertisements—soliciting agents.** Every agent of any insurance company shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town or village in which it is located, and the state or government under the laws of which it is organized. Any person who shall hereafter solicit insurance or procure application therefor, shall be held to be the soliciting agent of the insurance company or association issuing a policy on such application or on a renewal thereof, anything in the application, policy or contract to the contrary notwithstanding. [C. '73, § 1148.]

See 1725-50. Life 1800-1-14-15-21k, 1. Fraternal 1833-37.

An agent instructed to procure insurance is liable to his principal for any loss resulting from procuring insurance in a company not authorized to do business in the state. *Hartman v. Hollowell*, 126-643.

Sec. 1750. **Who deemed agents.** The term agent used in the foregoing sections of this chapter shall include any other person who shall in any manner directly or indirectly transact the insurance business for any insurance company complying with the laws of this state. Any officer, agent or representative of an insurance company doing business in this state who may solicit insurance, procure applications, issue policies, adjust losses or transact the business generally of such companies, shall be held to be the agent of such insurance company with authority to transact all business within the scope of his employment, anything in the application, policy, contract, by-laws or articles of incorporation of such company to the contrary notwithstanding. [18 G. A., ch. 211, § 1.]

See 1725-49. Life 1800-1-14-15-21k, 1. Fraternal 1833-37.

A soliciting agent with power to take and forward applications and receive money to be paid when the insurance is effected, does not have authority to bind the company by declarations as to the validity of the contract of insurance or as to the rights and liabilities of the company, when such declarations are not made while discharging his duties as agent in the transaction in question. *Schoep v. Bankers' Alliance Ins. Co.*, 104-354.

An adjusting agent with authority to ascertain and settle losses has of necessity power to determine what proofs are satisfactory and to waive those which are regarded as unimportant. *Brock v. Des Moines Ins. Co.*, 106-30.

Section applied. *McMaster v. New York L. Ins. Co.*, 78 Fed., 33; s. c. 90 Fed., 40; s. c. 99 Fed., 856.

An agent having the power to transact all the business within the apparent scope or usual extent of his employment in issuing policies may waive the conditions of a policy as to incumbrances, notwithstanding a provision in the policy denying such authority to the agent. *Liquid Carbonic Acid Mfg. Co. v. Phoenix Ins. Co.*, 126-225.

Section applied. *McMaster v. New York L. Ins. Co.*, 78 Fed., 33; s. c. 90 Fed., 40; s. c. 99 Fed., 856.

One soliciting insurance and taking applications therefor is the agent of the company issuing the policy, without regard to any provisions found in the policy. *Continental L. Ins. Co. v. Chamberlain*, 132 U. S., 304.

This provision is applicable to life insurance companies. *Ibid.*

It is a matter of general knowledge that the soliciting agent as a rule prepares the application for the owner, and what he does in that respect is within his powers, and binds his principal. *Jamison v. State Ins. Co.*, 85-229.

An insurance company is chargeable with knowledge of facts made known to its agent at the time of taking the application, and an instruction requiring more proof of the agent's authority than was necessary, held not prejudicial to defendant, although erroneous. *Key v. Des Moines Ins. Co.*, 77-174.

Under these provisions, held, that the agent of one company, who, by authority of his customer, applied to an agent of another company authorized to issue policies, for insurance on the property of his customer, was the agent for the company issuing the policy, and a mistake as between him and the agent issuing the policy was chargeable to the company, and not to the person for whose benefit the policy was issued. *St. Paul F. & M. Ins. Co. v. Shaver*, 76-282.

If the laws of the state make the agent soliciting or negotiating insurance the agent of the company issuing the policy no condition in the policy in terms making such agent the agent of the assured only, will be valid. *Fred Miller Brewing Co. v. Council Bluffs Ins. Co.*, 95-31.

Where an insurance agent in Wisconsin negotiated for insurance on property in that state through an insurance agent in another state without designating the company in which the insurance should be taken and the second agent placed the insurance in a foreign company, held that the first agent became, under the laws of Wisconsin, the agent of the company in which the insurance was placed in such sense that notice of the suit against the company might be served upon such agent so as to give the Wisconsin courts jurisdiction of such suit. *Ibid.*

An adjuster of losses has authority to waive conditions affecting the validity of the policy. *Arispe Mercantile Co. v. Queen Ins. Co.*, 141-607.

Knowledge by a soliciting agent of the existence of other insurance is a waiver of a stipulation against such insurance. *Solzman v. Machinery Mut. Ins. Assn.*, 142-99.

Knowledge of a soliciting agent as to the habits of the applicant for life insurance constitutes knowledge on the part of the company. *Biermann v. Guar. Mut. Life Ins. Co.*, 142-341.

A company is chargeable with notice of other insurance of which the soliciting agent has knowledge. *Wilson v. Anchor F. Ins. Co.*, 143-458.

An insurance company is not chargeable with notice of other insurance on the part of a soliciting agent where the only scope of such agent's employment was to return the policy for correction. *Scribner v. Anchor F. Ins. Co.*, 144-328.

If an agent has knowledge of past conditions or existing facts avoiding a policy which is secured by him, a company issuing a policy with such knowledge on the part of its agent cannot insist upon these facts for the purpose of avoiding it; but knowledge by a soliciting agent of the intention to violate some condition of the policy in the future is not binding upon the company. *House v. Security F. Ins. Co.*, 145-462.

An adjuster of losses can waive compliance with the provisions of the policy requiring the insurer to separate the damaged from the undamaged goods. *Farmers' Mercantile Co. v. Farmers' Ins. Co.*, 161-5.

Even though the secretary of a mutual company has no authority to agree to the removal of property beyond the limits of the county in which the association has authority to take risks, if after notice to the secretary of such removal the association makes assessments on the policy, the prohibition of the policy against removal is waived. *Kesler v. Farmers' Mut. F. & L. Ins. Assn.*, 160-374.

Provisions of the policy are valid, notwithstanding this section, which prescribe the manner in which the local agent shall exercise his authority so as to bind the company. *Mulrooney v. Royal Ins. Co.* (D. C.) 157 Fed. 598, (C. C. A.) 163 Fed. 833.

Section applied. *McMaster v. New York L. Ins. Co.*, 78 Fed. 33; s. c. 90 Fed. 40; s. c. 99 Fed. 856.

Sec. 1751. **Provisions applicable to associations.** The provisions of the foregoing sections relative to insurance companies shall apply to all such companies, partnerships, associations or individuals, whether incorporated or not. [C. '73, § 1147.]

Sec. 1752. **Fees.** There shall be paid to the commissioner of insurance for services required under the provisions of this chapter the following fees, which shall be accounted for by him in the same manner as other fees received in the discharge of the duties of his office:

1. For filing and examination of the first application of any company and accompanying articles of incorporation for organization in this state, and the issuing of the permission to do business, ten dollars;
2. For filing application of any foreign company for certificate to do business in this state, and the accompanying certified copy of charter or article of incorporation, twenty-five dollars;
3. For permission to foreign company to do business in this state, or certified copy thereof, two dollars;
4. For filing annual statement of a domestic company, and issuing the renewal of the permission required by law to authorize continuance in business, three dollars;
5. For filing annual statement of a foreign company, twenty dollars, and issuing renewal of permission, two dollars;
6. For each certificate of authority to agent of foreign company, two dollars;
7. For each certificate of authority to agent of domestic company, fifty cents;
8. For every copy of any paper filed, the sum of twenty cents per folio, and for affixing the official seal to such copy and certifying the same, one dollar;
9. For each certificate for publication of foreign companies, two dollars, and for each certificate for publication of Iowa companies, fifty cents. [C. '73, § 1153; 27 G. A., ch. 45, §§ 1, 2, 3.]

See 1818, as to state and county mutual. See 1759f.

Sec. 1753. **Expenses of examination.** The necessary expenses of any examination of any insurance company made or ordered to be made by the commissioner of insurance under this chapter shall be certified to by him, and paid on his requisition by the company so examined; and in case of failure of the company to make such payment the commissioner shall suspend such company from doing business in this state until such expenses are paid. If such expenses are not paid by the company, they shall be audited by the executive council and paid out of the state treasury. But in no case shall any foreign insurance company be examined except by order of the executive council. [16 G. A., ch. 37; C. '73, § 1156.]

. See 1700-31-55 Life 1777 Applicable 1821 a to g Fraternals 1839bc

Sec. **1754. Combinations.** It shall be unlawful for two or more fire insurance companies doing business in this state, or for the officers, agents or employes of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the fire insurance business within this state; and any such company, officer, agent or employe violating this provision shall be guilty of a misdemeanor, and on conviction thereof shall pay a penalty of not less than one hundred dollars nor more than five hundred dollars for each offense, to be recovered in the name of the state for the use of the permanent school fund. [26 G. A., ch. 22, § 1.]

See also sections 1758j and following.

The statutory prohibition of combinations between fire insurance companies in relation to the rates of commissions or the manner of transacting business is not in violation of the state constitution prohibiting the granting of special privileges and immunities, and requiring general laws to be uniform in operation. But so far as such provisions make it unlawful for two or more companies to enter into any agreement as to the amount of commissions to be allowed agents, they are invalid as depriving the companies of the liberty of contract, secured by the federal constitution. *Greenwich Ins. Co. v. Carroll*, 125 Fed., 121. (As to the second point this case is reversed. *Carroll v. Greenwich Ins. Co.*, 199 U. S., 401.)

Sec. **1755. Revocation of authority.** The commissioner of insurance is authorized to summon before him, for examination under oath, any officer, agent or employe of any such company suspected of violating any of the provisions of the preceding section, and, on complaint to him in writing by two or more residents of this state charging such company under oath upon their knowledge or belief with violating the provisions of the preceding section he shall summon any officer, agent or employe of said company before him for examination under oath; if upon such examination, and that of any other witness produced and examined, he shall determine that such company is guilty of a violation of any of the provisions of the preceding section, or if any such officer, agent or employe after being duly summoned shall fail to appear or submit to examination, the commissioner shall forthwith issue an order revoking the authority of such company to transact business within this state, and it shall not thereafter be permitted to do the business of fire insurance in this state at any time within one year therefrom. [Same, § 2.]

Certificate revoked. See 1715-24-25-47. Associations 1759c. Life 1796. App. 1821d. Frat. 1832-39-d. **Examination** 1700-31-53. Life 1777. Applicable 1821 a to g. Frat. 1939b, c.

Sec. **1756. Appeal.** Either party may appeal from the decision of the commissioner of insurance, made pursuant to the preceding section, to the district court of the county where the same was made, within twenty days from the time of the rendition of

such decision, by serving a written notice of such appeal on the opposite party and on the commissioner, and filing with the clerk of said court a good and sufficient bond for the payment of all costs on the appeal in case the decision shall be affirmed. On such appeal said court shall try the case *de novo,* as equitable causes are tried, and on such evidence as either party may produce, and may reverse, modify or affirm the decision of the commissioner. [Same, § 3.]

Sec. **1757. Evidence.** The statements and declarations made or testimony given by any such officer, agent or employe in the investigation before the commissioner of insurance, or upon the hearing and trial before the district court, as provided in the two preceding sections, shall not be used against the person making the same in any criminal prosecution against him. [Same, § 4.]

Sec. **1758. Insurance in unauthorized companies.** No action shall be maintained in any court in the state upon any policy or contract of fire insurance issued upon any property situated in the state by any company, association, partnership, individual or individuals that have not been authorized by the commissioner of insurance to transact such insurance business, unless it shall be shown that the insurer or insured, within six months after the issuing of such policy or contract of insurance, has paid into the state treasury two and one-half per cent of the gross premium paid or agreed to be paid for such policy or contract of insurance. [26 G. A., ch. 23.]

Sec. **1758-a. Additional riders and clauses permitted.** It shall be unlawful for any insurance company to issue any policy of fire insurance upon any property in this state except upon automobiles and marine risks other or different from the standard form of fire insurance policy herein set forth, except,

I. It may print in its policy its name, location, date of incorporation, amount of its paid-up capital stock, (if a stock company), names of its officers and agents, the number and date of the policy, the amount (under dollar mark) for which it is issued, and if issued through an agent, the words: "This policy shall not be valid until countersigned by the duly authorized agent of this company at....."

II. It may use in or upon its policy forms or slips of the description, location and specifications of the property insured, together with permits upon such conditions not in conflict with the provisions of law, as may be agreed upon, for the use or storage of electricity, gasoline, explosives, or other extra hazardous products or materials; for repairs or improvements; for the operation or ceasing to operate; and for the vacancy of the premises; and

permits for hazards other than those specifically mentioned above; also a mortgagee's or loss payable clause, and other permits or riders, not in conflict with law.

III. It may also by written or printed clause upon such conditions not in conflict with the provisions of law as may be agreed upon, provide that a policy shall cover any loss or damage caused by lightning, tornadoes, cyclones, hail or windstorms not exceeding the sum insured or the interest of the insured in the property; provided, if there shall be other valid insurance on such property whereby the same is insured against loss by lightning, tornadoes, cyclones, hail or windstorms, said company shall be liable only pro rata with such other valid and collectible insurance for any such loss by lightning, tornadoes, cyclones, hail or windstorms.

IV. Any company incorporated in this state, or authorized to do business herein, shall print in its policy or attach thereto any provisions which such company are required by law to insert in its policies or attach thereto, not included in the provisions of this policy, but such provisions shall be printed apart from the other conditions and agreements of this policy and under a separate title as follows: "Provisions required by law to be stated in the policy of insurance."

V. It shall print upon its policy issued in compliance with the preceding provisions of this act, the words: "Iowa Standard Fire Insurance Policy." [33 G. A., ch. 112, § 1; 32 G. A., ch. 76, § 1.]

See 1712-27-28-30-45-59-c, concerning policies other than life.

A rider to a blanket policy on several buildings incorporating therein an average clause is not prohibited by this section. *Dahms v. German F. Ins. Co.*, 153-168.

Sec. 1758-b. **Standard fire insurance policy—form.** The policy shall be plainly printed, and no part thereof shall be in type smaller than brevier; the conditions thereof shall be printed in uniform numbered lines, as adopted and approved by the commissioner of insurance, and such policy shall be in terms and conditions as follows:

I. In consideration of the stipulations herein named and of..... dollars, does insure.....for the term of..... from the.....day of.....19... at noon (standard time), to the.....day of.....19... at noon (standard time), against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding.....dollars, to the following described property, while located and contained as described herein, and not elsewhere, to-wit:

.....

.....

It is hereby agreed that the insured may obtain $..... additional insurance in companies authorized to do business in the state of Iowa.

II. This company shall not be liable beyond the actual cash value of the property covered by this policy at the time any loss or damage occurs, and said liability shall in no event exceed what it would cost the insured to repair or replace the property lost or damaged with material of like kind and quality. The sum for which this company is liable pursuant to this policy, shall be payable forty days after due notice and proofs of loss have been received by this company in accordance with law.

III. This policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof.

IV. Unless otherwise provided by agreement of this company this policy shall be void:

(a) If the insured now has or shall hereafter procure any other contract of insurance valid or invalid on the property covered in whole or in part by this policy; or

(b) If the subject of insurance be a manufacturing establishment, and it cease to be operated for more than ten consecutive days; or

(c) If the building herein described, whether intended for occupancy by the owner or tenant be or become vacant or unoccupied and so remain for ten consecutive days; or

(d) If the interest of the insured be other than unconditional and sole ownership; or

(e) If the subject of insurance be a building on ground not owned by the insured; or

(f) If any change other than by death of the insured, whether by legal proceedings, judgment, voluntary act of the insured or otherwise, take place in the interest, title, possession or use of the subject of insurance, if such change in the possession or use makes the risk more hazardous; or

(g) If the subject of insurance or a part thereof (as to the part so encumbered) be or become encumbered by lien, mortgage or otherwise created by voluntary act of the insured or within his control; or

(h) If the property insured or any part thereof (as to the part so removed) be removed to any other building or location than that specified in the policy; or

(i) If this policy be assigned before loss.

V. Unless otherwise provided by agreement of this company, this policy shall be void:

(a) If the subject of insurance be a manufacturing establishment, and it be operated in whole or in part at night later than 10 o'clock; or

(b) If the hazard be increased by any means within the knowledge of the insured; or

(c) If mechanics be employed in building, altering or repairing the within described premises for more than fifteen days at any one time; or

(d) If illuminating gas or vapor be generated in any building covered hereby, or on any premises adjacent thereto for use upon the insured premises; or

(e) If there be kept, used, or allowed on the within described premises benzine, benzole, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naptha, nitroglycerine, or other explosives, phosphorus, calcium carbide, petroleum or any of its products of greater inflammability than kerosene of lawful standard, which last named article may be used for lights and kept for sale according to law, in quantities not exceeding five barrels; or

(f) If the insured permits the property which is the subject of insurance, or any part thereof, to be used for any unlawful purpose.

Provided that nothing contained in paragraph five herein shall operate to avoid this policy in any case, if the insured shall establish that the failure to observe and comply with such provisions and conditions did not contribute to the loss.

VI. This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war, or military or usurped power, or by theft, or by neglect of the insured to use all reasonable means to save and preserve the property during and after a fire, or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for damage by fire only) by explosion of any kind or by lightning; but liability for direct damage by lightning may be assumed by specific agreement.

VII. This company shall not be liable for loss or damage to any property covered by this policy if the insured shall fail to pay any written obligation given to the company for the premium or any assessment or installment of premium when due; provided the company shall have given the assured notice as required by law. Upon payment and acceptance by the company of the delinquent premium assessment or installment of premium before loss occurs, or after loss, if the company shall have had notice thereof and accepts such payment, this policy shall be revived and in full force according to its terms.

VIII. If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building, or its contents, shall immediately cease.

IX. This company shall not be liable for loss to accounts, bills, currency, deeds, evidence of debt, money, notes or securities; nor, unless liability is specifically assumed thereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, plate glass, frescoes or decorations; or property held in storage or for repairs; nor, beyond the actual value destroyed by fire for loss occasioned by ordinance or law regulating construction or repairs of buildings, or by interruption of business, manufacturing processes or otherwise.

X. Any application, survey, plan, or description of property signed by the insured and referred to in this policy shall, when a copy is attached hereto, be a part of this contract, and shall be held to be a representation and not a warranty.

XI. This policy shall be cancelled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation either by registered letter directed to the insured at his last known address, or by personal written notice. If this policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rates; except that when this policy is cancelled by this company by giving notice it shall retain only the pro rata premium.

XII. If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein the provisions and conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest, as shall be agreed upon by the company.

XIII. If property covered by this insurance is so endangered by fire as to require removal to a place of safety and is so removed, that part of this policy in excess of its proportion of any loss and value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one new location bears to the value in all such new location; but this company shall not in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total valid

and collectible insurance on the whole property at the time of fire, whether the same cover in new location or not.

XIV. If loss occur the insured shall as soon as practicable after he ascertains the fact of such loss, give notice in writing thereof to the company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, and put it in the best possible order, and shall, within sixty days from date of loss, furnish this company with notice thereof in writing accompanied by affidavit stating the facts as to how the loss occurred and the extent thereof, so far as such facts are within his knowledge.

XV. The insured as often as reasonably required, shall exhibit to any person designated by this company, all that remains of any property herein described as to which a claim for loss or damage is made, and submit to examination under oath by any person named by this company, and subscribe the same, and, as often as reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof, if originals be lost, at such reasonable place as may be designated by this company or its representatives, and shall permit extracts and copies thereof to be made; provided, however, that this company shall not be held to have waived any of the provisions or conditions of this policy or any forfeiture thereof by any examination or investigation herein provided for.

XVI. This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole amount of valid and collectible insurance covering such property.

XVII. No suit or action on this policy, for the recovery of any claim thereon, shall be sustainable in any court of law or equity, unless commenced within twelve months next after the right of action for the loss accrues.

XVIII. Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

XIX. This policy is issued and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements or conditions now or hereafter specifically authorized by law as may be endorsed hereon or added hereto.

In witness whereof, this company has executed and attested these presents.

.....President.

.....Secretary.

Countersigned at..... this .....day of.....19..

.....Agent.

[34 G. A., ch. 18, §§ 9, 10; 32 G. A., ch. 76, § 2.]

See also 1728-41-43-45. Assessment Associations 1759m.

The notice requisite to the cancellation of a policy by the insurance company may be waived by the insured. *Warren v. Franklin Fire Ins. Co.*, 161-440.

Sec. **1758-c. Violations—penalty.** Any insurance company, its officers or agents, or either of them, violating any of the provisions of this act, by issuing, delivering or offering to issue or deliver any policy of fire insurance on property in this state other or different from the standard form, herein provided for, shall be guilty of a misdemeanor, and upon complaint made by the commissioner of insurance, or by any citizen of this state, shall, upon conviction thereof, be punished by a fine of not less than fifty

dollars nor more than one hundred dollars for the first offense, and not less than one hundred nor more than two hundred dollars for each subsequent offense, and such company shall, until the payment of such fine, be disqualified from doing any insurance business in this state; but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the same. [32 G. A., ch. 76, § 3.]

Sec. **1758-d. Existing statutes—waiver in interest of insured.** Nothing contained in this act nor any provisions or conditions in the standard form of policy provided for herein, shall be deemed to repeal or in any way modify any existing statutes nor to prevent any insurance company issuing such policy, from waiving any of the provisions or conditions contained therein, if the waiver of such provisions or conditions shall be in the interest of the insured. [32 G. A., ch. 76, § 4.]

Sec. **1758-e. Policy must appear in name of issuing company only.** That every fire insurance company and association authorized to transact business in this state shall conduct its business in the name under which it is incorporated, and the policies issued by it shall be headed or entitled only by such name. There shall not appear on the face of the policy or on its filing back, anything that would indicate that it is the obligation of any other than the company responsible for the payment of losses under the policy, though it will be permissible to stamp or print on the bottom of the filing back, the name or names of the department or general agency issuing the same. [36 G. A., H. F. 516, § 1.]

Sec. **1758-f. Misleading statements prohibited.** No insurance company or department of general agency of an insurance company, doing business in this state, or its officers or agents, shall issue any false or misleading advertisement through newspapers or other periodicals, or any false or misleading representations by signs, cards, letter-heads, etc., tending to conceal or misrepresent the true identity of the insurer or insurance company, which is carrying the liability under any policy issued in this state.

Nor shall any insurance company or department or general agency of an insurance company, doing business in this state issue any advertisement or representation of any character, giving the appearance of a separate or independent insuring organization on the part of any department or general agency, and the type or lettering used in any advertisement or representation shall set forth the name of the company or organization assuming the risk more conspicuously than that of any department or general agency. [36 G. A., H. F. 516, § 2.]

Sec. **1758-g. Penalty.** Any violation of this act shall be punished by a fine of not exceeding five hundred dollars. [36 G. A., H. F. 516, § 3.]

Sec. 1758-h. **Agent may advertise individual business without mentioning company represented.** Nothing herein contained shall be construed to prevent any representative of an insurance company from advertising his own individual business without specific mention of the name of the company or companies which he may represent. [36 G. A., H. F. 516, § 4.]

Sec. 1758-i. **Insurer defined—mutuals affected.** From and after the taking effect of this act, its provisions shall apply to all companies, associations, or aggregations of individuals hereinafter known as "insurer," transacting the business of insurance against the hazards of fire, lightning, windstorm, or hail, within the state of Iowa; except that section two of this act shall not apply to such mutual assessment associations as insure against either hail or tornado exclusively and such other associations as confine their fire risks to churches, schoolhouses, town dwelling and farm buildings and personal property. Such mutual associations shall in all other respects comply with and be within the provisions of this act, and shall file with the commissioner of insurance a statement in writing showing their plan of operation, and method of determining premium rates. The provisions hereof shall be in addition to any laws now in force relating to or regulating such business. [36 G. A., H. F. 495, § 1.]

Sec. 1758-j. **Must use rates of a rating bureau—bureau defined.** Every insurance company or association or other insurer authorized to effect insurance against the hazard of loss or damage by fire, lightning, windstorm or hail in this state shall be a member of a rating bureau, or adopt as its basis the rating of a bureau making insurance rates upon property in the state of Iowa. No insurer shall apply the rates of more than one rating bureau for the purpose of rating risks of like kind and hazard within the state of Iowa. A rating bureau may consist of any organization maintained for insurance rating purposes and not engaged in any way as an insurer, the services of which shall be available to any insurer desiring to adopt the rates of such bureau, without discrimination as to cost; or of one or more insurers, and when consisting of two or more insurers shall admit to membership any insurer applying therefor. The expense of a rating bureau consisting of insurers shall be shared in proportion to the gross premiums received by each member during the preceding year on fire risks located in this state, and to which said bureau's rates have been applied, and each member shall have one vote. Every rating bureau shall maintain an office within this state. Every insurance company, or other insurer aforesaid, shall on or before June first, 1915, and also in its application for its annual certificate of authority, specify the name and address of the rating bureau making rates upon property located in this state of which it is a member, or the rating bureau whose rates

it has adopted and during the year shall file a written notice of any such other rating bureaus of which it shall become a member, or whose rates it may hereafter adopt. [36 G. A., H. F. 495, § 2.]

Sec. 1758-k. **Commissioner of insurance may make inquiry concerning rates.** The commissioner of insurance may address inquiries to any individual association or bureau, or any insurer or insurers, which is or has been engaged in making rates or estimates for insurance upon property in this state, in relation to its organization, maintenance, or operation, or any other matter connected with its transactions, and may require the filing of schedules, rates, forms, rules, regulations and other information, and it shall be the duty of every such individual, association, bureau or insurer, or some officer thereof, to promptly make such filing, and reply to such inquiries in writing. [36 G. A., H. F. 495, § 3.]

Sec. 1758-l. **Commissioner of insurance may examine rating bureaus.** The commissioner of insurance shall have power to examine any such rating bureau as often as he shall deem it expedient to do so, and shall do so not less than once every three years. A report thereof shall be filed in his office. The commissioner of insurance may waive such examination upon the filing with him of the report of such examination made by some other insurance department or proper supervising officer, within such three years. A statement with regard to such examination shall be made in the manner required by the commissioner of insurance. [36 G. A., H. F. 495, § 4.]

Sec. 1758-m. **Discrimination forbidden.** No insurance company or association or other insurer insuring against any of the hazards mentioned in this act, and no rating bureau shall fix or charge any rate for such insurance upon property in this state which discriminates unfairly between risks of essentially the same hazards and having substantially the same degree of protection against the hazards covered by the insurance. Every such company or association or other insurer shall, at least fifteen days in advance of any variation by it from the rates then in use, file with the insurance department and the bureau of which it is a member a schedule showing the variation, and all such variations shall be uniform in their application to all of the risks in the class for which such variation is made. [36 G. A., H. F. 495, § 5.]

Sec. 1758-n. **Ratings must be based upon inspections—record.** Every rating bureau engaged in making rates or estimates for rates for insurance on property in this state shall inspect every risk specifically rated by it upon a schedule and shall make a written survey of such risk, and shall also specify all flat or classification rates for farm or town dwelling property, or other

property not specifically rated, all of which shall be filed as a permanent record in the office of such bureau. A copy of such survey shall be furnished to the owner upon request. [36 G. A. H. F. 495, § 6.]

Sec. **1758-o. Commissioner of insurance may review rates.** The commissioner of insurance shall have power upon written complaint, or on his own motion, to review any rate fixed by any bureau, or insurer, for insurance upon property within this state for the purpose of determining whether the same is discriminatory or unjust. He shall have power to order the discrimination removed or to fix and order substituted a rate which is not discriminatory or unjust. A review of such rate before the commissioner of insurance shall be had only after due notice and hearing, and his findings or order shall in all cases be subject to summary court review by a court of competent jurisdiction in this state. During such court review, the operation of the commissioner's order shall be suspended; but in the event of final determination against any insurer, any overcharges during the pendency of such proceedings shall be refunded to the persons entitled thereto. [36 G. A., H. F. 495, § 7.]

Sec. **1758-p. Rebating or discrimination forbidden.** No insurer, however constituted, doing the business of insurance, mentioned in this act, within this state, and no officer, agent, or employe thereof shall, as an inducement to securing such business, or after the obligation has been issued, whether with or without the knowledge of such insurer, pay, allow, or give, or offer to pay, allow or give, directly or indirectly, any rebate, discount, or reduction of the premium paid or payable under such policy, nor in addition to the terms, credits and allowances therein contained, promise or give anything of value, whether part of a compensation for securing said business, or by making contracts of sale or purchase, or in any other manner whatsoever, or confer any special favor, benefit, valuable consideration, or inducement whatever not given on all its policies of like class. [36 G. A., H. F. 495, § 8.]

Sec. **1758-q. Penalty—non-compliance by company.** Any insurer, if a company, association, or aggregation of individuals, found guilty of violating any of the provisions of this act, shall be subject to a penalty of not less than one hundred dollars, nor more than one thousand dollars to be sued for and recovered by the commissioner of insurance for the use of the state of Iowa, in any court of competent jurisdiction in any county in the state. [36 G. A., H. F. 495, § 9.]

Sec. **1758-r. Penalty—non-compliance by agent.** Every agent, solicitor, or other representative of any such insurer, found guilty of violation of this act, shall be deemed guilty of a misdemeanor

and upon conviction thereof shall be punished by a fine of not less than twenty dollars, nor more than two hundred dollars, and ordered committed to the county jail until such fine and costs are paid; such commitment, however, not to exceed thirty days; and the commissioner of insurance may thereupon suspend the license of such agent. It shall be unlawful for any insurer to pay, either directly or indirectly, the fine assessed against any of its agents, solicitors or other representatives, under this act. [36 G. A., H. F. 495, § 10.]

Sec. **1758-s. Enforcement by county attorney.** It shall be the duty of the several county attorneys throughout the state to enforce the provisions of this act, and to prosecute those guilty of its violation. [36 G. A., H. F. 495, § 11.]

CHAPTER 5, TITLE IX, CODE.

MUTUAL FIRE, TORNADO AND HAILSTORM ASSESSMENT INSURANCE ASSOCIATIONS.

Section **1759-a. Organization purposes.** Any number of persons may, without regard to the provisions of the preceding chapter, enter into contracts with each other for the insurance from loss or damage by fire, tornadoes, lightning, hailstorms, cyclones or windstorms and to insure plate glass against breakage from accident, but such associations of persons shall in no case insure any property not owned by one of their own number, except such school and church property as may be situated within the territory in which they do business and the reinsurance of the risks of similar associations. Associations organizing for the purpose of transacting business under the provisions of this chapter shall incorporate under the provisions of chapter one (1) of title nine (9) of the code.

Risks or hazards above mentioned shall be classified as follows:

(1) Fire and lightning.
(2) Tornadoes, cyclones and windstorms.
(3) Hailstorms.
(4) Plate glass.

[32 G. A., ch. 80, § 1; 29 G. A., ch. 74, § 1; 22 G. A., ch. 93; 20 G. A., ch. 11; 17 G. A., ch. 104; 16 G. A., ch. 103; C. '73, § 1160.]

A mutual fire insurance company cannot issue a policy to one not a member nor for a stated and definite amount of insurance nor for a stipulated premium. One who insures his property in a mutual company in a stated amount for a specific premium does not become a member. *In re Assignment Mutual Guaranty F. Ins. Co.*, 107-143.

One who has accepted such a policy which by the statute the company is not allowed to issue cannot recover therein. *Ibid.*

Members of the company are not individually liable under such a policy. *Ibid.*

An association organized under the provision of § 1160 of the Code of '73 could not collect money from a member by way of premium. *Bradford v. Mutual F. Ins. Co.*, 112-495.

An association collecting premiums from its members, instead of assessments, was not under that section exempt from the operation of chap. 211, acts of 18 G. A., relating to time of bringing action. *Ibid.*

The creation of a guaranty fund held not to deprive the corporation of the character of a mutual company. *Smith v. Sherman*, 113-601.

The requirements of Code, § 1741, as to setting out copy of application in connection with the policy are applicable to mutual companies. *Corson v. Iowa Mut. Fire Ins. Assn.*, 115-485.

Although in general a money judgment cannot be rendered against an assessment company, yet if the company has issued a policy in which it agrees to pay a fixed sum in case of loss, such action may be maintained. *Byrnes v. American Mut. F. Ins. Co.*, 114-738.

Under § 1160 of Code of '73, mutual companies were contemplated which should not be subject to other provisions of the general chapter on insurance. *Corey v. Sherman*, 96-114.

Where the articles of incorporation showed that the company was organized to do a mutual insurance business and insure only the property of its members, held, that the articles contained no authority to insure the property of any one not a member, and that the issuance of policies of insurance on the stock plan was invalid. *Ibid.*

Even though the relation between such mutual association and a member thereof is a personal one, not passing to the legal representative, yet the association may ratify and confirm it in the hands of the personal representative of the deceased member, and will be held to do so if it makes assessments of such personal representative as a member. *Harl v. Pottawattamie County Mut. F. Ins. Co.*, 74-39.

Companies organized to do business on the mutual plan cannot issue policies of insurance on the stock plan (§ 1690), and the members of a mutual company are therefore not liable for the payment of losses under such policies. *Corey v. Sherman*, 96-114.

Where it is not required by the articles and by-laws, notice of assessment need not be given before the assessment is made. *Ibid.*

The members of a mutual insurance company are presumed to have knowledge of its articles of incorporation and by-laws, and general misstatements as to the solvency of the company and its method of doing business will not constitute such fraud as to relieve the members from their obligation to pay assessments on their deposit notes. *Ibid.*

Members of the company are not individually liable under such a policy. *In re Assignment Mutual Guaranty F. Ins Co.*, 107-143.

An association organized under the provision of § 1160 of the code of '73 could not collect money from a member by way of premium. *Bradford v. Mutual F. Ins. Co.*, 112-495.

An action is premature and abatable when brought within forty days after service of the notice of loss and proof thereof under a mutual policy of insurance issued under this chapter, even though the company during said forty days denies all liability under the policy. *Salmon v. Farm Property Mut. Ins. Assn.*, 168 Iowa—

Sec. 1759-b. **County and state associations.** Any association incorporated under the laws of this state for the purpose of furnishing insurance as provided for in this chapter, doing business only within the county in which is situated the town or city named in its articles of incorporation as its principal place of business,

or the counties contiguous thereto, shall, for the purposes of this chapter, be deemed a county mutual assessment association; all other associations operating hereunder shall, for the purposes of this chapter, be deemed state mutual assessment associations and the two words "mutual" and "association" shall be incorporated into and become a part of their name. [34 G. A., ch. 18, § 11; 32 G. A., ch. 80, § 2.]

The distinction between state mutual and county mutual associations or companies may be the basis of distinction in the matter of taxation. *Iowa Mut. Tornado Assn. v. Gilbertson*, 129-658.

The fact that mutual insurance associations are authorized to make assessments to meet expenses indicates that they are associations for pecuniary profit under the incorporation laws. *Iowa Mut. Tornado Assn. v. Gilbertson*, 129-658.

Where an insurance company was notified of a loss to a corn crop by a hailstorm, and, in response, sent an adjuster, who took the insured's proposition of settlement, and promised to report the company's action thereon, and on renewed demands is promised to send its adjuster again for further inspection, but failed to do so, and did not notify the insured of the acceptance or rejection of his proposition, and did not demand proof of the loss before the claim matured, it waived its right to demand such proof. *Condon v. Des Moines Mut. Hail Ins. Assn.*, 120-80.

In an action on a mutual hail policy which provides full loss indemnity from a general fund to be provided by assessment of members, except in case the total losses exceed such amount so collected, then losses to be paid *pro rata*, the burden of proof is on the company to show insufficient funds to pay losses in full, and in the absence of such showing a judgment for full amount of loss will stand. *Delle v. State Mut. Hail*, 119-173.

The articles of incorporation and by-laws in mutual associations become a part of the contract with each member. *Farmers' Mut. Hail Ins. Assn. v. Slattery*, 115 Iowa, 410.

Where the by-laws of a mutual hail insurance association at the time of issuance of insured's policy made no provision for the suspension of policies for the failure to meet assessments, insured was not bound by subsequent amendment thereof providing for such suspension though he agreed to be governed by the articles of incorporation and by-laws. *Ibid.*

The statute does not prohibit the removal of property insured in a farmers' mutual association to another county than that in which it was insured and in which the company had a right to do business, and if it appears that the property destroyed was within the limits of the territory within which the company was authorized to carry risks at the time it was insured, its removal beyond such limits by the consent of the company will not terminate the risk. *Kesler v. Farmers' Mut. F. & L. Ins. Assn.*, 160-374.

Sec. 1759-c. **Conditions of authorization.** No state mutual assessment association shall issue any policies until at least one hundred twenty-five applications have been received in any class as shown by section one hereof, representing the following amount of insurance: Classes 1, 2 and 3, two hundred fifty thousand dollars; Class 4, one hundred thousand dollars, and no county mutual assessment association shall issue any policies until applications for insurance to the amount of fifty thousand dollars, representing at least fifty applicants, have been received. Neither shall any association issue any policies of insurance until its

articles of incorporation and form of policy shall have been submitted to, and approved by, the commissioner of insurance, nor until he has satisfied himself that the association has, in good faith, applications representing the number of applicants and the amount of insurance above required and has issued to the association a certificate authorizing it to transact an insurance business. [32 G. A., ch. 80, § 3.]

Sec. 1759-d. **Annual report.** Each association doing business under the provisions of this chapter shall, annually, in the month of January, report to the commissioner of insurance, upon blanks furnished by him, the following facts:

1st. The name, place of doing business, date of commencement and objects of the association.
2d. Names and postoffice addresses of president, secretary and treasurer;
3d. Amount of risks in force at beginning of year;
4th. Amount of risks written during the year;
5th. Amount of risks expired and cancelled during the year;
6th. Amount of risks in force at the end of the year;
7th. The amount of receipts from assessments during the year;
8th. The receipts from other sources;
9th. Amount paid for losses during the year;
10th. Amount paid to agents for services during the year;
11th. Amount paid to officers during the year, specifying amount paid each;
12th. Amount paid to employes during the year;
13th. Amount of other expenses;
14th. Amount of losses adjusted and due;
15th. Amount of losses adjusted and not due;
16th. Amount and number of claims reported but not adjusted;
17th. Number and amount of claims resisted and in litigation;
18th. Cost per thousand during the year;
19th. Average cost per thousand during the past five years. Provided, that state mutual assessment insurance associations shall, in addition to the foregoing, report the following facts:
20th. The value of real estate owned by the association;
21st. The amount of cash on hand and deposited in the bank to the credit of the association, and in what bank deposited;
22d. The amount of cash in hands of agents and in course of transmission;
23d. The amount of loans secured by first mortgage on real estate, with the rate of interest thereon;
24th. The amount of all other loans and bonds, and how secured with the rate of interest thereon;
25th. The amount of interest on investments actually due and unpaid;
26th. The amount of all other securities and their value;
27th. The amount which the association is required by law to hold as a reinsurance reserve;
28th. The amount due officers and employes;
29th. The amount due agents.
30th. The amount due banks or other creditors and the security given therefor;
31st. All other claims against the association;
32d. The largest amount insured in any one risk;
33d. The amount reinsured and names of companies and associations carrying such reinsurance, and such other information as the commis-

sioner of insurance may deem necessary for the purpose of ascertaining the true condition of the association. The report herein contemplated shall be made as of December 31st of each year, and verified by the oath of the president and vice-president and secretary of the association. [32 G. A., ch. 80, § 4; 17 G. A., ch. 104, C. '73, § 1160.]

See 1714-16. Life 1773-90-95. Applicable 1799. Fraternals 1830-36.

Sec. **1759-e. Publication of report.** The report referred to in the preceding section shall be tabulated by the commissioner of insurance and published by him in the annual report on insurance, one copy of which shall be sent to each association. The county associations, the state associations and those doing an exclusive tornado and an exclusive hailstorm insurance business shall be separately classified. [32 G. A., ch. 80, § 5; 17 G. A., ch. 104.]

Sec. **1759-f. Fees—certificates.** Such associations shall pay the same fees for annual reports and annual certificates of authority as are required to be paid by domestic companies organized and doing business under the preceding chapter, which certificates shall expire March 1st of the year following the date of its issue. [34 G. A., ch. 18, § 12; 32 G. A., ch. 80, § 6; 17 G. A., ch. 104; C. '73, § 1160.]

See Sec. 1752, Sub-secs. 4 and 7.

Sec. **1759-g. Inquiries by commissioner of insurance.** The commissioner of insurance may address inquiries to any association in relation to its doings and condition and any association so addressed shall promptly reply thereto in writing. [32 G. A., ch. 80, § 7.]

See also 1718, other than Life.

Sec. **1759-h. Fees and assessments.** Such associations may collect a policy and survey fees and such assessments, provided for in their articles of incorporation and by-laws, as are required to pay losses and necessary expenses incurred in the conduct of their business. State mutual fire insurance associations shall provide for and maintain a reinsurance reserve as hereinafter designated. No state mutual association shall collect assessments for more than one year in advance where such assessments exceed three mills on each dollar of insurance in force. [32 G. A., ch. 80, § 8; 17 G. A., ch. 104; C. '73, § 1160.]

See 1707-27. Life 1784-88. Fraternals 1823.

Sec. **1759-i. Reinsurance reserve—exceptions.** From and after the taking effect of this act, all state mutual fire insurance associations operating under the provisions of this chapter, except such associations as confine their business exclusively to farm and dwelling property, churches and schoolhouses, shall, annually, set aside and maintain as a reinsurance reserve an amount equal to ten per cent of the receipts from assessments

during the year until the total amount thus accumulated shall equal forty per cent, but not to exceed fifty per cent of the amount of one annual assessment at the basis rate charged for such insurance on all policies in force. The reserve thus accumulated may be used for the payment of losses and expenses and when so used shall be restored and maintained by the collection of assessments as hereinafter provided. [32 G. A., ch. 80, § 9.]

Sec. **1759-j. Maximum liability of members.** Every association contemplated by the preceding section shall provide in its by-laws and specify in its policies the maximum liability of its members to the association. Such liability shall not be less than a sum equal to the basis rate charged by the association for insurance nor greater than a sum equal [to] three times such basis rate. The maximum liability of the member shall be plainly and legibly stated in each policy. Whenever reductions shall be made in the liability of members such reduction shall apply proportionately to all policies in force. [32 G. A., ch. 80, § 10.]

Sec. **1759-k. Assessments when assets are insufficient.** Whenever the assets of any association required to maintain a reinsurance reserve are insufficient for the payment of losses and expenses, it shall make an assessment for the required amount ratably upon its members liable therefor, and whenever by reason of depreciation, loss or otherwise, the net assets of any association required to maintain a reinsurance reserve, after providing for other debts, are less than the required reserve, the deficiency shall be restored by assessment as above provided. [32 G. A., ch. 80, § 11.]

Sec. **1759-l. Assessments when association is insolvent.** Whenever the board of directors or the commissioner of insurance shall ascertain that any association is insolvent, such board, or upon its failure so to do, the commissioner of insurance may direct an assessment ratably upon all members liable therefor in such amount as may be necessary as follows:

1st. It shall be determined what amount each policyholder should pay or receive in case he desires to withdraw from the association.

2d. What further sum each policyholder should pay to reinsure his policy with some other solvent association.

The board of directors shall forthwith cause written notice and demand of payment to be served personally or by mail upon each policyholder liable therefor. The notice of assessment shall show separately the amount required to be paid in case of withdrawal and the amount required to be paid where withdrawal or cancellation is not desired. The amount due under the as-

sessment shall be payable at the home office of the association within thirty days after date of the notice, but the insured may elect whether to pay the amount called for in case of withdrawal is desired or the amount called for where it is desired that the insurance shall be continued and his policy shall be canceled or continued according to such payment. In case of state mutual assessment associations if, within sixty days after the assessment is made, it shall appear that the amount of insurance remaining in force is less than the amounts required by section three hereof the reinsurance reserve of such policies as are in force shall be used to reinsure such policies in some solvent association or at the option of the policyholder contributing the same shall be returned to him and the association shall continue only for the purpose of adjusting its affairs and closing up its business. [32 G. A., ch. 80, § 12.]

Sec. **1759-m. Cancellation of policies.** Any policy of insurance issued by any association operating under the provisions of this chapter may be canceled by the association giving five days' written notice thereof to the insured, or if the insured shall demand in writing or in person, of the association, the cancellation of his policy, the association shall immediately advise him, by letter to address named, the amount, if any, due, as his pro rata share of losses and expenses incurred since date of his policy. Upon surrender of his policy and payment of all sums due, his membership shall cease, provided, that during the months of June, July and August, hail insurance policies may be canceled only at the option of the officers of the association carrying the risk. Upon the expiration or cancellation of any policy of insurance issued under the provisions of this act, all obligations to the association having been paid, the members shall be entitled to and shall be paid by the association a sum equal to at least seventy-five per cent of the unexpended portion of the amount contributed by him to the reinsurance reserve. [32 G. A., ch. 80, § 13.]

See also 1758b, XI., and 1728.

The cancellation of the policy can only be effected by giving the five days' written notice of cancellation. The provision of the by-law providing that the association is not liable when assessments are more than sixty days overdue does no effect a cancellation. *Salmon v. Farm Property Mut. Ins. Assn.*, 168 Iowa—

Sec. **1759-n. State associations—bonds of officers.** Any state mutual assessment association contemplated by this chapter, before being authorized to do business in this state, shall require its secretary and treasurer to give bond to the association in such sum as the directors shall deem sufficient, not less, however, than ten thousand dollars for each office, which bond after being approved by the president of the association and by the commissioner of insurance, shall be deposited with the commissioner of insurance as security for the faithful performance of the duties

of the secretary and treasurer in handling the funds of the association. Should the commissioner of insurance consider the surety on said bonds, or the amount thereof, insufficient he may require additonal security, or an increase in the amount of the bond. If such additional security or increase be not furnished within thirty days after notice thereof, the commissioner of insurance may revoke the certificate of authority of the association. [32 G. A., ch. 80, § 14.]

Sec. **1759-o. Annual meetings.** The annual meetings of the members of associations transacting business under the provisions of this chapter shall be held at the home office of the association, except as hereinafter provided. Such associations as confine their membership to persons of one occupation, which persons maintain a state organization and hold annual meetings thereof, may for the purpose of electing directors and changing or amending their articles of incorporation and by-laws, hold their annual meetings at the same time and place as the annual meeting of the members of the occupation to which the association confines its membership, provided, that until such time as the articles of incorporation of the association provide for the holding of meetings as above contemplated other than at the home office of the association, twenty days' notice of the time and place of the holding of said meetings shall be given to all members of the association. [32 G. A., ch. 80, § 15.]

Secs. 1759 to 1767 both inclusive, repealed, 32 G. A., ch 80, § 16 above, substituted.

The fact that mutual insurance associations are authorized to make assessments to meet expenses indicates that they are associations for pecuniary profit under the incorporation laws. *Iowa Mut. Tornado Ins. Assn. v. Gilbertson*, 129-658.

CHAPTER 6, TITLE IX, CODE.

LIFE INSURANCE COMPANIES.

Section **1768. On level premium plan.** Every life insurance company upon the level premium or the natural premium plan, created under the laws of this or any other state or country, shall, before issuing policies in the state, comply with the provisions of this chapter applicable to such companies.

Before any such company shall be permitted to incorporate under the laws of this state, it shall present its articles of incorporation to the commissioner of insurance and the attorney general and have the same by them approved. Such articles shall show the name, location of principal place of business, object, amount of capital, if a stock company, and shall contain such other provisions as may be necessary to a full understanding

of the nature of the business to be transacted and the plan upon which the same is to be conducted. All amendments to such articles and amendments hereafter made to the articles of incorporation of companies already organized under the laws of this state shall be approved in like manner. [32 G. A., ch. 81; C. '73, § 1161.]

Articles Approved 1785. Fraternals 1832, other than Life 1685, 1759c.

It is not unlawful for an insurance company to discriminate between policy holders and those who are not policy holders in the loaning of money, nor for it to agree that one who takes insurance shall have a loan thereon. *Key v. National Life Ins. Co.*, 107-446.

A policy of life insurance issued to a resident of Iowa, but providing that the premiums were to be paid at the insurer's office in New York, where payment of the insurance was also to be made, and signed at the insurer's home office in New York City is a New York contract, governed by the laws of that state, though to take effect on delivery to the assured, in the absence of proof of the place of actual delivery. *Summit v. U. S. Life Ins. Co.*, 123-681.

The provisions of this section as to "any contract of insurance to agreement other than as plainly expressed in the policy issued" is to be limited in its application by the title of the act in which it was first enacted, and by the general provisions of the section, and is therefore applicable only to cases of discrimination. *Kelley v. Mutual L. Ins. Co.*, 109 Fed., 56.

The provision as to contracts "plainly expressed in the policy issued" includes in the term "policy" the provision of the application endorsed thereon, in accordance with Code § 1819. *Mutual L. Ins. Co. v. Kelly*, 114 Fed., 268.

The amendment of this section made by 27 G. A., chap. 46, held not applicable where the policy had been issued and the death had occurred prior to the taking effect of the amendment. *Beverly v. Northern L. Assn.*, 112-730.

Sec. 1769. **Stock companies—capital.** Stock companies organized under the laws of this state shall have not less than one hundred thousand dollars of capital subscribed, twenty-five per cent of which shall be paid up and invested in bonds of the United States of this state, or in bonds and mortgages upon unincumbered real estate in the state, worth, exclusive of improvements, at least double the sum loaned thereon, which securities shall be deposited with the commissioner of insurance, and upon such deposit, and evidence by affidavit or otherwise satisfactory to the commissioner that the capital is all subscribed in good faith, and that the company is the actual and unqualified owner of the securities representing the paid up capital, he shall issue to such company the certificate hereinafter provided for, but no part of the twenty-five per cent aforesaid shall be loaned to any stockholder or officer of the company. The remainder of such capital shall be paid within such time as the directors or trustees of the company may order, and until paid it shall be secured by the notes of the stockholders of the company. [C. '73, § 1162.]

Articles approved, 1785. Fraternals 1832, other than Life, 1685, 1759c.

Sec. **1770. Mutual companies—conditions.** Level premium and natural premium life insurance companies organized under the laws of this state upon the mutual plan shall, before issuing any policies, have actual applications on at least two hundred and fifty lives for an average amount of one thousand dollars each, a list of which, giving the name, age, residence, amount of insurance, and annual premium of each applicant shall be filed with the commissioner of insurance, and a deposit made with him of an amount equal to three-fifths of the whole annual premium on said applications, in cash or the securities required by the foregoing section; and on compliance with the provisions of this section, the commissioner shall issue to such mutual company the certificate hereinafter prescribed. [C. '73, § 1163.]

Other than Life, applicable 1689-90-1721-33.

Sec. **1771. Stock or premium notes.** No note shall be accepted as part of the capital of a stock company, nor as a premium note for the purpose of organizing a mutual company, unless accompanied by a certificate of the clerk of the district court or other court of record, of the county in which the person executing it resides, to the effect that the person making it is in his opinion pecuniarily good and responsible therefor in property not exempt from execution. All notes heretofore or hereafter given as a part of the capital stock of a stock company, shall be deposited with the commissioner of insurance, and in the event any stockholder shall dispose of his or her stock in such company, he or she may withdraw the note or notes so given, upon depositing with the commissioner of insurance the note of the purchaser of such stock, accompanied by a certificate as provided for in this section. [29 G. A., ch. 75, § 1.]

Other than Life, applicable 1692-93-1704-8-17-26-27.

Sec. **1772. Foreign companies—capital or surplus—investments.** No company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of the actual amount of capital required of any company organized by the laws of this state, or, if it be a mutual company, of surplus equal in amount thereto, and the same is invested in bonds of the United States or of this state, or in interest paying bonds, when they are at or above par, of the state in which the company is located, or of some other state, or in notes or bonds secured by mortgages on unincumbered real estate within this or the state where such company is located, worth double the amount loaned thereon, which securities shall, at the time, be on deposit with the superintendent of insurance, auditor, controller or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the commissioner of this state is fur-

nished with a certificate of such officer, under his official seal, that he as such officer holds in trust and on deposit for the benefit of all the policyholders of such company the securities above mentioned. This certificate shall embrace the items of security so held, and show that such officer is satisfied that such securities are worth one hundred thousand dollars. Nothing herein contained shall invalidate the agency of any company incorporated in another state by reason of its having exchanged the bonds or securities so deposited with such officer for other bonds or securities authorized by this chapter, or by reason of its having drawn its interest and dividends on the same. [C. '73, § 1164.]

Foreign. Associations 1794. Fraternals 1829. Other than Life 1721-23-35. **Capital.** 1769-83e, f, g. Other than Life 1691, 1701-21-32-69.

Sec. **1773. Annual statement.** The president or vice-president and secretary or actuary or a majority of the directors of each company organized hereunder shall annually, by the first day of March, prepare under oath and file in the office of the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, showing:

1. The name of the company and where located;
2. The names of officers;
3. The amount of capital, if a stock company;
4. The amount of capital paid in, if a stock company;
5. The value of real estate owned by the company;
6. The amount of cash on hand;
7. The amount of cash deposited in banks, giving the name of the bank or banks;
8. The amount of cash in the hands of agents, and in the course of transmission;
9. The amount of bank stock, with the name of each bank, giving par and market value of the same;
10. The amount of bonds of the United States, and all other bonds and securities, giving names and amounts, with the par and market value of each kind;
11. The amount of loans secured by first mortgage on real estate, and where such real estate is situated;
12. The amount of all other bonds, loans, how secured, and the rate of interest;
13. The amount of premium notes and their value on policies in force, if a mutual company;
14. The amount of notes given for unpaid stock, and their value in detail, if a stock company;
15. The amount of assessments unpaid on stock or premium notes;
16. The amount of interest due and unpaid;
17. The amount of all other securities;
18. The amount of losses due and unpaid;
19. The amount of losses adjusted but not due;
20. The amount of losses unadjusted;
21. The amount of claims for losses resisted;
22. The amount of money borrowed and evidences thereof;
23. The amount of dividends unpaid on stock;
24. The amount of dividends unpaid on policies;

25. The amount required to safely reinsure all outstanding risks;
26. The amount of all other claims against the company;
27. The amount of net cash premiums received;
28. The amount of notes received for premiums;
29. The amount of interest received from all sources;
30. The amount received from all other sources;
31. The amount paid for losses;
32. The amount of dividends paid to policyholders, and the amount to stockholders, if a stock company;
33. The amount of commissions and salaries paid to agents;
34. The amount paid to officers for salaries and other compensation;
35. The amount paid for taxes;
36. The amount of all other payments and expenditures;
37. The greatest amount insured on any one life;
38. The amount deposited in other states or territories as security for policyholders therein, stating the amount in each state or territory;
39. The amount of premiums received in this state during the year;
40. The amount paid for losses in this state during the year.
41. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk;
42. All other items of information necessary to enable the commissioner of insurance to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof. [15 G. A., ch. 2, § 2; C. '73, § 1167.]

See 1790-95. Applicable 1799. Fraternal 1830-36. Other than Life 1714-16-59d.

This section recognizes the existence of a debt from the company to its policy-holders. *Equitable L. Ins. Co. v. Board of Equalization*, 74-178.

Sec. 1774. **Valuation of policies.** As soon as practicable after the filing of such statement, the commissioner of insurance shall ascertain the net cash value of every policy in force upon the basis of the American table of mortality and four and one-half per cent interest, or actuaries' combined experience table of mortality and four per cent interest, in all companies organized under the laws of this state. For the purpose of making such valuation he may employ a competent actuary, who shall be paid by the company for which the service is rendered; but the company may make such valuation and it shall be received by the commissioner upon satisfactory proof of its correctness. The net cash value of all policies in force in any such company being ascertained, the commissioner shall notify it of the amount, and within thirty days thereafter the officers thereof shall deposit with the commissioner the amount of the ascertained valuation in the securities specified in section eighteen hundred and six, chapter eight, of this title. No stock company organized under the laws of this state shall be required to make such deposit until the cash value of the policies in force, as ascertained by the commissioner, exceeds the amount deposited by it as capital. [21 G. A., ch. 169; 17 G. A., ch. 47; C. '73, § 1169.]

Valuation of Assessment Association policies see 1798a. Fraternals 1839j.

Sec. 1775. **Annual certificate.** On receipt of such deposit and statement, and the statement and evidence of investment of for-

eign companies, all of which shall be renewed annually, by the first day of March, the commissioner of insurance shall issue a certificate setting forth the corporate name of the company, its home office, that it has fully complied with the laws of the state and is authorized to transact the business of life insurance for the ensuing year, which certificate shall expire on the first day of April of the ensuing year, or sooner upon thirty days' notice given by the commissioner of the next annual valuation of its policies. Such certificates shall be renewed annually, upon the renewal of the deposit and statement by a domestic company, or of the statement and evidence of investment by a foreign company, and compliance with the conditions above required, and be subject to revocation as the original certificate. [15 G. A., ch. 2, § 3; C. '73, § 1170.]

Sec. 1776. **Penalty—dissolution.** Upon a failure of any company organized under the laws of this state to make the deposit or file the statement in the time herein stated, the commissioner of insurance shall notify the attorney-general of the default, who shall at once apply to the district court of the county where the home office of such company is located, if the court is in session, if not, to any judge thereof, for an order requiring the company to show cause upon reasonable notice, to be fixed by the court or judge, as the case may be, why its business shall not be discontinued. If, upon the hearing, no sufficient cause is shown, the court shall decree its dissolution. Companies organized and chartered by the laws of a foreign state or country, failing to file the evidence of deposit and statement within the time fixed, shall forfeit and pay the sum of three hundred dollars, to be collected in an action in the name of the state for the use of the school fund, and their right to transact further new business in this state shall immediately cease until the requirements of this chapter have been fully complied with. [15 G. A., ch. 2, § 4; C. '73, § 1171.]

Sec. 1777. **Examination by commissioner—receiver.** The commissioner of insurance at any time may make a personal examination of the books, papers, securities and business of any life insurance company doing business in this state, or authorize any other suitable person to make the same, and he or the person so authorized may examine under oath any officer or agent of the company or others, relative to its business and management. If upon such examination the commissioner is of the opinion that the company is insolvent, or that its condition is such as to render its further continuance in business hazardous to the public or holders of its policies, he shall advise and communicate the facts to the attorney-general, who shall at once apply to the district court of the county or any judge thereof, where the home office of a domestic company or an agency of a foreign company

is located, for an injunction to restrain the company from transacting further business except the payment of losses already ascertained and due, until further hearing, and for the appointment of a receiver, and, if a domestic company, for the dissolution of the corporation. The judge of such court may grant a preliminary injunction with or without notice, as he may direct, and the court, on the final hearing, may make decree subject to the provisions of the following section as to the appointment of a receiver, the disposition of the deposits of the company in the hands of the commissioner, and its dissolution, if a domestic company. [C. '73, § 1172.]

Applicable 1821, a to g. Fraternal 1839b, c. Other than Life 1700-31-53-55.

In an action to close the business of a corporation for failure to comply with the provisions of chapter 5, title IX, of the Code of '73, held, that it must be assumed that the corporation was duly organized. *State ex rel. v. Iowa Mut. Aid Assn.*, 59-125.

Sec. **1778. Securities.** The securities of a defaulting or insolvent company, or a company against which proceedings are pending under the preceding section, on deposit shall vest in the state for the benefit of the policies on which such deposits were made, and the proceeds of the same shall, by the order of the court upon final hearing, be divided among the holders thereof in the proportion of the last annual valuation of the same, or at any time be applied to the purchase of reinsurance for their benefit. [C. '73, § 1173.]

See also 1699, 1791. Applicable 1806-7. Fraternals 1839 1.

Sec. **1779. Change of securities.** Companies shall have the right at any time to change the securities on deposit by substituting a like amount of the character required in the first instance. If the annual valuation of the policies in force shows them to be less than the amount of security deposited, then the company may withdraw such excess, but twenty-five thousand dollars must always remain on deposit. [C. '73, § 1174.]

See Sections 1791, 1806. Fraternals 1839 1.

Sec. **1780. Interest collected.** Companies having on deposit with the commissioner bonds or other securities may collect the dividends or interest thereon, delivering to their authorized agents the coupons or other evidence of interest as the same become due, but if any company fails to deposit additonal security when and as called for by the commissioner, or pending any proceedings to close up or enjoin it, the commissioner of insurance shall collect such dividends or interest and add the same to such securities. [C. '73, § 1175.]

Sec. **1781. Commissioner's annual report.** Before the first day of May the commissioner of insurance shall make an annual

report to the governor of the general conduct and condition of the companies doing business in the state, and include therein an aggregate of the estimated value of all outstanding policies in each of the companies, and in connection therewith prepare a separate abstract thereof as to each company, and of all the returns and statements made to him by them. [C. '73, § 1176.]

For other than Life, see 1720.

Sec. 1782. **Discriminations.** No life or casualty, health or accident insurance company or association shall make or permit any distinction or discrimination between persons insured of the same class and equal expectancy of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms or conditions of the contract it makes; nor shall any such company or association or agent thereof make any contract of insurance agreement, other than as plainly expressed in the policy issued; nor shall any such company or association or agent pay or allow, directly or indirectly, as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance. [34 G. A., ch. 18, § 13; 27 G. A., ch. 46, § 1; 23 G. A., ch. 33, § 1.]

The provision of this section as to "any contract of insurance agreement other than as plainly expressed in the policy issued" is to be limited in its application by the title of the act in which it was first enacted, and by the general provisions of the section, and is therefore applicable only to cases of discrimination. *Kelley v. Mutual L. Ins. Co.*, 109 Fed. 56.

The provision as to contracts "plainly expressed in the policy issued" includes in the term "policy" the provision of the application endorsed thereon, in accordance with code § 1819. *Mutual L. Ins. Co. v. Kelly*, 114 Fed. 268.

The amendment of this section made by 27 G. A., ch. 46, held not applicable where the policy had been issued and the death had occurred prior to the taking effect of the amendment. *Beverly v. Northern L. Assn.*, 112-730.

It is not unlawful for an insurance company to discriminate between policy-holders and those who are not policy-holders in the loaning of money, nor for it to agree that one who takes insurance shall have a loan thereon. *Key v. National Life Ins. Co.*, 107-446.

Sec. 1783-a. **Policy forms filed with commissioner of insurance for approval.** It shall be unlawful for any insurance company transacting business within this state, under the provisions of chapter six of title nine of the code, to write or use any form of policy or contract of insurance, on the life of any individual in this state, until a copy of such form of policy or contract has been filed with the commissioner of insurance subject to approval or disapproval by the governor, commissioner of insurance and at-

torney-general, or by any two of them. Any form of policy or contract which has been disapproved by said officials shall not be written or used in this state. [30 G. A., ch. 59, § 1.]

Other than Life 1745. Standard form 1758a. Assessment Associations 1759c, also 1783a.

Sec. **1783-b. Medical examination.** Said officials shall decline to approve any such form of policy or contract of insurance unless the same shall, in all respects, conform to the laws of this state applicable thereto, and unless the issuance of the same is based upon a satisfactory medical examination of the applicant by a physician duly authorized to practice medicine or by an osteopathic physician duly authorized to practice osteopathy in the state of Iowa, or the state where examined and no policy or contract of insurance shall be issued by any insurance company to any individual in this state until such examination shall have been passed and duly approved by the medical examiner or medical board of such company. [36 G. A., H. F. 116, § 1; 30 G. A., ch. 59, § 2.]

Sec. **1783-c. Penalty.** Any company violating any of the provisions of this act shall, upon conviction thereof, be fined in a sum not less than one hundred nor more than one thousand dollars for each such offense, and the court may also revoke its authority to do business within this state. Should any company decline to file a copy of its form of policies or contracts, as provided in this act, the commissioner of insurance shall suspend its authority to transact business within the state until such form of policies or contracts have been so filed and approved. [30 G. A., ch. 59, § 3.]

Sec. **1783-d. Life insurance companies may write other insurance.** Any life insurance company organized on the stock or mutual plan and authorized by its charter or articles of incorporation so to do, may in addition to such life insurance, insure the health of persons and against personal injuries, disablement or death, resulting from traveling or general accidents by land or water, and insure employers against loss in consequence of accidents or casualties of any kind to employes or other persons, or to property resulting from any act of the employe or any accident or casualty to persons or property, or both, occurring in or connected with the transaction of their business, or from the operation of any machinery connected therewith, but nothing herein contained shall be construed to authorize any life insurance company to insure against loss or injury to person, or property, or both, growing out of explosion or rupture of steam boilers. [31 G. A., ch. 74.]

See 1709 Sub-sec. 5. Accident and Employers' Liability, See 1759a, 1784, 1822.

Sec. **1783-e. Capital stock—minimum amount.** From and after the taking effect of this act, no insurance company shall be incorporated to transact business upon the stock plan, whether life insurance or insurance other than life, with less than one hundred thousand dollars capital, the entire amount of which shall be fully paid up in cash and invested as provided by law. No part of the capital referred to, shall be loaned to any officer or stockholder of the company. [32 G. A., ch. 79, § 1.]

See 1769-72. Other than Life 1691, 1701-21-32-69.

Sec. **1783-f. Companies heretofore organized.** The certificate of authority of any company heretofore organized and transacting business on the stock plan shall not be renewed after January first, nineteen hundred ten, unless said company shall have, at said time, at least one hundred thousand dollars of capital stock; at least fifty thousand dollars of which shall be paid up in cash and invested according to law. The remainder of said capital may be represented by stock notes payable to the company on demand of its board of directors and said notes shall be deposited with the commissioner of insurance subject to his approval. But no increase of the capital stock of any company shall hereafter be made unless the amount of said increase is paid up in cash. [32 G. A., ch. 79, § 2.]

Sec. **1783-g. May not advertise authorized capital.** No insurance company shall, after the taking effect of this act, be permitted to advertise or publish an authorized capital, or to represent in any manner itself as possessed of any greater capital than that actually paid up and invested as above provided. [32 G. A., ch. 79, § 3.]

Sec. **1783-h. Penalties.** Any person, firm or corporation violating any of the provisions of this act, or failing to comply with any of its provisions, shall be subjected to the penalties provided in section four of chapter fifty-six, acts of the thirtieth general assembly. [32 G. A., ch. 79, § 4.]

See 1821-d herein. Revocations of certificates.

CHAPTER 7, TITLE IX, CODE.

ASSESSMENT LIFE, HEALTH AND ACCIDENT INSURANCE ASSOCIATIONS.

Section **1784. Defined.** Every corporation organized upon the assessment plan, for the purpose of insuring the lives of individuals or furnishing benefits to the widows, heirs, orphans or legatees of deceased members, or insuring the health of persons or furnishing accident indemnity, shall be styled an association, and any corporation doing business under this chapter which

provides for the payment of policy claims, accumulation of a reserve or emergency fund, the expense of management and prosecution of the business, by payment of assessments as provided in its contracts, and wherein the liability of the insured to contribute to the payment of policy claims is not limited to a fixed amount, shall be deemed to be engaged in the business of life insurance upon the assessment plan, and shall be subject to the provisions of this chapter, and chapter eight, of title nine of the code. [31 G. A., ch. 75; 28 G. A., ch. 65, § 1; 21 G. A., ch. 65, § 1.]

See 1788. Fraternals 1823. Other than Life 1707-27-59h, k, l.

A company operating on the mutual assessment plan is not relieved from the provisions of this chapter by the provisions of code § 1798 exempting from its operation associations organized solely for benevolent purposes. *Connell v. Iowa State Trav. Men's Assn.*, 139-444.

The association cannot amend its by-laws in such manner as to affect the promise of the society to pay a particular sum to the insured. A member has the right to rely on the terms of his contract. *Fort v. Iowa Legion of Honor*, 146-183.

The general power to amend the by-laws reserved by the society does not authorize an amendment which impairs the vested rights of the members. *Ibid.*

Where the association so amended its by-laws as to repudiate its existing contracts and to provide for a new rate of assessment on a diminished policy, held that failure to tender the amount due under the original contract did not defeat his right of action to recover damages for breach of contract by such charge. *Ibid.*

The fact that the association has no funds with which to pay a judgment does not defeat the right to recover damages for repudiation of the contract. *Ibid.*

Where the assured agrees to be bound by amendments to the by-laws or articles subsequently adopted, he must take notice thereof and is as effectually concluded thereby as by those existing at the time of the issuance of his certificate or policy. *Elliott v. Home Mut. Hail Assn.*, 160-105.

The statute recognizes the authority of such associations to insure for the benefit of legatees and in the absence of limitation prescribed in the articles or by-laws, it is presumed that persons of any class enumerated in the statute may be beneficiaries. *Brinsmaid v. Iowa State Trav Men's Assn.*, 152-134.

Members of a mutual benefit association are bound to take notice of and be governed by its by-laws. *Fitzgerald v. Metropolitan Acc. Assn.*, 106-457.

The statutory provisions with reference to mutual benefit associations, held to be applicable to an association organized under such provisions, although it had not fully complied therewith. *Crocker v. Hogin*, 103-243.

Life insurance companies, except as otherwise specially provided, are incorporated under the general provisions as to the formation of corporations. *Krause v. Modern Woodmen*, 133-199.

Where the deceased accidentally received a wound on his finger, causing inflammation, which developed into blood poisoning, resulting in his death, such death resulted from a disease which followed as a natural consequence of the physical injury, and was an accidental death within a policy requiring that death must result solely from accidental injuries. *Delaney v. Modern Acc. Club*, 121-528.

Under the constitution of the association known as the Ancient Order of United Workmen, held, that such association, notwithstanding its fraternal character, was in effect a mutual insurance company, and that the

supreme lodge of that corporation, being incorporated under the laws of Kentucky, was not authorized to exercise any powers or do business in Iowa without compliance with the laws of Iowa with reference to life insurance companies. *State ex rel. v. Miller*, 66-26.

Where one of the objects of an association is to pay to the beneficiaries a sum of money upon the death of a member which is to be raised by assessments upon other members it is to be deemed an insurance company. *Grimes v. Northwestern Legion of Honor*, 97-315.

Former provisions of this character, held applicable to a fraternal society such as the Ancient Order of United Workmen, having life insurance and insurance against sickness and disability as its main object. *State ex rel. v. Nichols*, 78-747.

Mutual aid associations organized to furnish financial aid and benefits to the families of deceased members on the payment of membership fees, dues and assessments, held, not to be within the former provisions as to life insurance companies. *State ex rel. v. Iowa Mut. Aid Assn.*, 59-125. And see § 1798.

A railroad relief association organized by the railroad company for the benefit of employes who participate therein is not a life insurance company. *Maine v. Chicago, B. & Q. R. Co.*, 109-260.

An employe, member of such association who has accepted the benefits provided for by his contract of membership is bound by the terms of such contract. *Ibid.*

Sec. 1785. **Articles of incorporation—certificates.** "Certificates of membership" or "certificate," when used in this chapter with respect to the insurance of the members, shall be taken to mean and include policy of insurance. The articles of incorporation of any such association shall show its plan of business, and be submitted to the commissioner of insurance and the attorney-general, and if they are found by those officers to comply with the provisions of this title, chapter and of law, they shall approve the same. When the articles are thus approved, they shall be recorded in the office of the secretary of state, and a notice published within ninety days in the manner and for the time provided in the general incorporation laws. [21 G. A., ch. 65, § 2.]

See 1768. Fraternals 1832. Other than Life 1685, 1759c.

The president and the board of directors of a mutual life association are both governed by the association's articles of incorporation and the statutes of the state defining and limiting their respective duties and powers. *Sherman v. Harbin et al.*, 125-174.

Where the articles of incorporation of a mutual benefit life insurance association provide that the beneficiaries shall be entitled to a sum equal to what would be realized from an assessment upon all members, as shown by the books, at the time of death, but in no case shall the sum exceed the amount stated in the certificate, and also provide for a mortuary fund, to be raised by assessments, from which death losses shall be paid, and the certificate itself stipulates that the beneficiaries shall receive a definite sum, the amount due to be provided for by assessment, etc., as provided for in the articles of incorporation, the beneficiary is entitled to a money judgment, and not merely a mandatory order to make and pay over the proceeds of an assessment. *Thornburg v. Farmers' Life Association*, 122-260.

The burden is on the defendant association to show that an assessment at the time of the member's death would not have yielded the full amount named in the certificate. *Ibid.*

Sec. 1786. **Name.** No such association shall take any name in use by another organization, or one so closely resembling it as to mislead the public as to its identity. [Same, § 3.]

See other than Life, Sec. 1687.

The provisions of Code § 1689 as to including the word "mutual" in the name of a mutual company has no application to associations organized under this chapter. *Moore v. Union Frat. Acc. Assn.*, 103-424.

The action of the auditor [commissioner of insurance] in determining the name under which the association may do business is not conclusive as to another association claiming a prior right to the use of the same or a similar name. *Grand Lodge v. Graham*, 96-592.

Therefore held, that plaintiff, an association of the character contemplated in this section and authorized to do business under the name of the Grand Lodge of the Ancient Order of United Workmen of Iowa, could not enjoin an unincorporated society or voluntary association from using the name, it appearing that defendant had a prior right to the use of such name. *Ibid.*

Sec. 1787. **Conditions for commencing business—approval of policy forms.** Before issuing any policy or certificate of membership, if the association at the time has not a membership sufficient to pay the full amount of its certificate or policy on an assessment, it shall cause all applications for insurance to have printed in red ink, in a conspicuous manner along the margin thereof, the words: "It is understood that the amount of insurance to be paid under this application, and certificate or policy issued thereon, shall depend upon the amount collected from an assessment therefor." It must have actual applications upon at least two hundred fifty lives for at least one thousand dollars each; and it shall file with the commissioner of insurance satisfactory proof that the president, secretary and treasurer have each given a good and sufficient bond for five thousand dollars for the faithful discharge of their duties as such officers, sworn copies of which shall be filed with him. It shall also file with him a list, verified by the president and secretary, of the applications, giving the name, age and residence of each applicant, the amount of insurance applied for by each, together with the annual dues and the proposed assessments thereon. Its policy forms shall be approved, as provided by section seventeen hundred eighty-three-a of the supplement to the code, 1907. [34 G. A., ch. 18, § 14; 21 G. A., ch. 65, § 4.]

See 1724-25-59c. Fraternals 1832; also § 1783a.

Under the bond given by the president of an assessment life insurance company, the sureties are not liable to a receiver of the company for moneys wrongfully paid by him to one member which were collected for the benefit of another who has in turn been satisfied from funds subsequently collected or for money misappropriated after the expiration of the bond. *Sherman v. Harbin*, 124-643; 125-174.

Any act of the president of the association contrary to his duty under its articles of incorporation, even though directed or acquiesced in by the board of directors, constitutes a breach of duty involving liability of the surety on his official bond if it results in loss to the association. *Sherman v. Harbin*, 125-174; 124-643.

A new bond executed on re-election for another year is a new and independent undertaking and not a continuance of the bond for the previous year. *Ibid.*

Auditing the books of the company being no part of the duty of the president, he is not liable under his official bond for not discovering errors overlooked by the auditing committee. *Ibid.*

The act of the president in diverting the beneficiary fund to the payment of expenses in resisting claims renders him liable on his bond. *Ibid.*

If the obligation of the association is no more than to levy an assessment on its members and pay the benefit or indemnity stipulated from the proceeds derived therefrom, then the remedy is in equity to compel an assessment and an action at law cannot be maintained. But if the contract, whether contained in the certificate of membership, the articles of incorporation or by-laws, is for the payment of defined or fixed sums upon the happening of specific contingencies, then the remedy is at law. *Frank v. Interstate Business Men's Acc. Assn.*, 151-684.

Where the plan of the association requires that assessments be collected quarterly and that the sums provided in the contract be paid on the death of the member out of the proceeds of assessments on hand derived either from annual dues or assessments, then the action is properly at law even though the amount to be paid is subject to the limitation that it cannot exceed the assessment of a certain amount per member in good standing at the time of the injury. *Ibid.*

Fidelity bonds of the president of a mutual life association organized under chapter 65, acts of the Twenty-first General Assembly, though running to the association, may be enforced by any one for whose benefit they were executed. *Sherman v. Harbin et al.*, 124-643; 125-174.

Sec. 1788. **Assessments.** The articles and by-laws of each such association and its notices of assessment shall state the objects to which the money to be collected is to be devoted, and no part of the proceeds thereof shall be applied to any other purpose than as stated and the excess, if any, beyond payment of the benefit, shall be set aside and applied only to like purposes, except that all sums collected for expenses and not used for that purpose may be transferred to the benefit, emergency or reserve fund. [21 G. A., ch. 65, § 6; 30 G. A., ch. 60.]

The design of this section was not to compel the specification in the notices of assessment of particular items on which the moneys collected would be expended. A general, but inclusive, statement of the objects or purpose of the assessment is sufficient. *Mulherin v. Bankers Life Ins. Co.*, 163-740.

While in the enforcement of a claim for a death loss against a mutual benefit association resort must be had in the first place to an action in mandamus to compel a levy of an assessment, yet, where the corporation fails to make the levy at a time when it would be effectual in furnishing the fund for the payment of the claim, and postpones it until long after, when by reason of decrease in the membership in the association it becomes ineffectual, the association may be held liable in damages. *Christie v. Iowa L. Ins. Co.*, 111-177.

In such case interest from the time the money should have been collected and paid over under the terms of the contract may be added. *Ibid.*

The beneficiaries being entitled to the amount realized on particular assessments under their certificates, the misappropriation of an assessment made for a loss under one certificate to the payment of a loss under a different certificate, does not give rise to an action on the bond of the officer making such appropriation at the suit of the receiver of the company. *Sherman v. Harbin*, 124-643; 125-174.

The provisions of section 1788 of the Code, that the articles, by-laws, and notices of assessment of assessment life insurance associations shall state the object to which the money to be collected is to be devoted, and that no part of the proceeds shall be applied to any other purpose, apply only to assessments, and not to dues for contingent expenses or fixed charges, such as an agent's commission charge on policy renewals. *Schrimplin v. Farmers' Life Assn.*, 123-102.

Moneys collected from assessment levied in accordance with the provisions of section 1788 of the Code, should be applied on the particular loss for which the assessment, or a specific proportion thereof, was raised, and that neither the association nor its officers were entitled to direct the same to other liabilities or losses. *Sherman v. Harbin et al.*, 124-643; 125-174.

Where benefit assessments levied by a mutual life association belonged to certain of its beneficiaries, and the association's articles contained other provisions for ordinary expenses and those incident to the protection of the association against unjust claims, the association's officers had no authority to use money received from benefit assessments, made to pay death losses, for the payment of expenses incurred in the litigation of alleged unjust claims. *Sherman v. Harbin et al.*, 125-174; 124-643.

Where the by-laws of an insurance company provided several sources from which death losses might be paid, and it was nowhere indicated that an assessment must necessarily be made for each loss, a by-law providing that a beneficiary should be entitled to a sum of money equal to what would be realized from an assessment from all members in good standing at insured's death, not exceeding the amount of the certificate, did not make the levy of an assessment a condition precedent to insurer's liability. *Wood v. Farmers' Life Assn.*, 121-44.

Where decedent's certificate in a mutual benefit association provided that on decedent's failure to pay stipulated assessments as agreed, the contract should "close and be of no effect," and, prior to the making of a contract between the association and defendant for the reinsurance of all of the association's members in good standing at the time the contract was made, deceased had refused to pay assessments levied, on the ground that they were unjust, he acquired no rights under the association's contract of insurance. *Parvin v. Mutual Reserve Life Ins. Co.*, 125-95.

The liability of a member of a mutual benefit company is to be determined by an assessment on the basis of membership at the time of the loss and not at the time an assessment is made by order of court to pay such loss. *Collins v. Bankers' Acc. Assn.*, 96-216.

Even though the association has on hand enough money to pay a death loss, it is not proper to render judgment against it for the amount of the loss but only to compel an assessment to pay such loss. *Courtney v. United States Masonic Ben. Assn.*, 53 N. W. 238. Ia. not officially reported.

Where provisions are made for canceling certificates upon failure to pay assessments after actual notice, the obligation to give such notice is upon the company and the obligation to pay the assessments does not attach until the notice is given. *Ibid.*

Therefore, where the certificate holder, at the time notice was sent to him by mail, was not in such condition that he could understand such notice, held, that notice was not effectual. *Ibid.*

Provisions as to the method of giving notice of assessments for the purpose of fixing a forfeiture, which are provided for at the time of the issuance of the certificate cannot be subsequently changed without the consent of the insured unless there is a stipulation providing that insured shall be bound by such subsequent provisions. *Ibid.*

Where it was provided that the failure to pay assessments did not work an absolute forfeiture till the expiration of six months, held, that the receipt of intermittent dues during the six months was not a waiver of the default where the member did not, during the six months, take the steps necessary for reinstatement. *Leffingwell v. Grand Lodge A. O. U. W.*, 86-279.

Where the contract was between the subordinate lodge and the member, held, that the member had no right to offset, as against dues, compensation due him under a contract with the grand lodge. *Ibid.*

Sec. 1789. **Insurable age—beneficiary—assignment of policy.** No association organized or operating under this chapter shall issue a certificate of membership to any person under fifteen nor over sixty-five years of age, nor unless the beneficiary named in the certificate is the husband, wife, relative, legal representative, heir, creditor or legatee of the insured member, nor shall any such certificate be assigned. Any certificate issued or assignment made in violation of this section shall be void. The beneficiary named in the certificate may be changed at any time at the pleasure of the assured, as may be provided for in the articles or by-laws, but no certificate issued for the benefit of a wife or children shall be thus changed so as to become payable to the creditors. [21 G. A., ch. 65, § 7.]

Applicable, see 1813. Fraternals 1824.

Age: An association is not precluded by the provisions of this section from assuming by consolidation the liability of another association to a member, although at the time of such consolidation the member is over the age when a valid certificate could have been issued. *Cathcart v. Equitable Mut. L. Assn.*, 111-471.

A company whose articles do not prohibit the insurance of persons over the age specified by Code § 1789 cannot by its by-laws render a contract of insurance with a person within the statutory age *ultra vires* and void. *Krause v. Modern Woodmen*, 133-199.

The provision as to change of beneficiaries relates to the certificate and not to the fund, and the word "assignment" as here used is equivalent to the word "endorsement." A beneficiary who is substituted by the act of the person on whose life the certificate is issued is not an assignee of the certificate. *Shuman v. Supreme K. of H.*, 110-480.

Where the right to change the beneficiary is specifically provided for in the certificate, and the manner of doing so is pointed out, the method indicated must be adopted and if that method involves the issuance of a new certificate, the endorsement of a certificate without the observance of the formalities required will not give the endorsee a right to the proceeds as against the beneficiaries designated by the certificate itself. *Shuman v. A. O. U. W.*, 110-642.

Where the benefit was made payable to the wife of the deceased, who was disqualified to collect it on account of having feloniously caused the death of her husband, held that her heirs had no interest in the benefit fund, but that the amount payable was held in trust by the association for the estate of the deceased. *Schmidt v. Northern Life Assn.*, 112-41.

The beneficiary named in such a certificate has no property right therein, but only an expectancy. If a beneficiary is designated who does not belong to the class of persons enumerated by statute, the insurance becomes payable to those who would have been entitled to it in the absence of any designation. *Ibid.*

Where the parties have agreed upon a mode by which a change of beneficiary may be effected, the change can be made in that mode only, unless by subsequent agreement, assented to by the association, a different mode is substituted. *Modern Woodmen v. Little*, 114-109.

The beneficiary in a fraternal or mutual benefit association has no vested interest, but is subject to provisions as to changing beneficiaries and when the member has done all in his power to effect the change and entitle him to a new certificate in favor of the proposed beneficiary equity will

carry out his purpose, although the actual issuance and acceptance of the new certificate were prevented by the death of the member. *Wandell v. Mystic Toilers*, 130-639.

And it seems that if by action of the local officer the member is misled as to the steps necessary to be taken, the association will be estopped to question the sufficiency of the change. *Ibid.*

This section applies to foreign as well as domestic companies. *Belknap v. Johnston*, 114-265.

Where the certificate is a contract of insurance, made in another state, and change of beneficiary is made and completed in that state, according to its laws, it will be valid. *Ibid.*

The right to change beneficiary existing in such other state at the time the contract was made cannot be affected by subsequent legislation of such state. *Ibid.*

Where it was provided that the certificate should not be assignable in payment of or security for any debt, held, that the assignment thereof as a security was invalid and the creditor acquired no rights thereunder. *Crocker v. Hogin*, 103-243.

Until the beneficiary is changed by law, he has an actual, subsisting interest in the policy which will pass to his administrator in case of his death, and as against such beneficiary, or his administrator, suicide on the part of the insured is not a defense in the absence of a provision to that effect in the policy. But fraud, in procuring a policy with the intent to commit suicide, will vitiate the entire contract, and defeat recovery. *Parker v. Des Moines Life Assn.*, 108-117.

Under an ordinary life policy the beneficiary has a vested right which cannot be impaired without his consent. *Haerter v. Mohr*, 114-636.

In an action against a mutual benefit company by one claiming under a certificate as wife of the insured, the company defending on the ground that insured had a prior wife living, and that plaintiff was not, therefore, entitled to the benefit, has the burden of showing that a prior marriage existed, and had not been dissolved. *Parsons v. A. O. U. W.*, 108-6.

A "relative" for whose benefit a certificate may be taken includes a stepfather, after the death of the wife, on whom the relationship depends. *Simcoke v. Grand Lodge A. O. U. W.*, 84-383.

The provisions that the beneficiary may, by the consent of the society, be changed without the consent of the person who has been such beneficiary, is in accordance with the law previously existing with reference to the effect of such certificates. *Brown v. Grand Lodge A. O. U. W.*, 80-287; *Carpenter v. Knapp*, 101-712.

The provisions of § 1741, requiring the application of the assured to be indorsed on or attached to the policy, applies to all policies and contracts for life insurance, including those of mutual benefit associations issued upon the assessment plan. *McConnell v. Iowa Mut. Aid Assn.*, 79-757; *Grimes v. Northwestern Legion of Honor*. And see now §§ 1819, 1826; 97-315.

Where it was provided in the certificate of a mutual benefit society that it should be void in case the beneficiary named was not a natural heir of the member taking the certificate, held, that knowledge on the part of the society that the beneficiary named was not an heir of the member taking the certificate without objection on the part of the society, and continuing to collect assessments, and continuing to treat the certificate as valid, constituted a waiver of such condition. (Decided prior to the enactment of these provisions). *Lindsey v. Western Mut. Aid. Soc.*, 84-734.

Also held, that where such certificate was forfeited for non-payment of dues after the taking effect of the statute, but payment was subsequently accepted by the company, and the member was restored, such restoration did not amount to the making of a new contract, but was a waiver of the forfeiture, and the former certificate continued in force. *Ibid.*

Also held, that statements of the member with reference to good health, on which such restoration was made, were not false in such sense as to render such restoration void. *Ibid.*

Upon the surrender of a certificate for the purpose of changing beneficiaries the company is not permitted to alter, add to or take from other conditions of the contract in the new certificate and thereby bind the insured without his assent. *Wood v. Brotherhood of Am. Yeomen*, 148-400.

In the absence of any provision for notice to the company of a change of beneficiary, such change may be made by provision in a will. *Brinsmaid v. Iowa State Trav. Men's Assn.*, 152-134.

Until the beneficiary is changed by law, he has an actual, subsisting interest in the policy which will pass to his administrator in case of his death, and as against such beneficiary, or his administrator, suicide on the part of the insured is not a defense in the absence of a provision to that effect in the policy. But fraud, in procuring a policy with the intent to commit suicide, will vitiate the entire contract and defeat recovery. *Parker v. Des Moines Life Assn.*, 108-117.

If under the terms of the contract the benefit is payable to some extent and under some conditions to a beneficiary within the description of the statute, the naming of a beneficiary not authorized by statute to receive the benefit under certain conditions does not render the contract invalid and the recovery of the benefit may be had by the beneficiary coming within the statutory provisions. *Oliphant v. American Health & Acc. Assn.*, 147-656.

The beneficiary named in a certificate of a fraternal beneficiary association has no vested interest during the life of the member; but on the death of such member the person who, under the terms of the contract with the association, is then entitled to receive the benefits provided for in the certificate does acquire a vested interest therein. *Holden v. Modern Brotherhood*, 151-673.

The effort of a member to change a beneficiary which is not made in accordance with the rules of the association regulating the manner in which such changes may be made, is ineffectual. But to this rule there are some well defined exceptions, as where the society has waived compliance or estopped itself to assert noncompliance; where it is beyond the power of the member to comply literally with the regulations; or if the insured has pursued the course pointed out in the by-laws and has done all in his power to change the beneficiary, but before the new certificate actually issues he dies. *Ibid.*

When a benefit society pays the money into court upon one of its certificates, it waives all mere technical defenses which it might have set up against either claimant and leaves the court free to award the fund upon equitable principles and the court will then determine as to which of the two rival claimants is, in equity, entitled to the fund. *Ibid.*

Sec. 1790. **Report to commissioner of insurance—examination.** The annual business of such association organized under the laws of this state shall close on the thirty-first day of December of each year, and it shall within sixty days thereafter prepare and file in the office of the commissioner of insurance a detailed statement, verified by its president and secretary, giving its assets, liabilities, receipts from each assessment and all other sources, expenditures, salaries of officers, number of contributing members, death losses paid and amount paid on each, death losses reported but not paid, and furnish such other information as the commissioner of insurance, who shall provide blanks for that purpose, may require, so that its true financial condition may be shown, and shall pay, upon filing each annual statement, the sum of ten dollars. He shall publish such annual statement in detail in his report, and for the purpose of verifying it he may make

or cause to be made an examination of the affairs of any such association at its expense, which shall be, if done by him or his clerk, necessary hotel and traveling expenses only, if by a person not regularly employed in his office, the actual cost thereof, not exceeding five dollars per day for the time required, and actual expenses. If the commissioner regards it necessary for the safety of the funds of the association, he may require the bonds of the officers to be increased to an amount not exceeding double the sum for which they are accountable, and he may also require supplemental reports from such association at such time and in such form as he may direct, and it shall be the duty of its officers to furnish the bonds and reports when thus required. [Same, § 8.]

See 1793-95. App. 1799. Fraternal 1830-36. Other than Life 1714-16.

Sec. **1791. Investment of accumulations.** Any association accumulating any moneys to be held in trust for the purpose of the fulfillment of its policy or certificate, contract, or otherwise, shall invest such accumulations in the securities provided in section eighteen hundred and six, chapter eight, of this title, and deposit the same with the commissioner of insurance, as therein provided. But such association may invest in real estate in Iowa such a portion of said accumulation as is necessary for its accommodation in the transaction of its business to be owned by said association, and in the erection of any building for such purpose may add thereto rooms for rental. [Same, § 9.]

Life 1778-91. Applicable 1806-7. Fraternal Societies 18391.

Sec. **1792. Change of securities.** Such association may at any time change its securities on deposit by substituting a like amount in other securities of the same character, and the commissioner of insurance shall permit a withdrawal of the same, upon satisfactory proof in writing filed with him that they are to be used for the purpose for which they were originally deposited. [Same, §§ 10, 11.]

Sec. **1793. Collection of interest.** The commissioner of insurance shall permit the associations owning the bonds or other securities to collect and retain the interest accruing thereon, delivering to them the evidences of interest as the same become due; but on default of any association to make or enforce such collection, he may collect the same and add it to the securities in his possession, less the expense thereof. [Same, § 12.]

Sec. **1794. Foreign companies.** Any association organized under the laws of any other state to carry on the business of insuring the lives of persons, or of furnishing benefits to the widows, orphans, heirs or legatees of deceased members, or of paying accident indemnity, or surrender value of certificates of in-

surance, upon the stipulated premium plan or assessment plan, may be permitted to do business in the state by complying with the requirements hereinafter made, but not otherwise. It shall file with the commissioner of insurance a copy of its charter or articles of incorporation, duly certified by the proper officers of the state wherein it was organized, together with a copy of its by-laws, application and policy or certificate of membership. It shall also file with the commissioner of insurance a statement, signed and verified by its president and secretary, which shall show the name and location of the association, its principal place of business, the names of its president, secretary and other principal officers, the number of certificates or policies in force, the aggregate amount insured thereby, the amount paid to beneficiaries in the event of death or accident, the amount paid on the last death loss and the date thereof, the amount of cash or other assets owned by the association and how invested, and any other information which the commissioner may require. The statement, papers and proofs thus filed shall show that the death loss or surrender value of the certificate of insurance or accident indemnity is in the main provided for by assessments upon or contributions by surviving members of such association, and that it is legally organized, honestly managed, and that an ordinary assessment upon its members of other regular contributions to its mortuary fund are sufficient to pay its maximum certificate to the full limit named therein. Upon its complying with the provisions of this section, and of section eighteen hundred and eight, chapter eight, of this title, and the payment of twenty-five dollars, the commissioner shall issue to it a certificate of authority to do business in this state, provided the same right is extended by the state in which said association is organized to associations of the same class in this state. When the commissioner doubts the solvency of any foreign association, and the failure to pay the full limit named in its certificate or policy shall be such evidence of insolvency as to require the commissioner to investigate it, he shall for this or other good cause, at the expense of such association, cause an examination of its books, papers and business to be made, and if upon such examination he finds that the association is not financially sound, or is not paying its policies or certificates in full, or is conducting its business fraudulently, or if it shall fail to make the statement required by law, he may revoke its authority and prohibit it from doing business until it shall again comply with the provisions of this chapter. If the commissioner appoints some one not receiving a regular salary in his office to make this examination, such examiner shall receive five dollars per day for his services in addition to his actual traveling and hotel expenses, to be paid by the association examined, or by the state on the approval of the executive council, if the association fails to pay the same. The provisions of this

section shall apply to fraternal beneficiary associations doing exclusively an accident insurance business, and upon compliance with the provisions of this chapter, and the provisions of chapter eight of title nine of the code, so far as the same are applicable, such associations may be authorized to transact business within this state. [32 G. A., ch. 82; 21 G. A., ch. 65, § 13.]

Life 1772, 1808. Fraternals 1829. Other than Life 1721-23-35.

Sec. **1795. Proceedings to control or wind up.** When any association organized under this title and chapter fails to make its annual statement on or before the first day of March, or is conducting its business fraudulently or not in compliance with law, or is not carrying out its contracts with its members in good faith, the commissioner of insurance shall promptly communicate the fact to the attorney-general, who shall at once commence action before the district court of the county in which such association has its principal place of business, giving it reasonable notice thereof, and if upon a hearing it is found to be advantageous to the holders of certificates of membership therein, said court or judge may remove any officer or officers, and appoint others in their place until the next annual election. If it is advantageous to the holders of certificates that the affairs of said corporation be wound up, the court or judge shall so direct, and for that purpose may appoint a receiver who shall treat all legal claims for death benefits as preferred. The receiver may also, with the approval of the court, or judge, transfer the members of such association who consent thereto to some like solvent association of the state, or divide the surplus accumulated in proportion to the share due each certificate at the time. [Same, § 16.]

Other than Life 1731-33. Life 1777-95, 1821g. Fraternals 1836.

The fact that a mutual benefit association is doing business without complying with the law cannot be taken advantage of in an action against it by another association to restrain the use by defendant of a name common to the two, it appearing that plaintiff has no prior right to the use of such name. *Grand Lodge v. Graham*, 96-592.

Sec. **1796. Certificate.** Upon compliance with the provisions of this chapter by any association, the commissioner of insurance shall issue to it a certificate setting forth: First, the corporate name of the association; second, its principal place of business; third, the number of certificates or policies in force at the date of its last report; fourth, the sum of money which an ordinary assessment for payment of a single certificate or policy would produce in each class; fifth, the amount paid on its last death loss as evidenced by proof on file in his office, and the date of such payment; sixth, the amount of securities deposited in his office, and for what purpose; seventh, that it has fully complied with the provisions of this chapter, and is authorized to trans-

act business for a period of one year from April first of the year of its issue, which certificate shall be published by the association once a week for four weeks in a newspaper of general circulation published at its principal place of business. [Same, § 18.]

See 1715-24-25-47-55. Associations 1759c. App. 1821d. Fraternal 1832-39d.

Sec. **1797. Distribution of surplus—surrender value.** Any association which provides in the main for the payment of death losses or accident indemnity by assessments upon its members, or stipulated premium plan, may provide for the equitable distribution of any surplus or advance insurance fund accumulated in the course of its business, which may be paid in cash or applied in the reduction or payment of future premiums, paid up or extended insurance, as its rules or contracts may provide, and for an equitable surrender value upon the cancellation of a certificate or policy, provided the terms and conditions thereof are set forth in such policy or certificate of membership, and such surrender value shall in the main be accumulated during the term of such policy or certificate. [Same, § 20.]

Since the enactment of this provision a mutual life company has no authority to stipulate in its policies that an assessment shall be made for the purpose of paying an endowment. *Dishong v. Iowa Life & Endowment Assn.*, 92-163.

And where prior to the passage of this statute endowment contracts had been made by such a company, and the risks of such company were afterward reinsured in another mutual compny, which issued a different policy, held, that the second company was under no obligation to make an assessment for the payment of such endowment. *Ibid.*

Sec. **1798. Benevolent societies—process.** Nothing in this chapter shall be construed to apply to any association organized solely for benevolent purposes and composed wholly of members of any one occupation, guild, profession or religious denomination, but any such society may, by complying with the provisions hereof, become entitled to all the privileges thereof, in which event it shall be amenable to the provisions of this chapter so far as they are applicable; provided that if organized under the laws of another state or country, they shall file with the commissioner of insurance an agreement in writing authorizing service or notice of process to be made upon the said commissioner of insurance, and when so made shall be as valid and binding as if served upon the association within this state. [34 G. A., ch. 18, § 15; 21 G. A., ch. 65, § 21.]

See also Fraternals 1839j and 1839l.

A mutual assessment company providing for benefits to its members in case of death or accident is not an association organized solely for benevolent purposes within the provisions of this section. *Connell v. Iowa State Trav. Men's Assn.*, 139-444.

Sec. 1798-a. **Future organization or authorization prohibited —valuation of policies of existing associations.** No life, health or accident insurance company or association, other than fraternal beneficiary associations, which issues contracts, the performance of which is contingent upon the payment of assessments of call made upon its members, shall do business within this state except such companies or associations as are now authorized to do business within this state and which, if a life insurance company or association, shall value their assessment policies or certificates of membership as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state. [34 G. A., ch. 18, § 16; 32 G. A., ch. 83, § 1.]

Valuation; see also Life companies policies 1774; also 1798-b.

Sec. 1798-b. **Reincorporation as legal reserve company—stock company.** Any existing domestic assessment company or association or fraternal beneficiary society may, with the written consent of the commissioner of insurance, upon a majority vote of its trustees or directors, amend its articles of incorporation and by-laws in such a manner as to transform itself into a legal reserve or level premium company, and upon so doing and upon procuring from the commissioner of insurance a certificate of authority, as prescribed by law, to transact business in this state as a legal reserve or level premium company, shall incur the obligations and enjoy the benefits thereof, the same as though originally thus incorporated, and such corporation under its charter as thus amended, shall be a continuation of such original corporation, and the officers thereof shall serve through their respective terms as provided in the original charter, but their successors shall be elected and serve as in such amended articles provided; but such amendment or reincorporation shall not affect existing suits, rights or contracts.

Any assessment company or fraternal beneficiary society reincorporated to transact life insurance business, shall value its assessment policies or certificates or benefit certificates as yearly renewable term policies according to the standard of valuation of life insurance policies prescribed by the laws of this state.

Provided that accident or health associations may take advantage of all the provisions of this section, in so far as applicable, and may thereupon transform themselves into stock companies. But no such company or association shall reorganize under the provisions of this section unless it shall have accumulated sufficient surplus to constitute a reinsurance reserve equal to the unearned premium on all outstanding policies or certificates, as prescribed by the statutes of this state relating thereto. [36 G. A., S. F. 492, § 1; 34 G. A., ch. 18, § 17; 32 G. A., ch. 83, § 2.]

CHAPTER 8, TITLE IX, CODE.

PROVISIONS APPLYING TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS.

Section **1799. Annual Statement.** Every company or association organized under the laws of any other state or country and doing business in this state shall annually, by the first day of March, file with the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December preceding, in the same manner and form provided for similar companies or associations organized in this state. The commissioner may amend the form of the annual statement required to be made by companies or associations doing business in this state, and propose and require such additional matter to be covered therein as he may think necessary to elicit a full exhibit of the standing of any such company or association. [15 G. A., ch. 2, § 1; C. '73, § 1166.]

See 1773-75. Fraternals 1830-36. Other than Life 1714-16-59-d.

Sec. **1800. Agent's certificate.** No person shall, directly or indirectly, act within this state as agent, or otherwise, in receiving or procuring applications for insurance, or in doing or transacting any kind of life insurance business, for any company or association contemplated in the two chapters preceding, except for the purpose of taking applications for organizations, unless the company or association for which he is acting has received a certificate from the commissioner of insurance authorizing it to transact business therein, nor until he shall have received from said commissioner a certificate showing that such company or association has complied with the provisions of law, and that such person is authorized to act for it. [Same.]

See 1801-14-15-21k, l. Fraternal 1833-37. Other than Life 1725-49-50.

Sec. **1801. Penalty for acting without certificate.** Any such company or association that does or solicits new business without the certificates required by the two preceding chapters shall forfeit five hundred dollars for every day's neglect to procure the same. Any person knowingly soliciting applications or making insurance for any company or association having no such certificate from the commissioner of insurance as required, shall forfeit and pay the sum of three hundred dollars, and any person acting for any company or association authorized to transact business without having the agent's certificate prescribed in the preceding section in his possession, shall be liable to pay twenty-five dollars for each day's neglect to procure the same during the time he thus acts. [15 G. A., ch. 2, § 5; C. '73, § 1177.]

See 1800-14-15-21k, l. Fraternal 1833-37. Other than Life 1725-49-50.

Sec. **1802. Recovery of penalties.** Actions brought to recover any of the penalties provided for in this chapter shall be instituted in the name of the state by the county attorney of the county, under the direction and authority of the commissioner of insurance, and may be brought in the district court of any county in which the company or association proceeded against is engaged in the transaction of business, or in which the offending person resides, if it is against him. The penalties, when recovered, shall be paid into the state treasury for the use of the school fund. [15 G. A., ch. 2, § 6; C. '73, § 1178.]

Sec. **1803. Real estate.** No such company or association organized under the laws of this state shall purchase, hold or convey real estate, except for the purposes and in the manner herein set forth:

1. Such as is required for its use in the transaction of its business;
2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted in the course of its dealings;
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings;
4. Such as shall have been purchased at sales under execution issued upon judgments and decrees based upon debts due it, or obtained by redemption as junior judgment creditor or mortgagee. [C. '73, § 1180.]

Other than Life 1703. Fraternal 1839k.

Sec. **1804. When to be sold.** All real estate acquired which is not necessary for such company or association in the convenient transaction of its business shall be sold within five years after it acquired title thereto, unless it procures a certificate from the commissioner of insurance that its interests will suffer by a forced sale thereof, in which event the time may be extended as the commissioner shall direct in said certificate. [C. '73, § 1181.]

Sec. **1805. Policy exempt from execution.** A policy of insurance on the life of an individual, in the absence of an agreement or assignment to the contrary, shall inure to the separate use of the husband or wife and children of said individual, independently of his creditors. The proceeds of an endowment policy payable to the assured on attaining a certain age shall be exempt from liability for any of his debts. Any benefit or indemnity paid under an accident policy shall be exempt to the assured, or in case of his death to the husband or wife and children of the assured, from his debts. The avails of all policies of life or accident insurance payable to the surviving widow shall be exempt from liability for all debts of such beneficiary contracted prior to the death of the assured, but the amount thus exempted shall not exceed five thousand dollars. [24 G. A., ch. 28; 18 G. A., ch. 5; C. '73, §§ 1182, 2372; R., § 2362; C. '51, § 1330.]

The execution of an ordinary life policy confers immediately a vested right upon and raises an irrevocable trust in favor of the party named as

beneficiary, a right which cannot be impaired without the beneficiary's consent. *Haerther v. Mohr*, 114-636.

The purpose of this section being to provide that the money derived from life or accident insurance shall enure to the benefit of the widow, exempt from her antecedent debts, it follows that she may invest a part or the whole thereof in property which shall be necessary for the comfort and support of her family, without impairing this right of exemption. The exemption is not limited to the money itself. *Cook v. Allee*, 119-226.

In the absence of any contract or arrangement, the proceeds of life insurance are not exempt in the hands of the heir from the debts of such heir. *O'Melia v. Hoffmeyer*, 119-444.

Where a bankrupt holds a policy payable to himself, his heirs or legal representatives, the surrender value thereof will be a part of the assets of his estate in bankruptcy, under the provisions of the federal bankrupt law. *In re Lange*, 91 Fed., 361; *In re Steele*, 98 Fed., 78.

The provisions of the bankrupt law as to exemption of policies of life insurance are only applicable to cases where there is no exemption by the state law, but so far as such policies are exempt by the state law such exemption is recognized under the general provisions as to exempt property. *Steele v. Buel*, 104 Fed., 968.

This section contemplates a case where the policy is payable to deceased, or his or her legal representatives, and not a case where the policy is payable to another person for his use and benefit, in which case it can not be otherwise disposed of by will. *McClure v. Johnson*, 56-620.

Where the contract of insurance provides the method by which insured may change the beneficiary entitled to the proceeds of the policy, and such method is not pursued, a direction in the will of the assured making such change will be without effect. *Stephenson v. Stephenson*, 64-534.

Where absolute power is given to a member of a mutual benefit association to designate who the beneficiary shall be, such direction cannot be disregarded, although the articles of incorporation of the association provide that its object shall be to provide for the widows and orphans of deceased members, and the beneficiary designated is not a widow or child of the deceased member. *Mitchell v. Grand Lodge*, 70-360.

The assured cannot by direction in his will provide for payment of the proceeds of a policy on his life to another beneficiary than the one mentioned in the policy. The contract with the company cannot thus be altered without its consent. *Wilmaser v. Continental L. Ins. Co.*, 66-417.

The assured cannot change the beneficiary by will unless it is so provided in the contract of insurance. *Wendt v. Iowa Legion of Honor*, 72-682.

Where a decedent left a wife but no children, held, that the proceeds should go to the wife alone, and not be divided among all the distributees of his estate. *Rhode v. Bank*, 52-375.

The proceeds of life insurance are exempt to heirs generally and not merely to wife and children, to whom they are distributed free from the debts of the deceased. *Larrabee v. Palmer*, 101-132.

The proceeds of the policy when realized by the person entitled thereto, are not exempt from execution for the debts of such person. The exemption exists only as to the debts of the person insured. *Smedley v. Felt*, 43-607; *Murray v. Wells*, 53-256.

This section does not exempt the avails of a policy of insurance from the debts of a beneficiary when such beneficiary is a person other than the assured. *Murdy v. Skyles*, 101-549.

Therefore a benefit payable to the member of an association and by him transferred to his wife is not exempt from the debts of the wife. *Ibid.*

The exemption to the wife as against her own antecedent debts relates only to cases of death of the husband who is the assured. *Ibid.*

Under a policy of insurance for the use and benefit of the wife of assured, the sum stipulated being payable to said assured or her legal repre-

sentatives "or if the said assured be not then living the said sum shall be payable to her children or to their children if under age," held, that the wife and the children being dead before the death of insured the proceeds of the policy were payable to the grandchildren and were not subject to the debts of the deceased wife. *In re Conrad's Estate*, 89-396.

Where a certificate of insurance in a mutual benefit company was made payable to the "legal" heirs of assured, held, that the widow of assured was not within such description, but that the proceeds of such certificate should go to the children of deceased. *Phillips v. Carpenter*, 79-600; but see now § 3313.

The exemption of this section may apply to property purchased with the avails of the insurance. *Booth v. Martin*, 158-434.

In a particular case held, that the evidence did not show a contract to subject the proceeds of a life policy to the payment of a debt. *Herriman v. McKee*, 49-185.

Where the proceeds of a policy of life insurance are used to release other property from a claim under which it is held, the property, so released becomes subject to the payment of debts. *Friedlander v. Mahoney*, 31-311.

The proceeds of a life policy are assets of the estate, and only differ from other assets in the manner of their distribution. *Kelley v. Mann*, 56-625.

A daughter, who is the beneficiary in a policy of insurance on the life of her father, may make a valid assignment of the policy, and the assignee need not have an insurable interest in the life of the insured or that of the beneficiary. *Farmers' & Traders' Bank v. Johnson*, 118-282.

Further as to disposition of proceeds as assets of the estate, see § 3313.

Sec. **1806. Investment of funds.** The funds required by law to be deposited with the commissioner of insurance by any company or association contemplated in the two chapters preceding, and the funds or accumulations of any such company or association organized under the laws of this state held in trust for the purpose of fulfilling any contract in its policies or certificates, shall be invested in the following described securities and no other:

1. The bonds of the United States;
2. The bonds of this state or of any other state when such bonds are at or above par;
3. Bonds or other evidences of indebtedness of any county, city, town or school district within the state or any other state, drainage district bonds of this state, improvement certificates issued by any municipal corporation of this state such certificates being a first lien upon real estate within the corporate limits of the municipality issuing the same, where such bonds or other evidences of indebtedness are issued by authority of and according to law and bearing interest, and are approved by the commissioner of insurance;
4. Bonds and mortgages and other interest-bearing securities being first liens upon real estate within this state or any other state worth at least double the amount loaned thereon and secured thereby exclusive of improvements, or two and one-half times such amount including the improvements thereon, if such improvements are constructed of brick or stone; but no such improvements shall be considered in estimating the value unless the owner shall contract to keep the same insured in some reliable fire insurance company or companies authorized to do business in the state, during the life of the loan, in a sum at least equal to the excess of the loan above one-half the value of the ground exclusive of the improvements, the insurance to be made payable in case of loss to the com-

pany or association investing its funds, as its interests may appear at the time of loss; provided that before a company or association may invest any of its funds in such securities as are specified in this subdivision of this section in any state other than the state of Iowa it shall first obtain consent of the commissioner of insurance so to do; any mortgage lien upon real estate shall not, for the purposes of this section, be held or construed to be other than a first lien by reason of the fact that drainage or other improvement assessments may have been levied against the real estate covered by said mortgage, whether the installments of said assessment be matured or not, provided that in determining the value of said real estate for loan purposes, the amount of the drainage or other assessment tax unpaid, shall be deducted.

5. Loans upon its own policies, where the same have been in force at least two full years, in an amount not exceeding the net terminal reserve. If such loan is made, the company must describe in the note or contract taken, the amount of the loan, the name of the borrower, the number of the policy, and the terms of such note or contract shall make the amount loaned a lien against such policy and such note or contract shall be numbered, dated and signed, giving the post-office address of the insured.

6. Any such real estate in this state as is necessary for its accommodation as a home office and in the erection of any building for such purposes, it may add thereto rooms for rent; provided that before any company or association shall invest any of its funds, in accordance with the provisions of this subdivision it shall first obtain the consent of the executive council; and provided further that not to exceed ten per cent. of the lawful reserve of such company or association shall be so invested. Any company or association so investing its funds may use the value of any such home office as a part of the deposit of legal reserve in which case it shall convey the same to the commissioner of insurance by deed, such property to be held by him in trust for the benefit of the policyholders or members of the company or association; the value thereof to be determined from time to time by the commissioner of insurance.

All such securities shall be deposited with the commissioner, subject to his approval, and shall remain with him until withdrawn in accordance with law. Any company or association receiving payments or partial payments on any securities deposited with the commissioner of insurance shall notify him of such fact, giving the amount and date of payment, within thirty days after such payment shall have been made. The officers of any company or association which fails to report the receipt of payments or partial payments as above provided, shall be liable to a fine in double the amount collected and not reported within the time and in the manner above specified. It shall be the duty of the company or association and of the officers thereof to withdraw from deposit any loans made in accordance with the provisions of subdivision five of this section within fifteen days after the date of the lapsing or termination of any policy of insurance upon which any such loan is made. Any association making deposit with the commissioner of insurance as herein contemplated, shall at the time of making request for the withdrawal of any securities designate for what purpose the same are desired to be withdrawn. The commissioner of insurance shall have authority to suspend or revoke the certificate of authority of any company or association failing to comply with any of the provisions of this section or for violating the same.

[36 G. A., S. F. 452, § 1; 36 G. A., H. F. 610, § 1; 35 G. A., ch. 145, § 1; 31 G. A., ch. 77; 28 G. A., ch. 66, § 1; 25 G. A., ch. 33; 24 G. A., ch. 30; 21 G. A., ch. 65, § 9; 21 G. A., ch. 169; 17 G. A., ch. 47; C. '73, § 1179.]

See also 1699, 1778-91. Fraternal 1839 l.

Sec. **1807. Investment in land and buildings.** Such organization may purchase such real estate in the state with a portion of its accumulations as may be necessary for its use in the transaction of its business, and in the erection of a building thereon for such purpose, to which rooms for rent may be added. [21 G. A., ch. 65, § 9.]

Sec. **1808. Service of process.** Every life insurance company and association organized under the laws of another state or country shall, before receiving a certificate to do business in this state or any renewal thereof, file in the office of the commissioner of insurance an agreement in writing that thereafter service of notice or process of any kind may be made on the commissioner of insurance, and when so made shall be as valid, binding and effective for all purposes as if served upon the company according to the laws of this or any other state, and waiving all claim or right o error by reason of such acknowledgement of service. Such notice or process with a copy thereof, may be mailed to the commissioner of insurance at Des Moines, Iowa, in a registered letter addressed to him by his official title, and he shall immediately upon its receipt acknowledge service thereon on behalf of the defendant foreign insurance company by writing thereon, giving the date thereof, and shall immediately return such notice or process in a registered letter to the clerk of the court in which the suit is pending, addressed to him by his official title, and shall also forthwith mail such copy, with a copy of his acknowledgment of service written thereon, in a registered letter addressed to the person or corporation who shall be named or designated by such company in such written instrument. [21 G. A., ch. 65, § 13; C. '73, § 1165.]

Applicable see 3530 Appendix. Fraternal 1831. Other than Life 1722.

Sec. **1809. Provisions additional.** The provisions of the preceding section are merely additions to the general provisions of law on the subjects therein referred to, and are not to be construed to be exclusive.

Sec. **1810. Laws of other states—reciprocity.** If by the laws of any state, or the rulings or decisions of the appropriate officers thereof, any burden, obligation, requirement, disqualification or disability is put upon any company or association of any class organized in this state, effecting its freedom to do business in that state, then the same or like burden, obligations, requirement, disqualification or disability shall be put upon every such company

or association of the same class from that state doing or seeking to do business in this state; and the commissioner of insurance shall enforce the provisions of this section, and in doing so may refuse or revoke the certificate of such company or association of such other state; and it shall be unlawful for the commissioner of insurance to impose upon companies or associations organized under chapter seven of this title any rules or regulations, requirements or limitations, that shall not be imposed with equal force upon like companies or associations from other states doing a like business in this state. [21 G. A., ch. 65, § 13.]

See also 1821. Other than Life 1736.

Sec. **1811. Defenses to actions on policies—intoxication.** In any action pending in any court of the state on any policy or certificate of life insurance, wherein the defendant seeks to avoid liability upon the alleged ground of the intemperate habits or habitual intoxication of the assured, it shall be a sufficient defense for the plaintiff to show that such habits or habitual intoxication of the assured was generally known in the community or neighborhood where the agent of the defendant resided or did business, if thereafter the company continued to receive the premiums falling due thereon. [16 G. A., ch. 55, § 1.]

This provision has no application to mutual benefit associations. *Knapp v. Brotherhood of Am. Yeomen*, 128-566; s. c. 149-137.

If representations as to the habits of an applicant are known to the soliciting agent to be false the false statements in the application as to such habits cannot be relied upon by the company as a defense. *Biermann v. Guaranty Mut. Life Ins. Co.*, 142-341.

Sec. **1812. Physician's certificate.** In any case where the medical examiner, or physician acting as such, of any life insurance company or association doing business in the state shall issue a certificate of health or declare the applicant a fit subject for insurance, or so report to the company or association or its agent under the rules and regulations of such company or association, it shall be thereby estopped from setting up in defense of the action on such policy or certificate that the assured was not in the condition of health required by the policy at the time of the issuance or delivery thereof, unless the same was procured by or through the fraud or deceit of the assured. [Same, § 2.]

Applicable to Fraternals. See Supreme Court decisions.

To defeat recovery on account of false statements as to the health of the applicant, the defendant must show, not only that the statements of the applicant were false and fraudulent, but that the examiner was deceived thereby. But the defendant is not estopped by the certificate of the medical examiner from setting up fraud on the part of the applicant in procuring such certificate on which the policy was issued. *Welch v. Union Central L. Ins. Co.*, 108-224.

The purpose of this statutory provision, estopping the company from setting up misrepresentations as to the health of deceased where a medical examiner has passed on the fitness of the applicant, is to prevent recovery

being defeated on any policy where the company has, by its agent, examined and passed upon the fitness of the applicant for insurance, and it is quite immaterial what representations have been made, or warranties given. The fraud or deceit referred to in the statute is that of procuring the report or certificate of the physician and not the policy. *Weimer v. Economic L. Assn.*, 108-451.

Unless the examiner is deceived by answers in the application, or in some other way, the company is not entitled to have the condition of health of the insured at the time of the issuance of the policy investigated. In the absence of fraud or deceit practiced on the medical examiner the company is estopped from questioning the truthfulness of the answers made by the insured in the application. *Stewart v. Equitable Mut. L. Ins. Assn.*, 110-528.

Under this section the company is estopped from inquiring into the correctness of answers in the application, in the absence of an allegation that the medical examiner's report was procured through fraud or deceit. The fact that the statements in such application amount to warranties is immaterial. *Nelson v. Nederland L. Ins. Co.*, 110-600.

The provisions of this section evidently relate to procedure, and not to the validity of the contract, and therefore control in an action on a policy issued in another state by a foreign insurance company. *Ibid.*

Where a physician reports in favor of the application, and it is not proven that such report was secured by fraud practiced upon the physician, the defendant is estopped from denying the truthfulness of the applicant's representations. *Brown v. Modern Woodmen*, 115-450.

The medical examiner or physician referred to in this section is the person who examines the applicant and determines his condition of health and reports whether he is a proper risk. *Peterson v. Des Moines L. Assn.*, 115-668.

The provisions of this section apply to the person who represents the company in making an examination of applicants as to their physical condition, and not to the action of the medical director of the company in determining whether the risk shall be accepted. *Wood v. Farmers' Life Assn.*, 121-44.

Proof of the falsity of the representations made in an application for life insurance is not alone sufficient to establish that such representations were fraudulently made. *Ley v. Metropolitan L. Ins. Co.*, 120-203.

The provisions with reference to the conclusiveness of a health certificate given by a medical examiner have no application to mutual benefit associations. *Smith v. Supreme Lodge*, 123-676.

In an action on a fraternal benefit certificate evidence of fraud in the application consisting in false answers as to the conditions of the applicant's health is admissible to defeat recovery. *Ibid.*

To constitute obtaining a certificate of health, by an applicant for life insurance, by fraud, it is not enough that his answers to the medical examiner be untrue, but he must have known them to be false, and the examiner must have been thereby deceived into issuing the certificate. *Welch v. Union Central Life Ins. Co.*, 117-394.

Unless the examining physician's certificate was procured by fraud, a company whose physician certifies that an applicant is a fit subject for insurance, is estopped from setting up the falsity of assured's warranties as to his health prior to the medical examination. *Brown v. Modern Woodmen of America*, 115-450.

Unless the agent is purposely misled by the applicant for insurance, the company is estopped from putting in issue whether at the time of the issue or delivery of the certificate he was a fit subject for insurance. *Roe v. National Life Ins. Assn.*, 137-696.

To constitute such fraud or deceit there must have been an intention to deceive and the examiner must have relied upon the false statements made by the insured or have been misled by concealment of facts which good faith required him to disclose. *Ibid.*

The provisions of this section are not applicable to fraternal benefit societies, orders or associations. *Sargent v. Modern Brotherhood*, 148-600.

Where a policy of insurance takes effect from the time it is mailed to the applicant, the applicant's condition of health at that time is not open to question or consideration if he has been pronounced by the company's physician a fit subject of insurance. *Unterharnscheidt v. Missouri State Life Ins. Co.*, 160-223.

Section applied. The provisions of section 1812 of the Code are not applicable to fraternal beneficiary associations organized under the provisions of chapter 9, title IX of the code, since section 1825 of such chapter exempts such associations from the provisions of the laws relating to life insurance companies. *Smith v. Supreme Lodge K. & L. of Golden Precept*, 123-676.

Section applied. *Metzradt v. Modern Brotherhood of America*, 112-522.

Sec. **1813. Misrepresentation of age.** In all cases where it shall appear that the age of the person insured has been misstated in the proposal, declaration or other instrument upon which any policy of life insurance has been founded or issued, then and in such case the person or company issuing such policy shall, upon the discovery of such misstatement, be permitted to demand and collect the difference of premium, if any, which would be due, with interest not to exceed six per cent per annum, and payable on account of the true age of the assured, from year to year, according to the rates of premium of such person or company upon which such policy was issued; or such person or company so issuing the policy may, after the decease of the assured, deduct from the amount payable by such policy the difference of premium, if any, with interest, which would so have been payable from year to year, by reason of any difference of age at time of issuance of such policy; and no other defense or deduction by such person or company issuing such policy shall be permitted, after the death of the person assured, on account of such misstatement of age of the assured, notwithstanding any warranty of such statement of age by terms of policy or otherwise, except when it be shown by the person or company insuring that the policy was procured by fraud in fact. [Same, § 3.]

See also 1789. Applicable to Fraternals 1824.

This provision held applicable to a contract of insurance in the Modern Woodmen, it not appearing that such organization was a fraternal beneficiary society as defined in Code § 1822, and therefore specially exempted from the general statutory provisions relating to life insurance. *Krause v. Modern Woodmen*, 133-199.

Section applied. *Seiverts v. National Benefit Assn.*, 95-710.

In an action in this state on a policy issued in another state it will be presumed in the absence of a showing to the contrary that statutes in the other state contain a similar provision with reference to the age of the assured. *Ibid.*

Sec. **1814. Illegal business.** Any officer, manager or agent of any life insurance company or association who, with knowledge that it is doing business in an unlawful manner or is insolvent, solicits insurance with said company or associations, or receives applications therefor, or does any other act or thing towards pro-

curing or receiving any new business for such company or association, shall be guilty of a misdemeanor, and for every such act, on conviction thereof, shall be adjudged to pay a fine of not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not exceeding one year, or be punished by both such fine and imprisonment. All contracts, promises and agreements made by any person to or with any such company or association concerning any premium, policy or certificate of new business, after the revocation of its certificates or denial of authority to do business, shall be null and void, and all payments of premiums or assessments advanced or made by any person on account of any such policy, certificate of new business, or upon any arrangement therefor, may be recovered from such company or association, or its agent to whom payment was advanced or made, or from both of them, and in addition thereto plaintiff may recover an equal amount as liquidated damages, together with a reasonable fee to plaintiff's attorney for services in the case.

As to agents. See 1800-1-15, 1821k, l. Fraternals 1833-37. Other than Life 1725-49-50. **Illegal business** 1821f. Fraternals 1837. Other than Life 1747, 1758.

Sec. **1815. Advertisements—who deemed agent.** The provisions of sections seventeen hundred and forty-nine and seventeen hundred and fifty of chapter four, of this title, shall apply to life insurance companies and associations. [18 G. A., ch. 211, §§ 1, 2.]

Sec. **1816. Penalty for fraud in procuring insurance.** Any agent, physician or other person who shall knowingly, by means of concealment of facts or false statements, procure or assist in procuring from any life insurance organization any policy or certificate of insurance, shall be punished by a fine of not to exceed one thousand dollars or by imprisonment in the county jail not to exceed one year, or by both, in the discretion of the court. [21 G. A., ch. 165, § 19.]

Sec. **1817. Conspiracy to defraud.** If two or more persons conspire to defraud or obtain any money from any life insurance company or association by means of false statements as to the death of any person insured, or the false appearance of the death of any such person, each shall be punished by imprisonment in the penitentiary not to exceed ten years. Any person who by such means obtains any money or property on the policy or certificate of the person so insured shall be punished by imprisonment in the penitentiary not to exceed fifteen years. Any person who thus attempts to obtain money from any such company or association shall be punished by like imprisonment not to exceed seven years.

Sec. **1818. Fees.** When not otherwise provided, each life insurance company doing business in this state, except those or-

ganized under the laws thereof, shall pay to the commissioner of insurance the following fees:

1. Upon filing declaration or certified copy of the charter or articles of incorporation, twenty-five dollars;
2. Upon filing the annual statement, twenty dollars;
3. For each certificate of authority and certified copy thereof, two dollars;
4. For each agent's certificate, two dollars;
5. For every copy of any paper filed, the sum of twenty cents per folio, and for certifying and affixing the official seal thereto, one dollar;
6. For valuing policies, ten dollars for each million dollars of insurance or fraction thereof;

Companies organized under the laws of the state shall pay the following fees:

1. For filing an examination of the first application and the issuance of certificate thereon, ten dollars;
2. For filing each annual statement and issuance of renewal certificate, three dollars;
3. For each agent's certificate, fifty cents.

The provisions of the chapter on insurance other than life shall apply as to fees under this and the two preceding chapters, except as modified by this section. [C. '73, § 1183.]

See also 1752. As to state and county mutuals 1759f.

Sec. 1819. **Copy of application.** All life insurance companies or associations organized or doing business in this state under the provisions of the preceding chapters shall, upon the issue of any policy, attach to such policy, or indorse thereon, a true copy of any application or representation of the assured which by the terms of such policy are made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy, or, upon reinstatement of a lapsed policy, shall attach to the renewal receipt a true copy of all representations made by the assured upon which the renewal or reinstatement is made. The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of this section, it shall forever be precluded from pleading, alleging or proving such application or representations, or any part thereof, or the falsity thereof, or any part thereof, in any action upon such policy, and the planitiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at his option.

See 1741. As to Assessment, Life and Fraternals, see Supreme Court opinions.

A cross-petition asking cancellation of the policy on the ground of fraud committed by the making of false answers in the application cannot be sustained where a copy of the application has not been attached to or incorporated in the policy. *Biermann v. Guranty Mut. Life Ins. Co.*, 142-341.

The purpose of this section is to require all representations and warranties to be attached to the policy so that all parts of the contract may be together and the insured may be at all times in possession of the evidence of his contract. *Nutter v. Des Moines L. Ins. Co.*, 156-539.

Whether the provision that a copy of the application must be attached to or endorsed upon the policy pertains solely to matters of remedy and procedure, and is therefore applicable in an action in this state upon a policy regardless of the place of contract, *quaere*; but held that the statute of Minnesota under which the policy was executed, though different in terms from the statutory provision in this state, should receive the same construction, and that evidence of fraudulent statement in the application not thus attached or endorsed was inadmissible. *Rosen v. Prudential Ins. Co.*, 129-725.

The provisions of 18 G. A., chap. 211, as to attaching copy of application to policy (now embodied in Code § 1741) held applicable to fraternal societies. *Stork v. Supreme Lodge K. of P.*, 113-724.

Section applied. *Mutual L. Ins. Co. v. Kelly*, 114 Fed., 268.

As applicable to this section, see notes to Code § 1741.

Sec. 1820. **Limitation of action.** No stipulation or condition in any policy or contract of insurance or beneficiary certificate issued by any company or association mentioned or referred to in this chapter, limiting the time to a period of less than one year after knowledge by the beneficiary within which notice or proofs of death or the occurrence of other contingency insured against must be given, shall be valid.

In case of accident or health insurance it shall be valid for any company or association to limit by contract the time when notice or proofs of death, cause or disability or other contingency insured against shall be given; but in no case shall said notice be limited to a period of less than 60 days after knowledge by the beneficiary within which such notice or proofs must be given. [33 G. A., ch. 113 §§ 1, 2.]

The provisions of 18 G. A., ch. 211, § 3, relating to proofs of loss, held applicable to mutual benefit associations as well as fire insurance companies. *Parsons v. A. O. U. W.*, 108-6.

The time within which an action may be brought for the loss on the policy cannot by stipulation be limited to less than one year from the time the cause of action has accrued. *Kenny v. Bankers' Acc. Ins. Co.*, 136-140.

A stipulation in the by-laws of a mutual benefit association organized and acting under the provisions of code § 1784 exacting written notice of the death of a member within fifteen days after death is invalid. *Connell v. Iowa State Trav. Men's Assn.*, 139-444.

Sec. 1820-a. **Disbursements—vouchers—affidavit.** No domestic life insurance company shall make any disbursement of one hundred dollars or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements the voucher shall set forth the services rendered and an itemized statement of the disbursements made. When such voucher cannot be obtained the expenditure shall be evidenced by an affidavit of some officer or agent of said company describing the character and object of the expenditure and stating the reason for not obtaining such voucher. [32 G. A., ch. 84.]

Sec. **1820-b. Misrepresentations prohibited.** No life insurance corporation doing business in this state and no officer, director or agent thereof shall issue, circulate, or use, or cause or permit to be issued, circulated, or used, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or shall use any title of any policy or class of policies misrepresenting the true nature thereof. [32 G. A., ch. 85, § 1.]

Sec. **1820-c. Penalty.** Any person violating the provisions of this act, shall be deemed guilty of a misdemeanor and shall be punished accordingly. [32 G. A., ch. 85, § 2.]

Sec. **1820-d. Reports—form—convention edition.** All reports contemplated under sections seventeen hundred fourteen, seventeen hundred seventy-three, seventeen hundred ninety, seventeen hundred ninety-nine and eighteen hundred thirty of the code, and acts amendatory thereof may be upon forms furnished by the commissioner of insurance, and who may, at his option upon authority of the executive council, purchase such forms as are approved by the national convention of insurance commissioners, known as convention edition. [34 G. A., ch. 18, § 18.]

Sec. **1821. Taxes, how paid.** In case this or any other state shall impose or levy any tax on any company or association, the same may be paid from any surplus or emergency fund of such company or association.

CHAPTER 8-A, TITLE IX CODE.

EXAMINATION OF INSURANCE COMPANIES.

Sec. **1821-a. Examination authorized—at least biennially.** The commissioner of insurance may, at any time he may deem it advisable, make an examination of or inquire into the affairs of any insurance company authorized or seeking to be authorized to transact business within this state, provided that such examination shall not be less frequent than once during each biennial period. [30 G. A., ch. 56, § 1.]

See 1821b, c. Life 1777. Fraternals 1839b, c. Other than Life 1700-31-53-55.

Sec. **1821-b. Companies to assist—administer oaths.** When any company is being examined, the officers, employes or agents thereof shall produce for inspection all books, documents, papers or other information concerning the affairs of such company, and shall otherwise assist in such examination so far as they can do. The commissioner of insurance, or his legally authorized repre-

sentative in charge of the examination, shall have authority to administer oaths and take testimony bearing upon the affairs of any company under examination. [30 G. A., ch. 56, § 2.]

Sec. 1821-c. **Examiner—assistants—compensation—expenses—how paid.** For the purpose of carrying into effect the provisions of this act, the commissioner of insurance is hereby authorized to appoint two insurance examiners, one of whom shall be an experienced actuary who shall receive for his services a salary of three thousand dollars per year, the other of whom shall be an experienced and competent fire insurance accountant, who shall receive for his services a salary of two thousand dollars per year, and who, while conducting examinations, shall possess all the powers conferred upon the commissioner of insurance for such purposes. Said examiners shall give bond to the state conditioned upon the faithful performance of their duties, in the sum of five thousand dollars, which bond shall be filed with and approved by the commissioner of insurance. The entire time of the examiners shall be under the control of the commissioner of insurance, and shall be employed as he may direct. The commissioner of insurance may, when in his judgment it is advisable, appoint assistants to aid in making examinations. Such assistants shall receive as compensation for their services not to exceed five dollars per day each. Said examiners and assistants shall receive no other or further compensation than as above provided, except that they and the commissioner of insurance shall receive actual and necessary traveling, hotel and other expenses while engaged in conducting examinations away from their respective places of residence. Such expenses, together with the compensation of the assistants, shall be paid by the treasurer of state, upon warrants drawn by the commissioner of insurance, bills for the same having first been approved by the executive council. Such bills shall be filed under oath of the party incurring the expense and shall be approved by the person in charge of the examination. The salary of the examiners shall be paid as are the salaries of other employes of the commissioner's office. All bills for expenses of any examination, together with the compensation of the assistants, shall be charged to and paid by the companies examined, and upon failure or refusal of any company examined to pay such bill or bills, the same may be recovered in an action brought in the name of the state under the direction of the executive council, and the commissioner may also revoke the certificate of authority of such company to transact business within this state. All fees collected under the provisions of this chapter shall be paid to the commissioner of insurance and shall be by him turned into the state treasury as are other fees of his office. [34 G. A., ch. 80, § 1; 32 G. A., ch. 78; 30 G. A., ch. 56, § 3.]

Sec. 1821-d. **Revocation of certificate—publication of results of examination.** If upon investigation or examination, it shall appear that any company is insolvent or in an unsound condition, or is doing an illegal or unauthorized business, or that it has refused or neglected for more than thirty days to pay final judgment rendered against it in the courts of this state, the commissioner of insurance may suspend its authority to transact business withm this state until it shall have complied in all respects with the laws applicable to such company or has paid such judgment, or he may revoke its certificate of authority to transact business within this state and having revoked the certificate of any company organized under the laws of this state, he shall at once report the same to the attorney-general, who shall apply to the district court or any judge thereof for the appointment of a receiver to close up the affairs of said company; provided that in the case of companies organized on the stock plan under the provisions of chapter four, title nine of the code, the above named officers shall proceed as provided in sections seventeen hundred thirty-one and seventeen hundred thirty-two of the code; and in case of companies organized under the provisions of chapter six, title nine of the code, said officers shall proceed as provided in sections seventeen hundred seventy-seven and seventeen hundred seventy-eight of the code, and no receiver shall be appointed for any company contemplated by this chapter except upon application of the attorney-general, unless five days' notice shall have been served upon the commissioner of insurance and attorney-general, stating the time and place of the hearing of such application, at which time and place said officers shall have the right to appear and be heard as to such application and appointment. The results of any examination shall be published in one or more newspapers of the state or in pamphlet form, when in the opinion of the commissioner of insurance the interests of the public require it. [30 G. A., ch. 56, § 4.]

See 1796, Fraternals 1832-39d. Other than Life 1715-24-25-47-55.

Sec. 1821-e. **Transfer of stock pending examination.** Any transfer of stock of any company, pending an investigation, shall not release the party making the transfer from any liability for losses that may have occurred previous to such transfer. [30 G. A., ch. 56, § 5.]

Sec. 1821-f. **Soliciting business after revocation of authority—penalty.** Any officer, manager, agent or representative of any insurance company contemplated by this act, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, solicits insurance for said company, or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said company, shall be deemed guilty

of a misdemeanor and shall be subject to the penalties provided in section eighteen hundred fourteen of the code, and the provisions of said section are hereby extended to all companies contemplated by this act. [30 G. A., ch. 56, § 6.]

Sec. **1821-g. Refusing to be examined—penalty.** Should any company decline or refuse to submit to an examination as in this act provided, the commissioner of insurance shall at once revoke its certificate of authority, and if such company is organized under the laws of this state, he shall report his action to the attorney-general, who shall at once apply to the district court or a judge thereof for the appointment of a receiver to wind up the affairs of the company. [30 G. A., ch. 56, § 7.]

Sec. **1821-h. Nonresident companies.** Examination of insurance companies not located within this state shall only be made by order of the executive council, and at such time as it may direct. [30 G. A., ch. 56, § 8.]

Sec. **1821-i. "Company" defined.** The word "company" as used in this act shall mean all companies or associations organized under the provisions of chapters four, five, six, seven or eight of title nine of the code, except county mutuals, and all companies or associations admitted or seeking to be admitted to this state under the provisions of any of the chapters herein referred to. [30 G. A., ch. 56, § 9.]

Sec. **1821-j.** Repeals conflicting acts. [30 G. A., ch. 56, § 10.]

CHAPTER 8-B, TITLE IX.

CONSOLIDATION, REINSURANCE, PROPORTIONATE REPRESENTATION, LICENSING AGENTS AND USE OF PROXIES.

Section **1821-k. Agent must be licensed—commissioner may revoke.** No person shall directly or indirectly, act within this state as agent or otherwise, in receiving or procuring applications for insurance, or in doing or transacting any kind of insurance business for any company or association, other than county mutuals or fraternal beneficiary associations, until he has procured from the commissioner of insurance a license authorizing him to act for such company or association as agent which license shall terminate at the end of the insurance year for which such company or association is authorized to transact business. The commissioner of insurance may, for good cause, decline to issue such license or may, for like cause, revoke the same. The fee charged for such agent's license shall be, for domestic companies,

fifty cents, and for companies located outside the state, two dollars. [30 G. A., ch. 57, § 1.]

See 1821l, 1800-1-14-15. Fraternal 1833-37. Other than Life 1725-49-50.

Sec. **1821-l. Acting without license—penalty.** Any person acting as agent or otherwise representing any insurance company or association, in violation of the provisions of this act, shall be liable to a fine of twenty-five dollars for each day he shall so act. [30 G. A., ch. 57, § 2.]

Sec. **1821-m. "Company" defined.** The word "company" or "companies" when used in this act shall mean any company or association organized under the provisions of chapter four, five, six, seven or eight of title nine of the code, except county mutuals. [30 G. A., ch. 58, § 1.]

Sec. **1821-n. Life companies.** No company organized under the laws of this state to do the business of life insurance, either on the stock, mutual, stipulated premium or assessment plan, shall consolidate with any other company or reinsure its risks, or any part thereof, with any other company, or assume or reinsure the whole or any part of the risks of any other company, except as hereinafter provided. Provided that nothing contained in this chapter shall prevent any company as defined in section one of this act from reinsuring a fractional part of any single risk. [30 G. A., ch. 58, § 2.]

Consolidation with another company does not require the unanimous consent of the stockholders. *Beidenkopf v. Des Moines L. Ins. Co.*, 160-629.

Sec. **1821-o. Submit plan to commissioner of insurance—statement as to condition.** When any such company shall propose to consolidate or enter into any reinsurance contract with any other company, it shall present its plan to the commissioner of insurance, setting forth the terms of its proposed contract of consolidation or reinsurance, asking for the approval or any modification thereof, which the commission hereinafter provided for may approve. The company must also file a statement of its assets and if a legal reserve company, of the reserve value of its policies or contracts. [30 G. A., ch. 58, § 3.]

Sec. **1821-p. Commission to proceed without notice—may require notice.** The commission shall proceed to hear and determine such petition, without notice. But if the commission shall deem it necessary in order to conserve the interests of the policyholders that notice shall be given, it shall require the company or companies to notify, by mail, all of the members or policyholders of the said company or companies of the pendency of such petition, and the time and place at which the same will be

heard, the length of time of such notice to be determined by the commission. [30 G. A., ch. 58, § 4.]

Sec. **1821-q. Commission to hear petition—procedure—submission to membership—approval.** For the purpose of hearing and determining such petition, a commission consisting of the governor, commissioner of insurance and attorney-general is hereby created. In the inability of the governor to act, the secretary of state may act in his stead. The commission may make such examination into the affairs and condition of any company or companies as it may deem proper, and shall have power to summon and compel the attendance and testimony of witnesses, and the production of books and papers before said commission and may administer oaths. When notice shall have been given as above provided, any policyholder or stockholder of said company or companies shall have the right to appear before said commission and be heard with reference to said petition. Said commission, if satisfied that the interests of the policyholders of said company or companies are properly protected and no reasonable objection of said petition exists, may authorize the proposed consolidation or reinsurance or may direct such modification thereof as may seem to it best for the interests of the policyholders; and said commission may make such order and disposition of the assets of any such company thereafter remaining as shall be just and equitable. Such consolidation or reinsurance shall only be approved by the consent of all of the members of said commission, and it shall be the duty of said commission to guard the interests of the policyholders of any such company or companies proposing consolidation or reinsurance. In case of companies organized on the assessment plan, the commission may require the plan of consolidation or reinsurance to be submitted to the membership of such company or companies to be voted upon. When submitted, it shall be at a meeting called for that purpose, thirty days' notice being given, and a two-thirds vote of all the members present and voting shall be necessary to an approval of any plan of consolidation or reinsurance, and no proxies shall, in any case, be voted. Any plan of consolidation or reinsurance submitted as herein contemplated, must first have been approved by the commission, and the result of said vote must be filed with the commissioner of insurance and be by him determined before any consolidation or reinsurance shall be effected. [30 G. A., ch. 58, § 5.]

Sec. **1821-r. Companies other than life—approval of plan.** When any company or companies not named in section two of this act desire to consolidate or reinsure, it shall only be necessary for such company or companies to submit the plan of consolidation or reinsurance with any other information that may be required, to the commissioner of insurance and the attorney-

general and have the same by them approved. [30 G. A., ch. 58, § 6.]

Life 1778-91, applicable 1806-7. Fraternals 1839-1.

Sec. 1821-s. **Consolidation with unauthorized companies prohibited.** No company or companies as defined by section one of this act shall consolidate or reinsure with any other company or companies not authorized to transact business in this state. [30 G. A., ch. 58, § 7.]

Sec. 1821-t. **Expenses—how paid.** All expenses and costs incident to proceedings under the provisions of this chapter, shall be paid by the company or companies bringing the petition. [30 G. A., ch. 58, § 8.]

Sec. 1821-u. **Penalty.** Any officer, director or stockholder of any company or companies, as defined in this act, violating or consenting to the violation of any of the provisions hereof, shall be punished by a fine of not less than one thousand dollars, or by imprisonment in the county jail for not less than one year, or by both such fine and imprisonment in the discretion of the court. [30 G. A., ch. 58, § 9.]

Sec. 1821-v. **Proportionate representation.** From and after the taking effect of this act, the holder or holders, jointly or severally, of not less than one-fifth but less than a majority of the shares of the capital stock of corporations organized on the stock plan under the laws of this state for transacting the business of life or fire insurance, shall be entitled to nominate to be elected or appointed, as the case may be, directors or other persons performing the functions of directors by whom, according to the articles of incorporation of such corporations its affairs are to be conducted. In the event such nomination shall be made, there shall be elected or appointed to the extent that the total number to be elected or appointed is divisible, such proportionate number from the persons so nominated as the shares of stock held by persons making such nominations bear to the whole number of shares issued; provided the holder or holders of the minority shares of stock shall only be entitled to one-fifth (disregarding fractions) of the total number of directors to be elected for each one-fifth of the entire capital stock of such corporation so held by them; and provided further that this act shall not be construed to prevent the holders of a majority of the stock of any such corporation from electing the majority of its directors. Vacancies occurring from time to time shall be filled so as to preserve and secure to such minority and majority stockholders proportionate representation as above provided. [32 G. A., ch. 74, § 1.]

Sec. **1821-w. Directors.** All such existing corporations shall by amendment to their articles of incorporation, approved by the commissioner of insurance, provide for the nomination, election or appointment, of the directors or other persons by whom its affairs are to be conducted, in conformity with the provisions of this act, and the articles of incorporation of all such incorporations hereafter organized shall contain like provisions. [32 G. A., ch. 74, § 2.]

Directors other than Life, see 1695-6.

Sec. **1821-x. Voting by proxies—conditions.** Any insurance company or association organized under the laws of this state, may provide in its articles of incorporation, that its members or stockholders may vote by proxies, voluntarily given, upon all matters of business coming before the stated or called meetings of the stockholders or members, including the election of directors. No proxy shall be valid unless signed and executed within two months prior to such meeting or election for which said proxy was given, and such proxy shall be limited to thirty days subsequent to the date of such meeting or election, and may be revoked at any time by the policyholder or stockholder who executed the said proxy. All proxies shall be filed with the company at least one day prior to an election at which they are to be used. [32 G. A., ch. 77, § 1.]

See Fraternals 1839g.

Sec. **1821-y. Solicitation by agents—expenditure of funds.** Soliciting of proxies by an agent of the company either for personal use or for the use of officers of the company or association, or for any other persons, is forbidden. Nor shall any of the funds of a company or association be expended in procuring proxies. [32 G. A., ch. 77, § 2.]

Sec. **1821-z. Penalty.** Any violation of this act shall be deemed a misdemeanor and punishable accordingly. [32 G. A., ch. 77, § 3.]

CHAPTER 9, TITLE IX, CODE.

FRATERNAL BENEFICIARY SOCIETIES, ORDERS OR ASSOCIATIONS.

Section **1822. Defined—general provisions.** A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit, and having a lodge system, with ritualistic form of work and representative form of government. Such association shall

make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident or old age, provided the period of life at which payment of physical disability benefits on account of old age commences shall not be under seventy years, subject to the compliance by members with its constitution and laws. Provided that beneficiary societies or associations, whose membership is confined to the members of any one religious denomination, shall only be required to have a branch system and a representative form of government. Such beneficiary societies or associations shall be governed by the provisions of chapter nine, title nine, of the code, and shall be exempt from the provisions of the statutes of this state, relating to life insurance companies, to the same extent as fraternal beneficiary associations. But the provisions of this chapter shall not be construed to include fraternal orders which only provide for sick and funeral benefits. [34 G. A., ch. 81, § 1; 26 G. A., ch. 21, § 1.]

See also 1709. Sub-sec. 5; also 1783d, 1784.

Unless it appears that an association engaged in the business of insurance is within the definition of fraternal beneficiary societies, it will be presumed to be within the general provisions relating to life insurance companies and associations. *Krause v. Modern Woodmen*, 133-199.

The provision of code § 1812, relating to life insurance companies and associations, that the certificate of the examining physician estops the company from defending on the ground that the assured was not in condition of health required by the policy at the time of the issuance of the certificate, in the absence of any evidence that the certificate was acquired by any fraud or deceit of the assured, has no application to beneficiary societies or associations. *Sargent v. Modern Brotherhood*, 148-600.

Such an association may rely upon mis-representations as breaches of warranty. But held that under a liberal construction in favor of the assured the answers to questions in the application were not false in such sense as to defeat recovery. *Ibid.*

"Initiation" into a fraternal lodge is not a condition precedent to the validity of a certificate of insurance by reason of the language of this section. It may be made a condition precedent by the constitution or by-laws. *Schworm v. Frat. Bkrs. Res. Soc.*, 168 Ia.,—.

Sec. **1822-a. Membership confined to one religious denomination—heretofore organized.** Any corporation heretofore organized under the laws of this or any other state, whose membership is confined to the members of any one religious denomination, and whose plan of business permits, may take advantage of this act by amendment to its articles of incorporation, and by complying with the provisions of section eighteen hundred thirty-two of the supplement to the code, 1907; provided, that such corporations as on March fifteenth, nineteen hundred and seven, were and have since continuously been doing business under chapter seven, title nine of the code, may take advantage of this act without raising their mortuary assessment rates or showing

that their said rates are such as are required by section eighteen hundred and thirty-nine-j of the supplement to the code, 1907. [36 G. A., S. F. 260, § 1; 34 G. A., ch. 81, § 2.]

Sec. **1823. Assessments.** The fund from which the payment of such benefits shall be made and the expenses of such association defrayed shall be derived from beneficiary calls, assessments or dues collected from its members. [Same, § 2.]

Life 1784-88. Other than Life 1707, 1727, 1759h, k, l.

Sec. **1824. Insurable age—beneficiary.** No fraternal association created or organized under the provisions of this chapter shall issue any certificate of membership to any person under the age of fifteen years, nor over the age of sixty-five years, nor unless the beneficiary under said certificate shall be the husband, wife, relative, legal representative, heir or legatee of such member. [Same, § 3.]

See also 1789 and 1813.

The designation of a beneficiary in a certificate of fraternal insurance is not affected by the fact that such beneficiary has subsequently ceased to bear the relationship to the member required by the articles of the association with reference to the designation of such beneficiary. *White v. Brotherhood of Am. Yeoman*, 124-293; *Schmidt v. Hauer*, 139-531.

Relationship by affinity is not created between the blood relatives on either side of the parties to the marriage relation, and a beneficiary is not a relative of the member within the statutory language as to who may be beneficiaries where their relationship is only by affinity through one who is deceased. *Smith v. Supreme Tent*, 127-115.

Where a beneficiary named is not capable of taking the proceeds under the limitations of the statute as to who may be made beneficiaries, the administrator of the deceased member can recover such proceeds as though no beneficiary had been named. *Smith v. Supreme Tent*, 127-115.

In an action against a mutual benefit company by one claiming under a certificate as wife of the insured, the company defending on the ground that insured had a prior wife living, and that plaintiff was not, therefore, entitled to the benefit, has the burden of showing that a prior marriage existed, and had not been dissolved. *Parsons v. A. O. U. W.*, 108-6.

As to changing beneficiary see notes to § 1789.

The beneficiary has no right to resort to the tribunal of the association, since she has no vested interests in the certificate until the death of the holder. *Finnerty v. Catholic Knights of America*, 115-398.

Sec. **1825. Statutes applicable.** Such associations shall be governed by this chapter, and shall be exempt from the provisions of the statutes of this state relating to life insurance companies, except as hereinafter provided. [Same, § 4.]

The statutes relating to life insurance companies are not applicable to mutual benefit associations except as specifically provided, and therefore held that the provisions of Code § 1812, making the certificate of a medical examiner conclusive on the company as against all statements in the application, are not applicable to such associations. *Smith v. Supreme Lodge*, 123-676.

The provisions of the general chapter relating to life insurance are not applicable to mutual benefit associations unless incorporated into the chapter relating to such associations. *Knapp v. Brotherhood*, 128-566.

Sec. **1826. Copy of application.** All such associations shall, upon the issue or renewal of any beneficiary certificate, attach to such certificate or indorse thereon a true copy of any application or representation of the member which by the terms of such certificate are made a part thereof. The omission so to do shall not render the certificate invalid, but if any such association neglects to comply with the requirements of this section it shall not plead or prove the falsity of any such certificate or representation or any part thereof in any action upon such certificate, and the plaintiff in any such action, in order to recover against such association, shall not be required to either plead or prove such application or representation. [Same, § 5.]

Life 1819. Other than Life 1741.

The statute does not require a true likeness or facsimile of the application to be attached to the policy and discrepancies which do not involve any construction in determining that the copies of the application are the same may be disregarded. *Knapp v. Brotherhood of Am. Yeomen*, 139-136.

The provisions of the statute as to incorporating the application in or attaching a copy of it to the policy cannot be waived by the assured. *Mullen v. Woodmen of the World*, 144-228.

Sec. **1827. Where suable.** Such associations may be sued in any county in which is kept their principal place of business, or in which the beneficiary contract was made, or in which the death of the member occurred; but actions to recover old age, sick or accident benefits may, at the option of the beneficiary, be brought in the county of his residence. [Same, § 6.]

When an officer of an assessment insurance company has authority to waive proof of loss, and writes a letter in which he says the claim is invalid by reason of the suspension of the member but makes no objection for failure to make proof of loss, the same is waived. *Alexander v. Grand Lodge A. O. U. W.*, 119-519.

When an assessment company accepts membership dues through its authorized officer, it is estopped from denying the validity of the certificate on any ground which would have justified a refusal of such dues at the time offered, provided the association, through its officer, knew or had notice of such facts as would charge it or its officer with knowledge of the invalidity of the certificate. *Ibid.*

Parties to a mutual benefit certificate may agree to be bound by after-enacted by-laws, provided such by-laws are reasonable, and not retroactive. *Ross v. Modern Brotherhood of America*, 120-692.

Sec. **1828. Exemption of proceeds.** The proceeds of any beneficiary certificate issued by any such association, and of any claims for benefits, shall be exempt from execution and attachment, to the same extent as the proceeds of any policy of life or endowment insurance, as is now or may hereafter be provided by the laws of this state. [Same, § 7.]

See Sec. 1304. Sub-sec. 8 of Appendix. See also 1805.

Sec. **1829. Foreign companies.** Any such association organized under the laws of any other state shall be permitted to do

business in this state, when it shall have filed with the commissioner of insurance a duly certified copy of its charter and articles of association, and a copy of its constitution or laws, certified to by its secretary or corresponding officer, together with an appointment of the commissioner of insurance of this state as a person upon whom process may be served as hereinafter provided, if such association shall be shown to be authorized to do business in the state in which it is incorporated or organized. The commissioner of insurance may personally, or by some person to be designated by him, examine into the conditions, affairs, character and business methods, accounts, books and investments of such association at its home office, which examination shall be at the expense of such association, and shall be made within thirty days after demand therefor; and the expense of such examination shall be limited to five dollars per day and the necessary expenses of travel and for hotel bills. If the commissioner of insurance, after such examination, is of the opinion that no permit should be granted to such association, he may refuse to issue the same. [Same, § 9.]

See 1832. Life 1772. Associations 1794. Other than Life 1721-23-35.

Sec. **1830. Report.** Every such association doing business in this state shall, on or before the first day of March of each year, make, and file with the commissioner of insurance, a report for the year ending on the thirty-first day of December immediately preceding. All reports shall be upon blank forms to be provided by the commissioner of insurance, or may be printed in pamphlet form, and shall be verified under oath by the authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the commissioner of insurance under the separate title "Fraternal Beneficiary Associations," and shall contain answers to the following questions:

1. Number of certificates issued during the year, or members admitted;
2. Amount of indemnity effected thereby;
3. Number of losses or benefit liabilities incurred;
4. Number of losses or benefit liabilities paid;
5. The amount received from each assessment for the year;
6. Total amount paid members, beneficiaries, legal representatives or heirs;
7. Number and kind of claims for which assessments have been made;
8. Number and kind of claims compromised or resisted, and brief statement of reason;
9. Does association charge annual or other periodical dues or admission fees;
10. How much on each one thousand dollars annually, or *per capita*, as the case may be;
11. Total amount received, from what source, and the disposition thereof;
12. Total amount of salaries, fees, per diem, mileage, expenses paid to officers, showing amount paid to each;

13. Does the association guarantee, in its certificates, fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees and donations;
14. If so, state amount guaranteed, and the security of such guarantee;
15. Has the association a reserve or emergency fund;
16. If so, how is it created, and for what purpose, the amount thereof, and how invested;
17. Has the association more than one class;
18. If so, how many, and amount of indemnity in each;
19. Number of members in each class;
20. If voluntary, so state, and give date of organization;
21. If organized under the laws of this state, under what law and at what time, giving chapter and year and date of passage of the act;
22. If organized under the laws of any other state, territory or province, state such fact and date of organization, giving chapter and year and date of passage of the act;
23. Number of certificates of beneficiary membership lapsed during the year;
24. Number in force at beginning and end of year; if more than one class, number in each class;
25. Names and addresses of its presidents, secretary and treasurer, or corresponding officers.

The commissioner of insurance is empowered to make any additional inquiries of any such association relative to the business contemplated by this act, and such officer of such association as the commissioner of insurance may require shall promptly reply in writing, under oath, to all such inquiries. [Same, § 10.]

See 1836. Life 1773-75-90. Applicable 1790-99. Other than Life 1714-16-59d, also 1795.

Sec. 1831. **Service of process.** Any such association permitted to do business within this state, and not having its principal office within this state, and not organized under the laws of this state, shall appoint, in writing, the commissioner of insurance to be attorney in fact, on whom all process in any action or proceeding against it shall be served, and in such writing shall agree that any process against it which is served on said attorney in fact shall be of the same validity as if served upon the associations, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such certificate, certified by said commissioner of insurance, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original. Service upon such attorney shall be deemed sufficient service upon such association. When legal process against any such association is served upon said commissioner of insurance, he shall immediately notify the association of such service by letter, postage prepaid, directed and mailed to its secretary or corresponding officer, and shall within two days after such service forward in the same manner a copy of the process served upon him to such officer. The commissioner of insurance shall keep a record of

all processes served upon him, which record shall show the day and hour when such service was made. [Same, § 11.]

Life 1808. Applicable 2530. Appendix. Other than Life 1722.

Sec. **1832. Annual certificate—amount of insurance required.** Before any beneficiary society, order or association shall be authorized to commence business within this state, it shall submit to the commissioner of insurance its by-laws or rules by which it is to be governed, and also its articles of incorporation which shall include its plan of business. The commissioner of insurance shall thereupon submit its articles of incorporation to the attorney-general for examination, and if found by him to be in harmony with this title, chapter and with law, he shall so certify upon said articles and return them to the commissioner of insurance. If the commissioner of insurance shall approve the articles and also the by-laws or rules, he shall issue to the society, order or association a permit in writing, authorizing it to transact business within this state for a period of one year from the first day of April of the year of its issue, for which certificate and all proceedings in connection therewith, there shall be paid to the commissioner of insurance a fee of twenty-five dollars, and for each annual renewal thereof a like fee shall be paid; provided, however, that before such certificate shall be issued, the fraternal society, order or association shall have actual bona fide applications upon the lives of at least five hundred persons, residents of this state, for at least one thousand dollars of insurance each, and the commissioner of insurance may require the presentation of such applications, signed by the applicants themselves. No renewal of certificate of authority shall be made to any society, order, or association whose membership, in good standing, or the amount of whose insurance in force shall be reduced below the above requirements. Societies, orders or associations not organized under the laws of this state, in addition to the requirements of the provisions of section eighteen hundred twenty-nine of the code, must also comply with all of the provisions of this chapter, except as to the residence of membership; provided, that no such society, order or association shall be authorized to transact business within this state unless it shall be shown to have actual members, in good standing, of at least one thousand, and at least one million dollars of insurance in force. [30 G. A., ch. 62; 27 G. A., ch. 47, § 1; 26 G. A., ch. 21, § 12.]

Articles approved—Life 1768. Assess. Life 1785. Other than Life 1685. Mutual Assess. 1759c. **Certificate of Authority**, Fraternal 1839d. Life 1796, 1821d. Assess. Life 1787. Other than Life 1715-24-25-55. Mutual Assess. 1759c.

Sec. **1833. Agents.** Such association shall not employ paid agents in soliciting or procuring members, except in the organiza-

tion or building up of subordinate bodies, or granting members inducements to procure new members. [26 G. A., ch. 21, § 13.]

Life 1800-1-14-15-21k, 1. Other than Life 1725-49-50.

Mutual benefit associations are prohibited from employing paid agents, and therefore such an organization cannot after it is formed, ratify the act of a promoter in agreeing that an agent shall have a commission for procuring members for the organization. *First National Bank v. Church Federation*, 129-268.

Such a contract being expressly forbidden, the association is not estopped by taking advantage of the services of such agent from defending against his claim for compensation. *Ibid.*

The statute does not, however, prohibit others than the association from employing and paying an agent to procure members, and held that the promoter pretending to act as general superintendent of the organization was liable to the agent employed by him in the name of the association for compensation under the contract. *Ibid.*

Sec. **1834. Changing beneficiary.** No contract between a member and his beneficiary that the beneficiary or any person for him shall pay such member's assessment and dues, or either of them, shall deprive the member of the right to change the name of the beneficiary. [Same, § 14.]

Where the parties have agreed upon a mode by which a change of beneficiary may be effected, the change can be made in that mode only, unless by subsequent agreement, assented to by the association, a different mode is substituted. *Modern Woodmen v. Little*, 114-109.

Sec. **1835. Meetings in other states.** Any such association organized under the laws of this state may provide for the meetings of its legislative or governing body in any other state, territory or province wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be valid, in all respects, as if such meetings were held within this state; and where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any other state, territory or province shall be valid, as if cast within this state. [Same, § 15.]

Sec. **1836. Proceedings for violations of statute.** Any such association refusing or neglecting to make the report as provided in this chapter shall be excluded from doing business within this state. The commissioner of insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this chapter, give notice in writing to the attorney-general, who sh. ll immediately commence an action against such association to enjoin the same from carrying on any business. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violation complained of shall have been corrected, nor until the costs of such action be paid by

it, provided the court shall find that such association was in default as charged; whereupon the commissioner of insurance shall reinstate such association and not until then shall such association be allowed to again do business in this state. Any officer, agent or person acting for any such association or subordinate body thereof within this state, while such association shall be so enjoined or prohibited from doing business pursuant to this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than two hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court. [Same, § 16.]

See Sec. 1795 as to closing assessment associations.

Sec. **1837. Illegal business—agents.** Any person who shall act within this state as an officer, agent or otherwise for any such association which has failed, neglected or refused to comply with or which has violated any of the provisions of this chapter, or shall have failed or neglected to procure from the commissioner of insurance proper certificate of authority to transact business as provided for by this chapter, shall be subject to the penalty provided in the last preceding section for the misdemeanor therein specified. [Same, § 17.]

See 1833. Life 1800-1-14-15-21k, 1. Other than Life 1725-49-50.

Sec. **1838. False representations by officers or agents.** Any officer, agent or member of such association, who shall obtain any money or property belonging thereto by any false or fraudulent representations, shall be fined not more than five hundred dollars and costs, and stand committed until such fine and costs are paid, or may be imprisoned in the county jail not more than six months. [Same, § 18.]

Sec. **1839. Physician's certificate.** Every applicant for membership in any association organized in this state shall first be examined by a physician holding a certificate from the state board of medical examiners. [Same, § 19.]

Sec. **1839-a. "Association" defined.** The term "association" when used in this act shall mean any society, order or association organized or authorized under the provisions of chapter nine of title nine of the code. [30 G. A., ch. 61, § 1.]

Sec. **1839-b. Examination — assistants — compensation.** The commissioner of insurance may, at any time he may deem it advisable, either in person or by his legally appointed representative, make an examination of or inquire into the affairs of any fraternal beneficiary association authorized or seeking to be

authorized to transact business within this state, provided the examination of associations organized under the laws of this state shall not be less frequent than once during each biennial period. To aid in making such examination, the commissioner of insurance may appoint such assistants as may be necessary, each of whom shall receive as compensation for his services not to exceed five dollars per day. [30 G. A., ch. 61, § 2.]

See 1839e. Life 1777. Other than Life 1700-31-53-55.

Sec. **1839-c. Officers to assist—examiner may administer oaths.** When an association is being examined, the officers, agents or employes thereof shall produce for inspection all books, papers, documents or other information concerning the affairs of the association and shall otherwise assist in the examination. The commissioner of insurance or examiner shall have authority to administer oaths, and may summon and may examine under oath any officer, employe, representative or agent of any association concerning its affairs or condition. [30 G. A., ch. 61, § 3.]

Sec. **1839-d. Revocation or suspension of authority.** If upon investigation or examination, it shall appear to the satisfaction of the commissioner of insurance that any association is doing an illegal or unauthorized business, or is failing to fulfill its contracts with its members, or is conducting its business fraudulently, or if its membership or the amount of its insurance in force has been reduced below the legal requirement, or should any association decline or refuse to submit to an examination, the commissioner of insurance may suspend or revoke its certificate of authority to transact business within this state, and having revoked the certificate of authority of any association organized under the laws of this state, he shall at once report the same to the attorney-general, who shall apply to the district court or any judge thereof for the appointment of a receiver to wind up the affairs of such association. [30 G. A., ch. 61, § 4.]

See 1832. Life 1796. Other than Life 1705-24-25-47-55-59c, 1821d.

Sec. **1839-e. Expenses—how paid.** In addition to the compensation of the assistants provided for in section two of this act, the commissioner of insurance or examiner and assistants shall be entitled to actual and necessary traveling, hotel and other expenses while conducting examinations away from their respective places of residence, the same to be paid by the treasurer of state upon warrants drawn by the auditor of state, bills therefor having been filed under oath and approved by the executive council. Such expense and compensation shall, by the commissioner of insurance, be charged to and collected from the associations examined and should any association neglect or refuse to pay the same, the commissioner of insurance shall at once revoke its cer-

tificate of authority to transact business within this state. [30 G. A., ch. 61, § 5.]

Sec. 1839-f. **Soliciting new business—penalty.** Any officer, manager, agent or representative of any association who with knowledge that its certificates [certificate] of authority has been suspended or revoked or that it is doing an illegal, unauthorized or fraudulent business, solicits insurance for said association or receives applications therefor, or does any other act or thing toward receiving or procuring any new business for said association, shall be deemed guilty of a misdemeanor and for every such act, on conviction thereof, shall pay a fine of not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not more than one year, or be punished by both such fine and imprisonment. [30 G. A., ch. 61, § 6.]

Sec. 1839-g. **Plan of consolidation or re-insurance—approval.** When any fraternal beneficiary association shall propose to consolidate or enter into any re-insurance contract with any other association or organization, it shall present its proposed plan of consolidation or re-insurance, together with a statement of the condition of its affairs to the commissioner of insurance for his approval. Should he approve the plan, the same shall be submitted by any association proposing to re-insure its risks or transfer its business, to its local lodges or organizations or to a regular or special meeting of its supreme lodge or governing body to be voted upon, such notice being given as the commissioner of insurance may direct. If, in the judgment of the commissioner of insurance, it is deemed advisable he may also require the plan to be in like manner submitted to the association proposing to accept or re-insure the risks of any other association. In case two or more associations propose to consolidate, the proposed plan of consolidation shall be submitted, as above provided, to all the associations interested in such consolidation. In any of the above cases, a two-thirds vote of all of the members of each association present and voting shall be necessary to an approval of any plan of consolidation or re-insurance, and in no case shall proxies be voted. On presenting to the commissioner of insurance satisfactory proof that the foregoing provisions have been complied with and that the required number of votes have been cast in favor of the proposed plan, he shall issue to the associations an order to the effect that the plan has been approved, and the same shall be in force and effect from and after the date of such order, and the commissioner of insurance shall direct such distribution of the assets of any such associatior or associations as shall be just and equitable. [30 G. A., ch. 63, § 1.]

Sec. 1839-h. **Expenses, how paid.** All expenses or costs incident to proceedings under the provisions of this act shall be paid by the associations interested. [30 G. A., ch. 63, § 2.]

Sec. 1839-i. **Penalty.** Any officer, director or manager of any association violating or consenting to the violation of any of the provisions of this act shall be punished by a fine of not less than one thousand dollars, or by imprisonment in the county jail not less than one year, or by both such fine and imprisonment in the discretion of the court. [30 G. A., ch. 63, § 3.]

Sec. 1839-j. **Mortuary assessment.** No fraternal beneficiary society not admitted to transact business within this state prior to the passage of this act, shall be incorporated or given a permit or certificate of authority to transact business within this state, unless it shall first show that the mortuary assessment rates provided for in whatever plan of business it has adopted, are not lower than is indicated as necessary by the following mortality table:

[NATIONAL FRATERNAL CONGRESS MORTALITY TABLE.]

Age	Number living	Number dying	Yearly probability of dying	Age	Number living	Number dying	Yearly probability of dying
20....	100,000	506	.0050000	60....	69,801	1,588	.0227504
21....	99,500	501	.0050352	61....	68,213	1,681	.0246434
22....	98,999	502	.0050708	62....	66,532	1,778	.0267240
23....	98,497	503	.0051068	63....	64,754	1,880	.0290330
24....	97,994	505	.0051535	64....	62,874	1,985	.0315701
25....	97,489	507	.0052006	65....	60,889	2,094	.0343904
26....	96,982	510	.0052587	66....	58,795	2,206	.0375202
27....	96,472	513	.0053176	67....	56,589	2,308	.0409620
28....	95,957	517	.0053877	68....	54,271	2,430	.0447753
29....	95,442	522	.0054693	69....	51,841	2,539	.0489767
30....	94,920	527	.0055520	70....	49,302	2,645	.0536489
31....	94,393	533	.0056466	71....	46,657	2,744	.0588122
32....	93,860	540	.0057532	72....	43,913	2,832	.0644912
33....	93,320	548	.0058723	73....	41,081	2,909	.0708113
34....	92,772	557	.0060040	74....	38,172	2,969	.0777795
35....	92,215	567	.0061487	75....	35,203	3,009	.0854957
36....	91,648	578	.0063067	76....	32,194	3,026	.0939927
37....	91,070	591	.0064895	77....	29,168	3,016	.1031010
38....	90,479	606	.0066977	78....	26,152	2,977	.1138345
39....	89,873	622	.0069209	79....	23,175	2,905	.1253506
40....	89,251	640	.0071708	80....	20,270	2,799	.1380858
41....	88,611	660	.0074483	81....	17,471	2,659	.1521951
42....	87,951	683	.0077657	82....	14,812	2,485	.1677694
43....	87,268	708	.0081129	83....	12,327	2,280	.1849599
44....	86,568	734	.0084797	84....	10,047	2,050	.2040410
45....	85,826	761	.0088668	85....	7,997	1,800	.2250844
46....	85,065	790	.0092870	86....	6,197	1,539	.2483460

NATIONAE FRATERNAL CONGRESS MORTALITY TABLE—Continued.

Age	Number living	Number dying	Yearly probability of dying	Age	Number living	Number dying	Yearly probability of dying
47	84,275	822	.0097538	87	4,658	1,277	.2741520
48	83,453	857	.0102693	88	3,381	1,023	.3025732
49	82,596	894	.0108238	89	2,358	788	.3341815
50	81,702	935	.0114440	90	1,570	579	.3687898
51	80,767	981	.0121460	91	991	404	.4076690
52	79,786	1,029	.0128970	92	587	264	.4497445
53	78,757	1,083	.0137512	93	323	161	.4984520
54	77,674	1,140	.0146767	94	162	89	.5493827
55	76,534	1,202	.0157054	95	73	44	.6027397
56	75,332	1,270	.0168587	96	29	19	.6551724
57	74,062	1,342	.0181200	97	10	7	.7000000
58	72,720	1,418	.0194924	98	3	3	1.0000000
59	71,302	1,501	.0210513				

Provided, however, that nothing in this act shall be construed to apply to any association organized solely for benevolent purposes and composed wholly of members of any one occupation or guild.

The certificate written by any domestic fraternal beneficiary association operating under the provisions of the foregoing mortality table shall be valued in the same manner as provided in section seventeen hundred seventy-four of the code, except that such valuation shall be based upon the foregoing mortality table and four per cent. interest. [34 G. A., ch. 18, § 19; 32 G. A., ch. 86.]

Sec. 1839-k. **Acquisition of real estate—erection of building—conditions.** Any fraternal beneficiary society, order or association organized under the laws of this state, accumulating money to be held in trust for the purpose of the fulfillment of its certificates or contracts, shall be permitted to invest not to exceed ten per cent. of the aggregate amount of such accumulation in such real estate in this state as is necessary for its accommodation as a home office, and in the purchase or erection of any building for such purpose it may add thereto rooms for rent; provided that before any association shall invest any of its funds in accordance with the provisions of this subdivision it shall first obtain the consent of the executive council. Any company or association so investing its funds shall convey the real estate thus acquired to the commissioner of insurance by deed, such property to be held by him in trust for the benefit of the members of such association, the value thereof to be determined from time to time by the commissioner of insurance. Provided, that nothing in this

act shall be construed to permit the officials or board of directors of such society, order or association to make such investment without authority specifically granted by the said society, order or association through its grand or supreme lodge or convention. [32 G. A., ch. 87.]

Sec. 1839-l. **Investment of funds—securities deposited.** Any fraternal beneficiary society, order or association organized under the laws of this state, accumulating money to be held in trust for the purpose of the fulfillment of its certificates or contracts shall invest such accumulations in the following securities and no other:

1. Bonds of the United States.
2. Bonds of this or any other state, when such bonds are at or above par.
3. Bonds or other evidences of indebtedness of any county, city, town or school district within the state or any other state, or drainage bonds of any drainage district in the state of Iowa where such bonds or other evidences of indebtedness are issued by authority of and according to law and bearing interest, and are approved by the executive council.
4. Bonds, mortgages and other interest bearing securities being first liens upon real estate within this state or any other state, worth at least double the amount loaned thereon and secured thereby exclusive of improvements, or two and one-half times such amount including the improvements thereon, if such improvements are constructed of brick or stone; but no such improvements shall be considered in estimating the value unless the owner shall contract to keep the same insured in some reliable fire insurance company or companies authorized to do business in the state, during the life of the loan, in a sum at least double the excess of the loan above one-half the value of the ground exclusive of the improvements, the insurance to be made payable in case of loss to the company or association investing its funds, as its interest may appear at the time of loss.

All such securities shall be deposited with the commissioner of insurance subject to his approval, and shall remain with him until withdrawn in accordance with the provisions of this act. Any fraternal beneficiary society, order or association receiving payments or partial payments on any securities deposited with the commissioner of insurance, shall notify him of such fact giving the amount and date of payment within fifteen days after such payment shall have been made. The officers of any society, order or association which fails to report the receipt of payments or partial payments as above provided shall be liable to fine in double the amount collected and not reported within the time and in the manner above specified.

Any society, order or association required to make a deposit with the commissioner of insurance as herein contemplated, shall at the time of making such deposit, designate by what provisions of its articles of incorporation or laws such fund is accumulated and upon making request for withdrawal of any funds shall designate for what purpose such withdrawal is desired.

Any society, order or association, may at any time change its securities on deposit by depositing a like amount in other securities of the same character and the commissioner of insurance shall permit a withdrawal of the same upon satisfactory proof in writing filed with him that they are to be used for the purpose for which they were originally deposited.

The commissioner of insurance shall have authority to suspend or revoke the certificate of authority of any society, order or association failing to comply with any of the provisions of this act or for violating the same.

Nothing in this act shall be construed to apply to any association organized solely for benevolent purposes and composed wholly of members of any one occupation, guild, profession or religious denomination; nor shall the provisions of this chapter be construed to apply to auxiliary societies or associations, the membership of which consists of female members of the families of members of any one occupation, guild, profession or religious denomination. [34 G. A., ch. 82, § 1; 32 G. A., chs. 88-89.]

Other than Life 1699. Life 1778-91-1806.

Sec. 1839-m. **Receiver on application of attorney general only.** No application for the appointment of a receiver, for any fraternal beneficiary society, or branch thereof, shall be entertained by any court in this state, unless same is made by the attorney general. [36 G. A., S. F. 491, § 1.]

Sec. 1839-n. **When proceedings may be commenced.** No such proceedings shall be commenced by the attorney general against any fraternal beneficiary society until the commissioner of insurance has first made an examination of such fraternal beneficiary society, and completed a report upon its affairs, and not until after notice has been duly served on the chief executive officers of the society, and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced. [36 G. A., S. F. 491, § 2.]

Sec. 1839-o. **Examinations and statements not public.** Pending, during or after an examination or investigation of such fraternal beneficiary society, the commissioner of insurance shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy of such examination and investigation shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer such financial statement, investigation, report or finding, and to make such showing in connection therewith, as it may desire. [36 G. A., S. F. 491, § 3.]

CHAPTER 7-A, TITLE XII.

OF THE STATE FIRE MARSHAL.

Section 2468-a. **Office created—appointment—term—removal.** There is hereby created the office of state fire marshal and upon the taking effect of this act the governor shall appoint a citizen of the state versed in the causes of fires and having a knowledge of improved methods of preventing fires, to fill the position hereby created. The term of office of the state fire marshal shall be four years and the term of the first incumbent of the office shall end July first, nineteen hundred fifteen. During the thirty-sixth session of the general assembly and quadrennially thereafter the governor with the consent of the senate shall appoint a citizen of the state possessing the above requirements as state fire marshal, and the person so appointed shall assume the duties of his office July first following the date of his appointment. The state fire marshal may be removed for cause at any time by the governor and vacancies arising shall be filled by appointment by the governor, which appointment shall be for the unexpired term. The state fire marshal shall maintain an office at the seat of government and for that purpose the executive council shall provide him with suitably furnished rooms, furniture, books, supplies, printing and stationery necessary to the proper conduct of his office. Before entering upon the discharge of his duties he shall give a bond in the penal sum of five thousand dollars conditioned as provided in section eleven hundred eighty-three of the code. [34 G. A., ch. 128, § 1.]

Sec. 2468-b. **Deputy and other assistants—compensation.** The state fire marshal is hereby empowered to appoint a deputy fire marshal to assist him in his work, and with the approval of the executive council may appoint and fix the compensation of such additional deputies, clerks and assistants as may be necessary to properly and efficiently conduct the affairs of his office. [34 G. A., ch. 128, § 2.]

Sec. 2468-c. **Vacancy filled by deputy.** While any vacancy shall exist in the office of state fire marshal or during his absence or inability to perform his duties, the same shall devolve upon and be performed by the deputy fire marshal. [34 G. A., ch. 128, § 3.]

Sec. 2468-d. **Inspectors—appointment—powers.** With the approval of the executive council the state fire marshal may, in addition to the provisions of section two, appoint any person, or persons, as state inspector, or inspectors, who may be known to him to be competent and skilled in the inspection of buildings and their contents. Such person or persons shall have all the

powers of a deputy fire marshal to enter and inspect buildings, including their contents and occupancies, as provided in section nine hereof, and it shall be the duty of such inspector to report to the fire marshal any faulty or dangerous condition found. Such state inspector or inspectors shall be duly commissioned and shall receive such compensation as is provided for in section fifteen of this act. [34 G. A., ch. 128, § 4.]

Sec. 2468-e. **Investigation of causes of fires—duties of city and other officers—reports—penalties.** The state fire marshal either by himself or through other persons as in this act provided shall investigate the cause, origin and circumstances of every fire occurring within the state and it shall be the duty of the chief of the fire department of every city, town or village in which a fire department is established, and of the mayor of every incorporated town, or village in which no fire department exists, and of the township clerk of every organized township, ouside the limits of any organized city, town or village, to investigate the cause, origin and circumstances of every fire occuring in such city, town, village or township by which property has been destroyed, or damaged, and to specially make investigation as to whether such fire was the result of carelessness or design. Such investigation shall be begun within two days, not including Sunday, of the occurrence of such fire, and the state fire marshal shall have the right to supervise and direct such investigation whenever he deems it expedient or necessary. The officer making investigation of fires occurring in cities, villages, towns or townships shall forthwith notify said fire marshal, and shall within one week of the occurrence of the fire furnish to the said fire marshal a written statement of all facts relating to the cause and origin of the fire and such other information as may be called for by the blanks provided by said fire marshal. Any chief of a fire department, mayor or township clerk who fails or refuses to make the investigation and report required of him by this section shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined in a sum not less than five dollars nor more than one hundred dollars. [35 G. A., ch. 224, § 1; 34 G. A., ch. 128, § 5.]

Sec. 2468-f. **Record of fires.** The state fire marshal shall keep in his office a record of all fires occurring in the state, showing the name of the owners and name or names of occupants of the property at the time of the fire, the sound value of the property, and amount of insurance thereon, the total amount of insurance collected, and the total amount of loss to the property owner, together with all the facts, statistics, and circumstances, including the origin of the fire, which may be determined by the investigation provided by this act. Such record shall at all times be opened to public inspection. [34 G. A., ch. 128, § 6.]

Sec. 2468-g. **Testimony under oath—arrest for arson.** The state fire marshal shall, when in his opinion further investigation is necessary, take or cause to be taken the testimony under oath of all persons supposed to have knowledge of any facts, or to have means of knowledge in relation to the matter in which an examination is herein required to be made, and shall cause the same to be reduced to writing. If the state fire marshal shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with the attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, he shall cause such person to be arrested and charged with the offense, or either of them, and shall furnish to the proper prosecuting attorney all such evidence, together with the names of witnesses and all of the information obtained by same, including a copy of all matter and testimony taken in the case. [34 G. A., ch. 128, § 7.]

Sec. 2468-h. **Power to require attendance of witnesses—evidence—violation—penalty.** The state fire marshal and his deputy shall each have power in any county in the state to administer an oath and compel the attendance of witnesses before them, or either of them, to testify in relation to any matter which is by the provisions of this act a subject of inquiry and investigation, and may require the production of any books, papers, or documents necessary for such investigation. False swearing in any matter of proceding aforesaid shall be deemed perjury and shall be punished as such. Any witness who refuses to be sworn, or refuses to testify, or who disobeys any lawful order of said state fire marshal, or deputy state fire marshal, or who fails to produce any books, papers or documents touching any matter under examination, or who is guilty of any contentious conduct after being summoned by them or either of them to appear before them or either of them, to give testimony in relation to any matter or subject under investigation as aforesaid, shall be guilty of a misdemeanor, and it shall be the duty of the state fire marshal or deputy state fire marshal, or either of them, to make or compel said person or persons so refusing to comply with the summons or orders of said state fire marshal, or deputy state fire marshal, before any justice of the peace, police magistrate, or any court of record in the county in which said investigation is being had, and upon the filing of such complaint for such cause, shall proceed in the same manner as other criminal cases. Any person convicted of the violation of any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be fined in a sum not exceeding one hundred dollars or imprisoned not to exceed thirty days, or both, in the discretion of the court; provided, however, any person so convicted shall have the right of appeal. [34 G. A., ch. 128, § 8.]

Sec. 2468-i. **Authority to enter buildings.** Said state fire marshal and his deputy, or either of them, shall have the right and authority at all times of day or night in the performance of the duties imposed by the provisions of this act, to enter upon, or examine any buildings or premises, where any fire has occurred, and other buildings or premises adjoining or near the same. [34 G. A., ch. 128, § 9.]

Sec. 2468-j. **Examination of buildings—order for removal or change—penalty—appeal.** The state fire marshal, his deputy and assistants, the chief of the fire department of all cities, towns or villages where a fire department is established, and the clerk of each township in the territory outside the limits of an organized city or village, upon complaint of any person having an interest in any building or property adjacent, and without any complaint, shall have a right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises within their jurisdiction. Whenever any of said officers shall find any building, or structure, which by want of proper repair or by reason of age and dilapidated condition, or for any cause, is especially liable to fire, and is so situated as to endanger other buildings or property therein, or whenever any such official shall find in any building or upon any premises combustible or explosive matter or inflammable conditions dangerous to the safety of certain buildings or premises, they shall order the same to be removed or remedied and such order shall be forthwith complied with by the owner or occupant of said building or premises, providing, however, that if said occupant or owner shall deem himself aggrieved by such order he may within forty-eight hours appeal to the state fire marshal, and the cause of complaint shall be at once investigated under the direction of the latter, and unless by his authority the order is rejected, such order shall remain in force and be forthwith complied with by said owner or occupant. Any owner or occupant of buildings or premises failing to comply with the order of the authorities above specified shall be punished by a fine of not less than ten dollars nor more than fifty dollars for each day's neglect; such penalty to be sued in the name of the state of Iowa upon complaint of the fire marshal, deputy fire marshal or county attorney, or of any officer named herein in the county in which such building or buildings shall be situated, before any justice of the peace or any court of record; right of appeal shall be granted, and such penalty, when recovered, shall be paid into the county treasury of the county wherein such recovery is had; provided, however, that in municipalities having building inspection and limit ordinances, nothing herein shall be construed to affect such local regulations, but the jurisdiction of the state fire marshal shall be concurrent with that of the municipal authorities. [35 G. A., ch. 224, § 2; 34 G. A., ch. 128, § 10.]

["buildings" in enrolled bill. EDITOR.]

Sec. 2468-k. **Fire drills in public schools—exits unlocked—bulletin—teachers—penalty.** It shall be the duty of the state fire marshal and his deputies to require teachers of public and private schools, in all buildings of more than one story, to have at least one fire drill each month, and to require all teachers of such schools, whether occupying buildings of one or more stories, to keep all doors and exits of their respective rooms and buidings unlocked during school hours. The state fire marshal shall prepare a bulletin upon the causes and dangers of fires, arranged in not less than four divisions or chapters, and under the direction of the executive council shall publish and deliver the same to the public schools throughout the state, and the teachers thereof shall be required to instruct their pupils in at least one lesson each quarter of the school year with reference to the causes and dangers of fires. Any teacher failing to comply with the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine of not to exceed ten dollars for each offense. [34 G. A., ch. 128, § 11.]

Sec. 2468-l. **Salaries—expenses.** The state fire marshal shall receive an annual salary of twenty-five hundred dollars and the deputy fire marshal shall receive an annual salary of eighteen hundred dollars. The said fire marshal, his deputies and assistants shall be entitled to their actual and necessary traveling, hotel and other expenses while away from the city of Des Moines on business of the office; and the said fire marshal may contract such other expenses as may be necessary in the performance of his official duties, but the total amount to be expended for all purposes, including salaries, compensation, fees and expenses, except the office expenses provided in section one hereof, shall not exceed the sum of thirteen thousand five hundred dollars annually. [35 G. A., ch. 224, §§ 3, 6; 34 G. A., ch. 128, § 12.]

Sec. 2468-m. **Marshal and deputy shall devote entire time.** The state fire marshal shall devote his entire time to the duties of his office and he or his deputy shall, except when engaged elsewhere in the performance of his duties, at all times be at the office of the state fire marshal, ready for such duties as are required by this act. [34 G. A., ch. 128, § 13.]

Sec. 2468-n. **Annual report—publication—distribution.** The state fire marshal shall file with the governor annually, as early as consistent with full and accurate preparation and not later than the first day of February each year, a detailed report of his official action and of the affairs of his office, which report shall be published and distributed as the reports of other state officers. [34 G. A., ch. 128, § 14.]

Sec. 2468-o. **Fee for fires reported.** There shall be paid to the chiefs of the fire department, and to mayors of incorporated

villages, and to the township clerk of every organized township, who are by this act required to report fires to the state fire marshal, the sum of fifty cents for each fire so reported to the satisfaction of the state fire marshal, and in addition thereto there shall be paid to township clerks mileage at the rate of ten cents per mile for each mile traveled to the place of fire. Said allowance shall be paid by the state fire marshal out of any funds appropriated for the use of the office of said state fire marshal. [35 G. A., ch. 224, § 4; 34 G. A., ch. 128, § 15.]

Sec. 2468-p. **Annual appropriation.** There is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of thirteen thousand five hundred dollars annually, or so much thereof as may be necessary for the purpose of maintaining the department of the state fire marshal and paying all expenses thereof. The said fire marshal shall keep on file in the office an itemized statement of all expenses incurred by his department, and shall approve all vouchers issued, and said vouchers shall be allowed and paid out of the funds hereby appropriated in the same manner that other claims against the state are paid, upon approval of the executive council. [35 G. A., ch. 224, § 5; 34 G. A., ch. 128, § 16.]

CHAPTER 8-A, TITLE XII.

EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION.

PART I.

Sec. 2477-m. **Employers—employees—exceptions.** (a) Except as by this act otherwise provided, it shall be conclusively presumed that every employer as defined by this act has elected to provide, secure and pay compensation according to the terms, conditions and provisions of this act for any and all personal injuries sustained by an employee arising out of and in the course of the employment; and in such cases the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury, unless by the terms of this act otherwise provided; but this act shall not apply to any household or domestic servant, farm or other laborer engaged in agricultural pursuits, nor persons whose employment is of a casual nature.

(b) **Compulsory.** Where the state, county, municipal corporation, school district, cities under special charter and commission form of government is the employer, the terms, conditions and provisions of this act for the payment of compensation and amount thereof for such injury sustained by an employee of such

employer shall be exclusive, compulsory and obligatory upon both employer and employee.

(c) **Terms rejected.** An employer having the right under the provisions of this act to elect to reject the terms, conditions and provisions thereof and [who] in such case exercises the right in the manner and form by this act provided, such employer shall not escape liability for personal injury sustained by an employe of such employer when the injury sustained arises out of and in the usual course of the employment because:

(1) **Risks assumed.** The employe assumed the risks inherent in or incidental to or arising out of his or her employment; or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising from the failure of the employer to furnish reasonably safe tools or appliances, or because the employer exercised reasonable care in selecting reasonably competent employes in the business.

(2) **Negligence.** That the injury was caused by the negligence of the co-employe.

(3) **Intoxication.** That the employe was negligent unless and except it shall appear that such negligence was willful and with intent to cause the injury; or the result of intoxication of [on] the part of the injured party.

(4) **Burden of proof—employers' notice—form.** In actions by an employe against an employer for personal injury sustained arising out of and in the course of the employment where the employer has elected to reject the provisions of this act, it shall be presumed that the injury to the employe was the direct result and growing out of the negligence of the employer; and that such negligence was the proximate cause of the injury; and in such cases the burden of proof shall rest upon the employer to rebut the presumption of negligence.

Every such employer shall be conclusively presumed to have elected to provide, secure and pay compensation to employes for injuries sustained arising out of and in the course of the employment according to the provisions of this act, unless and until notice in writing of an election to the contrary shall have been given to the employes by posting the same in some conspicuous place at the place where the business is carried on, and also by filing notice with the Iowa industrial commissioner with return thereon by affidavit showing the date that notice was posted as by this act provided. Provided, however, that any employer beginning business after the taking effect of this act and giving notice at once of his desire not to come under the provisions of this act, shall not be considered as under the act. Provided, however, that such employer shall not be relieved of the payment of

compensation as by this act provided until thirty days after the filing of such notice with the Iowa industrial commissioner, which notice shall be substantially in the following form:

EMPLOYERS' NOTICE TO REJECT.

To the employes of the undersigned, and the Iowa Industrial Commissioner:

You and each of you are hereby notified that the undersigned rejects the terms, conditions and provisions to provide, secure and pay compensation to employes of the undersigned for injuries received as provided in the acts of the (.....) general assembly known as chapter (.....) and elects to pay damages for personal injuries received by such employe under the common law and statutes of this state modified by sub-divisions one, two, three and four of section one, chapter (.....) of the acts of the (.....) general assembly and acts amendatory thereto.

Signed.....

State of Iowa,

.....county. ss:

The undersigned being first duly sworn deposes and says that a true, correct and verbatim copy of the foregoing notice was on the..... day of....., 19....posted at.....

(state fully place where posted.)

Subscribed and sworn to before me by.....this..... day of....., 19....

.....

Notary Public.

The employer shall keep such notice posted in some conspicuous place which shall apply to the employes subsequently employed by the employer with the same force and effect and to the same extent and in like manner as employes in the employ at the time the notice was given.

Where the employer and employe have not given notice of an election to reject the terms of this act, every contract of hire express or implied, shall be construed as an implied agreement between them and a part of the contract on the part of the employer to provide, secure and pay, and on the part of the employe to accept compensation in the manner as by this act provided for all personal injuries sustained arising out of and in the course of the employment. [35 G. A., ch. 147, § 1.]

Sec. 2477-m1. **Willful injury—intoxication.** No compensation under this act shall be allowed for an injury caused:

(a) By the employe's willful intention to injure himself or to willfully injure another; nor shall compensation be paid to an injured employe if injury is sustained where intoxication of the employe was the proximate cause of the injury. [35 G. A., ch. 147, § 2.]

Sec. 2477-m2. **Rights of employe—notice to reject. (a) Exclusive of other rights—presumption—notice.** The rights and remedies provided in this act for an employe on account of an

injury shall be exclusive of all other rights and remedies of such employe, his personal or legal representatives, dependents or next of kin, at common law or otherwise on account of such injury; and all employes affected by this act shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions and provisions of this act until notice in writing shall have been served upon his employer; and also on the Iowa industrial commissioner, with return thereon by affidavit showing the date upon which notice was served upon the employer.

(b) **Rejection—procedure—oath—form—undue influence.** In the event such employe elects to reject the terms, conditions and provisions of this act, the rights and remedies thereof shall not apply where an employe brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this act; and in such actions where the employe has rejected the terms of this act the employer shall have the right to plead and rely upon any and all defenses including those at common law, and the rules and defenses of contributory negligence, assumption of risk and fellow-servant shall apply and be available to the employer as by statute authorized unless otherwise provided in this act. Provided, however, that if an employe sustains an injury as the result of the employer's failure to furnish or failure to exercise reasonable care to keep or maintain any safety device required by statute or rule, or violation of any of the statutory provisions or rules and regulations now or hereafter in force relating to safety of employes, the doctrine of assumed risk in such case growing out of the negligence of the employer shall not apply or be available as defensive matter to such offending party. The notice required to be given by an employe shall be substantially in the following form:

EMPLOYES' NOTICE TO REJECT.

To.....and the Iowa Industrial Commissioner:
(name of employer)

You and each of you are hereby notified that the undersigned hereby elects to reject the terms, conditions and provisions of an act for the payment of compensation as provided by the acts of the (.....) general assembly and acts amendatory thereto, and elects to rely upon the common law as modified by section three of the acts of the (.....) general assembly for the right to recover for personal injury which I may receive, if any, growing out of and arising from the employment while in line of duty for my employer above named.

Dated this.....day of....., 19....

Signed.....

State of Iowa,

.....county, ss:

The undersigned being first duly sworn deposes and says that the written notice was on the.....day of....., 19....

served on the within named employer of the undersigned by delivering to.....a true, correct and verbatim copy thereof.
(name of person served)

.....

Subscribed and sworn (or affirmed) to before me by the said.....
.....this.....day of....., 19....

.....
Notary Public.

In any case where an employe or one who is an applicant for employment elects to reject the terms, conditions, and provisions of this act, he shall, in addition to the notice required by subdivision (b) of section 3 of this act, state in an affidavit to be filed with said notice who, if any person, requested, suggested, or demands of such person to exercise the right to reject the provisions of this act. And if request, suggestion, or demand has been made of such employe by any person, such employe shall give and state the name of the person who made the request, suggestion, or demand, and all the circumstances relating thereto, the date and place when and where made, and persons present, and if it be found that the employer of such employe, or an employer to whom an applicant for employment, or any person a member of the firm, association, corporation, or agent or official of such employer, made a request, suggestion, or demand of such employe or applicant for employment to reject the terms, conditions and provisions of this act, such request, suggestion, or demand if made under such conditions, shall be conclusively presumed to have been sufficient to have unduly influenced such employe or an applicant for employment to exercise the right to reject the terms of this act, and the rejection made under such circumstances shall be conclusively presumed to have been procured through fraud and thereby fraudulently procured, and such rejection shall be null and void and of no effect.

No person interested in the business of such employer, financially or otherwise, shall be permitted to administer the oath to the affidavit required in case as [an] employe or applicant for employment elects to exercise the right to reject the provisions of this act. And the person administering such oath in making such affidavit, shall carefully read the notice and affidavit to such person making such rejection, and shall explain that the purpose of the notice is to bar such person from recovering compensation in accordance with the schedule and terms of this act in the event that he sustains an injury in the course of such employment. All of which shall be shown by certificate of the person administering the oath herein contemplated. The Iowa industrial commissioner, or any person acting for such commissioner, shall refuse to file the notice and affidavit, unless such notice, affidavit and certificate fully, and in detail, comply with the requirements hereof. And if such rejection, affidavit and certificate is found insuffi-

cient for any cause, [it] shall be returned by mail or otherwise to the person who executed the instrument. [35 G. A., ch. 147, § 3.]

Sec. 2477-m3. **Tenure of election.** (a) **Until provisions complied with.** When the employer or employe has given notice in compliance with this act electing to reject the terms thereof such election shall continue and be in force until such employer or employe shall thereafter elect to come under the provisions of this act as is provided in sub-division (b) of this section.

(b) **Notice—how filed.** When an employer or employe rejects the terms, conditions or provisions of this act, such party may at any time thereafter elect to waive the same by giving notice in writing in the same manner required of the party in electing to reject the provisions of the act and which shall become effective when filed with the Iowa industrial commissioner. [35 G. A., ch. 147, § 4.]

Sec. 2477-m4. **Liability of employer after election to reject.** Where the employer and employe elect to reject the terms, conditions and provisions of this act, the liability of the employer shall be the same as though the employe had not rejected the terms, conditions and provisions thereof. [35 G. A., ch. 147, § 5.]

Sec. 2477-m5. **Subsequent election to reject—security for compensation.** An employer having come under this act, who thereafter elects to reject the terms, conditions and provisions thereof, shall not be relieved from the payment of compensation to such employe who sustains an injury in the course of the employment before the election to reject becomes effective; and in such cases the employer shall be required to secure the payment of any compensation due or that may become due to such workman, subject to the approval of the Iowa industrial commissioner. [35 G. A., ch. 147, § 6.]

Sec. 2477-m6. **Liability of other than that of employer.** Where an employe coming under the provisions of this act receives an injury for which compensation is payable under this act and which injury was caused under circumstances creating a legal liability in some person other than the employer, to pay damages in respect thereof,

(a) The employe or beneficiary may take proceedings both against that person to recover damages and against the employer for compensation, but the amount of the compensation to which he is entited under this act shall be reduced by the amount of damages recovered.

(b) If the employe or beneficiary in such case recovers compensation under this act, the employer by whom the compensation

was paid or the party who has been called upon to pay the compensation shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the employe to recover therefor. [35 G. A., ch. 147, § 7.]

Sec. 2477-m7. **Contract to relieve not operative.** No contract, rule, regulation or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this act except as herein provided. [35 G. A., ch. 147, § 8.]

Sec. 2477-m8. **Notice of injury—form—failure to give.** Unless the employer or representative of such employer shall have actual knowledge of the occurrence of an injury, or unless the employe or some one on his behalf, or some of the dependents or some one on their behalf, shall give notice thereof to the employer within fifteen days of the occurrence of the injury, then no compensation shall be paid until and from the date such notice is given or knowledge obtained; but if notice is given or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. Provided, that if the employe or beneficiary shall show that his failure to give prior notice was due to mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another or to any other reasonable cause or excuse then compensation may be allowed, unless and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice. Provided, further, unless knowledge is obtained or notice given within ninety days after the occurrence of the injury, no compensation shall be allowed. No form of notice shall be required but may substantially conform to the following form:

FORM OF NOTICE.

To.....

You are hereby notified that on or about the.....day of ....., 19...., personal injury was sustained by .....while in your employ at.....

(Give name of place employed and point where located when injury occurred and that compensation will be claimed therefor.)

Signed.....

but no variation from this form of notice shall be material if the notice is sufficient to advise the employer that a certain employe, by name, received an injury in the course of his employment on or about a specified time at or near a certain place. Notice served upon one [upon] whom an original notice may be served in civil cases shall be a compliance with this act.

The notice required to be given to the employer may be served by any person over sixteen years of age, who shall make return upon a copy of the notice, properly sworn to, showing the date of service where and upon whom served, but no special form of the return of service of the notice shall be required. It shall be sufficient if the facts therefrom can be reasonably ascertained. The return of service may be amended at any time. [35 G. A., ch. 147, § 9.]

Sec. **2477-m9. Compensation schedule.** If any employe has not given notice to reject the terms, conditions and provisions of this act, or has given such notice and waived the same as by this act provided, and the employer has not rejected the terms, conditions and provisions of the act or has given such notice and waived the same and the employe receives a personal injury arising out of and in the course of the employment, compensation shall be paid as herein provided.

(a) The compensation provided for in this act shall be paid in accordance with the schedule unless otherwise provided.

(b) At any time after an injury and until the expiration of two weeks of incapacity, the employer, if so requested by the workman, or any one for him, or if so ordered by the court or Iowa industrial commissioner, shall furnish reasonable surgical, medical and hospital services and supplies, not exceeding one hundred ($100.00) dollars.

(c) Where the injury causes death the compensation under this act shall be as follows:

The employer shall in addition to any other compensation pay the reasonable expense of the employe's last sickness and burial not to exceed one hundred ($100.00) dollars. If the employe leaves no dependents this shall be the only compensation.

(d) If death results from the injury, the employer shall pay the dependents of the employe wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to fifty (50%) per cent of his average weekly wages, but not more than ten ($10.00) dollars nor less than five ($5.00) dollars per week for a period of three hundred (300) weeks.

(e) If the employe leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employe to such partial dependents bear to the annual earnings of the deceased at the time of the injury. When weekly payments have been made to an injured employe before his death,

the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred (300) weeks from the date of the injury.

(f) Where injury causes death to an employe, a minor, whose earnings were received by the parent, the compensation to be paid the parent shall be two-thirds (2-3) of the amount provided for payment in sub-division "D" section "10."

(g) No compensation shall be paid for an injury which does not incapacitate the employe for a period of at least two weeks from earning full wages; but if incapacity extends beyond a period of two weeks, compensation shall begin on the fifteenth day after the injury.

(h) For injury producing temporary disability, fifty (50%) per cent of the average weekly wages received at the time of injury, subject to a maximum compensation of ten ($10.00) dollars and a minimum of five ($5.00) dollars per week; provided, that if at the time of injury the employe receives wages less than five ($5.00) dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred (300) weeks.

(i) For disability total in character and permanent in quality fifty (50%) per cent of the average weekly wages received at the time of the injury subject to a maximum compensation of ten ($10.00) dollars per week, and a minimum of five ($5.00) dollars per week; provided, that if at the time of injury, the employe receives wages less than five ($5.00) dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not however, beyond four hundred (400) weeks.

(j) For disability partial in character and permanent in quality the compensation shall be based upon the extent of such disability.

For all cases included in the following schedule compensation shall be paid as follows, to-wit:

(1) For the loss of a thumb fifty per cent (50%) of daily wages during forty weeks.

(2) For the loss of a first finger, commonly called the index finger, fifty per cent (50%) of daily wages during thirty (30) weeks.

(3) For the loss of a second finger, fifty per cent (50%) of daily wages during twenty-five (25) weeks.

(4) For the loss of a third finger, fifty per cent (50%) of daily wages during twenty (20) weeks.

(5) For the loss of a fourth finger, commonly called the little finger, fifty per cent (50%) of daily wages for fifteen (15) weeks.

(6) For the loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be one-half of the amounts above specified.

(7) The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

(8) For the loss of a great toe, fifty per cent (50%) of daily wages during twenty-five (25) weeks.

(9) For the loss of one of the toes other than the great toe, fifty (50%) per cent of daily wages during fifteen (15) weeks.

(10) For the loss of the first phalange of any toe, shall be considered to be equal to the loss of one-half of such toe and the compensation shall be one-half of the amount above specified.

(11) The loss of more than one phalange shall be considered as the loss of the entire toe.

(12) For the loss of a hand fifty per cent (50%) of daily wages during one hundred fifty (150) weeks.

(13) For the loss of an arm fifty per cent (50%) of daily wages during two hundred (200) weeks.

(14) For the loss of a foot fifty per cent (50%) of daily wages during one hundred twenty-five (125) weeks.

(15) For the loss of a leg, fifty per cent (50%) of daily wages during one hundred seventy-five (175) weeks.

(16) For the loss of any [an] eye, fifty per cent (50%) of daily wages during one hundred (100) weeks.

(17) For the loss of both arms, or both hands, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability to be compensated according to provisions of clause "i" section ten, part one hereof.

(18) In all other cases in this, clause "j," the compensation shall bear such relation to the amount stated in the above schedule as the disability bears to those produced by the injuries named in the schedule. Should the employe and employer be unable to agree upon the amount of compensation to be paid in cases not specifically covered by the schedule, the amount of compensation shall be settled according to provisions of this act as in other cases of disagreement.

(19) The amounts specified in this, clause "j" and sub-divisions thereof, shall be subject to the same limitations as to maximum and minimum weekly payments as are stated in clause "h" section ten hereof. [35 G. A., ch. 147, § 10.]

Sec. 2477-m10. **Death—payment of unpaid balance.** Where an employe is entitled to compensation under this act for an injury received and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate. [35 G. A., ch. 147, § 11.]

Sec. 2477-m11. **Examination of injured employe—suspension of compensation.** After an injury [,] the employe, if so requested by his employer, shall submit himself for examination at some reasonable time and place within the state and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this state without cost to the employe; but if the employe requests [,] he shall, at his own cost, be entitled to have a physician or physicians of his own

selection present to participate in such examination. The refusal of the employe to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. [35 G. A., ch. 147, § 12.]

Sec. 2477-m12. **Contributions from employes—no reduction of employer's responsibility.** The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employes in his employment subject to the provisions of this act, and it shall not be in any wise reduced by contribution from employes. [35 G. A., ch. 147, § 13.]

Sec. 2477-m13. **Trustees for minors and those mentally incapacitated—reports.** When a minor dependent or one physically or mentally incapacitated from earning is entitled to compensation under this act, payment shall be made to a trustee appointed by the judge of the district court for each county in the respective judicial districts, and the money coming into the hands of the said trustee shall be expended for the use and benefit of the person entitled thereto under the direction and orders of the judge during term time or in vacation. The trustee shall make annual reports to the court of all money or property received and expended for each person, and for services rendered as trustee shall be paid such compensation by the county as the court may direct by written order directed to the auditor of the county who shall issue a warrant therefor upon the treasurer of the county in which the appointment is made. If the judge making the appointment deems it advisable, a trustee may be appointed to serve for more than one county in the district and the expenses shall be paid ratably by each county according to the amount of work performed in each county. The trustee shall qualify and give bond in such amount as the judge may direct, which may be increased or diminished from time to time as the court may deem best. [35 G. A., ch. 147, § 14.]

Sec. 2477-m14. **Commutation of future payments—discretion of court.** In any case where the period of compensation can be determined definitely either party may, upon due notice to the other, apply to any judge of the district court for the county in which the accident occurred for an order commuting future payments to a lump sum. And such judge may make such an order when it shall be shown to his satisfaction that the payment of a lump sum in lieu of future monthly or weekly payments, as the case may be, will be for the best interest of the person or persons receiving or dependent upon said compensation, or that the continuance of periodical payments will [,]

as compared with lump sum payments [,] entail undue expense or undue hardship upon the employer liable therefor. Where the commutation is ordered, the court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value and upon the basis of interest, calculated at 5 per cent per annum. Upon the payment of such amount the employer shall be discharged from all further liability on account of such injury or death, for which said compensation was being paid, and be entitled to a duly executed release, upon filing which the liability of such employer under any agreement award, finding or judgment shall be discharged of record. [35 G. A., ch. 147, § 15.]

Sec. **2477-m15. Schedule of computation.** The basis for computing compensation provided for in this act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages or earnings in the employment of the same employer during the year next preceding the injury.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employe was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) The annual earnings, if not otherwise determinable, shall be regarded as three hundred (300) times the average daily earnings in such computation.

(d) If the injured person has not been engaged in the employment for a full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same or in neighboring employments of the same kind have earned during such period. And if this basis of computation is impossible, or should appear to be unreasonable, three hundred (300) times the amount which the injured person earned on an average of those days when he was working during the year next preceding the accident, shall be used as a basis for the computation.

(e) In case of injured employes who earn either no wages or less than three hundred (300) times the usual daily wage or earnings of the adult day laborer in the same line of industry of that locality [,] the yearly wage shall be reckoned as three hundred (300) times the average daily local wages of the average wage earner in that particular kind or class of work; or if information of that class is not obtainable, then of the class or kindred or similarity in the same general employment in the same neighborhood.

(f) As to employes in employments in which it is the custom to operate for a part of the whole number of working days in each year such number shall not be used instead of three hundred (300) as a basis for computing the annual earnings, provided, the minimum number of days which shall be used for the basis of the year's work shall not be less than two hundred (200).

(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employe to cover any special expense entailed on him by the nature of his employment.

(h) In computing the compensation to be paid to any employe who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered. [35 G. A., ch. 147, § 16.]

Sec. 2477-m16. **Terms defined.** In this act unless the context otherwise requires:

(a) "Employer" includes and applies to any person, firm, association or corporation and includes state, counties, municipal corporations, cities under special charter and under commission form of government and shall include school districts and the legal representatives of a deceased employer. Whenever necessary to give effect to section seven of this act, it includes a principal or intermediate contractor.

(b) "Workman" is used synonymous with "employe"[,] and means any person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship for an employer, except a person whose employment is purely casual and not for the purpose of the employer's trade or business or those engaged in clerical work, only, but clerical work shall not include one who may be subjected to the hazards of the business or one holding an official position or standing in a representative capacity of the employer, or an official elected or appointed by the state, county, school district, municipal corporation, cities under special charter and commission form of government. Provided, that one who sustains the relation of contractor with any person, firm, association, corporation or the state, county, school district, municipal corporation, cities under special charter or commission form of government, shall not be considered an employe thereof.

The term "workman" shall include the singular and plural of both sexes. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents as herein defined, legal representatives or where the workman is a minor or incompetent to his guardian or next friend.

(c) The following shall be conclusively presumed to be wholly dependent upon a deceased employe:

(1) The surviving spouse, unless it be shown that the survivor wilfully deserted deceased without fault upon the part of the deceased, and if it be shown that the survivor deserted deceased without fault upon the part of the deceased, the survivor shall not be regarded as a dependent in any degree. No surviving spouse shall be entitled to the benefits of this act unless she shall have been married to the deceased at the time of the injury.

(2) A child or children under sixteen years of age (and over said age if physically or mentally incapacitated from earning) whether actually dependent for support or not upon the parent at the time of his or her death.

(3) A parent of a minor entitled to the earnings of the employe at the time when the injury occurred, subject to provisions of sub-division "f" section ten hereof.

(4) If the deceased employe leaves dependent surviving spouse, the full compensation shall be paid to such spouse; but if the dependent surviving spouse dies before payment is made in full, the balance remaining shall be paid to the person or persons wholly dependent, if any, share and share alike. If there be no person or persons wholly dependent, then payment shall be made to partial dependents.

(5) In all other cases [.] questions of dependency in whole or in part shall be determined in accordance with the fact as the fact may be at the time of the injury; and in such other cases if there is more than one person wholly dependent, the death benefit shall be equally divided among them, and persons partially dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency. Provided, however, that when a lump sum is paid as contemplated by this act, the court or commissioner, in making distribution thereof, shall take into consideration the contingent rights of partial beneficiaries or the rights of those who may become such after a wholly dependent child or children become sixteen years of age.

(6) Step-parents shall be regarded in this act as parents.

(7) Adopted child or children or step-child or children shall be regarded in this act the same as if issue of the body.

(d) "Injury" or "personal injury" includes death resulting from injury.

(e) The words "personal injury arising out of and in the course of such employment" shall include injuries to employes whose services are being performed on, in or about the premises which are occupied, used or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

(f) The words "injury and personal injury" shall not include injury caused by the willful act of a third person directed against an employe for reasons personal to such employe or because of his employment.

(g) They shall not include a disease except as it shall result from the injury.

(h) "Industrial employment" includes only employment in occupation, callings, businesses or pursuits which are carried on by the employer for the sake of pecuniary gain.

(i) The word "court" whenever used in this act unless the context shows otherwise, shall be taken to mean the district court. [35 G. A., ch. 147, § 17.]

Sec. 2477-m17. **Insurance against compensation prohibited—penalty.** (a) Any contract of employment, relief benefit or insurance or other device whereby the employe is required to pay any premium or premiums for insurance against the compensation provided for in this act shall be null and void; and any employer withholding from the wages of any employe any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine not less than ten ($10.00) dollars nor more than fifty ($50.00) dollars for each offense [,] in the discretion of the court.

No employe or beneficiary shall have power to waive any of the provisions of this act in regard to the amount of compensation which may be payable to such employe or beneficiary hereunder to whom the act applies. [35 G. A., ch. 147, § 18.]

Sec. 2477-m18. **Contract respecting claim for injury deemed fraudulent.** Any contract or agreement made by any employer or his agent or attorney with any employe or any other beneficiary of any claim under the provisions of this act within twelve (12) days after the injury shall be presumed to be fraudulent. [35 G. A., ch. 147, § 19.]

Sec. 2477-m19. **Safety appliances—standards.** The Iowa Industrial Commissioner co-operating with the employers affected by this act, or any committee or committees appointed by such employers or the Iowa industrial commissioner, shall fix standards of safety for safety appliances or places of employment, except mines under the jurisdiction of the mine inspectors. [35 G. A., ch. 147, § 20.]

Sec. 2477-m20. **Attorney's lien—subject to approval. No** claim of an attorney-at-law for services in securing a recovery under this act shall be an enforcible lien thereon unless the

amount of the same be approved in writing by a judge of a court of record or the Iowa industrial commissioner, which approval may be made in term time or vacation. [35 G. A., ch. 147, § 21.]

Sec. 2477-m21. **Applicable to intra-state and inter-state commerce.** The provisions of this act shall apply to employers and employes as defined in this act engaged in intra-state commerce and also those engaged in inter-state or foreign commerce for whom a rule or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intra-state work or foreign commerce shall be clearly separable and distinguishable from inter-state or foreign commerce; provided that any such employer and workman of such employer working only in this state may, subject to the approval of the Iowa industrial commissioner, and so far as not forbidden by any act of congress or permitted, voluntarily by written agreement, accept and become bound by the provisions of this act in like manner and with the same force and effect in every respect as by this act provided for other employers and employes. [35 G. A., ch. 147, § 22.]

PART II.

Sec. 2477-m22. **Iowa Industrial Commissioner—appointment—term.** There is hereby created the office of Iowa industrial commissioner, to be appointed by the governor, by and with the consent of the senate. The term of office of the commissioner shall be six years. An appointment may be made to fill a vacancy or otherwise when the senate is not in session, but shall be acted upon at the next session thereof. [35 G. A., ch. 147, § 23.]

Sec. 2477-m23. **Salary—expenses—office—seal—assistants—accounts—political activity—annual appropriation.** The salary and actual necessary expenses of the commissioner shall be paid by the state, and he shall be provided with adequate and necessary office rooms, furniture, equipment, supplies and other necessaries in the transaction of the business. The salary of the commissioner shall be three thousand dollars ($3,000.00) per annum. The commissioner, by and with the consent of the executive council [,] may fix the salary and appoint a secretary and other assistants and clerical help as may be required and needed, provided, that the salary of the secretary shall not exceed fifteen hundred dollars ($1,500.00) per annum. The salary and actual personal expense account of the commissioner shall be itemized and sworn to, and filed as other current bills as provided by statute, and warrant therefor shall be issued by the auditor upon the treasurer of the state for the payment thereof at the end of each calendar month; provided, however, that the expense account may be audited, allowed and paid at the end of each week. The commissioner shall provide himself with a seal, which shall be

used to authenticate his orders, decisions and other proceedings deemed necessary, upon which shall be inscribed the words "Iowa Industrial Commissioner's Seal" and the date of organization. All other accounts made by, through or under the commissioner for salary [and] expenditures, unless otherwise by this act provided, shall be itemized and sworn to by the parties entitled thereto, audited by the commissioner, attested by the secretary, filed as other bills are required by statute, and a warrant shall issue therefor by the auditor of state upon the treasurer, who shall pay the same out of the funds appropriated for the use of the commissioner as by this act provided. The salaries of all persons under the commissioner shall be audited, allowed and paid at the end of each month, and expense accounts may be audited, allowed and paid at the end of each week. The commissioner shall have the power to remove the secretary or any other person appointed to an office by him at any time the commissioner may see fit.

It shall be unlawful for any appointee by the commissioner to espouse the election or appointment of any candidate for or to any political office, or contribute to the campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointment to any political office, and any person performing the duties as an appointee under the commissioner violating the provisions of this act shall be sufficient cause for dismissal and removal from office.

Before entering upon his duties the commissioner shall qualify by taking the oath of his office, that he will support the constitution of the United States and of the state of Iowa, and will faithfully and impartially, without fraud, fear or favor, discharge the duties of his office incumbent upon him, as provided by the law of the state of Iowa, to the best of his ability and understanding.

There is hereby appropriated out of any money not otherwise appropriated for the use of the commissioner, as contemplated within the terms of this act or acts amendatory thereof, or other statutes relating to the commissioner, his duties and responsibilities empowered by law, the sum of twenty thousand dollars ($20,000.00) annually, and in addition thereto the executive council shall provide and furnish the commissioner with such printing as may be necessary in the transaction of the business within the contemplation of law. [35 G. A., ch. 147, § 24.]

Sec. 2477-m24. **Powers—rules—witnesses—reports.** The commissioner may make rules and regulations not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The commissioner shall have the power to subpoena wit-

nesses, administer oaths and to examine such books and records of the parties to a proceeding or investigation as relate to questions in dispute or under investigation. The fees for attending as a witness before the industrial commissioner shall be $1.50 per diem; for attending before an arbitration committee $1.00 per diem; in both cases five cents per mile for traveling to and from the place of hearing. The district court is hereby empowered to enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records. The commissioner shall make biennial reports to the governor who shall transmit the same to the general assembly, in which [,] among other things, the commissioner shall recommend such changes in the law covered by this act as he may deem necessary. [35 G. A., ch. 147, § 25.]

Sec. 2477-m25. **Compensation agreements—approval.** If the employer and the employe reach an agreement in regard to the compensation under this act, a memorandum thereof shall be filed with the Iowa industrial commissioner by the employer or employe, and unless the commissioner shall, within twenty days, notify the employer and employe of his disapproval of the agreement by registered letter sent to their addresses as given on the memorandum filed, the agreement shall stand as approved and be enforceable for all purposes under the provisions of this act. Such agreement shall be approved by said commissioner only when the terms conform to the provisions of this act. [35 G. A., ch. 147, § 26.]

Sec. 2477-m26. **Committee of arbitration.** If the employer and the injured employe or representatives or dependents fail to reach an agreement in regard to compensation under this act, either party may notify the industrial commissioner, who shall thereupon call for the formation of a committee of arbitration. The arbitration committee shall consist of three persons, one of whom shall be the industrial commissioner who shall act as chairman. The other two shall be named, respectively, by the two parties. If a vacancy occurs it shall be filled by the party whose representative is unable to act. [35 G. A., ch. 147, § 27.]

Sec. 2477-m27. **Oath of arbitrators.** The arbitrators appointed by the parties shall be sworn by the chairman to take the following oath:

I.....do solemnly swear (or affirm) that I will faithfully perform my duties as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party.

Signed.....

[35 G. A., ch. 147, § 28.]

Sec. 2477-m28. **Appointment of arbitrators.** It shall be the duty of the industrial commissioner, upon notification, that the

parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The commissioner shall act as chairman, and, if either party does not appoint its member on this committee within seven days after notification as above provided, or after a vacancy has occurred, the commissioner shall fill the vacancy and notify the parties to that effect. [35 G. A., ch. 147, § 29.]

Sec. **2477-m29. Powers of committee—hearings—decision.** The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be in the city, town or place where the injury occurred and the decision of the committee, together with the statement of evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions arising before it shall be filed with the industrial commissioner. Unless a claim for a review is filed by either party within five days, the decision shall be enforceable under the provisions of this act. [35 G. A., ch. 147, § 30.]

Sec. **2477-m30. Examination by physician—fee—evidence.** The industrial commissioner may appoint a duly qualified impartial physician to examine the injured employe and make report. The fee for this service shall be five ($5.00) dollars, to be paid by the industrial commissioner together with traveling expenses, but the commissioner may allow additional reasonable amounts in extraordinary cases. Any physician so examining any injured employe shall not be prohibited from testifying before the Iowa industrial commissioner or any other person, commission or court, as to the results of his examination or the condition of the injured employe. [35 G. A., ch. 147, § 31.]

Sec. **2477-m31. Compensation of arbitrators—costs.** The arbitrators named by or for the parties to the dispute shall each receive five ($5.00) dollars as a fee for his services, but the industrial commissioner may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the employer who may deduct an amount equal to one-half of the sum from any compensation found due the employe. And all other costs incurred in the hearing before the board of arbitration shall be taxed to the losing party, or an equitable apportionment made thereof by the committee according to the facts. [35 G. A., ch. 147, § 32.]

Sec. **2477-m32. Review—second hearing.** If a claim for review is filed, the industrial commissioner shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or may refer the matter back to the committee for further findings of fact, and shall file its decision with the records

of the proceedings and notify the parties thereof. No party shall as a matter of right be entitled to a second hearing upon any question of fact. [35 G. A., ch. 147, § 33.]

Sec. **2477-m33. Decree by district court—appeal.** Any party in interest may present certified copy of an order or decision of the commissioner or a decision of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the commissioner, and all papers in connection therewith, to the district court of the county in which the injury occurred, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and in all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact or where the decree is based upon an order or decision of the commissioner which has not been presented to the court within ten days after the notice of the filing thereof by the commissioner. Upon the presentation to the court of a certified copy of a decision of the industrial commissioner, ending, diminishing or increasing a weekly payment under the provisions of this act, the court shall revoke or modify the decree to conform to such decision. [35 G. A., ch. 147, § 34.]

Sec. **2477-m34. Review of payment—notice.** (a) Any payment to be made under this act may reviewed by the industrial commissioner at the request of the employer or of the employe, and on such review it may be ended, diminished or increased subject to the maximum or minimum amounts provided for in this act if the commissioner finds the conditions of the employe warrants such action.

(b) Any notice to be given by the commissioner or court provided for in this act shall be in writing but service thereof shall be sufficient if registered and deposited in the mail, addressed to the last known address of the parties. [35 G. A., ch. 147, § 35.]

Sec. **2477-m35. Fees subject to approval.** Fees of attorneys and physicians for services under this act shall be subject to the approval of the industrial commissioner unless otherwise provided in this act. [35 G. A., ch. 147, § 36.]

Sec. **2477-m36. Reports by employers—records—inspection.** Every employer shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employes in the course of their employment. Within forty-eight hours [,] not counting Sundays and legal holidays, after the employer has knowledge of the occurrence of an accident resulting in personal injury, a report shall be made in writing by the employer to the industrial

commissioner on blanks to be procured from the commissioner for that purpose.

Upon the termination of the disability of the injured employe, or if such disability extends beyond a period of sixty days, at the expiration of such period, the employer shall make a supplemental report on blanks to be procured from the commissioner for that purpose. The said reports shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employe, and shall state the date and hour of the accident, the nature and cause of the injury, and such other information as may be required by the commissioner. Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty ($50.00) dollars for each offense.

All books, records and pay-rolls of the employers, coming under this act showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the industrial commissioner, or any of his representatives presenting a certificate of authority from said commissioner for the purpose of ascertaining the correctness of the wage expenditure; the number of men employed and such other information as may be necessary for the uses and purposes of the commissioner in its [his] administration of the law. But information obtained within the contemplation of this act shall be used for no other purpose than the information of the commissioner or insurance association with reference to the duties imposed upon such commissioner. A refusal on the part of the employer to submit his books, records or pay-rolls for the inspection of the commissioner, or his authorized representatives presenting written authority from the commissioner, shall subject the employer to a penalty of one hundred dollars ($100.00) for each such offense [,] to be collected by civil action in the name of the state, and paid into the state treasurer [treasury]. [35 G. A., ch. 147, § 37.]

Sec. 2477-m37. **Political activity and contributions prohibited—penalty.** It shall be unlawful for the commissioner, during his term of office, to serve upon any committee of any political party or espouse the election or appointment of any person for any political office or contribute to any campaign fund of any political party, or to the campaign fund of any person who is a candidate for election or appointed to any political office. A violation of this section shall be deemed a misdemeanor and upon conviction shall be fined one hundred ($100.00) dollars. [35 G. A., ch. 147, § 38.]

Sec. 2477-m38. **Candidates for commissioner—political promises prohibited—penalty.** It shall be unlawful for any person

who is a candidate for the appointment as commissioner to make any promise to another, expressed or implied, in consideration of any assistance or influence given or recommendation made that the candidate will, if appointed as commissioner, vote to appoint such person or one whom he may recommend to an office within the power of the commissioner to appoint. A violation thereof shall be deemed a misdemeanor and upon conviction thereof shall be fined one hundred ($100.00) dollars. [35 G. A., ch. 147, § 39.]

Sec. 2477-m39. **Recommendations of candidates to be in writing—record—public inspection—financial interest prohibited—penalty.** All recommendations to the governor of any person asking the appointment of another as commissioner shall be reduced to writing signed by the person presenting the same, which shall be filed by the governor in his office and open at all reasonable times for public inspection, and all recommendations made by any person to the commissioner for the appointment of another within the power of the commissioner to appoint, shall be reduced to writing, signed by the person presenting the same and filed by the commissioner and open for public inspection at all reasonable times and hours. If any person recommending the appointment of another within the contemplation of this act refuse to reduce the same to writing, it shall be the duty of the person to whom the recommendation is made, to make a brief memoranda thereof [,] stating the name of the person recommended and the name of the person who made the same, which shall be filed as by this act in other cases provided. It shall be unlawful for the commissioner to be financially interested in any business enterprise coming under or affected by this act during his term of office [,] and any member offending this statute, it shall be sufficient grounds for his removal from office and in such case the governor shall at once declare the office vacant and appoint another to fill the vacancy. [35 G. A., ch. 147, § 40.]

Sec. 2477-m40. **Removal from office—filing of charges—executive council shall hear.** The governor shall remove from office the commissioner on the grounds of inefficiency, neglect of duty, or malfeasance in office, upon written charges having been filed with the executive council and sustained by proofs. But written notice of such charges, together with a copy thereof, shall be served upon the accused ten (10) days before the time fixed for hearing. The executive council shall have jurisdiction to hear the case, and shall make such finding in accordance with justice and the law. The finding shall be reduced to writing, and report and finding filed with the governor. [35 G. A., ch. 147, § 41.]

PART III.

Sec. 2477-m41. **Insurance of liability.** Every employer, subject to the provisions of this act, shall insure his liability thereunder in some corporation, association or organization approved by the state department of insurance. Every such employer shall within thirty days after this act goes into effect exhibit on demand of the state insurance department evidence of his compliance with this section. And if such employer refuses, or neglects to comply with this section, he shall be liable in case of injury to any workman in his employ under part one (1) of this act. [35 G. A., ch. 147, § 42.]

Sec. 2477-m42. **Mutual companies—conditions.** For the purpose of complying with the foregoing section, groups of employers by themselves or in an association with any or all of their workmen, may form insurance associations as hereafter provided, subject to such reasonable conditions and restrictions as may be fixed by the state insurance department and membership in such mutual insurance organization as approved, together with evidence of the payment of premiums due, shall be evidence of compliance with the preceding section. [35 G. A., ch. 147, § 43.]

Sec. 2477-m43. **Benefit insurance—approval.** Subject to the approval of the Iowa Industrial Commissioner [,] any employer or group of employers may enter into or continue an agreement with his or their workmen to provide a scheme of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act; but such scheme shall in no instance provide less than the benefits here secured, nor vary the period of compensation provided for disability or for death, or the provisions of this act with respect to periodic payments, or the percentage that such payments shall bear to weekly wages, except that the sums required may be increased; provided, further, that the approval of the Iowa industrial commissioner shall be granted, if the scheme provides for contribution by workmen, only when it confers benefits in addition to those required by this act commensurate with such contributions. [35 G. A., ch. 147, § 44.]

Sec. 2477-m44. **Certificate of approval.** Whenever such scheme or plan is approved by the Iowa industrial commissioner, he shall issue a certificate to that effect, whereupon it shall be legal for such employer, or group of employers, to contract with any or all of his or their workmen to substitute such scheme or plan for the provisions of this act during a period of time fixed by said department. [35 G. A., ch. 147, § 45.]

Sec. 2477-m45. **Termination—appeal to district court.** Such scheme or plan may be terminated by the Iowa Industrial Com-

missioner on reasonable notice to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purpose of this act; but from any such order of said Iowa industrial commissioner the parties affected, whether employer or workman, may, upon the giving of proper bond to protect the interests involved [,] appeal for equitable relief to the district court of this state. [35 G. A., ch. 147, § 46.]

Sec. **2477-m46. Maximum commission or compensation for reinsurance.** No insurer of any obligation under this act shall either by himself or through another, either directly or indirectly, charge or accept as a commission or compensation for placing or renewing any insurance under this act more than fifteen per cent. of the premium charged. [35 G. A., ch. 147, § 47.]

Sec. **2477-m47. Policy requirements.** Every policy issued by any insurance corporation, association or organization to assure the payment of compensation under this act shall contain a clause providing that between any employer and the insurer, notice, to and knowledge of the occurrence of injury or death on the part of the insured shall be notice and knowledge on the part of the insurer; and jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer and the insurer shall be bound by every agreement, adjudgment, award or judgment rendered against the insured. [35 G. A., ch. 147, § 48.]

Sec. **2477-m48. Insolvency clause prohibited—lien of insured.** No policy of insurance issued under this act shall contain any provision relieving the insurer from payment if the insured becomes insolvent or discharged in bankruptcy during the period that the policy is in operation, or the compensation, or any part of it, is due and unpaid. Every policy shall provide that the workman shall have a first lien upon any amount becoming due on account of such policy to the insured from the insurer, and that in case of the legal incapacity, inability or disability of the insured to receive the amount due and pay it over to the insured workman, or his dependents, said insurer shall pay the same directly to such workman, his agent, or to a trustee for him or his dependents, to the extent of discharging any obligation of the insured to said workman or his dependents. [35 G. A., ch. 147, § 49.]

Sec. **2477-m49. Proof of solvency—revocation of approval.** Where an employer coming under this act furnishes proofs to the insurance department satisfactory to the insurance department and Iowa industrial commissioner, of such employer's solvency and financial ability to pay the compensation and benefits as by this act provided and to make such payments to the parties

when entitled thereto, or when such employer deposits with such insurance department security satisfactory to such insurance department and the Iowa industrial commissioner as will secure the payment of such compensation, such employer shall be relieved of the provision of section forty-two (42) of this act. Provided that such employer shall from time to time, as may be required by such insurance department and Iowa industrial commissioner, furnish such additional proof of solvency and financial ability to pay as by this section of this act provided.

The insurance department and Iowa industrial commissioner may, at any time, upon reasonable notice to such employer and upon hearing, revoke for cause any order or approval theretofore made, as by this act provided and within the contemplation of this section. [35 G. A., ch. 147, § 50.]

Sec. **2477-m50. When effective.** Part one of this act shall take effect from and after July first, 1914, and parts two and three July fourth, 1913.

And any employer or employe who serves the notice to reject the terms of the act as by the act provided not less than thirty days before part one thereof takes effect, such notice for the purpose rejecting the terms of the act shall have the same force and effect as though part one had taken effect July fourth, 1913. [35 G. A., ch. 147, § 51.]

Sec. **2477-m51. When applicable.**. That the law enacted by the thirty-fifth general assembly known as senate file No. 3 [ch. 147, Acts 35 G. A.] relating to employer's liability for personal injury sustained by employes in line of duty, and fixing compensation therefor, shall not apply to an injury sustained by such employe of such employer which occurs prior to the time when such act takes effect in all of its parts; but the law and procedure in force at the time such injury occurs, if before such act takes effect in all of its parts, shall be the same as though such act had not been enacted whether such action is brought before or after such act takes effect in all of its parts. [35 G. A., ch. 148, § 1.]

APPENDIX.

APPENDIX.

MISCELLANEOUS SECTIONS OF THE CODE APPLICABLE TO INSURANCE AND INSURANCE ORGANIZATIONS.

Sec. 360. **When guaranty company may be accepted as surety—premium—not applicable to criminal cases.** Whenever any person who now or hereafter may be required or permitted to give a bond applies for the approval thereof, any officer or body who is now or shall hereafter be required to approve the sufficiency of such bond shall accept and approve the same, whenever its conditions are guaranteed by a company or corporation duly organized or incorporated under the laws of this state, or authorized to do business therein, and to guarantee the fidelity of persons holding positions of public or private trust, or secure any bond above referred to, and which company shall have the certificate of the commissioner of insurance authorizing it to do business therein, as provided in chapter four of title nine of this code, and the premium for any such guaranty or surety company bond as defined in this section, may, by the approval of the court, be paid out of the trust funds in the hands of the party of whom the bond is required. The certificate of the commissioner of insurance, to the effect that such company has complied with the requirements of said chapter and title and is authorized to do business in this state, shall be sufficient evidence to authorize the officer or body having the approval of such bond to accept and approve the same, but no such security shall be accepted on any bond for an amount in excess of ten per cent. of the paid up cash capital of such company or corporation unless the excess shall be reinsured in some other company or corporation authorized to do business in the state and in no case to exceed ten per cent. of the capital of the reinsuring company and provided that a certificate of such reinsurance shall be furnished to the insured, but nothing herein contained shall apply to bonds in criminal cases. [36 G. A., H. F. 219, § 1; 34 G. A., ch. 18, § 1; 33 G. A., ch. 25, §1; 21 G. A., ch. 157, §§ 1, 5.]

Sec. 361. **Release from liability—same as private persons.** Such company or corporation may be released from its liability as such surety on any bond on the same terms and conditions, and in the same manner, as is by law prescribed for the release of natural persons as such sureties; it being the intent of this chapter to enable companies created, incorporated or chartered for such purposes to become surety on bonds required by law, subject to all the rights and liabilities of natural persons. [21 G. A., ch. 157, § 2.]

Sec. 362. **Suit on bond of guarantee company—notice.** Whenever suit is required to be brought on any bond given by such company, service shall be had upon any agent of such company in this state, and if there is no agent in the state, then service may be had by serving the commissioner of insurance fifteen days before the term of court in which the suit is sought to be brought, and it shall be the duty of the commissioner of insurance, upon service being made upon him, to immediately mail a copy of such notice to such company at their principal place of business, and any notice so served shall be deemed to be good and sufficient service on any such company. [21 G. A., ch. 157, § 3.]

Sec. 422 par. 6. **Powers specified.** The board of supervisors at any regular meeting shall have the following powers, to-wit:

6. To cause the county buildings to be insured in the name of the county, or otherwise for its benefit. [R., § 303.]

Sec. 425. **Expenditure of insurance money.** In any county in this state where any of the public buildings thereof have been or may hereafter be destroyed by fire, wind or lightning, the board of supervisors of such county, for the purpose of reconstructing the same, may appropriate and use, in addition to the amount now authorized by law, the amount received by way of insurance on such building or buildings so destroyed. [19 G. A., ch. 54.]

The following class of property is not to be taxed.

Sec. 1304 par. 8. **Exemption.** The accumulations and funds held or possessed by fraternal beneficiary associations for the purposes of paying the benefits contemplated by section eighteen hundred and twenty-two (1822) of the code, or for payment of the expenses of such association. [31 G. A., ch. 48.]

Sec. 2071. **Liability for negligence or wrongs of employes.** (This section relates to the liability of railway corporations to employes in consequence of neglect or mismanagement or their agents, engineers or other employes.)

* * * Nor shall any contract of insurance, relief, benefit, or indemnity in case of injury or death, entered into prior to the injury, between the person so injured and such corporation, or any other person or association acting for such corporation, nor shall the acceptance of any such insurance, relief, benefit, or indemnity by the person injured, his widow, heirs, or legal representatives after the injury, from such corporation, person, or association, constitute any bar or defense to any cause of action brought under the provisions of this section, but nothing contained herein shall be construed to prevent or invalidate any settlement for damages between the parties subsequent to injuries received. [27 G. A., ch. 49, § 1.]

The so-called Temple amendment (added to this section by 27 G. A., ch. 49), prohibiting any defense on account of a contract between a railroad company and its employes in the nature of a contract for insurance or relief in case of accident, made prior to the injury, is constitutional. Such a contract constitutes a limitation such as is prohibited by the statute. *McGuire v. C., B. & Q. R. Co.*, 131-340.

An agreement entered into at the time of the employment between the company and an employe that if he sustains any personal injury for which he makes a claim against the company for damages he will give notice thereof in writing within thirty days is a limitation on the company's liability, and therefore invalid. *Mumford v. C., R. I. & P. Ry. Co.*, 128-685.

Participation in the benefit of a relief fund will not, under the provisions of this section, defeat recovery of damage for personal injury received by plaintiff in defendant's employment, the injuries complained of having been received in this state, although the contract of employment was made in another state where such limitation of liability was not invalid. *Hamilton v. C., B. & Q. Ry. Co.*, 145-431.

The provision of this section as amended, relating to the acceptance of benefits from a relief fund, is not unconstitutional. *On appeal affirming McGuire v. C., B. & Q. Ry. Co.*, 131-340, 219 U. S. 549, 31 Sup. Ct. R. 259.

Sec. 2783. **Use of contingent fund.** (School boards.) It may provide and pay out of the contingent fund to insure school property such sum as may be necessary.

Sec. 3313. **Life insurance—damages for death—widow deemed heir.** The avails of any life or accident insurance, or other sum of money made payable by any mutual aid or benevolent society upon the death or disability of a member thereof, are not subject to the debts of the deceased, except by special contract or arrangement, and shall be disposed of like other property left by the deceased. When a wrongful act produces death, damages recovered therefor shall be disposed of as personal property belonging to the estate of the deceased, but if the deceased leaves a husband, wife, child or parent, it shall not be liable for the payment of debts. The word "heirs" or "legal heirs" or other equivalent words used to designate the beneficiaries in any life insurance policy or certificate of membership in any mutual aid or benevolent association, where no contrary intention is expressed in such instrument, shall be construed to include the surviving husband or wife of the insured, and the share of such survivor in the proceeds of such policy or certificate made payable as aforesaid shall be the same as that provided by law for the distribution of the personal property of intestates. [18 G. A., ch. 5; C., '73, §§ 1182, 2372, 2526; R., § 2362, 4111; C., '51, § 1330.]

Sec. 3386. **Heir of beneficiary causing death or disability.** No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person, or receive any interest in the estate of the decedent as surviving spouse, or take by devise or legacy from him, any portion of his estate; and no beneficiary of any policy of insurance or certificate of

membership issued by any benevolent association or organization, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate; but in every instance mentioned in this section, all benefits that would accrue to any such person upon the death or disability of the person whose life is thus taken or who is thus disabled shall become subject to distribution among the other heirs of such deceased person, according to the foregoing rules of descent and distribution in case of death, and in case of disability the benefits thereunder shall be paid to the disabled person. [29 G. A., ch. 135, § 1.]

Sec. 3499. **Against insurance companies.** Insurance companies may be sued in any county in which their principal place of business is kept, or in which the contract of insurance was made, or in which the loss insured against occurred, or, in case of insurance against death or disability, in the county of the domicile of the insured at the time the loss occurred, or in the county of plaintiff's residence. [21 G. A., ch. 65, § 13; C., '73, § 2584.]

Under this section an action may be brought before a justice of the peace against an insurance company in another county than that of its residence, notwithstanding the provisions of § 4476, with reference to the place of bringing action in justice's courts. *Hunt v. Farmers' Ins. Co.*, 67-742.

Suit may be brought in the county where the loss occurs. *State Ins. Co. v. Granger*, 62-272.

A provision in a certificate of mutual benefit insurance by which it is stipulated that action shall not be brought thereon except in a certain county named is not valid. *Matt v. Iowa Mut. Aid Assn.*, 81-135.

An action may be brought against an insurance company in any county in which the loss occurred, although it has no agent on whom service can be made, provided jurisdiction *in rem* is acquired by publication. *Lesure Lumber Co. v. Mutual F. Ins. Co.*, 101-514.

An action against an insurance company may be brought in the county in which the loss occurred, even though the principal place of business of a company is in another county of the state. *Parder v. National Masonic Acc. Assn.*, 95-149.

Mutual benefit associations are to be deemed insurance companies within the provisions of this section. *Ibid.*

Sec. 3530. **On agent of insurance company.** If the action is against an insurance company, for loss or damage upon any contract of insurance or indemnity, service may be had upon any general agent of the company wherever found, or upon any recording agent or agent who has authority to issue policies.

This provides a method of service upon an agent in any case, no matter whether the action arose out of or was connected with any business involving his agency or not. *Bradshaw v. Des Moines Ins. Co.*, 154-101.

Sec. 4784. **Burning to injure insurers.** If any person wilfully burn any building, goods, wares, merchandise or other chattels

which are insured against loss or damage by fire, or wilfully cause or procure the same to be burned, with intent to injure the insurer, whether such person be the owner thereof or not, he shall be imprisoned in the penitentiary not exceeding ten years. [C., '73, § 3888; R., § 4230; C., '51, § 2606.]

Sec. 5054. **Fraudulent destruction of boats, etc.** If any person cast away, sink or otherwise destroy any raft, boat or vessel, within any county, with intent to defraud any owner or insurer thereof, or the owner or insurer of any property laden on board the same, or any part thereof, he shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding two thousand dollars and imprisoned in the county jail not exceeding one year. [C. '73, § 4082; R., § 4403; C. '51, § 2753.]

Sec. 5055. **Fitting out for that purpose.** If any person lade, equip or fit out, or assist in lading, equipping or fitting out, any raft, boat or vessel, with intent that the same be cast away, burnt, sunk or otherwise destroyed, to injure or defraud any owner or insurer thereof, or of any property laden on board the same, he shall be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [C. '73, § 4083; R., § 4404; C. '51, § 2754.]

Sec. 5056. **Making false bills of lading.** If any owner of any boat or vessel, or of any property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out of such boat or vessel, make out and exhibit, or cause to be made out and exhibited, any false estimates of any goods or property laden or pretended to be laden on board such boat or vessel with intent to injure or defraud any insurer of such boat or vessel or property, or of any part thereof, he shall be fined not exceeding one thousand dollars, or imprisoned in the penitentiary not more than three years. [C. '73, § 4084; R., § 4405; C. '51, § 2755.]

Sec. 5057. **Making false affidavits or protests.** If any master or other officer of any boat or vessel make, or cause to be made, any false affidavit or manifest, or if any owner or other person concerned in such boat or vessel, or in the goods or property laden on board the same, procure any such false affidavit or manifest to be made, or exhibit the same, with intent to injure, deceive or defraud any insurer of such boat or vessel, or of the goods or property laden on board of the same, he shall be imprisoned in the penitentiary not exceeding five years, or be fined not exceeding three thousand dollars and imprisoned in the county jail not exceeding one year. [C. '73, § 4085; R., § 4406; C. '51, § 2756.]

TAXES.

Sec. 1333. **Insurance companies.** Every insurance company or association organized or incorporated under the laws of any state or nation other than the United States, and every other insurance company whose charter may be owned or a majority of whose stock may be controlled or whose business shall be carried on in the interest or for the benefit of any insurance company or association incorporated under the laws of any state or nation other than the United States, shall at the time of making the annual statements as required by law, pay into the state treasury as taxes two and one-half per cent of the gross amount of premiums received by it in cash, promissory obligation or other form of settlement for business done in the state, including all insurance upon property situated in this state and upon the lives of persons resident in this state, during the preceding year.

Every insurance company incorporated under the laws of any state of the United States other than the state of Iowa, not including associations operating under the provisions of chapter seven, title nine of this code, or fraternal beneficiary associations doing business in the United States, shall at the time of making the annual statement as required by law, pay into the state treasury as taxes two and one-half per cent of the gross amount of premiums received by it for business done in this state, including all insurance upon property situated in this state and upon the lives of persons resident in this state during the preceding year.

At the time of paying said taxes said companies and associations shall take duplicate receipts therefor, one of which shall be filed with the commissioner of insurance, and upon filing of said receipt, and not till then, the commissioner shall issue the annual certificate as provided by law.

No deduction or exemption from the taxes herein provided shall be allowed for, or on account of any indebtedness owing by any such insurance company or association. Provided, however, that companies doing a fire insurance business may deduct from the gross amount of premiums received, the amount of premiums returned upon canceled policies issued upon property situated in this state. [32 G. A., ch. 56; 29 G. A., ch. 57, § 1; 28 G. A., ch. 43, § 1; C. '73, § 807; R. § 718; C. '51, § 464.]

This section which requires insurance companies to pay a tax on gross earnings within the state and exempts them from payment of all other taxes, state or local, except taxes on real property and special assessments is unconstitutional under constitution, art. 8, § 2, which subjects property of all corporations for pecuniary profit to taxation the same as that of individuals. *Hawkeye Ins. Co. v. French*, 109-585.

The tax here provided for is not unconstitutional on account of lack of uniformity. There is no requirement that taxes on business or on privileges shall be uniform. *Scottish U. & N. Ins. Co. v. Herriott*, 109-606.

The officers of the state are not authorized to collect this tax by suit or distraint of property. The only effect of the non-payment is that the auditor [commissioner of insurance] will not issue a certificate authorizing the delinquent company to do business in the state during the ensuing year. *Manchester Ins. Co. v. Herriott*, 91 Fed. 711.

This section is not unconstitutional on account of lack of uniformity. *Ibid.*

Sec. **1333b.** Provides that every domestic insurance corporation, not including stock, county mutuals and fraternal associations, shall on or before January 26th of each year furnish to the assessor of the district in which its principal place of business is located a statement verified by its president showing for the past calendar year:

1. A duplicate statement required by law to be made to the commissioner of insurance.

2. A detailed statement of its property and assets of every kind and the value of each item thereof including guaranty and reserve fund.

It shall be the duty of the assessor upon receipt thereof to assess against the corporation the value of all personal property owned by such corporation, at the same rate and purpose as the property of private individuals as provided in Sec. 1305 Code.]

Sec. **1333-c.** [In assessing for taxation the moneys and credits of such domestic insurance corporations, the assessor shall ascertain the debts or liabilities, if any, of the corporation to its shareholders or other persons which liabilities shall be deducted as provided in Sec. 1311 Code. In ascertaining such corporate indebtedness, a debt shall be deemed to exist on account of its liabilities on the policy certificates or contracts of insurance issued by it equal to the amount of surplus or other funds accumulated by such corporation pursuant to law, its contracts of insurance or its articles of incorporation, for the purpose of fulfilling its policy contracts of insurance and which can be used for no other purpose.]

The purpose of the legislature as indicated by statutory provisions with reference to the taxation of insurance companies is to make the moneys and credits of such companies taxable, subject only to certain definite exceptions and these exceptions are limited to funds which may be accumulated pursuant to law or the contract of insurance or the articles of incorporation of the company for the purpose of fulfilling its policies, certificates or other contracts of insurance. Therefore held that an unassigned or surplus fund was not within the exception. *Chicago Life Ins. Co. v. Board of Review*, 131-254.

Sec. **1333-d. State tax—date payable.** Every insurance corporation or association of whatever kind or character organized under the laws of the state of Iowa, not including county mutuals or fraternal beneficiary associations, which county mutuals

and fraternal beneficiary associations are not organized for pecuniary profit, shall, on or before the first day of March of each year, pay to the treasurer of state a sum equivalent to one per centum of the gross receipts from premiums, assessments, fees and promissory obligations required by insurance contracts which are received during the next year preceding the first day of January last past, after deducting the amounts actually paid for losses, matured endowments, dividends to policy holders and the increase in the amount of the reserve as certified by the department actuary in his official statement to the commissioner of insurance on the 31st day of December previous, based on the actuaries' table of mortality and four per cent, and the amounts returned to members upon cancelled policies, certificates and rejected applications during said year, and not until such payment shall the commissioner of insurance issue the annual certificate as provided by law. Provided, that fire insurance companies organized under the provisions of chapter four (4) of title nine (9) of the code shall only be required to pay to the treasurer of state a sum equivalent to one per centum upon the gross receipts from premiums, assessments, fees and promissory obligations for business done within this state, including all insurance upon property situated in the state, after deducting the amount actually paid for losses on property located wthin the state and the amount returned upon cancelled policies and rejected applications covering property situated within this state. [32 G. A., ch. 57; 28 G. A., ch. 43, § 5.]

IOWA SHORT RATE TABLE.

Prepared under the provisions of Section 1729, Code, for determining amount to be retained by the insurance company from the unearned premium, where policy is cancelled by request of the insured.

Periods exceeding 20 days, and not exceeding 25 days, to be the rate of 25 days, and so on up to one year.

If policy was written for **one** year and has been in force any number of days indicated in left hand column, the company may retain from the annual premium the percentage indicated by the figures set opposite in the right hand column.

1 day...	2	55 days		.....	29
2 days..	4	60	"	.....	30
3 " ..	5	65	"	.....	33
4 " ..	6	70	"	.....	36
5 " ..	7	75	"	.....	37
6 " ..	8	80	"	.....	38
7 " ..	9	85	"	.....	39
8 " ..	9	90	"	or three months.....	40
9 " ..	10	105	"	.....	45
10 " ..	10	120	"	or four months.....	50
11 " ..	11	135	"	.....	55
12 " ..	12	150	"	or five months.....	60

13	"	..13	165	"	 65
14	"	..13	180	"	or six months..... 70
15	"	..14	195	"	 73
16	"	..14	210	"	or seven months..... 75
17	"	..15	225	"	 78
18	"	..16	240	"	or eight months..... 80
19	"	..16	255	"	 83
20	"	..17	270	"	or nine months..... 85
25	"	..19	285	"	 88
30	"	..20	300	"	or ten months..... 90
35	"	..23	315	"	 93
40	"	..26	330	"	or eleven months..... 95
45	"	..27	360	"	or twelve months.....100
50	"	..28			

If policy was written for **two** years and has run for 2 months or less, 25% of term premium.

Over	2	and not	exceeding	4	months	 30
"	4	"	"	6	"	 40
"	6	"	"	8	"	 50
"	8	"	"	10	"	 60
"	10	"	"	12	"	 70
"	12	"	"	14	"	 75
"	14	"	"	16	"	 80
"	16	"	"	18	"	 85
"	18	"	"	20	"	 90
"	20	"	"	22	"	 95
"	22					 100

If policy was written for **three** years and has run for 3 months or less, 25 % of term premium.

Over	3	and not	exceeding	6	months	 30
"	6	"	"	9	"	 40
"	9	"	"	12	"	 50
"	12	"	"	15	"	 60
"	15	"	"	18	"	 70
"	18	"	"	21	"	 75
"	21	"	"	24	"	 80
"	24	"	"	27	"	 85
"	27	"	"	30	"	 90
"	30	"	"	33	"	 95
"	33	months				 100

If policy was written for **four** years and has run for 4 months or less, 25% of term premium.

Over	4	and not	exceeding	8	months	 30
"	8	"	"	12	"	 40
"	12	"	"	16	"	 50
"	16	"	"	20	"	 60
"	20	"	"	24	"	 70
"	24	"	"	28	"	 75
"	28	"	"	32	"	 80
"	32	"	"	36	"	 85
"	36	"	"	40	"	 90
"	40	"	"	44	"	 95
"	44	months				 100

If policy was written for **five** years and has run for 5 months or less, 25% of term premium.

Over	5	and not exceeding	10	months	.....	30
"	10	"	15	"	.....	40
"	15	"	20	"	.....	50
"	20	"	25	"	.....	60
"	25	"	30	"	.....	70
"	30	"	35	"	.....	75
"	35	"	40	"	.....	80
"	40	"	45	"	.....	85
"	45	"	50	"	.....	90
"	50	"	55	"	.....	95
"	55	months			.....	100

If policy was written for **six** years and has run for 6 months or less, 25% of term premium.

Over	6	and not exceeding	12	months	.....	30
"	12	"	18	"	.....	40
"	18	"	24	"	.....	50
"	24	"	30	"	.....	60
"	30	"	36	"	.....	70
"	36	"	42	"	.....	75
"	42	"	48	"	.....	80
"	48	"	54	"	.....	85
"	54	"	60	"	.....	90
"	60	"	66	"	.....	95
"	66	months			.....	100

INCORPORATION FEES.

Payable in advance to the secretary of state and by him turned into the state treasury.

For filing articles. Where authorized capital is $10,000 or less, $25. Mutuals $25.

Where authorized capital is over $10,000, add $1 in fees for each $1,000 of capital in excess of $10,000. For example, where authorized capital is $25,000 the filing fee is $40.

Recording Fee, 10 cents per 100 words. See section 1291 of the code, 1897.

In all cases where corporations are organized for pecuniary profit, there is a **filing fee** and a **recording fee.**

In cases where copies of articles are required, the copy fee is the same as the recording fee.

Where certified copies are required, $1 is charged for certificate, additional to copy fee.

Amendments to articles require a recording fee and when the capital stock is increased, a filing fee of one dollar per thousand dollars for such increase. If the capital is not increased, a certificate fee of one dollar is required in addition to the recording fee, but no filing fee.

All insurance companies, associations or orders, must incorporate under the provisions of Chapter 1, Title 9.

Life Insurance companies may incorporate for a period of fifty years; all others are limited to a corporate period of not to exceed twenty years.

Insurance companies are required by the commissioner of insurance to file a certified copy of said articles. The Secretary of State will furnish same for a small fee.

Changes in articles of incorporation must be made by amendments duly adopted by the stockholders or members if a mutual. If no increase is made in the amount of capital stock, a certificate fee of $1.00 and a recording fee must be paid. No recording fee less than 50c. Where capital stock is increased the certificate fee is omitted and a filing fee of $1.00 per thousand of such increase together with the recording fee of 10 cents per hundred words is required.

Articles of incorporation of an insurance company or association must be reviewed and approved by the commissioner of insurance **before** being recorded by the recorder of deeds or the secretary of state. This applies to amendments as well.

SUGGESTIVE FORM FOR ARTICLES OF INCORPORATION.

ARTICLES OF INCORPORATION OF THE

.....

We, whose names are hereto subscribed, hereby associate ourselves into a body corporate under the provisions of Chapter 1, Title IX, of the Code of Iowa and acts amendatory thereof; assuming all the powers, rights and privileges granted bodies corporate under said chapter and title, and do adopt the following Articles of Incorporation, to-wit:

Article I. The name of this corporation shall be the.....

.....

Article II. Its principal place of business shall be at..... and ..... in the county of..... State of Iowa.

Article III. The object of the corporation is.....

.....

.....

.....

.....

.....

.....

(Here state object of the corporation. If insurance designate the Code chapter under which it is proposed to operate. Fire and Casualty under Chapter 4, Assessment Associations under Chapter 5, Life under Chapter 6, and Fraternal Orders under Chapter 9, all of Title IX, Code.)

The corporation shall have the right to buy, hold, sell and convey personal property and such real estate, as may be necessary or convenient for the proper conduct of the affairs of the corporation.

All conveyances of real property made by the corporation shall be executed by the president and countersigned by the secretary with an impression of the corporate seal attached, if the corporation has a seal; and all releases of mortgages, liens, judgments or other claims that are required by law to be made of record may be executed by the president, vice-president or secretary of the corporation.

(The following article cannot be used by a Mutual.)

Article IV. The amount of capital stock authorized is..... .....thousand dollars, divided into shares of ....dollars each. No stock shall be issued until the corporation has received payment in full therefor at par in cash or property. The capital stock authorized may be in-

creased by vote of.....in interest of all the stockholders, by the adoption of an amendment to these articles. When the outstanding capital is increased, the additional shares shall be offered to the existing stockholders proportionately to their holdings at not less than par.

(This article must in an insurance company state the amount of capital stock actually paid up, which cannot be less than $100,000. See Section 1783-e. Property cannot be taken on stock by insurance corporations.)

Article V. The corporate period of this corporation shall begin on the date the Secretary of State issues a certificate of incorporation, and shall terminate at the expiration of ..... years from said date unless sooner dissolved by a..... vote of the stockholders at any annual meeting, or at a special meeting called for that purpose, or by unanimous consent as provided by law.

(Life insurance companies may endure for fifty years; those for other insurance purposes not to exceed twenty years. See Section 1618.)

Article VI. The affairs of this corporation shall be managed by a board of.....directors, who shall elect a president, vice-president, secretary and treasurer and such other officers, including an executive committee, as they may see fit or as may be provided for by the by-laws of this corporation.

(Not less than five directors. See Section 1695.)

Article VII. The annual election shall be held on the..... day of ..... of each year. Until the first election, which shall be held on ....., the following persons shall be directors:

Name	Postoffice Address
.....	.....
.....	.....
.....	.....

and the followings persons shall be officers:

President	Postoffice.....
Vice-President	Postoffice.....
Secretary	Postoffice.....
Treasurer	Postoffice.....
.....	Postoffice.....

All officers of this corporation shall hold office for the term of one year or until their successors are elected, and have qualified. Every director shall be a stockholder and if any director shall sell or transfer his stock in this corporation he shall at once cease to be a director. The board of directors may fill all vacancies occurring in its membership between annual elections by the appointment of qualified persons to hold office for the remainder of the term. Special meetings of the stockholders may be called at any time by the president upon giving .....days' notice in person or in writing to the stockholders and shall be called by him at any time upon request of stockholders representing ..... shares of stock, and in case of his neglect or refusal to call a meetfng, the parties owning stock to the amount of..... shares may join in a call of the stockholders, which meeting shall be the same as though called by the president. At all meetings of the stockholders each stockholder shall be entitled to one vote for each share of stock held by him, which vote he may cast in person or by written proxy.

(Substitute members, in a Mutual, for stockholders.)

Article VIII. The highest amount of indebtedness to which this corporation may at any time subject itself shall not exceed two-thirds of its paid up and outstanding capital stock.

(A Mutual may designate a definite amount.)

Article IX. The private property of the stockholders shall be exempt from corporate liability except to the extent and in the manner provided by the laws of the State of Iowa.

(Substitute members for stockholders, in a Mutual.)

Article X. The corporation may make and alter by-laws at pleasure, and may authorize the board of directors to do so, subject to such restrictions as may be deemed advisable.

Article XI. Amendments to these articles may be made at any annual meeting of the stockholders, or at a special meeting called for that purpose, two-thirds of all stockholders in interest voting for such amendments.

Dated this.....day of....., 19....

.....

.....

.....

State of Iowa,

.....County ss

On this ..... day of....., 19....
before me, a Notary Public in and for said county and state, personally appeared .....
.....
.....
said persons being to me personally known to be the identical persons whose names are subscribed to the foregoing Articles of Incorporation, and each for himself acknowledged the same to be his free and voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and notarial seal at.....
.....in the county of.....
State of Iowa, the day and year last above written.

[Seal] .....
Notary Public.

SUGGESTIVE FORM FOR AMENDMENT TO ARTICLES OF INCORPORATION.

AMENDMENT TO ARTICLES OF INCORPORATION OF THE

.....

Know All Men by These Presents:

That at a.....meeting of the stockholders of ..... company, a corporation duly organized under the laws of the State of Iowa, held at the office of the company in..... Iowa, on the .....day of .....A. D. 19....., after due and legal notice had been given to the stockholders thereof in conformity with its articles of incorporation, and the laws of the state, at which the requisite majority of the stock of said corporation was represented, the following amendment was adopted, by a..... .....vote of the stock interests of the said company, as shown below:

Amendment:

.....
.....
.....
.....
.....

The President and Secretary of the Company were duly authorized and directed to sign, acknowledge, record, publish and do all things which are by law required, to execute, complete and carry into effect the above amendment to the articles of incorporation of said company.

We, ..., and ....., Chairman and Secretary of said meeting do hereby certify the above to be a true and correct statement of the proceedings of the stockholders at the above named meeting.

.....
Chairman.

.....
Secretary.

In conformity with the above resolution we, the President and Secretary of said corporation, have executed this instrument, and do hereby sign and acknowledge the same, for and in behalf of the said corporation, this.....day of..... A. D. 19....

.....
President

.....
Secretary.

State of Iowa,
County of..... ss.

Be it remembered, that on this.....day of ....., A. D. 19...., before me, a notary public in and for said county and state, personally appeared..... ..... and..... each being to me personally known, who being by me duly sworn did say, that they are the President and Secretary respectively of the..... ..... and that said instrument was signed and sealed in behalf of said corporation by authority of its stockholders, and that they acknowledged said instrument to be the voluntary act and deed of said corporation, by them voluntarily executed.

[Seal]

.....
Notary Public.

(Substitute members for stockholders in case of a Mutual or an Association. Substitute association for company in case of a county or state Association.)

SUGGESTIVE FORM FOR CERTIFICATE OF RENEWAL.

CERTIFICATE OF RENEWAL.

Be it remembered, that at a special meeting of the stockholders of the.....Company, a corporation duly organized and existing under the laws of the State of Iowa, having its place of business at..... County, Iowa, held on the.....day of..... 19...., after due and proper notice had been given the stockholders thereof, and at which meeting the requisite number of shares of stock said corporation was represented, in accordance with its articles of incorporation and the laws of the State, the following resolution was adopted by a.....vote in favor thereof, wherefore the said resolution was declared duly adopted:

Resolved, That the corporate period of the..... .....Company, which will expire on the..... .....day of....., 191...., is hereby extended for a period of.....years from said date, continuing until.....unless sooner dissolved by the voluntary action of the stockholders.

Be It Further Resolved, That the renewal, amended and substituted articles of incorporation submitted to the stockholders at said meeting and hereto attached be and the same are hereby adopted as the articles of incorporation of said corporation under the renewal herein provided for.

Resolved Further, That the president and secretary of this Company be and they are hereby authorized and directed to sign, acknowledge, record, publish and do any and all things which are by law required, to execute, complete and carry into effect the above resolution, and to execute, sign and acknowledge the renewal, amended and substituted articles of incorporation duly adopted at said meeting.

We, ... and ....., president and secretary of said company, do hereby certify the above to be a true and correct statement of the proceedings of the stockholders at the above named meeting.

Attested by:

....
..... President.
.....
....
..... Secretary.

State of Iowa,
.....County, ss.

Subscribed and sworn to before me by the said ..... and ..... this .....day of ....., A. D. 19.....

.....
[Seal] Notary Public in and for
.....County, Iowa.

PUBLICATION NOTICE.

Section 1613, Iowa Code, provides that a notice of such incorporation must be published in a newspaper. It is not necessary that the articles as adopted by the corporation be published in full, therefore the following form will be deemed sufficient.

NOTICE OF INCORPORATION.

Notice is hereby given that the undersigned have associated themselves together as a body corporate under the name of the..... .....Insurance Company, with principal place of business at ....., Iowa.

The general nature of the business to be transacted by such corporation is that of..... insurance under the general provisions of Chapter Six, Title IX, Code of Iowa.

The amount of capital stock authorized to be issued is $..... of which $100,000 shall be fully paid up.

This company will commence its corporate existence as soon as a certificate is issued by the Secretary of State, and may endure for .....years, unless otherwise terminated as by its Articles of Incorporation provided.

Its affairs shall be conducted and managed by a president, secretary, treasurer, and a board of ..... directors, to be elected at the annual meeting of the stockholders in accord with its articles of incorporation and by-laws.

The highest amount of indebtedness to which this company can at any time subject itself is $.....

Private property of the stockholders shall be exempt from corporate debts.

A state or county mutual must use the word members instead of "stockholders" and association must be substituted for "company." Reference to capital stock should be omitted and reference to Chapter 5 should be substituted for Chapter 6, as above.

Incorporations other than life can have a corporate existence of but twenty years. That of a life company fifty years.

Capital stock can not be less than $100,000 paid up.

ANALYSIS OF SEC. 1710.

Sec. 1710. **Analysis of Risks.** No company may issue policies in Iowa for more than one of the nine purposes mentioned in Section 1709, except as follows:

1. **Fire.** A stock company organized to transact business under Sub.-sec. 1, may, if its charter permits, in addition to fire, insure against the casualties specified in Sub-sec. 9.

2. **Fidelity.** A domestic company having a paid up capital of $100,000, or a foreign company with $200,000 paid up capital, may in addition to writing fidelity or security bonds, do insurance against robbery, theft and burglary.

5. **Health and Accident.** A domestic stock company organized to transact business under Sub-sec. 5, with a paid up capital of $100,000, may also insure steam boilers against rupture or explosion (6) and plate glass against breakage from accident.

If a foreign company has a paid up capital of $250,000, it may in addition to covering business contemplated by Sub-sec. 5, do steam boiler insurance (6) or plate glass.

If possessed of $300,000 paid up capital, it may do steam boiler insurance (6) and plate glass.

If possessed of $500,000 paid up capital, it may also do fidelity insurance (2) and steam boiler (6) and plate glass.

A domestic company operating under Sub-sec. 5, may also insure against burglary, robbery and theft.

WHAT CONSTITUTES INSURANCE IN IOWA.

In order to determine if the business conducted by a company, society or association is such as to bring it within the provisions of the insurance laws of the state of Iowa, it is only necessary to decide whether or not the business proposed to be conducted is a form of insurance, in which event, they must comply with the requirements of the statutes before they can do business or exercise any authority or power in the state of Iowa.

"If it be an insurance company—that is, an institution which undertakes to pay a sum of money upon the death of the assured, or at another fixed time, in consideration of premiums, assessments or payments made in any other way, it must comply with the requirements of our statutes before it can do business or exercise any authority or power in the state."—Opinion of Judge Beck, rendered in the case of *State v. Nichols*, 78 Iowa, 747.

"A contract of insurance is an agreement by which one party for a consideration, which is usually paid in money, either in one sum or at different times during the continuation of the risk, promises to make a certain payment of money, on the destruction or injury of something in which the other party is interested. * * * * All that is requisite to constitute such a contract is the payment of the consideration by the one and the promise of the other to pay the amount of the insurance upon the happening of injury to the subject by the contingency contemplated in the contract."—Justice Gray in the case of *Commonwealth v. Wetherbee*, 105 Mass., 149.

It was contended that defendant society was a benevolent one and not an insurance company, but the court held that the contract was one of insurance, saying that all insurance was originally based on the idea of benevolence; that the benevolence in this case does not flow from mere good will, but from legal obligation; that its gifts are not bestowed without consideration, but depend on mutual promises; that if defendants are exercising charity and benevolence by means of contracts for the payment of money on the death of a member, they are doing an insurance business. *State v. Merchants Exchange Mutual Benefit Society*, 72 Mo., 146.

"But counsel for defendant insist that the system of insurance to which the policy involved in this suite belongs is 'purely benevolent,' and, therefore, ought not to be subject to the legislation applicable to other classes of insurance. We think the 'Benevolence' in the case is purchased for, at least, a fair, if not liberal, consideration, and rests upon a contract which must be regarded and enforced by the law as all other contracts. It will not do to recognize a rule which requires courts to consider the purposes of contracts, or to be guided in their interpretation and the application of remedies for enforcing them, by the benefits conferred upon the contracting parties, and the benevolent purposes they had in view when they assumed the obligations of the contract." *McConnell v. Iowa Mutual Aid Association*, 79 Iowa, 757.

"If he becomes disabled, the company promises to do an act of value to him. If he dies, the promise is to do an act of value to his widow or to his heirs; that is, an act equivalent to, and actually involving, the payment of money, conditioned upon the cessation of human life. The real character of this promise, or of the act to be performed, cannot be concealed or changed by the use or absence of words in the contract itself; and it is wholly immaterial that on its face this contract does not expressly purport to be one of insurance, and that this word nowhere appears in it. Its nature is to be determined by an examination of its contents, and not by the terms used. The performance of the contract may be enforced by the holder in case of disability, or by his widow or heirs in case of his decease. If it does not come within the definition of an insurance contract, as found in section 3 (that is, if it is not an agreement by which one party, for a consideration, promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction of injury of something in which the other party has an interest), it involves the payment of money or something else of value to the family or representatives of the holder, conditioned upon the continuance or cessation of human life, and is covered by the definition found in section 63. It is an agreement involving and providing, in effect, for the indirect payment of money by the relinquishment of a debt; and there is no substantial distinction between such an agreement or obligation and the ordinary life insurance policy. The obligation in each case is conditioned upon the cessation of human life."—Judge Collins in the case of *State v. Beardsley*, 92 N. W. (Minn.) 472.

See also:

State v. Miller, 23 N. W. (Iowa), 241;
Berry v. K. T. & M. L. I. Co., 46 Fed., 439;
National Union v. Marlow, 74 Fed., 775;
Commonwealth v. Wetherbee, 105 Mass., 149;
Holland v. Order of Chosen Friends, 54 N. J. Law, 490.

CASES CITED IN THIS VOLUME

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